

DOJ Orders DEA to halt airport searches

By Gary Fouse

This week, the Department of Justice [ordered](#) the head of the Drug Enforcement Administration, Anne Milgram, to discontinue a controversial enforcement program that had come under renewed scrutiny after a video surfaced of DEA agents attempting to obtain a consensual search of a traveler's luggage at Cincinnati Airport.



As a retired DEA agent, I had some experience with this practice, which has been going on for many years. I retired from DEA in 1995, which gives you an idea how long the practice has been in effect. Some aspects may have changed over the years, but since it has

come under scrutiny since the Cincinnati incident, I thought I would share my own personal knowledge.

Since drugs and the cash proceeds from drug trafficking are often transported through airports, train stations, and bus terminals, some DEA agents and task force officers have been trained to interdict the drugs and cash through approaches to certain travelers who raise suspicions. The agents would approach the person in question, identify themselves, and ask for permission to search their luggage or person.

There are certain indicators that might raise the suspicion of

a trained investigator. One that was reported in the Cincinnati case was the fact that the person in question had purchased his ticket shortly before departure. There are others that also pertain to the circumstances of the person's travel and/or behavior. Already, the reader might be thinking: "profile". That is a tricky term and can quickly lead to charges of racial profiling, which by law, is not allowed, yet critics of the program have often made that accusation. On the contrary, it is the actions of the person in question that count, not their ethnicity.

Since I was also a US Customs agent prior to joining DEA in 1973, I would also like to point out that Customs agents and inspectors have what we call Customs search authority. That means that Customs personnel have the right to search any and all items entering the US from other countries. That right also extends to items *suspected* by Customs personnel to have crossed the border. Customs search authority also means that items that have entered the country can be searched at ports of entry or anywhere else. That authority does not extend to other law enforcement agencies.

Returning to the actions of DEA agents at US airports involving domestic flights, that means that DEA agents must obtain consent to search a traveler's luggage or person. If consent is not granted, the agents only recourse is to obtain a search warrant based on probable cause that the person is carrying drugs or drug money. To develop that probable cause during an encounter requires specialized training that not all DEA agents have-or least had in my day. No consent, no probable cause, it's "Have a nice day, Sir. Sorry to bother you." If the agents decide they have probable cause to seek a search warrant, the traveler is free to leave but the luggage stays until the search warrant is signed or denied. As was shown in the Cincinnati video, a positive reaction by a detector dog adds to probable cause.

It is also true that money that has been seized can be subject

to civil administrative forfeiture. The person from whom the money is seized has the right to petition for its return, but it is his or her own burden to prove the money was not proceeds or instruments of drug traffic. In practice, many of those truly involved in the drug trade choose not to petition for return of the money for obvious reasons. There is also a procedure for criminal forfeiture in cases where people are actually charged with drug trafficking, and in these cases, the standard of proof is greater as opposed to civil procedures. In civil forfeitures, an arrest and/or conviction is not necessary.

To be honest, I was never comfortable on the handful of occasions I participated in this kind of enforcement action although on occasion, I was present when drugs or money were found. While I did not receive the requisite training, I always accompanied an agent or agents who did.

Through the retired agents' grapevine, I have seen mixed reactions to this decision. Some say it should have been abandoned a long time ago. Others point out that it was Deputy Attorney General Lisa Monaco, a liberal activist, who issued the order, and predicted that when President Trump returns to office, it will be resumed. After all, the practice has been challenged in the courts and (when conducted properly and with probable cause) has been upheld.

I myself have mixed reactions. Conducted properly, it was legal. I always felt that this was a program that required the highest degree of professionalism and skill. One bad incident and we risked losing the authority altogether. While I am not judging the Cincinnati incident, it seems to reinforce the knowledge we always possessed that if you abuse a power, you will lose that power.

And let's be honest: No matter how diplomatically an agent conducts himself/herself, any innocent traveler who experiences this will leave with a bad taste in their mouth.

At any rate, considering the publicity this case has caused, I wanted to present as accurate a picture of the practice as I could given the fact that I am now three decades removed from being in drug law enforcement. This enforcement practice has led to countless seizures of drugs and money linked to the drug traffic, but all it takes is one unfortunate encounter to put it at risk of being shut down.