

## LAW REVIEW

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### 49ers REQUIRE FULL-BODY PATDOWN TO ENTER STADIUM

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O.k. sports fans, picture this hypothetical. The 49ers are in the Super Bowl—six point favorites.

No, too implausible. Try this. You and your family (and 30,000 friends) are entering Monster Park, always Candlestick Park to me, 49er tickets in hand eager to see them win a game. Any game. (The Law Review strives for realism.)

You know you are not supposed to bring in a backpack, that's covered, but you are a little unprepared for what happens next.

With San Francisco police and the world watching, 49er security tells you to raise your arms while they touch you on the arms, then sides and back, patting you down for weapons or hidden explosives. Some of you find it enjoyable.

Sorry, that humor is inappropriate.

#### 49ers Sued

In fact, you find it “highly objectionable”, at least if you are Daniel and Kathleen Sheehan. So much so, you sue the 49ers for a violation of your privacy under the California Constitution, the so-called Privacy Initiative part of the Constitution. Whatever happened to “go with the flow”?

The Sheehans argued they had an “inalienable right to obtain and preserve privacy from nongovernmental entities...they had a reasonable expectation of privacy” and the 49er’s patdown policy constituted “a serious invasion of privacy”.

Following 9-11 the NFL handed down a mandate to physically inspect fans by “touching, patting, or lightly rubbing” all ticket holders entering the stadium. That’s what the Opinion said.

#### Fans Lose

The trial court sided with the 49ers as did the Court of Appeal. However, both courts essentially avoided the constitutional law privacy question saying the Sheehans had purchased 2006 season tickets knowing of the patdown policy, so they impliedly consented to the search policy. I.e., they could not have a reasonable expectation of privacy.

#### Dissent

One of the three Court of Appeal justices disagreed, arguing that the Sheehans were given a Hobson’s Choice: submit to a search or never attend a 49ers game. The dissenting justice felt the Court of Appeal majority’s conclusion that the Sheehans “could walk away, no questions asked” was disingenuous.

#### California Supreme Court

The Sheehans appealed their privacy case to the California Supreme Court which held oral arguments last month. Chief Justice George was particularly skeptical of the 49er’s patdown policy. Justice George described a hypothetical town where at every public event participants were frisked upon

admission, asking “what kind of society would that be?” He also asked why the team did not use metal detectors which are less obtrusive. I was wondering the same thing.

Justice Baxter raised an interesting point, if stadium searches are not thorough, it could expose stadium owners to lawsuits for failing to provide adequate security.

The Supreme Court is expected to rule in about three months. I have no idea where they may come down on this issue, but if I had to guess, I would predict the Supremes will determine the trial court did not have enough information to make a ruling and will send the case back for more evidence. In a close case, that’s one way to put off a decision.

I don’t plan on testing the 49er frisk policy until they start winning. Hopefully pretty soon.

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