

**TOUCHED BY AN AGENT: WHY THE
UNITED STATES SHOULD LOOK TO THE
REST OF THE WORLD FOR A NEW
AIRPORT SECURITY SCHEME AND STOP
USING FULL-BODY SCANNERS**

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I. INTRODUCTION

After the tragic events of September 11, 2001, the issues of airport security and terrorism prevention have become some of the most talked about topics of the last twelve years,¹ and with good reason. The attacks America faced all those years ago required quick action in order to better protect citizens worldwide.² Countries all over the world have since been trying to beef up security in order to protect their citizens while at the same time trying to keep in mind the protection of the rights of those very citizens.³ Because most of the technology currently used in airports is brand new, and because what rights citizens may or may not have is usually a very blurry area,⁴ the balance

1. See generally Eben Peck, *Improving Upon Status Quo in Airport Security*, TRAVEL WEEKLY (Sept. 10, 2012), <http://www.travelweekly.com/Articles/Improving-upon-status-quo-in-airport-security/>.

2. Eben Kaplan, *Targets for Terrorists: Post-9/11 Aviation Security*, COUNCIL ON FOREIGN RELATIONS (Sept. 7, 2006), <http://www.cfr.org/air-transportation-security/targets-terrorists-post-911-aviation-security/p11397>.

3. See *Information on the Implementation of Security Scanners*, DEPARTMENT FOR TRANSPORT (Jan. 23, 2011), <http://www.dft.gov.uk/publications/information-on-the-implementation-of-security-scanners> (“The code of practice requires airports to undertake scanning sensitively, having regard to the rights of passengers. It states that passengers will not be selected to be scanned on the basis of ethnic origin, gender, or designation of travel.”); see *Airport Security in South Africa*, SOUTHAFRICATO: TRAVEL ONLINE, <http://www.southafrica.to/transport/Airports/Airport-Security/Airport-Security-South-Africa.php5> (last visited Mar. 27, 2013) (noting that in South Africa, passengers that wear a veil are not required to lift their veils, and that passengers bringing laptops will not have those laptops searched despite new security regulations).

4. Many countries do not explicitly recognize a right to privacy in their constitutions, yet those countries sometimes purport to manage citizens’ rights by statute or other means. See *Country Reports: Australia*, PRIVACY INT’L, <https://www.privacyinternational.org/reports/country-report-australia-2006/i-legal-framework> (last visited Mar. 27, 2013) (indicating that while there is no express privacy right in the federal constitution, at least two jurisdictions within the country recognize such a right); *Country Reports: Indonesia*, PRIVACY INT’L,

between protecting citizens and assuring that their countries are not intruding on their rights is not always easy to strike.⁵

This Comment examines the methods countries across the globe are utilizing in airports, and ultimately, suggests what the United States could be and should be doing. This Comment has six parts. First, it analyzes the United States laws against unreasonable searches and seizures and the United States right to privacy, followed by a discussion of the current measures the United States employs for airport security. A brief discussion of the United Nations' stance on the right to privacy follows. Then the separate rights of privacy, as well as the separate methods of airport security, that exist in Australia, Nigeria and Israel are analyzed. Finally, this Comment proposes a solution to the United States' security issues based on which measures do and do not work in airports throughout the globe.

This Comment argues that while the United States is at the forefront of technology in terms of airport security, the country lacks in one major area: personal interaction. This Comment argues that the implementation of simple personal interaction aspects in the United States' airport security model will help cut down on terrorism, just as personal interaction in Israel's Ben Gurion International Airport has reduced terrorist threats in Israel.⁶ This Comment addresses concerns that exist in regard to

<https://www.privacyinternational.org/reports/indonesia/ii-legal-framework> (last visited Mar. 27, 2013) (commenting that Indonesia's participation in intergovernmental agreements, including the Universal Declaration of Human Rights, requires the country to give legal protection to privacy); *Country Reports: Canada*, PRIVACY INT'L, https://www.privacyinternational.org/reports/country-report-canada-2006/i-legal-framework#footnote1_nihg5zf (last visited Mar. 27, 2013) (illustrating that while no right to privacy exists in its constitution, the Canadian courts have recognized one as an extension of the right to be free from unreasonable search and seizure, and privacy is regulated in the private and public sectors at the federal and local levels).

5. See *Michigan v. Sitz*, 496 U.S. 444, 455 (1990) (noting the balance of a state's interest in preventing drunk driving and the degree of intrusion upon an individual stopped at an intoxication check point weighs in favor of allowing the intrusion); see also *id.* at 458 (Brennan, J., dissenting) ("By holding no level of suspicion is necessary before the police may stop a car for the purpose of preventing drunken driving, the Court potentially subjects the general public to arbitrary or harassing conduct by the police.").

6 *What Can We Learn from Ben Gurion Airport in Israel to Help Push Aviation Security in the U.S. to the Next Level?*, SECURITYSOLUTIONS.COM, http://securitysolutions.com/news/security_exposing_hostile_intent/ (last visited Nov. 16, 2012)

implementing a system of personal interaction, such as concerns over effectiveness and efficiency and budgetary constraints. Finally, this Comment will provide alternative measures the United States could put into action in order to move further away from relying solely on technological advancements.

II. THE UNITED STATES: THE PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES AND THE UN-ENUMERATED RIGHT TO PRIVACY (WHATEVER THAT MAY MEAN)

Before an analysis of the methods the United States uses in its airports can be conducted, it is first imperative to look at United States citizens' rights because these rights provide the basis for the ways the United States' airports are conducting security. There are two rights, working together, that are important to a discussion of airport security: (a) the right against unreasonable searches and seizures, and (b) the right to privacy.⁷

A. *What Are the Rights of United States Citizens?*

The Fourth Amendment to the United States Constitution protects those in the United States against unreasonable searches and seizures.⁸ With a few exceptions, the Constitution provides that a Government actor searching a person must obtain a warrant based on probable cause.⁹ Probable cause is defined as a "reasonable ground to suspect that a person has committed or is committing a crime or that a place contains

[hereinafter *What Can We Learn from Ben Gurion?*].

7. U.S. CONST. amend. IV; U.S. CONST. amend. XIV; U.S. CONST. amend. X; *Katz v. United States*, 389 U.S. 347, 360–61 (1967) (Harlan, J., concurring) (articulating the "reasonable expectation of privacy" test for searches).

8. U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.").

9. *Id.*; see, e.g., *Chimel v. California*, 395 U.S. 752 (1969) (contemporaneous warrantless search of arrestee and immediately surrounding areas is justified by a lawful custodial arrest), *abrogated by Davis v. United States*, 131 S. Ct. 2419 (2011).

specific items connected with a crime.”¹⁰

The right to privacy complements the right against unreasonable searches and seizures.¹¹ The United States Supreme Court has recognized the right to privacy as one of the un-enumerated rights that exists in the due process clause of the Fifth and Fourteenth Amendments.¹² The right to privacy is defined as the right to be free of unsanctioned intrusion.¹³

B. If Every Person in the United States Has Both a Right to Privacy and a Right Against Unreasonable Searches and Seizures, How Does the Government Get Around Those Rights?

If the United States recognizes both a right to privacy and a right against unreasonable searches and seizures, how is it that in airports across this country, the rights seem to vanish as airport security personnel take photographs of passengers' naked bodies, conduct aggressive pat-downs, and dig through their baggage?

Perhaps the most astounding part about those rights American citizens supposedly have is the ways the United States has come up with to get around these requirements in the name of airport security.¹⁴

A “special needs” exception to the right against unreasonable searches and seizures has been found to exist by

10. BLACK'S LAW DICTIONARY 566 (3d Pocket ed. 2006).

11. Ellen Alderman, *Striking a Delicate Balance*, CARNEGIE REPORTER, Fall 2002, available at <http://carnegie.org/publications/carnegie-reporter/single/view/article/item/55/>.

12. U.S. CONST. amend. XIV (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law”); U.S. CONST. amend. X (No person shall be . . . deprived of life, liberty, or property, without due process of law”); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (stating that various areas of the Constitution have penumbras, various areas of the Constitution create zones of privacy, and finally that there is a right to privacy penumbra in the due process clause of the Fourteenth Amendment).

13 MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 988 (11th ed. 2003).

14. See Zach Fulkerson, *Privacy is Under Attack: TSA and Police Drag Fourth Amendment through Mud*, POLICYMIC (Oct. 2012), <http://www.policymic.com/articles/16506/privacy-is-under-attack-tsa-and-police-drag-fourth-amendment-through-the-mud>.

the United States Supreme Court in the context of drunk driving checkpoints.¹⁵ Applied in airport checkpoints, this exception balances the state's interest in conducting the seizure, the effectiveness of checkpoints, and the level of intrusion on a person's individual privacy.¹⁶ It is this exception that allows searches to be conducted in airports without probable cause and without the need to have any warrants issued.¹⁷ The only requirement for a search to be conducted under the special needs exception is that the search must be reasonable.¹⁸ However, the truth remains that people entering airports have the right to decide not to board an airplane, and therefore, those who refuse to board will not be subjected to a passenger screening or search.¹⁹ The United States Constitution may say that a warrant and probable cause should be requirements in order for citizens to be searched and seized, but the special needs exception neatly sidesteps that requirement.²⁰

One other way around the right against unreasonable searches and seizures is to gain consent from the passenger.²¹ Passengers have "the choice, as a matter of constitutional law, to submit to . . . search[ing] . . . as a condition to boarding an airplane, or to leave[.]" and this choice can be "seen as either a decision to give up the right to leave or a decision to submit to the search."²² No matter how one views that choice, "the choice is seen as consent."²³

In terms of the right to privacy, many argue that the use of full-body scanners in airports, which are considered legal,

15. *Michigan v. Sitz*, 496 U.S. 444, 448–51 (1990).

16. *Id.* at 448; Sara Kornblatt, *Are Emerging Technologies in Airport Passenger Screening Reasonable Under the Fourth Amendment?*, 41 LOY. L.A. L. REV. 385, 403 (2007) ("[R]easonableness for airport searches is judged by weighing against the general public's interest in traveling safely by air.").

17. *See* U.S. CONST. amend. XIV; *see Sitz*, 496 U.S. at 450–51 (stressing the importance of the state's interest).

18. *Sitz*, 496 U.S. at 450 ("The question thus becomes whether such seizures are "reasonable" under the Fourth Amendment."); Kornblatt, *supra* note 16, at 392–93.

19. Kornblatt, *supra* note 16, at 393–94.

20. *See* U.S. CONST. amend. XIV; *Sitz*, 496 U.S. at 448–51.

21. Kornblatt, *supra* note 16, at 393–94.

22. *Id.*

23. *Id.* (internal quotation marks omitted).

violates the right to privacy.²⁴ It would naturally seem to most people that allowing airport security officers to see photographs of passengers' naked bodies is a violation of those people's privacy.²⁵ Privacy is further breached when photographs of passengers' naked bodies, which airport officials have assured us will remain safe from the public eye, end up plastered across the Internet.²⁶

While a right to privacy and a right against unreasonable searches and seizures both exist in the United States, these rights are abridged in the name of airport security.²⁷ Full-body scans, pat-downs, and bag searches are all being conducted in airports, while the Supreme Court has yet to deal with the issue of whether the use of these machines is reasonable.²⁸

III. THE UNITED STATES' AIRPORT SECURITY MODEL: INNOVATION, TECHNOLOGY AND PRACTICALLY A COMPLETE RELIANCE ON MACHINES

Since the 1970s, when the X-ray machine made its first

24. Samantha Royce, *Do Full Body Scanners Violate Right to Privacy?*, ARBITER ONLINE (Nov. 29, 2010), <http://arbiteronline.com/2010/11/29/do-full-body-scanners-violate-right-to-privacy/> (pointing out that those in the American Civil Liberties Union, students, Muslims, feminists, parents, the transgendered, the disabled and even Pope Benedict XVI all believe full-body scanners violate passengers' right to privacy).

25. Nedra Pickler, *Privacy Group Say Body Scanners Violate Constitution*, ASSOCIATED PRESS (Mar. 10, 2011), available at <http://www.msnbc.msn.com/id/42013292/ns/travel-news/t/privacy-group-says-body-scanners-violate-constitution/>.

26. See Joel Johnson, *One Hundred Naked Citizens: One Hundred Leaked Body Scans*, GIZMODO (Nov. 16, 2010), <http://gizmodo.com/5690749/these-are-the-first-100-leaked-body-scans>.

27. *Dying Michigan Woman Says TSA Pat-Down 'A Little Rude' as She Makes Last Trip to Hawaii*, FOX NEWS (Oct. 10, 2012), <http://www.foxnews.com/us/2012/10/10/dying-michigan-woman-says-tsa-pat-down-little-rude-as-makes-last-trip-to-hawaii/> (detailing a dying woman's experience of having to lift her shirt and expose her feeding tubes in full view of public); Harriet Baskas, *TSA Pat-Down Leaves Traveler Covered in Urine*, NBC NEWS (Mar. 25, 2011), <http://www.msnbc.msn.com/id/40291856/ns/travel-news/t/tsa-pat-down-leaves-traveler-covered-urine#.UIdhM65tB8E> (explaining how a bladder cancer survivor experienced a pat-down that caused his urostomy bag to burst).

28. See *Whole Body Imaging Technology and Body Scanners ("Backscatter" X-ray and Millimeter Wave Screening)*, EPIC.ORG, <http://epic.org/privacy/airtravel/backscatter/> (last visited Nov. 11, 2012) (noting that the Supreme Court, on Jan. 6, 2012 agreed to review a case about dog sniffs and enhanced search techniques, but that the EPIC case regarding full-body scanners is still pending an independent review).

debut in the field of airport security,²⁹ United States citizens, as well as citizens worldwide, have associated the United States' airport security with astounding technological advancements.³⁰ While many changes have occurred in United States airports over the years, one thing that may always remain true is that the United States is constantly finding new ways to use technology to provide what seems like better security for passengers.³¹

Today the United States relies almost entirely on electronic methods of detecting threats to national security.³² Not only does the United States use tried-and-true methods of security such as metal detectors and X-ray scanners,³³ but also uses innovative technological advancements in order to protect United States citizens from terrorist attacks.³⁴ Four relatively new methods, common in United States airports are: biometric identification, Bottled Liquids Scanners, Explosives Trace Detection and lastly, full-body scanners or Advanced Imaging Technology.³⁵ Of all the new technology being used in airports, full-body scanners elicit the most negative response from passengers.³⁶

29. ANTONIN KAZDA & ROBERT E. CAVES, AIRPORT DESIGN AND OPERATION 304 (2d ed. 2007).

30. *Advanced Imaging Technology (AIT): Traveler's Guide*, TRANSP. SEC. ADMIN., <http://www.tsa.gov/traveler-infomration/advanced-imaging-technology-ait> (last modified Nov. 1, 2012).

31. Chuck Goodwin, *Airport Security & Body Scanners: An Overview*, POINTS OF VIEW REFERENCE CTR. (2010), available at <http://www.waukesha.uwc.edu/Faculty---Staff/Directory/Faculty-Staff-A-C/Greg-Ahrenhoerster/101-Syllabus/101-final-exam-reading-packet-f10.aspx>.

32. See *Security Technologies: Technology Used for Passenger Screening, Baggage Screening and More*, TRANSP. SEC. ADMIN., <http://www.tsa.gov/about-tsa/security-technologies> (last updated Sept. 28, 2012); see also Jayshree Bajoria, *The Debate Over Airport Security*, COUNCIL ON FOREIGN RELATIONS (Dec. 28, 2010), <http://www.cfr.org/air-transportation-security/debate-over-airport-security/p23673> (discussing alternative security screening techniques that may prove to be more effective).

33. *Passenger Security Checkpoints: A Three-Step Process*, TRANSP. SEC. ADMIN., <http://www.clarionledger.com/assets/pdf/D086062919.pdf> (last visited Nov. 16, 2012).

34. *Security Technologies: Technology Used for Passenger Screening, Baggage Screening and More*, supra note 32.

35. *Id.*

36. A Google search of "full-body scanners" brings up 1.73 million results; on the

A. What Do These Kinds of Machines Do Exactly?

First, biometric identification is a way of identifying passengers by scanning their fingerprints, or scanning their irises, or a combination of the two.³⁷ While fingerprint scans are quite straightforward, iris scans analyze the “rings, furrows and freckles in the colored ring that surrounds the pupil of the eye . . .” and use more “than 200 points . . . for comparison.”³⁸

Second, Bottled Liquids Scanners (BLS) can be used to differentiate between liquid explosives and common liquids.³⁹ They are commonly utilized when airport security has to screen medical liquids.⁴⁰ These machines work by reading the liquid’s molecular makeup and they can determine, within fifteen seconds, which liquids are safe and which liquids are dangerous.⁴¹ It is said that these machines are paving the way for passengers to be able to bring full-sized bottles of liquid, such as shampoos and sodas, on airplanes once again.⁴²

Third, Explosives Trace Detection (ETD) devices allow security officers to swab a passenger’s baggage or their hands and have that sample tested for explosive residue.⁴³ The

first page of the results list, articles and websites alike are titled with such names as “Are Full-Body Scanners Dangerous?” and “TSA violated law when installing full body scanners, court says.” See GOOGLE, <http://www.google.com/search?client=safari&rls=en&q=full-body+scanners&ie=UTF-8&oe=UTF-8> (last visited Mar. 27, 2013); see also Johnson, *supra* note 26; Michael Grabell, *Coffee, Tea or Cancer? Almost Half of Americans Oppose X-ray Body Scanners*, PROPUBLICA (Dec. 7, 2011) <http://www.propublica.org/article/coffee-tea-or-cancer-americans-oppose-X-ray-body-scanners>.

37. See *Biometric Identification Systems*, TECHNOVELGY.COM, <http://www.technovelgy.com/ct/Technology-Article.asp?ArtNum=12> (last visited Nov. 16, 2012) (listing the different physical traits that can be used to identify people by biometric identification systems, including fingerprints and irises).

38. *Id.*

39. *Security Technologies: Technology Used for Passenger Screening, Baggage Screening and More*, *supra* note 32.

40. *Id.*

41. *Full-Body Scanners Delayed; New Scanners for Liquids*, CBS NEW YORK (Oct. 14, 2010), <http://newyork.cbslocal.com/2010/10/14/full-body-scanners-delayed-new-scanner-for-liquids/> (“The device is so sensitive it can tell the difference between red and white wine, and between different types of soda.”).

42. *Id.*

43. *Security Technologies: Technology Used for Passenger Screening, Baggage*

Transportation Security Administration (TSA) classifies improvised explosive devices as the biggest threat to airport security today,⁴⁴ so it logically follows that passengers' bags, hands and personal belongings would need to be swabbed for explosive residue. To run an ETD test, airport security officers "swab over the area in question to collect a trace sample . . . [and] then place the swab in the ETD machinery which analyzes the sample for extremely small traces of explosives."⁴⁵ All of this can be done in a few seconds, and as the technology is extremely mobile,⁴⁶ it is a great addition to the security methods already in place in most of the United States' airports.

Lastly, and perhaps most infamously, is Advanced Imaging Technology (AIT), otherwise commonly known as the full-body scanner.⁴⁷ Full-body scanners use electromagnetic wavelengths to see beneath your clothes, meaning the image that is produced for airport security officers is that of your naked body and any metal, drugs, or explosives you may have on your person.⁴⁸ There are two types of full-body scanners: the millimeter wave machine and the backscatter machine.⁴⁹ The millimeter wave machine works by "send[ing] radio waves over a person and produc[ing] a three-dimensional image by measuring the energy reflected back."⁵⁰ Backscatter machines operate by "us[ing] low-level X-rays to create a two-dimensional image of the body."⁵¹

Screening and More, supra note 32.

44. *Explosive Trace Detection Usage Expanded: Give Us a Hand*, TSA BLOG (Feb. 17, 2010), <http://blog.tsa.gov/2010/02/explosive-trace-detection-usage.html>.

45. *Id.*

46. *Id.*

47. *See* Johnson, *supra* note 26.

48. Justin Mullins, *Full-Body Scanners: We Reveal All*, NEWSIDENTIST (Nov. 18, 2010, 6:00 PM), <http://www.newscientist.com/article/dn19746-fullbody-scanners-we-reveal-all.html>.

49. Joelle Tessler, *FAQ: How Do Full-Body Airport Scanners Work?*, PANTAGRAPH.COM (Jan. 1, 2010, 3:00 PM), http://www.pantagraph.com/news/article_3781a802-f625-11de-9a8c-001cc4c002e0.html.

50. *Id.*

51. *Id.*

B. To Put it Nicely, Airline Passengers Detest Full-Body Scanners and the Possible Problems They Create

Passengers voice two concerns when it comes to full-body scanners: first, that their privacy is impeded,⁵² and second, that their health is jeopardized.⁵³

There are many events that seem to rationalize passenger concerns about privacy invasion by full-body scanners.⁵⁴ For instance, in a recent instance in a Nigerian airport, airport security officers used full-body scans as a form of pornography.⁵⁵ And, at a Florida Federal courthouse, although saving full-body scanner images is prohibited, United States Marshalls saved 35,000 images of full-body scans on one scanner.⁵⁶ To add insult to injury, Gizmodo plastered one hundred of those photos were on the Internet after filing a Freedom of Information Act (FOIA) request and got copies of the photographs.⁵⁷ Gizmodo later reported on the wrongdoings of those United States Marshalls, and included the intrusive photographs in an article.⁵⁸ Furthermore, there have been numerous reports about privacy still being encroached upon when they refuse to go through the full-body scanners and are instead subjected to an intense pat down.⁵⁹

52. See Johnson, *supra* note 26 (“At the heart of the controversy over ‘body scanners’ is a promise: The images of our naked bodies will never be public. U.S. Marshals in a Florida Federal courthouse saved 35,000 images on their scanner . . . That we can see these images today almost guarantees that others will be seeing similar images in the future.”).

53. *New Study Raises Concerns Over Full Body Scanners at Airports*, CBS NEW YORK (Nov. 18, 2011, 9:23 PM), <http://newyork.cbslocal.com/2011/11/18/new-study-raises-concerns-over-full-body-scanners-at-airports/>.

54. *E.g.*, Chinedu Eze, *Now Showing at MMIA: Nude Images of Passengers*, ALLAFRICA.COM (Sept. 21, 2010), <http://allafrica.com/stories/201009210101.html>; Johnson, *supra* note 26.

55. See Eze, *supra* note 54 (noting that security officials “catch a glimpse of some of the passengers entering the machine and immediately go back to view the naked images, in order to match the faces with the images since the faces are blurred on the monitors while passengers are inside the machine.”).

56. Johnson, *supra* note 26.

57. *Id.*

58. *Id.*

59. See, *e.g.*, *Does Airport Security Breach Medical Privacy?: Recent N.Y. Incident Underscores Challenges for Patients*, ADVISORY BOARD CO. (Oct. 5, 2011), <http://www.>

The use of full-body scanners also involves concern over passenger health.⁶⁰ It seems that currently forty-six percent of United States citizens are against full-body scanners because of the risk of cancer that these full-body scanners carry with them.⁶¹ It is estimated that “among the 750 million security checks of 100 million airline passengers per year, six cancers could result from the X-ray scans.”⁶² The legitimate fear that passengers could get cancer resulted in European officials prohibiting the use backscatter machines in airports.⁶³

IV. THE UNITED NATIONS’ UNIVERSAL DECLARATION OF HUMAN RIGHTS: INTERNATIONALLY RECOGNIZED RIGHTS TO PRIVACY AND AGAINST UNREASONABLE SEARCHES AND SEIZURES

While it may be true that each country has its own view on the right to privacy and the right against unreasonable searches and seizures, and many countries do not explicitly recognize a right to privacy,⁶⁴ the United Nations recognizes both of these

advisory.com/Daily-Briefing/2011/10/05/Does-airport-security-breach-medical-privacy (noting that at New York’s John F. Kennedy Airport, a breast cancer patient was subjected to an enhanced pat-down, which was conducted in public rather than private, after not being given a chance to explain her medical condition and reporting a story of another woman that was “asked to show her prosthetic breast during a security screening”).

60. See, e.g., Grabell, *supra* note 36 (discussing a poll in which respondents voiced their concerns for the possibility that such scanners used in airports may cause cancer).

61. *Id.*

62. *Id.* Another study conducted by the director of Columbia University’s Center for Radiological Research estimated that scanners could cause as many as 100 additional cancers per year. *Id.*

63. Michael Grabell, *Europe Bans X-ray Body Scanners Used at U.S. Airports*, PROPUBLICA (Nov. 15, 2011), <http://www.propublica.org/article/europe-bans-x-ray-body-scanners-used-at-u.s.-airports>.

64. See *REPORT: Australia—Chapter I: Legal Framework*, PRIVACY INT’L (Dec. 12, 2006), <https://www.privacyinternational.org/reports/country-report-australia-2006/i-legal-framework> (noting that none of Australia’s Constitutions contain any express right to privacy); *REPORT: Austria—Chapter I: Legal Framework*, PRIVACY INT’L (Jan. 1, 2011), <https://www.privacyinternational.org/reports/austria/i-legal-framework> (noting that Austria does not specifically recognize a right to privacy); *REPORT: Malaysia—Chapter II: Legal Framework*, PRIVACY INT’L (Oct. 22, 2012), <https://www.privacyinternational.org/reports/malaysia/ii-legal-framework> (noting that the Malaysian Constitution does not provide for the protection of privacy); *REPORT:*

rights.⁶⁵

Article 12 of the Universal Declaration of Human Rights states, “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”⁶⁶ Furthermore, for body searches, “effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials . . . should only be examined by persons of the same sex.”⁶⁷

Where does airport security come into play? In a world where men and women are required to pass through full-body scanning devices, and in a world where no passenger knows if it is a male or female security officer that is looking at photographs of that passenger’s naked body that are generated by said full-body scanning devices, how can the United States comply the United Nations’ Declaration on Human Rights? Furthermore, if these photographs are released to the public, even though governments promise they will never be seen outside of the context of airport security,⁶⁸ these protections still seem “[in]consistent with the dignity of the person who is being searched.”⁶⁹

Because nations worldwide have adopted individualized

Singapore—Chapter I: Legal Framework, PRIVACY INT’L (Dec. 12, 2006), <https://www.privacyinternational.org/reports/singapore/i-legal-framework> [hereinafter Singapore Country Report] (noting that Singapore does not recognize a right to privacy in its Constitution).

65. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, arts. 12, 17, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), *available at* <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>.

66. *Id.* art. 12.

67. Office of the High Comm’r for Human Rights, General Comment No. 16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Art. 17), ¶ 8 (Apr. 8, 1988), <http://www.unhchr.ch/tbs/doc.nsf/0/23378a8724595410c12563ed004aeecd?Opendocument> [hereinafter HCHR, General Comment No. 16].

68. *See* Johnson, *supra* note 26.

69. HCHR, General Comment No. 16, *supra* note 67.

meanings of privacy, and use those meanings of privacy to conduct airport security, it is likely that the United Nations' Universal Declaration of Human Rights will continue to be largely ignored.⁷⁰

V. AUSTRALIA'S AIRPORT SECURITY MODEL: FOLLOWING IN BOTH THE UNITED STATES AND ISRAEL'S FOOTSTEPS

Australia does not recognize a common law right to privacy, and even when Australia's government enacted the Privacy Act of 1988, the act dealt with the protection of personal information as opposed to privacy of the person.⁷¹ Furthermore, no constitutional right against unreasonable searches and seizures exists in Australia, which means that searches and seizures are governed by statute.⁷²

Despite the fact that it seems as though no right to privacy is explicitly recognized in Australia and the fact that Australia's protections against unreasonable searches and seizures are much lower than those in the United States, Australia's airport security measures are very similar to the United States' methods.⁷³ This is true despite the fact that Australia's laws would seem to give Australia more latitude in conducting airport security than the United States has. Passengers have their

70. Compare Universal Declaration of Human Rights, *supra* note 65 (protecting a person from an arbitrary interference with one's privacy, family, home, or correspondence), with Singapore Country Report, *supra* note 64 (noting that Singapore has no general protections for privacy).

71. *Australia, Right to Privacy*, HUMAN & CONSTITUTIONAL RIGHTS, http://www.hrcr.org/safrica/privacy/austr_law.html (last visited Nov. 16, 2012); *Privacy Act Snapshot*, OFF. OF THE AUSTL. INFO. COMM'R, <http://privacy.gov.au/aboutprivacy/snapshot> (last visited Nov. 16, 2012).

72. Paul Marcus & Vicki Waye, *Australia and the United States: Two Common Criminal Justice Systems Uncommonly at Odds*, 12 TUL. J. INT'L & COMP. L. 27, 37-43 (2004) ("Thus, although Australian courts tend to strictly read search and seizure statutes, they often fail to exclude evidence from a criminal trial that breaches the scope of those provisions. This reflects a pragmatic view that police investigation should not be unduly restricted if it produces appropriate outcomes. Therefore, Australia gives priority to the need to maintain law and order over individual rights to privacy.").

73. *Security Checks at the Airport*, AUSTL. GOV'T: DEP'T OF INFRASTRUCTURE AND TRANSP., <http://travelsecure.infrastructure.gov.au/international/screening/index.aspx> (last updated Feb. 25, 2013) (providing information on the baggage and passenger screening processes at Australian international airports).

baggage X-rayed,⁷⁴ go through metal detectors, and are patted down.⁷⁵ More recently, Australia has even moved into the full-body scanning area of airport security, despite the fact that Australian experts still remain divided “on the risks of radiation exposure and whether the machines provide anything more than ‘security theatre.’”⁷⁶

As if Australia’s airport security tactics are not already rigid enough, the country recently announced that it will be investing \$200 million more on new security measures.⁷⁷ First, the government will be spending \$28.5 million to introduce body scanners like the United States uses.⁷⁸ And, much like the profiling methods used in Israel, Australia is spending \$24.9 million on a program that will allow Customs to assess passengers’ information earlier and faster.⁷⁹ This system will give security officers all passengers’ travel history in advance so those working in security can make more informed judgments at the border.⁸⁰

74. *Carry-on Baggage Screening*, AUSTL. GOV’T: DEP’T OF INFRASTRUCTURE AND TRANSP., http://travelsecure.infrastructure.gov.au/international/screening/baggage_screening.aspx (last visited Nov. 16, 2012).

75. *Passenger Screening*, AUSTL. GOV’T: DEP’T OF INFRASTRUCTURE AND TRANSP., http://travelsecure.infrastructure.gov.au/international/screening/passenger_screening.aspx (last visited Nov. 16, 2012).

76. Karen Dearne, *Controversial Body Scanners Set for Airport Security*, THE AUSTRALIAN (Feb. 22, 2011), <http://www.theaustralian.com.au/australian-it/controversial-body-scanners-set-for-airport-security/story-e6frgax-1226009695385> (“The Office of Transport Security has revealed the controversial backscatter X-ray machines used to screen air travellers are considered fit for use despite an international backlash after embarrassed passengers realised staff were examining the ‘naked’ images . . . [T]he government has yet to decide whether body scanners will be used on children, while passengers with physical difficulties ‘preventing them holding the required pose for a specified period of time’ cannot be screened.”). The backscatter X-ray machines that have been approved for use in Australia are the very machines that the European Union has banned because of health risks. Grabell, *supra* note 36.

77. Media Release, Kevin Rudd, Prime Minister, & Hon. Brendan O’Connor, Minister for Home Affairs, Strengthening Aviation Security (Feb. 9, 2010), http://www.minister.infrastructure.gov.au/aa/releases/2010/February/AA024_2010.aspx.

78. *Id.*

79. *Id.*

80. *Id.* (noting that the government will also be spending \$11.4 million on an initiative that will “use advanced data analysis and risk profiling to better identify and refer visa applicants who may present national security risks to intelligence agencies”).

In addition to those technological advancements, the Australian government is investing tens of millions of dollars on strengthening international cooperation, policing at airports, and securing the air cargo supply chain.⁸¹

VI. NIGERIA'S AIRPORT SECURITY MODEL: NO MODEL AT ALL

While security in some Australian airports may closely mirror the tactics that the United States is using in its airports,⁸² this is not always in other countries.⁸³ Many airports, like Nigeria, have lax standards for airport security.⁸⁴

In December 2009, a Nigerian man boarded an airline headed for Detroit from Nigeria and lit an explosive device that he had smuggled on the plane in his undergarments.⁸⁵ Even more unsettling about this man's attempted terrorist attack is the fact that the United States gave Nigeria four full-body scanners in 2008, and not a single one was used to scan the Nigerian man that attempted to blow up the Detroit-bound airplane.⁸⁶ Even worse, not only did the full-body scanners go unused, but the news that Nigeria even owned four full-body scanners that were given to them by the United States had not even reached top Nigerian officials.⁸⁷ One of those uninformed

81. *Id.*

82. Dearne, *supra* note 76.

83. *U.S. Scanners Went Unused at Nigeria Airport*, MSNBC.COM (Dec. 21, 2009, 4:40 PM), http://www.msnbc.msn.com/id/34645445/ns/us_news-airliner_security/t/us-scanners-went-unused-nigeria-airport/#.Tpib8OtXkeU [hereinafter *U.S. Scanners Went Unused*] (pointing out Nigeria's failure to use full-body scanners that were available); Jane Hansen, *Airports' Unchecked Fear: No Security at Some of Our Regional Airports*, SUNDAY TELEGRAPH (Nov. 14, 2011, 7:46 AM), <http://www.news.com.au/travel/news/airports-unchecked-fear-no-security-at-some-of-our-regional-airports/story-e6frfq80-1226194148816> (pointing to Australia's failure to use security measures in regional airports); Jim Heintz, *Medvedev Says Security Was Poor at Bombed Moscow Airport*, CNS NEWS (Jan. 25, 2011), <http://cnsnews.com/news/article/medvedev-says-security-was-poor-bombed-moscow-airport> (noting that Russian President Dmitry Medvedev even admitted that the 2011 bombings in the Moscow airport were the result of poor airport security).

84. *U.S. Scanners Went Unused*, *supra* note 83.

85. *Id.*

86. *Id.* (“[A] spokesman for the Nigerian Civil Aviation Authority . . . did not deny that some passengers have been allowed to breeze past security checkpoints.”).

87. *Id.*

top officials was supposedly responsible for airport security at the time of the accident.⁸⁸

As a result of the incident, the United States has placed Nigeria on a list with fourteen other countries,⁸⁹ and passengers arriving in the United States via any of the countries on that list are forced to go through additional security measures.⁹⁰ Nigeria immediately criticized the extensive security measures its citizens would be forced to go through in the United States, calling it “discrimination.”⁹¹

VII. ISRAEL’S AIRPORT SECURITY MODEL: PERSONAL INTERACTION AND GROUP PROFILING

If countries like Nigeria exist on the low-end of the airport security spectrum, and Australia and the United States lie somewhere in the middle, which country is on the high end of the spectrum? Israel. Israel, with its sometimes controversial methods of airport security, has perhaps the most rigid security system in the world.⁹² It is a system that many envy.⁹³

In terms of citizens’ rights, Israel recognizes a national right to privacy, which may not be violated except by a law that benefits the country, is enacted for a proper purpose, and is utilized to an extent no greater than absolutely necessary.⁹⁴ But despite a philosophy that looks similar to the way the United States views the right against unreasonable searches and

88. *Id.*

89. Nathan Guttman, *Israel’s Airport Security, Object of Envy, Is Hard to Emulate Here*, *JEWISH DAILY FORWARD* (Jan. 6, 2010), <http://www.forward.com/articles/122781/>.

90. *Id.*

91. *New US Security Checks Discriminatory: Nigeria*, *ZIMBIO* (Jan. 4, 2010), http://www.zimbio.com/Umar+Farouk+Abdul+Mutallab/articles/jCrzX_UwMA/New+security+checks+discriminatory+Nigeria (noting that Nigeria Information Minister Dora Akuyili said that “[i]t is unfair to include Nigeria on the US list for tighter screening because Nigerians do not have terrorist tendencies,” and “[i]t is unfair to discriminate against over 150 million people because of the behaviour of one person . . .”).

92. *Id.* (outlining the security procedures at Tel Aviv’s Ben Gurion International Airport).

93. Guttman, *supra* note 89.

94. *Basic Law: Human Dignity and Liberty*, *KNESSET*, http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm (last visited Nov. 16, 2012) [hereinafter *Basic Law: Human Dignity*].

seizures,⁹⁵ the countries differ extremely in terms of civil rights.⁹⁶

A. Israel's Largest International Airport: What Security Methods Are Being Used in Ben Gurion International Airport?

Ben Gurion International Airport is one of three international airports in Israel⁹⁷ and is the largest international airport in the country.⁹⁸

As the airport with the most traffic in Israel,⁹⁹ and because of the airport's history of terrorist attacks,¹⁰⁰ the country requires those working in Ben Gurion International Airport to employ a system of group profiling in order to prevent airplane terrorism.¹⁰¹ And based on the fact that terrorists have not infiltrated Israel's main international airport since 1972, their system of group profiling and personal interaction appears to be working.¹⁰²

95. U.S. CONST. amend. IV; *Michigan v. Sitz*, 496 U.S. 444, 448–51 (1990) (stating that (a) the government's interest, (b) the effectiveness of the administrative stops, and (c) the level of intrusion on the individuals that are being searched or seized are three criteria that must be taken into account when determining the constitutionality of administrative searches and seizures).

96. Guttman, *supra* note 89; *Whren v. United States*, 517 U.S. 806, 813 (1996); *see also Basic Law: Human Dignity*, *supra* note 94 (“There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.”) (emphasis added).

97. The other two international airports in Israel are the Ovda and Eilat airports. *Airports in Israel*, EL AL http://elal.co.il/elal/english/allaboutyourflight/attheairport/israeli_airports/airportsin_israel.html (last visited Nov. 17, 2012).

98. *Israel Airports*, ASIAROOMS.COM, <http://www.asiarooms.com/en/travel-guide/israel/how-to-get-in/israel-airports.html> (last visited Nov. 16, 2012).

99. *Id.*

100. Brian Palmer, *What's So Great About Israel Security?*, SLATE MAG. (Jan. 3, 2011, 3:38 PM), http://www.slate.com/articles/news_and_politics/explainer/2011/01/whats_so_great_about_israeli_security.html; David Rose, *'Are You a Terrorist?' The Simple Question Being Asked at an Airport Which Could Rumble a Suicide Bomber*, DAILY MAIL ONLINE, <http://www.dailymail.co.uk/home/moslive/article-1336571/Terrorism-Can-really-stop-bomber-asking-Are-terrorist.html> (last updated Dec. 15, 2010).

101. Guttman, *supra* note 89.

102. Palmer, *supra* note 100.

B. A Day in the Life of a Ben Gurion Passenger

The typical trek through the Ben Gurion Airport looks something like this: as passengers enter their respective terminals, most Jewish Israeli citizens pass through security after only having to partake in a brief conversation.¹⁰³ However, some Israeli Arabs and non-Jewish visitors are forced to engage in long periods of questioning, and are required to allow airport security to do a thorough search of their luggage and their person.¹⁰⁴ Factors that are taken into consideration when deciding whether to require that a certain passenger go through further security measures include: the passenger's ethnicity, religion, national affiliation, behavioral patterns, travel information, and previous intelligence regarding the passenger.¹⁰⁵

In terms of the personal interaction aspect of Israel's airport security measures, the first layer of interaction takes place outside the airport: cars that approach the airport are stopped and guards ask the passengers questions.¹⁰⁶ Then, before checking in for a flight, passengers must again answer a series of questions and are required to show their travel documents.¹⁰⁷ Throughout the entire personal interaction process, airport security is less concerned with the actual answers passengers come up with and is more concerned with physical cues such as nervousness and tone of voice.¹⁰⁸

But Israel's reliance on actually interacting with passengers, both through personal questions and through ethnic, religious, and travel-history profiling may not be the biggest way that United States airports differ from Israel's take on airport security.¹⁰⁹ The Ben Gurion International Airport only uses X-ray machines and metal detectors; there is not a single

103. Guttman, *supra* note 89.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

full-body scanner in use in the entire airport.¹¹⁰

VIII. MEASURES THE UNITED STATES SHOULD EMPLOY IN AIRPORTS IN ORDER TO BETTER PROTECT ITS CITIZENS

This section, which has four subsections, (a) proposes which security methods the United States should be using in its airports; (b) highlights Boston's Logan International Airport as a superb example of airport security that the rest of the United States could be following; (c) addresses concerns regarding the efficiency of such a plan and concerns revolving around budgetary issues; and (d) lastly proposes an alternative the United States could employ if implementing a system like Israel's throughout the entire United States is out of the question.

A. *The United States Should be Relying Partially on Technological Advancements in Airport Security and Partially on Personal Interaction with Passengers*

If Israel's Ben Gurion International Airport has not seen a terrorist attack since 1972, and they are not using any of the more recent technological advances that have been made in the field of airport security,¹¹¹ what is the United States doing wrong?

The United States is on the forefront of airport security technology.¹¹² The country utilizes refined X-ray backscatter equipment, new baggage scanners that allow passengers to have their baggage scanned the moment they arrive at the airport, and sensors that can detect explosive residue on passengers' clothing; all of which are employed at airports throughout the country.¹¹³ With all of these advancements, it seems as though the United States would be impenetrable to terrorists. But the truth is that Israel has not seen any serious acts of terrorism

110. *Id.*; Palmer, *supra* note 100.

111. Palmer, *supra* note 100.

112. See Gene J. Koprowski, *After 9/11: Ten Years of Tech Made Airports Safer*, DISCOVERY NEWS (Sept. 9, 2011, 1:22 PM), <http://news.discovery.com/tech/tech-airport-safer-110909.html>.

113. *Id.*

since 1972,¹¹⁴ yet the United States has been the victim of a considerable number of attacks since the September 11, 2001 terrorist attacks.¹¹⁵

In order to make better use of the United States' highly advanced airport security equipment,¹¹⁶ the country should employ some of the same tactics that Israel employs.¹¹⁷ Personal interaction, like the kind that takes place in Israel's Ben Gurion airport,¹¹⁸ should not completely replace the United States' advanced security equipment, but instead should be used in addition to some of those advances that the United States has come to rely on since 9/11.¹¹⁹

The United States should be training those already working in airport security to implement a system of personal interaction like Israel's. The country should also be employing and training thousands of extra employees to implement a system of personal interaction. These airport security officers will be spending approximately five minutes per passenger questioning them about their travel plans, all the while keeping an eye out for physical cues such as nervousness or eye movement in order to determine which passengers should be separated and be required to go through further screening procedures.¹²⁰ The goal

114. Palmer, *supra* note 100.

115. *Ten Years after 9/11: Assessing Airport Security and Preventing a Future Terrorist Attack: Field Hearing Before the H. Subcomm. On Oversight, Investigations, and Mgmt. of the H. Comm. On Homeland Sec.*, 112th Cong. 3–4 (2011) [hereinafter *Ten Years after 9/11*] (discussing the need for more thorough passenger screening in light of the thousands of security breaches that have occurred in United States airports since Sept. 11, 2001).

116. *Security Technologies: Technology Used for Passenger Screening, Baggage Screening and More*, *supra* note 32.

117. *See generally* Palmer, *supra* note 100 (discussing Israel's model of airport security). *But see* Guttman, *supra* note 89 (discussing the difficulty of adopting the Israeli model in the United States).

118. Guttman, *supra* note 89.

119. *See generally Security Technologies: Technology Used for Passenger Screening, Baggage Screening and More*, *supra* note 32 (detailing the various advanced security equipment that the United States relies on).

120. Carl Joseph Maccario, *Aviation Security and Nonverbal Behavior*, in *Nonverbal Communication: Science and Applications* 147, 151–54 (David Matsumoto et al. eds., 2012) (explaining the TSA's new personal interaction approach to airport security training that emphasizes the interpretation of physical cues that often

should be to search out possible threats by personally interacting with passengers just by having five-minute conversations with screened passengers.

Furthermore, the country should start phasing out full-body scanners and replacing them with security measures that have proven to be more efficient and effective.¹²¹ The country should continue to use some of the technological advancements that have come to be successful in detecting security threats and couple those electronic methods with methods of personal interaction. If the United States is constantly facing backlash based on its implementation of full-body scanning methods in airports,¹²² why not move further away from a controversial method of detecting threats to national security and instead move towards a system that works in Israel¹²³ and is being implemented successfully in Boston's Logan International Airport?¹²⁴

The other chief method Israel implements, a method that the United States should undoubtedly be refraining from using in order to maintain national security, is profiling.¹²⁵ While profiling on the basis of age, gender, race or religion should be

accompany a fear of detection).

121. In January 2013, the TSA announced that it would be getting rid of almost 200 backscatter body scanners by June 30, 2013. Jeff Plungis, *Naked-Image Scanners to Be Removed From U.S. Airports*, BLOOMBERG (Jan. 18, 2013), <http://www.bloomberg.com/news/2013-01-18/naked-image-scanners-to-be-removed-from-u-s-airports.html>. Seventy-four were already removed from airports prior to January 2013. *Id.* The company making these machines was unable to "meet a congressional deadline to produce generic passenger images," and therefore the machines must now be removed. *Id.*; see *supra* notes 47–59 and accompanying text for a discussion regarding the technology behind backscatter body scanners and the controversy surrounding the machines.

122. See GOOGLE.COM, *supra* note 36 and accompanying text (explaining that a Google search of "full-body scanners" results in 1.73 million results with articles about the controversies and problems with full-body scanners).

123. See *What Can We Learn from Ben Gurion?*, *supra* note 6 (discussing advice from a former Ben Gurion Airport director of security on how U.S. airports can improve security).

124. Bart Jansen, *In Boston, Airport Security Now Begins with a Chat; Controversial TSA Effort Aims to Boost Screening*, USA TODAY, Oct. 14, 2011, at 1A.

125. Guttman, *supra* note 89.

considered unconstitutional in the United States,¹²⁶ the country is already seeing quasi-profiling being implemented in its quest for a safer airport system.¹²⁷ If a passenger is traveling to the United States from one of fourteen countries, including Afghanistan, Nigeria, Pakistan, Saudi Arabia, Yemen, and Syria, that passenger now must undergo an extra search before boarding.¹²⁸ This extra search requirement seemed to be considered legal at the time it was put in place.¹²⁹ The United States, with its January 2010 order that passengers arriving from fourteen international countries be subjected to further searches, seems to be trying to find ways around the laws against discrimination in order to protect national security.¹³⁰

B. Innovative Security Tactics at Boston's Logan International Airport: Footsteps the United States Should Follow In

The best example of where United States airport security should be headed is the innovative new system in place at Boston's Logan International Airport.

In Boston, airport security is testing out Israel's personal interaction methods, calling them "chat-downs."¹³¹ These chat-

126. See U.S. Const. amend. XIV, § 1 (enumerating the right of equal protection under the law); *Whren v. United States*, 517 U.S. 806, 813 (1996) ("The Constitution prohibits selective enforcement of the law based on considerations such as race."); JODY FEDER, CONG. RESEARCH SERV., RL31130, RACIAL PROFILING: LEGAL AND CONSTITUTIONAL ISSUES (2012), available at <http://www.fas.org/sgp/crs/misc/RL31130.pdf>.

127. Guttman, *supra* note 89.

128. *Id.*

129. But see Thomas Frank, *New Rules for Screening Fliers in Place*, USA TODAY http://usatoday30.usatoday.com/travel/flights/2010-04-02-screen_N.htm (last updated Apr. 2, 2010, 4:57 AM) (discussing the replacement of the extra screening for passengers from the fourteen countries with "a new system that will vet all U.S.-bound passengers against a broader array of intelligence sources").

130. Guttman, *supra* note 89; Press Release, Transp. Sec. Admin., TSA Statement on New Security Measures for International Flights to the U.S. (Jan. 3, 2010), <http://www.tsa.gov/press/releases/2010/01/03/tsa-statement-new-security-measures-international-flights-us>. The January 2010 order was rescinded and replaced in April 2010, with an anonymous Obama administration official "calling it a blunt tool that is not as effective as it initially was because terrorists figured out how to circumvent it." Frank, *supra* note 128.

131. Jansen, *supra* note 124.

downs take place in addition to passengers being required to go through metal detectors and full-body scanners.¹³² And again, just like in Israel, while the TSA officers are asking general questions about a passenger's travel plans, they are looking for more than just answers.¹³³ They are looking for physical cues that would lead security officers to believe the passenger is lying, fears discovery, or has hostile intent.¹³⁴

C. Will Implementing a More Israeli-Like Security System be Effective in the United States?

In terms of effectiveness, passengers voice three major concerns. First, critics have questioned whether Boston's Logan International Airport tactics have made the airport any safer.¹³⁵ Second, passengers are concerned that a system like Israel's could not be efficiently implemented in the United States because Israel's main airport only sees ten million people per year while most major United States airports see up to eighty million people per year.¹³⁶ Third, and perhaps the most popularly voiced passenger concern, is that implementing a chat-down system seems to involve wasting a great deal of passenger time.¹³⁷

However, these concerns are not as well grounded as many passengers seem to believe.

First, in terms of efficiency and effectiveness, critics point to the fact that Boston's Logan Airport has not shown that the implementation of Israel's tactics have made the airport any safer,¹³⁸ which is a cause of concern. However, Boston's

132. *Id.*

133. *See generally* Guttman, *supra* note 89.

134. Maccario, *supra* note 120, at 152–54.

135. Jansen, *supra* note 124.

136. Guttman, *supra* note 89.

137. Jansen, *supra* note 124.

138. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-763, EFFORTS TO VALIDATE TSA'S PASSENGER SCREENING BEHAVIOR DETECTION PROGRAM UNDERWAY, BUT OPPORTUNITIES EXIST TO STRENGTHEN VALIDATION AND ADDRESS OPERATIONAL CHALLENGES 46 (May 20, 2010) [hereinafter GAO-10-763], *available at* <http://www.gao.gov/assets/310/304510.pdf> (determining that it is unknown if the SPOT program has “ever resulted in the arrest of anyone who is a terrorist, or who was planning to engage in terrorist-related activity”).

chat-down system has only been in place for a short amount of time,¹³⁹ while Israel's system has been in place for decades.¹⁴⁰ While it is true that from 2004 to 2008, no passenger going through airports with these increased security measures was charged with terrorism, there were "427 arrests of undocumented immigrants, 209 for outstanding warrants, 166 for fraudulent documents and 125 for drug possession."¹⁴¹ 802 dangerous persons, all in the span of four years, all going through airports with the increased security that Boston's Logan International Airport implements, were arrested for serious crimes.¹⁴²

Those skeptical of the effectiveness of Israel's methods also point to the fact that Israel's main international airport only serves, at most, ten million passengers per year, while major airports in the United States, such as Chicago or Los Angeles, see up to 80 million passengers per year.¹⁴³ Critics point out that the United States will likely never be able to successfully implement a personal interaction system when so many passengers who travel through United States airports expect to get through security screenings without any significant delays.¹⁴⁴

While, there are millions more passengers entering the United States' main hubs in comparison to Israel's Ben Gurion International Airport, there are airport security officers in every United States airport. The United States should further train

139. Jansen, *supra* note 124 (noting that chat-down program was in a trial stage as of Oct. 2011).

140. See *What Can We Learn from Ben Gurion?*, *supra* note 6 (explaining that with improved security, Ben Gurion Airport has not seen a serious terrorist attack since 1972, when twenty-four people died in the airport as a result of an attack).

141. Jansen, *supra* note 124.

142. *Id.*

143. Guttman, *supra* note 89.

144. See GAO-10-763, *supra* note 138, at 1 (shedding light on the cultural difference between U.S. airport security and Israeli airport security, and stating that "El Al security screeners are encouraged to spend as much time with passengers as needed, and are not concerned whether passengers experience delays in boarding an aircraft"); Guttman, *supra* note 89 (quoting Yuval Bezhero, an executive at an airport security firm, explaining that the TSA would need to train tens of thousands of employees to start questioning everyone who goes through U.S. airports).

these existing officers to conduct chat-downs and recognize physical cues. If there are enough officers in every United States airport to handle the major traffic going through those cities, it logically follows that with extra training, those existing airport officials could help to efficiently implement an Israeli-like system.

This Comment further proposes that thousands of extra officers would need to be hired in order to allow security officers to spend approximately five minutes questioning each and every passenger. By cost-shifting and a re-allocation of funds that are already designated for airport security,¹⁴⁵ the combination of requiring further training of existing employees and hiring the extra employees that are also necessary will make implementing Israel's methodology an attainable goal. Attendants checking boarding passes and running the X-ray machines and full-body scanners could simply be briefly questioning passengers and keeping an eye out for physical cues as travelers go through the already-in-place security measures.

While critics worry that it will be impossible to properly train the thousands of employees that are necessary to implement a chat-down system,¹⁴⁶ the people asking questions in airports are not trying to "identify terrorists in 30 seconds," they are simply trying to "sort out higher-risk passengers for more screening."¹⁴⁷ Keeping that goal in mind, it seems as though training those already working in airport security and hiring extra hands would not be impossible, and would be a giant step towards being able to recognize specific physical cues passengers exhibit solely in order to separate passengers that require further screening.¹⁴⁸

At Houston's George Bush Intercontinental Airport, when an international flight arrives, passengers with only carry-on

145. Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 121 Stat 1844, 2052 (2007).

146. Guttman, *supra* note 89.

147. Tovia Smith, *Next In Line For The TSA? A Thorough 'Chat-Down,'* NPR (Aug. 16, 2011), <http://www.npr.org/2011/08/16/139643652/next-in-line-for-the-tsa-a-thorough-chat-down> ("You don't have to find the needle in the haystack . . . You only have to find the section of the haystack where the needle may be.").

148. *See id.* (quoting George Nacarra).

luggage may participate in Customs and Border Protection's OneStop program, which streamlines the entry process.¹⁴⁹ In the OneStop program, passengers line up to have their passports checked, airport security asks routine questions about the length of each passenger's trip, why they traveled to each destination, and what the passengers carry with them in their baggage.¹⁵⁰ A simple system like this could be implemented for all flights, international and domestic, throughout all United States airports.

Finally, one last concern related to effectiveness is the fear that implementing a system like Israel's in the airports across the United States would be a huge waste of passengers' time.¹⁵¹ But proposed system would only take up five minutes. Considering that the entire airplane passenger process may take up to three hours with the checking in, the baggage checks, the long lines, the X-ray scanners, the full-body scanners and the document screening,¹⁵² an extra five minutes to further ensure every single passenger's safety seems rather miniscule in comparison.

Alternatively, the United States could quell the passenger fears about the "chat-down" system being a waste of time by implementing a pre-screening program.¹⁵³ A pre-screening program would allow passengers to provide extra personal background information in advance of their flight, so as to expedite the security process.¹⁵⁴ Airports in Atlanta, Detroit, Dallas and Miami already use such methods.¹⁵⁵ David Harris,

149. *OneStop*, FLY2HOUSTON: INTERCONTINENTAL AIRPORT, <http://www.fly2houston.com/OneStop> (last visited Nov. 26, 2012).

150. *Id.*

151. Jansen, *supra* note 124.

152. See *Security Check-In Requirements*, DELTA, http://www.delta.com/traveling_checkin/itineraries_checkin/requirements/ (last visited Nov. 18, 2012) (noting that passengers going to certain countries overseas should report to the airport three hours in advance of the time that their flight leaves).

153. *TSA Pre✓™ Expedited Screening*, TRANSPORTATION SECURITY ADMINISTRATION, <http://www.tsa.gov/tsa-pre%E2%9C%93%E2%84%A2/tsa-pre%E2%9C%93%E2%84%A2-expedited-screening> (last visited Nov. 18, 2012); Jansen, *supra* note 124.

154. *TSA Pre✓™ Expedited Screening*, *supra* note 153.

155. *Id.*

the executive director of the American Jewish Committee, has stated that the Israeli method of human interaction is only a “minimum inconvenience for the vast majority of travelers, who spend no more time at the [Israeli] airport than their American counterparts.”¹⁵⁶ However, implementing this pre-screening process could be an easy solution to United States fliers’ perhaps unwarranted complaints that a chat-down system would take too much time to implement in airports.¹⁵⁷

D. Even if Implementing Israel’s Airport Security System in America Could be Efficient, Could the Country Ever Afford it?

When looking towards the budgetary constraints this proposal will encounter, it is first necessary to lay out what the TSA is currently dealing with. First of all, in 2008, the United States spent \$5.74 billion on airport security.¹⁵⁸ Furthermore, the United States’ fiscal 2011 budget included the purchase of 500 advanced imaging technology machines, and the 2012 budget asked for an additional 275 units to be purchased.¹⁵⁹ These machines can cost between \$130,000 and \$200,000 apiece.¹⁶⁰ Finally, over the last ten years, funding for airport security has already increased by 700%.¹⁶¹

It is next necessary to further break down what the United States spends per year to protect its passengers compared to what Israel spends per year to protect its passengers. The United States’ budget in 2008 for airport security was \$5.74 billion, and the United States in 2008 monitored and protected

156. Guttman, *supra* note 89.

157. *See generally id.* (noting Americans’ unwillingness to spend more time or money at American airports).

158. Annie Lowrey, *What Would it Cost for the U.S. to Get Israel-Level Airport Security?*, FOREIGN POLICY (Jan. 7, 2010), http://blog.foreignpolicy.com/posts/2010/01/07/would_you_pay_25_for_71_seconds_of_scrutiny_in_an_airport.

159. Press Release, Transp. Sec. Admin., TSA Announces Advanced Imaging Technology Deployments at U.S. Airports (Oct. 6, 2011) [hereinafter Press Release, TSA Advanced Imaging Technology], *available at* <http://www.tsa.gov/press/releases/2011/1006.shtm>.

160. Tessler, *supra* note 49.

161. Koprowski, *supra* note 112.

735,297,000 passengers.¹⁶² This means that the United States spent \$7.80 per passenger.¹⁶³

In comparison, Israel spends approximately \$100 million per year for airport security for its 1.3 million annual passengers, amounting to \$76.92 spent per passenger.¹⁶⁴

There are two ways that the United States could implement a security system like Israel's without having to worry so much about the billions of dollars it would cost: first, the United States could shift some of the costs to the passenger.¹⁶⁵ Second, the United States could re-allocate some of the existing TSA budget away from the technological side of airport security technology and use it towards the personal interaction side of airport security.

In terms of shifting some of the costs of security to the passenger, the United States could place a tax on airline tickets in order to help fund the shift to Israeli-like security methods.¹⁶⁶ Perhaps the United States could place a tax on tickets costing twenty-five or even forty dollars. Assuming there are 735,297,000 passengers per year, a twenty-five dollar tax on each airline ticket would raise \$18.4 billion per year, and a forty-dollar tax would raise \$29.4 billion per year.¹⁶⁷

If it is estimated that it would cost \$150 billion per year for ten minutes of questioning per passenger in the United States,¹⁶⁸ how much money would it cost to simply question passengers for five or even two minutes? Basic math dictates that if the United States were to question each passenger for five minutes it would end up costing seventy-five billion dollars per year. Basic math further dictates that, if each passenger were only questioned for two minutes, it would cost the United States thirty billion dollars per year. Just raising ticket prices by forty dollars apiece would nearly cover the cost of questioning every single passenger going through United States airports for

162. Lowrey, *supra* note 158.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

two minutes.¹⁶⁹

But can two minutes of personal interaction really compare to the extremely lengthy questioning that passengers experience when flying through Israel? Probably not, but if the United States raises ticket prices by forty dollars per passenger, it can then re-allocate some of the existing airport security budget to security programs that focus on personal interaction.¹⁷⁰

As mentioned above, the United States asked for money for an additional 275 advanced imaging technology machines in 2012.¹⁷¹ Instead of spending money on 275 more full-body scanners, as 500 were already purchased in 2011,¹⁷² the United States could re-allocate the body scanner funds to help the country move toward an Israeli-like airport security model. It is estimated that each of these machines costs at least \$130,000,¹⁷³ if these funds were reallocated, the United States would have \$35.8 million to spend on the personal interaction side of airport security. The amount of money for reallocation is even greater—about fifty-five million dollars—if the United States were to forgo purchasing the most expensive machines, which run about \$200,000 each.¹⁷⁴ Further, the United States could reallocate funds from other budget items to fund the new security measures. If money could be reallocated away from other technological areas of airport security, or reallocated from other, unrelated areas of the budget, more money could be spent on personal interaction in airports.

This reallocated money would not only be used to fund the actual implementation of a system like this in airports, but it would be put towards the preliminary phase of this proposal.

169. *Compare id.* (stating that thirty billion dollars would be needed in order to be able to question every single United States airline passenger for two minutes), *with supra* note 167 and accompanying text (increasing ticket prices by forty dollars apiece would raise \$29.4 billion).

170. *See* Press Release, TSA Advanced Imaging Technology, *supra* note 159 (noting that the United States asked for an additional almost 300 full body scanners on top of the already 500 that are in place in America).

171. *Id.*

172. *Id.*

173. Tessler, *supra* note 49.

174. *Id.*

The money could be used to teach people who already work in airports, as well as new employees, how to question passengers and how to recognize important physical cues displayed by potentially dangerous passengers. While it may be true that implementing Israeli-like measures would require “train[ing] tens of thousands of employees,”¹⁷⁵ it would not be impossible to have those that are already working in airport security go through extra training, which could further alleviate some of the initial costs.

Furthermore, over the last twelve years, funding for airport security has already increased by 700%.¹⁷⁶ If a 700% increase in funding has been approved over the last twelve years, with most of that funding going toward implementing high-tech methods of detecting terrorism,¹⁷⁷ how can it be said that another increase in the funding percentage, in order to implement personal, human contact-type methods of detecting terrorism, is out of the question? As it becomes clearer that the United States’ reliance on purely technological methods in airport security is not working very well, this possibility may very well become reality.¹⁷⁸

E. If the United States Refuses to Tax Passengers and Refuses to Re-Allocate Funds Towards Implementing an Israeli-Like Airport Security System, What Alternatives are There?

If a forty dollar tax on each airline ticket or a reallocation of funds towards changing the way America handles its airport security are ultimately rejected by the government, the United States could start implementing an Israeli-like security model sparingly throughout the country. There could be a focus on either airports that see more acts of terrorism or on high-traffic airports. This solution is perhaps one more way that the United States could pacify passengers who are skeptical that a system like Israel’s would work. If the United States first implements a system like Boston’s Logan International Airport in twenty or

175. Guttman, *supra* note 89.

176. Koprowski, *supra* note 112.

177. *Id.*

178. *Ten Years after 9/11*, *supra* note 115.

thirty major airports, a success in those cities in terms of preventing acts of terrorism could mean a larger rally in favor of implementing an Israeli-like model at every United States airport.

IX. CONCLUSION

The bottom line is that those working in airport security want to use the best methods possible to protect citizens from terrorist attacks.

If the United States truly wants to protect its citizens from terrorist attacks and continue to be at the forefront of airport security, some changes have to be made. The reliance on purely technological methods of detecting threats in airports cannot continue if the United States wants to efficiently run its airport security program.

The art of airport security requires much trial and error, and with all the complaints from passengers and all the attacks the country still faces, it is time to move far, far away from full-body scanners. Less intrusive security measures would incur less passenger resistance, would pair well with personal interaction, more so than full-body scanners. Furthermore, these less intrusive tactics would be more respectful of a passenger's right to privacy and the right against unreasonable searches and seizures. One TSA administrator may have put it best when he said that personal interaction in place of full-body scanners "means moving further away from what may have seemed like a one-size-fits-all approach to security[.]"¹⁷⁹

To move in the right direction, the United States needs to shift away from purely mechanical ways of detecting threats and towards a system of personal interaction. Personal interaction that kept Israel free from terrorist attacks since the 1970s, and it is personal interaction that will help America's airport security officers pick up on things that machines may miss, such as physical cues and passenger responses to questioning.

It may be true that the switch to an Israeli-like security system will cost a large sum of money and that the switch will require the training of thousands of people. But concessions can

179. See Jansen, *supra* note 124.

be made, either by shifting some of the costs to the passenger or by re-allocating funds that are already slated to be spent on airport security. It is a manageable goal.

Those involved in the United States' airport security model may believe that being at the forefront of airport security means having the best technological advancements. However, the way Israel relies primarily on personal interaction and based on the fact that the country practically never sees terrorist attacks come through their airports, the real way to protect American citizens is to shift away from machines and toward the trusted agents already working in airports.