



Napolitano admits screening isn't optional after all

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By Paul Mulshine/The Star Ledger

As I noted, I got to ask Department of Homeland Security Secretary Janet Napolitano a question during her news conference in Trenton Monday.

The answer reveals just how totalitarian the DHS has become.

My question dealt with the TSA's assertions on its website and through its spokespersons, that those new Advanced Imaging technology scanners are optional. TSA chief John Pistole recently said of the scanners, "Well, obviously, the advanced imaging technology is optional ..."

If something is optional, then you can opt out of it.

So it seems a bit Orwellian for the DHA to call the scans "optional" when the passenger faces an even-worse intrusion that is mandatory. As we all know by now, John "Don't Touch My Junk" Tyner has been told he faces a fine of up to \$11,000 for declining to have his gonads groped by an agent of the state.

I pointed that out to Napolitano and then asked the following question about the new intensified searches:

Me: Are they optional or can you be fined for opting out and will they be imposed even if you object?

Napolitano: Obviously, I did not say they were optional in that sense. I don't know where you got that, but

Me: From a TSA spokesperson.

Napolitano: Listen, very few passengers receive a pat-down. Those who decide they don't want to go through the walk-through metal detectors or the new AIT machines, there has to be a way to screen them and the way to screen them is with a pat-down.



Chris Pedota/The Record

Janet Napolitano and N.J. Senator Frank Lautenberg at the Trenton Train Station Monday.

Then if an individual ... if there are things that alarm either on the walk-in metal detectors or the new AIT machines, those also have to be patted down to resolve what caused the alarm, so there's a process for each of those.

And in the in the ultimate kind of pat-down, the so-called "resolution pat down," the passenger has a right to go into a private room, always with a companion and with an inspector of the same gender, so there's a series of processes there so that even in that setting we're paying attention to passenger privacy concerns for those who have them.

If I don't misread her plain words, Napolitano is saying that the pat-downs are not optional at all. And when you put that together with the lunatic logic of Pistole, then the groping has to be intensely private. Pistole recently told a Congressional committee that anyone who opts out of the scanners has by doing so created a suspicion he's hiding something. And therefore that person must be groped in those intimate places where explosives could theoretically be hidden.

This is the point where the TSA is moving into a criminal assault on an individual. Many people make the mistake of framing this debate in terms of the Fourth Amendment right to be free of unreasonable searches, but that's a losing battle. All you get out of that in court is a suppression of the evidence obtained.

When a public official assaults you against your will, that's not a matter of your rights. That's a simple crime, one that should be prosecuted in court like any other crime.

And though the feds would have you believe otherwise, it's not at all clear that TSA agents have any immunity to being charged in state courts for assault. The way for the TSA to opt out of those criminal charges would be simple: Make it clear that any searches are consensual. On Monday, Napolitano declined the opportunity to do so.

Let us hope some solid conservative prosecutor somewhere in America takes action.

ALSO: I note that one commenter is pushing the mistaken notion that Israeli security is more intrusive. I urge all such clueless liberals to read **this piece** by Michael J. Totten, who travels through Israel regularly. Profiling is the way to go:

If they pull you aside, you had better tell them the truth. They'll ask you so many wildly unpredictable questions so quickly, you couldn't possibly invent a fake story and keep it all straight. Don't even try. They're highly trained and experienced, and they catch everyone who tries to pull something over on them.

Because I fit one of their profiles, it takes me 15 or 20 minutes longer to get through the first wave of security than it does for most people. The agents make up for it, though, by escorting me to the front of the line at the metal detector. They don't put anyone into a "porn machine." There's no point. Terrorists can't penetrate that deeply into the airport.