

Pat-Down Policies, Privacy, and Security at Sports Events

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In the aftermath of the September 11, 2001 terrorist strikes, pat-down searches of spectators at sports events have been implemented. These spectator search policies represent a level of intrusiveness beyond that of the minimally intrusive magnetometer (wand) searches and visual bag inspections that were primarily used prior to 9/11. In 2004, the 11th Circuit struck down a mass warrantless search of attendees at a political rally that utilized magnetometers (*Bourgeois v. Peters*, 2004). The justification proffered for the search was the increased threat of terrorist strikes at large-gathering types of events. The court refused to extend the special needs exception to the 4th Amendment warrant requirement based on a generalized fear of terrorism, holding that to do so would be an unconstitutional infringement on the fundamental right of individual privacy in our persons. Since that decision was rendered, more intrusive pat-down search policies have been challenged in the courts.

In 2005, relying on the decision in the *Bourgeois* (2004) case, the Supreme Court of North Dakota held that a mass pat-down search of spectators at college ice hockey games was unconstitutional (*State of North Dakota v. Seglen*, 2005). Also in 2005, a Tampa Bay Buccaneers season ticket holder challenged the constitutionality of the NFL's pat-down policy as implemented by the Tampa Sports Authority (TSA). Also relying heavily on the *Bourgeois* (2004) case, the Florida court issued a preliminary injunction prohibiting the TSA from implementing and enforcing the NFL's policy at Buccaneers' games (*Johnston v. Tampa Sports Authority*, 2005). In July of 2006, the U.S. District Court for the Middle District of Florida upheld that preliminary injunction (*Johnston v. Tampa Sports Authority*, 2006).

This research analyzes the rationale underlying these court decisions in an attempt to clarify for sport managers why such pat-down searches are considered to violate the Constitution. The finding of state action in each case is analyzed to determine what types of security personnel and their actions will trigger constitutional protection for those subject to the searches. Factors considered relevant by the courts include police officer status of security personnel and governmental status of the agency responsible for conducting the searches.

Another issue is whether or not spectator attendance constitutes implied consent to be searched. The courts agree that consent, for purposes of such searches, must be genuinely free and voluntarily given, and that the searches in question have not permitted truly free consent. Also relevant in this context is the doctrine of unconstitutional conditions, under which the courts ruled that it is impermissible to condition spectators' rights to use their tickets on giving up their constitutional right to be free from unreasonable searches.

The reasonableness of the search policies themselves are also analyzed, including a discussion of the courts' views as to whether the post-9/11 increased threat of terrorism justifies mass suspicionless pat-down searches of sports spectators. These three courts ruled that a generalized fear of terrorism does not justify expanding the existing carefully delineated, narrow exceptions to the warrant requirement.

Finally, the implications of these decisions for sport managers who are considering adopting similar search policies are also discussed.