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Placing Myself On The No-Fly List

In March 2010, the Transportation Security Administration (?TSA') began rolling out its Advanced Imaging Technology (?AIT'). The AIT, also known as the Full Body Scanner, penetrates clothing with a burst of radiation which provides an image of the passenger's naked body along with any guns, weapons or items secreted on the passenger. The TSA stated the new scanning devices were to ?ensure travel remains safe and secure.? In late 2010, the TSA announced it was implementing new pat-down procedures. These new ?enhanced? pat-downs were put in place in order to ?keep the traveling public safe.? The AIT and enhanced pat-downs permit what some have described as a sexual assault on today's airline passenger. When a passenger is selected for enhanced screening, they have two choices: be viewed naked or be groped.Once the TSA implemented their invasive procedures, the public was shocked. The stories related by passengers regarding the new procedures were appalling. A breast cancer survivor was forced to show her prosthetic breast to a TSA agent. A bladder cancer survivor had his urostomy bag disconnected during an enhanced pat-down, resulting in the passenger being covered in his own urine and embarrassed beyond belief. A rape victim, not wanting to relive the horror of being manhandled by a stranger, was arrested after refusing a TSA pat-down.

Of course, many people were willing to go through these little embarrassments as long as it increased security. After all, we are living in a post-9/11 world. But these enhanced screening procedures are targeting some unlikely victims. Children are subjected to both the AIT and the enhanced pat-downs, resulting in some unhappy children lashing out at TSA agents. In order to make children comply with the new screening process, TSA regional security director James Marchand said "if you can come up with some kind of a game to play with a child, it makes it a lot easier.? However, critics suggest that allowing groping to be treated as a game places children at risk of assault by sexual predators. Even wheelchair-bound nuns are not immune from the TSA's probing fingers.

And what of the Fourth Amendment and it's protections against ?unreasonable searches and seizures?" The Supreme Court, in examining ?reasonableness,? said ?there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.?1 Building on this balancing approach, the Court of Appeals for the Ninth Circuit found airport screenings to be administrative searches because they ?are conducted as part of a general regulatory scheme,? where the essential administrative purpose is to ?prevent the carrying of weapons or explosives aboard aircraft.?2 In U.S. v. Davis3, the court paved the way for more intrusive searches of passengers at airports. The Fourth Amendment seemingly provides little protection when the government claims the privacy interest of the individual is outweighed by security interest of the government.

Since the Constitution offered no solution, I contacted Senator Frank Lautenberg (D-NJ), Senator Robert Menendez (D-NJ), and Congressman Bill Pascrell (D-NJ) to voice my concern over such intrusive searches. Only Senator Menendez honored with me with a reply, which can be found here. Senator Menendez assured me that Congress was acting on the problem, stating:
You may be happy to know that the U.S. House of Representatives recently passed H.R. 2200, the TSA Authorization Act, which included an amendment prohibiting TSA from utilizing whole-body imaging as the first-screening device at airports. Accordingly, TSA would only be allowed to use this technology for secondary searches of individuals who have already triggered primary metal detector alarms. Further, the amendment requires that screeners disclose that millimeter wave imaging could allow a TSA worker in a remote room to see through their clothes, and affords passengers the right to request a pat-down search in lieu of full-body imaging.
Unfortunately, H.R. 2200 stalled in the Senate. So, the TSA can continue to use these intrusive search techniques without any guidance from Congress.

Thus, the traveling public is left with few options. We can either subject ourselves to the possibility of a sexual assault by a random TSA agent, allow ourselves to be photographed in the buff, or we can choose not to fly. I have chosen not to fly. By refusing to travel by air, I and many others hope to exert economic pressure on the airline industry and force a change in the screening procedures. An adverse ruling by the courts and an ineffective Congress does not end the debate over unreasonable and invasive searches during airport screening. It merely shifts the burden to the place from which our Constitutional rights originate: to the people. I encourage all readers to examine the state of affairs at the airport for themselves, contact your representatives, and voice your opinions.

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1 Camara v. Mun. Court of County & County of San Francisco, 387 U.S. 523, 536-37 (1967).
2 United States v. Davis, 482 F.2d 893, 908 (9th Cir. 1973).
3 Id. See also United States v. Aukai, 440 F.3d 1168 (9th Cir. 2006) (finding that because a secondary search comports with the Fourth Amendment's requirement that a search be reasonable, a passenger who presents no identification at check-in, and who voluntarily walks through a metal detector without setting off an alarm, cannot prevent a government-ordered secondary screening search by stating he has decided not to fly and wants to leave the terminal).