The Natural Law Remedy to TSA Airline Security Groping

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[This Chapter is from the book *The LAWFUL Remedy to Tyranny – How You Lost Your Rights and How You Can Get Them Back*, by Richard Walbaum, Copyright (C) 2012, available from www.NaturalLawRemedy.com.[1] This Chapter may be duplicated provided it is done so in its entirety.

This book enumerates rights retained by the people that we can claim under the Ninth Amendment,[2] under First Amendment religious free exercise,[3] and 96 Stat. 1211[4] wherein Congress asks us to voluntarily apply the teachings of the Bible and the holy scriptures, all based upon natural law[5] which comes to us from a rich but suppressed history in which hundreds of scholars over several thousand years agreed that laws must not be arbitrary or unreasonable, otherwise they are not laws at all and we have a right and duty to disobey. This is *individual nullification*[6] of bad law, and is a legal remedy that we can argue in court: We will be following a higher law as a duty to God.]

Disclaimer: The information contained herein represents the opinions of the author and how he would act upon various issues. If you desire to follow the same path, know that the information herein is an untested legal theory. Use at your own risk. Post your experiences on the blog page at www.NaturalLawRemedy.com; the feedback will allow the theory to evolve.

This Chapter does not replace the book from which it came, but there is enough here to allow you to take action should you desire to do so, even though you have not learned its basis. Whenever your rights are trampled, you can't just break the law; you must have a reason why, and this Chapter gives you the law underlying TSA groping of private parts, how it can be resisted, and how to protect your children, though it does not guarantee that the courts will accept the theory or that you will be able to fly (you probably won't), but it will give you a legal basis to sue. It does not rely so much on natural law, but we can fall back on it later, if necessary.

First we will see what the courts have to say regarding our pertinent rights; then we will examine the technical issues that modify those rights. It is a good idea to understand the underlying theory; this will provide flexibility should an unanticipated case arise. [Note: “supra” means “above”]

Court Cases On Searches, Seizures, and the Fourth Amendment

The Fourth Amendment to the U.S. Constitution states: “The right of the people to be secure

1 Also available in paperback at Amazon.com.
2 The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
3 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.
4 See Appendix 4.
5 See http://en.wikipedia.org/wiki/Natural_law
6 There is the well known power of the jury known as *jury nullification* to judge a law as bad and refuse to convict. A state, through the power of state nullification, can refuse to acknowledge the power of the federal government under the Tenth Amendment; this is becoming lively now due to the need of the time. See the book *Nullification* by Thomas E. Woods, Jr., Regnery Publishing, 2010.

in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution. *Chambers v. Maroney,* 399 US 42, 51 (1970)[7]

Constitutional provisions for the security of person and property should be liberally construed. *Boyd v. U.S.*, 116 US 616, 617 (1886)

The Supreme Court held in *Brown v. Texas*, 442 U.S. 47, 51-52 (1979) that a demand for ID by police must be based on reasonable suspicion with objective criteria.

The *Lopez* Court explained that there are different degrees of probability "that the subject has been, is, or is about to be, engaged in criminal activity ..." with "various degrees of probability justifying different types of intrusion upon the privacy of the individual [citations deleted]." An investigative "stop" requires one degree of probability, while a "frisk" in many cases requires a higher level, and at the far end is the "probable cause" level which will justify the issuance of search warrants, and searches incidental to arrest with or without a warrant. *Lopez*, supra, 1094. When you give consent, the government avoids any problem with violating your rights:

[A]n accused's voluntary consent must be proven by clear and positive evidence. A consent is not a voluntary one if it is the product of duress or coercion, actual or implicit. Moreover, to be voluntary, a consent must have been unequivocal, specific, and intelligently given. *United States v. Smith*, 308 F.2d 657, 663 (2d Cir. 1962)

I would suspect that most of you reading this had no idea you had given voluntary consent that was "unequivocal, specific, and intelligently given" when you entered a TSA screening area.

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone — the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth. *Olmstead v. U.S.*, 277 U.S. 438, 478-479 (1928).

7 Note: Most cases listed herein can be found at www.scholar.google.com; enter the citation; you may need to use advanced search.

One court in examining the drug problem, observed that even though the government cited the "the severe and intractable nature of the drug problem", the court held that "the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose." *City of Indianapolis et al. v. Edmond et al.* 531 U.S. 32, 42 (2000)

See Appendix 1: Excerpts from *City of Indianapolis et al. v. Edmond et al.* 531 U.S. 32, 37 (2000), for more on searches not related to air travel.[8]

The Supreme Court stated:

> [W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another. *Simmons v. U.S.*, 390 U.S. 377, 394 (1968)
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> As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. … Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436, 490-491 (1966)
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> The claim and exercise of a constitutional right cannot thus be converted into a crime. *Miller v. U.S.*, 230 F.2d 486, 490
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> The Fourth and Fourteenth Amendments are implicated in this case because stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of those Amendments, even though the purpose of the stop is limited and the resulting detention quite brief. The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order " `to safeguard the privacy and security of individuals against arbitrary invasions. . . .' " *Delaware v. Prouse*, 440 U.S. 648, 653-654
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> Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police. *Brinegar v. United States*, 338 U.S. 160, 180-181 [dissenting opinion]

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8 In *Edmond* at 42 ("Our holding also does not affect the validity of border searches or searches at places like airports and government buildings, where the need for such measures to ensure public safety can be particularly acute.") See, e.g., *Flippo v. West Virginia*, 528 U.S. 11, 13-14 (1999) (per curiam) (no "murder-scene" exception to warrant requirement); *Richards v. Wisconsin*, 520 U.S. 385, 391-95 (1997) (refusing to recognize blanket exception to knock-and-announce requirement in drug cases); *Abel v. United States*, 362 U.S. 217, 219-20 (1960) (applying Fourth Amendment to espionage case)

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding. *Olmstead v. United States*, 277 U.S. 438, 479 (1928). And in footnote 12: [I]t is better that a few criminals escape than that the privacies of life of all the people be exposed to the agents of the government, who will act at their own discretion, the honest and the dishonest, unauthorized and unrestrained by the courts.

There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case, it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation. In my view, it is temporary detention, warranted by the circumstances, which chiefly justifies the protective frisk for weapons. *Terry v. Ohio*, 392 U.S. 1, 34 (1968)

It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has “seized” that person. *Terry v. Ohio*, supra at 16.

When officers detained defendant for the purpose of requiring him to identify himself, they performed a seizure of his person subject to the requirements of the Fourth Amendment. *Brown v. Texas*, 443 U.S. 47, 50 (1979)

The Texas statute under which appellant was stopped and required to identify himself is designed to advance a weighty social objective in large metropolitan centers: prevention of crime. But even assuming that purpose is served to some degree by stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity, the guarantees of the Fourth Amendment do not allow it. When such a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits. See *Delaware v. Prouse*, 440 U. S. 648 at 661 (1979). *Brown v. Texas*, supra, at 52.

Even with a compelling state interest,

... that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)

There should be no sanction or penalty imposed upon one because of his exercise of constitutional rights. *Sherar v. Cullen*, 481 F.2d 945, 946 (1973)

... [S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment —subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967)

It is the "specifically established and well-delineated exception" of the above case that applies to airline travel, called a "special needs" exemption.

Court Cases Relating to Travel

I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. [*Edwards v. California*, 314 U.S. 160, 177 (1941)]

Freedom of movement under United States law is governed primarily by the Privileges and Immunities Clause of the United States Constitution which states, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." As far back as the circuit court ruling in *Corfield v. Coryell*, 6 Fed. Cas. 546 (1823), the Supreme Court recognized freedom of movement as a fundamental Constitutional right. In *Paul v. Virginia*, 75 U.S. 168 (1869), the Court defined freedom of movement as "right of free ingress into other States, and egress from them." However, the Supreme Court did not invest the federal government with the authority to protect freedom of movement. Under the "privileges and immunities" clause, this authority was given to the states, a position the Court held consistently through the years in cases such as *Ward v. Maryland*, 79 U.S. 418 (1871), the *Slaughter-House Cases*, 83 U.S. 36 (1873) and *United States v. Harris*, 106 U.S. 629 (1883).[9]

Freedom of movement, mobility rights or the right to travel is a human rights concept that the constitutions of numerous states respect. It asserts that a citizen of a state, in which that citizen is present has the liberty to travel, reside in, and/or work in any part of the state where one pleases within the limits of respect for the liberty and rights of others, and to leave that state and return at any time. Some immigrants' rights advocates assert that human beings have a fundamental human right to mobility not only within a state but between states.[10]

The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day; and under the existing modes of travel includes the right to drive a horse-drawn carriage or wagon thereon, or to operate an automobile thereon, for the usual and ordinary purposes of life

9 From: http://en.wikipedia.org/wiki/Freedom_of_movement_under_United_States_law
10 From: http://en.wikipedia.org/wiki/Freedom_of_movement

and business. It is not a mere privilege, like the privilege of moving a house in the street, operating a business stand in the street, or transporting persons or property for hire along the street, which a city may permit or prohibit at will. *Teche Lines vs. Danforth*, Miss., 12 S.2d 784; *Thompson vs. Smith*, 154 SE 579 (1930), 155 VA 371, 377 (1930)

The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment. *Kent v. Dulles*, 357 US 116, 125 (1958).

The right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law. A restraint imposed by the Government of the United States upon this liberty, therefore, must conform with the provision of the Fifth Amendment that "No person shall be * * * deprived of * * * liberty * * * without due process of law". *Schactman v. Dulles*, 225 F.2d 938, 941 (D.C. Cir, 1955).

Court Cases Relating to Airline Travel

The power of the government to regulate air travel comes from the Commerce Clause of the U.S. Constitution, which gives the federal government the power to regulate *interstate* commerce.[11] The powers granted to the federal government cannot usurp our rights, particulary the right to probable cause of the Fourth Amendment. But there are "special needs"[12] that allow suspicion-less searches and seizures. When they restrict your freedom of movement, you are "seized".[13]

The approved system [to detect hijackers] survives constitutional scrutiny only by its careful adherence to absolute objectivity and neutrality. When elements of discretion and prejudice are interjected it becomes constitutionally impermissible. *United States v. Lopez*, 328 F. Supp. 1077, 1101 (1971)

Nor can the government properly argue that it can condition the exercise of the defendant's

11 "Constitutional watchdog, The Texas Tenth Amendment Center noted that 'the Texas legislature stands on solid ground [in making groping illegal]. Local governments control airports and no enumerated power in the Constitution gives the federal government the authority to regulate them. Under the Tenth Amendment, airport operation falls under state jurisdiction.'" http://www.infowars.com/states-rebeling-against-tsa-texas-the-latest-to-legislate-for-banning-grope-downs-naked-scanners.

In *United States v. Lopez*, 514 US 549 (1995) the court said: "When asked at oral argument if there were any limits to the Commerce Clause, the Government was at a loss for words. ... Likewise, the principal dissent [judges of the court] insists that there are limits, but it cannot muster even one example."

If there are no limits to the power, then the enumeration of powers in the Constitution of Article 1 Sec. 8 is meaningless. I agree with the Tenth Amendment Center and the *Lopez* court, but a person might not expect to win a 10th Amendment case, while a state would not have to, and would simply assert the right via nullification. This Chapter will give an individual person an argument the courts must accept.

The Tenth Amendment reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

12 See *Indianapolis v. Edmond* 531 US 32, 47-48 (2000) ("Our holding also does not affect the validity of border searches or searches at places like airports and government buildings, where the need for such measures to ensure public safety can be particularly acute.")

13 If the TSA rolls out to high school proms and shopping malls, there is no "special case" requirement here. I can ask them "What is your probable cause for this first amendment intrusion?" I have a right to enter a public place, and it cannot be conditioned by a search or seizure. If they cannot *articulate* probable cause, I might make them arrest me, and then sue them.

constitutional right to travel on the voluntary relinquishment of his Fourth Amendment rights. [Citation deleted]. Implied consent under such circumstances would be inherently coercive. *Lopez*, supra, 1093

The government has argued that continuing the boarding process after reading the posted and clearly observable signs which state "PASSENGERS AND BAGGAGE SUBJECT TO SEARCH" amounts to implied consent to searches such as occurred in this case. ... Consent to a search involves a relinquishment of fundamental constitutional rights and should not be lightly inferred. *Lopez*, supra, 1092

One court held that:

"In determining whether individualized suspicion is required, we must consider the nature of the interests threatened and their connection to the particular law enforcement practices at issue." *Edmond* at 42-43.

One court in examining the drug problem, observed that even though the government cited the "the severe and intractable nature of the drug problem", the court held that "the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose." *Edmond* at 42. [14]

A court stated the standard to be applied:

"...where a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context."[15]

The following court case demonstrates that air travel is no longer a luxury, but an essential component of our existence:

Commercial air travel, once a luxury, has become a staple of modern existence. For many Americans, boarding an airplane to travel across the state or across the country is as ordinary and commonplace an event as boarding a bus or train fifty years ago, or mounting a horse-drawn carriage around the turn of the century. ... Airplane travel has become the lifeblood of American society in the latter part of the twentieth century.[16]

In the 1970s there was a problem with increased hijacking of planes, so government responded by implementing airport screening. Because of our Fourth Amendment right against unreasonable searches

14 See, e.g., *Flippo v. West Virginia*, 528 U.S. 11, 13-14 (1999) (per curiam) (no "murder-scene" exception to warrant requirement); *Richards v. Wisconsin*, 520 U.S. 385, 391-95 (1997) (refusing to recognize blanket exception to knock-and-announce requirement in drug cases); *Abel v. United States*, 362 U.S. 217, 219-20 (1960) (applying Fourth Amendment to espionage case)

15 *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989)

16 *US v. $124,570 US Currency*, 873 F. 2d 1240, 1242 (9th Cir. 1989)

and seizures, the 9th Circuit Appellate court in *United States v. Davis*[17] had to determine what constituted "reasonable", and came up with what I view as a brilliant plan that harmonized the interests of security, while maintaining the Fourth Amendment right. This is nicely expressed in a later case in 2005 wherein the Ninth Circuit affirmed the *Davis* case:

> In *Davis* and its progeny, we have established a general reasonableness test for airport screenings. "An airport screening search is reasonable if: (1) it is no more extensive or intensive than necessary, in light of current technology, to detect weapons or explosives; (2) it is confined in good faith to that purpose; and (3) **passengers may avoid the search by electing not to fly.**" ...[18] [emphasis added]

Normally under the Fourth Amendment, reasonable suspicion or probable cause that a crime has been, is being, or is about to be committed, is required before a search can commence. The rule in *Davis* was created as a "special needs" exception to the Fourth Amendment, for suspicion-less searches to be applied to airport screening.[19]

With the *Davis* ruling for suspicion-less searches, the sole purpose of airport screening was (and still is) to prevent weapons and explosives from being brought onto the plane. Such screening cannot be used for a criminal investigation. For example, in *US v. McCarty*,[20] the TSA found child pornography in McCarty's luggage; since the search must be limited to the detection of weapons or explosives, the evidence was suppressed; without evidence, there could be no prosecution. But if there is a reasonable suspicion or probable cause that you are committing a crime, you can be seized and searched in the same manner if you were out on the street. With this ruling (but no longer today), you had the right at any time to opt out of the screening, even after you set off the magnetometer. If you didn't want to be searched, or if the TSA was abusing you or your children, you could just walk away. The government's interest to prevent weapons and explosives onto the plane had been served because you did not get on. You were free to try again later.

The screening was based on a "consent" search, and you could withdraw your consent at any time. But in 2007, 32 years later, the 9th Circuit Court of Appeals reversed itself in *US v. Aukai,*[21] noting that a potential terrorist could simply walk away from the screening before his weapon was detected, and after a number of attempts might make it on the plane. The *Davis* rule No. 3, supra, was deleted; after entering the screening area,[22] you could no longer avoid the search by electing not to fly. This also opened the door to abuse by the TSA. Since you were seized, you could not leave, and if you did not know your rights they could more or less do whatever they wanted to you.

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17 *United States v. Davis*, 482 F. 2d 893, 910 (9th Cir. 1973)

18 *United States v. Marquez*, 410 F.3d 612, 616 (9th Cir. 2005)

19 For other cases on conditioning the right to travel by relinquishing the Fourth Amendment, see *Perry v. Sindermann*, 408 U.S. 593 (1972) (coerced consent violates the doctrine of unconstitutional conditions; the Government cannot condition the receipt of a governmental benefit on waiver of a constitutionally protected right); *Speiser v. Randall*, 357 U.S. 513 (1958), (veterans tax benefit may not be conditioned on taking a loyalty oath); *Frost Trucking Co. v. Railroad Comm'n*, 271 U.S. 583, 594 (1926) (on unconstitutional conditions, "it is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence.")

20 *US v. McCarty,* 672 F. Supp. 2d 1085 - Dist. Court, D. Hawaii (2009)

21 *US v. Aukai,* 497 F. 3d 955, (9th Cir. 2007)

22 This began when you put your carry-on luggage on the xray scanner, or went through the magnetometer.

Before we continue, you need to understand an element necessary in applying natural law to the issue: There are two types of offenses: malum in se, and malum prohibitum.

> Malum in se: An offense that is evil or wrong from its own nature irrespective of statute.
> Malum prohibitum: An offense prohibited by statute but not inherently evil or wrong.[23]

Examples of malum in se are murder, theft, and the like. Examples of malum prohibitum include driving statutes such as driving on the wrong side, or running a stop light; these are not wrong as such, there is no natural penalty, but merely prohibited.

The *Aukai* case is neither arbitrary nor unreasonable from the perspective of preventing hijackers from getting on a plane. But from the perspective of what is right and wrong, and what is acceptable to society,[24] it is clearly unreasonable based on the fact that groping of private parts causes distress and humiliation in and of passengers, and many people refuse to fly or subject their children to it for that reason. As beings created in the image and likeness of God, pursuant to 96 Stat. 1211, that is not how you treat God. That groping is malum in se and punishable by states laws is further confirmation, and instead of protecting passengers, it is causing harm.[25] The *Aukai* court either did not properly find the balance point, or properly control the system, and the ruling in my opinion is void as contrary to natural law.

Here is more evidence the sovereign[26] people have expressed their will on the question of groping; it is a violation of natural law to ignore the will of the sovereign:

- The system cannot discriminate between what is and is not a real risk: Former Governor Jessee Ventura and former Navy Seal, is deemed a risk because he has metal implants and sets off the magnetometer. He now refuses to be groped and will not fly commercially.[27]
- Congressman Ron Paul complained about being groped.[28]
- Miss TSA molested by TSA.[29]
- There were protests of groping via opt-out days and weeks.[30]
- The Texas legislature attempted to ban groping: The house was unanimous, and the senate one vote shy of unanimous.[31] They backed down when a US Attorney threatened to blockade Texas air traffic if

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23 http://dictionary.lp.findlaw.com

24 "Right, by definition, is natural law." -- Maharishi Mahesh Yogi, perhaps the greatest exponent of natural law in our time.

25 http://www.youtube.com/watch?v=V9i10_WX7tA. http://www.youtube.com/watch?v=ADZUQUfJoBk&feature=related.
http://pncminnesota.wordpress.com/2010/11/08/rape-survivor-devasted-by-tsa-enhanced-pat-down.
Search YouTube.com "TSA harrassment" for others.

26 The sovereignty of the people is explained in a previous chapter.

27 http://www.youtube.com/watch?v=qVKmMD-_QuA

28 http://www.youtube.com/watch?v=AzPe515C1gI. Ok, it is understandable that congressmen cannot be trusted.

29 http://www.youtube.com/watch?v=X6hvUWv2CsY

30 Search YouTube.com for "tsa opt out day" for various videos.

31 HB 1937, a bill that would have made it "A criminal act for security personnel to touch a person's private areas without probable cause as a condition of travel or as a condition of entry into a public place," was headed for an imminent Senate vote in Texas having already passed the House unanimously 138-0, [the Senate was polled, having not yet voted, showing 30 to 1 in favor, according to infowars.com radio show] before the federal government stepped in to nix the legislation. Senate sponsor Dan Patrick added that TSA officials had warned him passing the bill "could close down all the airports in Texas," which he regarded as a 'heavy handed threat' by the federal government.

they passed the law.[32]

• In New Jersey, reflecting the desires of their constituency:

> Republican state Senator Mike Doherty has vowed to push for legislation that will ban both the scanners as well as invasive groping techniques.
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> "It is with great sadness that I have come to recognize that one of our greatest threats has been presented by officials of the TSA who have begun to implement intrusive searches of law abiding Americans who are traveling within our borders." Doherty has said.
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> "I am drafting new legislation that will make it perfectly clear that in New Jersey, our Constitutionally granted civil liberties are treasured and will be protected. I am calling upon my colleagues in the Legislature to step up and co-sponsor legislation that will protect the rights of citizens in New Jersey," he added.
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> ...
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> [New Jersey Governor Chris Christie called] the procedures "too invasive." "None of us wants to be on an airplane with somebody who wants to blow it up. We have to find a balance here, but I think the TSA at this point has erred on the wrong side of that balance." ... "I support the TSA trying to keep us safe, but not the way they're doing it."[33]

• In Utah, Rep. Carl Wimmer is working on a bill that

> "will prohibit TSA pat downs in Utah without reasonable suspicion. Texas needs us to stand with them." The *Daily Herald* quotes Wimmer as saying: "It is a work in progress, what I would do right now is simply say TSA Agents are not exempt from the requirement of reasonable suspicion or probable cause to pat down a citizen."[34]

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http://www.prisonplanet.com/feds-threat-to-cancel-flights-in-texas-kills-anti-tsa-grope-down-bill.html

32 The letter from the U.S. Attorney can be seen at: https://docs.google.com/viewer?a=v&pid=explorer&chrome=true&srcid=0B3Uww67RvC9-YmI4OTU4NDktOTM3Ny00NjllLWFmZmItMTA4NDhkYzdmZGFm&hl=en_US&pli=1.

The letter contains some errors. 1) "HB 1937 would directly conflict with federal law." Prior to the *Aukai* case of 2007, citizens could just leave without a pat down; so federal law can be rewritten to be in accord with HB 1937 so there would be no conflict. 2) "If the administrator determines that "a particular threat cannot be addressed in a way adequate to ensure . . . the safety of passengers and crew," he "shall cancel the flight or series of flights." The key word is *adequate*, and the people are the ultimate judge of adequate. 3) "Under the Supremacy Clause of the United States Constitution, Texas has no authority to regulate federal agents ..." The US Attorney would know the law and therefore was lying; the Supremacy Clause (Article. VI. Clause 2) states that the Constitution is supreme, not the federal government: *This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.*

33 http://www.securityinfowatch.com/The%2BLatest/1318834

34 http://www.infowars.com/utah-to-follow-texas-lead-in-tsa-grope-down-revolt. Rep. Wimmer is bucking the 9th Circuit Appellate Court's *Davis* and *Aukai* decisions. First, Utah is located in the 10th Appellate Circuit and is not bound to obey the 9th Circuit rulings. Second, decisions of the appellate courts are not binding on any state courts on state matters. http://en.wikipedia.org/wiki/Stare_decisis. The important question that I have not researched centers on who has jurisdiction over airports, the state or federal government? The State of Utah may be able to ignore *Aukai*, but I wouldn't

• According the infowars.com:

> There shouldn't even be a debate as to whether or not TSA workers can stick their hands down your pants or fondle a woman's breasts. Not even a police officer or an FBI agent can legally lay a hand on you unless it's in the course of an arrest. Though welcomed, there isn't even any need for a law to be passed in Texas, all state police have to do is enforce existing laws.
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> As Steve Wagstaffe, the District Attorney in San Mateo County, told Alex Jones last year, merely touching someone against their will is a felony in California, just as it is in Texas and across the country.
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> "If it is skin to skin, if someone were to take their hand and put it underneath somebody's blouse and touch someone inappropriately and go skin to skin, that's a felony, and if it's done simply over the clothing, according to California law, that's a misdemeanor," said Wagstaffe.
>
> If police merely did their job and enforced existing laws by arresting TSA agents who molest Americans, whether that be in airports, at train stations, highways, bus terminals, prom nights or wherever else TSA workers are used, then there would be no need for new legislation.[35]

The above is sufficient evidence that the people, and their representatives, do not condone TSA groping. One court stated:

> Even "the degree of community resentment aroused by particular practices is clearly relevant to an assessment * * of the intrusion. * * *" Moreover, the "manner" in which the frisk was "conducted is * * * [a] vital * * * part of the inquiry." *Lopez*, supra, 1094-1095 [citations deleted]

The "manner", in the case of airline screening, is groping of private parts. Can groping, which is impermissible under state law, be considered the lawful performance of official federal duties? Stated another way, can the federal government overturn state law by passing a law? That issue is currently (June, 2011) being tested by the Texas legislature (as described above), who tried to pass a law affirming their intention to arrest anyone who groped; a U.S. Attorney responded by threatening Texas with an air blockade, so Texas backed down. While we are waiting for the states to get a spine, we can take action on our own.

The federal power to regulate interstate commerce doesn't give the federal government the power to protect; it is not enumerated in the Constitution. This is a fearsome power, allowing all manner of surveillance and intrusion into all aspects of life and liberty. Such power is reserved to the states under

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try it as an individual.

35 http://www.infowars.com/tsa-on-the-ropes-budget-slashed-texas-grope-ban-returns/

the Tenth Amendment, embodied in the numerous statutes passed under the police powers which are based upon necessity.[36] The Supreme Court asserted:

> It is incontestible that the Constitution established a system of "dual sovereignty." [citations deleted] Although the States surrendered many of their powers to the new Federal Government, they retained "a residuary and inviolable sovereignty." ... Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, §8, which implication was rendered express by the Tenth Amendment's assertion that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Printz v. United States*, 521 U.S. 898, 918-919 (1997)

Since all laws under the police powers must be based upon necessity, and since terrorists could just blow up a bomb while waiting in line at the airport, or could blow up a mall or large building or large group of people somewhere, or bring a chemical or biological weapon on board that cannot be detected by magnetometers, x-rays or dogs, or place a weapon in the anus (if we don't draw the line, is an anal probe in our future?), there is no point in trying to make an airport's security perfect. Groping will not find something implanted, which a committed terrorist might do. This makes groping an ineffective and therefore *unnecessary* practice. Any attempt to make airport security perfect will only create a police state which would destroy the whole purpose of security which is to protect our way of life. We would no longer be a free country.[37] An attack will generally occur at the weakest link in the security chain, and there are lots of other easier targets; terrorists would just go elsewhere.

Furthermore, the federal government is obviously not interested in our safety, so they cannot claim that they need groping to "protect" us. We have open borders to the south, and any terrorist can come in.[38] The most southern 80 miles of Arizona have signs warning people not to enter as it is dangerous (due to Mexican drug cartels taking over), and Obama refuses to secure the border.[39] The "humanitarian" love bombs being dropped on Libya,[40] the ongoing wars in Afghanistan and Iraq, and drone attacks in Pakistan that kill innocent civilians, these can only create enemies who would want to attack us. If you stick a stick into a hornet's nest, the *expected* result is reprisal. Our federal government has a callous disregard for the safety of Americans, and when we are eventually attacked, the expected result would be martial law which appears to be the true goal. But I digress.

While the federal government can regulate interstate commerce, it is the job of the states to protect society, and the federal government cannot exercise its powers in such a roughshod manner that it conflicts with the states role to protect society.

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36 Described in a previous chapter.

37 They are working to bring complete safety via taser bracelets on every passenger (http://www.infowars.com/dhs-wants-airline-shock-bracelet), and cameras on every seat to observe every passenger (http://www.infowars.com/big-brothers-candid-camera-at-30000-feet). There is nothing they can do to prevent biological or chemical attacks.

38 http://www.youtube.com/watch?v=3a6LO9LPR7Y&feature=player_embedded#at=221

39 http://www.examiner.com/conservative-in-national/the-federal-government-declares-war-on-arizona; http://cnsnews.com/news/article/64385;
http://www.infowars.com/americas-militias-respond-to-3-day-muster-along-deteriorating-arizona-border;
http://cnsnews.com/news/article/64385

40 http://www.youtube.com/watch?v=IwBAX3lMxak

Summary of the Anti-Groping Theory

1) Based on the *Aukai* decision, a suspicion-less search "that is no more extensive or intensive than necessary, in light of current technology, to detect weapons or explosives" is acceptable (at least to me).

2) Exposure to radiation from a body scanner is dangerous and can cause cancer. The TSA cannot protect me by harming me. But since I can opt-out from the body scanner, this is not an issue.

3) Under natural law a groping of private parts is unacceptable, based on the principle that the people as sovereign have set a boundary as reflected in all states laws that groping is illegal and not permitted, in statements by state and federal leaders who oppose groping, is *malum in se* due to the apparent humiliation to everyone, and harm caused to women and children,[41] and whatever the increased risk from terrorists, the people have shown they have no intention to make the plane *perfectly* safe which will just drive the "terrorists" elsewhere, and create a police state, plus the terrorists won.

4) All police powers must be based upon necessity, and since groping causes harm without completely protecting from terrorism, it does not fulfill the *necessity* requirement.

5) Consent given to be searched, by entering the security area, does not imply consent to an unlawful act, and groping is unlawful under states laws, and it is unreasonable to expect that government will perform unlawful acts upon us when we consent to a search. Consent under the *Aukai* case was to a waiver of the probable cause requirement; consent did not apply to other rights including natural and state-secured rights, absent probable cause.

6) I cannot give consent for someone else, for an illegal act to be done upon that person (I do not have the power), so I cannot waive the rights of my children to a groping, and as guardian it is my duty to protect them. And if my children will not consent to a pat-down after explaining what it is to them, they cannot be forced as it may harm them, also a violation of state law.

Applying the Theory

At all times during the TSA screening process, it is important not to break the law. That will prevent being arrested or fined. If I break *their* law, I must have a reason why: I will be resorting to a higher law (natural law) or to state or federal law. If they threaten me with violence, my safest recourse it to accept their demand while stating my objection (failure to timely object is to waive the right), and threaten them with a suit under the appropriate law, giving them *notice* that they are breaking the law (my law), and the attendant penalties.

41 http://www.youtube.com/watch?v=V9i10_WX7tA. http://www.youtube.com/watch?v=ADZUQUfJoBk&feature=related; search "TSA harrassment" for others.

I can take as gentle or as aggressive a legal position as I want, depending on the circumstances. If I *must* catch that flight, I may not want to assert my rights at all. On the other extreme, if I am in an intolerant mood I can try to get them to break the law and make them arrest me by asserting my rights. "The claim and exercise of a constitutional right cannot thus be converted into a crime." *Miller v. U.S.*, 230 F2d 486, 490. Again, I would never break the law.

Words of caution: I would not do this unless I ...

1) Was willing to go to jail. I may not have to go to jail, but I must be willing.

2) Was willing to sue the government and the individuals involved, if they violate my rights. If I am not competent as a pro se, I will need to hire an attorney. If I do not follow through, I will just muddy the water by setting legal precedents, making it harder for others.

3) Have the time to spend hours at the airport, and can afford to miss any appointments due to missing my flight or getting arrested.

4) Can keep my temper. I are arguing law, and anger should not enter into it. If they raise a weird argument, I can say "that is in interesting legal theory". I will be giving them a handout that puts them on notice of the law. If they break the law, they will not be able to argue ignorance of the law should this go to court.[42]

5) Can keep my presence of mind if a dozen police and TSA agents surround me, handcuff me, and to try to intimidate me.[43] They are just getting themselves into more trouble.

Once the TSA agents are liable for violation of rights and they end up in court or jail, they will think twice before doing it again. This will put an end to violation of our rights.

My first step is to try to avoid a pat-down if possible by being sure I have no metal on my person so I don't set off the metal detector. But if the airport uses naked-body scanners, I would do an "opt-out" (use these magic words) because those machines are dangerous to health,[44] violate privacy because they record the images, and violate the Religious Freedom Restoration Act, referencing religious laws about modesty.[45] So I will instead be pat-down.

If they yell out "OPT-OUT, WE HAVE AN OPT-OUT", I would say: **"Do you know that you have just broken the rule regarding suspicionless searches as stated in *U.S. v. Aukai*[46]? The court's rule states: 'An airport screening search is reasonable if ... it is no more extensive or intensive than necessary, ...' Calling attention to my choice for the purpose of intimidating or embarrassing me or others is more intensive than necessary. Was this your idea or the TSA's, and how long has this been going on?"**

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42 Appendix 2 contains a handout to give the TSA to give them notice of their rights.

43 http://www.youtube.com/watch?v=sJGvsAgpfig Meg McLain was handcuffed, and escorted out of the airport by about a dozen cops.

44 http://www.infowars.com/radiation-scientists-agree-tsa-naked-body-scanners-could-cause-breast-cancer-and-sperm-mutations/

45 http://www.infowars.com/naked-body-scanners-monumental-cover-up-exposed/

46 *US v. Aukai,* 497 F. 3d 955, (9th Cir. 2007)

I am acquiring data to be used at trial.

Once the pat-down is about to begin, I would first inform the TSA agent:

"I do not allow you to touch my private parts. When I entered the security area, I gave consent to a search, but consent does not apply to an unlawful act, and groping is unlawful under states laws."

The chances are they will not let me fly, and my recourse is to file a complaint and sue.

"You cannot condition my right to travel, on consent to break state law. If you want to break state law and grope my private parts, you will need reasonable suspicion or probable cause to do so." (They will need to *articulate* it.)

If they state that unless I finish the security procedure, they will charge me with a civil suit, I would say: **"You can do what is legal and moral, and nothing more absent probable cause. Groping of private parts is both illegal under state law, and immoral, and if you break the law and deny my right to travel, you will be charged under Title 18 Sec. 241 and 242 which states that any person who under color of law denies another person his rights, the violator is subject to a 1 year jail term and and unspecified fine; and if there is threat of violence, the jail term increases to 10 years."** Note that they will face criminal penalties, and you will face an $1,100 civil penalty.[47]

If they argue that I make them feel nervous which constitutes probable cause, I would answer: **"Discretion and prejudice are constitutionally impermissible under *United States v. Lopez*.[48] Obviously, if nervousness was a sufficient basis for probable cause, this could be used against everyone and the Fourth Amendment would have no meaning."**

If they are not being prudent with my time, I would say:

If you are not prudent with my time, you are breaking the court's rule that "An airport screening search is reasonable if ... it is no more extensive or intensive than necessary, ..." It is not necessary to make anyone wait in the security area where they cannot leave. They can wait in line outside until you are ready for them. Once I enter the security area, it should take you no more than 5 minutes, 10 on the outside, to do a pat-down and search of my carry-ons.

Chairman of the Texas Public Utilities Commission Barry Smitherman stated that it took the TSA 40 minutes to do a pat-down and search his carry-on luggage piece by piece. The TSA agent admitted when asked, that he was being punished for opting out of the naked body scanner.[49] This violates the requirement that the search be objective and neutral:

> The approved system [to detect hijackers] survives constitutional scrutiny only by its careful adherence to absolute objectivity and neutrality. When elements of discretion and prejudice are interjected it becomes constitutionally impermissible. *United States v. Lopez*, 328 F. Supp. 1077, 1101 (1971)

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47 See Appendix 3. There is a fallacy that imposing an $1,100 fine for violating TSA code will stop a terrorist.

48 *United States v. Lopez*, 328 F. Supp. 1077, 1101 (1971)

49 http://www.infowars.com/texas-state-officials-groped-by-tsa-as-punishment/

If they want to put me in a holding cell:

What is your probable cause for this arrest or incarceration? (If they can *articulate* reasonable suspicion or probable cause that you have a *weapon or explosives*, they have the right; otherwise...) **You need probable cause if you go outside the rule established in *U.S. v. Aukai.*[50] A holding cell breaks the court's rule that "An airport screening search is reasonable if ... it is no more extensive or intensive than necessary, ..." It is not necessary to put anyone in a holding cell where they cannot leave. They can wait in line outside until you are ready for them. Once I enter the security area, it should take you no more than 5 minutes, 10 on the outside, to do a pat-down and search of my carry-ons. Violation of the court's rule will be met with a complaint or legal action.**[51]

In my opinion it is because I have been seized and cannot leave, based on a special exemption to the Fourth Amendment right, that they cannot just take their sweet time. As stated by the Supreme Court:

> "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry v. Ohio*, 392 US 1, 16 (1968)

If they take more than 10 minutes (or whatever I deem is reasonable), I will complain to the TSA supervisor about the *Aukai* rule, and if he or she ignores me:

I'm giving you notice that I will sue you under Title 18 sections 241 and 241,[52] which states that any person who under color of law denies another person his rights, the violator is subject to a 1 year jail term and and unspecified fine; and if there is threat of violence, the jail term increases to 10 years.

The TSA can deal with my theory of law in three ways:

1) Let me on the plane. (I can ask: Can I get on the plane now?)
2) Remove me from the security area (I can't take a flight; I can ask: Can I go now?). I expect this is the most likely. I will not leave the security area without their permission, or I can be fined. If they remove me from the airport, that is a public place and I have a right to be there. I might try to get arrested by staying. Besides, I need to get my ticket refunded.
3) Arrest me. If I have not broken a law but merely asserted my rights, the courts have said:

> The claim and exercise of a constitutional right cannot thus be converted into a crime. *Miller v. U.S.*, 230 F.2d 486, 490 (1956).

> There should be no sanction or penalty imposed upon one because of his exercise of constitutional rights. *Sherar v. Cullen*, 481 F.2d 945, 946 (1973).

If the TSA violates my rights, I might want to sue them under appropriate law. The theory is: They cannot violate my right to travel; they cannot break state laws against groping, and even if the state is

50 *US v. Aukai,* 497 F. 3d 955, (9th Cir. 2007).
51 Also, I have the right to remain silent per *Miranda v. Arizona,* 384 U. S. 436 (1966).
52 See Appendix 2.

afraid to take on the federal government, I am not; and they cannot violate the court's rules granting a "special case exemption" suspicion-less search.

If I *must* get on the plane, my only choice may be to accept the groping. Otherwise, I might risk saying:

"If you insist on groping my private parts, proceed under my objection (I must timely object otherwise you waive your rights).

My recourse may be to file a complaint, and sue. Note that in order to sue, I must incur a damage, otherwise I have no "standing."[53] Loss of one's right to travel is a damage.

If they argue that a condition for using this airport is to waive my rights, I could answer: **"This is a public airport paid for with public funds; I have a right to use public transportation."**

After the groping, I might call the District Attorney of the county I am in, and see what he can do. Steve Wagstaffe, supra, the District Attorney of San Mateo County (within which San Francisco International Airport resides) has stated that he will prosecute TSA if they are caught groping because it is illegal under California law. Also, the sheriff, being the highest executive officer in the county and sworn to uphold the U.S. and state constitutions, can arrest a federal agent who breaks the law.[54]

Finally, if they violate my rights and I do nothing about it, nothing has been gained.

Groping of Children

A parent or guardian of a child does not have the right to waive the rights of the child in certain areas. For example, I do not have the power to allow a friend to grope my child for any reason. Just because I gave consent when entering the security area to be pat down, does not mean that I can waive the child's rights when it will cause him or her distress or harm. State law does not allow a child (or their parents or guardian) to give consent where it would harm the child. If I do not have the power to do an illegal act (harm my child), I do not have the power to allow someone else to do it; I cannot give consent, directly or implied. When I walk into the security area, it is the TSA vs. the child's rights; my consent has nothing to do with it because it is outside my power, but I will defend the child's rights because I am the guardian. I suspect the child will win; but if they deny our right to travel, the only recourse is to file a complaint, and sue.

This is distinguished from allowing a doctor to touch the child's private parts. Going to a doctor is a voluntary act, which I as parent or guardian having decided is in the child's best interests. Entering a TSA screening area is united with and inseparable from the exercise of the right to travel, and while I may give my consent to a pat-down, I do not have a right to consent to acts that can harm the child. Touching the child's private parts is of no benefit to the child, and numerous cases on YouTube[55] show that it causes harm; it is the threat of harm that precludes my ability to waive the child's rights.

There are numerous state laws to protect children from improper touching. They are generally

53 http://en.wikipedia.org/wiki/Standing_(law)
54 See *The County Sheriff - America's Last Hope*, Sheriff Richard Mack, www.sheriffmack.com, (2009)
55 http://www.youtube.com/watch?v=V9i10_WX7tA

stated in terms of a sexual interest, which is reasonable because sexual interest would be the main motivation for improper touching of a child. By illegalizing improper sexual contact, in one stroke the state has removed the source of most harmful contact which is the intent of the law. The Texas legislature tried to take care of a remaining source, TSA groping, and was bullied out of it. State Rep. David Simpson of Texas was groped by the TSA; he noted "This is a sexual assault in any other activity. If that happened right now, it would be sexual assault."[56]

I would suggest that a TSA pat-down (but not a grope) of a child falls in the category in which the parent cannot give consent, but the child can give consent, if old enough that it can be explained to him or her. Based on the natural law right to safety and security, if the child objects to a pat-down, it is not in my power to allow it; the child is too young to give implied consent, and as parent or guardian my duty is to defend your child's right to safety, even if it means missing a flight.

If the child does not object to a pat-down (ask him/her), then I don't perceive a problem with it. If the child is too young, then perhaps the parents would conduct the pat-down under TSA supervision; we should attempt to harmonize diverse interests as nature does. The entire creation is upheld and managed without a problem. If one holds the clothes against the skin, it should be possible to see bulges. If this plan is followed, dress the child appropriately for the occasion.

If the police get involved, I might ask: "Your job is to protect. Shouldn't you be doing your job?"

To see some YouTube videos of pat-downs, go to www.YouTube.com, and search on "tsa harrassment" or "tsa pat down".

<u>If I Am On a No Fly List</u>

If I am put on a no-fly list for asserting my rights, that is an illegal penalty for asserting my rights. If I find myself on a no-fly or watch list, or think I am on one and want to confirm it, my recourse is first at the administrative level. Pursuant to 49 U.S.C. 44903. Air transportation security:

> (j)(2)(C)(iii)(I) establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the advanced passenger prescreening system[57] determined that they might pose a security threat, to appeal such determination and correct information contained in the system;

I can contact the Department of Homeland Security.[58] If they cannot explain why I am on the no fly list and am denied my right to travel, and they are unwilling to correct the error (assuming it is an error), I can file a Title 18 Sec. 241-242 complaint in District Court. But first, I must exhaust administrative remedies. I don't know if there is anything I can do about the watch list other than to correct the data, because I have experienced no harm.

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56 http://www.infowars.com/texas-state-officials-groped-by-tsa-as-punishment/
57 This system began operation on January, 2005.
58 http://www.dhs.gov/files/programs/gc_1169676919316.shtm

[Authors note: Richard Walbaum is a professional meditator, practicing an advanced form of Transcendental Meditation (www.tm.org) on the Invincible America assembly whose purpose is to raise the collective consciousness of the US by enlivening natural law through the group dynamics of consciousness, so we stop making mistakes or enemies. When everyone is our friend we will be invincible. Ignorance will turn into all good for everyone, and it is unstoppable, which more and more will manifest by people booing the government. The true solution to tyranny and terrorism is a spiritual one, with a little help from friends like Alex Jones (www.infowars.com).

After several attempts at writing this Chapter, I thought "This is impossible; not even God can solve this problem." I should have known better. During my 8-hour a day, 7-day a week practice of meditation, contacting the home of all the natural laws, the solution to each problem eventually came by revelation. It is apparently the need of the time to realign with natural law, with God's help.]

Appendix 1: Excerpts from *City of Indianapolis et al. v. Edmond et al.,* On Searches

City of Indianapolis et al. v. Edmond et al. 531 U.S. 32, 37 (2000):

> The Fourth Amendment requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. *Chandler v. Miller*, 520 U. S. 305, 308 (1997). While such suspicion is not an "irreducible" component of reasonableness, *Martinez-Fuerte*, 428 U. S., at 561, we have recognized only limited circumstances in which the usual rule does not apply. For example, we have upheld certain regimes of suspicion less searches where the program was designed to serve "special needs, beyond the normal need for law enforcement." See, e. g., *Vernonia School Dist. 47J v. Acton*, 515 U. S. 646 (1995) (random drug testing of student athletes); *Treasury Employees v. Von Raab*, 489 U. S. 656 (1989) (drug tests for United States Customs Service employees seeking transfer or promotion to certain positions); *Skinner v. Railway Labor Executives' Assn.*, 489 U. S. 602 (1989) (drug and alcohol tests for railway employees involved in train accidents or found to be in violation of particular safety regulations). We have also allowed searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited. See, e. g., *New York v. Burger*, 482 U. S. 691, 702-704 (1987) (warrantless administrative inspection of premises of "closely regulated" business); *Michigan v. Tyler*, 436 U. S. 499, 507-509, 511-512 (1978) (administrative inspection of fire-damaged premises to determine cause of blaze); *Camara v. Municipal Court of City and County of San Francisco*, 387 U. S. 523, 534-539 (1967) (administrative inspection to ensure compliance with city housing code).
>
> We have also upheld brief, suspicion less seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, *Martinez-Fuerte*, supra, and at a sobriety checkpoint aimed at removing drunk drivers from the road, *Michigan Dept. of State Police v. Sitz*, 496 U. S. 444 (1990). In addition, in *Delaware v. Prouse*, 440 U. S. 648, 663 (1979), 38*38 we suggested that a similar type of roadblock with the purpose of verifying drivers' licenses and vehicle registrations would be permissible. In none of these cases, however, did we indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.
>
> ...

We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested in *Prouse* that we would not credit the "general interest in crime control" as justification for a regime of suspicionless stops. 440 U. S., at 659, n. 18. Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety. Because the 42*42 primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment. Id., 41

...

If we were to rest the case at this high level of generality [securing the border and apprehending drunk drivers are law enforcement activities that use checkpoints], there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life. Id., 42

...

But the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose. Rather, in determining whether individualized suspicion is required, we must consider the nature of the interests threatened and their connection 43*43 to the particular law enforcement practices at issue. We are particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends. Id. 42

...

The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance "the general interest in crime control," *Prouse*, 440 U. S., at 659, n. 18. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever present possibility that interrogation and inspection may reveal that any given motorist has committed some crime. Id., 44

...

While reasonableness under the Fourth Amendment is predominantly an objective inquiry, our special needs and administrative search cases demonstrate that purpose is often relevant when suspicionless intrusions pursuant to a general scheme are at issue. Id., 47

...

[3] Several Courts of Appeals have upheld roadblocks that check for driver's licenses and vehicle registrations. See, e. g., *United States v. Galindo-Gonzales*, 142 F. 3d 1217 (CA10 1998); *United States v. McFayden*, 865 F. 2d 1306 (CADC 1989). Id. fn 3

Appendix 2: Notice of Rights

This Constitutes Notice. *Actual Notice* exists when knowledge is actually brought home to the party to be affected by it. [Bouviers Law Dictionary, 1914 Ed. - Notice]

Court case on suspicion-less searches

Pursuant to *US v. Aukai*, 497 F. 3d 955, 962 (9th Cir. 2007):

> A particular airport security screening search is constitutionally reasonable provided that it "is no more extensive nor intensive than necessary, in the light of current technology, to detect the presence of weapons or explosives [and] that it is confined in good faith to that purpose." Quoting *United States v. Davis*, 482 F.2d 893, 913 (9th Cir.1973)

Court cases on the right to travel

> The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived. *Chicago Motor Coach v. Chicago*, 337 Ill 200; 169 NE 22.
>
> The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day; and under the existing modes of travel includes the right to drive a horse-drawn carriage or wagon thereon, or to operate an automobile thereon, for the usual and ordinary purposes of life and business. It is not a mere privilege, like the privilege of moving a house in the street, operating a business stand in the street, or transporting persons or property for hire along the street, which a city may permit or prohibit at will. *Teche Lines vs. Danforth*, Miss., 12 S.2d 784; *Thompson vs. Smith*, 154 SE 579 (1930), 155 VA 371, 377 (1930)
>
> The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment. *Kent v. Dulles*, 357 US 116, 125.
>
> The right to travel is a well-established common right that does not owe its existence to the federal government. It is recognized by the courts as a natural right. *Schactman v. Dulles* 96 App DC 287, 225 F2d 938, at 941.
>
> I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. [*Edwards v. California*, 314 U.S. 160, 177 (1941)]

Penalties for Violating the Rights of Persons

> TITLE 42--THE PUBLIC HEALTH AND WELFARE, CHAPTER 21--CIVIL RIGHTS
> Sec. 1983. Civil action for deprivation of rights
> **Every person who, under color of any statute**, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, **subjects**, or causes to be subjected, **any citizen** of the United States or other person within the jurisdiction thereof **to the**

deprivation of any rights, privileges, or immunities secured by the Constitution and laws, **shall be liable to the party injured** in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE, PART I—CRIMES
CHAPTER 13--CIVIL RIGHTS
Sec. 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Sec. 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, **willfully subjects any person** in any State, Territory, Commonwealth, Possession, or District **to the deprivation of any rights**, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, **shall be fined** under this title **or imprisoned not more than one year, or both**; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Appendix 3: Some Codes Relevant to Air Travel

Title 49, Subtitle VII[59]

Sec. 44902. Refusal to transport passengers and property

59 http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=BROWSE&title=49usc&PDFS=YES

(a) Mandatory Refusal.--The Under Secretary of Transportation for Security shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport--

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

Sec. 46301. Civil penalties[60]

(a) General Penalty.--(1) A person is liable to the United States Government for a civil penalty of not more than $25,000 (or $1,100[61] if the person is an individual or small business concern) for violating--

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

60 There are a large number of sections providing penalties for various violations. The sections listed herein are a useful start for further research.

61 The news reports that the fine is $11,000; I believe the news is wrong.

Appendix 4: Congress Declares Bible “The Word Of God”

PUBLIC LAW 97-280--OCT.4, 1982

Public Law 97-280 96 STAT. 1211

Joint Resolution Authorizing and requesting the President to proclaim 1983 as the "Year of the Bible".

Whereas the Bible, the Word of God, has made a unique contribution in shaping the United States as a distinctive and blessed nation and people;

Whereas deeply held religious convictions springing from the Holy Scriptures led to the early settlement of our Nation;

Whereas Biblical teachings inspired concepts of civil government that are contained in our Declaration of Independence and the Constitution of the United States;

Whereas many of our great national leaders--among them Presidents Washington, Jackson, Lincoln, and Wilson--paid tribute to the surpassing influence of the Bible in our country's development, as in the words of President Jackson that the Bible is "the rock on which our Republic rests";

Whereas the history of our Nation clearly illustrates the value of voluntarily applying the teachings of the scriptures in the lives of individuals, families, and societies;

Whereas this Nation now faces great challenges that will test this Nation as it has never been tested before; and

Whereas that renewing our knowledge of and faith in God through Holy Scripture can strengthen us as a nation and a people:

Now, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate 1983 as a national "Year of the Bible" in recognition of both the formative influence the Bible has been for our Nation, and our national need to study and apply the teachings of the Holy Scriptures.

Approved October 4, 1982