

(2004)

ANN STAUBER and the NEW YORK CIVIL LIBERTIES UNION, Plaintiffs,

v.

THE CITY OF NEW YORK, et al., Defendants.

JEREMY CONRAD, Plaintiff,

v.

THE CITY OF NEW YORK, et al., Defendants.

**JEREMIAH GUTMAN and the NEW YORK CIVIL LIBERTIES UNION,
Plaintiffs,**

v.

THE CITY OF NEW YORK, et al., Defendants.

[03 Civ. 9162 \(RWS\), 03 Civ. 9163 \(RWS\), 03 Civ. 9164 \(RWS\).](#)

United States District Court, S.D. New York.

July 27, 2004

ORDER

ROBERT SWEET, Senior District Judge.

The opinion issued in this case on July 16, 2004 (the "Opinion") directed the parties to submit a proposed preliminary injunction. See [Staubert v. City of New York, 03 Civ. 9162, 9163, 9164, 2004 WL 1593870, at *34 \(S.D.N.Y. 2004\)](#). While the parties are in agreement as to most terms, there is a dispute over the language enjoining the bag search policy.

As an initial matter, the Opinion omitted "or" between the words "demonstration" and "without" in the second paragraph on page 78. The Opinion is hereby amended to add "or" to correct the omission.

The defendant the City of New York (the "City") submitted an affidavit of David Cohen, Deputy Commissioner for Intelligence for the New York City Police Department ("NYPD") ("Cohen") on July 23, 2004 in connection with its proposed preliminary injunction. Cohen is well qualified and has a background in intelligence with the NYPD and the Central Intelligence Agency ("CIA"). The City, based on his submission, has proposed "credible" to modify the threat to public safety referred to in the Opinion as one of the conditions under which the bag search policy would not be enjoined. In support of the City's position Cohen has cited the use of knapsacks in the recent bombings in Madrid. The plaintiff New York

Civil Liberties Union ("NYCLU") has proposed "specific," the word contained in the Opinion, as the modifier to be employed in the injunction.

The bag search policy as described in the Opinion has been employed by the NYPD only in connection with demonstrations under particular circumstances, and, to date, as indicated by the record, not in connection with any other possible threats to public safety. The circumstances of the Madrid bombings differ from an organized public demonstration which was the subject of the Opinion. A bag search in the context of the exercise of constitutionally protected speech calls for a different analysis.

"Specific," as used in the Opinion, was intended in the sense of fixed and distinct, or definite, rather than indefinite or generalized. Cohen's submission, however, establishes that "specific" in the intelligence community would imply a time and place identification of a potential threat that would be overly restrictive. Accordingly, the more traditional probable cause standard for searches will be adopted in the preliminary injunction to be entered simultaneously with this Order (the "Preliminary Injunction") rather than either "specific" or "credible."

The City has requested a further hearing in the event that its proposed form of preliminary injunction is not adopted. For the reasons set forth above, the Preliminary Injunction does differ from that proposed by the City. Notwithstanding, the City's request for a further hearing is denied.

The record in this proceeding is closed, the issue between the parties is a narrow one, and both the City and the NYCLU have made submissions and arguments on the subject. In consequence, any further delay which would result from an additional hearing is unwarranted.

The City has also requested a stay related to the bag search policy portion of the Preliminary Injunction to permit an application to the Court of Appeals. Its request is granted, and paragraph 4 of the Preliminary Injunction is stayed for ten days from the date of this Order for that purpose.

It is so ordered.