

Screen test

In this issue Margaret Giugliano takes a look at the emotive subject of passenger rights and asks whether the sector is approaching the subject of passenger screening in the correct way.

The common law right of privacy was first enunciated in the United States in an 1890 law review article by Louis Brandeis and Charles Warren that reasoned individuals have the right to prevent truthful but intrusive and embarrassing disclosures by the press. The law review article provided the foundation for ensuing judicial decisions, as well as certain state statutes, to recognize the common law right of privacy afforded to each individual. The right to privacy protects against intrusion upon an individual's private self-esteem and dignity.

Fast forward to the present: most readers will know that the United States Department of Homeland has been putting into place a controversial program of passenger screening that includes physical pat-downs and full body scans by machines that produce, essentially, a nude picture of the passenger.

From the government's perspective, this program is but the next step in the progression of increased security measures necessitated by recent security threats. The government does not consider this latest security measure as being an unreasonable search or violation of the individual's privacy rights, any different, in fact, from the use of those magnetic meters that travelers are asked to walk through at airport security gates.

Since the individual traveler has a choice and can opt out of such searches by merely choosing to travel via another mode of transportation, the search is not unreasonable and does not violate the individual's privacy rights.

However, the program is controversial because the machines used for body scans produce three dimensional images of individuals that are equivalent to a physically invasive body strip-search. Indeed, one national organization in the United States has taken legal action to enjoin further use of these machines, claiming these machines were designed to store and transfer images and not to detect powdered explosives. Their actions seek a public hearing on the use of these procedures. As more and more airport locations install these body scanners, we anticipate seeing instances of misuse or poor judgment that may well result in claims and possibly lawsuits against the government.

Enhanced airport passenger screening also raises more than just privacy concerns

- namely travel delays and the impact on air carriers who provide short haul service. The increased screening requires most passengers to arrive at the hub or large city terminals a

full two hours before the flight's departure time. What is the sense of having to be at the airport two hours before a 40 minute flight? The inadvertent result is that passengers may avoid short flights altogether in lieu of other forms of transportation.

In this writer's opinion, security agencies should first improve the use of intelligence and selective screening of passengers in ways that are more meaningful and productive. Rather than subjecting the entire population of travelers to the same level of scrutiny,

airport security agencies should seek out a predicate that warrants a closer look which avoids increased security screening. Invasive body searches, including body scans, should be reserved for secondary screening of passengers who exhibit suspect behavior or characteristics.



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