



Written by [Bob Adelman](#) on March 9, 2010

TSA and the Fourth Amendment: Take another Look

When Homeland Security Secretary Janet Napolitano announced that Major General Robert Harding was President Obama's latest nominee for the Transportation Security Agency (TSA), she said, "Mr. Harding has the experience and perspective [emphasis added] to make a real difference in carrying out the mission of the agency. If there was ever a nominee that warranted expedited...consideration in the Senate, this is it."



The [responsibility](#) of the TSA is security for all modes of transportation, but its primary focus, as every citizen who has flown on a commercial aircraft knows, is airport security. Specifically, "airport security" and "the prevention of aircraft hijackings" are its main goals. Accordingly, the TSA has sole responsibility for screening passengers and their baggage (checked as well as carry-ons) at 450 airports across the country. As part of HSS, the agency has 45,000 employees, including the screeners, Federal Air Marshals and other specialists in snooping. The budget for the agency is \$7 billion annually.

It appears that the president has picked the perfect spook for a spooky agency. Harding is not Obama's first choice as Erroll Southers, nominated in January, withdrew his name from consideration under an ethics cloud. But Harding's background of 35 years in the military intelligence community before retiring in 2001, and then starting a private security agency in 2003 which he sold last year, certainly qualifies him to run this illegal, unconstitutional agency.

As an agency operating under another unconstitutional agency, the TSA is "therefore totally unaccountable to the American people," according to Rep. Ron Paul (R-Texas). And because it is not accountable, it has created considerable controversy and stirred up significant anger and resentment among the citizens it was allegedly set up to protect.

The list of criticisms and scandals rates [two full pages](#) of fine print at Wikipedia and includes claims that TSA provides no actual security, just jobs for more federal workers. When undercover TSA agents attempted to bring fake bombs through security, screeners at LAX and Chicago O'Hare missed most of them. Some TSA screeners have been reprimanded and others fired for sleeping on the job, and the highly publicized "Terror Watch List" continues to contain the names of innocents who still are plagued by extra searches and delays when flying. Employee records were lost or stolen (this is a security



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agency, remember) which included the names, Social Security numbers, bank and payroll information on tens of thousands of TSA workers. The TSA asked the FBI to investigate, and sent a letter of apology to those whose private information was breached.

The failure of the TSA to intercept the Christmas Day Bomber has made headlines across the country. But other experiences by travelers being bullied and threatened and intimidated by the screeners is unfortunately so robust as to be beyond the scope of this article. The Ryan Thomas case, however, made the news recently which illustrates the point clearly.

Ryan was taking his first flight, to Walt Disney World, for his fourth birthday. Having been born 16 weeks prematurely, his legs hadn't developed fully and Ryan required a stroller and braces on his legs. When he and his parents, Bob and Leona Thomas, arrived two hours early at the airport, Bob dismantled the stroller and put it on the conveyor belt. His mother then assisted Ryan (he had just started to walk but only with assistance) through the metal detector. This is what happened next:

The alarm went off.

The screener told his parents to take off the boy's braces.

The Thomases were dumbfounded. "I told them he can't walk without them on his own," said Bob.

The screener replied, "He'll need to take them off."

Ryan's mother offered to walk him through the detector after they removed the braces.

No, the screener replied. The boy had to walk on his own.

Leona said she was calm. Bob, on the other hand, was starting to burn. He demanded to see a supervisor.

"I told him, 'This is overkill. He's 4 years old. I don't think he's a terrorist.'"

The supervisor replied, "You know why we're doing this."

Bob Thomas told the supervisor he was going to file a complaint and at that point, the supervisor walked away.

New see-through technology has raised the ire of other commentators. [Tom Chartier](#) says that "security scanners that see through clothes are mighty close to violating the Fourth Amendment." Chartier then reminded his readers of the exact wording of that Amendment

Amendment 4 — Search and Seizure. Ratified 12/15/1791.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

And then he asked, "Would you feel *secure in your person* while standing in a peep booth at the airport? Do you think see-through scanners might be *unreasonable searches*? And where's the *probable cause*, *warrant* and *oath or affirmation describing the place to be searched*? Do you suppose you might feel *violated*?"

Supreme Court Justice Robert Jackson [wrote](#) in *Brinegar v. United States* in 1949, "These rights, I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual



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and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government.”

Rep. Ron Paul was equally candid: “TSA has created an atmosphere of fear and meek subservience in our airports that smacks of Soviet bureaucratic bullying. It’s downright disgraceful to see older Americans and children treated so imperiously.” But, Paul goes on to say, “if they don’t submit quickly and attempt to assert any rights, they will end up detained, put on a TSA list that guarantees them hostile treatment at every airport, and possibly [be] arrested or fined for their ‘attitude.’”

Paul’s final point is chilling: “How we as Americans react to authoritarian agencies like TSA is an indicator of how much we still value freedom over our persons and effects.”

President Obama’s latest appointee, noted for his “perspective” gained from more than 30 years in intelligence services, if approved by the Senate, ought to feel right at home.

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