

# First and Fourth Amendments arrested

Nat Hentoff • January 28, 2011

At the command of Thomas Jefferson and James Madison, I often have written about the need for students to understand why they are Americans -- so they can act as informed citizens.

This is the inspirational story of 21-year-old architecture student Aaron Tobey, who was outraged at the violation of his civil liberties by the Transportation Security Authority's imposition of whole-body imaging scanning and patdowns of our private parts at airports.

On Dec. 30, waiting in line at Richmond (Virginia) International Airport, Tobey, determined "to start a dialogue" about the crucial importance of the First and Fourth Amendments to our constitutional liberties, removed his shirt as the screening began to show that he had written on his chest the core of the Fourth Amendment:

"The right of the people to be secure ... against unreasonable searches and seizures shall not be violated."

Immediately arrested and handcuffed, this young, insistent constitutionalist was interrogated for 90 minutes by security agencies, including, of course, the FBI's Joint Task Force on Terrorism.

Although at no time did this disciple of James Madison interfere with or resist security procedures, he was charged with disorderly conduct, a class one misdemeanor that brings with it up to 12 months in jail and a \$2,500 fine. After his grim interview with the FBI and a federal marshal, Tobey told his father, Robert Tobey, also a constitutionalist, "They accused me of being a terrorist!"

Startled at being stripped of the First and Fourth Amendment and brought to court for "disorderly conduct," he wondered whether this official "logic will be applied beyond airports."

As I have been asking during the administrations of George W. Bush and Barack Obama, there follows a logical further question: "Is this still America?"

I first heard the First and Fourth Amendments had been busted from John Whitehead, president of The Rutherford Institute (Charlottesville, Va.), whom I have called the Tom Paine of our time as he continually discloses violations of our founding document in weekly commentaries carried by daily and weekly newspapers, as well as on the Web and on radio stations around the country. There are also Whitehead weekly video blogs distributed through YouTube.

I have known -- and learned from -- John Whitehead for many years and have reported on the abundant legal assistance he has provided at no charge to Americans whose constitutional rights have been ambushed. I have a collection of these cases, which ought to be in law school libraries.

In immediately coming to the defense of this college student who dared to wear the Fourth Amendment on his chest, the Rutherford Institute was joined by criminal defense attorney Steve Benjamin in Richmond, who has been appearing in court for the allegedly disorderly protester Aaron Tobey.

As reported in "The Rutherford Institute News" (Rutherford.org), Steve Benjamin makes the penetrating point that "it was ironic that officials arrested a person they wanted to strip search for taking off his clothes."

If this had had happened years ago, I would have asked for a comment from a professor of constitutional law at the University of Chicago, about whom I'd heard good things when I was in that city speaking before the Society of Professional Journalists.

His name, Barack Obama, was new to me. I'd sure like to hear what he has to say now from the White House about this out-of-step student. To encourage the return of badly needed civics classes to our public schools, do you think the president might award Aaron Tobey the Liberty Medal?

Sorry, I was only dreaming.

As Aaron Tobey and his attorney, Steve Benjamin, came into Henrico County General Court on Jan. 11, they found the prosecutor, Wade Kiser, was telling Judge Archer Yeatts III that he was dropping the disorderly conduct charges against Aaron Tobey.

As reporter Frank Green of the Richmond-Times Dispatch reported (Jan. 11, 2001): Kizer "said outside the courtroom that he did not believe Tobey's behavior rose to that required to be in violation of the disorderly conduct law. 'He was looking for attention, and he got it.'"

Tobey says he actively will display the Fourth Amendment again.

There are prosecutors, as I've found in covering other court cases, who actually are committed to doing justice more than racking up convictions.

And one of the hopeful elements of this case is the discovery of one of them. Elsewhere, as I've also learned on the justice beat, there are other prosecutors who would have heartily pursued the charges against this strange character who wore the Constitution not only in his heart but also on his chest.

In John Whitehead's new paperback book, "The Freedom Wars: What You Can Do To Preserve Your Rights" (TRI press, [www.Rutherford.org](http://www.Rutherford.org)), copies of which I've ordered for

my children and grandchildren, he quotes actor and civics education activist Richard Dreyfuss ("The Bill Maher Show," Nov. 26, 2006):

"Unless we teach our kids the ideas that make America a miracle of government, it will go away in their lifetimes, and we will be a fable. We must find the time and creativity to teach civics in school. If we don't, we will lose it to fundamentalists of every stripe and to stupidity and the darkness."

In the interest of full disclosure, I was stunned to see "The Freedom Wars" dedicated to me ("freedom fighter and warrior journalist").

But I suggest that in future editions, John should place a dedication to Aaron Tobey on the front page, right after the subhead: "What You Can Do To Preserve Your Rights." Adam personifies what Samuel Adams meant: "It does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds."

**Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press and the Cato Institute, where he is a senior fellow.**