

Airport Screening Policy: Repression or Discretion?

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Google “TSA stupidity” and you will find that almost one-and-a-half million websites have something to say about the subject. If the United States is to avoid another major terrorist attack on its air transportation system without placing greater restrictions on the civil liberties of air travelers, the Transportation Security Administration (TSA) had better get smart.

Everyone who travels by air in the United States has a depressing story to tell about airport screening. Media stories of a gravely ill 95-year-old grandmother forced to remove her adult diaper before being allowed on a plane and viral videos showing terrified children being intimately touched by TSA agents are more than depressing. They are a chilling commentary on the police state increasingly accepted by the American public in the name of security.

Air travelers dare not complain. TSA standards focus additional scrutiny on travelers who are “very arrogant” and express “contempt against airport passenger procedures.”

Is such repression the only choice? Or, can TSA officers be trained to exercise the necessary discretion to detect would-be terrorists, while allowing innocent travelers to swiftly and safely pass through screening?

A reasonable and practical balance in airport security screening policy must be obtained before another terrorist attack results in even greater repression.

Today’s TSA

Shocked that poorly-trained airport security guards allowed terrorists armed with box cutters to board and use four passenger airplanes as flying missiles of mass destruction, Congress established the TSA two months after 9-11.

Fifty thousand Transportation Security Officers (TSO) were quickly hired and rushed through one-week training courses. Although these officers are now federal employees and receive improved training, they are still security guards. Even so, as “officers” of Homeland Security, they exercise great power over the flying public.

TSA transformed contract screening guards into quasi-law enforcement officers and provided uniform training and policies; however, the TSA was organized as a top-down directed organization which allows very little discretion to individual officers. It’s “one size fits all” approach to screening results in well intended, but outrageous conduct by its agents.

In an attempt to prevent collective bargaining and to avoid adding Democratic-leaning

permanent workers to the federal bureaucracy, the Republican-controlled Congress exempted TSA employees from most federal civil service laws. Instead, the Secretary of Homeland Security and the TSA administrator were given virtually unlimited authority to create a personnel system. This action was to have a number of unintended consequences.

Although legislation has been introduced to bring TSA officers into the federal civil service, the TSA administrator retains absolute control over the personnel system. Exercising this power, administrator John Pistole granted some bargaining rights earlier this year.

While Pistole's order provides greater job protection to officers, it does nothing to improve the existing TSA personnel selection system. As presently constituted, the employment process perpetuates mediocrity and limits the ability of TSA managers to hire and promote the most qualified officers.

Currently TSA job applicants primarily use the Internet to identify job announcements for TSA airport operations at more than 450 airports, complete applications and take an online test to measure their ability to operate screening equipment.

All English-speaking U.S. citizens over the age of 18 with a high school diploma, a GED, or one year of experience as a security officer or x-ray technician, meet the basic requirements for TSA officers, as long as they are current in their payment of income taxes and child support.

The main problem is that, once applicants meet these minimum requirements and pass a physical examination, drug screening and perfunctory background investigation, they are lumped together with all other applicants in a hiring pool for each job site.

Unlike general civil service rules, there are no ranked lists of the most qualified applicants within these pools.

Under the personnel standards established by the TSA administrator, local managers are required to select officers from the hiring pool based on the earliest applicant first, irrespective of their additional qualifications. Thus, a local TSA manager must hire a high-school dropout with a GED and no experience who applied one day before a college graduate with a degree in criminal justice and who earned his or her way through college working for the campus police department. While some managers conduct oral interviews of candidates, only in rare cases are they allowed to reject candidates who meet the minimum qualifications.

Laboring under a flawed selection process and making the best of available candidates, TSA has identified three basic ways to achieve mission effectiveness: baggage inspection, passenger screening and, most recently, behavior observation.

Although every checked bag is not hand inspected, passengers are not allowed to lock baggage unless special TSA locks are used. As a result most bags are inspected by inspectors who are either working alone or under limited supervision.

There have been some recent improvements in baggage security; however, the *New York Press* reports that "according to Transportation Security Administration records, press reports and court documents, . . . approximately 500 TSA officers" have been "fired or suspended for stealing from passenger luggage since the agency's creation. . . ."

Every passenger is personally screened before boarding commercial aircraft and the majority of TSA officers are deployed to handle this task. Having a mission in which officers “literally touch passengers” and their most private possessions “requires a workforce of the best and brightest” according to Nico Melendez, TSA Public Affairs Manager of the Pacific Region.

Unfortunately, because of low hiring standards and minimum training, many, if not most screening officers possess poor people skills and manage to offend a large portion of the flying public on a daily basis.

Seeking to emulate the Israeli model of “identifying the bomber, rather than the bomb,” TSA deployed Behavior Detection Officers (BDO) in 2007 under its Screening of Passengers by Observation Techniques (SPOT) program. Officers randomly ask passengers questions, such as “Where are you traveling,” while looking for facial cues that might indicate deception or terrorist intent, leading to additional questioning and closer inspection of baggage.

Thousands of BDOs are now working in hundreds of airports and the program is being expanded; however, they are generally selected from screening personnel and only given two weeks of training before being deployed.

There has been no scientific validation of the program and, although there have been hundreds of criminal arrests, most have been for documentation issues, such as immigration violations and outstanding warrants.

Would improved personnel selection procedures of TSA officers better insure the safety of the flying public and reduce the incidence of civil rights violations?

Building a Better TSA

The essential question is whether TSA officers are security guards or police officers when it comes to the manner in which they lay hands on the bodies and belongings of passengers. The difference in the two roles being the manner and extent to which they make decisions.

Security guards with minimal training cannot be expected to exercise discretion in critical matters. They are told exactly what or what not to do. The result is that screaming children are being felt up by strangers and the sick and elderly are publicly humiliated.

On the other hand, even with the “mandatory” criminal laws passed in the past 30 years, America’s free society still requires the exercise of arrest, prosecution and sentencing discretion in the criminal justice system, if there is to be individual justice in an individual case.

TSA must rethink the manner in which its officers are hired and trained to allow greater discretion, without an unacceptable rise in the risk of a terrorist attack.

The TSA has been moving in this direction with its “risk-based intelligence-driven screening process”; however, its steps have been hesitant and unsure, as it has staggered from incident to increasingly negative incident.

Melendez believes the key to successful screening is a workforce capable of implementing a risk-based screening process based upon updated software and equipment and ready

access to an improved data base.

So, how can a marginally trained group of 50,000 security guards be converted into a professional workforce, which has the intellectual ability and training to use sophisticated detection equipment and computer data bases *and* which allows TSA officers to decide which sick person or young child should be allowed to proceed without a mandatory body search?

Selection.

A former high-level TSA manager, who declined to be publicly identified, firmly believes that TSA could build an elite organization, if local managers were simply allowed to rank the hiring pools by qualifications, rather than having to hire the candidate who filed the earliest application.

Certainly there is a need to avoid discrimination in hiring and to create a “diverse and inclusive” workforce that is reflective of the public it serves; however, police departments have used a civil service process for decades that involves testing and interviews to establish priority lists to ensure the employment and promotion of the most qualified candidates.

Among the federal law enforcement agencies, the FBI moves applicants through a multi-phase selection process in which advancement depends upon “their competitiveness among other candidates”; Secret Service applicants must pass several examinations and a *series* of in-depth interviews; and ATF applicants who pass entrance exams and assessment tests have to successfully complete a “field panel interview.”

The current recession and high unemployment rate has resulted in a gigantic pool of highly-qualified and well-educated people who are looking for work. At the same time, TSA has been experiencing a fairly high turnover of employees, even though it offers a generous salary and benefit package. Given all of this, there is a golden opportunity to improve the quality of the TSA workforce, particularly as it relates to the ability of its officers to exercise discretion.

A recent informal survey of airport car rental employees revealed that all of them were college graduates; however, they generally earned less and had fewer benefits than the TSA officers who worked in the same building.

In fact, most national car rental companies require all applicants to have college degrees. Avis says, “College graduates, start your engines” in its attempt to attract “energetic proactive college graduates who are eager to accelerate their careers in a fast-paced environment.” Enterprise “prefers” college degrees since applicants will “be involved in a comprehensive business skills training program that will help you make crucial business decisions. . . .”

Clearly it is neither necessary nor appropriate for all TSA applicants to be college graduates; however, local TSA managers should be allowed to consider levels of education, as well as length and quality of relevant experience, in establishing priority lists for hiring replacement officers and for promoting officers to supervisory or BDO positions.

Revised personnel policies that rank applicants by qualifications for these advanced

positions would also allow TSA managers to directly hire more qualified candidates, such as retired police officers, for positions requiring a higher level of decision making.

Training.

Currently, most training of TSA officers is conducted through online applications of standardized instruction. While such training may be adequate to communicate rule-based procedures to security guards, it is inadequate to teach the more finely nuanced insights required for officers to safely exercise discretion in individual cases.

Behavior Detection Officers and supervisors are currently selected from the ranks of TSOs and receive as little as two weeks of additional training upon promotion. However, a successful risk-based screening process involving critical thinking requires more intensive development and training.

Obviously, TSA can't fire 50,000 officers and start all over again from scratch, but surely there is a way to safely maintain the basic security guard approach to screening yet allow for higher levels of discretion during the process?

Assuming that TSA managers are allowed to more effectively promote officers and to select supervisors and Behavior Detection Officers from outside the organization, and further that TSA could improve the training of supervisors and BDOs, they could begin to exercise the quality of discretion which would allow small children and elderly grandmothers to safely pass through security without impermissible assaults.

TSA should consider establishing regional training academies at the larger facilities around the country to provide classroom training for newly-appointed supervisors and BDOs into the nature of policy, the concept of rational profiling and the exercise of security discretion in a free society.

Policy.

The concept of policy, as differentiated from procedures and rules, is that policies are intended as broad guidelines for the exercise of discretion allowing decision makers some flexibility in their application.

The exercise of critical discretion will fail in the absence of effective policies. This was recognized by the National Advisory Commission on Criminal Justice Standards and Goals in its Report on the Police in 1973:

"If police agencies fail to establish policy guidelines, officers are forced to establish their own policy based on their understanding of the law and perception of the police role. Errors in judgment may be an inherent risk in the exercise of discretion, but such errors can be minimized by definitive policies that clearly establish limits of discretion."

We are all aware of the insidious and repressive nature of racial profiling that has been practiced by some law enforcement agencies. Indeed, one criticism of the TSA Behavior Detection program involved Newark BDOs known as "Mexican hunters" was that they concentrated on Hispanic-appearing individuals, resulting in a large number of arrests for immigration violations.

Well-considered policies can allow BDOs to productively direct their attention to the most

suspicious candidates for extended questioning, rather than to mindlessly and repetitively ask every single traveler where they are going.

With improved policy guidance and greater discretion, BDOs might actually identify and stop a real threat, but they will only offend even more travelers if they continue to follow rote procedures.

Perhaps most importantly, such polices can provide commonsense guidelines for qualified decision makers at each screening station to allow obviously harmless grandmothers and children to avoid intrusive body contact, while focusing attention on those individuals more likely to be a terrorist.

The Right Direction

According to *TSA 101*, a 2009 overview of the TSA, the agency seeks to evolve itself “from a top-down, follow-the-SOP culture to a networked, critically-thinking, initiative-taking, proactive team environment.”

TSA Administrator John Pistole wants “to focus our limited resources on higher-risk passengers while speeding and enhancing the passenger experience at the airport.”

On June 2, 2011, Pistole testified before Congress that “we must ensure that each new step we take strengthens security. Since the vast majority of the 628 million annual air travelers present little to no risk of committing an act of terrorism, we should focus on those who present the greatest risk, thereby improving security and the travel experience for everyone else.”

It appears TSA is moving in the right direction and John Pistole may be the person to keep in on course. Prior to his appointment by President Obama in May 2010, he served as the Deputy Director of the FBI and was directly involved in the formation of terrorism policies.

Most significantly, his regard for civil rights was suggested by his approval of FBI policy placing limits on the interrogation of captives taken during the “war on terror.” The policy prohibited agents from sitting in on coercive interrogations conducted by third parties, including the CIA, and required agents to immediately report any violations.

Hopefully, Mr. Pistole will exercise his authority to bring about improved selection and training of TSA personnel and will promulgate thoughtful screening policies which will result in a safer and less stressful flying experience for everyone.

William John Cox is a retired prosecutor and public interest lawyer, author and political activist. He authored the portions of the *Police Task Force Report on the role of the police and policy formulation for the National Advisory Commission on Criminal Justice Standards and Goals* in 1973. His efforts to promote a peaceful political evolution can be found at VotersEvolt.com, his writings are collected at WilliamJohnCox.com and he can be contacted at u2cox@msn.com.

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