

## **Bag Check II**

### **by Dan Jacoby**

In my last essay ("Bag Check", July 24), I discussed the futility of Mayor Bloomberg's order to have police stop people at random as they try to get on the subway and check their bags. This essay deals with the constitutionality of this issue.

The fourth amendment to the U.S. Constitution states:

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

This begs the question, what constitutes a "reasonable search"?

The only clues we have directly from the Constitution are in the remainder of this amendment, which requires probable cause for a warrant, and a description of exactly what is to be searched and seized. In this case, the "probable cause" is given as the possibility that terrorists will bring bombs into the subway in an attempt to kill people. So they're clearly searching for bombs, bomb parts, and bomb materials.

In "Bag Check", I showed why the current system has absolutely no chance of stopping, or even dissuading, even one terrorist. Furthermore, the cost of covering every entrance to every subway station (which still wouldn't completely stop terrorists, but might at least slow them down) is prohibitive. Therefore, since the one reason given for doing these checks clearly does not apply, there is no reason for the police to check the bags.

Is it illogical to conclude that if the only reason for a search is totally ineffective and therefore illegitimate, the search itself is unreasonable and unconstitutional?

Perhaps. I am neither lawyer nor a constitutional scholar, so I suppose a case could be made that a search performed for no reason is reasonable anyway. I can't imagine the argument used, but in an age where we go to war for no reason but a bunch of lies, and the liar-in-chief manages to stay in power anyway, I can't rule anything out.

The constitutionality of this procedure will probably not be tested. By the time any case finds its way through the courts, the bag checks will certainly be dropped, or at least seriously modified. The Supreme Court has a history of refusing to consider cases when the situation arising from the dispute no longer applies.

Meanwhile, however, I have been riding the subways extensively since this new procedure was announced, and I have yet to see any police doing searches. If I ever do, I will resolutely refuse to be searched, and also refuse to leave. I will stand up for my constitutional rights, for my freedom, and for courage in the face of terrorism from without and tyranny from within.

I may be writing my next column from a jail cell. When you visit, make sure not to bring any bags.