

# TRAVEL, TOURISM AND HOSPITALITY LAW

INTERNATIONAL BAR ASSOCIATION LEGAL PRACTICE DIVISION



the global voice of  
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NUMBER 13

SEPTEMBER 2005

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## FROM THE CHAIR

# Key Concerns

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Are travellers more reluctant to travel due to the delay and other stresses of added security procedures at points of entry? Could this explain why tourism is down significantly to the United States, for example? Are we making the world safer with added procedures, or grasping at straws in an effort to feel we are 'doing something'?

A couple of months ago, a colleague was prevented from boarding an Air France flight from Paris to the United States and the flight was delayed nearly an hour while her bags were taken off of the plane. Was there a terrorist in our midst? Hardly. She'd awoken a few minutes before flight time in the business class lounge, where no boarding announcements are made, and rushed for the flight. Halfway down the jetway, she was selected for additional screening. In the cramped surroundings, only half awake, she saw the contents of her carry-on bag displayed on the floor of the jetway, open to the gazes of all boarding passengers. Then told to stand spread-eagled, the security guard used her hands, not a wand, to do a complete pat-down. When she got to her breasts, the colleague was startled and told the woman to stop touching them. The security guard stepped back and an Air France agent was apparently alerted. The agent anxiously explained that the security officer was insisting that the airport police complete the search. They would not arrive in time to permit her to board the flight. She then asked that the security officer complete the search, to no avail. The police arrived. Reportedly loud and aggressive, they required her to come to their airport headquarters, where a report was made to the police, but any comment

*Continued overleaf*

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from her was declined. Not a French speaker, she belatedly learned that her bags had been taken off the flight and another flight would not be available until the next day.

I've repeated this story to a number of colleagues and get surprisingly different reactions. Many feel strict compliance with airport screening is critical to a fight against terrorism. Others feel the entire screening process is a complete drain on productivity, unreasonably invades privacy and/or does little to fight the war on terror. Many women find that societal norms long requiring 'modesty' in women are at odds with new requirements that they stand with legs spread and arms out to be patted down by security personnel in front of dozens of complete strangers. TSA, the US agency now responsible for airport screening, has been flooded with complaints from women, especially about groping from male screeners.

To be fair, my own experience reflects more invasive screening in US airports than in many abroad, although I have not encountered a US airport that permits security personnel to use hands in lieu of a wand to perform a body search. Some would commend the United States, others insist its procedures are inconsistent from airport to airport, reflecting a chaotic approach that belies any knowledge of what, exactly, is effective screening. Many US airports advise that suit jackets and shoes be removed before going through a metal detector, to avoid a second screening if alarms go off. One colleague told me he explained to security personnel that his suit jacket could remain on as it had not set off alarms before. This was permitted, but then he was immediately ordered into a second screening, though no alarms had gone off. Are we 'advised' to remove jackets and shoes, or secretly 'required'?

Concerns about security procedures are not limited to those at the X-ray machines. CNN ran a story on its website on 16 August 2005, describing the number of babies that had been denied boarding because their names are the same as or similar to those of an estimated 100,000 possible terrorists on the US Government's 'no-fly' list. 'It sounds like a joke, but it's not funny to parents who miss flights while scrambling to have babies' passports and other documents faxed.'

What to do? Is it possible to assess the success of screening procedures so that the most effective are used? Should screeners at DeGaulle airport in France be asked to use wands to bodily screen passengers? Should they be denied the discretion to refuse to complete a search to avoid their delaying other passengers on a flight while baggage of an unlikely terrorist is removed? Should screening areas include some sort of privacy screen so bodies and possessions are not exposed to public view? Or, as many think, is all this simply a new

'world price' we have to pay to ensure security in an increasingly insecure world?

You might want to take a look at Jessica Lew's article on advances being made through technology and other means to improve screening – so that it is faster, more targeted and less invasive. Those solutions are costly, but according to some experts, less costly than employing legions of screeners who now manually search bodies and belongings of passengers, the overwhelming majority of whom pose absolutely no threat. Surely economists can calculate the loss of productivity of business travellers and psychologists could examine the increased stress of travel due to long waits and confusing screening procedures. Our Committee is creating a database of information on the subject. Please contact me at [Ichrista@christalaw.com](mailto:Ichrista@christalaw.com) with your opinions, anecdotes and known research on the subject. Links will soon be available on the Committee website to the relevant information.

The other articles in this Newsletter are also of interest to Committee members. From Agustín Mayer West in Uruguay, we have an interesting article on airport improvement that the country is using to increase tourism. From John Vernon in the United States, we have a comprehensive report on issues related to hotel development in Eastern Europe. Hans-Joseph Vogel writes on 'dynamic packaging', an internet phenomenon dramatically affecting the way that travel companies are doing business in competition with online packagers, and issues arising from 'real-time' packaging over the internet. Holly Whatley writes of a new US Supreme Court decision that will dramatically affect the obligations of cruise ships to comply with American laws against discrimination against disabled passengers. Simon Liddy from Australia writes on another chapter on the litigation involving the very real problem of those passengers seeking compensation for injuries resulting from deep vein thrombosis (DVT) arising during long flights.

Also take a look at the descriptions of the four sessions that our Committee will chair or co-chair at the IBA Annual Conference in Prague in September. These include an all-day session with the Real Estate Law Committee on hotel development and marketing in Eastern Europe; a thorough look at the dynamic packaging phenomenon mentioned above, including what it means for bricks and mortar companies, as well as what new legal issues arise from 'instant packages'.

A third joint session with the Criminal Law Committee and the Human Rights Institute will cover human trafficking issues worldwide. Successes in curbing trafficking in Eastern Europe will be contrasted with child labour trafficking on cocoa plantations in West Africa, among other areas. Sex tourism generates

## FROM THE CHAIR

much of the demand for human trafficking. Greater recognition of trafficking has led to more legislative efforts to criminalise the conduct, but enforcement is still patchy, at best. A fourth session, co-chaired by the Real Estate Law and Art, Cultural Institutions and Heritage Law Committees looks at the increasing call for historic preservation – perhaps a pendulum that has swung too far in some jurisdictions – where contemporary structures are sidelined to ‘preserve’ structures that some believe are merely ‘old’. Did the Louvre suffer from the placement of a 20th-century structure, a glass pyramid, in its midst? Did tourism increase with the pyramid, or did tourists shun the ‘new’ Louvre? Who decides what is to be preserved? Tourism experts? Preservationists? Municipal or worldwide bodies?

I encourage you all to attend the Prague Conference, which is expected to be one of the mostly highly attended on record. Following our ‘Hotel development’ session on Tuesday 27 September, we will have a Committee Meeting to discuss what the content of our sessions will be next year at the IBA Annual Conference in Chicago. We invite all Committee members to attend. If you can’t attend, please feel free to suggest topics or speakers to me via e-mail. On Thursday 29 September we are holding our legendary Committee dinner. We’ve selected a great restaurant. The dinner was a sell-out last year in Auckland and a great, convivial evening for all. I encourage all of you, especially new members, to book those tickets early. Be sure to introduce yourselves to Committee Officers.

Last, we are still in the process of coordinating a project to publish a country-by-country review on the rating of hotels. The ratings vary widely in different countries, making it difficult for travel agents and tour operators, not to mention consumers, to determine the quality of accommodations being booked. If you would like to contribute on behalf of your jurisdiction, please send me an e-mail. This is a project we would like to complete by the end of the year.

As always, any suggestions for additional activities by our Committee are welcomed, as is your involvement. Please look me up in Prague.

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