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Temporary Tactic to Combat Drug Cartels

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Temporary tactic to combat drug cartels

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In an effort to wipe out the profits in illegal drug trafficking and thus strike a lethal blow against this business, Congress should consider a one-year suspension of the probable cause requirement for property search warrants for drugs under the Fourth Amendment, but without the concomitant arrests and prosecutions.

Under this experimental paradigm in drug interdiction, which I would call "No Jeopardy" searches and seizures, the Drug Enforcement Administration, FBI and state police could conduct property searches for drugs based upon a lower reasonable suspicion standard, rather than the current probable cause requirement. Such a no-cost, congressional initiative would expose the supply pipeline of major drug barons to non-stop, round-the-clock search, seize and destroy operations, similar to the FBI's decimation of Al Capone's bootlegging kingdom in Chicago 70 years ago.

The police, before entering the premises, would be required to announce what I would call a reverse Miranda rights warning: "This is a 'No Jeopardy' search and seizure operation under federal law. We are only here to search, seize and destroy illegal drugs found on the property. You may leave the premises if you wish and come and go as you please. You will not be arrested. Nothing you say can or will be used against you."

This prudent law enforcement approach to drug suppression would be particularly attractive and effective in inner cities, where exchanges of gunfire and cries of police brutality often accompany police drug raids. Without arrests and prosecution, there would be no real incentive for drug dealers to battle the police. Consequently, the lives of many police officers could be spared, while the profits of cocaine and crack traffickers would begin to evaporate.

At the core of the Fourth Amendment is the right to privacy from unwarranted police invasions, especially those that result in evidence found that leads to prosecution. The "No Jeopardy" system, as it would be narrowly tailored to target major suppliers and dealers and thus bankrupt the drug cartel, would essentially render this constitutional concern moot since neither a drug lord's nor law-abiding citizen's constitutional rights would ever be in prosecutorial jeopardy. Moreover, since no citizen has the right to possession of any illegal substance, the Fifth Amendment's due process clause and prohibition against the government taking private property without just compensation would never be triggered. Finally, given the potential, ultimate eradication of drug trafficking, crime-weary and crime-plagued Americans may just gladly accept the de minimis intrusion into their expectation of privacy under the "No Jeopardy" system.

In an effort to curb any potential police abuse under this one-year experiment in criminal procedure, the current federal statute that allows citizens to sue the police for violations of their personal liberties would be expanded accordingly. In addition, Congress would strengthen the 1874 federal law that was successfully used to prosecute the two former Los Angeles policemen convicted in the videotaped beating of motorist Rodney King. Equally important, there would be a complete bar to prosecution for drug offenses stemming from any illegal drugs seized during these searches. Thus, this proscription would serve as a deterrent to any potential prosecutorial abuse under this program, as well.

With the fundamentally conservative Rehnquist Supreme Court having rendered several, surprise pro-law enforcement decisions in 1996, the "No Jeopardy" search and seizure procedure just might pass constitutional muster should it face any court challenges. The Senate Judiciary Committee would be an appropriate forum to test the constitutional waters of this idea by calling criminal procedure scholars, senior Justice Department, FBI and DEA officials, and the president's drug czar to testify about their opinions.

"No Jeopardy" would empower the police to execute swift, summary justice against an illegal product and would be the quintessential drug baron nightmare. By merely lowering the constitutional threshold for property searches while preserving inviolate a citizen's rights under the Fourth Amendment, this constitutional alternative would pave the way for virtually an unlimited number of searches and seizures against the drug industry. Given the fact that tens of thousands of drug convictions have failed to win the "war on drugs" and caused a core meltdown of our criminal justice system at astronomical cost, the nation may just find palatable the tradeoff between suspending drug arrests and prosecutions for one year with the ultimate eradication of drug profits.

In sum, this short-term Fourth Amendment paradigm shift would inflict a fatal wound against the economic jugular of the drug cartel, at no cost to the taxpayer. I would submit that after six months under this system, hundreds of starving ex-drug lords might just be standing in unemployment lines.

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