The TSA Is Awesome  
Opposition Brief by Vance Trefethen, Modified by Chris Jeub



The Transportation Security Administration is an easy application for negative debaters claiming violation of private property rights. And there are plenty of critical whistle blowers who complain about the TSA’s invasion of our privacy.

However, there are advocates for this invasive agency. This opposition brief is taken from Stoa’s policy debate year when they argued against TSA body scanners (brief written by Vance Trefethen). There was a rich amount of evidence that challenged teams that tried to do away with electronic surveillance at airports.

Affirmative value debaters would be wise to tuck this away for use against the TSA application.

The TSA Is Awesome

PreCheck solves: allows passengers to avoid the body scanners

Joe Sharkey 2014. (has worked as a journalist for more than 40 years; works as a freelance colonist for The New York Times; previously worked as an assistant national editor at The Wall Street Journal) “Something to Sing About, Finally, at Airport Security” NEW YORK TIMES 28 April 2014 <http://www.nytimes.com/2014/04/29/business/tsa-finally-hits-a-high-note-with-passengers.html?_r=0>

Managing to avoid the hated body-scanner experience, and instead use the old metal detectors, is one major benefit of PreCheck. T.S.A. officials will not comment on the decline of body scanner use as a result of PreCheck. But it’s happening, since PreCheck lanes by design employ the metal detector portals rather than the body scanners.

Status Quo is engaged in continuous search for less invasive technologies

**Dr. Yofi Tirosh and Dr. Michael Birnhack generally agree with the Affirmative position, but they admitted in 2013:**

Dr. Yofi Tirosh and Dr. Michael Birnhack 2013. (Tirosh - holds an S.J.D. degree; works on the Faculty of Law at Tel Aviv University; previously worked as a Visiting Professor at Georgetown University Law Center. Birnhack - holds an J.S.D. degree; works as a Professor of Law at Tel Aviv University; previously worked as Co-Director of the Haifa Center of Law and Technology) “Naked in Front of the Machine: Does Airport Scanning Violate Privacy?” 17 March 2013, 74 Ohio State Law Journal 1263 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2234476>

The story of body scanners is an ongoing one: social concerns (anti-terror measures) resulted in the development and use of new surveillance technologies, which then met with social protests and legal challenges on the public’s side, and some technological and organizational adjustments on the government’s side, alongside a de facto practice of growing acceptance, only to be overturned again by a new policy decision, to withdraw some kinds of machines from airports. At this point in time, there is a continuous search for less invasive technologies. An important technological development might be, for example, that scanners will be able to automatically detect the kind of external object carried on the body, thus separating the diaper from the bomb, or the prosthesis from the gun. Accordingly, the social construction of scanners is yet to be settled.

Updated scanners protect privacy

Body scanners have been modified to “non-naked” images. They’re just cartoon characters now

Matthew Shoemaker 2014. (PhD candidate in the War Studies Department at King's College London) 7 Mar 2014 New Jersey Legislation would Ban TSA Body Scanner Images <http://blog.tenthamendmentcenter.com/2014/03/new-jersey-legislation-would-ban-tsa-body-scanner-images/>

In an attempt to try to appease some of the voices criticizing the machines such as the American Civil Liberties Union, the TSA back in 2011 updated the body scanner systems so that a cartoon-like character is projected on a screen when a person enters the machine and any illegal contraband is super-imposed onto the cartoon character instead of showing a naked x-ray of the person. However, the update did little to quash the debate since opponents continue to label it an unwarranted strip search in violation of the 4th amendment prohibiting unreasonable searches.

The TSA is upgrading its full-body scanners with ATR technology (which eliminates the “naked” image)

Mark Hachman 2011. (works as the senior editor at PCWorld Magazine) “No More 'Naked' Full-Body Airport Scans After TSA Upgrade” 21 July 2011 <http://www.pcmag.com/article2/0,2817,2388855,00.asp>

The U.S. Transportation Security Administration has approved plans to roll out upgrades to its full-body scanners at the nation's airports, which will eliminate the "naked" image that appears on an operator's screen. The upgrades, known as Automated Target Recognition (ATR), are being installed in 40 airports, including Chicago, Dallas, Detroit, Miami and Newark, according to the Associated Press. In the coming months, TSA will install the software upgrade on all currently deployed millimeter wave imaging technology units at U.S. airports nationwide, the TSA said on Wednesday. The same software will be tested on backscatter units this fall. There are nearly 500 imaging technology units at 78 airports nationwide, including millimeter wave and backscatter units, with additional units planned for deployment this year, it said.

The new software maintains the security of the procedure while further anonymizing the actual passenger

Mark Hachman 2011. (works as the senior editor at PCWorld Magazine) “No More 'Naked' Full-Body Airport Scans After TSA Upgrade” 21 July 2011 <http://www.pcmag.com/article2/0,2817,2388855,00.asp>

The new software will eliminate appearance of a "naked" figure that is produced by the current millimeter wave imaging machines, and will instead replace it with a computer-generated silhouette or outline. Suspicious objects will be superimposed on the outline, maintaining the security of the procedure while further anonymizing the actual passenger. If the passenger passes the test, an "OK" will be superimposed on the outline. If a suspicious object is detected, the passenger will be subject to additional screening. "Our top priority is the safety of the traveling public, and TSA constantly strives to explore and implement new technologies that enhance security and strengthen privacy protections for the traveling public," TSA Administrator John Pistole said in a statement. "This software upgrade enables us to continue providing a high level of security through advanced imaging technology screening, while improving the passenger experience at checkpoints.”

Backscatter scanners—which produce an image of the naked body—were removed in June 2013

**Dr Yofi Tirosh and Dr Michael Birnhack generally support the Affirmative position, but they admitted in 2013:**

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There are two main technologies for body scanning: millimeter wave and backscatter. Their intended function is to detect external objects attached to the body. The technologies have undergone some adjustments; for example, millimeter wave scanners now use Automated Target Recognition (ATR) software that produces a generic figure rather than the actual image of the passenger’s naked body. The backscatter scanners, which do not have the ATR installed, were removed from operation in June 2013. Airport security authorities use the scanners to examine images of passengers for detecting explosives and weapons.

FAA Modernization & Reform Act limits the scanners’ intrusiveness using ATR software and generic images

Andrea M. Simbro 2014. (J.D. degree; previously worked as a Research Assistant for the University of Arizona James E. Rogers College of Law) “THE SKY'S THE LIMIT: A MODERN APPROACH TO AIRPORT SECURITY” 2014, 56 Ariz. L. Rev. 559 <http://www.arizonalawreview.org/pdf/56-2/56arizlrev559.pdf>

Although the body scanners are constitutional, Congress has taken steps to limit the scanners' intrusiveness. The FAA Modernization and Reform Act requires the TSA to equip all advanced imaging technology with automatic target recognition (ATR) software by June 1, 2012, subject to a one-year extension under certain circumstances. The TSA granted the extension, imposing a June 1, 2013 deadline upon Rapiscan, the body-scanner manufacturer, to develop a software patch for its x-ray backscatter machines. The software produces a "generic image" of every individual that walks through the scanner. Instead of producing graphic images that TSA officers can view in a back room, ATR software displays "a cookie-cutter image of the human form.”

FAA Modernization & Reform Act removes “human factor” from image review and removes backscatter scanners

R. Gregory Israelsen 2013. (J.D. degree; Attorney at the Washington, DC office of Banner & Witcoff, Ltd.) “APPLYING THE FOURTH AMENDMENT'S NATIONAL-SECURITY EXCEPTION TO AIRPORT SECURITY AND THE TSA” Summer 2013, 78 J. Air L. & Com. 501 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2261017>

In February 2011, the TSA began testing Automated Target Recognition (ATR) software, which works with millimeter wave AIT. ATR software uses the same millimeter wave screening technology, but instead of requiring a TSA agent to analyze images of actual passenger scans, the system itself "performs all necessary image analysis to determine the location of anomalies found during a scan of the passenger, thereby removing the human factor from the image review process. The AIT with ATR then displays information regarding the location of the anomalies on an avatar to facilitate secondary screening." In 2012, Congress passed the FAA Modernization and Reform Act, which, among other things, requires the use of ATR technology for all passenger screening beginning on June 1, 2012. In mid-2013, the TSA began removing backscatter scanners from airports.

ATR software improves protection of privacy: Generic outline of a person, rather than a full image

Deema B. Abini 2014. (law student at the University of Southern California, Gould School of Law; previously worked as a Judicial Extern at the United States District Court for the Central District of California) “TRAVELING TRANSGENDER: HOW AIRPORT SCREENING PROCEDURES THREATEN THE RIGHT TO INFORMATIONAL PRIVACY” 2014, 78 S. Cal. L. Rev. 120A <http://lawreview.usc.edu/wp-content/uploads/Abini-PDF.pdf>

In 2011, the TSA began installing Automated Target Recognition ("ATR") software in its millimeter wave systems in order to assuage continuing privacy concerns and improve efficiency at screening checkpoints. Rather than displaying the full image of the subject as rendered by millimeter wave technology, the ATR displays show only a generic outline of a person with the locations of any potential concealed threats highlighted (see Figure 3). Areas identified as containing potential threats require additional screening. When no threat is detected, the ATR monitor displays the word "OK" against a green background instead of the generic outline of a person.

The TSA removed all backscatter machines from U.S. airports, and the new systems raise fewer privacy concerns

Mike M. Ahlers 2013. (works as the senior producer for transportation and regulation at CNN) “TSA removes body scanners criticized as too revealing” 30 May 2013 <http://www.cnn.com/2013/05/29/travel/tsa-backscatter/>

The harshest critics labeled them "virtual strip searches." Airport passenger screening that produced particularly realistic full-body images using backscatter technology. Others also expressed health concerns about low doses of radiation from the X-rays underpinning those scans. Well, it's all over now as the Transportation Security Administration says it has met a June 1 deadline to remove all 250 backscatter machines from U.S. airports. Travelers will still go through other full-body scans that rely on a system that uses radio waves and produces less detailed body imaging. The millimeter wave machines raise fewer privacy and virtually no health concerns. "I think from the privacy perspective, that (the elimination of backscatter machines) has to be considered a victory," said Marc Rotenberg of the Electronic Privacy Information Center.

99% of travelers prefer scans to other security screening methods. ATR software has reduced privacy concerns

George M. Beech 2012. (Assistant Federal Security Director for Screening at the Transportation Security Administration; previously worked as the Learning Services Manager at Allegis Group, one of the largest privately held staffing companies in the world) NAVAL POSTGRADUATE SCHOOL, MASTER’S THESIS “RISK-BASED AVIATION SECURITY: DIFFUSION AND ACCEPTANCE” March 2012 <http://calhoun.nps.edu/bitstream/handle/10945/6767/12Mar_Beech.pdf?sequence=1>

The rate of adoption increased from 81 percent supporting the use of AIT in November 2010 (Condon, 2010) to 99 percent choosing AIT over alternative screening methods in 2011 (TSA, n.d. d). Some of the increase may be due to several independent surveys in late 2010 and early 2011, showing that approximately four out of five passengers supported the use of AIT (Condon, 2010; Jones, 2010; TripAdvisor, 2011; and Dooley, 2010). The failed lawsuit by EPIC claiming TSA violated passengers’ Fourth Amendment rights by using the AIT and the implementation of automated target recognition (ATR) software may have also assisted in speeding up the rate of adoption. ATR, which is currently only available on millimeter wave AIT equipment, virtually eliminated the privacy concerns of most passengers by replacing the black and white image of a passenger’s body with a generic outline of a human and a small box that shows the location of any potential threat item.

Scanners don’t violate 4th Amendment

Supreme Court says: When a search is routine, part of a general regulatory scheme, and applied equally, there’s no constitutional need to show probable cause

**Dr Tirosh and Dr Birnhack generally support the Affirmative’s position, but even they admitted in 2013:**

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The Supreme Court carved out some exceptions regarding the probable cause prong of the Fourth Amendment, the administrative search doctrine being the one most relevant here. When a governmental search is routine, part of a general regulatory scheme, and applies equally to all passengers regardless of any specific suspicion, it is considered an administrative search, in which case there is no need to show probable cause. A typical example is a police roadblock to verify drivers’ licenses. An administrative search is nevertheless still subject to the first condition set in the Fourth Amendment, namely the reasonableness requirement. Courts have consistently interpreted the reasonableness requirement to be a matter of balancing. For example, in a 1985 airport search case, the Supreme Court stated that ‘what is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself. The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.’

Advanced Imaging Technology for airport primary screening does not violate the 4th Amendment

Judge Douglas H. Ginsburg 2011. (Circuit Judge for the U.S. Court of Appeals for the District of Columbia Circuit) opinion of the court in the case of Electronic Privacy Information Center v. Dept of Homeland Security, 15 July 2011 (brackets in original) <http://www.readbag.com/cadc-uscourts-internet-opinions-nsf-0-b3100471112a40de852578ce004fe42c-file-10-1157-1318805>

Finally, the petitioners argue that using AIT for primary screening violates the Fourth Amendment because it is more invasive than is necessary to detect weapons or explosives. In view of the Supreme Court's "repeated[] refus[al] to declare that only the least intrusive search practicable can be reasonable under the Fourth Amendment," City of Ontario v. Quoit, 130 S. Ct. 2619, 2632 (2010) (internal quotation marks omitted), and considering the measures taken by the TSA to safeguard personal privacy, we hold AIT screening does not violate the Fourth Amendment. As other circuits have held, and as the Supreme Court has strongly suggested, screening passengers at an airport is an "administrative search" because the primary goal is not to determine whether any passenger has committed a crime but rather to protect the public from a terrorist attack. See United States v. Aukai, 497 F.3d 955, 958-63 (9th Cir. 2007) (en bane) (passenger search at airport checkpoint); United States v. Hartwell, 436 F.3d 174, 178-81 (3d Cir. 2006) (Alito, J.) (same); United States v. Edwards, 498 F.2d 496, 499-501 (2d Cir. 1974) (Friendly, J.) (carry-on baggage search at airport); see also Illinois v. Lidster, 540 U.S. 419 (2004) (police set up checkpoint to obtain information about earlier crash); Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (sobriety checkpoint). An administrative search does not require individualized suspicion.

“Scanners aren’t catching terrorists” – Response: It’s difficult to measure the success of deterrence

Dr. Clinton V. Oster Jr., Dr. John S. Strong, and Dr. C. Kurt Zorn 2013. (Oster - Ph.D.; Professor Emeritus, School of Public and Environmental Affairs, Indiana University. Strong - Ph.D.; Professor, Economics and Finance, College of William and Mary. Zorn - Ph.D.; Associate Vice Provost for Undergraduate Education, Indiana University) “Analyzing aviation safety: Problems, challenges, opportunities” July 2013, 43 Research in Transportation Economics 1 <http://faculty.wcas.northwestern.edu/~ipsavage/104-13.pdf>

A third challenge is how much to respond to terrorist threats. Unfortunately, there is a clear tradeoff between potential harm from terrorist activities and actual harm from steps taken to prevent these activities. That actual harm comes in the form of the added cost and inconvenience of air travel. One estimate was that in 2007, the recurring capital and operating costs for aviation security were in the range of $10-15 billion and the delay costs to travelers were on the order of an additional $13-24 billion with the expectation that costs were likely to increase in the future (Oster & Strong, 2008a). Security measures have clearly increased the cost of air travel relative to travel by automobile, measured both in terms of time cost and out of pocket cost. There seems little doubt that added air security costs have caused some people to shift from air travel to auto travel, particularly for short-haul trips. Because air travel is much safer than highway travel, such shifts cause more transportation deaths. More generally, it is extremely difficult to measure the benefits of aviation security policies (Jackson et al., 2012). Adding to the measurement difficulties is the fact that one of the goals of aviation security policy is to deter prospective terrorists, but it is virtually impossible to measure how much deterrence has been achieved. Attempts to measure the cost-effectiveness of aviation security measures have found that estimating the lives saved from any specific measure can require some very strong assumptions (Stewart & Mueller, 2008).

Pat-downs are invasive (AFF doesn't ban pat-downs – and they would have to increase without scanners)

TSA uses enhanced pat downs to resolve alarms at security checkpoints, or when a person opts out of AIT screening

Deema B. Abini 2014. (law student at the University of Southern California, Gould School of Law; previously worked as a Judicial Extern at the United States District Court for the Central District of California) “TRAVELING TRANSGENDER: HOW AIRPORT SCREENING PROCEDURES THREATEN THE RIGHT TO INFORMATIONAL PRIVACY” 2014, 78 S. Cal. L. Rev. 120A <http://lawreview.usc.edu/wp-content/uploads/Abini-PDF.pdf>

The TSA utilizes "enhanced pat downs" to resolve alarms at security checkpoints, including those triggered by metal detectors and AIT units. Pat downs are also used when a person opts out of AIT screening in order to detect potentially dangerous and prohibited items. The TSA provides some specific guidelines with respect to pat down procedure, indicating that pat downs "should be conducted by an officer of the same gender," passengers "should not be asked to remove or lift any article of clothing to reveal a sensitive body area," and passengers "can request a private screening at any time and a private screening should be offered when the officer must pat down sensitive areas.

Pat-downs are the alternative to AIT, and they violate privacy more than scanners do

Brittany R. Stancombe 2011. (holds a J.D. degree; works as a Labor and Employment Associate at the Baker, Donelson, Bearman, Caldwell & Berkowitz law firm) “FED UP WITH BEING FELT UP: THE COMPLICATED RELATIONSHIP BETWEEN THE FOURTH AMENDMENT AND TSA'S "BODY SCANNERS" AND “PAT-DOWNS”" 2011, 42 Cumberland Law Review 181 <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=42+Cumb.+L.+Rev.+181&srctype=smi&srcid=3B15&key=8f7f87f065c1e959be121f44083736c5>

The TSA currently uses pat-downs as a secondary form of screening if a passenger causes alarm at a checkpoint by either setting off the metal detector or an Advanced Imaging Technology (AIT) unit. While passengers have the right to be patted-down in a private location, many still feel uncomfortable with the process. Starting October 29, 2010, TSA officers were permitted to perform pat-downs with the front of their hands as opposed to the less invasive backs of their hands. The pat-down comes as a result of a passenger opting out of the AIT unit or if the passenger's body scan produces an image of a possible threatening device that needs further investigation. Passengers who opt-out of the AIT are subject to a "pat-down by a TSA officer of the same gender." Once selected for a pat-down, if a passenger refuses they will not be permitted to fly. Transportation Officers are supposed to offer passengers a disposable drape to use during the pat-down. Passengers may also have someone with them during a pat-down to increase the level of privacy. According to TSA, the "vast majority of passengers will not receive a pat-down at the checkpoint." Despite this, however, it is important to keep in mind that not receiving a pat-down means agreeing to go through the body-scanner. For Americans, like Judith Briles, the body scanner is the only reasonable choice when compared to the pat-down: "I'm fed up with being felt up," said Briles. Many passengers have complained that their private areas, such as breasts and genitals, have been touched during a pat-down.

Pat-down screenings are especially difficult and invasive for people with medical devices

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For people with medical devices such as pacemakers, diabetic pumps, bowelostomy bags or bladder drainage bags, going through security at the airport can be a particularly invasive and difficult process. These individuals inevitably set off the metal detector or their medical device displays some sort of ambiguous image during a body scan, resulting in further screening. A woman was arrested in December 2010, after refusing to allow a TSA officer to touch her breasts during an enhanced pat-down. Hirschkind, who says she is a rape victim, has a pacemaker-like device that set off the metal detector, resulting in further screening. Thomas Sawyer, a bladder cancer survivor, was humiliated on November 7, 2010, when a TSA officer burst Mr. Sawyer's urostomy bag during an enhanced pat-down. Mr. Sawyer was selected for further screening following his body scan and asked to be searched in a private location. Despite warnings given by Mr. Sawyer to the TSA officer about the bag, the officer continued the pat-down, burst the bag, and urine spilled all over Mr. Sawyer's clothing. Similarly, breast cancer survivor Cathy Bossi was forced to remove her prosthetic breast during an enhanced pat-down. Despite being in a private room, Ms. Bossi describes the experience as "horrific." According to official TSA procedure, passengers should not have to remove their prosthetic devices. In addition to prosthetic devices, approximately 581,000 knee replacements and 193,000 hip replacements are performed each year in the United States. Arguably this means that a significant number of people not posing a threat to security will be subjected to enhanced searches after setting off the metal detector or AIT unit. As the system in place now operates, people with medical devices will likely have a chance of being subjected to either a body scan or an enhanced pat-down every time they fly.

American public misconceptions fuel hate against the TSA (too big a harm to solve)

The TSA cannot always reveal current intelligence that drives security changes, yet the public ignites resistance

Brian Michael Jenkins 2012. (works as a Senior Adviser to the president of the RAND Corporation; previously served as Chair of the Political Science Department at RAND; former member of the White House Commission on Aviation Safety and Security) “Aviation Security: After Four Decades, It's Time for a Fundamental Review” 2012 <http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP390.pdf>

An element of randomness—changes that the public may find confusing and arbitrary—is essential to prevent security from being too predictable. Moreover, changes in security may be dictated by current intelligence, which TSA cannot always reveal. The latest security measures have increased public resentment. Public attitudes turned a sharp corner with the deployment of full-body scanners and the introduction of more thorough pat-downs in response to the underwear bomber and subsequent demands for something to be done. Seen as a more intrusive regime, the procedures provoked resistance, which in turn was stoked by the news media and joined by individuals and organizations with other agendas.

Hatred of the TSA is simply projecting hatred of the federal government—a lot of exaggeration that goes beyond reality

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Most people in the United States have limited direct contact with government authority. At the local level, think of encounters with parking enforcement officers, traffic cops, and the Department of Motor Vehicles. At the federal level, think of IRS audits or security screening at an airport. None of these institutions are beloved. TSA has the greatest frequency of encounters. About 800 million times a year, Americans pass through a TSA checkpoint. For many, it is a hands-on experience. Everyone has a story to tell about his own (or his aunt’s) experience with airport security—usually illustrating a failure or causing outrage. Some of these tales have the quality of urban legends. Some are patently false. Not surprisingly, many people revile TSA as the embodiment of what they see as an increasingly tyrannical federal government. Every error of judgment, every apocryphal accusation arouses a growing chorus of TSA-haters. The antipathy goes over the top on the public blogs where screeners are routinely described as “Nazis” and “thugs” who push people around, violate their privacy, and touch their “junk.” This kind of bilious anger suggests resentment against more than what happens at an airport.

Satisfying contradictory demands and wishes by airline passengers and politicians is utterly unrealistic

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What airline passengers seem to want and politicians appear to demand is fast, friendly, and flawless passenger screening that is 100-percent effective against the latest terrorist devices and concealment methods, while anticipating and thwarting new threats. The system must effectively screen every passenger—and every piece of checked and hand-carried luggage—without error and without irksome body scanners and pat-downs. Performance must be perfect. And screeners must do this nearly 800 million times a year. At the same time, passenger screening should be discerning but democratic. Intelligence must keep terrorist suspects off flights but without errors that affect innocent travelers, and it must accomplish this without government-held databases, the existence of which is seen by some to threaten civil liberties. And all of this is to be achieved with significantly fewer government personnel, including fewer supervisors at airports where private security has taken over passenger screening but for which TSA remains responsible for failures. Cost reductions are mandatory. Failure in any dimension is evidence of government incompetence. The problem is that satisfying these contradictory demands and wishes is utterly unrealistic.

With laser-based molecular scanners, the government could permanently prevent weapons and explosives from circumventing airport security

Andrea M. Simbro 2014. (holds a J.D. degree; previously worked as a Research Assistant for the University of Arizona James E. Rogers College of Law) “THE SKY'S THE LIMIT: A MODERN APPROACH TO AIRPORT SECURITY” 2014, 56 Ariz. L. Rev. 559 <http://www.arizonalawreview.org/pdf/56-2/56arizlrev559.pdf>

Rather than fearing this technology because of what could happen, the government and the general public should embrace it. Where technological innovation is concerned, the sky should be the limit. Under our current system, however, the government is forced to adopt security measures to detect new types of threats as technology advances, especially in the airport security context. As a result, like a rodent on a hamster wheel, the government is constantly chasing new threats and struggling to keep up with the pace of technological innovation. But with the aid of laser-based molecular scanners, the government has the power to permanently prevent weapons and explosives from circumventing airport security. However, as the saying goes, "with great power comes great responsibility," and the scanners' detection capabilities must be carefully limited in order to protect individual privacy interests.

Laser-based molecular scanners could streamline the airport security process

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Imagine the ideal airport security experience: no lines, no stumbling while trying to remove shoes, no x-ray conveyor belts, and no removal of metallic items. Arriving at the airport less than an hour before a flight would no longer be unwise. All of this would be possible with the implementation of laser-based molecular scanners. With the capability to "rapidly sweep wavelengths in any pattern and sequence," the scanners can scan a passenger and her carry-on items at the same time. There would be no need for x-ray conveyor belts, and passengers could keep their shoes on. If the scanners were programmed to detect weapons and explosives, removing metallic items also would be unnecessary. These improvements would substantially speed up the security process, especially because the scanners can scan multiple people at once.While a millimeter-wave scan takes 15 seconds per person, a laser-based molecular scan can screen groups of passengers in picoseconds.

Laser-based molecular scanners could be a constitutional search with certain precautions, and would not be surreptitious

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Laser-based molecular scanners would be a constitutional administrative search if the government (1) only used the scanners at airport security checkpoints; (2) programmed the scanners to detect only metallic and nonmetallic threats; (3) designed the search scheme to pursue an antihijacking objective; and (4) minimized the level of associated stigma. If the TSA used laser-based molecular scanners in a similar fashion to current screening technology, the searches would not be surreptitious. Although the scanners are portable and can scan from a distance, passengers would be aware that they will be searched at security checkpoints. And even if passengers are initially ignorant about specific procedures, signs can provide adequate notice.

If the laser-based molecular scanners have the same scope of detection as current technology, it would be constitutional and would not have an alarming level of backlash

Andrea M. Simbro 2014. (holds a J.D. degree; previously worked as a Research Assistant for the University of Arizona James E. Rogers College of Law) “THE SKY'S THE LIMIT: A MODERN APPROACH TO AIRPORT SECURITY” 2014, 56 Ariz. L. Rev. 559 <http://www.arizonalawreview.org/pdf/56-2/56arizlrev559.pdf>

If the laser-based molecular scanners are programmed to detect the same items as current technology, the scope of the search would be constitutional, but the government may have to provide an alternative search mechanism. Although programming the scanners to detect metal is well supported by precedent, the constitutionality of search mechanisms to detect nonmetallic threats (i.e. body scanners) has not been thoroughly discussed. Because the D.C. Circuit justified its decision to uphold the constitutionality of body scanners based on the ability for passengers to opt out, the government may have to provide passengers with an alternative search option. If the government programs the scanners to only detect threats to passenger safety, the scanners would not generate an alarming level of stigma. Traces of drugs on currency would not alarm a system programmed to detect weapons and explosives. Furthermore, there is virtually no associated stigma when every passenger is subject to a search. Unlike the x-ray backscatter machines, laser-based molecular scanners could be equipped with automatic target recognition software to ensure that TSA officials could not view nude images of passengers from a back room.

Laser-based molecular scanners can detect metallic and nonmetallic threats

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Laser-based molecular scanners can fill these loopholes by disclosing metallic and nonmetallic threats that are overlooked by current technology. In fact, the scanners have the capability to precisely detect traces of substances. To ensure that the scanners' effectiveness is not reduced by a false positive problem, however, they should be programmed to alert to substances greater than a specified amount. Such a limitation would avoid the "Big Brother" scenarios depicted in the Introduction of this Note.

LBMS can detect threats without touching passengers, so privacy interests would not be sacrificed

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Unlike a probing pat-down, laser-based molecular scanners can detect threats without even touching passengers. With the goal of "quickly identify[ing] explosives, dangerous chemicals, or bioweapons at a distance," the scanners permit passengers to speed through security without the fear of being groped by strangers. Passengers would not have to check their privacy interests at the gate when they chose to fly.

LBMS are an optimal solution to airport security if they are used appropriately

Andrea M. Simbro 2014. (holds a J.D. degree; previously worked as a Research Assistant for the University of Arizona James E. Rogers College of Law) “THE SKY'S THE LIMIT: A MODERN APPROACH TO AIRPORT SECURITY” 2014, 56 Ariz. L. Rev. 559 <http://www.arizonalawreview.org/pdf/56-2/56arizlrev559.pdf>

Airport security is a critical, and often the most dreaded, part of traveling. Passengers are asked to sacrifice their individual privacy rights, and sometimes their dignity, in exchange for flying from point A to point B safely. Although the world is not as safe as it used to be, the general public should not have to suffer for the misdeeds of a few. The government has substantial resources at its disposal, including laser-based molecular scanners, to prevent threats from escalating into catastrophes. Because of their convenience, effectiveness, minimal invasion of privacy, and ease of judicial administration, laser-based molecular scanners are an optimal solution to airport security if they are used appropriately. The government should continue to take advantage of technological innovation to stop terrorists in their tracks, while simultaneously protecting the privacy interests of the law-abiding majority.

Uniform Screening Avoids Racial Discrimination

Link: Status Quo’s uniform scanning of all passengers eliminates potential for discrimination

Uniform screening eliminates discrepancy (and potential for discrimination) and ensures equal protection

Yevgenia S. Kleiner 2010. (holds a J.D. degree; member of the New York State Bar Association; works as the Associate Co-chair of the Women Litigators Affinity Group) “RACIAL PROFILING IN THE NAME OF NATIONAL SECURITY: PROTECTING MINORITY TRAVELERS' CIVIL LIBERTIES IN THE AGE OF TERRORISM” Winter 2010, 30 B.C. Third World L.J. 103 <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1012&context=twlj> (Brackets in Original)

Racial profiling, or indicia of it, is unconstitutional and often ineffective in eliminating the threat of terrorist attacks on commercial aircraft. In fact, the use of racial profiling to detect terrorists hinders the anti-terrorist effort more than it bolsters it: profiling serves to "divert[] precious anti-terrorism resources, alienate[] potential allies in the anti-terrorism struggle, and is inconsistent with cherished notions of freedom and equality" because it is contrary to basic rights guaranteed by the U.S. Constitution. As others have suggested, the ability to travel by airplane is not a right, but rather a privilege. Those who would prefer not to have their things and their person carefully examined are of course free to travel by other means. In the meantime, uniform screening of airline passengers achieves several goals. First, it eliminates the discrepancy in the way TSA treats individuals in light of their cultural, ethnic and religious backgrounds. Second, it provides for 'equal scrutiny' and thus ensures equal protection. Third, it prevents the possibility that unsuspecting passengers whose profiles fail to trigger a match with the government's No Fly and selectee lists under Secure Flight will board flights while unknowingly carrying ticking explosive devices.

Technological methods of screening passengers should be preferred over methods that use racial profiling

Yevgenia S. Kleiner 2010. (holds a J.D. degree; member of the New York State Bar Association; works as the Associate Co-chair of the Women Litigators Affinity Group) “RACIAL PROFILING IN THE NAME OF NATIONAL SECURITY: PROTECTING MINORITY TRAVELERS' CIVIL LIBERTIES IN THE AGE OF TERRORISM” Winter 2010, 30 B.C. Third World L.J. 103 <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1012&context=twlj>

Rather than spending millions of tax dollars on programs that profile and inadvertently discriminate against minority passengers, the TSA should concentrate on the continued development and expansion of these and other physical security initiatives. To encourage the TSA to develop the necessary technology, binding federal legislation should be passed to prohibit, monitor and provide redress for unconstitutional racial profiling in airports. If the implementation of advanced technology security programs forces airports to spend more time and human capital on screening passengers, so be it: not only does this approach avoid unconstitutional scrutinizing of those who fit into protected class categories, but this method will enable TSA to identify individuals like Richard Reid, John Walker Lindh, and Marwan al-Shehhi (those intending to commit acts of terror) as well as individuals like Jeffrey Goldberg and Nathaniel Heatwole (those merely seeking to underscore the inadequacies of existing national security measures).

Brink: Profiling and "selective" scanning open the door for abuse

Where body scanners are used for select individuals on a discretionary basis, discrimination could occur

European Union Agency for Fundamental Rights 2010. (the FRA assists EU institutions and EU Member States in understanding and tackling challenges to safeguard the fundamental rights of everyone in the EU) “The use of body scanners: 10 questions and answers” 27 July 2010 <http://fra.europa.eu/sites/default/files/fra_uploads/959-FRA_Opinions_Bodyscanners.pdf>

Discrimination could occur where body scanners are used for selected individuals on a discretionary basis, and where their use amounts to discriminatory ethnic, racial, national or religious profiling resulting in one or several particular social groups being disproportionately targeted.

Impact: Civil liberties violated

Profiling is discriminatory and repugnant to the constitutional right to equal protection of the laws

Daniel S. Harawa 2013. (holds a J.D. degree; works as an Associate in the Litigation, Employment, and White Collar Defense & Investigations practice groups at the Covington & Burling law firm; previously worked as a Law Clerk for the Honorable Roger L. Gregory of the United States Courts of Appeals for the Fourth Circuit) “The Post-TSA Airport:A Constitution Free Zone?” 2013, 41 Pepperdine L. Rev. 1 <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=2327&context=plr>

Another problem with blindly allowing the TSA to go forward with its security program is its use of profiling. Immediately following the September 11th terrorist events, public sentiment favored the profiling of people appearing to be Muslim or of Middle-Eastern descent. According to a Gallop Poll taken less than two weeks after September 11th, 49% of Americans supported the practice of forcing Arabs or Arab-Americans to carry special identification and 58% supported requiring Arabs to undergo more security checks at airports. In a Los Angeles Times poll, 68% of respondents said that law enforcement should be allowed to randomly stop people who fit the profile of suspected terrorists. It seems public opinion was cemented in TSA policy, as just last year TSA agents complained they were being trained to target ethnic and religious minorities. To allow this form of profiling, with no justification, legitimates profiling in other situations. It reinforces law enforcement officers targeting African- Americans or Latinos based on nothing more than race, socio-economic status, or location. It even signals to policy-makers, e.g. those in Arizona that passed S.B. 1070, that it is acceptable to pass laws permitting profiling if the profiling is employed to combat a “pressing” problem, such as illegal immigration. Profiling is repugnant to the ideal of Americans’ constitutional entitlement to “equal protection of the laws.”

Increasing security precautions via physical security checks would be superior to racial profiling, by upholding civil rights

Yevgenia S. Kleiner 2010. (holds a J.D. degree; member of the New York State Bar Association; works as the Associate Co-chair of the Women Litigators Affinity Group) “RACIAL PROFILING IN THE NAME OF NATIONAL SECURITY: PROTECTING MINORITY TRAVELERS' CIVIL LIBERTIES IN THE AGE OF TERRORISM” Winter 2010, 30 B.C. Third World L.J. 103 <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1012&context=twlj>

Rather than spending millions of dollars on computerized security clearance systems that terrorists will strive to avoid with fake IDs, fake boarding passes and Registered Traveler cards, federal funding should be used to buttress intelligence and emergency response programs and to design an efficient way to search and X-ray every individual passenger's person and belongings in an expedient but effective manner. Larger waiting rooms and a longer check-in process, as well as a veritable obstacle course of bomb-sniffing dogs, trace detectors, high-tech body scanners and thousands of new TSA baggage screeners will likely be required to implement this policy. Increasing security precautions in this way could be massively expensive. Nevertheless, having to be at the airport for an extra hour or two before one's flight is a small price to pay in exchange for protecting not only all travelers' physical safety, but also each passenger's constitutionally guaranteed civil rights.

Racial profiling is less effective than consistent, uniform scanning of each passenger’s luggage

Yevgenia S. Kleiner 2010. (holds a J.D. degree; member of the New York State Bar Association; works as the Associate Co-chair of the Women Litigators Affinity Group) “RACIAL PROFILING IN THE NAME OF NATIONAL SECURITY: PROTECTING MINORITY TRAVELERS' CIVIL LIBERTIES IN THE AGE OF TERRORISM” Winter 2010, 30 B.C. Third World L.J. 103 <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1012&context=twlj>

Decades ago, security experts realized that profiling is less effective than consistent, uniform X-raying of each passenger's luggage, suggesting that a combination of X-raying and the development of more advanced screening devices would bring the government significantly closer to developing an aviation security system that is both effective and constitutionally sound. Even if it is not mandated by the government, TSA can and should establish a universal, race-blind approach and corresponding procedures to establish airline security programs that can simultaneously eliminate threats to aviation security without infringing on travelers' constitutional rights.Achieving security for all commercial airline passengers while refusing to compromise on travelers' civil liberties? Nothing could be more patriotic.

Uniform Screening avoids invasive searches. Removing AIT scanners will actually increase invasive searches for many

Link: The new PreCheck program allows many passengers to avoid the body scanners

Joe Sharkey 2014. (has worked as a journalist for more than 40 years; works as a freelance colonist for The New York Times; previously worked as an assistant national editor at The Wall Street Journal) “Something to Sing About, Finally, at Airport Security” NEW YORK TIMES 28 April 2014 <http://www.nytimes.com/2014/04/29/business/tsa-finally-hits-a-high-note-with-passengers.html?_r=0>

Managing to avoid the hated body-scanner experience, and instead use the old metal detectors, is one major benefit of PreCheck. T.S.A. officials will not comment on the decline of body scanner use as a result of PreCheck. But it’s happening, since PreCheck lanes by design employ the metal detector portals rather than the body scanners.

Link: PreCheck passengers will set off metal detectors if they have internal medical devices. They get body scan instead

Joe Sharkey 2014. (has worked as a journalist for more than 40 years; works as a freelance colonist for The New York Times; previously worked as an assistant national editor at The Wall Street Journal) “Some Kind Words for Airport Body Scanners” NEW YORK TIMES 05 May 2014 <http://www.nytimes.com/2014/05/06/business/some-kind-words-for-the-airport-body-scanner.html>

But PreCheck is not welcomed by everybody. “I bet you don’t have hip or knee replacements,” one reader, Nancy Teater, said of my enthusiasm for the program. “Since I have two, I detest going through the metal detectors, which bing every time, leading to a pat-down. Talk about feeling like a perp! The scanners are quick and easy, and I tolerate whatever barking there may be,” she said.Another reader, Roger Lang, told me, “Those of us with replacement joints, in my case a knee, are worse off with PreCheck than we were before.” He said that when he is sent to a PreCheck lane, he always sets off the metal detector, leading to “an intrusive full-body pat-down, which is totally unnecessary.”Mr. Lang also said he frequently encountered screeners “who get their joy from yelling at people with young children, and old people.” Still, he added, there are pleasant experiences. At Kennedy International Airport in New York two weeks ago, he said, “I told the T.S.A. agent I was going to set off the alarm, and he walked me over to a full-body scanner still in use and told the agent to let me go through it.”

Impact: Reduced privacy. Without AIT, passengers with metal implants have to get pat-downs because they set off metal detectors.

George M. Beech 2012. (works as a Assistant Federal Security Director for Screening at the Transportation Security Administration; previously worked as the Learning Services Manager at Allegis Group, one of the largest privately held staffing companies in the world) NAVAL POSTGRADUATE SCHOOL, MASTER’S THESIS “RISK-BASED AVIATION SECURITY: DIFFUSION AND ACCEPTANCE” March 2012 <http://calhoun.nps.edu/bitstream/handle/10945/6767/12Mar_Beech.pdf?sequence=1>

Passengers’ perception concerning the AIT’s ease of use may include awareness of the speed in which a passenger can navigate the security checkpoint. TSA has not released statistics on the time it takes for a passenger to go through AIT, but one report claims that the AIT takes approximately five seconds compared to approximately five minutes for the alternative pat-down (Bennett, 2011). The walk through metal detector (WTMD) took less time, but often required multiple scans due to forgotten items in pockets and metal implants. Metal implants will not alarm the AIT since the equipment scans the outside of the body and does not detect any implants below the skin (CNN Travel, 2010). Many passengers that have metal implants below the surface of the skin are subjected to a pat-down after alarming the walk-through metal detector. According to Ed Meyers, Esq. (2011), Arizona Center for Disability Law Director, approximately 25 million American have medical implants, most of which contain metal that could alarm the WTMD. AIT virtually eliminates passengers with metal implant due to a medical procedure from alarming unnecessarily. This change in passenger experience is likely to influence millions of travelers’ perception of ease of use as the AIT will not alarm on a below-the-skin metal implant.

Without screening, we will have increased terrorism

Link: Imaging technology is key to aviation safety: we need something that can detect threats not picked up by metal detectors

Dr. Adnan Omar and Dr. Muhammed Miah 2014. (Omar - holds a Ph.D. degree; works as a Professor of Computer Information Systems at the Southern University at New Orleans. Miah - holds a Ph.D. degree; works as an Assistant Professor of Management Information Systems at the Southern University at New Orleans) “Risk Based Airport Security Approach” 2014, 3 Int’l J. Comp. Sci. 1 <http://researchnation.org/journal/index.php/ijcs/article/view/8>

Imaging technology for security applications emerged as a need when the Federal Aviation Administration sought ways to detect concealed plastic threats that would not be picked up by traditional metal detectors in airports. TSA began deploying state-of-the-art advanced imaging technology in 2007. This technology can detect a wide range of threats to transportation security in a matter of seconds to protect passengers and crews. Imaging technology is an integral part of TSA's effort to continually look for new technologies that help ensure travel remains safe and secure by staying ahead of evolving threats (TSA, Transportation Security Administration, 2010)

Link & Brink: Before Advanced Imaging Technology, there was no technology that could effectively screen passengers for plastic explosives hidden under clothing

George M. Beech 2012. (Assistant Federal Security Director for Screening at the Transportation Security Administration; previously worked as the Learning Services Manager at Allegis Group, one of the largest privately held staffing companies in the world) NAVAL POSTGRADUATE SCHOOL, MASTER’S THESIS “RISK-BASED AVIATION SECURITY: DIFFUSION AND ACCEPTANCE” March 2012 <http://calhoun.nps.edu/bitstream/handle/10945/6767/12Mar_Beech.pdf?sequence=1>

AIT may be perceived as useful because it finds non-metallic explosive components that other equipment or procedures have not been able to do well in the past. The attempted attack by Umar Farouk Abdulmutallab in December of 2009 to bring down a Detroit-bound aircraft with non-metallic explosive components reinforced the need for screening passengers for more than handguns and metal improvised explosive device component parts. Until the deployment of the AIT, there was no technology that could effectively screen passengers for plastic explosives hidden under clothing. Explosive trace portals, or puffers, are still in use at some airports, but TSA halted deployment in 2007 and has no plans to purchase more because of problems detecting explosives and maintenance issues (Frank, 2007). Some passengers were occasionally screened using other explosive trace detection equipment (ETD), but only after the passenger’s behavior or luggage necessitated further screening. The Gallup poll showed that passengers believe that AIT scans are more effective at preventing terrorists fromsmuggling explosives or other dangerous objects onto airplanes (Jones, 2010).

Impact: Terrorists will take advantage of unwarranted privacy concerns and exploit security weaknesses to kill people

Brian Michael Jenkins 2012. (works as a Senior Adviser to the president of the RAND Corporation; previously served as Chair of the Political Science Department at RAND; former member of the White House Commission on Aviation Safety and Security) “Aviation Security: After Four Decades, It's Time for a Fundamental Review” 2012 <http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP390.pdf>

Americans are a cantankerous bunch. They have come to hold unreasonable expectations that government should provide 100-percent security, and they quail when there is any failure. At the same time, they have little tolerance for inconvenience and react with outrage to intrusions into their privacy. Successful terrorist attacks underscore the threat and consequent need for stringent security. Fortunately, there have been no successful terrorist attacks against American airliners since 9/11. But the safer people feel, the less their tolerance for what they see as increasingly intrusive security. Part of the problem derives from lack of understanding. There is a reason behind every security measure. Why, for example, do screeners search children and elderly women? The fact is, the oldest person arrested in the United States for plotting a terrorist attack was 76, while terrorists have employed children as young as six as suicide bombers. The terrorists apprehended by British authorities in 2006 for plotting to blow up airlines flying across the Atlantic contemplated allaying suspicion by boarding the aircraft with their own children, including a nine- month-old baby, who would have been killed in the planned suicide attack. Security procedures must be based on suspicion. If terrorists could be certain that children would not be searched, they would not hesitate to have them carry explosives. Terrorists watch what security does—and what it cannot do. The public’s reaction to the more intrusive pat-downs after the underwear bomber’s failed attempt kept this line of attack open. Terrorists could believe that they were on the right path but only needed to make a better underwear bomb.

Impact: Aviation security = national security: Economic, psychological and foreign policy consequences beyond passenger safety

Brian Michael Jenkins 2012. (works as a Senior Adviser to the president of the RAND Corporation; previously served as Chair of the Political Science Department at RAND; former member of the White House Commission on Aviation Safety and Security) “Aviation Security: After Four Decades, It's Time for a Fundamental Review” 2012 <http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP390.pdf>

The risks to the nation of a successful terrorist attack go far beyond the safety of individual travelers. Bringing down a passenger airliner could have significant economic and psychological consequences for the nation and could propel the country toward military action. That makes aviation security a matter of national security, not simply passenger safety. There is no easy way to reconcile these perspectives.

Impact: Can’t deter terrorism. TSA screening is not primarily to detect and interdict, but to deter a larger pool of would-be terrorists from even trying to carry out an attack

**Note: This card also applies against the Affirmative argument “Screening never catches terrorists”.**

Samuel J. Rascoff 2014. (works as an Associate Professor of Law at New York University; serves as the Faculty Director of the Center on Law and Security at New York University; previously served as a Law Clerk to U.S. Supreme Court Justice David H. Souter and to Judge Pierre N. Level of the U.S. Court of Appeals for the Second Circuit) “COUNTERTERRORISM AND NEW DETERRENCE” June 2014, 89 N.Y.U.L. Rev. 830 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2456367> (Brackets in Original)

To illustrate counterterrorism at scale, it is useful to consider a program that does not command the same attention as drone strikes or military commissions, but nevertheless has become a signature feature of modern American counterterrorism: airport security. The conventional official line states that the purpose of the Transportation Security Administration (TSA) screening is to detect passengers with weapons. Passengers sacrifice a little bit of time and sanity to allow for the detection and interdiction (followed, no doubt, by arrest/incapacitation) of would-be terrorists wielding bombs or box cutters. Meanwhile, on an equally conventional critique, TSA protocol represents "security theater" - "there are huge costs, like an annual $ 4 billion payroll for TSA workers alone plus all the gizmos, construction, and maintenance expenses ... to deal with the remote chance of finding a culprit."If the real reason behind TSA screenings is to detect and interdict, then the program has to be judged a colossal failure. But new deterrence suggests that the standard arguments miss an important feature of airport screening: The purpose is not (or at any rate, not exclusively) to prevent any individual attack, but to deter a larger pool of would-be terrorists from even trying. Deterrence is central to the design of airport security. Thus, the Department of Homeland Security's National Strategy for Aviation Security embraces the idea that "layered security deters attacks, which otherwise might be executed in a multiple, simultaneous, catastrophic manner, by continually disrupting an adversary's deliberate planning process." Similarly, the threat of Air Marshals leads to a "perception of security [that] may change the attackers' choices, creating additional security for flights with no marshal present through deterrence."