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## Newsroom: Margulies on TSA Controversy

Roger Williams University School of Law

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# ***Newsroom***

## Margulies on TSA Controversy

**Professor Peter Margulies** was featured in the "Quick Word" column of [Rhode Island Lawyers Weekly](#) in its Nov. 29, 2010, issue, addressing the TSA airport security controversy.

[http://law.rwu.edu/sites/law/files/rwu/news/pdf/margulies\\_rilw.pdf](http://law.rwu.edu/sites/law/files/rwu/news/pdf/margulies_rilw.pdf)

## NEWS BRIEFS

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### Professor weighs in on TSA airport controversy

Roger Williams University School of Law Professor Peter S. Margulies is well versed on the balance that exists between the government's right to protect citizens against national security threats and an individual's personal liberty interests.

#### Quick WORD

Margulies has written extensively about the war on terror and recently led a national conference on the subject entitled "Legal Dilemmas in A Dangerous World: Law, Terrorism and National Security."

He recently talked with Lawyers Weekly's David Frank about the Transportation Security Administration's recent decision to implement a controversial new pat-down and scanner policy at airports around the country.

**Q.** Is it too simple to say the government wins any legal challenge if it can point to a rational basis for the new policy?

**A.** The government would have to show that an important purpose existed for the change and that the measures they used were tailored to achieve that purpose. They also have to show the absence of less intrusive alternatives.

**Q.** What if a plaintiff says the less intrusive alternative is the status quo?

**A.** I have a hard time seeing a court saying that the government can't decide, based on recent events like the Christmas Day bombing, that more security is necessary.

**Q.** If the government defends the policy on public safety grounds, how do you think the courts respond?

**A.** The courts will be inclined to defer to the government and feel that they don't have a basis for second-guessing safety restrictions. That's not to say that there aren't real problems with the way this policy has been implemented, because I think there are.

**Q.** Like what?

**A.** The policy is far too indiscriminate in the way it targets virtually anyone, including young kids, although the TSA has now said they may revisit that practice. To most Americans, you need to combine concern for safety with common sense, and that probably means not targeting young kids who are highly unlikely to be terrorists.

**Q.** If it is true that the scanning machines cause radiation damage, how, from a legal perspective, would that impact the outcome of a lawsuit?

**A.** It would be up to the plaintiffs to establish those health



#### PETER S. MARGULIES

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**Bar admission:** 2000 (Rhode Island); 1982 (New York)

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risks, and I think it would be unlikely they would be able to meet their burden on the health risk issue.

**Q.** Why?

**A.** There are lots of other things we do that potentially create risks that are a lot more unhealthy than anything you might do with a scanner. We still permit them because we think there are countervailing interests.

**Q.** How big a problem would the government have if a court ever found that the naked images of passengers passing through the scanners were not destroyed and were, in fact, being stored somewhere?

**A.** If there is evidence that the government is using this for another purpose to somehow track people, that would present an entirely different kind of case. 