

# **Fourth Amendment Considerations and Application of Risk Management Principles for Pat-Down Searches at Professional Football Games**

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According to Higgs and McKinley (2009) sport in the United States parallels what is occurring in the rest of American society. These authors continue that if aliens viewed a sports event for the first time they might very well associate the sport with the business world because of the business signage that appeared in the stadium or on the television. The perception may very well reflect the reality that sport itself is a microcosm of American culture (Higgs & McKinley, 2009). Because they are so strongly associated with American economy and culture, sports have been considered significant targets of terrorism attacks (Appelbaum, Adeland, & Harris, 2005; Atkinson & Young, 2002). In a panel discussion, Paul Zoubek, Counsel for the New Jersey Domestic Preparedness Task Force, stated that:

Sports are a very symbolic target of terrorism because they are so associated with the globalization of the American economy and the American culture. Young kids are wearing those jerseys, they are wearing their Nike shirts, their Nike shoes, and the terrorists are looking for a symbol to target (Fallon, [quoting Zoubek], 2003, p. 367).

In response to the terrorist attacks on September 11, 2001, the commissioner of the National Football League (NFL), Paul Tagliabue appointed the task force of stadium security and crowd management

professionals. Over a two month period, the task force developed a set of best practices for the NFL designed for patron safety (Wilde, 2001). Subsequently, the NFL hired an independent security firm to perform an audit to determine how each stadium conducted these practices on non-game day and game day (Curtis, 2002; Fallon, 2003). The first pat-down search policy was implemented for Super Bowl XXVII in February, 2002 (Fallon). As a part of their security plan, in 2005 the NFL expanded the policy to include all league games. The policy stated that ". . . all persons attending league games must be physically searched before entering any of the venues where the games are played, the aim being to prevent terrorists from carrying explosives into the stadiums" (*Johnston v. Tampa Bay Sports Authority*, 2005, p.1078). However, some patrons objected to the pat-downs claiming that the pat-downs were a violation of their constitutional rights because they were warrantless and unreasonable government searches and seizures. While subsequent cases (*Sheehan v. San Francisco 49ers*, 2007; *Sheehan v. San Francisco 49ers*, 2009) alleged that the NFL's policy violated federal and state constitutional rights against warrantless and unreasonable government searches, *Tampa Sports Authority v. Johnston* (2005) was the first case to decide whether this policy violated the Fourth Amendment of the United States Constitution.

The first section of this article explores issues raised by the initial cases *Johnston v. Tampa Sports Authority* and *Sheehan v. San Francisco 49ers* and subsequent appeals, regarding the Fourth Amendment during pat-down procedures. The second part examines this security measure in the context of wider operational risk management efforts and addresses the role of risk management in providing a reasonably safe environment at a professional football game. The third part will identify risk management approaches that can assess potential threat, identify potential vulnerabilities, and recognize organizationally significant assets, infrastructures, and critical functions. This part further considers pat-searches in the context of modern developments in risk management. The final part provides concluding comments and recommendations for stadium managers regarding ways to implement risk management practices that can increase patron safety and minimize Fourth Amendment litigation while conducting pat-downs. Other commentators (Beckley, 2008, Claussen, 2006, Downs, 2007, Homenda, 2008) have done more exhaustive examinations of the constitutional issues involved in pat-down searches. This article differs by examining how, in light of the recent court rulings, a stadium manager can employ risk management practices to increase patron safety.

## PART I: FOURTH AMENDMENT CONSIDERATIONS IN PAT-DOWN SEARCHES

Among the most common types of searches of sports spectators are pat-downs searches (Steinbach, 2006). Pat-down searches may include patting and rubbing of the torso and pockets with no skin-to-skin contact (Share, 2008). If patrons are wearing a zippered or buttoned jacket they are required to open it, hold it away from the body, and allow security personnel to check for contraband (Share). If contraband is found, the patron is detained. Anyone who refuses to be searched is denied entrance (*Johnston v. Tampa Bay Sports Authority*, 2006). Some scholars have articulated that increased security at sporting contests has begun to erode the protections provided by the Fourth Amendment to patrons' individual privacy because of the invasiveness of pat-downs (Claussen, 2006; Kearns, 1999). Previous court rulings have indicated that such conduct may be construed as a serious infringement on the sanctity of the individual, inflict great indignity and create strong resentment (*Terry v. Ohio*, 1968) and be a gross invasion of one's privacy (*United States v. Albarado*, 1974).

The Fourth Amendment to the U.S. Constitution reads:

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. (U.S. Const. amend. IV).

Among the factors to be considered in an examination of a search is whether or not it is state action (*United States v. Ellyson*, 2003). State action refers to "anything done by a government; an intrusion on a person's rights either by a government entity or by a private requirement that can be enforced by governmental action" (Garner, 2009, p. 1538). The court in *Ellyson* stated that "... a private search may be converted into state action only if the private actor is regarded as having acted as an instrument or agent of the state (*United States v. Ellyson*, 2003, p. 528). As a result, searches may be interpreted as a state action if they are done as a way to assist law enforcement agencies (Claussen, 2006; *Johnston v. Tampa Sports Authority*, 2005). According to the court in *State v. Iaccarino* (2000), the Fourth Amendment of the United States Constitution guarantees "... the right to be free from unreasonable searches and seizures. Implicit in that guarantee is the requirement that an agent of the government perform those searches and seizures" (p. 475). Other factors include whether the patron consented to the search or if the search falls

under the "special needs" exception (*Bourgeois v. Peters*, 2004, p. 1312).

Another factor to consider is the reasonableness of the search, as "[t]he touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable" (*Florida v. Jimeno*, 1991, p. 248). To clarify, the reasonableness of a search relies on balancing the public interest and the individual's right to personal security that is free from any subjective interference by law officers (*State v. McCormick*, 2007; *State v. Dorey*, 2008). As such, reasonableness may be established by balancing the intrusion on the Fourth Amendment interests of a person versus the search's promotion of valid governmental interests (*Shell v. U.S.*, 2006; *Vernonia School District v. Acton*, 1995).

## PART II: ANALYSIS OF THE NFL PAT-DOWN POLICY TO COURT CASES

The NFL implemented its' first pat-down search policy for Super Bowl XXVII in 2002, and expanded the policy to pat-down searches of all patrons entering NFL stadiums in 2005. The Tampa Sports Authority (Authority) runs Raymond James Stadium, the home of the Tampa Bay Buccaneers. In September 2005, based on the demands of representatives from the NFL and the Buccaneers, the Authority approved a policy to conduct limited above-the-waist pat-down searches of all persons attending Buccaneers football games.

### *Johnston v. Tampa Bay Sports Authority*

In *Johnston v. Tampa Sports Authority* (2006) the plaintiff was a Tampa Bay Buccaneers season ticket holder who objected to the pat-down search policy and claimed that he was told that the Buccaneers would not refund the cost of season tickets based solely on his objections. Johnston did attend the first three games and the screener advised him that a pat-down search would be performed. Though Johnston verbally objected, he consented to the pat-down so that he could attend the game. After attending the second game, Johnston sued the Authority in state court seeking to enjoin the searches on the grounds that the mass suspicionless pat-downs at Buccaneers' games violated his Florida constitutional rights. Later, Johnston amended his complaint alleging violations of the Fourth Amendment and civil rights under 42 U.S.C. § 1983. Johnston was able to obtain an injunction and the case was later removed to federal court.

As stated previously, state action is required to gain the protections of the Fourth Amendment and § 1983. The Authority argued that the pat-downs

were conducted by a private security agency that they hired, and hence not as state action and not subject to the Fourth (*Johnston*, 2006, p. 1262). However, the Court noted that the Authority was a public agency created by the Florida legislature and even though the search was implemented by a private firm, the Authority could not contract away its public status (*Johnston*, p. 1263). Hence, the trial court concluded that the Authority's pat-downs were state action (p. 1264).

The Authority also argued that their searches were not unreasonable since they were able to demonstrate a "special need" exception as Johnston had no reasonable expectation of privacy at the NFL games (*Johnston*, 2006, p. 1266). The Authority also argued that Johnston had given his implied consent to the pat-down search thus weighing the equities in favor of public safety. Johnston argued that he was not notified of the pat-down policy prior to purchasing his 2005-06 season tickets and if he did not consent to the pat-down that the Buccaneers would not refund the cost of his season tickets (*Johnston*, p. 1261). Hence, he was faced with the choice of either subjecting himself to the pat-down searches or not attending the games thus losing the value of his tickets, parking pass, seat deposit and the opportunity to attend the Buccaneers games (p. 1261).

The district court in *Johnston* (2006) gave an extensive review of search and seizures going back to *Terry v. Ohio* (1968) and commented that "consistent with the Court's analysis in *Terry*, mass suspicionless searches have been uniformly prohibited, absent certain narrow exceptions" (*Johnston*, p. 1265). Also citing *Chandler v. Miller* (1997) the court further stated that special needs circumstances occur when the risk to public safety is substantial and real, and citing *City of Indianapolis v. Edmond* (2000), the court indicated that a threat must be grave and "*real and not simply hypothetical*" (*Johnston*, p.1265). The court found that the Authority failed to demonstrate that the threat to NFL stadiums was "substantial and real" (p. 1268) and that "the intrusiveness of the pat-downs cannot be constitutionally justified under these circumstances" (p. 1271).

On appeal, the U.S. Court of Appeals for the Eleventh Circuit overturned the injunction noting that the district court erred in finding that Johnston did not have notice of the pat-down search policy (*Johnston v. Tampa Sports Authority*, 2007). It did not analyze the wisdom or reasonableness of the pat-down policy, rather the court found that "... considering the totality of the circumstances Johnston voluntarily consented to pat-down searches each time he presented himself at a Stadium entrance to attend a game" (*Johnston*, 2007, p. 825). A year later, the court vacated its prior opinion and substituted a revised opinion (*Johnston v. Tampa Sports Authority*, 2008). The court again

noted that the United States Supreme Court has consistently held that searches without a warrant are per se unreasonable except for a few "well-delineated exceptions (*Johnston*, 2008, p. 1326)." One of those exceptions is consent to the search. The court also found that the plaintiff knew well in advance that there would be a pat-down search and that he chose to voluntarily submit to that search on two occasions (*Johnston*, p. 1328). In conclusion the court found that again, considering the totality of the circumstances, Johnston voluntarily consented to pat-down searches each time he presented himself at a stadium entrance to attend a game (p. 1328).

*Stark v. Seattle Seahawks*

*Stark v. Seattle Seahawks* (2007) also involved pat-down searches that were a condition of a ticketholder's entry to a professional football at Qwest Field & Event Center ("Qwest Field"). Plaintiffs Fred and Kathleen Stark contended that the pat-downs constitute unreasonable searches in violation of the Fourth Amendment (*Stark*, 2007, p. 3). The Starks also claimed that the pat-downs were in violation of the Washington State Constitution and their civil rights under 42 U.S.C. § 1983 (*Stark*, p. 3). The defendants argued that the searches were authorized by private entities and conducted by private security personnel and there were no state actors (p. 3).

The court stated, "[w]hile the Starks point to several ways in which the Stadium Authority and First & Goal benefit from their relationship, they do not offer sufficient evidence that the Stadium Authority operates Qwest Field, or that it profits from the allegedly unconstitutional pat-down searches" (*Stark*, 2007, p. 17). The court found that even though the Stadium Authority benefited from state financing, the government did not have a meaningful role in drafting or enforcing the search policy (*Stark*, p. 19). Because they did not rise to state action there was no violation of the Fourth Amendment or § 1983.

*Sheehan v. San Francisco 49ers*

In *Sheehan* (2007), the plaintiffs, Daniel and Kathleen Sheehan, objected to pat-down searches at 49ers' home games as a violation of the California state constitutional right to privacy. The trial court and the California Court of Appeal concluded that Sheehan could not show that they had a reasonable expectation of privacy under the presented circumstances because they had advance notice of the pat-down policy and by voluntarily purchasing the tickets that they impliedly consented to the search (*Sheehan*, p. 403). As the Court of Appeal stated, "rather than submit to the pat-down the Sheehans had the choice of walking away, no questions asked" (p. 407).

Later on appeal, the California Supreme Court (*Sheehan v. San Francisco 49ers*, 2009) recognized *Johnston* (2008) but differentiated *Sheehan* from *Johnston* on two grounds. One was that the court in *Johnston* had a full factual record that was not present in *Sheehan* (*Sheehan*, 2009, p. 479). The other was that the pat-down searches were different (*Sheehan*, p. 479). In the initial *Johnston* hearing, as well as the subsequent appeals, the pat-down search was limited to above the waist, while in *Sheehan* the plaintiff alleged that the search was more intrusive as screeners ran their hands ". . . around the [plaintiffs'] backs and down the sides of their bodies and their legs" (*Sheehan*, 2009, p. 476).

The Court remanded the case for further proceedings, noting that the record (which consisted solely of the complaint) did not establish valid consent as a matter of law (*Sheehan*, 2009). The Court noted that, "People certainly have, in general, a right not to have others pat them down" (*Sheehan*, p. 601). But, the Court went on to say,

As evidenced by the circumstance that the pursuit of safety, like the pursuit of privacy, is a state constitutional right, the competing social interest of enhancing safety is substantial. Those who provide private entertainment venues, including the 49ers' at NFL football games, have a substantial interest in protecting the safety of their patrons (p. 601).

The Court concluded by noting that courts are not "a roving commission to second-guess security decisions at private entertainment events or to micromanage interactions between private parties" (p. 480).

It appears that by remanding the case back to the trial court, the California Supreme Court was putting the onus on the 49ers to prove that the pat-downs are "appropriate to ensure the safety of their patrons, subject, when those security measures substantially infringe on a privacy interest, to judicial review for reasonableness" (*Sheehan*, 2009, p. 1003). This is consistent with *Johnston* (2006) and *City of Indianapolis* (2000) where the courts indicated that a threat must be concrete and not merely speculative. *Sheehan* and *Johnston* may establish a legal framework to determine the legitimacy of pat-down searches and it appears that the courts are leaning toward protection of patrons. The *Johnston* Court concluded that searches supported a "vital interest" and that the searches were instituted "to guard against mass casualties at NFL games from a potential terrorist attack" (*Johnston*, 2008, p. 1328). The *Sheehan* Court pointed out that stadium owners "necessarily retain primary responsibility for determining what security measures are appropriate to ensure the safety of their patrons" (*Sheehan*, p. 1003). In both cases the

overarching concern was patron safety. It appears the only question is the reasonableness of the search and this can be determined by how intrusive is the search and how feasible are the alternatives. It also raises the interesting question of whether a stadium owner opens itself to litigation if they do not conduct searches to prevent an attack.

### III: THE PAT-DOWN SEARCH IN A RISK MANAGEMENT CONTEXT

The sports industry is one of the largest in the United States eclipsing real estate, health care, banking and transportation (Coakley, 2007). Arguably the most visible components of the industry are sporting events. Few, if any, other sports can compete with the popularity of attending American professional football games as typified by large gatherings of people, frequently exceeding 70,000 (ESPN, 2009). Additionally, polls have shown that professional football has been the most popular sport in the United States throughout the past decade (Business Wire, 2008; Carroll, 2007; Harris Poll, 2010; Jones, 2001). Badenhausen, Ozanian, and Settimi (2009) reported that the finances of the NFL were unparalleled in professional sports as the revenues for the league's 32 teams rose seven percent to \$7.6 billion. Badenhausen, et al. (2009) cited the league's television agreements with CBS, NBC, Fox and ESPN as a significant reason for the financial increase. Additionally they revealed that the NFL revenues from ticket sales increased by six percent from 2007 to 2008. Thus, it appears from the television deals and increased ticket sales, the NFL is a highly visible, financially stable, and well-attended entity in the United States.

Due to visibility, attendance, and financial considerations, an assault on a professional football stadium could produce what a terrorist may seek: mass casualties and economic harm (Clonan, 2002; Picarello, 2005; Schneider, 2003). Milton Ahlerich, vice-president of security for the National Football League, declared that:

After September 11th the idea of where event security fit into our mix was high on the list. If not the highest, it was certainly among the top two or three things that we did. Event Security immediately became, through pronouncement by our commissioner, the number one priority of the National Football League. He said repeatedly that the NFL could stand a lot of mistakes; we could make a lot of bad business decisions, we could have bad business partners, we could have bad problems with our most important human resources, but we could not, perhaps, survive a terrorist attack or a large loss of life in one of our



venues, at one of our games. That is a very strong statement. (Fallon, [quoting Ahlerich] 2003, pp. 352-353).

According to former Defense Secretary William Perry, as well as former Assistant Secretary of Defense Graham Allison, the probability of a terrorist attack is more than 50% over the next ten years (Curtis, 2008). In 2006, a Harvard researcher calculated a 29% probability of a terrorist attack over the next ten years (Bunn, 2006). Specifically relating to sports, Hurst, Zoubek, and Pratsinakis (2002) stated that it is foreseeable that sports arenas may be targeted in the near future. While football stadiums have not been victimized by a terrorist attack yet, some researchers have indicated that the potential for one still exists (Baker & Connaughton, 2005; Baker, Connaughton, Zhang, & Spengler, (2007); Blum, 2009; Fallon, 2003; Miller, Veltri, & Phillips, 2007; Piccarello, 2005). In a study dealing with spectator perceptions of safety practices, more than 95% respondents indicated that it is foreseeable that a terrorist-related assault may be attempted at a professional football game in the near future (Miller, Veltri, & Gillentine, 2008). According to *Isaacs v. Huntington Memorial Hospital* (1985), ". . . authorities who know of threats of violence that they believe are well-founded may not refrain from taking reasonable preventive measures simply because violence has yet to occur" (pp. 125-126).

If an organization can foresee the realization of a threat occurring as well as negative impacts that an incident could create, the level of the management of risks would be elevated. As such, when a plausible danger is multiplied by the potentially harmful impact, the level of risk increases (credible threat x potential negative impact = level of risk increases). Should an organization possess credible information indicating that an incident was foreseeable, such as a red alert from the Department of Homeland Security, but the organization did not respond suitably, it may have breached its' reasonable duty of care (Picarello, 2005). In order to prevent a breach of this duty and because venues have a substantial interest in protecting patron safety from foreseeable harm (*Sheehan*, 2009), a risk management plan should be strongly considered.

At the most operational level effective risk management policies and procedures require a balance between the foreseeable risks to the organization and the costs to preserve or protect a particular asset, such as a patron (Cawood, 2002). As illustrated by the cases presented earlier a football stadium manager may have to consider balancing the need for safety versus an individual's sense of privacy. Milton Ahlerich addressed this balancing issue by stating:

The balancing of the invasive efforts to protect our fans, what might be considered invasive by some, I think is an important area that needs to be discussed. How far can we go with physical searches? How much permission is needed as fans enter the stadium to protect the fans at large and our business? (Fallon, [quoting Ahlerich] 2003, p. 354).

One of the risk management measures instituted by the NFL after September 11, 2001, was pat-downs of patrons entering the stadium. The original intent of pat-downs was established by international security and military personnel because suicide vests could be hidden underneath an individual's garments, thereby avoiding detection (Mowbray, 2005). Pat-downs have been employed as a means to ensure that improvised explosive devices ("IEDs"), which might be carried on a person entering a stadium, may be detected (*Johnston*, 2006). Because pat-downs may detect hidden IED's some have perceived that they are more apt to dissuade a possible terrorist attack (Kalson, 2005; Wirtz, 2006). However, as presented in the *Johnston*, *Sheehan*, and *Stark* cases, pat-downs are arguably intrusive, especially when not communicated well to the patrons.

At an operational level, risk management runs afoul of many problems if there is not a clearly articulated view of the risk policy and its relationship to overall strategy and policy—a point discussed more fully in the third part of this article. Paul Tagliabue, the commissioner of the NFL at the time the pat-down procedures were implemented, explained the rationale for the policy was, "...in recognition of the significant additional security that 'pat-downs' offer, as well as the favorable experience that our clubs and fans have had using 'pat-downs' as part of a comprehensive stadium security plan" (Kansas City Chiefs News, 2005). When the league-wide adoption of the pat-down policy occurred, every team in the NFL communicated to their season-ticket holders that pat-down procedures were going to be conducted (*Johnston*, 2005; *Sheehan*, 2007; *Stark*, 2007).

As a simplistic example, a wider lens approach might suggest that the better use of resources is on less intrusive prevention measures. As such, there are other risk management search options that football stadium manager may employ with less controversy than pat-downs, such as visual checks, metal detectors, and container checks or bag searches. Visual checks have been used in which individuals extend their arms away from their bodies with palms up. In doing so, the security personnel may be able to see if any explosive devices are on the body without compromising a patron's personal space (Share, 2008). A significant concern is that possible false security may exist due to personnel being inattentive or "rushed" to get the patrons through the turnstiles

(Fallon, 2003). Metal detectors have also been utilized as search mechanisms. The installation of metal detectors, commonly referred to as target hardening, has been thought to increase the security of soft targets such as sports stadiums and arenas (Paraskevas, 2008). However, the effective use of metal detectors has been questioned since the September 11th terror hijackers used plastic knives (Fallon; Picarello, 2005). Container checks and bag searches are also options that football stadium managers may consider instead of pat-down searches. Although less controversial than pat-downs, concerns about bag searches include the lack of attention by security personnel to materials in the bag or bag size (Fallon).

Regardless of the different types of searches conducted, football stadium managers would be wise to consider the three-prong balancing test as set forth by *Jensen v. Pontiac* (1982) Court. The Court in *Jensen* (1982) recognized that a reasonable search included a three-prong test of: 1) the public necessity, 2) the efficacy of the search, and 3) the degree and nature of the intrusion involved. The public necessity inquiry considers the nature of the threat involved along with the likelihood that the threat will materialize (*Collier v. Miller*, 1976). According to the *Jensen* Court, the second prong of the balancing test considers the likelihood that the search procedure will be effective in averting the potential harm (p. 624). Citing the *United States v. Skipwith* (1973), the *Jensen* Court stated that the final factor that must be balanced was "the degree and nature of intrusion into the privacy of the person and effects of the citizen which the search entails" (p. 19). Thus, the football stadium manager should consider the likelihood of a threat and its impact, whether the search will avoid injury, and whether the search could violate the patron's right to privacy.

Do pat-searches objectively address the risk in question or does it just look like it is effective? Does it simply shift the risk elsewhere? Does it in some unexpected way transform the risk in question? The conventional assumption is that most risk management measures are effective – and there certainly is evidence to support that view. Literature points out how behavior changes in response to an implementation of a risk management measure. For example, the introduction of safety measures in highway construction reduces the frequency of vehicle accidents (Hedlund, 2000; Holland & Hill, 2007). To extrapolate to this paper, people may be less likely to bring items into a stadium when they perceive the search protocol is effective. Thus, it is important to anticipate and manage how pat-downs are perceived by patrons. However, as the third part of this article notes, recent developments in modern risk management point out the double-edged sword present in reactions to risk management measures.

### Patron Perception of Searches

The United States government's position regarding homeland security has become progressively more cautious due to the terrorists attacks of September 11, 2001. Americans have come to accept increased security at sporting events. For example, unlike random searches in public settings, pat-downs at NFL games are compulsory for all patrons who voluntarily attend the contests. Most of these same patrons seem content with pat-downs as attendance at NFL games rose between 2001 and 2009 (ESPN, 2009).

In 2001, a Harris Poll indicated that more than 85% of Americans approved of using technology to scan for terrorists in public areas (Balint, 2003). In 2008, Miller, Veltri, and Gillentine (2008) reported that nearly 70% of the participants in the 18-34 age group and 58% in the age group of 45 and older agreed that all spectators should be checked for carry-ins before entering the stadium. They also reported that more than 85% of the respondents did not believe that their personal privacy was violated by searches prior to entering the sport stadium. Moreover, 90% indicated that cars should be checked as they enter the premises and security personnel should be visible (Miller, Veltri, & Gillentine, 2008). Paul Squires stated that, "The guests want us to search them. My philosophy is that I do not know that they want us to search them as much as they want to make sure that we are searching the people on their left and right" (Fallon [quoting Squires], 2003, p. 359). Squires continued that many patrons indicated that the search procedures had not been consistent enough and that the organizations were not searching "as well as they would like us to search them" (Fallon, [quoting Squires], 2003, p. 360).

In addressing appropriate conduct, the court in *Jacobsen v. City Seattle* (1983) stated that search procedures should be conducted to include everyone. In fact, the director of the American Civil Liberties Union Pittsburgh office Barb Feige, reasoned ". . . from a civil liberties standpoint, [patting-down] is not an issue as long as they're doing it to everyone" (Kalson, 2005, p. A2). The point is that patrons may accept being searched knowing that everyone else was also being searched prior entering the stadium (Perry, 2002).

Although a terrorist-related incident at a professional football game has not occurred, the impact would likely be catastrophic. As mentioned earlier, the catastrophic impact would include economic and well as personal damages (Schneider, 2003; Suder, 2004). One of the primary premises recognized for the September 11th attack specific to the World Trade Centers was the ability to cripple economic industry in the United States. As a result of the significant property damage, insurance claims were estimated at \$40 billion dollars (Zolkos, 2003). Some security officials in professional sports have revealed

that the economic viability of a league may be terminated should a terrorist attack occur at a contest and cause numerous casualties (Fallon, 2003).

#### Potential Economic Impact of an Attack

To highlight the potential economic impact, Lee, Gordon, Moore, and Richardson (2008) conducted a case study to ascertain the economical losses as the result of a terrorist strike on a sports stadium. They created a hypothetical situation in which a National Football League stadium seating 75,000 people was the subject of a bioterrorism attack and conducted several computer based simulations to determine economic impacts. The major areas of economic impact were casualties, illnesses, contamination, and business interruption. Casualties were assumed to be 7,000 among stadium attendees and an additional 3,600 from people within the community. A value of a statistical life computation was used to measure economic impact of lost lives.

Lee, et al. (2008) estimated that 20,000 attendees and an additional 11,000 people from the community would suffer severe illnesses that would require a hospitalization of seven days as well as follow-up medical appointments. They estimated that quarantine of the stadium and surrounding area would be required for a month, 50% of the buildings would be uninhabitable for six months, and the entire decontamination process would last approximately a year. The investigators further hypothesized that if a stadium were to be hit and damaged, attendance would drop at least eight percent simply due to the cancelling of games for the month of quarantine. Depending on the reaction by the public, attendance levels are estimated to drop anywhere from 15% to 40%. Business would also be affected in the form of lost jobs in the immediate area. Using the attacks of September 11th as a model, these researchers estimated that 3,793 jobs would be lost for the first year. Ultimately, economic losses could be estimated to range anywhere from \$62 billion to \$73 billion (Lee, et al.).

Objective risk management practices, such as searching all patrons who enter the stadium, raise the probability that risks can be completely managed, thereby averting the economic catastrophe described by Lee et al. (2006). Further, there may be perception that once the inventory of risks has been accounted for (i.e. all of the patrons are searched) the management of those potential risks has been completely satisfied. However, these perceptions can generate a false sense of security that may diminish the managers' awareness, thereby creating even larger risks. In order to gauge whether any patron searches, specifically pat-downs, are effective as a security tool, it is useful to briefly place this security measure in even a broader risk management context.

#### PART IV: EVENT SECURITY IN A MODERN RISK MANAGEMENT CONTEXT

Risk management has evolved rapidly over the past fifteen years, and it is important to emphasize that modern risk management is now structured around a comprehensive process for assessing and addressing risks – a process in which operational risk management is but one part. This approach, frequently labeled Enterprise Risk Management (ERM), differs from historical practices in several ways. First, it seeks to identify and assess the widest possible range of risks in organizational or less structured settings. Second, ERM develops a comprehensive organizational policy for managing risks. Third, ERM embeds a process for the ongoing assessment of risks while it ultimately implements a process for the day-to-day management of those risks (Young & Tippins, 2000). Although there is a great deal more that could be said about ERM, most experts would agree that the key characteristics are 1) top management engagement in the establishment of risk policy, and 2) the involvement of all employees in the management of risks that fall within the scope of their general responsibilities (Andersen & Schröder, 2010; Lam, 2003; Slovic & Peters, 2006; Young & Tippins, 2000). Thematically, ERM approaches risks as a highly interconnected portfolio of risks that need to be managed, not just in response to the individual characteristics of a particular risk, but with a specific eye on understanding the interrelationships of all risks in question (Andersen & Schröder). This central insight produces a number of effects that extend and frequently challenge thinking about risk management.

In order to determine the level of safety and security needed to protect patron life and property, football stadium managers should assess a wide number of factors related to the event. According to the International Association of Assembly Managers (IAAM) Center for Venue Management Studies (2002), some factors that should be considered are whether the event is open to the public, the number and nature of attendees, whether senior government officials will attend, and the specific location of the facility. Additionally, when attaching responsibility to employ a risk management decision-making model several assessments must be analyzed. The first assessment is the significance of the threat (Threat Assessment). The second assessment relates to the potential vulnerabilities in and around the sport facility (Vulnerability Assessment). The third assessment prioritizes the vulnerabilities and implements action to diminish the likelihood of harmful incidences (Criticality Assessment). Once these assessments have been analyzed, a football stadium manager will be able to apply appropriate risk management measures. Should organizational decision-makers overlook the

perceived importance of these assessments, lack risk awareness, or simply ignore the need to develop, implement and enforce safeguards, it may be only a matter of time before an incident happens (Alston, 2003).

FIGURE 1

## Phases in Risk Management Planning

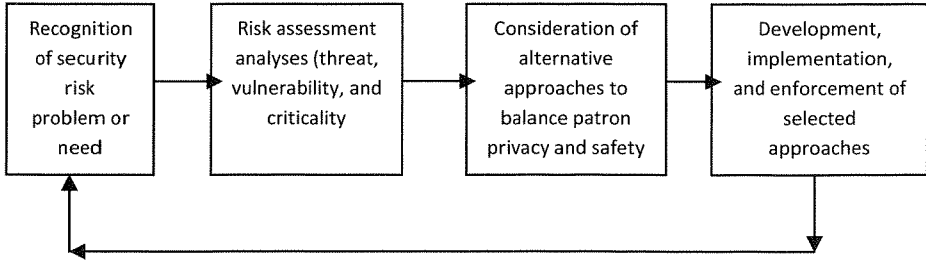


Figure 1 shows a planning process that puts the risk analysis of threats, vulnerabilities and criticalities as a bridge between the recognition of the security problem and alternative approaches that football stadium managers many consider in balancing patron privacy and safety. Table 1 provides a short descriptive summary of the security risk management planning model. As can be gathered from the previously illustrated cases; the development, implementation and enforcement of a search alternative may generate additional security related issues. As such, the cycle depicted in Figure 1 and explained in Table 1, is continuous.

TABLE 1

Description of Phases in Risk Management Planning Model

Phase	Description
Recognition of risk problem or need	The recognition of potential terrorist or other violent disasters. Also, recognition of compromising patron privacy
Risk assessment analyses	Assessment of potential problem areas involving threat credibility, facility vulnerability, and critical priorities are conducted
Alternative approaches	Creation of the best approaches to meet organizational and patron needs
Development, implementation, and enforcement of selected approach(es)	Realizing risk management plan as an on-going, dynamic process that may need to recognize additional problems or needs

When examining a specific security policy like pat-down searches, it is useful to reflect on the relationship between the specific action and the overall risk policy, as well as other interrelated actions that might be taken. For example, a risk officer/director is likely to want to shape consideration of pat-down policy in the light of (at least) the following questions:

1. What is our organization's overall policy on risk, and does the implementation of pat-down procedures support the goals and objectives we have articulated in that policy?
2. Is this practice consistent with all other security and safety measures we employ? Are we being consistent?
3. Are we confident that the measure in question is achieving the results we seek? Or, in introducing this measure are we simply moving the risk somewhere else (risk migration) or in some other way transforming the risk (risk shifting)?
4. Finally, are we so managing the threats that we are also harming the upside opportunities? For example, draconian



security measures could ultimately drive away fans and qualitatively diminish the enjoyment of game attendance.

In other words, any risk management measure must be assessed in terms of the context and in light of its role in assisting the achievement of overall risk goals and objectives.

### The Value of ERM

Broadly, it can be said that risk tends to degrade an organization's (or an activity's) value if left unattended (Rescher, 1983). Thus, the case can be made that effective risk management contributes to organization or enterprise value (Williams, Smith, & Young, 1998). However, there is some controversy as to how "value" is measured because it can mean very different things in different settings. For football stadium managers, the value of the event would seem to be derived from an interconnected range of "experience elements," such as ambience, competitiveness of the event, concessions quality, security, and a range of other issues such as convenience or weather. Pat-down searches, in addition to the question of legality, contribute to the value of the experience for patrons through actual improved security, and increase patron awareness of these heightened security efforts. Thus, football stadium managers would have to be cognizant of the range of these activities that support the value of the patrons' experience. In the extreme, security measures could become so burdensome that they offset reduced ticket prices, attractive concessions, and the general excitement of attending a professional football game. In other words, security measures could degrade the value of the experience. Thus, risk management decisions almost invariably involve a generalized risk-reward trade-off (Adams, 2001). It is impossible to drive risks to "zero" without degrading value (and even then, proximity to "zero" comes only at great expense), so the decision process must follow an optimizing rule, balancing the costs and benefits against overall risk management objectives (Rescher, 1983).

Various models of risk management have been put forth to epitomize the relationships between risk perceptions and behavior (Adams, 2001; Slovic & Peters, 2006). For example, Adams (2001) explored an important aspect of the perception of risk management actions and the response to them. Whereas the traditional operational view of risk management has tended to consider responses to be uniformly favorable (patrons perceiving heightened security are less likely to bring questionable items with them to the venue), he has

shown that perceptions can lead to undesirable responses (seatbelt laws lead to drivers feeling more safe, which leads to less safe driving behaviors).

In the case of pat-searches, the undesirable responses would tend to be risk migration (wrong-doers simply seek out other vulnerabilities) or risk shifting (attacks are planned for the parking lots or other unscreened sites). This insight tends to emphasize that modern risk management not only requires consideration of the interconnectiveness of risks but also anticipation of what is called "risk reflexivity" – that is, that responses to risk management measures do not just occur in favorable terms. Thus a kind of multi-dimensional game-theory approach to risk management becomes more necessary.

As noted previously, the specific case of pat-down searches involves more than just the intrinsic issues of the procedure, such as inconveniencing patrons. There is a clearly legal dimension to the issue that trumps the managerial decision. Notably here, while a risk officer might conclude that pat-down searches met the internal "value" test, if they are judged to be illegal, no value-adding argument will suffice. Conversely, it should be noted, legal theory often adopts approaches in which risk management enables decisions and helps to explain the possibility of responsible action (Steele, 2004).

In the context of this article, it is important to understand that risk management is not a legal issue in the normally understood sense though it is an important part of many legal decisions (Heilbrun, 1997). Nevertheless, it is reasonably fair to conclude that there is a growing "legalistic" express expectation that risk management should be taking place within public and private organizations (Steele, 2004). This trend is due to several different developments, but includes such influences as Sarbanes-Oxley, the Treadway Commission's COSO guidance on Enterprise Risk Management, emerging risk management requirements of rating agencies, and new accounting and audit rules (Atkins, Bates, & Drennan, 2006). It is proper to assume that these emerging expectations will have some impact on future interpretations of legal duty.

There is no express legal requirement to practice risk management today, though the cases discussed in the first part of this article suggestive movement in that direction. From the specific legal perspective, risk management has been viewed as the process of deterring a risk to a point that is regarded by society as acceptable (Kolluru, 1995). Heilbrun (1997) stated that because violent behavior is a common legal and societal concern, risk management is connected to circumstances in which some type of "control" is exercised over those who may be potentially violent and risk management strategies must be implemented. As a managerial strategy, Sharp, Moorman and Claussen (2007)

stated, "[t]he safety and well-being of all your constituents should be one of your core values, and risk management is an important tool to carry out that imperative" (p. 17). Baron (2004) echoed this statement by asserting that risk management should be used to assist sport event managers in providing a reasonably safe environment for their patrons. As such, risk management may be perceived as constituting a fundamental way in which decisions makers solve problems.

Taken in this light, the decision to introduce pat-searches must fully consider both the "value" dimension and the legal dimension. As noted by both Decker (2001) and van der Smissen (2001), the implementation of a methodical approach to risk assessment and the implementation of security measures serves to support the event manager in developing a plan to prevent legal disputes from occurring, and intervening when a potentially litigious situation arises (Masteralexis, Barr, & Hums, 2009). It is somewhat less clear whether having a clear process for assessing and addressing risks meets the legal test of reasonableness and thus serves as a clear defense, but it is clear that a formalized approach does serve as a "road map" or as evidence of the presence of a risk management plan (Miller & Veltri, 2003).

It should be noted that the development of an effective risk management policy is not a one-time activity. Rather it should entail a continuous and comprehensive process focused on ascertaining potential problems. The new ISO 31000 guidance produced by the International Organization for Standardization (ISO), is emphatic on this particular point, indicating that organizations and their environments are dynamic and constantly changing (ISO 31000, 2009). Among other things, ISO's view reflects the fact that traditional risk management does not employ a wide enough lens in looking at risks. Thus, while things like security and public safety might receive attention, other important risks (financial, reputational, supply chain, competitive) have historically failed to receive appropriate attention.

Further, traditional approaches tend to ignore the interconnectivity of most organizational risks. For example, many sport venues have not been designed with security in mind with the ability to control access and visibility (Then & Loosemore, 2005). As such, the security risk in question might be affected not only by stadium design and construction but by marketing policy, general economic considerations, facility maintenance and management, and the managing organization's hiring policy. And, of course, the risk relationship travels in both directions; security can affect many of those risks in return.

It might therefore be noted that the real impact of modern risk management on measures like the pat-down search is to add "dimensionality" to the analysis. Any individual measure should be considered in terms of its

relationship to overall organizational policy, risk policy and to the interconnectivity that exists between risks. And, the temporal dimension must be considered as well—a risk management measure is introduced and it must not only suit its original purpose but must in some way anticipate the responses to that measure over time. Patrons will react, and not always in expected and positive ways.

## PART V: CONCLUSION AND RECOMMENDATIONS

The development of an effective risk management plan should not be episodic. Rather it should be dynamic in ascertaining potential problems. Organizations that intend to practice risk management in its most modern incarnation should spend a good deal of time clarifying the overall risk management goals and objectives. For example, are those goals consistent with the overall goals of the organization/operation? Are they clearly understood by the key stakeholders? Can those policy goals be translated into action? In the public sphere, it has become axiomatic that risk management needs to be seen to be effective. However, the planning and implementation of effective risk management is often conducted out of the public eye. As a result, the general public may not see how the organization has dealt with providing them with a reasonably safe environment.

For example, whether pat-downs or any other search method has actually have reduced the risk of an attack, or merely changed it to a different form or location is difficult to answer since no attacks have occurred and so no attack could be used as evidence to prove or disprove the effectiveness of these search methods. As a result, it is not automatically the case that good risk management practices will actually be seen and appreciated by patrons. Indeed, many risk management measures only reveal the costs involved (the inconvenience of a search) and not the benefits of the measure (terrorist attacks that don't occur).

Before September 11, 2001, most court cases dealing with stadium search policies were concerned with detecting individuals entering the premises with alcohol or drugs, not bombs or other explosive devices. Sporting events, especially professional football games, have been identified as symbolic targets of terrorism (Fallon, 2003; Gannon, 2003; Hurst, Zoubek, & Pratsinakis, 2002). Unlike other places where public gatherings take place, a professional football game has not yet been attacked. Even so, a stadium search "entails a search of the person and his effects. In this respect [a stadium search] is similar to airport and courthouse or courtroom searches" (*Collier v. Miller*, 1976, p. 20). Another court recognized that it is "certainly [a]

logical . . . concern that public events at which large crowds gather might be targets of unidentified terrorists" (*Tampa Sports Authority v. Johnston*, 2005, p. 1080). The challenge that is presented to football stadium managers is to decide how to develop, implement, and enforce a risk management plan to balance the aspects of safety while preserving the fundamental right to privacy of football attendees.

### Recommendations

The authors of this article recommend three considerations for football stadium managers to increase patron safety and minimize Fourth Amendment litigation. First, every football stadium manager should adhere to the three part balancing test as set forth in *Jensen v. Pontiac* (1982) of public necessity, efficacy of the search, and the degree and the nature of intrusion into the privacy of the patron. Second, the three parts of the balancing test should be implemented in conjunction with the three elements of an effective risk management plan: threat, vulnerability, and criticality assessments. Third, managers should contemplate and address the dimensionality issues brought forward by modern risk management thinking—risks (and the responses to risk)—do not exist in isolation. Thus, football stadium managers should attempt to educate the public about the need for pat-down practices. By enlightening the public, an increase of understanding and cooperation by patrons will occur.

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