



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

FEDERAL COURT RULES THAT SUBWAY BAG SEARCHES ARE CONSTITUTIONAL

JUDGE ASSERTS THAT “THE NEED TO PREVENT A TERRORIST BOMBING...IS A GOVERNMENTAL INTEREST OF THE HIGHEST ORDER” AND THAT RANDOM SEARCHES “HELP DETECT AND DETER A TERRORIST ATTACK AGAINST NEW YORK CITY’S SUBWAY SYSTEM”

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New York, Dec. 1, 2005 – In a legal victory that will help protect New Yorkers from terrorist violence, United States District Court Judge Richard M. Berman ruled today that subway bag searches are constitutional. The decision recognizes the importance of random bag inspections in deterring terrorists from bringing explosives into the transit system, and increasing the security and safety of the millions of people who use it daily.

“The judge gave great attention to all the evidence and the applicable law, and reached the right decision for New York City. This is a critical ruling that will help the NYPD continue to provide security in the transit system for all those who ride the subways,” noted Corporation Counsel Michael A. Cardozo, whose office litigated the case for the City.

“The City is pleased that the Court has upheld the constitutionality of our counter-terrorism efforts,” Police Commissioner Raymond W. Kelly noted. “Common sense prevailed.”

Gail Donoghue, the Law Department’s Special Counsel, and the lead case attorney, added: “I am very happy with the ruling. The trial team brought to the court a full record on which the judge could base his decision. Judge Berman analyzed all of the evidence and the law, and issued a through and well-reasoned decision.”

The NYPD started the Mass Transit Bag Inspection Program, also called the Container Inspection Program, in late July 2005, after terrorist attacks on transit systems in Madrid, Moscow and London. Under the program, the NYPD conducts random visual bag inspections throughout the City’s transit system, in an effort to deter and detect terrorist attacks. Five plaintiffs, represented by the New York Civil Liberties Union (NYCLU), sued the City in a case called *MacWade v. Kelly*, claiming that the searches violated the Constitution.

During the bench trial in this case, the City presented expert testimony from three counter-terrorism experts, including Richard Clarke, a former senior White House advisor on issues of intelligence and counter-terrorism. All of the City’s experts testified that random bag inspections are an effective way to detect and deter terrorist attacks, even if people are allowed to walk away from stations where bag inspections are taking place. The City’s experts testified that the random nature of the inspections adds an element of unpredictability that is likely to undermine a potential terrorist plot against the transit system.

In upholding the inspection program, the District Court found that the NYPD's new counter-terrorism strategy fits within the "special needs" exception to the usual Fourth Amendment rule requiring reasonable individual suspicion before performing a search. Applying that exception, the District Court said that the bag inspections address a real and substantial threat to the transit system, implicate commuters' privacy interests only minimally and are a reasonable method for detecting and deterring terror attacks.

Judge Berman wrote in his decision that "the Container Inspection Program is an effective measure to help deter and detect a terrorist attack against New York City's subway system." Later in the decision, he also noted, "The need to prevent a terrorist bombing of the New York City subway system is a governmental interest of the very highest order."

In addition to Gail Donoghue, the City's legal team included Peter Farrell, David Hazan and Jay Kranis of the Law Department's Special Federal Litigation Division and Scott Shorr of the Appeals Division.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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