

Air Travel and FAA Guidelines

by D'vorah Yaffah, Batya, daCosta

Do constitutionalists merely whine, cry, and inevitably lose in their misguided attempts to challenge government? Increasingly, the answer is No. Here's an article which demonstrates small, even tentative victory of simply learning enough constitutional law to challenge the Federal Aviation Administration's (FAA) new "guidelines" for airline passenger identification. On one hand, this "small victory" is nothing to get excited about. On the other hand, this victory was engineered by one or two people against the seemingly irresistible power of government — and that is cause for excitement. The tide's turning. Constitutionalists are beginning to win and even government is beginning to pay them a bit of respect.

D'vorah Yaffah is a senior management consultant and educator for Fortune 500 companies with over 25 years of experience in the workplace. She travels frequently by air and has personal experience with new FAA guidelines for Airport Security and how they are being implemented by some airlines. Her story offers another indication that constitutionalists willing to study and stand up for their rights can fight "city hall", the airlines, and even the FAA.

Have Americans lost the freedom to travel by air without intrusive, unreasonable, and even unconstitutional forms of "heightened security measures"? Are these new security measures being used to protect us from significant terrorist threats or just another excuse for government to over-regulate America?

Part of the answer may be glimpsed in the fact that, worldwide, air safety is only barely threatened by terrorists. Air terrorist attacks are so statistically rare they would be almost unknown except for the media's endless reports of the few real occurrences. In fact, we have far more fatalities due to other causes and air travel is one of the safest and most secure forms of travel.

I won't delineate the statistics that show air terrorism is unlikely. But it's important to ask whether there might be ulterior reasons for government agencies and airlines to impose more intrusive and unconstitutional restrictions on our freedom to travel.

So are we being protected by "heightened security measures"? Or merely "conditioned" to believe the threat of air terrorism is so great as to warrant serious intrusions into our private lives and liberty? These interest-

ing questions are being considered and investigated by a broad cross-section of Americans.

My own investigation started one day in an airport when I overheard an argument between an airline gate agent and a passenger. The agent demanded a Federal or State photo ID, but the young man could only show them a photo ID that was not Federal/State. I guessed he didn't have a state-issued drivers license, but was probably showing them a college student ID. He was refused a seat on the plane and became considerably upset since he was flying to another city for a job interview he couldn't afford to miss. The agent was unaffected by his pleas, and simply repeated that "government regulations" required an acceptable form of State or Federal ID to board the plane.

I came up to the counter and asked to speak with the young man privately. We walked away and I asked if he really wanted to get on this flight. He said Yes, so I explained that according to his constitutional 1st Amendment rights, the airline would have to "accommodate" him if he insisted on *religious* grounds that they accept an alternative ID or search procedure.

I explained that identification is

only required so the agent at the gate (or ticket counter) can check the name on the ID and the face in the photo with the name on the ticket and the face of the human being using the ticket. But forms of ID other than Federal and State can also serve this purpose. So if an airline insists on only Federal and State IDs — many of which require a Social Security Number (SSN) and/or fingerprints — they might expose themselves to lawsuits for religious discrimination.

For example, some perfectly non-violent Americans regard the SSN as the “mark of the beast” discussed in Revelations and, under their 1st Amendment right of religious freedom, refuse to accept *all* personal IDs using that “satanic” number. Can airlines refuse to seat passengers who reject SSN-based IDs for religious reasons? Probably not.

However, the young man didn’t want to debate the airline about religion or the Constitution, so we went back to gate — he, begging to board his prepaid flight — and I, asking the gate agent to produce the “Federal Regulations” that require *only* Federal or State ID to board a plane.

The ticket agent seemed annoyed when first intervened on behalf of this young man, but became visibly distressed when I asked to see the “Federal Regulations” (generally a sign that something is up). She replied that I’d have to get the regulations from the FAA (curious answer). The young man missed his flight and I boarded mine determined to discover these so-called “Federal Regulations”.

Identification vs. accommodation

A few weeks later, I called Washington and spoke to a very helpful FAA employee (who asked to remain nameless) who explained that the FAA identification “guidelines” are not “regulations and therefore merely “encourage” airline companies to improve security by asking for identification of their passengers. These FAA guidelines recommend several “levels” of identification and procedures for handling ID problems — *none* of which suggest that individuals should be denied their seats.

The first level is asking for Fed-

eral or State photo ID, which is believed to be the safest and most accurate. If a passenger presents this type of ID the agent is supposed to allow them to board (provided the security questions are properly answered).

The second level is a form of photo-ID that is *not* Federal or State, plus one other piece of identification that *is* Federal or State and may not have a photo but still identifies the passenger to be who they say they are. (Surprisingly, this non-photo ID could be a court-filed document. Some folks have used a combination of photo ID — not Fed/State — and a “Revocation of Power of Attorney” filed at the County Court. This would probably qualify under FAA guidelines as an acceptable ID; I’ve heard that this is in fact being accepted at airports around the country.)

The third level is any other kind of ID or *no ID at all*. FAA guidelines say that the airlines may, at this point, subject the “would be” passenger to *additional security measures* like searching their luggage and carry-on baggage or holding their luggage back until they actually board the plane. But note that the FAA recommends that persons lacking “appropriate” ID be subjected to *ad-*

ditional security measures rather than summarily denied access to board the plane.

For example, when the young man was denied his seat he was *not* told that if he had arrived at the gate with more advance notice to the airline of his identification situation, they would have had more choices and options to solve the problem. Yet this is what the man at the FAA suggested for those folks who have legitimate (i.e. constitutional) reasons for not owning Federal or State (or other acceptable) forms of identification.

For “security reasons”, of course, FAA guidelines are “restricted information” relative to the public. However, a rather feisty lady named “Betsy Ross” (not her real name) uncovered these guidelines (Security Directive 96-05) because a particular airline hassled her. She demanded to be shown these “government regulations” when she was at risk of losing her paid-for airline seat and the agent at the gate showed her just the first page of a ten-page document.

“Betsy Ross” has written a wonderful resource article about the FAA identification issue and her experiences in traveling with “nonstandard” (other than Federal/State) ID and she’s keep-

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ing tabs on the airlines and their “misbehavior” for interested groups. For more information about which airlines are being “reasonable” about the identification issue (and which are not) you can contact Alaska Liberty House (800) 544-2548. It will be important for folks to “vote with their feet” and purchase tickets from those companies who are dealing with this phenomenon in a reasonable manner.

Even the ACLU expressed concern over violations of people’s rights by the “profiling system” and made a presentation at the Commission of Air Safety and Security headed up by Vice President Gore (the presentation can be downloaded from www.aviationcommission.dot.gov).

Based on research by Betsy Ross and the ACLU, it appears that denying a passenger his seat is not part of government *regulations*, but is instead airline company *policy*. In other words, some airline passengers may lose their right to fly because either the *airline’s* policy refuses to accept any ID besides Federal or State, and because the airline doesn’t want to absorb the additional costs necessary to implement reliable security measures.

Profile system

The next level of heightened security is the computerized “Profile System” which will record worldwide terrorist activity. However, rather than merely warn airlines of *individual* terrorists, the computer will generate a “generic” description of terrorists to identify a *class* of people who *might* be terrorists. If a potential passenger resembles the terrorist “profile”, he can be denied his seat. At first blush, this system appears racist in nature, since the obvious “profiles” will describe people of Middle Eastern origin with swarthy complexions, accents and possible ties to Iran, Iraq or Palestine.

Regardless of hype, the Profile System does *not* assure security, since terrorists are too smart to “fit” the profile and can find individuals without the “profile” to carry bombs onto plane. If public safety is the real concern, it’s more effective (and also more expensive) to thoroughly search (or electronically

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screen) all airline luggage for the newer plastic explosives which don’t show up on current airport metal detectors.

Manifest destiny?

The third level of heightened security measures is the proposed “Passenger Manifest System” which will record each passenger’s name, residential address and phone number, emergency contact, their address and phone number, and a social security number. Under this computerized system, the airlines will ask for required ID information at the point of sale, including travel agencies. This information will be reconfirmed at the airport with forms of identification that substantiate the passenger is the person who ordered/purchased his ticket.

The Passenger Manifest System is in the proposal stage but will be justified as necessary to decrease airline vulnerability to terrorist attack and increase the ability to notify relatives of casualties in the event of a downed aircraft. However, it seems like an unreasonable violation of people’s civil liberties to require all of this information (especially SSNs) of every airline passenger based on only a handful of possible terrorist attacks.

Further, the FAA doesn’t appear to be considering an alternative to the SSN — as if individuals with religious objections have no right to avoid being

“marked” by a government-issued number and also travel by air. So it might be a good idea for air travelers who care about the continued erosion of their religious freedoms to work in advance to teach airlines and government agencies that they will not allow their constitutional rights and immunities to be further diminished.

In fact, the gentleman I talked to at the FAA assured me that the government has no intention of consciously and purposely violating people’s rights. Nevertheless, he suggested that people who object to new or proposed security measures should: 1) band together as a group; and 2) petition the FAA while this



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new Passenger Manifest System is in the “draft and review” stages to provide an exception process (an “accommodation”) for those who wish to preserve their constitutional rights.

I think America should take him up on his suggestion. For example, it might be a good idea to request “accommodations” for folks with “religious objections” through the Jural Societies that are forming around the country. We’ll see if the FAA is as open to this feedback as their agent suggested. It’s important to ask for the accommodation, since the alternative is certainly unpleasant and probably unconstitutional.

Reality vs. “virtual reality”

Our current and proposed “heightened airport security” creates an inexpensive, computer-based illusion or “virtual reality” of increased safety but not the tangible reality. This will be obvious the first time a plane explodes from a real (not “virtual”) bomb despite the airlines’ “heightened security measures”.

In the meantime, the primary threat to American airline passengers may be posed by airlines that prefer inexpensive computer-based illusions (that necessarily violate people’s rights)

to the more costly screening equipment and/or physical searches that are currently routine in many foreign airports. In Israel, for example, passengers must be at the airport two hours before a flight leaves, and expect long delays in getting through security. Everyone goes through this process and no one is immune. It is fairer and safer because it’s more thorough.

The interesting point in this article is that the corporate airlines — not the government — may be the “bad guy” responsible for restricting our freedoms. Judging from this article, I’d bet the airlines “influenced” the FAA to pass the new, quasi-secret “guidelines” in order to provide the airlines with an excuse to impose inexpensive, computerized ID requirements rather than the implement more expensive physical security procedures. If those new ID requirements were designed by corporate executives rather than politicians and bureaucrats (who, at least, have some knowledge of the Constitution), it shouldn’t be surprising if those requirements are unconstitutional and easily defeated in court.

Further, this article again demon-

strates the computer-dependent mentality of most big businesses and big governments. Have a terrorist problem? No sweat! Just build a bigger and badder database. Ignore the fact that (according to one computer security expert) any semiskilled computer hacker can crack into the White House computer, and that hacker assaults on Pentagon and CIA computers are commonplace. If so, what’s to stop a determined terrorist organization from hacking into the airline computers housing the terrorist data and adjusting it any way they want? After all, the Passenger Manifest System will apparently take input from every travel agency in the USA! It will be about as permeable as a Swiss cheese.

Besides, if we had a database with John Hinckley’s name, address, SSN and emergency contact, would that have stopped him from shooting President Reagan? Would a super-data base have prevented the bombing in Oklahoma City? O’course not. So how will an airline computer system stop terrorist bombers? It won’t.

Any terrorist that can’t bypass a security system designed to quickly “check” hundreds of thousands of people daily is probably too dumb to light a match. On the other hand, any high school dropout with a little brains and determination can probably penetrate the existing and proposed “heightened security measures”.

The simple truth is this: No computerized list of millions of names and addresses will have the least impact on any serious terrorist. Reliance on computer-based security systems is based on a corporate desire for illusion rather than security, and a need to cut costs to the bare minimum — even if the Constitution must be scrapped as a “business expense”. Ultimately, effective airline security will increase the costs and overhead in air travel to a degree that will dissuade some Americans from flying and further strain already thin airline company profits. On the other hand, inexpensive computer-based airline security may cost some people’s lives but will certainly reduce airline costs.

For more information, write to D’vorah Yaffah at 660 Preston Forest, Suite #139, Dallas, Texas 75230. ■

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