

# Americans Fed Up with Out of Control Airport 'Searches'

Thursday, 02 July 2009

The Transportation Security Administration has moved beyond just checking for weapons and explosives. It's now training airport screeners to spot anything suspicious, and then honoring them when searches lead to arrests for crimes like drug possession and credit-card fraud.

But two court cases in the past month question whether TSA searches—which the agency says have broadened to allow screeners to use more judgment—have been going too far.

A federal judge in June threw out seizure of three fake passports from a traveler, saying that TSA screeners violated his Fourth Amendment rights against unreasonable search and seizure. Congress authorizes TSA to search travelers for weapons and explosives; beyond that, the agency is overstepping its bounds, U.S. District Court Judge Algenon L. Marbley said.

“The extent of the search went beyond the permissible purpose of detecting weapons and explosives and was instead motivated by a desire to uncover contraband evidencing ordinary criminal wrongdoing,” Judge Marbley wrote.

In the second case, Steven Bierfeldt, treasurer for the Campaign for Liberty, a political organization launched from Ron Paul's presidential run, was detained at the St. Louis airport because he was carrying \$4,700 in a lock box from the sale of tickets, T-shirts, bumper stickers and campaign paraphernalia. TSA screeners quizzed him about the cash, his employment and the purpose of his trip to St. Louis, then summoned local police and threatened him with arrest because he responded to their questions with a question of his own: What were his rights and could TSA legally require him to answer?

Mr. Bierfeldt recorded the encounter on his iPhone and the American Civil Liberties Union filed suit in June against Homeland Security Secretary Janet Napolitano, claiming in part that Mr. Bierfeldt's experience at the airport was not an anomaly.

“Whether as a matter of formal policy or widespread practice, TSA now operates on the belief that airport security screening provides a convenient opportunity to fish for evidence of criminal conduct far removed from the agency's mandate of ensuring flight safety,” the ACLU said in its suit.

‘Mission Creep’?

TSA said in a statement on the Bierfeldt incident that travelers are required to cooperate with screeners, and while it is legal to carry any amount of money when flying domestically, the agency believes cooperation includes answering questions about property. As a result of the recording, however, TSA determined that “the tone and language used by the TSA employee was inappropriate and proper disciplinary action was taken.”

The cases will likely inflame TSA critics and frequent travelers who believe screeners take a heavy-handed approach and worsen the hassle of getting through airports with layers of rules and sometimes inconsistent policies between different cities.

“TSA agents don't get to play cops,” says Ben Wizner, an attorney who filed Mr. Bierfeldt's suit. The ACLU has heard an increasing number of reports of TSA agents involved in what he called “mission creep,” he says.

TSA spokesman Greg Soule says airport screeners are trained to “look for threats to aviation security” and discrepancies in a passenger's identity. TSA says verifying someone's identity, or exposing false identity, is a security issue so that names can be checked against terrorism watch lists. Large amounts of cash can be evidence of criminal activity, Mr. Soule says, and so screeners look at the “quantity, packaging, circumstances of discovery or method by which the cash is carried.”

Questioning travelers is part of TSA's standard procedures, and the agency gives its employees discretion. “TSA security officers are trained to ask questions and assess passenger reactions,” Mr. Soule says. “TSA security officers may use their professional judgment and experience to determine what questions to ask passengers during screening.”

No one questions arrests made after TSA runs into evidence of drugs or other crimes during weapons searches. A bulge in baggy pants can be investigated, for example, because it might be an explosive. If it turns out to be cocaine, TSA is expected to report it to police or Drug Enforcement Agency officials.

But once TSA has determined that someone doesn't have weapons or explosives, agents sometimes keep searching—leading some legal experts to wonder whether questioning people about how much cash they're carrying, the number of credit cards they have and even prescription drugs in their bags stretches the intent of airport security law.

Congress charged TSA with protecting passengers and property on an aircraft "against an act of criminal violence or aircraft piracy" and prohibited individuals from carrying a "weapon, explosive or incendiary" onto an airplane. Without search warrants, courts have held that airport security checks are considered reasonable if the search is "no more extensive or intensive than necessary" to detect weapons or explosives.

In testimony to Congress last month, Gale D. Rossides, acting TSA administrator, said the agency had moved past simply trying to intercept guns, knives and razor blades to "physical and behavioral screening to counter constantly changing threats."

Every screener has completed a 16-hour retraining that "provides the latest information on intelligence, explosives detection and human factors affecting security," she said. "We have revised our checkpoint Standard Operating Procedures to enable officers to use their judgment appropriately in achieving sensible security results."

In the fake passport case, a man named Fode Amadou Fofana used a valid driver's license with his real name at a Columbus, Ohio, TSA checkpoint. Because he had purchased his ticket for a flight at the airport just before departure, he was flagged for secondary screening. He didn't set off metal detectors and TSA's X-ray equipment didn't see anything suspicious, according to court testimony. The bags were swabbed for explosive residue and did not trigger any alarms. TSA agents opened the bags and searched inside because he was selected for extra screening.

According to the judge's ruling, the TSA agent involved testified that she had been instructed to search for suspicious items beyond weapons and explosives and to "be alert for anything that might be unlawful for him to possess, such as credit cards belonging to other people, illegal drugs or counterfeit money."

The agent found envelopes with cash, which she considered suspicious. Three other envelopes had something more rigid than dollar bills. She testified she didn't believe there were weapons inside, but opened them looking for "contraband" and found three fake passports.

#### Limiting Searches

Judge Marbley said the TSA had no authority to open the envelopes. In his ruling, he said prior cases clearly established that airport security searches should be aimed only at detecting weapons or explosives.

"A checkpoint search tainted by 'general law enforcement objectives' such as uncovering contraband evidencing general criminal activity is improper," the judge wrote. The U.S. Attorney's Office in Columbus has filed notice that it will appeal the judge's order.

Mr. Bierfeldt's suit, filed in U.S. District Court in the District of Columbia, seeks to bar TSA from "conducting suspicion-less pre-flight searches of passengers or their belongings for items other than weapons or explosives."

Mr. Bierfeldt, who was released by TSA after an official in plain clothes saw political materials in his bag and asked if the cash was campaign contributions, said he just wants to save others from harassment by TSA. "It's the principle of the matter," he said. "I didn't break any laws and was no threat." //WSJ

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