Air Marshals: Undercover and Under Arrest

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> Shawn Nguyen bragged that he could sneak anything past airport security using his top-secret clearance as a federal air marshal. And for months, he smuggled cocaine and drug money onto flights across the country, boasting to an FBI informant that he was "the man with the golden badge."

Michael McGowan used his position as an air marshal to lure a young boy to his hotel room, where he showed him child porn, took pictures of him naked and sexually abused him.

And when Brian "Cooter" Phelps wanted his ex-wife to disappear, he called a fellow air marshal and tried to hire a hit man nicknamed "the Crucifixer."

Since 9/11, more than three dozen federal air marshals have been charged with crimes, and hundreds more have been accused of misconduct, an investigation by ProPublica has found. Cases range from drunken driving and domestic violence to aiding a human trafficking ring and trying to smuggle explosives from Afghanistan.

The Federal Air Marshal Service presents the image of an elite undercover force charged with making split-second decisions that could mean the difference between stopping a terrorist and shooting an innocent passenger.

But an examination of police reports, court records, government reports, memos and e-mails shows that 18 air marshals have been charged with felonies, including at least three who were hired despite prior criminal records or being fired from law enforcement jobs. A fourth air marshal was hired while under FBI investigation. Another stayed on the job despite alarming a flight attendant with his behavior.

This spring, after U.S. embassies, airlines and foreign police agencies complained about air marshal misconduct overseas, the agency director dispatched supervisors on international missions.

From 33 to 3,000

Before 9/11, the Air Marshal Service was a nearly forgotten force of 33 agents with a $4.4 million annual budget. Now housed in the Transportation Security Administration, the agency has a $786 million budget and an estimated 3,000 to 4,000 air marshals, although the official number is classified.

Only a fraction of them have been charged with crimes, and some degree of misconduct occurs at all law enforcement agencies. But for air marshals, the stakes are uniquely high. Their beat is a confined cabin with hundreds of passengers in firing range. There are no calls for backup at 30,000 feet, putting a premium on sound judgment and swift action.

Since 9/11, air marshals have taken bribes, committed bank fraud, hired an escort while on layover and doctored hotel receipts to pad expenses, records show. They've been found sleeping on planes

and lost the travel documents of U.S. diplomats while on a whiskey-tasting trip in Scotland.

The Air Marshal Service says it has the highest firearms qualification standard among federal law enforcement agencies. Yet police and court records show some marshals have used their weapons imprudently:

In 2003, a New York air marshal pulled his gun in a dispute over a parking space. Another failed to turn over his ammunition on an international trip, as required by diplomatic agreements, and was detained by Israeli airport security in 2004. That same year, a Las Vegas air marshal "discharged" his gun in a hotel room, penetrating a wall and shattering a mirror. In April, a Phoenix air marshal fired his during a fight outside a bar.

Still another left his handgun in the plane's lavatory in 2001, according to court papers. He realized it was missing only after a teenager found it.

Robert Bray, director of the Air Marshal Service, says the misconduct cases don’t represent the exemplary work done by the vast majority of air marshals.

"We can reassure the public that these dedicated professionals go out there every day and put their lives on the line to make sure that everyone is safe," Bray says. “I don’t want them to be tarred by…a few allegations from a few years ago."

Bray and other officials declined to discuss specific cases, citing privacy laws.

Under government policies, air marshals found guilty of felonies were fired or forced to resign. But 10 air marshals convicted of misdemeanors, mostly drunken driving, were allowed to keep their jobs. And even after notice that background checks were poor, the agency failed to root out air marshals with troubled pasts before they committed felonies.

Current and former air marshals say the misconduct cases show that the agency continues to struggle with policing its own ranks, a problem that first surfaced in its post-9/11 buildup. Since then, the service has had three leaders, been moved four times to different parent agencies and been blasted by Congress for, among other things, failing to cover enough flights and enforcing a dress code that many air marshals felt blew their cover.

Don Strange, the former special agent in charge of the Atlanta office and a finalist to lead the agency in 2006, says turmoil and low morale have led good air marshals to quit and made it harder for managers to maintain the highest standards.

"It starts with the urgency (to hire and train recruits) in a ridiculous amount of time," he says. "Things start to spin out of control."

Recruiting Rush

Under heavy congressional pressure, the government rushed to hire thousands of air marshals after 9/11. Partly motivated by enduring images of planes hitting the World Trade Center, the Pentagon aflame and a charred Pennsylvania field, 200,000 applied. With limited spots, the Air Marshal Service had an acceptance rate of about one in 40 -- four times as tough as Harvard's.

"We're getting the cream of the crop," then-TSA spokesman David Steigman told reporters. "The people who are going into the air marshal program are the best of the best."

But that wasn't necessarily the case.

Shortly after joining the agency, three air marshals were indicted in corruption investigations at their former police departments. One, Louis Pirani, was hired in early 2002, despite being under FBI investigation for months on suspicion of skimming profits from drug couriers as a sheriff's deputy in Arkansas. He eventually was convicted and went to prison for lying to investigators.

Just two weeks after joining the air marshals in April 2002, Shawn Nguyen filed for bankruptcy, claiming $200,000 in debts. Three years later, the former narcotics officer began carrying cash and cocaine past airport security for a man he knew as a drug trafficker, but who'd already turned to the FBI.

"I don't care what's in the [expletive] package, you know what I mean? Just tell me how much it is and what I'm getting in money," Nguyen told the informant in a recorded conversation recounted in court records. "I'm the man with the golden badge." Nguyen was sentenced to seven years in prison.

Before becoming an air marshal, Brian Phelps had worked at five small police departments in Alabama, but none for more than a year. He was fired from the job he held longest for losing his temper and acting "irrationally" before thinking things through, prosecutors said. He quit another job in lieu of being fired for misconduct while on duty, says Mayor Paula Phillips of Douglas, Ala.

In 2005, Phelps, known as "Cooter" among fellow air marshals, told a colleague that he wanted to see his wife's picture on a milk carton, court transcripts say. He asked the air marshal, who'd worked in Chicago's housing projects, if he knew of anyone who could help. The colleague said he did: The Crucifixer. The colleague told the Air Marshal Service, and after numerous contacts with FBI agents posing as hit men, Phelps was arrested and sentenced to 25 years in prison.

Another air marshal, David Kellerman, was arrested on felony charges for dealing in stolen property in 1983 and for carrying a concealed weapon in 1990. Although judgment was withheld in both cases, Kellerman was sentenced each time to probation, according to Florida Department of Law Enforcement records.

In September, Kellerman -- a Green Beret and Purple Heart recipient -- was sentenced to 27 months in prison after being caught hiding a cache of weapons that included AK-47s and a grenade launcher stolen while he was on leave for a military tour in Afghanistan. Kellerman told investigators that he was bringing back training aids for his job as an air marshal firearms instructor.

Background Checks

Because air marshals receive top-secret security clearances, background checks are supposed to include criminal history searches going back 10 years, credit reports and interviews with relatives, neighbors and employers. Checks are conducted by the federal Office of Personnel Management, a separate agency, which forwards results to the Air Marshal Service.

Kellerman's charges predated the 10-year check period. But in Phelps' case, three officials -- Justice Ashley, former assistant police chief in Guntersville, Ala.; Chad Long, the current Douglas police chief, and Phillips -- say they couldn't recall the air marshals contacting anyone to make a background check. It’s unclear whether Pirani's FBI scrutiny and Nguyen's bankruptcy were missed or disregarded.

A 2004 report (PDF) by the Department of Homeland Security's inspector general also flagged gaps

in the background checks. The report cited 504 applicants who were recommended for hire and awaiting offers, noting that nearly a third had potentially disqualifying problems, including past arrests, bankruptcies or disciplinary problems.

"Many (air marshals) were granted access to classified information after displaying questionable judgment, irresponsibility and emotionally unstable behavior," the report said.

This summer, after a Houston TV station reported that three air marshals had been charged with drunken driving, including one with a prior DWI conviction, Rep. Ted Poe, R-Texas, grilled TSA Administrator Kip Hawley at a congressional hearing.

In a subsequent letter to Poe, Hawley said that 28 air marshals had been hired with misdemeanors on their records, and nine more kept their jobs after a drunken-driving conviction.

TSA policies state that employees who drive drunk "demonstrate a disregard for TSA's mission" and raise questions about their ability to deal with security threats. Yet the policy allows drunken driving to be punished with a letter of reprimand, one of the lowest penalties.

By comparison, the FBI mandates at least a 30-day suspension without pay for drunken driving. Although other federal police agencies generally allow for flexibility in discipline, many big-city departments, such as New York, Los Angeles and Chicago, mandate a suspension or loss of pay for a first offense.

"It's more serious than a letter saying, 'Don't do it again, try to do better,'" Poe said in an interview. "I don't think a person should have a criminal record and keep their job with the Air Marshal Service -- including a DWI."

The flying public agrees. In a national survey for ProPublica conducted by Harris Interactive, 86 percent of those who'd taken a commercial flight in the past year said it was unacceptable for someone convicted of driving under the influence to become an air marshal. (Check out the complete results (PDF).)

No office compiles uniform statistics on arrests of federal law officers, making it difficult to compare agencies. The 2004 inspector general's report found 753 documented cases of misconduct by air marshals over 20 months, with offenses from sleeping on duty to flunking drug tests.

After the report, the agency said it tightened its background procedures. When misconduct occurred, the agency said, it had acted "swiftly and decisively," terminating 101 air marshals over two years and taking resignations from 32 others.

But problems continued -- Kellerman, Phelps and Nguyen all committed their crimes after the 2004 report. The service declined to say what's been done since to check for cases that fell through the cracks.

Hiring Standards Erode

Over the years, the service has loosened some hiring practices:

In 2002, the agency decided that recruits no longer had to pass a rigorous firearms test requiring them to prove speed and accuracy in close quarters similar to an airplane. The test is still used in training but is no longer a hiring qualification.

In late 2005, the agency began hiring TSA screeners, new college grads and others with no law enforcement experience. The change departed from practice during the 9/11 ramp-up, when air marshals almost uniformly were chosen from law enforcement, such as the Border Patrol, federal Bureau of Prisons and police and sheriff's departments.

Two years ago, officials suspended a requirement that air marshals pass a written psychological test and an interview with a psychologist or psychiatrist. Instead, the agency relies on recruits to self-report mental conditions on medical history forms.

Bray, the director, says the changes did not lower hiring standards and that it's unfair to suggest a TSA screener or a recent college grad could not be up to par after training.

In the ProPublica survey, 87 percent said air marshals should be required to pass a psychological stress test, and 77 percent said they should have prior experience in law enforcement.

Two cases show why psychological testing might be valuable.

Orlando air marshal Marcus Rogozinski was on a mission from New York to Dallas in 2006 when he walked to the galley and showed a flight attendant a book with some pictures of blue crystals, his supervisor, Richard Lozada, wrote in an e-mail introduced at a competency hearing

If she had good thoughts, Rogozinski told her, the water could be turned clear, Lozada recounted. But if she had bad thoughts, it would turn murky.

When Rogozinski went to the lavatory, the alarmed flight attendant walked back to his partner, Paul Steward.

"I can't believe he is able to carry a gun!" she said, according to an account written by Steward.

In 2007, another flight attendant complained that Rogozinski "was talking about all kinds of crazy stuff like outer space," according to a memo from air marshal David Cameron.

"No (air marshal) should have to pay more attention to their partner than to the passengers," Cameron wrote. Afterward, Rogozinski failed a psych exam and was put on leave.

In June, Rogozinski was convicted of bank fraud for trying to cash a $10.9 million check from a woman he said he believed was Cambodian royalty. The money, he told prosecutors, was partial settlement for a "personal lawsuit" after he was scratched by the woman's cat.

Then there's the case of Michael McGowan, who joined the air marshals after 9/11. Before he was sentenced to a sex-offenders unit in 2006, his lawyer pleaded with a judge for help for his client. "He is taking the position 'I have a serious problem, I'm sick,'" said attorney Joel Weiss, according to a court transcript.

McGowan had been caught two years earlier trying to buy pornography of children as young as 7 over the Internet. Investigators discovered he'd been molesting a Texas boy since 2002 and had enticed the boy by saying he was staying at a nearby hotel on air marshal business.

Even after his conviction, court records show, McGowan called the boy from prison and engaged him in sexual conversations.

‘Impact on Our Reputation’

Earlier this year, a rash of complaints about air marshal misconduct on overseas missions set off new alarms.

The agency would not provide details of the incidents. But ProPublica obtained an April 15 internal memo from Dana Brown, then director of the Air Marshal Service, warning the rank and file that the behavior threatened to create diplomatic problems for the agency on international routes, "some of the most important we fly."

"In foreign countries, some have behaved in a manner that may jeopardize our ability to continue to operate effectively," Brown wrote. "The negative impact on our reputation and that of the American government has the potential to cause significant harm."

To put a stop to it, Brown ordered "Quality Assurance Teams" of supervisors to monitor air marshals on international missions and act as liaisons with host countries.

"These are highly trained federal air marshals with guns on planes. If they need chaperones, then we’re all in serious trouble," says P. Jeffrey Black, a Las Vegas air marshal who in the past has testified before Congress about agency policies in 2004.

Bray says the agency was not able to substantiate the allegations of overseas misconduct and that Brown was simply being proactive.

Black says the job shouldn’t be entry-level. New hires need the experience and judgment learned from making decisions on the street, he says.

Poe, a former judge and prosecutor who sits on the House aviation subcommittee, says the unique nature of the job demands the highest recruiting standards. He says he wants to address the issue of air marshal misconduct further when the new Congress is seated next year.

Air marshals "all have to be of high quality, not most of them," Poe says. “We can't take a chance that they will make a mistake.”

Six of Cincinnati air marshal David Slaughter's colleagues wrote character references for him after his arrest in 2006, according to court records.

"A man of impeccable character," wrote one. "An outstanding employee." "Polite," wrote another. "His character around the office is one of example." "Dave's demeanor and professionalism reflect favorably on the field office as well as the agency as a whole."

Slaughter was convicted of abducting a female escort during a July 2006 layover in the Washington, D.C., area.

In an interview, he said he hired the escort because he was having marital problems and wanted a woman’s perspective. As they talked about how to spend their time, he went into the bedroom of his hotel suite and returned with his gun and handcuffs. The woman tried to flee, but he prevented her from leaving and unplugged the phone, prosecutors said.

The two struggled, and when the woman got the door open, Slaughter pinned her to the ground, held her in a chokehold and handcuffed her, according to prosecutors and the woman, Cherith

Zorbas.

Despite his colleagues' support, Slaughter lost his job and got 15 days in jail. Zorbas called the outcome "horrific," and said the public should be scared.

"He's the only one on an airplane with a freakin' weapon," she said, "and he's supposed to have it to be protecting us."

ProPublica's Jamie Wilson contributed to this story.

http://www.propublica.org/feature/air-marshals-undercover-and-under-arrest-1113
