

Guest editorial: Don't start down slippery slope in airport security

By David Raybin January 26, 2010

The newest proposal is the so-called full-body scan. The machine is said to use far less "radiation" than a cell phone, and we are told it is "perfectly safe." Health concerns aside, does such a device comport with the Constitution?

The Fourth Amendment guarantees that citizens are to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Without doubt a machine that gets up close and personal with assorted body parts constitutes a search of our "person."

The key question is whether such a search is "unreasonable," since that inquiry has always been the touchstone of Fourth Amendment jurisprudence.

Definition of 'reasonable' changes

The proposed system uses a pair of security officers. The one working the machine never sees the image of the body scan, which appears on a computer screen behind closed doors elsewhere. The remotely located officer who sees the image never sees the passenger.

As further protection, a passenger's face is blurred and the image as a whole is said to "resemble a fuzzy negative."

This whole-body scan procedure is itself fuzzy and perhaps not well thought out. Will this really make us safer?

The process appears to invade our privacy. It makes us uncomfortable and certainly angry that it may be necessary.

Yet, our views of what is a reasonable search can swiftly change.

I remember that when there was a proposal to search all mass-transit passengers I vociferously decried the practice as an unnecessary abridgment of our rights. My opinion was articulated in this paper just five days before 9/11. I certainly felt differently a week later. We all did.

As the capability of bringing destructive devices on board a vulnerable airplane becomes more sophisticated, the means of detection of the tools of terror must keep pace. In my view, the non-intrusive body scan technology is constitutionally reasonable as an alternative to a physical pat-down search where the authorities literally lay on hands to your person.

I just wonder where this will all lead. The slippery slope has become steeper and far more expensive in a literal sense and in our notions of what is acceptable. Are we willing to become a police state? Perhaps they will next want to tattoo us with bar codes if we can qualify as a "safe" security risk.

I do not want to be scanned, even anonymously. It is reminiscent of a search when one enters a prison. Indeed, I am not certain that this level of inspection is necessary.

If done quickly and uniformly the practice approaches the limits of toleration. It also approaches the limit of what the Fourth Amendment recognizes as reasonable.

I do not want our right of privacy to slowly evaporate with each new perceived threat to our security. The new procedure is a virtual strip-search. The terrorists will have prevailed if we also strip away that which we hold most dear.

We should always remember that the constitutional protection of the Fourth Amendment draws a line for us. It should not be marked in sand but in stone.

www.tennessean.com