Implications of "Third-Party" Involvement in Enforcement: The INS, Illegal Travelers, and International Airlines

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This article is part of a larger study about the factors shaping the exercise of discretion by Immigration and Naturalization Service (INS) inspectors. It focuses on an infrequently examined topic: how agency behavior is affected when government depends on private enterprise to help enforce legal requirements. My examination of the INS's relationship with international airlines reveals that airlines are part of a third-party liability system. Airlines are mandated by law to screen foreign travelers prior to transporting them to the United States, in order to ensure foreign travelers' admissibility to the country, as well as required to remove all inadmissible travelers at airline cost. The study shows how third-party liability requirements generate a complex system of exchange relations and dependence between the INS and international airlines, a system that affects in important ways how the INS handles the cases of suspected inadmissible travelers.

Law enforcers cannot be everywhere policing activity. It is often more cost efficient and effective for government agencies to deter misconduct by enlisting the assistance of private entities. I here explore one such situation—the Immigration and Naturalization Service's (INS) use of international airlines in enforcement.

Today in a wide variety of contexts we use private parties as de facto "cops on the beat" (Kraakman 1986:53; Gilboy 1996). The Internal Revenue Service, for instance, requires lawyers, accountants, real estate brokers, and boat and car dealers to report large cash transactions possibly indicative of money laundering

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(Holmes 1990; Glaberson 1990). Physicians, social workers, and school principals are mandated by law to report suspected child abuse to government child protective agencies (Zellman 1990). Still other laws require businesses to make payroll deductions to ensure that workers pay court-ordered child support or outstanding debts (Chambers 1979:ch. 11; Shellenbarger 1992). Typically, government imposes civil or criminal sanctions on private parties to compel their assistance in detecting deviance or ensuring compliance with legal requirements.

These private entities or third parties whose help the government enlists are neither the principal authors nor beneficiaries of the illegal conduct they police (Kraakman 1986). Their assistance, however, can be invaluable in supplementing government efforts at direct deterrence of wrongdoers. Particularly when illegal behavior cannot be detected except at great public cost, private parties can assist in enforcement by disclosing private information or by withholding support or services essential to wrongdoers' activities (ibid.).

Most theoretical[1] and empirical discussions of third-party liability systems focus on the behavior of the *third parties* themselves. Their actions are of scholarly and practical interest because, unlike some third-party enforcers who stand to benefit from compliance (e.g., consumer complainants, workers concerned with health and safety violations),[2] private entities in liability systems often are compelled to assist without benefit or compensation. Their behavior is thought to vary with the costs imposed by the scope of legal requirements and possible penalties (Kraakman 1986:75, 94). Both compliant behaviors (Kagan & Skolnick 1993) as well as forms of noncompliance are reported, including complacency in policing (Calavita 1990; Rolph & Robyn 1990:45), avoidance of legal responsibilities (Shellenbarger 1992; Whitford 1979:1050), and withholding of cooperation (Levi 1991:112).

This literature, however, does not exhaust examination of behavior in third-party liability systems. The meeting of the worlds of third parties and government enforcers raises a seldom explored issue. Government agencies seeking to augment their enforcement powers are not just the bearers of liability or merely watchdogs of private sector performance of imposed obligations. They are also potentially affected by the encounter.

This article shifts our attention to the effects of third-party liability systems on *government agencies.* How are agency officials' enforcement practices and decisionmaking affected by reliance on private enterprise to help enforce legal requirements?

[1] This literature is predominantly normative in nature and includes legal and economic analyses. Among the most thorough discussions is Kraakman's (1986) analysis and framework for assessing the advantages and limitations of third-party liability regimes; see also Lorne (1978) and Lowenfels (1974).

[2] See generally Bardach & Kagan 1982; Hawkins 1984a:381.

This situation is examined through a case study of the INS. Immigration has one of the earliest third-party liability systems. During the 20th century, laws have required transportation carriers (initially steamships and now also airlines) to screen travelers prior to transporting them to the United States in order to ensure their admissibility to the country, as well as to remove all inadmissible travelers they transport.

This study focused on INS inspectors whose principal task at international airports is to question suspected inadmissible travelers in order to determine their eligibility to enter the country. Inspectors operate in a situation where the last step of enforcement—the removal from the country of an inadmissible traveler—is not performed or paid for by the agency but by the international airline that transported the traveler.

The article describes the ways in which third-party liability requirements generate a complex system of exchange relations and dependence between the INS and international airlines, a system that affects in important ways how the INS handles the cases of suspected inadmissible travelers.

Although several explanations exist for why officials come to cooperate with private enterprise, the study suggests that officials' behavior is shaped not by direct pressures from the industry but more indirectly by specific agency constraints that establish practical work concerns and conditions that increase the *dependence* of inspectors on the cooperation and goodwill of airline personnel.[3] In devising solutions for the problems they confront, agency officials become enmeshed in exchange relations[4] with airline personnel in which both come to expect quid pro quo exchanges (within limits) through which each acknowledges and acts to further certain special interests and concerns of the other.

This phenomenon is not unique to immigration. Levi (1991) describes a similar situation of dependence and cooperative relations between government enforcers and British banks. To deter money laundering, banks are legally required to inform enforcers of suspicious conduct by bank clients. Levi makes clear that although banks operate under disclosure laws, enforcement officers desire assistance not legally required—such as freezing client assets, interpretation of records, and prompt information (ibid., pp. 114–15). Enforcers have comparatively little leverage in the relationship (p. 115) but are able to promote cooperation by extending various courtesies as well as by threatening leaks to the media about bank uncooperativeness (p. 121).

[3] On an earlier draft Robert M. Emerson provided valuable comments about dependency relationships that I have drawn on in preparing this and other sections.

[4] These working relations were based on exchanges of "privileges and courtesies," not unlike those reported in other settings, that facilitate each party's interests (Blumberg 1976:261).

This work highlights the place of government officials' dependence on private enterprise in promoting cooperative relations. The nature of officials' "dependence" on private enterprise, however, varies with important implications for their behavior. When officials depend on private entities for assistance required by legal rules, their dependence exists only in a weak sense as no special obligation to the private entity is incurred because they are required to perform these functions. Officials' dependence, however, does exist in a stronger, exchange sense when they seek to get the private entity to do something it does not have to do—and does not want to do. Development of cooperative relations is especially critical in those instances when the third party has discretion to act in its own interest in matters officials depend on for effective enforcement.

Although studies have focused on how various features of an agency's task environment may influence officials' behavior, few have focused on the aspect described here—the situation in which agency officials may be particularly dependent on private enterprise to accomplish government goals. Given the potential problems of such dependencies, it is useful to explore more fully their origins as well as how officials respond in such situations.

I. Research Setting and Data Collection

This study of immigration inspection work took place at a large international airport in the United States. Annually, thousands of travelers fly into this airport and seek to be admitted to the country. Decisions as to their admissibility are made by the INS.

First, all arriving foreign nationals and U.S. citizens receive a *primary inspection* in which their entry documents (passports, visas, visa waiver forms, etc.) are examined. Most travelers (98%) are admitted at this stage.

If there are questions regarding a person's admissibility, they receive a *secondary inspection.* Most are admitted after this further inquiry. Relatively few (6%) are thought to be inadmissible (e.g., they appear to have fraudulent documents or to be intending to work illegally).

This article focuses on discretionary decisionmaking at the secondary inspection stage. Observations and interviews for the larger study took place during 102 days (about 700 hours). Secondary inspections were observed during 73 of these days, and each of the 18 inspectors assigned to this work were observed and interviewed several times.

Like other types of law enforcers, secondary inspectors have considerable discretion in carrying out their work. This arises from broad delegations of legal power as well as from features of exclusion processing. There are nine categories for the exclusion

of foreign nationals (including criminal, security and health reasons).[5] Broad discretionary power lies in the fact-finding process for establishing these grounds: what type of evidence and how much is necessary to establish inadmissibility. For example, how much information is enough to conclude the individual is coming to work illegally? What type of information will be gathered: Will handbags and luggage be checked? Other choices of action or inaction (Davis 1969:4) are largely left to the discretion of the inspector, such as whether to expand the inquiry by questioning family or friends in the airport arrival area or by making calls to the employer or school to which the individual is going.

Moreover, given the nature of exclusion processing, inspectors have considerable scope in which to exercise their discretion.[6] They interview travelers in a personal interview. Decisions to admit travelers to the country after an inspector's interview are not normally reviewed by supervisors. Findings of inadmissibility by inspectors seldom are reviewed by an immigration judge. Most travelers found inadmissible (90%) are removed from the airport without further legal processing.[7] Hence, secondary inspection often is the final stage of case processing.

As discussed earlier, removing an inadmissible traveler is the responsibility of the transporting airline. This airline duty is part of a liability system dating back to early in the century.[8] In its contemporary form the system seeks to compel the assistance of airlines in the screening of foreign travelers through the levying of *fines* ($3,000 per passenger) for failure to determine a passenger had improper documentation to enter the United States; the imposition of *detention costs and custody responsibilities* in certain situations; and the imposition of a *duty to transport* all inadmissible travelers brought to the United States (Immigration Act of 1990:1227).

[5] See Immigration Act of 1990. See generally *Interpreter Releases* 1991a, 1991b, 1991c.

[6] Secondary inspectors' discretion is not unlimited, however. In cases where an inspector concludes that the traveler is inadmissible, the case is briefly reviewed by a supervisor at the airport. There is a tendency for the review to be the most thorough in cases for which the supervisor anticipates receiving complaints (Gilboy 1992) or when the case will be reviewed by an immigration judge.

[7] The remainder receive an exclusion hearing before an immigration judge on the issue of whether they can be admitted. This major characteristic of immigration enforcement is in part related to the fact that often individuals eligible for an exclusion hearing waive their right to it and agree to depart voluntarily. It is also related to the fact that some travelers seeking to enter the United States have no right to a hearing upon a finding by inspectors of their inadmissibility. In recent years travelers from many nations have been allowed to use "visa waivers" (rather than having to obtain a visa) to enter the United States. When using a visa waiver, they give up a formal immigration hearing if they are found upon inspection to be inadmissible.

[8] For a description of the concerns behind this system see Mayock's statement in U.S. Congress (1951:184). On early attempts to regulate, see Proper (1900). Recently, carrier liability legislation has been introduced in most countries in the European Union (Cruz 1994).

This article focuses on secondary inspection work and airline removal of inadmissible travelers. With the focus on this aspect of inspectors' work, readers may tend to visualize relatively infrequent situations, such as the removal of inadmissible travelers under the work conditions discussed here, as if they were common, everyday phenomena. In this research setting, such was not the situation. At the port of entry studied, about 1,600 foreign nationals were inspected daily of which about 35 to 40 received secondary inspection and only 1 or 2 were found inadmissible and returned. Moreover, the practical work problems of inspectors discussed here did not arise in each of these cases. Nevertheless, although the public-private relationship described here is not built on or tested in daily case encounters, inspectors developed, maintained, and nourished that relationship in anticipation of both routine enforcement needs and the unusual situations where they needed special airline cooperation.

II. Removing Inadmissible Travelers

A. Priority of Avoiding Detention

A high priority of inspectors and supervisors is avoiding the overnight detention of inadmissible travelers. Removal of these travelers on the day they arrive at the airport is pursued as a means to deal with several problems.

First, inspectors view overnight detentions as creating undesired contingencies to removal. Like other kinds of decisionmakers, inspectors routinely consider the "downstream consequences" or implications of their decisions (Emerson & Paley 1992; see also Lundman 1980; Schuck 1972). One concern is that a successfully completed case—one where an inadmissible traveler has agreed to return home voluntarily—can evaporate with overnight detention if the detainee changes his mind and demands an exclusion hearing.

Inspectors consider hearings to be a costly, ineffective, and inefficient way of enforcing exclusion laws. With hearings, the INS district office has to spend monies to detain and process the person through multistage proceedings in which there are many opportunities for delay. Moreover, hearings are seen as producing uncertainty in outcomes. At the time of the research, the INS Port Director believed that inadmissible travelers might not be found excludable at a hearing because his secondary inspectors were relatively inexperienced. Inspectors also are familiar with past cases in which, even if the foreign national was found inadmissible at a hearing, the immigration judge did not enter an exclusion order (with its tougher provisions for reentry to the United States) but instead allowed the individual to return voluntarily after withdrawing his application to enter. This disposition

was one that inspectors thought could have been achieved "in the first place," and more efficiently, by immediate removal from the airport.

Second, inspectors also believe overnight detentions invite outside political interference in case handling. With detainees, calls sometimes come to the INS Port Director, the District Director, or the Commissioner's office in Washington from individuals pressuring the agency to admit the person. These contacts—typically from the "casework" of federal legislators or local politicians—if handled insensitively could jeopardize the program support the agency relies on (Gilboy 1992, 1995). The problem is illustrated in the case of a young man who had withdrawn his application to enter the country.

> INSPECTOR 20: His brother was in this country and called his father who was in Saudi Arabia, who then called someone in Washington. [The supervisor] was on the phone all day and night. Finally he was let in. . . . They fought it, but eventually they let him in for a short stay. But he was in custody for a day or so. . . .
>
> QUESTION: So things can change if they're held?
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> INSPECTOR: Yeah, you want to get them out as soon as possible [using his hands to indicate a plane zooming off]. (Feb. 1989)

The strategy of same-day removal helps to insulate enforcement decisionmaking. From the practical viewpoint of inspectors, it is difficult for outsiders successfully to pressure the INS for reversal of a decision when the person is midair on the way home.

Third, at times during the research, detention funds were limited. Superiors directed inspectors to use detention only for extremely serious violators (e.g., individuals excludable because of past criminal activity). Others had to be removed on the day of their arrival or released and told to return the next day for removal. Since inspectors consider their reappearance at the airport the next day very unlikely, achieving same-day removals was important.

Finally, in some cases, in varying degrees, inspectors saw overnight detention as undesirable (e.g., for juveniles or for young women arriving to work as au pairs, technical mixups when company workers arrive with inappropriate visas). These concerns are illustrated in an inspector's comments about a case he was processing.

> We don't want to detain him. First, the detention is too severe for this man. His intentions were not to deceive us. The feeling in the office is it's too severe. You have to take them to whatever jail they have and put him in that. That doesn't always work out to be a good jail. Second, we have to pay for the detention, and then, too, it's more manpower and paperwork. (Inspector 6; Dec. 1988)

Inspectors see same-day removals, then, as increasing their ability to enforce the law. They can avoid the particularly difficult situation of deciding what to do with a person who is legally inadmissible but for whom overnight detention seems "too severe" a punishment given characteristics of the individual or case.

B. Airline Cooperation and Avoidance of Detention

Same-day removal of inadmissible travelers takes on considerable importance for inspectors given the problems they perceive with holding returnees overnight. These removals, however, take place within the special enforcement context they confront.

On the one hand, the law is clear that every airline is obligated to remove any inadmissible passengers it transports. The returnee is to be removed on the airline's "next available flight," in the place of a reservation passenger if necessary, at airline expense if there is no return ticket (54 *Fed. Reg.* 100; 53 *Fed. Reg.* 1791).

On the other hand, in some cases, airline "cooperation" is needed to avoid detention. Two sorts of cooperation are essential. First, although airlines are obligated to return their inadmissible passengers on the "next available flight," what constitutes the next available flight is affected by airline cooperation in arranging transportation removal. Inspectors encounter such acts of covert resistance by airlines in performing this legally mandated duty as "stalling" to avoid bumping a paying passenger in favor of seating the nonpaying returnee.[9] As one inspector explained:

> [Airline personnel] try to stall around if their flight is full, but we don't want [the inadmissible travelers] detained overnight. (Inspector 8; March 1990)

Probably the most important area of airline cooperation is in "rerouting" returnees on flights of other airlines. This is critical when the legally responsible airline no longer has flights departing to the returnees' point of origin that day, but another airline does. What the INS does in this situation depends in part on whether the returnee has a paid return-trip ticket. When none exists, inspectors do not seek airline cooperation in rerouting. But when a paid fare exists, inspectors prefer that the transporting airline turn over the return-trip ticket to an airline with a flight departing that day.

Rerouting arrangements are not legally mandated and are considered "favors" if done. Inspectors understand that requests for rerouting are viewed by some airlines, particularly smaller ones, as creating undesired financial losses and risks.

[9] Moreover, even when a returnee has a ticket, an airline with a full flight may prefer to put the returnee on a flight with empty seats the next day.

> If we have to deal with small international carriers, they don't care if the person is detained until tomorrow . . . in order that they get the $500 ticket. Other large carriers . . . are more likely to do what's in an individual's best interests, just book them and get them a ticket on another flight going out that day whether it's their carrier or not. (Inspector 4; Dec. 1988)

Inspectors also depend on the willingness of airlines to accept these tickets—particularly when "risky" or "problem" returnees are involved. They cannot assume that one airline will agree to transport another airline's passenger to the point of embarkation. Such help may require the airline to unseat a reservation passenger if the flight is full, or it may require ignoring wait-listed passengers to seat the returnee. It also may create other "problems." An inspector described these airline concerns:

> A lot has to do with who they're carrying back, such as Nigerians. They may abscond and they don't want to say they'll take them. If they feel it's a passenger who will become a problem, they want to stay out of it. But for an 18- or 19-year-old girl, they don't view that as a problem case. (Inspector 11; Feb. 1990)

Moreover, if an airline helps the INS, passengers may be offended by having to sit near an "unseemly character" (smelly or physically restrained during travel). In addition, the returnee might abscond or end up being costly to the airline (hotel, guards, etc.) if the airline cannot get him to his point of embarkation promptly. Hence, while inspectors report that airlines often will cooperate in rerouting, obtaining the assistance of some airlines may be difficult, and obtaining the assistance of any airline under certain circumstances can be unreliable.

III. Inspectors' Behavior and Airline Characteristics

The priority of avoiding overnight detentions imposes a set of constraints on inspectors. To avoid detentions, inspectors must work within the practical contingencies of return flights and flight schedules. As a result, in some instances case processing and dispositions reflect inspectors' adaptations of their work to airline schedules as well as crucial judgments about the moral character of travelers during this processing.

A. Accelerating Inspections to Make Departing Flights

As in other organizational settings, uncertainties critical to an organization's functioning are dealt with by more tightly coordinating activities with relevant entities (Pfeffer & Salancik 1978:285). At the airport, this phenomenon can be seen in the practice of accelerating inspections to parallel flight departure times, thus minimizing the likelihood of overnight detentions.

Two acceleration strategies are used. In some instances, inspectors take a short cut and eliminate the primary inspection. This most frequently occurs with "turnaround" flights, that is, international flights that have only brief stopovers at the airport before returning to their point of origin. Inspectors distinguish these turnaround flights from others because of the particular problems they present for their work—namely, timely inspections and removals (on work concerns and categorization, see Emerson 1988). In order to coordinate their inspections with departures, inspectors walk through the primary lines looking for travelers whose appearance suggests they may be one of the profiled "high-risk" travelers (Gilboy 1991). As one inspector explained: "Hunting for passengers saves 15 minutes, and with KLM and their tight schedule, this is important." Profiled travelers are taken out of the primary line to the secondary waiting area and their passports examined. Depending on the results, they are either admitted or called into the office for questioning and a possible removal.

Accelerating secondary questioning is the other way to avoid detentions. In paralleling questioning with flight departures, information gathering can be very hurried, and interviews dotted with questions and comments to airline representatives and to each other: "When is the airline leaving?" "Will they hold the plane?" So frantic can the removal processing become that deviations can occur, such as knowingly using another traveler's plane ticket for the returnee's removal. For example:

> Inspector 6 remarked to Inspector 7, "This is a passport of [a "high-risk" Asian nation], a real bad one. We're going to try to get him out today." Speaking to the airline representative, "What time does the flight leave, twenty after four?" [It did.] Inspector 7 speaking to the foreign national for the first time informed him: "We're going to send you back. Your government gave you a bad passport." The case became very rushed. The flight was leaving in just minutes. The officers hurried to get the paperwork done. The ticket they had did not contain the traveler's name. Somehow in the secondary office his ticket had gotten mixed up with another passenger's ticket. The officers pushed ahead. One officer sat doing the paperwork rapidly. No statement was taken from the foreign national. The foreign national signed the withdrawal of the application to enter the United States. Inspector 7 began to explain to me in front of the returnee, "He had all kinds of alterations on his passport." As the returnee began to protest this statement, Inspector 7 informed him of all the changes on the document. Inspectors 6 and 7 rushed off with the foreign national and boarded him on the plane using the ticket that belonged to another traveler. Airline representatives were aware of the irregularity. Later a supervisor told Inspector 6 the airline called about the "ticket mixup" and needed paperwork to explain the situation. (April 1988)

Making decisions in a time frame to fit flight schedules fosters abbreviated inspections. Perceptions that problems exist with accelerated processing, however, are for the most part muted. Shortcuts, policy deviations, and irregularities in case handling are tolerated and defended by inspectors as making no difference to the accuracy of case dispositions.

As illustrated below, with hurried inquiry, critical questions can be left unanswered. Despite the realization *after* the traveler was taken to the plane that basic information was missing, the case was viewed as a "clear-cut" instance of inadmissibility. Shared understandings between inspectors working on a case together reinforce the notions that one ordinarily expects returnees to "deny" wrongdoing and that an immigration judge's decision would be the same as an inspector's disposition. The following illustration reveals the pressured, incomplete nature of some inspections and the views of inspectors that underlie this case processing.

> Inspectors 8 and 16 study a passport [of a "high-risk" Asian national]. The airline representative informs them that the plane is leaving very shortly. Inspector 8 rushes to the passenger area and brings the individual in for an interview. Speaking in simple shorthand phrases to make himself understood he advises the foreign national:
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> 4:15 P.M.: "You know, no good. Read this." [He pushes toward the traveler materials in English explaining the right to withdraw an application to enter the U.S.] He continues: "Do you chose to go home or go before an immigration judge? Passport no good. Changed. I don't know if this is you or not. This visa, writing is all altered. I will not admit you to the U.S. You can go home today on Alitalia or go to an immigration judge." The traveler responds, "I want to go." The officer goes to do the paperwork, saying the plane leaves in 5 minutes.
>
> 4:20 P.M.: The airline representative gets the traveler's bags off the carousel.
>
> 4:21 P.M.: It is explained to the man he is going to Rome to make his connection.
>
> 4:24 P.M.: They leave for the plane.
>
> Later Inspector 16 says to 8 that he didn't see him do the paperwork. Inspector 8 responds, "I didn't till I took him out to the plane." Inspector 16, "Did he deny it?" Inspector 8, "They always do." Later when Inspector 8 is working on the paperwork, he notices that the traveler had two passports (an old one and new one with a current visa) and that the pictures looked different, "Usually when you see two it's a dead give away." Looking more closely he observes, however, that the handwriting on the two pictures looks alike. He remarks, "If I had seen that, I'd have asked him to sign his name again." He concludes, however, "Maybe [both passports] were his and he

just changed the visa. This is a 'clear-cut' case. If it went to a judge he'd deport him." (June 1990)

As illustrated, the tendency to parallel inspection work with departures affects the climate in which foreign nationals exercise their right to a hearing. Like other kinds of law enforcers, inspectors prefer a quick, informal "cooperative" plea-bargain type disposition, to a more costly, delayed formal adjudication (Blumberg 1976; Feeley 1979). In dealing with suspected inadmissible travelers who have the right to an exclusion hearing, inspectors routinely urge individuals to withdraw their application to enter the country. In accelerating inspections, encounters between inspectors and foreign nationals can involve extremely rushed advisements of rights and pressures on foreign nationals to decide "right now" whether to withdraw their applications to enter or request a hearing.

In addition, the not-so-subtle threat of lengthy detention pending a hearing and of the adverse consequences of an exclusion order by an immigration judge—without the benefit of full advisements regarding the positive features of a hearing[10]—further functions to rapidly dispose of cases by discouraging foreign nationals from exercising their right to a hearing. For example:

Inspector 11 has in his secondary office a 25-year-old Ghanaian male who arrived at the airport with $300, no credit cards, and plans for a two-week stay with a "taxicab driver friend" who was to meet him in the passenger arrival area. Inspector 11 asks a senior inspector to check the validity of the passport but first gives his own impression that "He's probably okay." Inspector 11 heads to the passenger area to find the traveler's friend. After a look outside, he concludes the friend is not there—a black man standing near the information desk was not approached since the inspector thought he "wasn't dressed like a taxicab driver." A little later inspectors 6 and 10 make another check of the passenger area, this time more thoroughly, calling out the cab driver's name; no one answers (the man by the information desk is no longer there). The case was discussed with a supervisor who also concluded the man had insufficient money to enter the country. KLM airlines is now boarding. An airline representative runs to get the paperwork for reboarding. Inspector 10 is quickly typing a form for removal. In this pressured situation, Inspector 6 advises the traveler of his rights:

Q: You have two options. You can go before an immigration judge and plead your case and you will be in jail for a few days or you can go home. We can't find your friend. We cannot verify your story and you do not have enough money.

A: My friend . . .

Q: You have two options.

[10] For a similar problem in deportation cases, see *Orantes-Hernandez v. Smith* (1982).

A: I cannot go to Denmark [where his wife is living]. I don't see why I have to go to jail.

Q: You're not admitted to the United States. You do not have enough money. We're not able to verify your story. You have no guarantee that you're going to a judge tomorrow. This is Thursday. You may see him Monday or Tuesday so you may be in jail for 3 or 4 days. You can go home now and have no record of it, or you can go to a judge. If he thinks the same thing, you'll get a record of deportation. You must decide right now. What are you going to do?

A: I don't understand the reason why.

Q: I just explained. You're not admissible. Your visa means you can apply for admission and the decision is made here and now, and we've made the decision that you're not admissible to the United States. [The Ghanaian says that he'll stay less time.] You have already established your intent. You want to go back?

A: Yes.

Q: If you want to go back, you must sign this here.

Inspectors 6 and 10 drive him to the plane. Fifteen minutes have passed since the plane began to board, and the returnee is removed. All of this was extremely rushed. At one point Inspector 10 calls to Inspector 6 and says "Are they [the airlines] going to wait for us?" Inspector 6 says, "No, you've got to hurry." Inspector 10 informs me that they are trying to get him on this plane because they will have "a detained problem. . . . If we detain them, then they think, okay, I'll go to a judge." Inspector 9 adds that they will eventually be removed from the country, but after more time and money. (Dec. 1988)

In sum, inspection work in some instances comes to be geared to getting those determined to be inadmissible on turnaround or other shortly departing flights. This requires inspectors to act with great speed, in doing so giving short shrift to foreign nationals' rights, and truncating their own inspections. Importantly, airline flight contingencies (daily flights and departure times) did *not* need to be a critical factor in shaping inspectors' case processing but became one because of inspectors' priority of avoiding overnight detentions.

B. Flight Contingencies, Moral Judgments, and Case Dispositions

Usually inspectors' efforts result in avoiding overnight detention. Occasionally, though, instances arise where detention is imminent due to flight schedules. The particular outcomes of these cases are fluid. As in many regulatory settings, final outcomes depend on enforcers' decisions about how strictly to enforce the law based on judgments about a violator's moral character and the severity of the offense committed (Hawkins 1984b:ch 8; Hutter 1988:105–20; Bardach & Kagan 1982:ch. 5.; Kagan 1994:387).

Inspectors distinguish two basic types of individuals. The foreign national may be a *decent* or honest person but misinformed, misled, or naive about what he or she could do on entering the United States. For example, a young woman may try to enter the United States on a tourist visa to become a mother's helper for low wages and room and board. Such persons are usually viewed as decent persons who either did not realize it is wrong to enter the United States to work without a work visa or did not realize the gravity of their attempted illegal entry. A foreign national, however, may be perceived as a *bad* person—scheming, underhanded, and well aware of the implications of his or her actions in attempting to enter the country. Those using stolen and altered entry documents (e.g., passports reconstructed with new pages or containing substitutions of photos) usually fall into this category. For inspectors, the judgments about moral character both explain the attempted illegal entry and shape their response to possible detention pending removal (see generally Emerson 1969:91).

There is little reaction, for instance, to detaining travelers perceived as morally "bad." On the other hand, in varying degrees, those falling in the "decent" category are viewed as inappropriate for overnight detention. The differing concerns are illustrated as follows:

> The Port Director noted that if individuals were not removed from the airport but held overnight, INS would try to put the women in a hotel and the men in a jail near the airport (if possible in a room away from other types of detainees). He emphasized, however, other considerations: "If you have an altered document case, someone like that, I don't care about that [detaining them]. But if it's someone with the wrong visa or something like that, not so bad, I don't like to do it. That's why I like to get them out."

The organizational relevance of categorization is most notable with respect to the "decent" category. Problems arise when travelers may be bona fide visitors (e.g., they appear to have legitimate arrangements to work) but enter with an inappropriate visa. Detention seems too harsh a sanction. The following illustrates the fluid nature of outcomes in such a situation, as well as suggesting how contingencies (departing flights, looming detention, and incomplete information) shape decisionmaking. Again, the character of the travelers is a recurring theme.

> Two supervisors spoke to three Englishmen in secondary inspection. One supervisor told them he hated to deport them because it was not their fault they were here on the wrong visas. "The kind of work you're coming to do you would have to have a different kind of visa [not the B-1 business visa]. . . . They [the company] only gave you one day to fly to the U.S. [not enough time to get an appropriate visa]. . . . I'd hate to detain you overnight. You don't deserve it. Like the supervisor said, you're

not criminals. If you miss the flight you have to be detained overnight. When you signed the [visa waiver] form, you have no rights [gave up the right to an exclusion hearing]."

The men reiterated the legitimate nature of their visit. They suggested calling England, but it was late in the day and presumably past work hours in England. They had no U.S. business number to call.

The three Englishmen pointed out that 12 other workers had already entered and were here until Christmas and that the U.S. company they were joining was purchased by a British company. The supervisors speculated that an argument could be made that the three men were not being paid in the U.S. but from overseas. [T]he workers themselves, however, were unsure who was paying them.

One supervisor thought further then reacted, "They are here already. . . . It's kind of a hard step to send three back when you're only here three weeks. It's important to get an appropriate visa [suggesting a specific type of visa]." The men were admitted.

Later an officer discussed the case with me: "It doesn't serve any purpose to send the people back. I think you can build a case that the B-1 [business visa] is not bad here. Both are the same company, the one here and in England. But if it were over a prolonged period of time, they should get an E-1 treaty trader [visa]. So . . . under the circumstances I think it's rotten to send them back. The guys are awfully honest." (Nov. 1988)

In this case the inspectors were unable because of the international time differences to resolve several questions. Facing no remaining return flights that day and the detention of the three workers pending clarification of the facts, inspectors chose to focus on factors that would merit admission—indicators of the decent nature of the individuals or legitimate circumstances underlying their visit. As various supervisors commented, they were "awfully honest," "not criminals," "don't deserve" detention.

Inspectors also take a pragmatic approach to case dispositions when faced with overnight detention of a person committing a relatively minor offense. In the following case involving a suspected nanny, as soon as the inspector learned of the departure of the airline's last flight that day, the inspection was abruptly terminated.

A young Swiss female was queried by Inspector 6. Her responses fit the port's "nanny" profile. Inspector 6 and I went out to the passenger arrival area and located the family the girl was visiting—a man, two children, and a woman very pregnant with a third child. After brief questioning the inspector remarked to me, "They're not good liars. They were not rehearsed. They didn't know that this was going to happen!" The inspector examined letters in the woman's luggage. One letter from a friend cautioned, "Good luck with customs." The in-

> spector laughed,"We know what that means!" Learning from the airline representative that the last flight left at 4:20 P.M. and it is now 6:00 P.M., Inspector 6 informed the representative the individual would be admitted. (Feb. 1990)

In some cases, then, flight contingencies and inspectors' evaluations of the moral character of travelers shape how cases are disposed. Only one flight a day will mean that travelers assessed as "decent" will benefit from this practically constrained processing by being admitted, although doing so is not technically justified; travelers initially assessed as "bad" or "deliberately deceptive" will be processed for return. Another flight that day gives inspectors more time for the case—more time for extensive inquiry sometimes leading to more "punitive" outcomes (i.e., uncovering indications of "suspicion" of initially assessed "decent" travelers), and sometimes to more "lenient" outcomes (i.e., uncovering indicators of "decency" or "legality" etc. for previously judged "bad" cases).

IV. Immigration Service and Airline Relations

Although to avoid overnight detentions inspectors orient their work to airline flights and timetables, they also realize that in some instances they are dependent on special airline cooperation to achieve this priority.

Generally speaking, inspectors are dependent on airlines in several ways. Inspectors depend or rely on airlines for returning rejected foreign nationals. But such dependence incurs no special debt to airlines because the airlines are legally obligated to perform this service. Inspectors' dependence does exist in a stronger sense when they seek to induce airline cooperation in matters where the airline is not legally required to act and where it may not be in the airline's interest to provide assistance. Inspectors become indebted to airlines in several specific situations (see Table 1) in which airlines have latitude to act in their own interests, such as by refusing to reroute an inadmissible traveler on another airline's flight (not giving up a fare), declining to transport another airline's returnee (not assuming financial risk), and "stalling" in making return arrangements (not bumping a paying client).

Pressure to develop and maintain working relations with airline personnel grow out of these situations in which inspectors would like cooperation but the airline has discretion to act otherwise.

A. Airlines

It is useful to ask why airlines would bother to cooperate with the INS. After all, in many instances there is no legal obligation to do so. Several factors promote at least partial dependence of airline personnel on inspectors and thus facilitate a situation of mutual dependence and cooperation.

Table 1. Types of Airline Cooperation

Types of Cooperation	Examples
Skills and goods	Language interpretation for another airline's passenger; occasional office supplies
Revenues	Turning over inadmissible passengers' fares to other airlines for rerouting purposes
Equipment	Transporting other airlines' inadmissible passengers
Personnel services	Obtaining information from relatives of passengers sent to secondary inspection; locating luggage; "quickly" making removal arrangements

First, in a job with a high degree of emphasis on "passenger facilitation" or smoothing the way for passengers to reach their destination, access to special inspection services is useful to airline personnel. In the case of infirm or ill passengers, each airline would like special inspection handling (such as not requiring their client to wait in the primary inspection lines or having an inspector conduct the inspection on the plane).

Second, airlines particularly recognize the value of good working relations with inspectors with respect to passenger facilitation in situations in which the INS has greater latitude to ignore airline requests. For instance, an airline administrator may be coming into the United States and local airport personnel may want inspectors to provide VIP treatment to make them "look good" to their boss. Or an airline manager's family, or friends of an airline representative, or important travelers (e.g., Dr. Suzuki of the famed Suzuki School of Music or company CEOs) may be arriving, and an anticipated extended wait for primary inspection may lead an airline to want inspectors to give expedited processing to the individual.

As one representative of a large European airline described their working relations with the INS.

> It happens in a blue moon. . . . It is not much money [to reroute their passenger on another airline]. . . . We are all working in this area and if our boss comes from [European city] or there is a sick passenger, we ask the inspectors to help us.

Third, another factor promoting cooperation is that airlines cannot afford to isolate themselves from the issue of overnight detention of their passengers because airlines get calls of con-

cern and complaints from detainees' relatives and risk possible negative publicity from any untoward event that may occur.

Finally, personnel from certain airlines prefer that returnees pay for their tickets home. If the returnee did not arrive with a return-trip ticket, they want an inspector to search the individual for any concealed money the individual might have to pay for the ticket.

Airline personnel consequently have an interest in helping inspectors and extend their cooperation in several ways besides helping with rerouting of returnees. Airlines provide interpreter services to the INS. The INS does not have interpreters at the airport, and among inspectors relatively few different foreign languages are spoken. Although having airline personnel interpret for their own passengers serves an airline interest in passenger facilitation, inspectors become indebted to airline personnel when they agree to interpret for *passengers other than their own.* Cooperating can be inconvenient. It reduces the number of airline staff members available to meet flights or may require reservation desk or office staff to be pulled away from their normal work.

Airline personnel also serve inspectors' interests by filling out passengers' entry documents, locating luggage of passengers sent to secondary inspection as well as soliciting information for the agency from family and friends in the airport arrival area, and quickly making removal arrangements for inadmissible travelers. These are important services for inspectors—lightening their workload, facilitating questioning, reducing complaints to the agency (from citizens or legislators) about inspection delays, and avoiding overnight detentions. These, too, also serve an airline interest in passenger facilitation. But airline personnel have discretion to be more or less energetic in assisting inspectors.

Thus, while providing resources can prove inconvenient, costly, time-consuming, and even at times risky to airlines, these resources are recognized as commodities of value to inspectors and knowingly extended by airlines with the expectation of some future benefit to themselves.

B. Immigration Service

Inspectors provide two types of favors to encourage airline cooperation.[11] First, there are "professional courtesies." These courtesies are largely in the form of expedited inspections. The

[11] When one imagines an exchange relationship that is highly fine-tuned to airline interests, one can envision other possible kinds of favors by inspectors. This study does not preclude their existence, but they were not revealed during the study. For example, is immigration reporting of airline violations (such as transporting a person who has an expired visa, a violation that subjects the airline to a possible fine) affected by the larger mutual exchange of favors and services in the setting? Because of the difficulty of researching this and other sensitive subjects, some questions remain unanswered.

well-understood quid pro quo nature of these inspections is illustrated in a supervisor's comments:

> [W]e can give certain people VIP treatment. There was a station manager whose boss was coming in, and we gave him the VIP treatment. That made him look good. Or the person's wife and children are coming in and it's very crowded and there are long waits, he would come to us and ask if we could do a special inspection, and we did. I call it professional courtesy. . . . I will call him up and say to him that they need to take a passenger that's missed a flight. (Feb. 1990)
>
> [Talking about an airline that had provided interpreters for another airline's passengers] If the [airline's] manager comes in and there is a long line, I am going to give him preferential inspection here because they helped us . . . a lot of times when they shouldn't. . . . You have to cooperate with each other. The Service is not an entity by itself. (March 1990)

The officer further illustrated his point by mentioning the time they ran out of copy paper and an airline brought them a supply.

The exchanges generally are not manifested in the immediate swapping of privileges in particular cases. Instead, favors and services extended are either repaying help given in the past or building a treasure chest of goodwill to be drawn on later; and benefits or services accepted are understood as obligating the party to later return the favor.

During the research, the acceptable boundaries of these favors were still being tested, challenged, and freshly articulated. Requests for services sometimes were viewed as unreasonable or illegitimate. From an INS perspective, some airline requests are unreasonable because they potentially open the floodgates to other demands. For instance, a supervisor denied a request for expedited processing of an *entire flight* when passengers had been delayed in leaving Europe and needed to make connecting flights. The agency, he said, had not created the delay and such visible preferential treatment could mean that they would "have to do that for everyone."

Inspectors also learn about the limits of airline goodwill. In one case, a major airline was "burned" when transporting another airline's returnee—the returnee missed his connecting flight in Europe and the airline had to pay for housing, food, and guard service for several days. The airline's station manager advised an inspector that such requests probably were outside the limits of what the airline would be willing to do in the future.

Inspectors' favors are given with the expectation that they will be repaid by airline personnel. Occasionally inspectors face uncooperative behavior. In the following instance, an inspector encountered an airline representative who was reluctant to turn over the returnee's round-trip fare to another airline. This led the inspector to threatened to expose the airline representative for failure to cooperate.

> "This is a female. We don't like her in detention. It could fall back in your lap." The airline representative asked what he meant. The inspector responded, "If there's an inquiry or congressional, it will fall back in your lap if TWA or another airline was willing to take her today." Later to me he added the following: "If we get a congressional and it turns out there was another airline that could have taken her, I'm going to tell them. I'm not going to take the blame for this. [The airline] wants the revenue." (Dec. 1988)

This threat is like those reported elsewhere when an organization with meager resources to exchange for needed services extracts another organization's cooperation in exchange for "the decision not to carry through on the threat" (Emerson 1969:75).

A second favor inspectors can provide airlines is the employment of state power for private interests. Inspectors' exchange relations with airlines occasionally subject them to pressures by airlines to detain, interrogate, and search arriving foreign nationals—a special power sometimes of considerable value in protecting an airline's financial interests.

Airlines seek inspectors' powers to search in several circumstances, including searches for a returnee's "hidden" or "underreported" money that could used for return-trip fare. For example:

> Inspector 9 asked the Iranian male to "take everything out of your pockets." Perusing the items the officer exclaimed, "All the money you have is $43? Gee willikers. You have a one-way ticket." To the airline representative he remarked, "Another one." The foreign national was told he could not enter (his passport was altered). He agreed to return home. A few minutes later I noticed Inspector 12 walking the returnee off to another room. Joining him was the airline representative who, catching my eye, said: We're going to pat him down, see if he has any money. How else are we going to get money for the ticket?" (April 1988)

Occasionally airlines ask the INS to use its coercive powers in other situations. For instance, an airline informed the INS at the airport that two U.S. citizens traveling to the United States had purchased their tickets with a credit card not belonging to them. The airline asked the INS to detain the travelers because the airline had accepted the tickets and boarded the Americans, putting the matter outside the jurisdiction of the state police. But the INS viewed the demand as "unreasonable." As one supervisor said, "Can you imagine that? That's the kind of thing they want. They're there to make money."

Such use of state coercive powers for private interests was not condoned by the Port Director or supervisors. As one supervisor explained:

> This is not appropriate. It would exceed the authority of inspectors. We can search for social security cards or something like that. We're not here to search for the airlines. I wouldn't do it. Recently we had a case where the alien mentioned they had $700 and then said they said they had only $300. The representative said, "Where's the $400?" and they said to us to search, and we said no. (Feb. 1990)

As in other settings, strategies to nurture or cultivate relations with other institutions in the environment are not problem-free (Emerson 1969:29; Pfeffer & Salancik 1978:282). Although searches for airlines were not condoned by inspectors' superiors, they were nevertheless a commodity in the exchange relationship. Such services, though, were not by any means guaranteed to an airline; they required the cooperation or acquiescence of a willing inspector. Some, but not all, inspectors were willing to do this, and thus not all requests (or hints) for a search lead to one taking place.

Because of the relatively small number of searches observed (and the sensitivity of the subject), there is insufficient data to explain variations among inspectors. Behavior was affected to some extent by staff training and supervision. The agency was staffed by some less experienced inspectors, and the "slippage" between supervisors' views and inspectors' actions was a product of inadequate communication or training (Lipsky 1980:16). A few inspectors, however, were aware of higher-ups' views but did not share them. Their behavior was invisible to supervisors; they conducted the "pat down" behind closed doors and quickly to avoid detection.

V. Cooperative Relations in Context

This study of a third-party liability system provided an opportunity to explore a feature of the environment of government agencies that has not been dealt with extensively in the literature—situations in which the government is particularly dependent on private enterprise to accomplish governmental goals.

The research suggests that government's use of private enterprise in enforcement at times can have unintended and undesired consequences for the agency. Rather than simply an enforcement strategy being introduced into a setting, third-party liability systems can become entwined with the organizational circumstances of officials and become occasions for mutual dependencies and exchange between public and private entities that affect in important ways government's handling of cases.

The case study raises an important question. Do such relations exist in other settings where the government relies on private enterprise to assist in public enforcement? Data suggest that

contexts differ widely in the existence and scope of such exchange behavior.

To understand why variations exist, consider the differing work concerns, risks, and opportunities that parties confront. First, in some enforcement contexts *practical work concerns and conditions* lead the government to depend on third-party enforcers for special favors. The immigration context is such a setting. Inspectors' high priority of avoiding detentions increased their dependence on the goodwill of airlines for removal assistance the airlines were not obligated to provide. Importantly, much opportunity existed in the context for developing working relations. Day in and day out, inspectors and airline personnel worked in tandem, and the routine work demands of both (processing sick or elderly passengers, returnees, etc.) meant that there was a *high probability of future needs and continuing interaction.* Levi (1991:115) presents a somewhat similar picture in the context of bank deterrence of money laundering. Enforcers viewed banks as "repeat players" that they had an "interest in cultivating" because good relations were essential to current and prospective special needs.

In contrast, to take an extreme case, the likelihood of the development of mutually dependent relations is negligible where businesses enforce no-smoking rules. Kagan & Skolnick (1993) describe this third-party enforcement area as one in which there is considerable public support for restrictions—customers and workers themselves will even seek to deal with violators. There was no evidence that municipal health inspectors were in regular contact with the regulated entities (there were few complaints a year requiring enforcement action) or that they were dependent on businesses for assistance beyond that which restaurants and firms were legally obligated to provide. Likewise, we might expect exchange relations to be minimal or nonexistent where private enterprise is long accustomed to performing enforcement duties in contexts where there is little reason for regular contact with enforcers (e.g., employer withholding of wages for taxes).

Second, the more *visible, resource consuming, or otherwise risky the request,* the less likely it seems that one party can rely on the other's cooperation. Levi's (1991:115) study suggests that banks were particularly reluctant to help enforcers with freezing client accounts, an action that was highly visible to a client and legally risky compared with other types of cooperation. In the immigration setting, cooperative exchanges also took place within limits. Inspectors refused to conduct VIP processing for an entire flight because it opened the door to similar requests by other airlines which made it their business to know how inspectors exercised their powers. Likewise, airlines held inspectors' requests in check—threatening not to accept rerouted passengers if doing so exposed them to significant out-of-pocket expenses difficult to justify to superiors. Exceptions highlight the general observation.

Unauthorized but relatively difficult to detect searches of returnees were conducted by some inspectors for airlines.

Finally, in some law enforcement contexts, government officials' preferences are relatively compatible with third-party enforcers, and thus opportunities for cooperative relationships are more likely. In the inspection setting, for instance, there is probably a greater *community of interest* between the INS and airlines in moving and disposing of cases than exists in some other third-party liability contexts. Compare, for example, the situation in which a securities underwriter is desperate to conclude a public offering of a corporate security while the Securities and Exchange Commission is not—having a far greater interest in reviewing the offering and ensuring that a fraudulent deal is not in the works. Cooperation also may be relatively lower in the area of regulation of money laundering. Money launderers are "good business" for banks, providing needed resources for liquidity and overhead. Banks have much incentive to drag their feet when it comes to more discretionary activity, such as how thoroughly potential customers are questioned, particularly since it is thought by banks that "critical inquisition . . . will simply displace them to rival financial institutions" (Levi 1991:112).

Compelled third-party participation in enforcement is a growing phenomenon but one for which there is relatively little empirical research about it effects on government behavior. By continuing to explore the conditions shaping the emergence of public-private exchange relations and dependence, our full understanding of the environment of enforcement will be enhanced, in all of its facets and dimensions.

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