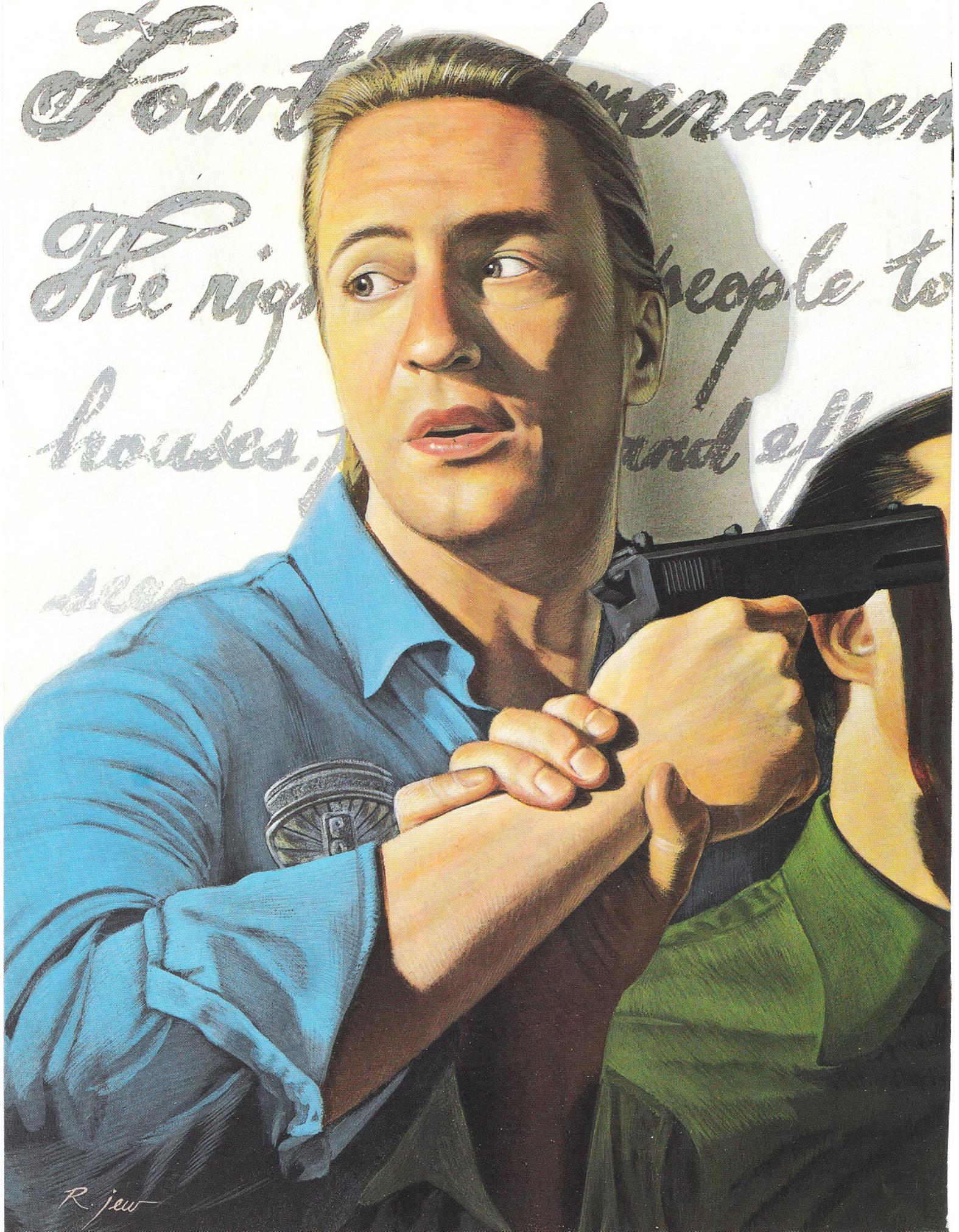


of
Fourth Amendment

The right of people to
houses,



R. Jew

American Jihad

Losing Battles in the War on Drugs

Report by James W. Harris

The only victories in the White House's
dope wars have been against the
Constitution and you.



Illustration by Robert Jew

DRUG WARS

Every American citizen is liable to body and luggage searches prompted by no more legal justification than simple curiosity.

Responding to an informer's tip that Newark, California, factory worker Bok Kwan Kim stored amphetamines at his residence, narcotics officers break down the door of the tiny, off-street apartment. Kim is handcuffed and beaten unconscious. His wife is handcuffed and shoved to the floor. As their children scream, the officers tear the apartment apart. Every piece of furniture is broken. Every dish is shattered. The only item in the house left intact is a picture of Jesus Christ on the wall. No drugs are found.

Armed with a search warrant based on a 20-month-old tip, police use a battering ram to smash into the Hudson, New Hampshire, home of 34-year-old machinist Bruce Lavoie. When the terrified Lavoie rises from his bed to defend himself against what he perceives to be nighttime intruders, police shoot him to death while his five-year-old son watches. The apartment is ransacked. Found: one marijuana cigarette.

A 47-year-old plumber is under a customer's sink fixing a clogged drain while, unknown to him, undercover offi-

cers purchase two kilos of cocaine from the owner of the house in the living room. The property owner and the property owner's mother, who had hired the plumber that day, both testify in court that the drainsman knew nothing about the drug deal. Nevertheless, the plumber is convicted of trafficking and conspiracy to traffic in cocaine and sentenced to a mandatory 15-year imprisonment.

* * *
The Fourth Amendment to the United States Constitution guarantees U.S. citizens the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. It further declares that search warrants cannot be issued without probable cause, and that such warrants must particularly describe the place to be searched and the persons or things to be seized.

"The Fourth Amendment was written for the purpose of setting up a protective barrier between individuals and government," explains Nancy Hollander, president of the 25,000-member National Association of Criminal Defense

Lawyers. "If we lose it, what we lose is our protection against a police state."

Thanks largely to recent Supreme Court decisions facilitating the White House war on drugs, however, warrantless searches of people and private property have become standard police procedure. The Fourth Amendment, for all practical purposes, no longer applies to much of our lives.

"We don't have much Fourth Amendment left," admits Hollander. "The bottom line is that the Fourth Amendment shrinks day by day."

* * *
In 1990s America, SWAT teams in helicopters can hover a few hundred yards over private homes, searching with high-beam searchlights for signs of marijuana growth—no warrant needed. Unseen in outer atmospheric orbit, infrared cameras of military surveillance satellites seek out and identify homes that emit unusual amounts of heat, whose localities are reported to drug-enforcement authorities on the theoretical grounds that the owners might be growing pot indoors.

"Open fields" search doctrines allow police and government agents to ignore NO TRESPASSING signs, barbed wire fences and brick walls and enter private fields and woods to search for whatever they choose. No warrant is required. Property owners' demands that such trespassers vacate their premises can be legally ignored. Phones can be tapped and bank records inspected as well, all without probable cause.

Every American citizen is liable to official inspection at U.S. airports, bus terminals and train stations, including body and luggage searches prompted by no more legal justification than simple curiosity. Florida police routinely storm interstate buses and Amtrak trains at layovers in Fort Lauderdale and Palm Beach. Displaying guns and raid jackets, cops block exits, question passengers and "request" to search bags. In a move to end these maneuvers, the Florida Supreme Court cited examples of identical tactics in Nazi Germany, Soviet Russia and Communist Cuba, arguing that consent given for searches under threatening circumstances is clearly coerced and therefore illegal. In spite of this, the United States Supreme Court stuck to its agenda and in June 1991 reversed the Florida court's decision.

Recent civil-forfeiture laws allow officers to seize cars, money and other belongings upon mere suspicion—without warrant, without evidence—that a detainee might be involved in drug trafficking. Cars, houses, boats and cash are regularly seized when even microscopic

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traces of drugs are detected. Drug agents seize millions of dollars in cash from thousands of innocent Americans each year because drug-sniffing dogs indicate the money carries traces of cocaine—even though scientific tests indicate that 80% to 96% of U.S. currency is contaminated with cocaine.

* * *

Over a ten-month period in 1991 the *Pittsburgh Press* investigated thousands of cases of civil seizures, describing a legal massacre of innocent citizens.

•In February 1991 Nashville, Tennessee, gardening contractor Willie Jones went to the Nashville Metro Airport carrying \$9,600 in cash. He had planned to fly to Houston to buy flowers and shrubs for his business. At the Nashville airport Jones was detained by drug agents. He fit their drug courier profile simply because he was black and had paid for his ticket in cash. The police searched him and seized his cash. Even though they discovered absolutely no evidence linking him to controlled substances, he lost his money and, consequently, almost lost his whole business.

"I didn't know it was against the law for a 42-year-old black man to have money in his pocket," Jones told the *Pittsburgh Press*.

•In 1988 Ethel Hylton, a 46-year-old New York City housekeeper and janitor, took her life savings of \$39,120 to Houston, Texas, where she planned to buy a house to get away from the frigid New York winters that aggravated her diabetes. At the Houston airport DEA agents arrested her, searched her bags and strip-searched her person, claiming a drug-sniffing dog had pawed her luggage. No drugs were found. Hylton was never charged with a crime. The drug agents, however, took all but \$10 of her money. She hasn't yet recovered it.

•In Milwaukee, Wisconsin, police seized a 36-unit apartment building because it had become a known drug-dealing site. The seizure came even though the building's owners—who were innocent of drug trafficking—had done everything possible to fight the dealers, including evicting tenants suspected of using drugs, giving master keys to police, informing police of suspected dealers and

hiring two security firms and an off-duty police officer to patrol the building.

* * *

Law-enforcement officials often stop and search cars, travelers and pedestrians based on "drug courier profiles"—a prescribed set of traits and behavior patterns that drug agents say are typical of drug traffickers. However, such "criminal characteristics" have been known to vary considerably.

Researching court documents, *Mother Jones* magazine found that airport drug searches have been triggered because a suspect was carrying new luggage or old; seemed nervous or calm; was buying a round-trip ticket or one-way; was traveling alone or with a companion. A similar study by the *Pittsburgh Press* found searches triggered because the suspect was: among the first people off the plane (he was in a hurry); among the last off the plane (she was trying to appear unafraid); in the middle of passengers leaving the plane (he was trying to lose himself in the crowd). People have been stopped because they walked slowly or quickly, because they avoided looking at police, or because they stared at them.

Former New York Giants center Kevin Belcher was stopped and searched by a narcotics agent at the Dallas/Fort Worth Airport because he fit the so-called profile. According to the narc, Belcher was observed to be carrying a large number of \$100, \$50, \$20, \$10 and \$5 bills, which was consistent with drug-asset seizures. As the *Pittsburgh Press* wryly noted, the arresting officer made no mention as to what denomination other than one-dollar bills was left for non-drug traffickers to carry.

"The drug courier profile is a fraud," says Nancy Hollander. "The profile is whatever the policeman thinks at the moment is the reason he wants to stop that person."

"You fit the profile just by being a young black man," adds Earl T. Shinhoster, director of the Southeast office of the National Association for the Advancement of Colored People (NAACP).

In Cherokee County, Georgia, just north of Atlanta, police have stopped and searched hundreds of cars on a small stretch of I-75 during the past few years. Officers told the *Atlanta Constitution* that decisions to request searches were based on such factors as young male drivers, rental cars, borrowed cars, out-of-state tags and nervous drivers. "They say we pull over and arrest more blacks," says Deputy Jeff Shields, a member of Cherokee County's anti-drug squad. "Well, studies show black people traffic more drugs."

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Custom agents ordered her to defecate into a wastebasket, while they watched, so they could search her excrement for signs of drugs.

Few motorists realize that such searches can be far more than just quick sight or hand inspections. Officers allowably rip out seats, door panels and roof linings. They can open suitcases and closed containers. They may even remove gas tanks.

* * *

"Martial law has been declared in our inner cities," warns Loren Siegal of the American Civil Liberties Union in an article about the war on drugs. "Police raids, curfews and warrantless searches [have become] the order of the day."

Warrantless searches condoned by drug-war policies threaten to turn housing projects into virtual prisons. In 1989 the Chicago Housing Authority instituted Operation Clean Sweep. Under the guise of housing inspections, Operation Clean Sweep police and security officers entered housing-project buildings, locked all exits and carried out unannounced, warrantless, systematic searches of tenants and their guests. According to Kevin Zeese of the National Drug Policy Foundation, Operation Clean Sweep officers rifled through dresser drawers,

closets, bedding, personal items, kitchen cabinets, refrigerators, medicine cabinets and even Christmas presents. Following all such searches, the targeted buildings were fenced with security grates. In order to enter or exit their homes, residents were required to present identification cards to official security personnel.

Jack Kemp, U.S. Secretary of Housing and Urban Development, praised the Chicago Housing Authority for working with the police "to search [without warrants] every unit from top to bottom" and called for federal funds to enact similar programs in other cities. Nevertheless, as Zeese points out, "Nothing in the Constitution states its full protections do not apply to the poor, who are forced by circumstance to live in public housing."

Similar police-state tactics have cropped up in public housing in Washington, D.C., New York City, New Orleans and Charleston, South Carolina.

In 1990 Mike Wallace of the television news show *60 Minutes* discovered that California's Oakland County Hous-

ing Authority police randomly assaulted public-housing residents, stole money, planted narcotics, made arrests and lied in court to meet drug-arrest quotas. Jeff Garden, a former Oakland Housing Authority police officer, bluntly told Wallace: "We'd brutalize people. We stole their money. We planted drugs on them to take them off the street." Garden described this as standard operating procedure.

Drug sweeps in black neighborhoods in Boston, Massachusetts, have been so abusive (including, according to the ACLU, indiscriminate lineups of young men spread-eagled and forced to drop their pants and submit to searches of their underwear) and so blatantly unconstitutional that in September 1989 State Superior Judge Cortland Mathers declared flatly: "A tacit understanding exists in the Boston Police Department that constitutionally impermissible searches will not only be countenanced but applauded."

* * *

In an additional blow to the Fourth Amendment, the U.S. Supreme Court has upheld the legality of mandatory drug-test screenings for government and private-sector employees. As a result, today one out of three private-sector job applicants is required to pass a urine test.

The inherent inaccuracy of urine testing means that a certain number of employees will falsely test positive for drugs—and lose their jobs.

On May 31, 1989, Georgia probationer Eddie J. Greene was arrested on suspicion of selling cocaine and ordered to take a urine test. When he tested positive, he was charged with possession, convicted and sentenced to five years in prison—even though the only cocaine he "possessed" was in his urine. The Georgia Supreme Court upheld his conviction.

On March 5, 1983, Rosa Montoya de Hernandez of Bogota, Colombia, was stopped at the Los Angeles International Airport because she fit the airport's drug-courier profile. On this suspicion alone—with no warrant or probable cause—de Hernandez was taken to a private room and strip-searched. She wore two pairs of underpants and her abdomen appeared full. Customs agents guessed she might be an alimentary canal smuggler—someone who swallows balloons filled with cocaine or heroin, then excretes them when safely in the U.S. When de Hernandez refused to be handcuffed and X-rayed, Customs agents ordered her to defecate into a wastebasket, while they watched, so they could search her excrement for signs of drugs.

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Two elderly citizens were killed when fire from a flash grenade ignited their Minneapolis home. No drugs were found.

Ms. de Hernandez refused and was imprisoned in a barren room for nearly 24 hours, with no phone and no contact with attorneys or the outside world. She still produced no bowel movement. Finally, frustrated police obtained a court order for a body search. A cocaine balloon was recovered from her rectum. Over the next four days she excreted 88 additional balloons.

Though de Hernandez was clearly guilty, the U.S. Court of Appeals threw out the conviction because it felt the Customs agents had no constitutionally valid cause to suspect de Hernandez was a smuggler. The Supreme Court, on July 1, 1985, upheld the conviction.

Says Arnold Trebach of the Drug Policy Foundation, "The Supreme Court has now established the principle that, when the suspicions of border police are aroused, even if they lack any clear evidence of crime, they may detain any traveler until that person dispels their suspicions by defecating in their presence and into a container of their choice so that the vigilant police may inspect the traveler's human waste for contraband."

Such a ruling puts virtually every traveler entering or leaving U.S. borders in jeopardy of degrading treatment.

* * *

The Supreme Court has made so many recent exceptions to the Fourth Amendment's search warrant requirement in the name of fighting drugs that Supreme Court Justice Antonin Scalia actually proposed in 1991 to abolish the general warrant requirement altogether. Furthermore, many current Supreme Court justices favor totally doing away with the long-established "exclusionary rule," a protectionary measure that prevents the government from using in court evidence obtained in violation of the Fourth Amendment.

The Bush Administration recommends evidence seized illegally, without a warrant, be admissible in federal court. According to Kevin Zeese, many drug warrants today are delivered by SWAT teams. Homes have been literally ripped to shreds by drug squads searching for contraband—plumbing pulled out, furniture

shattered, personal items trashed. The Supreme Court has upheld the use of flash grenades and battering rams to enter homes with warrants. In January 1987 two elderly black citizens, Lloyd Smalley and Lillian Weiss, were killed when fire from a flash grenade ignited their Minneapolis home. No drugs were found. The police chief apologized, but added: "This is a war."

In 1987 the Supreme Court ruled that victimized citizens cannot bring lawsuits against federal agents who engage in unconstitutional searches and seizures—even if the agents *know* their actions are unconstitutional. The Court said the only test is whether a "reasonable officer" might think the search legal. In the case that resulted in this ruling, FBI agents searching for a bank robber had smashed into the Minnesota home of the robber's brother—without a warrant. They allegedly pointed guns at the terrified family, hit the father and even hit the ten-year-old daughter as she screamed for help.

Incredibly, the Court ruled the family could not sue for damages.

Writing in dissent, Justice John Paul Stevens argued that this decision created "a new rule of law that protects federal agents who make forcible nighttime entries into the homes of innocent citizens without probable cause, without a warrant, and without any valid emergency justification for their warrantless searches."

Such decisions, wrote former Supreme Court Chief Justice William Brennan, "threaten to obliterate the distinction between our form of government, where officers are under the law, and the police state, where they are the law."

Georgia Supreme Court Justice George T. Smith puts it bluntly. "For all practical purposes," he says, "there is no Fourth Amendment."

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In 1987 President Reagan endorsed censorship of films and music, claiming no one has a constitutional right to sell pro-drug propaganda to minors. Early drafts of the Bush Administration's 1990 Omnibus Crime Bill would have declared mere verbal opposition to the war on drugs an act of treason against the United States, punishable by up to ten years in prison.

Ex-"drug czar" William Bennett has implied that it might be necessary to suspend the Constitution in order to fight the war on drugs. At the rate American Constitutional liberties are being destroyed at the hands of its own Supreme Court, suspending the Constitution may in fact be redundant. 