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Re: Response to Demand by TSA Officer Thedala Magee

Dear Ms. Roberts:

This law firm has the privilege of representing Amy Alkon, author of the Advice Goddess Blog. I have reviewed your letter to my client on behalf of Thedala Magee, an agent for the United States Transportation Security Administration (TSA). In it, you demand \$500,000 on behalf of your client. My client's position is as follows:

I. The Operative Facts

My client entered Terminal Six at Los Angeles International Airport (LAX) and exercised her right to opt out of the TSA's body scan. Your client, in apparent retaliation for my client's refusal to blindly submit to the TSA's authority, jammed her fingers in between my client's labia -- not once, not twice, but four times. My client characterized Ms. Magee's actions as "rape." As a result, your client seems to believe that she is entitled to \$500,000.

Ms. Magee may plead "I was just doing my job," but that defense is both unpersuasive and insulting. When it comes to the erosion of liberty, one is part of the solution or part of the problem. Ms. Magee is not just *part* of the problem. She is, rather, a necessary component of it. As Dennis Prager wrote, "*More harm was done in the 20th century by faceless bureaucrats than tyrant dictators.*" Furthermore, no matter what one's job, every person has the freedom and the obligation to act with conscience. Ms. Magee decided to do the opposite, and actually abused her position. If the cost is mere criticism, Ms. Magee should consider herself to be fortunate.

We are confident that when this country regains its sanity, people like Ms. Magee will be seen for what they are -- traitors to our Constitution and the American way of life.

II. The Transportation Security Administration.

After the 9/11 attacks, America wallowed in fear, and ignoble politicians took advantage of that national temporary psychosis. In doing so, they foisted an intrusive security apparatus upon us, but one that was never effective at making us safer. It was, however, effective at rolling back our rights under the Fourth Amendment. We may have killed Osama Bin Laden this year, but he actually defeated the American way of life ten years ago. On September 11, 2001, America went from “the land of the free and the home of the brave” to a nation of mewling cowards, eager to give up their liberties for perceived “safety.” One of the worst symptoms of this transformation is the TSA and its minions of blue-shirted “officers.” As numerous investigations¹ of these checkpoints’ efficacy reveal, anyone with a marginal IQ and the desire to evade them can and will do so.

While the TSA fails miserably in providing security, it excels in undermining our protections under the Bill of Rights. This petty army has done its best not only to grind the Fourth Amendment into dust, but to strip us of our dignity as human beings. The Internet is replete with videos of travelers being groped by the TSA in a way that would result in sexual assault prosecutions for people other than TSA agents, all while the victims cry, protest, and express their horror. Your client may feel that she is in no way culpable for these wrongs, but her continued employment by the TSA and her actions against Ms. Alkon are an integral and inseparable part of the TSA’s abuse of all Americans. Fortunately for all of us, people like my client take the position that TSA agents cannot simply do whatever they want – not without dissent.

Ms. Alkon is acutely aware of the TSA’s erosion of our rights. When she entered the airport, Ms. Alkon did what any good American should do – she refused to quietly give up her rights and her dignity. This was an act of patriotism by Ms. Alkon. Like this law firm, Ms. Alkon believes that the TSA has gone too far, and it has turned America into a nation held hostage by its lowest common denominator. However, when Ms. Alkon refused to be subjected to the full body scan, your client, like so many other TSA agents before her, decided to teach Ms. Alkon a lesson. The message was clear: If you do not do as the TSA commands, you will pay with your dignity

After Ms. Alkon refused to allow her Fourth Amendment rights to be yanked away without protest, she refused to remain silent when Ms. Magee sexually assaulted her, jamming the side of her hand between Ms. Alkon’s labia four times. And why *should* Ms. Alkon remain silent? Because your client felt that Ms. Alkon should learn a lesson about respecting authority? If so, she is wrong. And if your client thinks that she should now win the lottery to the tune of \$500,000 because she wants to punish a patriotic American for exercising her First Amendment rights, she should think again.

We all know full well that Ms. Magee suffered no legal harm from Ms. Alkon’s statements; rather, Ms. Magee is lashing out at Ms. Alkon because Ms. Alkon’s statements come too close to the truth. Factually, Ms. Magee’s actions *were* rape. “Sexual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object.”²

Figuratively, the TSA has been raping this country for years – raping it of its Fourth Amendment protections, raping it of its personal dignity – and now your client is trying to rape Ms. Alkon of her First Amendment rights. If your client feels any discomfort as a result of Ms. Alkon’s statements, she should quit her job and

¹ For example, in February of 2011, a TSA tester snuck a gun through a checkpoint in Dallas. Not just once. *Five times*. [per NBC/DFW] A month before, it took only a \$100 bribe by undercover TSA agents to get an unaccompanied package on a JetBlue flight. [per SeattlePI]

² Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi and Rafael Lozano, World Report on Violence and Health, World Health Organization (2002) at 149.

find respectable work. If she elects to be a TSA agent, earning a living by violating Americans' constitutional rights daily, nobody is under any obligation to show her respect. In fact, we believe that it is every American's patriotic duty to treat TSA agents with the utmost disrespect. The agency's reign is no more legitimate than a foreign occupation, and even treating TSA agents with common courtesy enables their abuses to continue.

III. None of Ms. Alkon's Statements Are Actionable as Defamation.

In your July 12 letter to Ms. Alkon, you claim that her statements constitute defamation *per se* under California law. You are mistaken. A statement must be both false and unprivileged to be defamatory. Ms. Alkon's were neither.

First of all, Ms. Magee *did* rape my client. Your client aggressively pushed her fingers into my client's vulva. I am certain that she did not expect to find a bomb there. She did this to humiliate my client, to punish her for exercising her rights, and to send a message to others who might do the same. It was absolutely a sexual assault, perpetrated in order to exercise power over the victim. We agree with Ms. Alkon's characterization of this crime as "rape," and so would any reasonable juror.

Furthermore, even if your client did not actually sexually assault my client, Ms. Alkon's statements to and about Ms. Magee would still be protected by the First Amendment. The word "rape" itself has been the subject of defamation cases by far more sympathetic Plaintiffs than your client. In *Gold v. Harrison*, 962 P.2d 353 (Haw. 1998), *cert denied*, 526 U.S. 1018 (1999), the Hawai'i Supreme Court held that a defendant's characterization of his neighbors' seeking an easement in his backyard as "raping [the defendant]" was not defamatory. This speech was protected as rhetorical hyperbole. Of course, we need not seek out Hawai'i case law in order to debunk your unsupportable claims. Rhetorical hyperbole has a strong history of favorable treatment in defamation actions. See *Greenbelt Cooperative Pub. Ass'n v. Bresler*, 398 U.S. 6, 14 (1970). This doctrine acknowledges our First Amendment right to express ourselves, even when employing literary license. Accordingly, even if your client's actions were not "rape," Ms. Alkon had every right to characterize them as such.

No free woman should endure what your client did to Ms. Alkon. Fortunately, Ms. Alkon is capable of recognizing injustice, and for the good of us all, she had the courage to speak out on this matter of public concern of the highest order. After Magee's assault on Ms. Alkon's vagina and dignity, Ms. Alkon exercised her First Amendment right to recount this incident to others in person and through her blog. This was not only her right -- it was her responsibility.

IV. Ms. Alkon's Conduct Does Not Support Your Client's Emotional Distress Claims.

Your client also seems to have been persuaded that Ms. Alkon's statements constitute "intentional infliction of emotional distress" ("IIED"). Any emotional harm suffered by Magee is a self-inflicted wound, and likely a broader consequence of working for the TSA. A TSA agent threatening to sue a citizen for IIED is one of the most ironic events I can imagine. Perhaps if you are looking for similarly situated clients, you could find surviving members of the Montgomery, Alabama police department to sue civil rights marchers for the stress that they forced them to endure when they got all uppity and made the police attack them with fire hoses. I am certain that Zacharias Moussaoui feels a bit hurt about how people talk about him. Finally, I bet you could sue Trey Parker and Matthew Stone, the creators of South Park, on behalf of Sadaam Hussein's estate.

Ms. Alkon's exercise of her First Amendment rights does not come close to constituting extreme or outrageous conduct. To sustain an IIED claim, the conduct must be intolerable in normal society, such as arresting someone baselessly. See *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.*, 48 Cal. 3d 583,

594 (Cal. 1989). Perhaps another example would be jamming one's fingers between another person's labia in retaliation for that person's audacity to exercise her rights.

That leaves us, then, with the issue of whether it was extreme and outrageous for the word "rape" to come out of Ms. Alkon's mouth after your client forced her hand into Ms. Alkon's vagina – not once, nor even twice, but four times. *Any* reaction to this treatment cannot credibly be regarded as too extreme or outrageous. We believe that Ms. Alkon was within her rights to act violently in self-defense. Instead, she defended herself with mere words. Her reaction to Ms. Magee's crime is so tame on the scale of legally and morally justified responses that Ms. Magee should be thankful that words of protest are all she received. We must all "tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment." *Snyder v. Phelps*, ___ U.S. ___, 131 S. Ct. 1207, 1219 (2011), citing *Boos v. Barry*, 485 U.S. 312, 322 (1988). There is no competing requirement that we tolerate being sexually abused as retaliation for believing in the Fourth Amendment.

If the Fourth Amendment is to survive the lingering hysteria fostered by those who use fear as a political weapon, then we **need** people like Ms. Alkon to speak out. The once-raging fire of American liberty is virtually extinguished -- in no small part because of the complicity of thousands of footsoldiers of tyranny like Ms. Magee and the millions of Americans who think that these intrusions should be suffered in silence. If it were not for brave people like Ms. Alkon, tending delicate candles of liberty, the light of freedom would already have died out.

Ms. Magee is the latest in a long and disturbing lineage of TSA agents who have gone too far in sexually assaulting and abusing citizens and punishing them for daring to assert their rights. But, humiliating and sexually violating Ms. Alkon were not enough for Ms. Magee. Your client now trains her sights on the First Amendment. This threat of frivolous litigation is so disgusting, so unsupportable, and so frivolous that we cannot help but mock it. While every client deserves representation, sometimes counsel's job is to inform their client that they have no claim. That should have been your role in this matter.

Ms. Magee will not dim the light from Ms. Alkon's candle of liberty. Our greatest hope is that its light will shine upon you, and you will do your ethical duty of advising Ms. Magee that her case is meritless. Should you fail to do so, or if she should fail to heed that advice, we are prepared to vigorously defend Ms. Alkon's First Amendment rights.

Best regards,



Marc. J. Randazza

cc: Amy Alkon
J. Malcolm DeVoy, IV
Jason A. Fischer