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"If it suffices to accuse, what will become of the innocent?"

Or, "If mere accusation is sufficient for conviction, what will become of the innocent?

This was Emperor Julian's retort to the plea of Delphidius, the accuser of Governor Numerius who stood trial before the Emperor, "Oh, illustrious Caesar! if it is sufficient to deny, what hereafter will become of the guilty?" (4th century.)

Delphidius was concerned that a guilty man (in this case his enemy) might go free; Emperor Julian was more concerned that an innocent man might be convicted.

All of you have been accused of being infected with a highly contagious, deadly virus. (This constitutes "Defamation *Per Se*" – accusation of a loathsome disease!)

All of you were forced to prove your innocence – although no defendant in court is required to do so – and all of you did prove that you are not infected, or you wouldn't be sitting here, yet you are still being required to cover your faces, and to do so with material that, according to recent testimony, does not even stop a virus.

Think about these facts. Consider the state of our legal system and our Republic.

Emperor Julian's retort in the 4th Century echoed the legal maxim that has been the law across various empires for the past 3,500 years – until now – the Presumption of Innocence.

For some reason, certain people now want to abandon this legal doctrine that has stood firm across diverse empires for nearly four millennia.

I. DUE PROCESS IS THE FOUNDATION OF THE COMMON LAW

A. Presumption of Innocence ("Innocent until proven guilty.")

1. The Supreme Court case of *Coffin v. United States*, 156 U.S. 432 (1895), stands for the proposition that that the presumption of innocence is a fundamental right in American law.

2. "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Id*. at 453.

3. The Court goes on to note that "Greenleaf [a treatise on evidence] traces this presumption to Deuteronomy, and quotes Mascardus De Probationibus to show that it was substantially embodied in the laws of Sparta and Athens. *Id*. at 454. (Sparta - 650 BC; Athens 400 BC.)

4. Cicero, a Roman statesman, lawyer, and scholar in the 1st Century BC is quoted as saying, "I would rather ten guilty persons should escape, than one innocent should suffer."

5. Roman Emperor Trajan, in the 2nd century AD, said, "A person ought not to be condemned on suspicion; for it is preferable that the crime of a guilty man should go unpunished than an innocent man be condemned."

6. Alfred the Great, in the 9th Century, echoed the ancient maxim: "In cases of doubt one should rather save than condemn."

7. Echoing Cicero, Sir John Fortescue, Chief Justice of the King's Bench, in 1471 stated, "Indeed I would rather wish ten evil doers to escape death through pity, than one man to be unjustly condemned."

8. And according to our Supreme Court, "Blackstone (1753-1765) maintains that 'the law holds that it is better that ten guilty persons escape than that one innocent suffer.'" *Id*. 456. This enshrines the

ancient doctrine of the Presumption of Innocence, or Innocent until Proven Guilty in a Court of Law, into our American Common Law system, and thus it is also called Blackstone's Ratio.

B. Due Process therefore requires that we are well until proven unwell.

1. Otherwise said, the law must consider us not contagious until we are proven contagious; not a threat to others until we are proven a threat.

2. Indeed, A.S. 18.15.385.(d) (Quarantine and Isolation) requires that: "Before quarantining or isolating an individual, the department shall obtain a **written order from the superior court** authorizing the isolation or quarantine…."

3. Paragraph (e) goes on, "Notwithstanding (d) of this section, when the department has **probable cause** to believe that the delay involved in seeking a court order imposing isolation or quarantine would pose a clear and immediate threat to the public health…." (It also requires a petition in superior court and emergency hearing within 48 hours.)

C. Under the Due Process Clause, people have the liberty to refuse medical treatment.

1. "A competent person has a liberty interest under the Due Process Clause in refusing unwanted medical treatment." *Cruzan v. Director*, Missouri Dept. of Health, 497 U.S. 261 (1990).

2. The Cruzan Court noted, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-30, 105 N.E. 92, 93 (1914). "**The informed consent doctrine has become firmly entrenched in American tort law.** See Dobbs, Keeton, & Owen, supra, § 32, pp. 189-192; F. Rozovsky, Consent to Treatment, A Practical Guide 1-98 (2d ed. 1990)." *Id*. at 496.

3. Also in 1990, the Supreme Court held that, "The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty" *Washington v. Harper*, 494 U.S. 210, 221-222 (1990).

4. This line of Supreme Court decisions demonstrates constitutional protection against unwanted vaccination and intrusive examinations.

5. Informed consent would also implicate the right to chose one's own medical provider. There are also privacy issues related to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Why are we forced to divulge private medical information to strangers?

II. FOURTH AMENDMENT FREEDOM IS IMPLICATED

A. "No right is held more sacred, or is more carefully guarded, by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U. S. 250, 251 (1891).

B. In 2016, the Supreme Court held in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016) that warrantless drunk driving blood tests are a 4th Amendment violation, as is criminal penalization for refusing the same.

C. The Court noted, quoting *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) (holding unconstitutional the sterilization of convicted felons), that blood tests "require piercing the skin" and are "a compelled physical intrusion beneath [the defendant's] skin and into his veins" and are "significant bodily intrusions." *Id*. at 2178.

D. Broadly speaking, the Fourth Amendment protects people against unreasonable searches and seizures. "The right of the people to be secure 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."

E. On its face, the Alaska quarantine statute requires "Probable Cause" and this term has been clarified by the Supreme Court:

1. REASONABLE PRUDENCE IN BELIEF OF CRIM

2. [The Supreme Court has held, "probable cause to search as existing where: the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Ornelas v. U.S.*, 517 U.S. 690, 695 (1996).

3. "The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." *Id*.]

F. "Probable Cause" is a much higher standard that "reasonable suspicion."

1. ARTICULATED IN TERRY

2. [The one merely stopping, but not detaining, another "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that, at some point, the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And, in making that assessment, it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more

substantial than inarticulate hunches, a result this Court has consistently refused to sanction." *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)]

3. Both are **objective standards**, not subjective ones.

G. The various orders lack a rational basis and are not narrowly tailored.

1. Because fundamental rights are implicated, strict scrutiny is used.

2. The various orders cast large nets over the entire populace, whereas the CDC's own data documents that only a small percentage of the populace is affected.

3. The various restrictions imposed are not narrowly tailored toward the stated ends: requiring masks that, according to their manufacturers, do not stop the virus in question; requiring an arbitrary amount of distance; requiring arbitrary capacities; arbitrarily allowing some businesses to open while others must close; requiring masks after a person has passed both a temperature check and a virus test, etc.

   a) Six feet or two meters? Why not 10 feet? 25% capacity here, 50% capacity there? Restaurants are good but bars are bad? Being out during the day and early evening is okay, but at night is bad?

4. Several courts across the country have thus held, both in religious freedom and business shutdown cases.

5. If this is really about saving lives, consider:

   a) Suicides are up. I personally know a pastor's son who committed suicide during the initial full lockdown. He was 16.

   b) Elderly are dying alone, of loneliness. My sister-in-law was not even permitted to identify her mother's body after being separated from her during her last days on this earth. Same with a good friend.

c) According to the CDC, abortion is the leading cause of death, exceeding heart disease. Alaska has had the opportunity to pass a law introduced by Rep. Eastman (HB178 the Alaska Life at Conception Act) but declined to do so…some say because it's unconstitutional under Roe v. Wade. Unconstitutional but would stop the leading cause of death…isn't that the argument why these measures should be permitted?

III. FIRST AMENDMENT RIGHTS ARE IMPLICATED

A. Freedom of speech is restricted by hiding one's face; body language is more than half of communication.

1. Nonverbal facial expressions are eliminated.

2. Hiding of the face combined with distance sets a real barrier to interpersonal communication.

B. Freedom of association is restricted by prohibiting gatherings.

1. It goes without saying that prohibitions on gatherings are per se prohibitions against association.

2. Online meetings are no substitute for in-person ones.

C. Freedom of religion is violated because it is against the sincerely held beliefs of many Christians that hiding one's face from another, staying away from the other person, failing to gather, and being vaccinated are against the Christian religion.

1. Sacramental churches believe that the actual body and blood of our Lord and Savior Jesus Christ is present in the bread and wine of Holy Communion, and that they are to be partaken of at least every Sunday. This cannot be done online and in fact the idea of online Communion has been condemned by several church bodies.

a) During times of Roman persecution, and during the 30-Years War, Christians were willing to die rather than deny the real presence.

b) Last year, police in Moscow, Idaho (no, not Moscow, Russia) asserted that the Governor's order prohibited the administration of the Mass while permitting delivery and consumption of bread and wine for secular purposes, prompting us to sue.

2. Sacramentarian churches affirm, together with the sacramental ones, the essentiality of the regular gathering together of the body of believers every Sunday in accordance with, for instance, Hebrews 10:25.

   a) During times of Roman persecution, Christians met in secret. Now, in our Republic, they have again been forced to do so. Think about that.

3. The Rev. John J. Bombaro, Ph.D., Lt. Commander in the US Navy Reserves and chaplain to the USMC, "God's Unmasked Face" (1/4/2021 published by 1517.)

4. Prof. Ryan C. MacPherson, Ph.D., Chairman of the History Department at Bethany Lutheran College, "Aborted Human Fetal Tissue in Vaccines: Ethical and Legal Considerations amid the Race to a COVID-19 Vaccine," Life and Learning XXX, Proceedings of the Thirtieth University Faculty for Life Conference (2020): 89–112.

5. By imposing a mode of worship and conduct, the orders are imposing belief, according to the ancient theological maxim, "Lex Orandi, Lex Credendi": the law of prayer is the law of belief; otherwise said, how you worship will affect how – and therefore in whom – you believe. (5th-century Prosper of Aquitaine and disciple of St. Augustine of Hippo.)

D. First Amendment rights are always examined under strict scrutiny, the highest standard.

IV. CONCLUSION

A. The Presumption of Innocence is the foundation of our Common Law system and all of these measures are premised on a presumption of guilt – a presumption that a person is contagious until proven not contagious; but, worse – even when proven not contagious, these measures treat a person as if he might still be contagious. This is proven by the fact that you all are required to wear masks after having passed questionnaires, temperature checks, and virus tests.

B. That betrays the fact that the measures lack a reasonable basis and are not narrowly tailored to serve a legitimate police power. Even those who have tested well are required to act as if they are contagious; yet they do so by means that on their face will not stop viral spread.

C. Supreme Court cases across the centuries demonstrate that the measures implicate fundamental constitutional rights.

D. Indeed, the entire substance of our Republic is threatened by the abandonment of the fundamentals of our Common Law system and the adoption of strange practices, before unknown to us. For, "lex orandi, lex credendi" – as we act, thus we believe. We are being conditioned to believe differently, to believe that the role of government is to keep us safe – even safe from disease – rather than to secure our God-given rights, as it is written in the Declaration of Independence: "To secure these rights, governments are instituted among men."