

# JUST CAUSE LAW COLLECTIVE

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## When Do You Have to Give Your Name at the RNC Protests?

**Question:** In the State of New York, if I'm detained by the police or the FBI, do I have to identify myself?

**Short Answer:** No, unless you're stopped while driving a vehicle, in which case you have to show your license, registration and proof of insurance.

**Long Answer:** The U.S. Supreme Court recently decided *Hiibel v. Sixth Judicial Dist. Court*, 124 S.Ct. 2451 (2004), in which it determined that Nevada's "stop-and-identify" statute is constitutional. Nevada's law is quite different from New York's. While both states' laws specify that the officer must first have a reasonable suspicion that the suspect has committed, is committing, or is about to commit a crime, the focus of each statute is different:

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| <b>Nevada Stop-and-Identify:</b> Nev. Rev. Stat. §171.123  | <b>New York Stop-and-Identify:</b> NY CLS CPL §140.50(1)  |
| ... Any person detained [by a police officer] shall identify himself, but may not be compelled to answer any other inquiry of any peace officer. | ...a police officer [who is detaining a suspect]...may demand of him his name, address and an explanation of his conduct. |

The Nevada statute imposes a duty on the *suspect* to identify himself, whereas the New York statute provides guidance to the *officer*, so as to limit the officer's investigation. The Nevada statute was held to be constitutional because the suspect can stop answering questions as soon as he's given his name. The New York statute, if it were read as imposing a duty on the suspect, would be unconstitutional, because it goes far beyond giving one's name. Having to give "an explanation of his conduct" would clearly strip away altogether the suspect's Fifth Amendment protection against self-incrimination.

Neither the Nevada nor New York stop-and-identify statute actually defines a crime in itself. In each state, you must look to the law on "obstruction," to see whether there's been criminal conduct. Again, Nevada's law is different from New York's in defining that obstruction occurs when a person:

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| <b>Nevada Obstruction:</b> Nev. Rev. Stat. §199.280   | <b>New York Obstruction:</b> NY CLS Penal §195.05   |
| ...willfully resists, delays, or obstructs a public officer in discharging or attempting to discharge any legal duty of his office... | ...intentionally obstructs, impairs or perverts the administration of law or other governmental function, or prevents or attempts to prevent a public servant from performing an official function, <i>by means of intimidation, physical force or interference, or by means of any independently unlawful act...</i> |

In Nevada, the courts determined that Mr. Hiibel's silence, when asked his name, constituted "resisting, delaying, or obstructing." In New York, obstruction has to be physical, not just verbal. The New York courts have considered this issue repeatedly and come to the same conclusion: mere words are not enough to constitute obstruction. *People v. Case* (1977) 42 N.Y.2d 98 (revealing the whereabouts of a speed trap);

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*People v. Longo* (1971) 71 Misc.2d 385 (revealing the identity of an undercover narcotics officer). Even giving a false name, when detained, is not obstruction in New York, as long as you're not impersonating someone else. *People v. Sherman* (1982, City Ct) 116 Misc.2d 109; *People v. Gaissert* (1973) 75 Misc.2d 478. The nail in the coffin is *People v. Offen* (1978) 96 Misc.2d 147, in which the defendant, whom the police attempted to detain for littering, refused to identify himself, told the officer, "Go fuck yourself," and walked away. The court stated:

An essential element of the crime of obstructing governmental administration... must be an act of either (1) intimidation or (2) physical force or interference or (3) an independently unlawful act.

Plainly, ignoring an officer's request for identification is not a crime, nor does that act supply any such element. *Offen*, at 150.

**Question:** If I don't say my name, won't that give the officer grounds to arrest me?

**Answer:** No. The officer would have to find some other crime to arrest you for, since it's not against the law to withhold your name.

**Question:** What if I'm not sure whether I've been detained?

**Answer:** Sometimes it's hard to tell, so just ask: "Am I free to go?" If the officer doesn't clearly tell you to stay, then you should calmly walk away without saying anything else.

**Question:** If I *am* arrested, do I have to give my name then?

**Answer:** Of course, if you want to get out of jail. The police won't necessarily release you, but you'll have to give your name just to be considered for release. The police will also want to see government-issued photo ID, with your current address on it.

**Question:** Shouldn't I give my name if I'm being detained and the officer says maybe he'll let me go if I identify myself?

**Answer:** Do you feel lucky? Maybe the officer will let you go if you identify yourself. Or maybe he'll want your address, too. And then maybe he'll want to know about your political beliefs, and who your friends are, and what you're planning to do... The best place to draw the line is right at the beginning. Because if we're engaging in free speech and free assembly, and we give in to government intimidation and harassment, we're setting the scene for another McCarthy Era. The great activist and performer, Paul Robeson, used to sing, "There's a man going 'round taking names," and he wasn't kidding.

**Question:** So you think that I shouldn't give my name unless I've been clearly told that I'm under arrest?

**Answer:** Exactly.