

Pat-down searches: Reduction technique for terrorist threat or litigation waiting to happen?

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Abstract 265

The terrorist actions of September 11 have forever affected the way facilities and events are managed. An international survey found that 94 percent of the respondents identified security as the most important component for a stadium event (Geigle, 2002). For the first time in history, the 2002 NFL Super Bowl and the 2002 Winter Olympics in Salt Lake City were classified as "National Special Security Events." This classification allowed the federal government to take over the control of the security of the event. The Secret Service was put in charge and, along with the Federal Emergency Management Agency (FEMA) and the FBI, a comprehensive security plan was devised (Ammon & Unruh, 2007).

With the exception of the bombing at the 1996 Atlanta Summer Olympics and the recent suicide bombing at an OU - KSU football game sports events have been spared the specter of terrorism (Associated Press, 2005). However, it has been estimated that an attack on a major sport/entertainment venue could result in 15 times the deaths that occurred on 9/11/01 (Abernethy, 2004). Thus it is paramount for sport/entertainment facility operators to recognize their venue's vulnerability and take corrective measures. Some of the most obvious corrective measures involve the type of search policy, parking concerns, identification of vendors, alcohol policies, transportation of teams and number of staff necessary for the event (Ammon & Unruh, 2007).

From a practical perspective two recently completed studies have demonstrated the need for corrective measures at intercollegiate football games. Miller, Gillentine, and Veltri (in press) reported that nearly 70% of 1100 respondents perceived that multiple targets, which may have been considered an additional threat for an attack, were present in the community. More strikingly, over half of the respondents perceived that the enforcement of risk management procedures had become more lax since 9/11. In a related study of mega-sporting events, Miller, Veltri, and Gillentine (in press), indicated that over 60% of the respondents believed that stadium security personnel should check items being brought into the stadium and more than 70% did not perceive searches were a nuisance. Finally, over 80% of the respondents did not believe that their personal privacy was violated by any of the security issues previously noted.

From a legal perspective several recent cases highlight the importance of pat-down searches and their impact on facility managers. In 2005, 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). The court found the existence of signs in an arena did not establish Seglen's consent to the search and that physical "pat-down" searches by a guard were more intrusive than a limited visual search. The Fourth Amendment and state action were debated with the court mentioning that "a wrongful search or seizure conducted by a private party does not violate the Fourth Amendment." Even though the facility was privately owned the officer conducting the search was found to be acting in an official capacity as a University of North Dakota police officer, so the Fourth Amendment applied. Even so, the State alleged, without citing legal authority, the pat-down search used on Seglen was "but an extension of the visual observations, justified by patrons' ability to conceal items in oversized clothing and the facility's heightened need to protect not only hockey game patrons, but the Minnesota and North Dakota Governors as well."

Citing the potential threat by terrorists the NFL implemented a "limited" pat-down search policy in every NFL stadium before the 2005 season. Raymond James Stadium halted their searches after Gordon Johnston; a Tampa Bay Buccaneer season ticket holder fan sued the Tampa Bay Sports Authority (TSA), the government agency that runs Raymond James Stadium. Similar to Seglen, Johnston claimed that the pat-downs were a violation of his Fourth Amendment rights. Tampa was the only NFL city where the pat-downs had been successfully challenged in court, though lawsuits were also filed in Chicago, Seattle and San Francisco (Estrella, 2005). Johnston successfully challenged the NFL policy in two state courts and one Federal court. However, in June 2007 a three-judge panel of the 11th United States circuit court ruled that Johnston gave up his right to challenge the searches when he consented to them. The court concluded that Johnston, as well as other fans, knew they were going to be subject to searches before they entered the stadium. Knowing this information, in the judge's opinion, was considered voluntarily submitting to the search. The court stated, "considering Johnston's ticket was only a revocable license to attend games, there is in the court's opinion at least a question concerning whether Johnston had a constitutional right to pass voluntarily through the stadium gates without being subjected to a pat-down search, even if he had not consented to one" (*Johnston v Tampa Sports Authority*, 2007).

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Similar to the Seglen case state action was also emphasized in a recent state of Washington federal court decision (*Stark v The Seattle Seahawks*, 2007). Fred Stark filed suit against the Seattle Seahawks and others for allegedly conducting an illegal search and seizure while implementing the 2005 NFL "limited" pat-down searches. The plaintiffs alleged that the "symbiotic" relationship between the Stadium Authority and the corporation that leases Qwest field was so "entwined" that their actions constituted state action. This was important as the plaintiffs needed to establish state action in order to prevail on their federal and constitutional claims. The federal judge granted summary judgment to the Seahawks after determining that while the searches were a condition for entry into the stadium, they did not meet the threshold of state action. The judge stated "the Stadium Authority did not participate in the original decision to conduct pat-down searches of ticket-holders, nor did it control, profit, or directly benefit from the pat-down searches conducted by the private entities at Qwest Field. Accordingly the court concludes that the Starks have failed to come forth with sufficient evidence to meet the symbiotic relationship test for demonstrating state action" (*Starks v The Seattle Seahawks*, 2007).

In light of the practical as well as legal findings the reasonableness of search policies will be analyzed, including a discussion as to whether the NFL's mass pat-down searches are justified. In addition, due to the threat of potential terrorism, proper and legal security measures that ensure banned items do not enter the facility will be debated. Regardless of the terrorist threat the likelihood of litigation resulting from security measures and prohibited items being brought into the facility is a real possibility. Therefore, implications of pat downs and corrective measures for sport facility managers will also be discussed.

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