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Title: Critiquing Critiques of Profiling in Aviation Security Screening Programs: Why the ACLU Has It Wrong

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Abstract. This article provides commentary on the American Civil Liberty Union's (ACLU) criticisms of the Computer Assisted Passenger Screening System (CAPS) that was developed under the auspices of the Federal Aviation Administration (FAA) to support aviation security.

Profiling in security screening programs usually denotes the development and employment of criteria that identify certain types of people as being at greater risk to perpetrate behavior with security-damaging consequences. The potential classes of criteria are many: intrapsychic, physical, demographic, environmental, social, and cultural are only a few. In a critique of profiling, one may address the criteria themselves, as well as how they are employed within the security screening program.

The Computer Assisted Passenger Screening System (CAPS) is an aviation security screening system developed through a recommendation by the White House Commission on Aviation Safety and Security and under the auspices of the Federal Aviation Administration (FAA). It is largely focused on identifying people at greater risk to perpetrate aviation terrorism and other behaviors with noxious aviation safety and security consequences. In complaining about CAPS, the American Civil Liberties Union (ACLU) has addressed both CAPS criteria and how they are employed.

ACLU Complaint 1. Profiling is speculative and does nothing to ensure safety. IBPP Commentary. If this means that profiling is not a sure thing, then sure, we agree. But reputable profilers never make such a claim. Instead, they labor to demonstrate incremental attenuation of certain security risks and/or some increase in security benefits. This demonstration comprises both descriptive and inferential statistical analysis, as well as conceptual analysis. In the United States (US), the success of profiling for the screening of large numbers of people in security situations goes back at least as far as World War I. In fact, successful profiling for security screening occurred thousands of years ago and can be identified in the history of bureaucracies in China. Finally, the history of profiling for security screening clearly suggests that profilers can more validly screen out risk than screen in its converse. The former is exactly what CAPS addresses.

ACLU Complaint 2. The criteria of profiling do not individually suggest evidence of behavior damaging to security. IBPP Commentary. Again, if this complaint means that profiling is not a sure thing, then see above. On the other hand, if this complaint suggests that for a set of criteria to be useful, then each criterion must be directly linked to security risk, we disagree. A criterion--itself not directly related to security risk--may be useful as a moderating, modifying, or otherwise intermediary variable in a nexus of criteria that may have very significant validities--e.g., concurrent, predictive, construct, or discriminative--towards behavior damaging to security. If instead the complaint is that profilers can only demonstrate significant validity of criteria in general--for samples and populations-and not for specific individuals, again we disagree. Through statistical and conceptual analysis, profilers may render competent opinions of likelihood for a specific behavior for both groups of people and individuals. The same criterion may well have different likelihoods for different populations, different samples, different individuals. The same criterion may be directly related in some cases, indirectly or not at all related in

others. Different criteria may have similar likelihoods for different populations, samples, and individuals. Yet, the validity Issue is always the same: the generalization of a generalization to a particular. (However, we admit that the Issue of data derived from groups and applied to individuals is a "hot topic." Coincidentally, it will be the focus of a symposium next month at an annual gathering of experts in personality assessment (Ganellen, 1998).)

ACLU Complaint 3. Profiling can involve the "troublesome maintenance and evaluation" of personal information about passengers and their travel using criteria that are kept secret for "security reasons." IBPP Commentary. If by troublesome, the ACLU is implying that information about people should not be employed in making decisions about them--well, we don't believe that ACLU officials and members follow this approach in selecting and managing their own people, attempting to help others, as well as leading their own lives. If the complaint instead is that security criteria should not be held "secret" but promulgated to the world--well, besides the futility of such an enterprise, we again don't believe that ACLU members follow this approach in their own professional and personal lives. If the complaint is that personal information is evaluated invalidly, this would be a significant concern. But the ACLU presents no empirical data or conceptual analysis to support this position. On the other hand, if the Issue is that security officials do not have the requisite ability and/or motivation to securely maintain information, again this would be a significant concern--to the Department of Transportation (DOT) (that controls FAA), the FAA, and the public discourse on profiling and CAPS. But then the ACLU complaint becomes recursive, for exactly the same Issues of criteria and incremental validity as described above become germane to developing and managing better personnel, operations, physical, and communications security systems for aviation-related security officials.

ACLU Complaint 4. CAPS has or will have an unequal impact on some passengers who will be identified as greater security risks based on race, religion, or national origin. In essence, CAPS is or will be discriminatory. IBPP Commentary. The very phenomena of conscious and subconscious sensation, perception, and judgment--among other inferred intrapsychic processes--are discriminative. In other words, they intrinsically lead to unequal impact on their targets--animate and inanimate. This unequal impact also comprises behaviors associated with these intrapsychic processes towards their targets and the consequences of these behaviors.

Does a discriminative process necessarily lead to a discriminatory one? The IBPP opinion is only if an individual is being treated differently solely because of--in this case--race, religion, or national origin. But is this happening with CAPS? Although the CAPS criteria have not been released to the general public, DOT and FAA spokespersons assert that race, religion, and national origin are not criteria--that, in fact, the criteria deal with behaviors directly and indirectly deduced from airline ticketing data. The ACLU counter to this assertion is that behaviors may be directly or indirectly related to race, religion, or national origin. Therefore, behavioral profiling is inherently discriminatory. The problem with the ACLU counter is that the behaviors intimated to be criteria by DOT and the FAA data are not exclusively related to a particular race, religion, or national origin. The best the ACLU can do is state that certain behaviors may have a higher incidence or prevalence in some groups than others. Thus, if CAPS does not differentially treat different people who manifest the same behavioral data--and DOT and the FAA assert that this is the case--the discriminatory accusation by the ACLU becomes very difficult to reasonably make. To buttress the accusation, the ACLU might need to posit some quantitative threshold of incidence and prevalence of a behavior or nexus of behaviors for a specific group above which discriminatory practice would be said to occur. And given the vagaries of life, the actual incidences and prevalences would be continuously changing--necessitating the employment of thousands of statisticians in an ever growing bureaucracy. ACLU might better profit from ensuring an independent

evaluation of the statistical and conceptual analysis that led to CAPS based on state-of-the-art profiling concepts and procedures.

Some further comments on the consequences of profiling criteria and CAPS. Would the ACLU maintain that even a perfect profiling system--100% true positives and true negatives--would be discriminatory because terrorists would be treated differently than nonterrorists, other criminals from noncriminals? Such a complaint would exemplify a regrettable, vapid, craven, and recurrent tendency throughout history for some observers to reify a concept or ideology--e.g., civil liberties--even if the reification leads to consequences directly and hugely contrary to those linked to what is reified--e.g., a horrible and unjust death. (We see such a tendency today in discourse over formal democratic procedure and human rights in Africa (Gourevitch, 1997).)

But, finally, is the Issue not differential treatment per se, but differential treatment based only on certain criteria, viz., race, religion, or national origin? That is, other criteria leading to differential treatment would be tolerable, but not race, religion, and national origin. The necessary legal and, perhaps, philosophical analysis would cover not only whether discriminative and discriminatory are identical--as would be salient if the ACLU is objecting to all differential treatment--but also whether race, religion, and national origin are imbued with some inherent essence that renders discriminatory acts based on them more objectionable than the same acts based on other variables. The ACLU has not provided such an analysis.

ACLU Complaint 5. CAPS will engender maltreatment and abusive security screening incidents. (Part of this complaint is based on data collected by the ACLU. It alleges to have collected more complaints of discriminatory security screening from passengers traveling via Northwest Airlines--which has tested CAPS in some airports for over one year--than other airlines.) IBPP Commentary. This complaint has less to do with profiling criteria than with implementation of a security screening program regardless of criteria validity. It probably is safe to posit that all human systems--security screening networks, service bureaucracies, industrial conglomerates, sensitivity groups--can be characterized by a fluctuating base rate of maltreatment and abusive incidents. So can systems advocated or at least tolerated by the ACLU--the so-called full "luggage match" system, as well as systems employing x-ray machines and other technological devices that screen everyone's checked luggage. Does the ACLU have data to back up a claim that CAPS somehow generates more noxious incidents than other screening systems? Its data on Northwest has been countered by reports that the complaints were at sites where CAPS was not yet in use. Even if these reports are bogus, however, the ACLU data might have little or nothing to do with CAPS and might be no more than an artifact. Moreover, the complaint and its supporting data conflate maltreatment and abuse with discrimination. Certainly, the first two can occur without the third.

ACLU Complaint 6. Criminals--including those who fit the profiling criteria--may find CAPS easy to evade by duping a passenger who does not fit the profile into carrying a bomb. IBPP Commentary. This complaint somewhat captures the essence of theatre of the absurd. Do criminals dupe noncriminals into carrying bombs? Sure. Do criminals, knowing that they fit the profile, dupe someone who doesn't fit the profile? No, because the criminals can't know what they don't know--unless the ACLU succeeds at forcing the CAPS to "spill the beans," i.e., interjecting the profile criteria into public discourse...or unless the criminals succeed in breaking through the security protecting the criteria. This latter case is quite probable among more sophisticated threats to aviation safety and security. However, the criteria would still be useful against criminals not having access to them. What's more, the "spy-counterspy" process of security improvement, countersecurity improvement, and so on is a recurrent feature of history and should not dissuade one from taking the quest for improved security seriously as opposed to just giving

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up. Again, the ACLU seems to be demanding a perfect system or no system--even if elsewhere the ACLU might well imply or even posit that a perfect system may be discriminatory and, therefore, should be inoperative. Here the ACLU might more profitably advocate independent evaluation not only of criteria validity and appropriateness of program employment, but also myriad cost-benefit issues.

ACLU Complaint 7. DOT has failed to establish its own means of adequately collecting and tracking passenger complaints about CAPS and to set up an independent monitoring panel to review complaints. IBPP Commentary. If true, this can be alleviated easily.

Let's close with a complaint of our own. IBPP Complaint 1. The ACLU has developed a passenger profiling complaint form on the world wide web to collect further data bearing on mistreatment and abusive or discriminatory security screening by airport security personnel. The ACLU states that the data will be kept confidential upon request. IBPP Commentary. To best explore the effects of security screening in general or CAPS specifically, the ACLU's form should be structured to elicit data on good and bad treatment, respect and abuse, equitable and discriminatory contacts. The public could be best served if ACLU collected data on what supports as well as what violates rights--what should be kept, increased, decreased, or done away with in specific situations and in general. As it now stands, however, the ACLU's form reads like a highly slanted screed more than a so-called objective questionnaire. (1) It begins with a large-lettered expletive--"Act Now!"--closely aligned with a letterhead bearing the phrase "Freedom Network" and the word "Complaint." This stimulus configuration quite probably represents a significant biasing towards dire aggrievedness and exploitation on the part of the complainant that may not be preexisting before contact with the form. (2) Terms differing in evaluative content--"singled out," "selected," and "subjected"--are used interchangeably throughout the series of questions, while abuse, maltreatment, and discrimination are lumped together. To be charitable, this complicates data analysis. (3) The question "Do you believe you were selected for heightened security measures based on constitutionally-protected characteristics, such as your race, religion, or national origin?" does not even attempt to discriminate between discriminative and discriminatory acts. (4) The ACLU has publicly stated that it will protect the confidentiality of the complainants, but the form itself clearly is biased towards persuading complainants to mark the "non-confidential" box to "allow us maximum flexibility in using the information you provide." (5) The form contains a "SOUND OFF" section that encourages complainants to "tell the Department of Transportation what happened to you and why you believe what you experienced was abusive, embarrassing (sic) or discriminatory." This phrasing lumps together noxious events that may have nothing to do with discrimination and events that are perceived to be discriminatory. (See (2) above.) (6) Just as the ACLU has attacked DOT and the FAA for neglecting to develop appropriate procedures of collecting, tracking, and reviewing complaints, the ACLU itself is using the number of complaints elicited by its form to attack CAPS without publicly communicating any attempt to evaluate the veracity and relevance of these complaints.

Conclusion. Attempts to contribute towards increased aviation safety and security should be encouraged and carefully evaluated. The ACLU complaints about CAPS should be considered in this light. So should counters to the ACLU complaints like one cited by New York Times reporter Matthew Wald and attributed to a spokesman for the Air Transport Association: "There is no way the system operates that it could discriminate against people." Remember: whether there's a will or not, there's a way. (See ACLU: Aviation Profiling Complaint Form, http://www.aclu.org/forms/complain_aviation.html; Aviation terrorism: The development of terrorist profiles. (February 14, 1997). IBPP, 1(12); Clausen, J. (January 3, 1998). Airlines' computerized profiling system prompts complaint campaign on Web. The New York Times, <http://www.nytimes.com>; As airlines debut profiling system, ACLU launches web complaint form. (December 31, 1997). ACLU Press Release; Fairbank, J.K. (1992). China: A new history (pp. 46-71).

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