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Right to Travel

DESPITE ACTIONS OF POLICE AND LOCAL COURTS, HIGHER COURTS HAVE RULED THAT AMERICAN CITIZENS HAVE A RIGHT TO TRAVEL WITHOUT STATE PERMITS

By Jack McLamb (from Aid & Abet Newsletter)

For years professionals within the criminal justice system have acted on the belief that traveling by motor vehicle was a privilege that was given to a citizen only after approval by their state government in the form of a permit or license to drive. In other words, the individual must be granted the privilege before his use of the state highways was considered legal. Legislators, police officers, and court officials are becoming aware that there are court decisions that disprove the belief that driving is a privilege and therefore requires government approval in the form of a license. Presented here are some of these cases:

CASE #1: "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*, 169 NE 221.

CASE #2: "The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a common law right which he has under the right to life, liberty, and the pursuit of happiness." *Thompson v. Smith*, 154 SE 579.

It could not be stated more directly or conclusively that citizens of the states have a common law right to travel, without approval or restriction (license), and that this right is protected under the U.S Constitution.

CASE #3: "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.

CASE #4: "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.

As hard as it is for those of us in law enforcement to believe, there is no room for speculation in these court decisions. American citizens do indeed have the inalienable right to use the roadways unrestricted in any manner as long as they are not damaging or violating property or rights of others. Government -- in requiring the people to obtain drivers licenses, and accepting vehicle inspections and DUI/DWI roadblocks without question -- is restricting, and therefore violating, the people's common law right to travel.

Is this a new legal interpretation on this subject? Apparently not. This means that the beliefs and opinions our state legislators, the courts, and those in law enforcement have acted upon for years have been in error. Researchers armed with actual facts state that case law is overwhelming in determining that to restrict the movement of the individual in the free exercise of his right to travel is a serious breach of those freedoms secured by the U.S. Constitution and most state constitutions. That means it is unlawful. The revelation that the American citizen has always had the inalienable right to travel raises profound questions for those who

are involved in making and enforcing state laws. The first of such questions may very well be this: If the states have been enforcing laws that are unconstitutional on their face, it would seem that there must be some way that a state can legally put restrictions -- such as licensing requirements, mandatory insurance, vehicle registration, vehicle inspections to name just a few -- on a citizen's constitutionally protected rights. Is that so?

For the answer, let us look, once again, to the U.S. courts for a determination of this very issue. In *Hertado v. California*, 110 US 516, the U.S Supreme Court states very plainly:

"The state cannot diminish rights of the people."

And in *Bennett v. Boggs*, 1 Baldw 60,

"Statutes that violate the plain and obvious principles of common right and common reason are null and void."

Would we not say that these judicial decisions are straight to the point -- that there is no lawful method for government to put restrictions or limitations on rights belonging to the people? Other cases are even more straight forward:

"The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 US 22, at 24

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 US 436, 491.

"The claim and exercise of a constitutional right cannot be converted into a crime." *Miller v. US*, 230 F 486, at 489.

There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights." *Sherer v. Cullen*, 481 F 946

We could go on, quoting court decision after court decision; however, the Constitution itself answers our question - Can a government legally put restrictions on the rights of the American people at anytime, for any reason? The answer is found in Article Six of the U.S. Constitution:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary not one word withstanding."

In the same Article, it says just who within our government that is bound by this Supreme Law:

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..."

Here's an interesting question. Is ignorance of these laws an excuse for such acts by officials? If we are to follow the letter of the law, (as we are sworn to do), this places officials who involve themselves in such unlawful acts in an unfavorable legal situation. For it is a felony and federal crime to violate or deprive citizens of their constitutionally protected rights. Our system of law dictates that there are only two ways to legally remove a right belonging to the people. These are:

1. by lawfully amending the constitution, or
2. by a person knowingly waiving a particular right.

Some of the confusion on our present system has arisen because many millions of people have waived their right to travel unrestricted and volunteered into the jurisdiction of the state. Those who have knowingly given up these rights are now legally regulated by state law and must acquire the proper permits and registrations. There are basically two groups of people in this category:

1. Citizens who involve themselves in commerce upon the highways of the state. Here is what the courts have said about this: "...For while a citizen has the right to travel upon the public highways and to transport his property thereon, that right does not extend to the use of the highways...as a place for private gain. For the latter purpose, no person has a vested right to use the highways of this state, but it is a privilege...which the (state) may grant or withhold at its discretion..." *State v. Johnson*, 245 P 1073. There are many court cases that confirm and point out the difference between the right of the citizen to travel and a government privilege and there are numerous other court decisions that spell out the jurisdiction issue in these two distinctly different activities. However, because of space restrictions, we will leave it to officers to research it further for themselves.
2. The second group of citizens that is legally under the jurisdiction of the state are those citizens who have voluntarily and knowingly waived their right to travel unregulated and unrestricted by requesting placement under such jurisdiction through the acquisition of a state driver's license, vehicle registration, mandatory insurance, etc. (In other words, by contract.) We should remember what makes this legal and not a violation of the common law right to travel is that they knowingly volunteer by contract to waive their rights. If they were forced, coerced or unknowingly placed under the state's powers, the courts have said it is a clear violation of their rights. This in itself raises a very interesting question. What percentage of the people in each state have applied for and received licenses, registrations and obtained insurance after erroneously being advised by their government that it was mandatory?

Many of our courts, attorneys and police officials are just becoming informed about this important issue and the difference between privileges and rights. We can assume that the majority of those Americans carrying state licenses and vehicle registrations have no knowledge of the rights they waived in obeying laws such as these that the U.S. Constitution clearly states are unlawful, i.e. laws of no effect - laws that are not laws at all. An area of serious consideration for every police officer is to understand that the most important law in our land which he has taken an oath to protect, defend, and enforce, is not state laws and city or county ordinances, but the law that supersedes all other laws -- the U.S. Constitution. If laws in a particular state or local community conflict with the supreme law of our nation, there is no question that the officer's duty is to uphold the U.S. Constitution.

Every police officer should keep the following U.S. court ruling -- discussed earlier -- in mind before issuing citations concerning licensing, registration, and insurance:

"The claim and exercise of a constitutional right cannot be converted into a crime." *Miller v. US*, 230 F 486, 489.

And as we have seen, traveling freely, going about one's daily activities, is the exercise of a most basic right. [an error occurred while processing this directive]