

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Legal Currents

Tempations of Utopia

This column, featured every Monday, tackles timely issues important to the local legal community.

“Those who made and endorsed our Constitution knew man’s nature, and it is to their ideas, rather than to the temptations of utopia, that we must ask that our judges adhere.”

— ROBERT BORK

BY NICOLE BLACK

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NICOLE BLACK

A few weeks ago, my family ventured forth from the cold, barren wasteland that is Upstate New York in January and traveled to a strange, exotic and Utopian wonderland: Walt Disney World.

Our two young children were atwitter with anticipation, while my husband and I were cautiously optimistic about the prospects of a daylong visit to the wonderful world of Disney, free of major meltdowns by our over-stimulated offspring.

As we approached the gates, tickets in hand, my kids barely able to contain their excitement, imagine the surprise and consternation of this Bill-of-Rights-thumping, anti-surveillance, criminal defense attorney when faced with a fingerprint scanner as a condition of admission.

My children, who are under 10 years of age, were exempt from the fingerprinting requirement, and already passed through the gates. They were chomping at the bit, raring to go.

For a brief moment, the civil rights advocate in me envisioned standing up to The Man and refusing to comply, but my children’s imploring eyes eagerly beckoned.

I was torn: Fight the power or enjoy a fun-filled day spending a small fortune on the consumption of Disney products?

Secure in the knowledge that I had no intention of committing any major felonies while at Disney World, I reluctantly allowed my fingerprint to be scanned and off we went.

I have since learned that Disney World began using this biometric pass system in January 2005. Disney claims the technology reduces wait times and prevents ticket fraud from occurring in the form of the re-sale of multiday passes. The option of providing photo identification in lieu of a fingerprint scan is available, although this alternative is not advertised to visitors.

According to Disney’s privacy policy on its Web site, any personal information — which presumably includes fingerprint data — collected by Disney about its guests may be disclosed when the company: “[B]elieve[s] in good

faith that such disclosures (a) are required by law, including, without limitation, for example, to comply with a court order or subpoena, or (b) will help to: ... protect your safety or security ... and/or protect the safety and security of us, other subsidiaries of The Walt Disney Co., and/or third parties, including, without limitation, the safety and security of property that belongs to us, other subsidiaries of The Walt Disney Company or third parties.”

I’ve since learned Disney is on the cutting edge of biometrics, and now is looking into the use of automated face recognition, a more advanced form of technology.

In fact, after Sept. 11, the federal government consulted Disney for their expertise in the use of biometrics for security and intelligence purposes. Following 9/11, a Disney executive served on a panel convened by a number of governmental agencies to explore the use of biometrics in airports as a way to verify the identity of air travelers. Former Disney employees also have joined the ranks of and assisted the National Security Administration and the U.S. Department of Homeland Security.

Newt Gingrich, in an article published July 2007 and entitled “Report from the World That Works, Part II” posited that the world would be a better place if our federal government were more like Disney World.

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As I walked around that happy, functioning, efficient place, I concluded the difference between Disney World and the federal government is that there are certain, basic principles that Disney understands.

If those basic principles are the loss of our citizen's privacy and liberty in the never-ending search for "security" and a false sense of Utopia, then I absolutely agree with Gingrich's statement.

Not surprisingly, I sincerely regret my split second decision to provide my fingerprint data. As far as I'm concerned, our constitutional rights trump the temptations of Utopia any day of the week.

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