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Federal Attitude Policy

by James Bovard

The Transportation Security Administration has created more gantlets at American airports than most travelers realize. It has continually changed the rules for flying since it first deployed its 40,000+ army of screeners across the land. Americans are at much greater risk of being arrested or fined in the airport for not kowtowing to federal agents. The rise of the TSA vivifies how low contemporary Americans have fallen. James Madison observed in The Federalist Papers,

It will be of little avail to the people that the laws are made by men of their own choice if the laws be ... so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow.

Today, “law” and regulations have become tools to force people to behave in ways government officials approve of, rather than a clear line that citizens can respect in order to live their lives in privacy and peace. Government agencies now routinely covertly change their regulations. The rule of law — the classical concept endorsed by the Massachusetts constitution of 1780 as a restraint on government power — has been replaced by the “rule of memo,” whereby federal officials on a whim create new rules to bind private citizens.

Americans of the Revolutionary era glorified the law because it was seen as a means to restrain government and to secure the rights of the citizens. Nobel Laureate Friedrich Hayek defined the rule of law in 1944:

Government in all its actions is bound by rules fixed and announced beforehand — rules which make it possible to foresee with fair certainty how the authority will use its coercive powers.

The rule of law aims to minimize discretionary power. But the TSA maximizes its discretion to change the rules travelers must obey at any time.

Fining for fun

TSA agents are entitled to reverential treatment, regardless of how much damage they inflict on people's travel schedules or luggage. The TSA slapped fines on almost 5,000 people in 2003, yet never made any public announcement that people faced fines for violations. There were no warnings and people who received a fine in the mail were never informed of their right to contest or appeal the fine. TSA waited until early 2004 to announce the fine system, at which time the maximum fine was raised from \$1,100 to \$10,000.

TSA agents at Baltimore-Washington International Airport confiscated a small steak knife from the briefcase of Susan Brown Campbell, a California lawyer. After she received a \$150 fine in the mail, she called TSA seeking information on how to challenge the fine. A TSA lawyer phoned Campbell and, as she later stated, was "very, very intimidating," warning "that the penalty could be up to \$10,000." Campbell was told she would have to travel back to Baltimore to contest the fine. TSA punished Campbell's insolence by doubling her fine to \$300.

Travelers can be heavily fined for inadvertently possessing the same kind of object TSA now approves giving to first-class passengers during flights. It ruled in September 2003 that airlines would be permitted to provide metal knives to first-class passengers at mealtime. TSA spokeswoman Yolanda Clark said of a typical airline knife, "Even though it's stainless steel, it has rounded edges and the chances of it actually being used to bring down an aircraft are probably minimal." The metal knives given to first-class passengers may be potentially more dangerous than most items seized at TSA checkpoints. But the agency has no plans to boost its seizure totals by launching raids on first-class cabins.

The fines are an extension of the power the feds awarded themselves in a February 2002 *Federal Register* notice, which announced that people could be arrested if they acted in a way that "might distract or inhibit a screener from effectively performing his or her duties.... A screener encountering such a situation must turn away from his or her normal duties to deal with the disruptive individual, which may affect the screening of other individuals." Practically any comment or behavior that makes a TSA screener "turn away" from whatever he was doing can thus be a federal offense.

A thousand people were arrested in airports at TSA's behest in 2002, and roughly 1,500 were arrested in 2003. (Many of those arrested were caught with firearms or bona fide dangerous weapons.) Since the TSA is now intercepting 15,000 prohibited items a day from travelers, the new system of fines could raise enough money to pay for fancy new epaulets for every TSA agent's uniform.

TSA agents can fine Americans up to \$1,500 for any alleged “nonphysical interference” at a TSA checkpoint. There is no formal definition for this offense. TSA spokeswoman Ann Davis said the offense included “any nonphysical situation that in any way would interfere with the screener and his or her ability to continue to work or interfere with their ability to do their jobs.” This penalty would seem to be limited solely by the imagination or the malice of TSA agents.

TSA agents can slap fines on Americans based on “attitude,” which TSA classifies as one of the “aggravating factors” in determining financial punishments. TSA has issued no guidance on the precise amount of obligatory groveling at airport checkpoints. People who question TSA commands are probably far more likely to be fined.

The *Wall Street Journal* reported in 2005 that individual TSA airport “federal security directors” have sweeping discretion to impose penalties on travelers — or not. The frequency of fines ranged from 300 per million passengers to zero per million passengers. The Manchester, New Hampshire, airport had by far the highest rate of fines for travelers. The airport’s manager, Kevin Manger, complained, “Far too much discretion has been given to the federal security directors.”

Ann Davis explained why the 160 federal security directors had such varying policies: “I’m sure they and their regulatory staff have differing philosophical approaches.”

But passengers hit with TSA fines are not facing a philosophical conundrum. Instead, they are being hit by the Iron Fist of Uncle Sam. It is not a philosophical dispute: it is an issue of arbitrary power and intimidation.

The TSA’s system of fines is a travesty of the Administrative Procedures Act — which guarantees Americans due process rights in dealings with federal agencies. Instead, TSA simply concocted a system of fines, failed to give people warning or notice, failed to define the key terms, failed to notify violators of their right to appeal. And if people are unsatisfied with the TSA’s “justice” — they must go through the Coast Guard’s administrative law judge system to dispute the fee. This guarantees years of delay and makes it far more difficult for an American citizen to let a jury of his peers in a federal courtroom decide the justice of the government’s action.

Petty tyrants

The TSA has made little or no effort to control the attitude or arrogance of many of its own screeners. In March 2004, airline passengers filed almost 3,000 formal complaints with the federal government over the conduct of TSA screeners. Hundreds of people complained about the rudeness of TSA screeners. And yet, none of these complaints by taxpayers and citizens will result in a single attitude fine for a TSA employee. (Air travelers filed four times more complaints against the TSA than against airlines.)

These fines have nothing to do with preventing terrorist attacks. The 9/11 hijackers intensely studied American airport-security procedures. Once the system of attitude fines

becomes known, savvy hijackers will simply work around it — the same way that the hijackers learned how to bypass obstacles at airport checkpoints prior to the 9/11 attacks.

The TSA's attitude-fine regime may soon become far worse. The TSA is unleashing a horde of "behavior detection officers" into airports, aiming to have 500 spread across the land by the end of this year. The BDOs will be surveilling passengers for "body language and facial cues ... for signs of bad intentions." The TSA's latest intrusion is based on an Israeli model. McClatchy Newspapers reported last August that

Jay M. Cohen, undersecretary of Homeland Security for Science and Technology, said in May that he wants to automate passenger screening by using videocams and computers to measure and analyze heart rate, respiration, body temperature and verbal responses as well as facial micro-expressions.

There is no word yet on whether the TSA will begin fining passengers who break into a sweat because of all the government nonsense they encounter at airports.

Attitude fines exemplify that TSA aims to rule airports by fear. Anyone who is not properly docile can be treated as a public enemy. The attitude fines illustrate how power has gone to the heads of TSA chiefs. Amidst a surge of private and congressional complaints about TSA abuses, the TSA aspires to shut the American people up, once and for all. Intimidating people is the same as protecting them, and exalting federal agents the same as protecting public safety, apparently.

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