

Search Me – Not! **by Dan Jacoby**

Federal Judge Richard Berman ruled yesterday that the random, suspicionless bag searches being conducted within the NYC subway system are, in fact, constitutional. His 41-page ruling makes it crystal clear that he wasn't about to let the facts get through the dazzle of uniforms in his eyes. The ruling is incompetent.

There is no doubt that these bag searches will never catch, stop, deter, or materially delay even one terrorist. There is no doubt that anyone with a bomb can simply walk to the next subway station and get in. Four months of searches have failed to catch anyone carrying anything illegal. Why? Because anyone with drugs, guns, bombs, or anything else that might be seized knows that he or she can get in at the next station. Would-be terrorists aren't stupid; they understand this too.

So why did judge Berman rule that these searches are legal? The clue comes from his reliance on the city's "experts" (most of whom wear uniforms) over the experts called by the New York Civil Liberties Union (NYCLU), most of whom do not. Berman never claims that the city's witnesses say anything relevant to the situation; he just takes it for granted that they obviously know best.

Perhaps we should just take Donald Rumsfeld's word for it that we have plenty of troops in Iraq. After all, as Secretary of Defense he "knows best", doesn't he? Or perhaps we should take George W. Bush's word for it that more tax cuts will balance the budget – doesn't he "know best" as well?

Meanwhile, the mainstream media is mired in a morass of mediocrity. Not one member of the press has bothered to ask just exactly how these bag searches will stop terrorism. Not one self-described "journalist" has questioned either Mayor Bloomberg or Police Commissioner Kelly. It seems that everyone with a pad and pencil or a television camera is just taking their word for it too.

The whole point of a free press is to question the actions, words and motivations of our political leaders. By asking the tough questions, digging for the facts, and reporting the truth regardless of political consequences, the news media are our society's first line of defense against tyranny.

They are failing in their duty.

The public court system, by providing a forum where all sides of an issue can be openly aired, is our second line of defense. By ensuring that government does not overreach its constitutional limitations, the process of judicial review protects us.

So far, the court system has failed as well.

I say "so far," because it is certain that the NYCLU will appeal this patently stupid ruling, and the court system will have an opportunity for self-correction. Perhaps, as this case works its way up the ladder, the media will correct itself as well.

Meanwhile, any time a police officer, or anyone, tries to search our bags without a specific suspicion of illegal activity, we should refuse. We are, after all, Americans!