



**Transportation  
Security  
Administration**

SEP 21 2011

The Honorable Peter T. King  
Chairman  
Committee on Homeland Security  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman King:

Thank you for your letter of June 20, 2011, regarding the Transportation Security Administration's (TSA) screening practices at Newark Liberty International Airport (EWR). Specifically, your letter cites allegations of profiling that occurred nearly 2 years ago. Since that time, I have installed new leadership at EWR, including a new Federal Security Director (FSD). Please accept my apologies for this delayed response. TSA conducted a thorough review of this matter to be as responsive as possible to your requests.

TSA does not tolerate the unlawful profiling of any race, ethnicity, or nationality. The Screening of Passengers by Observation Techniques (SPOT) program includes safeguards to protect the privacy, civil rights, and civil liberties of individuals who are screened across the transportation system. As part of their basic training, Behavior Detection Officers (BDOs) who perform SPOT receive cultural awareness training and specific instruction with emphasis on the U.S. Department of Homeland Security's (DHS) policy against racial or ethnic profiling.

Additionally, several procedures outlined in the SPOT standard operating procedures (SOP) provide best practices to avoid racial and ethnic profiling in behavior detection activities. The SPOT SOP includes the requirement that BDOs work in pairs to validate and confirm each other's observations. The SOP also requires managers who oversee the SPOT program to spend time on the floor observing BDOs to ensure SPOT is being performed correctly. If allegations of profiling arise, TSA immediately conducts an investigation and takes corrective action as warranted.

In the case involving the EWR SPOT program, TSA conducted a thorough investigation upon receiving reports that EWR employees were engaged in prohibited activities. When it became clear that some EWR management officials may have engaged in misconduct, TSA conducted appropriate follow-on investigations. Ultimately, TSA took disciplinary action against one EWR SPOT manager, which was upheld by an administrative judge of the Merit Systems Protection Board (MSPB). As a result of the investigation's findings, TSA has retrained the entire EWR BDO staff and appointed new management officials at EWR. The TSA FSD at EWR continues to closely monitor the performance of the BDO workforce to ensure that appropriate techniques and procedures are used at all times. Pursuant to your request, I have attached three separate

reports regarding the investigation at EWR, as well as the initial decision of the MSPB upholding the disciplinary action taken against the SPOT manager. The manager has appealed the decision to the full MSPB. The Agency has responded to the appeal, which, as of the date of this letter, is pending. Some of these documents contain Sensitive Security Information (SSI) and are appropriately marked. Personal Identifiable Information (PII) was not redacted in the materials provided to you, as they were in the materials sent to the Ranking Member. If, for any reason, you intend to release any of these materials, we ask that you consult with us beforehand so that PII and SSI can be redacted and withheld from public release.

I appreciate that you took the time to share your concerns with us. Should you need additional information, please do not hesitate to contact me personally or the Office of Legislative Affairs at (571) 227-2717.

Sincerely yours,



John S. Pistole  
Administrator

#### Attachments

1. *SPOT Standardization Team Report* dated November 20, 2009
2. *Administrative Inquiry* dated January 25, 2010
3. *Administrative Inquiry regarding BDO Manager Luis Chevere* dated February 17, 2010
4. *Merit Systems Protection Board Initial Decision* dated June 24, 2011

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Arlington, VA 20598



**Transportation  
Security  
Administration**

November 20, 2009

**MEMORANDUM FOR:** Barbara Powell  
Federal Security Director  
Newark Liberty International Airport (EWR)

Russell McCaffery  
Acting Federal Security Director  
Newark Liberty International Airport (EWR)

**FROM:** John Bettac  
SPOT Program Manager  
Office of Security Operations

**SUBJECT:** SPOT Standardization Team Report

#### **INTRODUCTION**

Assistant Federal Security Director-Screening (AFSD-S) at Newark Liberty International Airport (EWR) requested that the Standardization Team (STAN) visit to observe and evaluate Behavior Detection Officers (BDOs) at the airport. This report summarizes the STAN's observations and overall operational evaluation of EWR's BDO program from the period of November 2 to November 5, 2009.

#### **BACKGROUND**


The Aviation Transportation Security Act of 2001 (ATSA) requires the TSA Administrator to provide for the screening of all passengers boarding a passenger aircraft. Additionally, the Implementing the Recommendations of the 9/11 Commission Act of 2007 states that TSA "shall provide advanced training to transportation security officers for the development of specialized security skills, including behavior observation and analysis...in order to enhance the effectiveness of layered transportation security measures."

The SPOT Program began deploying nationwide in October 2006 to provide behavior observation and analysis training to select employees at the nation's highest-risk airports. The Behavior Detection Officers (BDO)s charged with this task provide an additional layer of security to mitigate the threat of an individual causing harm to the nation's transportation systems.

The SPOT Program Office is charged by the Office of Security Operations (OSO) to provide oversight of the proper operation of the BDO program in cooperation with the Federal Security Director and the Assistant Federal Security Director-Screening (AFSD-S) at each SPOT airport. SPOT Standardization Teams is a to ensure uniform compliance with the SPOT Standard Operating Procedures (SOP) and all other applicable program directives, with the goal of having a well-trained, high-performing SPOT team at each airport.

## DISCUSSION

### Adherence to Procedures

- During the visit, the STAN Team observed and anecdotally heard stories of BDOs who selected passengers for additional screening based on other reasons than SPOT behaviors. In some instances, these passengers were allegedly selected because of their race or ethnicity. In other situations, the STAN Team observed a BDO select a motorcycle gang member because they frequently carry prohibited items. The SPOT SOP states that the program "must be conducted without regard to race, color, religion, national origin, ethnicity, sexual orientation, or disability." It further states that individuals will only received additional screening where a BDO has observed certain behaviors that are indicative of stress, fear and deception.
- Further, there were instances when BDOs did not complete the required paperwork after making a referral. These practices are not in accordance with Section 3.10.A of the SPOT SOP which states B3; 49 U.S.C. § 114(r)  
B3; 49 U.S.C. § 114(r)  

- BDOs need to be very aware of the location and activities of their partner. The STAN Team observed one BDO hold up B3 fingers signaling to his partner when they were working B concourse. These practices not only violate the SSI policy by disclosing the point values associated with the SPOT Referral Screening threshold, but are also a poor means of communication between BDOs, as electronic media are provided to BDOs at airports as a means of discreet communication.

## **Quotas**

TSA policy is that the SPOT program must not be held to the use of a quota system because it will compromise the integrity of the program. By mandating a certain level of SPOT referrals, BDOs may feel compelled to select people who are not exhibiting the indicative behaviors.

The standardization team found several instances where the BDOs were assigning behaviors where no such behavior existed or it was inflated by the reporting BDO. The AFSD-S promotes what he calls "metrics" and sees his system as a measure for productivity and promotions. The BDOs interviewed see this as a quota. BDOs state they know it is a major factor in promotions and have been told by the supervisors that they "need more activity." A BDO manager told the BDOs that promotions from F to G band would be based on who had the most referrals. A non-BDO member of the management team reports that quotas were being used and that two BDO supervisors had directed their subordinates that promotions depended on the number of referrals that they made. There is a belief held by the BDO staff and voiced by the first line supervisors that the numbers of referrals are important to getting promoted.

On November 12, 2009, the AFSD-S approached the Standardization Team lead and questioned him again on why referrals could not be used as a measure for BDO performance. The AFSD-S stated that it was the only viable metric.

## **Training and Implementation**

The standardization team noted that many EWR BDOs were not using new implemented programs like the "walk the line" initiative. Some BDOs appeared to have forgotten some of their training, including casual conversation, knowledge of behaviors, and appropriate resolutions, rather than "trip stories."

There are a number of underlying causes to the behavior noted above. Some BDOs were initially trained as long ago as 2006. A lack of recurrent training has made it difficult to reinforce what had been learned during training. Members of the National Training Team report that the "Walk the Line" procedure was not stressed as being critical in those early classes. This lack of training may have caused the inability on the part of some BDOs to demonstrate this procedure to the standardization team. First line supervision, however, should have corrected that lack of training by adopting the technique from newly trained BDOs.

## **Management**

BDO managers must continue to work and employ their SPOT training. The STAN team observed, however, that if BDO managers do not work the floor, their skills are diminished in a short amount of time. Because managers do not mentor, new BDOs quickly become rusty because they have no one to ask about proper technique. Managers do not properly correct BDO mistakes. Managers get a "no confidence" vote from the BDOs.

The BDO managers are not sufficiently maintaining their behavior detection skills as required in the SPOT SOP. (b)(3):49 U.S.C. § 114(r)

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(b)(3):49 Behavior observation is a perishable skill which requires practice and is soon lost without it. Not maintaining certification in behavior observation is detrimental not only to the BDO manager, but also to their team of BDOs, due to the manager's inability to provide proper supervision and counseling in job performance.

### **Failure to Properly Employ BDO Assets**

Another issue observed was allocation of BDO assets for non-BDO functions. The EWR non-BDO manager reported the BDOs are a constant source for filling the TDC position particularly on Sundays and Mondays. The FSD has a contingency plan and BDOs are one of the larger sources of personnel on that plan. This manager also reported that this past summer saw a "horrendous" use of BDOs as TDCs. This practice is in direct conflict with the above direction provided by the Assistant Administrator of Security Operations.

Several communications regarding the proper use of BDOs have been released to FSDs from OSO Senior Leadership. SPOT OD 400-50-1-9A, dated April 28, 2009, and signed by Assistant Administrator Lee Kair, states "Transportation Security Officers (TSO) selected and designated as Behavior Detection Officers (BDO) must be exclusively assigned to SPOT duties on a full time-basis unless otherwise assigned by the FSD for exigent circumstances, such as responding to critical incidents."

The SPOT Operational Directive (OD) further states that "BDOs will not perform traditional TSO screening functions except to establish and maintain certifications for whole bag searches and Explosives Trace Detection as part of their BDO duties."

Additionally, an FSD Communication dated October 7, 2009 states "The redirection of BDOs may be implemented for 20 minute intervals and may be extended as deemed necessary by the senior TSA management official. Extensions must be reported to the TSOC."

Two unsigned letters allegedly from the EWR BDOs to the SPOT Assistant General Manager, the SPOT Program Manager and the OSO Assistant Administrator allege similar events. One letter states all BDO assets at times were reassigned to CTX bag rooms. This was also stated to SPOT program office personnel at EWR on November 17, 2009.

## **RECOMMENDATIONS**

### ***1. Re-Train the Entire BDO Workforce***

The Standardization Team recommends retraining the BDO workforce, including all supervisors and managers. The BDOs will be fully cognizant of all the techniques that a BDO should be using. It is incumbent upon the EWR management to set a new culture where BDO work is used properly and valued for the security layer that it provides.

2. ***Strengthen the Law Enforcement Relationship***

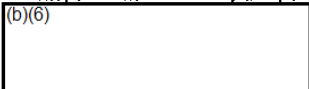
It is recommended that the AFSD-LE work on the relationship problem with the Port Authority Police Department (PAPD), with Customs and Border Protection and with any other law enforcement agency working at the airport. LEOs must first understand the program through training and then must understand their role in responding to a call for assistance. BDOs are not empowered beyond identifying threats.

3. ***Establish Clear Communications between Airport Management and BDOs***

Clear communications from senior FSD management to first line supervisors and subsequently to BDOs need improvement. While some informational fall-out is expected in any large organization, many EWR BDOs report that they are not receiving the information that is important to their job. When questioned about some recent policy changes, the team found that several BDOs were unaware of any changes.

4. ***Restore the Overall Trust Within the Workforce***

A new paradigm must be established between EWR's senior management and the first line BDO supervisors. The lack of trust verbalized by the AFSD-S on several occasions combined with a failing grade from almost all interviewed subordinates points to a serious problem. While there may be supervisors who are not fulfilling their responsibilities, identify the ones who are putting forth an effort and re-establish the relationship. This recommendation will be accomplished when the BDOs, first line BDO managers and senior management report that there is a tangible improvement over past practices.

(b)(6)  


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11-20-2009  
Date