

# *The Security Pretext*

## *An Examination of the Growth of Federal Police Agencies*

by Melanie Scarborough

No. 94

June 29, 2005

### **Executive Summary**

Since the terrorist attacks of September 11, 2001, bureaucrats and special interest groups have been busy repackaging everything from peanut subsidies to steel protectionism under the rubric of “national security.” Federal law enforcement agencies have also been expanding their power in the name of combating terrorism, whether or not such expansion has anything to do with enhancing security. One safeguard that exists to prevent such abuse is congressional oversight, but too many members of Congress are too often reluctant to challenge law enforcement officials.

For freedom to prevail in the age of terrorism, three things are essential. First, government officials must take a sober look at the potential risk and recognize that there is no reason to panic and act rashly.

Second, Congress must stop federal police agencies from acting arbitrarily. Before imposing costly and restrictive security measures that inconvenience thousands of people, police agencies ought to be required to produce cost-benefit analyses.

Third, government officials must demonstrate courage rather than give in to their fears. Radical Islamic terrorists are not the first enemy that America has faced. British troops burned the White House in 1814, the Japanese navy launched a surprise attack on Pearl Harbor, and the Soviet Union deployed hundreds of nuclear missiles that targeted American cities. If policymakers are serious about defending our freedom and our way of life, they must wage this war without discarding our traditional constitutional framework of limited government.

*Melanie Scarborough writes a monthly column for the Washington Post.*

**Instead of checking the expansion of executive branch power, members of Congress have virtually abandoned their critical oversight responsibilities.**

## **Introduction**

“The Constitution of the United States was written by 55 men—and one ghost,” writes military historian Dave R. Palmer in 1794.<sup>1</sup> This nation’s Founders were well aware of the example of Oliver Cromwell, who led the revolution that deposed King Charles I and established civil government in Great Britain. That democracy was short-lived, because when the newly formed Rump Parliament refused to meet Cromwell’s demands, he used the army to seize power and establish himself as Great Britain’s “Lord Protector.” To America’s Founders, the lesson was obvious: standing armies threaten liberty. That explains why the Constitution divided the power over the military between the executive branch and the legislative branch.

What America’s Founders did not foresee was Congress allowing the president to control small armies of *civilian* police forces. The Secret Service, the National Park Service, the Transportation Security Administration, and dozens of other executive agencies act solely at the president’s behest. But instead of checking the expansion of executive branch power, members of Congress have virtually abandoned their critical oversight responsibilities.

Although the growth of federal police powers began before the September 11, 2001, terrorist attacks, the threat of terrorism is now used to justify their reflexive expansion. Restrictions on individual freedom go virtually unchallenged as long as they are characterized as “security measures.” Cost-benefit analyses are rarely, if ever, offered or required. This paper will briefly examine the enhanced powers of four federal police agencies and will explain how those enhanced powers threaten individual liberty.

## **National Park Police**

Since the secretary of the interior reports to the president, George W. Bush oversees the

United States Park Police, which means that the president controls access to all national parks and monuments. Historically, that power has not been abused. But consider the actions that the Bush administration has taken over the last several years.

- After 9/11, Bush closed the Statue of Liberty. Liberty Island reopened, but people can no longer go inside the statue to overlook New York City and the harbor. The statue that stands as a beacon of courage and freedom has now been closed off because of fear.
- Independence Hall in Philadelphia resembles a minimum security prison facility. To protest the metal barriers surrounding the building where the Declaration of Independence was adopted, local resident Jake Browne placed a sign reading “Free Independence Hall” on a park bench one day as he ate his lunch. A park ranger told Browne to remove his sign. “What about my First Amendment right to free speech?” Browne asked. “This is a First-Amendment-free zone,” said the ranger, directing Browne to an area two blocks away. Not wanting to move, Browne offered instead to turn his sign around. “Fine,” said the ranger, “but if you turn it back, you’re under arrest.”<sup>2</sup>
- Some Americans have simply given up on plans to visit national parks and monuments. While in Hawaii, Dan and Lisa Holland of Meridian, Mississippi, took their young sons to the Pearl Harbor memorial. The family waited in line two hours to get through security—only to be handed timed tickets dictating another two-hour wait. “And you couldn’t even spend that time looking around,” Mrs. Holland says, “because you couldn’t leave the secured area.” The family outing they had hoped to enjoy became a burdensome ordeal.<sup>3</sup>
- In Washington, D.C., entrances to public buildings are blocked by metal detectors and armed guards. Drivers near the Capitol can be stopped by police on city

streets and their cars searched by bomb-sniffing dogs. Visiting museums requires waiting in long lines while backpacks and pocketbooks are searched.<sup>4</sup>

- The Park Service has turned the Washington Monument into a surveillance tower, placing cameras on its observation deck that record activity on the National Mall and beyond. After the Bush administration announced its plans to begin electronic surveillance of visitors to national monuments, Rep. Constance Morella (R-MD) called a hearing and asked for details. “How long are they going to capture on these cameras every face of every person who is there? How long do they hold this material? Who will have access to it?” she asked John Parsons of the Park Service. Parsons’s dismissive response was that it would be used “only for valid law enforcement purposes.”<sup>5</sup>

Surveillance cameras cannot prevent a terrorist attack. If a suicide bomber walks into the rotunda of the Jefferson Memorial with explosives strapped to his body, a police officer watching at a remote site can do nothing to prevent disaster. And what sort of imagined threat is forestalled by fencing off the rear of the Lincoln Memorial? Almost no one goes behind the Lincoln Memorial, but the fencing makes the monument an ugly site.

Other measures are not only equally pointless, but they are likely to be counterproductive. Consider how the Park Police fence off the National Mall before such events as the Fourth of July festivities and herd visitors in through checkpoints, which the Park Police no longer pretend are purely anti-terrorism measures. Park officials have admitted that they search picnic baskets and coolers for contraband—“alcoholic beverages, glass bottles, fireworks.”<sup>6</sup>

The searches almost certainly yield nothing but inconvenience. Determined scofflaws will hide drugs in potato chip bags or pour liquor into soda bottles. More important, if something does go wrong, thousands of people will be trapped in a confined space.

Subjecting Americans to police searches before entering the National Mall protects no one but may endanger many, and defies the freedom the Mall is supposed to memorialize. Yet the Park Police are rarely asked to justify their practices. And when they are asked but refuse to account, they suffer no adverse consequences.

No one disputes that American landmarks are prime terrorist targets. But what the Bush administration ought to be exemplifying—and what its policies should reflect—is a defiant refusal to be terrorized. As Sen. John McCain (R-AZ) has put it: “Get on the damn elevator! Fly on the damn plane! Calculate the odds of being harmed by a terrorist! It’s still about as likely as being swept out to sea by a tidal wave. Suck it up, for crying out loud. You’re almost certainly going to be okay. And in the unlikely event you’re not, do you really want to spend your last days cowering behind plastic sheets and duct tape? That’s not a life worth living, is it?”<sup>7</sup> That’s useful advice as well for Homeland Security officials. The vain quest to “terrorproof” each and every possible target is making the nation’s capital a monument to fear.

Is the astronomical chance that terrorists will attack a national landmark at the precise moment of one’s visit worth hours wasted by *every* individual before *every* visit to *every* park and museum? Trying to find a handful of terrorists by institutionalizing inconvenience for millions of Americans would seem to be a prime example of an unreasonable search. Instead of sacrificing civil liberties for unneeded and ineffective homeland security measures, policymakers should be focusing on a few key areas that will make a significant difference in preventing a future terrorist attack—such as safeguarding nuclear and chemical facilities.<sup>8</sup>

## Capitol Police

In addition to the Washington, D.C., metropolitan police department, members of

**As Sen. John McCain put it: “Get on the damn elevator! Fly on the damn plane!”**

**Costs may reach \$500 million—a monstrous overrun resulting from weak congressional oversight, according to the Government Accountability Office.**

Congress are also protected by the Capitol Police. As it has other federal police agencies, terrorism has provided the Capitol Police with a golden opportunity to expand their authority. Within weeks of 9/11, Congress rushed into place a \$600 million security plan to hire more police officers and give them a new command center and an upgraded vehicle fleet, among other things.<sup>9</sup> Eighteen months later, Capitol Police chief Terrance Gainer asked for more money and power, seeking to expand the force from 1,393 sworn officers to 1,833 and to more than double the number of civilian employees (from 227 to 573). Gainer also asked Congress to enlarge the police force's jurisdiction to include all of Washington, D.C., and its suburbs—from Frederick County, Maryland, to Loudoun County, Virginia.<sup>10</sup>

Exercising commendable oversight, Congress did not allow the expanded jurisdiction. Congressman Jim Moran (D-VA) was a notable critic. "The Capitol Police chief is overreaching, both in the scope of his responsibilities and in his jurisdiction," Moran said. "It's almost as though he's trying to create his own army on Capitol Hill."<sup>11</sup> But the 2004 budget allotted \$207 million to cover salaries for more Capitol Police officers. The force has around 1,600 officers now and is actively recruiting more.<sup>12</sup> When it reaches the 1,800 requested by Gainer, it will have one officer for every four members of Congress. When will the force be considered large enough? When every member of Congress has a personal bodyguard?

As with other federal police agencies, a worrisome aspect of the Capitol Police force is that its officers serve the citizenry only indirectly. In 1992, after a representative was mugged on Capitol Hill and a congressional spouse was robbed, Congress expanded the Capitol Police jurisdiction to include the surrounding neighborhood. Moreover, the Capitol Police have authority to make arrests nationwide when accompanying members of Congress. How many regular citizens, after becoming crime victims, can order personal police protection at taxpayer expense? And, as with other agencies, that level of protec-

tion is approaching the point of absurdity. William Pickle, the Senate's sergeant at arms and chairman of the Capitol Police Board, says beefing up the police force is necessary to protect "not only the institution and the members, but also the officers themselves."<sup>13</sup> So now we need more Capitol Police to protect the other Capitol Police?

That enough-is-never-enough mentality is evident in one of the most unnecessary restrictions imposed after 9/11: the closing of the Capitol's west steps, which afford access to one of Washington's most magnificent views. What possible purpose could that serve? No one can drive a bomb-laden truck up those steps. A terrorist with explosives strapped to his body could not carry enough ammunition to damage the tremendous marble edifice. Moreover, the steps naturally form a progressive barricade. Anyone appearing suspect could be seen climbing the steps and intercepted long before he reached the building.

Fear also drives the massive expansion of the Capitol's underground visitors' center, which Congress approved after a deranged gunman opened fire in the Capitol in 1998. When the idea was bandied about in the early 1990s, construction of the center was estimated to cost \$71 million. But in the wake of the 9/11 attacks, lawmakers added to the plan two underground escape routes, a tunnel to the Library of Congress, and underground offices to operate from in the event of an attack. Completion of the project has been delayed until late 2006, and costs may reach \$500 million—a monstrous overrun resulting from weak congressional oversight, according to the Government Accountability Office.<sup>14</sup>

## **Secret Service**

The Secret Service began protecting presidents unofficially as an outgrowth of its official duties. Created in 1865 with the principal mission of nabbing counterfeiters, the agency's task soon expanded to include other forms of federal fraud. In 1894, when two



Secret Service agents in Colorado reported that the suspects they were investigating made threats against President Grover Cleveland, the agency's chief dispatched two men to protect Cleveland personally.<sup>15</sup>

When President William McKinley was assassinated in 1901, Congress again addressed the problem of how to protect the president from bodily harm without affording him royal treatment. Sen. Stephen Mallory (R-FL) said, "I would object on general principles that it is antagonistic to our traditions, to our habits of thought, and to our customs that the president should surround himself with a body of Janizaries or a sort of Praetorian guard and never go anywhere unless he is accompanied by men in uniform and men with sabers as is done by the monarchs in the continent of Europe."<sup>16</sup> The House Judiciary Committee objected to the proposal that a cabinet secretary send presidential protectors "among the people to act under secret orders. When such laws begin to operate in the Republic, the liberties of the people will take wings and fly away."<sup>17</sup> Despite such objections, in 1906 Congress authorized the Secret Service to use appropriated funds to cover temporarily "the protection of the person of the President of the United States." That authorization was subject to annual renewal until it was made permanent in 1951. The terms of the debate have shifted dramatically since Sen. Mallory registered his objection on the Senate floor in 1901. Indeed, today Congress hardly even questions the remarkable expansion of the Secret Service.

Bush's first Inauguration Day marked the first time in history that Americans were not free to line the streets of Pennsylvania Avenue. Claiming that protesters posed a threat to the president, the Secret Service declared "America's Main Street" off-limits and permitted access only through police checkpoints. When protesters took the matter to court, Judge Gladys Kessler declined to order the Secret Service to dismantle its plan. But she made clear in her ruling that she considered the proposal an assault on democratic ideals. "This court has very deep concerns

about the utilization of checkpoints. At no time in history have citizens been required to go through checkpoints to exercise their freedom to watch their leaders and present their political views or receive others' political views," Kessler said.<sup>18</sup> "[There is] no question that for a significant number of people, it will chill their participation, as well as that of demonstrators."<sup>19</sup>

That may have been the point. The administration evidently has charged the Secret Service with protecting President Bush not only from physical harm but from political embarrassment as well.<sup>20</sup> Whenever the president makes a public appearance, the Secret Service directs local police to confine Bush's critics to a remote area—ironically defined as a "free-speech zone"—where they will go unseen by the president and the media. Only supporters are allowed proximity to the president; dissenters who infiltrate those ranks are subject to arrest.<sup>21</sup>

Brett Bursey is among those who have been hauled off in paddy wagons for exercising their right to free speech. During a presidential visit to Columbia, South Carolina, in 2002, Bursey joined a crowd of Bush supporters and held up a sign reading, "No War for Oil." A Secret Service agent told him to move to the so-called free-speech zone. "I told her that I was already in a free-speech zone—the United States of America," Bursey says, "and she ordered a local cop to arrest me." When he asked what the problem was, Bursey said the police officer replied, "It's the content of your sign that's the problem."<sup>22</sup>

Because South Carolina law says trespassing charges cannot apply to public property, the official charge against Bursey was subsequently dropped. But the Bush administration was so determined to see Bursey punished that federal prosecutors brought charges under a law against "entering a restricted area around the president of the United States." Bursey was convicted and fined \$500, despite the judge's acknowledgment that Bursey had presented no threat to the president. So why was it necessary to bring the full force of the federal government

**Whenever the president makes a public appearance, the Secret Service directs local police to confine Bush's critics to a remote area—ironically defined as a "free-speech zone."**

**Federal agents told Givens his editorial was not covered by free speech rights and threatened to bring charges against him.**

down on a harmless protestor? “There has to be a consequence when people ignore the directions of the Secret Service,” the prosecutor said.<sup>23</sup>

It is difficult to account for the way the Secret Service behaves toward citizens such as Glenn Givens. Four years ago, as editor of the student newspaper at the State University of New York–Stony Brook, Givens wrote a satirical editorial in which he asked Jesus to “smite” George Bush and MTV host Carson Daly. Secret Service agents arrived unannounced at the newspaper’s offices where they questioned Givens extensively and asked him to submit to a psychological evaluation and to allow them to search his home and obtain his medical records. The federal agents told Givens his editorial was not covered by free speech rights and threatened to bring charges against him.<sup>24</sup>

Those heavy-handed tactics finally drew criticism from Congress when the Secret Service moved against a Pulitzer Prize-winning cartoonist, Michael Ramirez. To illustrate his opinion that President Bush “is the target of political assassination because of his State of the Union address,” Ramirez drew an editorial cartoon showing Bush being held hostage with a gun pointed at his head. The gun is held by a man who is labeled “politics.” The Secret Service deemed the illustration a threat to Bush and announced it was investigating “what action, if any, could be taken.”<sup>25</sup> In a letter to Secret Service director Ralph Basham, Rep. Christopher Cox (R-CA) said he was “disappointed” to read of the agency’s position and said that “the use of federal power to attempt to influence the work of an editorial cartoonist for the *Los Angeles Times* reflects profoundly bad judgment.”<sup>26</sup>

Unfortunately, such congressional criticism of the Secret Service is unusual. Indeed, lawmakers allow the president’s police force to function with virtually no oversight. The Secret Service now has a budget of \$1.3 billion, but the agency claims that its expenditures must be classified.<sup>27</sup>

And who is keeping track of how many people the Secret Service is protecting? By

law, the agency protects the president, vice president, president elect, vice president elect, and their immediate families; former presidents and their spouses (unless the spouse remarries); former presidents’ children under the age of 16; visiting heads of foreign governments; other distinguished foreign visitors; and major presidential candidates.<sup>28</sup> But nowadays presidents seem to dispense Secret Service protection as a perk. In one of his last acts before leaving office, Bill Clinton issued an executive order prolonging Secret Service protection for his daughter Chelsea and his former vice president. Neither would be assuming an official capacity, nor was either in particular danger. But Secret Service protection is the ultimate convenience; protectees never have to wait in a line. President Bush has reportedly expanded round-the-clock Secret Service protection to 20 individuals in the Bush and Cheney families, which is the largest number ever.<sup>29</sup> No one in Congress wants to challenge the president by requiring him to make the case that such expenses are justified.

In some cases, security measures seem arbitrary. Shortly after 9/11, Bush closed Reagan National Airport to general aviation. The airport reopened to commercial traffic, but private aviation remains tightly restricted by the Transportation Security Administration.<sup>30</sup> Waivers to land at Reagan airport are now granted to high-ranking officials, such as governors—but only if their pilots undergo federal security screening and the governor is accompanied by sworn law enforcement officers.<sup>31</sup> None of those restrictions prevents terrorists from taking off from open fields or deserted highways and flying into restricted airspace. The salient fact is that even if that happens, it poses no dire threat. A jet plane is a flying bomb, but a Cessna pattering along at about 100 mph carrying 50 gallons of fuel is not. At 2,500 pounds, the plane weighs less than a Ford Explorer. When a deranged pilot flew a Cessna into the White House in 1994, the crash killed the pilot but barely nicked the building.<sup>32</sup>

If it were providing serious oversight, Congress would also question security mea-

tures that merely serve the convenience of the Secret Service and the president's family. One of the most expensive practices that has developed in recent years on the pretense of security is ferrying the president's family in Air Force jets. Hillary Clinton traveled the world at public expense with her daughter, planning "goodwill tours" that always managed to coincide with Chelsea's school vacations. On the taxpayers' nickel, mother and daughter toured South Asia, Europe, and Africa. Laura Bush continued the tradition by taking her daughter Jenna to Paris in 2002, purportedly to thank our European allies.

That explanation was hard to believe. A First Lady can command a platform in Peoria as easily as she can in Paris. Moreover, her husband was traveling to Europe later in the month. Surely, thanking the allies could have waited until Mrs. Bush caught a ride on Air Force One.

The costs of Laura Bush's mother-daughter vacation are difficult to assess, but consider: Everywhere the Bush women traveled was visited by advance teams of planners and Secret Service agents. The White House is cagey about releasing numbers, but if 10 advance people flew commercial airlines round-trip from Washington to Paris to Budapest to Prague, the airfare would have totaled about \$21,000. More likely, the team spent at least 10 times more by flying a military jet, such as the C-32, which costs \$10,000 an hour to operate (according to the Air Force; nonmilitary sources estimate the cost as at least three times higher). The average per diem allotted by the State Department for those cities was \$226; so over 14 days, a team of 10 would run up a tab of \$31,640.<sup>33</sup>

If Mrs. Bush and Jenna also traveled on an Air Force C-32, then taxpayers shelled out another \$220,000 for the plane to fly to Europe and return Jenna home after the First Lady joined her husband.<sup>34</sup> And that round-trip expense was matched or exceeded by the cargo plane carrying their motorcade vehicles. The Bush women stayed with friends now enjoying ambassadorships, but the cost of feeding and sheltering their entourage went on the taxpayers' tab. Mrs. Bush's office

wouldn't say how many people accompanied her. Fifty is a guess. If so, that was another \$158,200 in per diems.<sup>35</sup> All told, taxpayers may have spent more than \$800,000 for Mrs. Bush to enjoy a nine-day vacation with her daughter.<sup>36</sup> Legislators ought to be asking questions about such expenses, but their silence is deafening.

Certainly, no one argues that it is unimportant to protect the president's wife and daughters. But can the Secret Service make the case that the women would be uniquely endangered on a commercial airplane or a private jet, any more than they are in restaurants or bars or college classrooms?

## Transportation Security Administration

The Transportation Security Administration was created two months after the September 11 attacks. Prior to 9/11, private commercial firms screened passengers and luggage. Congress created the TSA so that all airport security checkers would be federal employees.

In 2002 the TSA announced a major initiative called the Computer Assisted Passenger Prescreening System. The current system of passenger screening is administered by the airlines—the airlines essentially check names against a government "watch list" and select passengers for extra screening, or rejection in the event of a match. CAPPs II would require prospective travelers to give their full name, date of birth, address, and home telephone number when making a flight reservation. That information will be sent to the TSA, where government computers will comb databases and build a file on the individual. Secret algorithms will assess the passenger's threat level and encrypt it on the airline ticket.<sup>37</sup> Travelers bearing green labels will pass through regular security; those rated yellow will be scrutinized. Passengers assigned red—or "no-fly status"—will be barred from boarding planes.

CAPPs II has proved to be a very unpopular proposal because of the privacy intrusions

**Taxpayers may have spent more than \$800,000 for Mrs. Bush to enjoy a nine-day vacation with her daughter.**

**TSA screeners  
have flagged  
members of  
Congress as  
suspects who  
ought to be  
denied access to  
commercial  
aircraft, searched,  
and questioned  
by law  
enforcement.**

it entails. Airlines that cooperated with the government in designing CAPPS II now face boycotts and lawsuits from customers.<sup>38</sup> But instead of changing its approach, the TSA has simply renamed the program (it is now called “Secure Flight”) and says it will *force* the airlines to comply.

And for what supposed gain will air travelers forfeit their privacy? Among the many drawbacks of CAPPS II is that it almost certainly will not work. Planners of the September 11 attacks plainly understood how to avoid detection by the present system, CAPPS I. The terrorists took practice runs on the flights they would hijack, to be sure the computer didn’t flag them. To crack the code on CAPPS II, terrorists need only test-book flights and see who among them rates a “low risk.”

The TSA screeners have flagged members of Congress as suspects who ought to be denied access to commercial aircraft, searched, and questioned by law enforcement. Sen. Edward Kennedy (D-MA) and Rep. John Lewis (D-GA) have both experienced problems at airports because their names matched names on secret “no fly” lists.<sup>39</sup> Of course, members of Congress can cut through the bureaucracy’s red tape so that the problem will not recur, but ordinary citizens are stuck. For example, one family has had to resort to a special seating arrangement when they fly together. Because the father’s name matches one on the watch list, he now takes a seat that is far away from his wife and children. He does that so his daughters will not see the recurring questioning, searches, and demands for identification papers.<sup>40</sup>

Yet the real menace of CAPPS II is not that it won’t work but that it will work in untoward ways. Once air travel is considered a privilege, the government can revoke it at will. Inevitably, the “privilege” to fly—like the “privilege” to drive—will become a tool for government social engineering schemes. Consider how many behaviors unrelated to driving are punished by rescinding that privilege. In nearly half the states, drivers’ licenses are suspended for not paying child support. Californians can lose their right to drive

for consorting with prostitutes, nonfelony violations of the Fish and Game Code, growing peyote, playing sound equipment on public transportation, or beating a vending machine.<sup>41</sup> Florida reserves the right to revoke a driver’s license for any “immoral act in which a motor vehicle was used.”<sup>42</sup> In several states, drivers’ licenses can be revoked as a penalty for *bicycling* infractions.<sup>43</sup>

Does anyone believe that the TSA will not similarly expand its reach? Before CAPPS II is even fully in place, its dragnet has already widened. TSA officials announced that the program also will snare individuals with outstanding warrants.<sup>44</sup> Undoubtedly, the agency intends to add other ranks of miscreants to that list. The TSA initially said the program would flag “a statistically infinitesimal number” of passengers. Now, it predicts that 5 percent of travelers will be labeled red or yellow. Unless 1 of every 20 passengers is a terrorist, the system is either grossly inefficient or its qualifiers of “high risk” are alarmingly broad. The latter is suggested by many of the incidents that have been reported in recent years. Travelers now face stiff penalties for merely indicating annoyance over the arbitrary enforcement of vague regulations.<sup>45</sup>

- In 2002 a member of the U.S. boomerang team was arrested and charged with breach of the peace. Like many business travelers who are frustrated by inconsistent policies about what may be included in carry-on baggage, this young woman started to argue with a police officer who said her boomerangs could not be brought into the main cabin. The officer was not interested in knowing about how many times she had flown with them before, or how boomerangs are less threatening than tennis rackets, which apparently are allowed on airplanes.<sup>46</sup>
- TSA agents held an entire cabin of a jetliner at gunpoint for a half hour in response to a perceived threat. Upon landing, the agents arrested a retired Army physician and detained him for several hours before releasing him with-



out any charges. The TSA agents made the arrest because the physician was apparently observing the agents “too closely.” The TSA initially denied any wrongdoing, but after a lawsuit was filed, it agreed to pay \$50,000 to the falsely arrested physician, issued a formal apology, and agreed to revise its training program. After the lawsuit was filed, civil rights lawyers discovered that one of the TSA agents involved had sought employment with the Philadelphia police and fire departments but had been rejected because of his performance on a psychological exam.<sup>47</sup>

- When Patti LuPone, the singer and actress, was told to remove her clothing at an airport security checkpoint, she removed her jacket, belt, and shoes. But when the screener said, “Now take off your shirt,” LuPone objected. Screeners barred LuPone from her flight for her persistent objections.<sup>48</sup>
- When a French woman became exasperated by a screener’s repeated “wandering” of her chest, she took a step back and removed her sweater and bra to prove she had nothing to hide and to finally end the search. The police placed the 57-year-old tourist under arrest for “disorderly conduct.” Prosecutors initially pursued the felony charge but dropped it after a public outcry.<sup>49</sup>
- Federal agents charged Gurdeep Wander, a 48-year-old American citizen, with “intimidating a flight attendant” because he used a washroom too long. Shortly after takeoff, Wander went to use the bathroom. After 10 minutes, Wander was asked to return to his seat. He responded that he needed a few minutes to finish shaving. Because the flight attendant felt “intimidated” by his stubbornness, Wander was arrested when the plane landed. Although no one believes that Wander was doing anything other than shaving, federal prosecutors believed that a felony charge was warranted.<sup>50</sup>
- Eighty-year-old Fred Hubbell, tired and

upset after facing several airport security checkpoints, was arrested after making a sarcastic remark to security screeners. When Hubbell, a World War II veteran, saw an agent poking through his wallet, he said, “You better look at it real good; there may be a rifle in there.” Dana Cosgrove, head of the airport security force, explained that because people in the vicinity heard the word “rifle,” an arrest was appropriate. A state police sergeant explained that serious charges were reserved for travelers who become “obnoxious or irate,” but since Hubbell simply made a remark, a \$78 fine would be appropriate.<sup>51</sup>

Are legislators so afraid of appearing soft on terrorism that they will not rein in such obvious abuses?

Once airlines are forced to relinquish passenger data to the government, citizens will have no idea what information is collected, who has access to it, or how else it might be used, because the TSA says revealing that knowledge would compromise security. The agency’s promise that it will strictly limit use of the data is not much of an assurance. History teaches that government functions rarely remain tethered to their original purposes.<sup>52</sup> And the TSA has misled both Congress and the press about its past activities. In November 2003 Sen. Susan Collins (R-ME) asked TSA chief admiral James Loy whether any of his contractors had used any real-world data for testing purposes. In a sworn written response, Loy said: “No. TSA has not used any (passenger) data to test any of the functions of CAPPs II.”<sup>53</sup> In 2004 the TSA confirmed rumors that its contractors had indeed acquired and tested sensitive passenger data.<sup>54</sup>

The crucial step is checking passengers’ names against terrorist watch lists—and airlines can perform that role as ably as the government can. CAPPs II will only inconvenience the innocent while invading every air traveler’s privacy.<sup>55</sup> And by allowing the federal government to create files on honest citizens, it will set a dangerous precedent.

**The TSA has misled both Congress and the press about its past activities.**

**All Americans must accept the reality that our society will never be able to afford an environment that is totally free from the risk of terrorist attacks.**

## Conclusion

In October 2001 Osama bin Laden boasted that terrorist attacks would achieve their purpose: “I tell you, freedom and human rights in America are doomed. The United States government will lead the American people into an unbearable hell and a choking life.”<sup>56</sup> Life in the United States remains exceptionally good and is a far cry from bin Laden’s “unbearable hell.” But some changes in recent years are worrisome. Long lines, searches, and identification requirements are becoming routine. Unwarranted intrusion and inconvenience are becoming the American way of life.

It is naive to believe, as some do, that the “pendulum will swing back toward liberty” when the threat of terrorism wanes. The concept of what it means to be free can be lost in one generation. Unless reason soon prevails, today’s children will grow up accustomed to being routinely stopped and searched. How can they learn to cherish freedoms they have never known? To counter the push for diminishing liberty, it is necessary to counter the specious arguments behind it. The most common argument is that 9/11 “changed everything.” But life changed forever with the invention of gunpowder, germ warfare, and the atomic bomb. History is, in large part, the story of aggression’s innovation. Restricting freedom cannot stop or turn back hostility’s advancement.

Another canard used to justify excessive security at public landmarks is that police are merely “protecting the symbols of democracy.” But the symbol of democracy is an open society, not an ominous police presence. Installing cameras in monuments, surrounding them with unsightly fences, and limiting citizens’ access doesn’t protect the symbols of democracy, it desecrates them.

Freedom is a fragile thing; stone and steel are not. The Statue of Liberty has been taken over by Puerto Rican nationalists, dissident Iranians, the Attica Brigade, and the Vietnam Veterans against the War (twice).<sup>57</sup> The Black Liberation Front attempted to blow up the

statue in 1964.<sup>58</sup> In 1980 a bomber was successful—but the damage to the statue was minimal.<sup>59</sup> Engineers have testified that the Washington Monument, with its 15-foot-thick walls, is virtually immune to destruction from hand-carried explosives.<sup>60</sup> Bombs have detonated in the Capitol three times since 1915, with no injuries or structural catastrophe.<sup>61</sup> Terrorists have *already* hit our national monuments. The difference is that after those earlier attacks, the government did not respond with hysteria.

The war against terrorism is in large part a war against fear. To win this war, three things are critically needed. First, all Americans must accept the reality that our society will never be able to afford an environment that is totally free from the risk of terrorist attacks. Nor would most Americans want to live with the restrictions that such a risk-free environment would demand. Thus, policymakers should resist the temptation to enact a hodgepodge of hastily assembled initiatives in the immediate aftermath of a terrorist incident.<sup>62</sup>

Second, policymakers should employ cost-benefit analyses when choosing among the policy proposals that will substantially reduce the threat of terrorism. As economist Robert W. Hahn has observed, “Improving security is important, but we need to assess the cost and effectiveness of each measure before spending billions of taxpayers’ dollars on security-enhancing measures.”<sup>63</sup> Even though it will not always be possible to precisely quantify estimates in the homeland security context, it would be a mistake to abandon the exercise altogether. Cost-benefit analyses “offer the foundation of a principled approach for making difficult decisions.”<sup>64</sup>

The third essential is for the nation’s leaders to be willing to demonstrate courage. Freedom prevailed in other times of national attack because leaders did not succumb to fear. When John F. Kennedy was assassinated in 1963 during the iciest days of the Cold War, many in his administration initially feared the murder was the start of a coup.<sup>65</sup> If so, his successor, Lyndon B. Johnson, was the

next obvious target. Yet when Kennedy's widow announced her intention to walk the several blocks from the White House to her husband's funeral, Johnson helped lead the procession that marched through the streets of downtown Washington.<sup>66</sup>

After winning wars against the empires of Great Britain, Japan, and the Soviet Union, will Americans now lose their freedom to some zealots? "Terrorism succeeds," said the late senator Patrick Moynihan, "when people become terrified."<sup>67</sup> Sadly, such success looms—unless American policymakers begin defending freedom rather than pandering to fears.

## Notes

1. Dave R. Palmer, *1794: America, Its Army, and the Birth of the Nation* (Novato, California: Presidio, 1994).

2. Ronnie Polaneczky, "Rangers Taught a History Lesson," *Philadelphia News*, July 10, 2003, p. 7.

3. Interview with author.

4. See Paul Schwartzman, "Security Measures Altering Tourists' Views of Capital," *Washington Post*, March 27, 2005, p. A1.

5. Quoted in Spencer Hsu, "Video Surveillance Planned on Mall," *Washington Post*, March 22, 2002, p. A1.

6. Park Police spokesman quoted on News Channel 4, July 4, 2003.

7. John McCain with Mark Salter, *Why Courage Matters* (New York: Random House, 2004), pp. 35–36.

8. Charles V. Peña, "Homeland Security," in *Cato Handbook on Policy* (Washington: Cato Institute, 2005), pp. 501–10.

9. Spencer Hsu, "New Needs Transform Capitol Security," *Washington Post*, November 29, 2001, p. A1.

10. Sewell Chan, "U.S. Capitol Police Seek to Expand Authority," *Washington Post*, June 12, 2003, p. B1.

11. Quoted in *ibid.*

12. Interview with Capitol Police spokesman Michael Lauer.

13. Quoted in Sewell Chan, "U.S. Capitol Police Want 4.21 Officers for Every Member of Congress," *Washington Post*, May 27, 2003, p. B1.

14. Christopher Lee, "Digging Deep for Capitol Visitors," *Washington Post*, November 11, 2003, p. A1.

15. Philip Melanson and Peter Stevens, *The Secret Service: The Hidden History of an Enigmatic Agency* (New York: Carroll and Graf, 2002), p. 24.

16. Quoted in *ibid.*, p. 30.

17. Quoted in *ibid.*, pp. 30–31.

18. Quoted in "Inaugural Protesters Lose Court Challenge," United Press International, January 19, 2001.

19. *Ibid.*

20. Liberal critics sometimes ignore the fact that Bush is employing the tactics of his predecessors. See, for example, *Mahoney v. Babbitt*, 105 F.3d 1452 (D.C. Cir. 1997).

21. See Carol Leonnig, "Lawsuit Criticizes Secret Service," *Washington Post*, September 24, 2003, p. A27.

22. Brett Bursey, "Prosecuted for Politics, Not Security," *State*, January 31, 2004.

23. Quoted in Clif LeBlanc, "Bursey Found Guilty, Fined \$500," *State*, January 6, 2004, p. B1. See also James Bovard, "Protests Pre-empted," *Baltimore Sun*, August 6, 2004, p. A13.

24. "Secret Service Questions College Journalist over Bush Editorial," Associated Press, February 19, 2001.

25. Office of Representative Christopher Cox (R-CA), <http://cox.house.gov/html/release.cfm?id=683>.

26. Quoted in Albert Eisele, "Much in Mind in August," *The Hill*, July 30, 2003, p. 15.

27. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2006, Analytical Perspectives*, (Washington: Government Printing Office, 2005), chap. 25, p. 59.

28. U.S. Code, Title 18, Section 3056.

29. Paul Bedard, "Bush Wears on Secret Service," *U.S. News and World Report*, May 14, 2001, [http://www.usnews.com/usnews/politics/whispers/articles/010514/archive\\_001034.htm](http://www.usnews.com/usnews/politics/whispers/articles/010514/archive_001034.htm).

30. See Annie Gowen and Sara Kehaulani Goo,

- "Bill Seeks to Speed Reopening of National to Private Planes," *Washington Post*, February 18, 2005, p. A9.
31. See Steven Ginsberg, "Private Flights to Resume at National under Strict Limits," *Washington Post*, May 26, 2005, p. A1.
32. U.S. Department of the Treasury, *Public Report of the White House Security Review* (Washington: Government Printing Office, 1995), <http://www.fas.org/irp/agency/ustreas/ussr/t1pubrpt.html>.
33. The author used the State Department's per diem numbers to make this estimate, <http://www.state.gov/m/a/als/prdm/>.
34. Ibid.
35. Ibid.
36. Ibid.
37. Ryan Singel, "Secure Flight Gets Wary Welcome," *Wired News*, August 27, 2004, <http://wired-vig.wired.com/news/privacy/0,1848,64748,00.html>.
38. See Eric Lichtblau, "Government's 'No Fly' List Is Challenged in a Lawsuit," *New York Times*, April 23, 2003, p. A17. See also Brian Doherty, "Wanna Go Where Everybody Knows Your Name?" *Reason*, January 13, 2004.
39. Lolita C. Baldor, "Terror List Snag Nearly Grounded Ted Kennedy," Associated Press, August 20, 2004.
40. Lisa Friedman, "Paying for a Name," *Los Angeles Daily News*, June 15, 2003.
41. Thomas D. Elias, "Licenses Lifted for Non-driving Offenses," *Washington Times*, February 5, 1998, p. A2.
42. See *Florida Driver Handbook*, chap. 2, [http://www.hsmv.state.fl.us/handbooks/English/ch\\_202.html](http://www.hsmv.state.fl.us/handbooks/English/ch_202.html).
43. For example, eight states have determined that drunk "cycling" falls within their drunk driving laws, <http://www.insidetri.com/news/fea/1532.0.html>.
44. Department of Homeland Security, "CAPPS II: Myths and Facts," news release, February 13, 2003, <http://www.dhs.gov/dhspublic/display?content=3163>.
45. See Bob Barr, "Outside View: TSA's Attitude Adjustment," United Press International, February 28, 2004. See also James Bovard, "'Dominate. Intimidate. Control.' The Sorry Record of the Transportation Security Administration," *Reason*, February 2004.
46. Joe Sharkey, "On the Road: The Case of the Banned Boomerangs," *New York Times*, July 9, 2002, p. C10.
47. Thomas Ginsberg, "Air Marshal Arrest Case Settled," *Philadelphia Inquirer*, August 1, 2003, p. B1.
48. Joe Sharkey, "Many Women Say Airport Pat-Downs Are a Humiliation," *New York Times*, November 23, 2004.
49. "Woman Allegedly Disrobes at Airport," Associated Press, October 30, 2002.
50. Edward Wong, "Bound for Las Vegas, 2 Men Take a 9/11 Detour to Jail," *New York Times*, September 20, 2002, p. A18.
51. Paul Marks, "Texan Learns to Rue Remark," *Hartford Courant*, August 3, 2002, p. B1.
52. See Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987).
53. Quoted in Ryan Singel, "More False Information from TSA," *Wired News*, June 23, 2004, <http://www.wired.com/news/politics/0,1283,63958,00.html>.
54. Ryan Singel, "TSA Work Sloppy, but Not Illegal," *Wired News*, March 26, 2005, <http://www.wired.com/news/privacy/0,1848,67031,00.html>.
55. Richard Rahn, "Confusing Control and Security," *Washington Times*, March 28, 2005, p. A15.
56. "Bin Laden's Sole Post–September 11 TV Interview Aired," CNN News, February 5, 2002.
57. Barbara Blumberg, *Celebrating the Immigrant: An Administrative History of the Statue of Liberty National Monument, 195–1982*, National Park Service Cultural Resource Management Study no. 10, 1985, [http://www.cr.nps.gov/history/online\\_books/stli/adhi.htm](http://www.cr.nps.gov/history/online_books/stli/adhi.htm).
58. Ibid.
59. Ibid.
60. See Monte Reel, "Washington Monument Dispute Resurfaces," *Washington Post*, August 4, 2003, p. A1.
61. See Amy Sinatra, "Violence at the Capitol," *ABCNews.com*, July 27, 1998.



62. See Timothy Lynch, "Breaking the Vicious Cycle: Preserving Our Liberties While Fighting Terrorism," Cato Institute Policy Analysis no. 443, June 26, 2002.
63. Robert W. Hahn, "The Cost of Antiterrorist Rhetoric," *Regulation* 19, no. 4 (1996): 51. See also John Mueller, "A False Sense of Insecurity?" *Regulation* 27, no. 3 (Fall 2004).
64. Robert W. Hahn and Cass R. Sunstein, "The Precautionary Principle as a Basis for Decision Making," *The Economists' Voice* 2, no. 2 (2005).
65. William Manchester, *The Death of a President* (New York: Harper & Row, 1967).
66. Ibid.
67. Daniel Patrick Moynihan, "Ethnicity Now," *Washington Post*, September 16, 2001, p. B7.

## OTHER STUDIES IN THE BRIEFING PAPERS SERIES

93. **Keep the Cap: Why a Tax Increase Will Not Save Social Security** by Michael Tanner (June 8, 2005)
92. **A Better Deal at Half the Cost: SSA Scoring of the Cato Social Security Reform Plan** by Michael Tanner (April 26, 2005)
91. **Medicare Prescription Drugs: Medical Necessity Meets Fiscal Insanity** by Joseph Antos and Jagadeesh Gokhale (February 9, 2005)
90. **Hydrogen's Empty Environmental Promise** by Donald Anthrop (December 7, 2004)
89. **Caught Stealing: Debunking the Economic Case for D.C. Baseball** by Dennis Coates and Brad R. Humphreys (October 27, 2004)
88. **Show Me the Money! Dividend Payouts after the Bush Tax Cut** by Stephen Moore and Phil Kerpen (October 11, 2004)
87. **The Republican Spending Explosion** by Veronique de Rugy (March 3, 2004)
86. **School Choice in the District of Columbia: Saving Taxpayers Money, Increasing Opportunities for Children** by Casey J. Lartigue Jr. (September 19, 2003)
85. **Smallpox and Bioterrorism: Why the Plan to Protect the Nation Is Stalled and What to Do** by William J. Bicknell, M.D., and Kenneth D. Bloem (September 5, 2003)
84. **The Benefits of Campaign Spending** by John J. Coleman (September 4, 2003)
83. **Proposition 13 and State Budget Limitations: Past Successes and Future Options** by Michael J. New (June 19, 2003)
82. **Failing by a Wide Margin: Methods and Findings in the 2003 Social Security Trustees Report** by Andrew G. Biggs (April 22, 2003)
81. **Lessons from Florida: School Choice Gives Increased Opportunities to Children with Special Needs** by David F. Salisbury (March 20, 2003)
80. **States Face Fiscal Crunch after 1990s Spending Surge** by Chris Edwards, Stephen Moore, and Phil Kerpen (February 12, 2003)
79. **Is America Exporting Misguided Telecommunications Policy? The U.S.-Japan Telecom Trade Negotiations and Beyond** by Motohiro Tsuchiya and Adam Thierer (January 7, 2003)
78. **This Is Reform? Predicting the Impact of the New Campaign Financing Regulations** by Patrick Basham (November 20, 2002)

77. **Corporate Accounting: Congress and FASB Ignore Business Realities** by T. J. Rodgers (October 25, 2002)
76. **Fat Cats and Thin Kittens: Are People Who Make Large Campaign Contributions Different?** by John McAdams and John C. Green (September 25, 2002)
75. **10 Reasons to Oppose Virginia Sales Tax Increases** by Chris Edwards and Peter Ferrara (September 18, 2002)
74. **Personal Accounts in a Down Market: How Recent Stock Market Declines Affect the Social Security Reform Debate** by Andrew Biggs (September 10, 2002)
73. **Campaign Finance Regulation: Lessons from Washington State** by Michael J. New (September 5, 2002)
72. **Did Enron Pillage California?** by Jerry Taylor and Peter VanDoren (August 22, 2002)
71. **Caught in the Seamless Web: Does the Internet's Global Reach Justify Less Freedom of Speech?** by Robert Corn-Revere (July 24, 2002)
70. **Farm Subsidies at Record Levels As Congress Considers New Farm Bill** by Chris Edwards and Tad De Haven (October 18, 2001)
69. **Watching You: Systematic Federal Surveillance of Ordinary Americans** by Charlotte Twight (October 17, 2001)
68. **The Failed Critique of Personal Accounts** by Peter Ferrara (October 8, 2001)
67. **Lessons from Vermont: 32-Year-Old Voucher Program Rebuts Critics** by Libby Sternberg (September 10, 2001)
66. **Lessons from Maine: Education Vouchers for Students since 1873** by Frank Heller (September 10, 2001)
65. **Internet Privacy and Self-Regulation: Lessons from the Porn Wars** by Tom W. Bell (August 9, 2001)
64. **It's the Spending, Stupid! Understanding Campaign Finance in the Big-Government Era** by Patrick Basham (July 18, 2001)
63. **A 10-Point Agenda for Comprehensive Telecom Reform** by Adam D. Thierer (May 8, 2001)
62. **Corrupting Charity: Why Government Should Not Fund Faith-Based Charities** by Michael Tanner (March 22, 2001)

61. **Disparate Impact: Social Security and African Americans** by Michael Tanner (February 5, 2001)
60. **Public Opinion and Campaign Finance: A Skeptical Look at Senator McCain's Claims** by David M. Primo (January 31, 2001)
59. **Lessons of Election 2000** by John Samples, Tom G. Palmer, and Patrick Basham (January 2, 2001)
58. **Will the Net Turn Car Dealers into Dinosaurs? State Limits on Auto Sales Online** by Solveig Singleton (July 25, 2000)
57. **Legislative Malpractice: Misdiagnosing Patients' Rights** by Greg Scandlen (April 7, 2000)
56. **"We Own the Night": Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit** by Timothy Lynch (March 31, 2000)
55. **The Archer-Shaw Social Security Plan: Laying the Groundwork for Another S&L Crisis** by Andrew G. Biggs (February 16, 2000)
54. **Nameless in Cyberspace: Anonymity on the Internet** by Jonathan D. Wallace (December 8, 1999)
53. **The Case against a Tennessee Income Tax** by Stephen Moore and Richard Vedder (November 1, 1999)
52. **Too Big to Fail? Long-Term Capital Management and the Federal Reserve** by Kevin Dowd (September 23, 1999)

Published by the Cato Institute, *Cato Briefing Papers* is a regular series evaluating government policies and offering proposals for reform. Nothing in *Cato Briefing Papers* should be construed as necessarily reflecting the views of the Cato Institute or as an attempt to aid or hinder the passage of any bill before Congress.



Contact the Cato Institute for reprint permission. Additional copies of Cato Briefing Papers are \$2.00 each (\$1.00 in bulk). To order, or for a complete listing of available studies, write the Cato Institute, 1000 Massachusetts Avenue, N.W., Washington, D.C. 20001. (202) 842-0200 FAX (202) 842-3490.