

Balloon smuggler puts 4th amendment to test

Herewith a short course on the constitutional law of the alimentary canal.

The question confronting customs officials when passengers deplaned at Los Angeles from Bogota, Columbia, was whether the woman was a "balloon smuggler." Such people smuggle cocaine by swallowing balloons containing the stuff, balloons that are passed through the smuggler's alimentary canal after the smuggler has passed through customs.

Two years later, the question confronting the Supreme Court was whether the Fourth Amendment's protection against "unreasonable" searches and seizures was violated by the customs officials' method of ascertaining the contents of her alimentary canal.

One inspector, who had caught many such smugglers, had reason for suspicion when he saw in her passport that she had made at least eight recent trips to Miami or Los Angeles from Bogota, capital of the cocaine industry. The lady spoke no English, had no family or friends here, had \$5,000 in cash but no billfold, could not recall how her ticket had been purchased and said she planned to travel around Los Angeles by taxi, buying goods for her husband's store in Bogota.

The inspector requested a female colleague to conduct a "patdown" and

strip search. It revealed that the woman's abdomen had "a firm fullness." She consented to a X-ray, but when asked said she was pregnant. And when she learned she would be handcuffed while traveling to the hospital, she withdrew consent.

She was given three choices. She could return to Bogota on the next



George Will

available flight, or receive an X-ray, or remain in detention until she produced a monitored bowel movement. She chose the first, but could not get a seat on the flight leaving the next morning.

Sixteen hours after landing from her 10-hour flight, she was showing signs of what an appeals court called "heroic efforts to resist the usual call of nature." Then officers sought and received from a federal magistrate authorization for a rectal examination and involuntary X-ray. Before the X-ray results were in on the pregnancy test that proved she was lying, a physician removed from her rectum a balloon containing a foreign substance.

She was arrested. During the next four days she passed 88 balloons containing 528 grams of cocaine.

The appeals court reversed her con-

viction, arguing that although customs officials had "justifiably high" suspicions, they should have quickly sought authority for a X-ray rather than waiting for natural processes to confirm their suspicions. The court said the indications of smuggling were not sufficiently clear to justify the protracted detention, which was "humiliating" to the woman.

The Supreme Court has now disagreed. It notes that the Fourth Amendment is more permissive of police power at the nation's border (where, for example, cars can be searched at random, or on the basis of the passenger's ethnicity) than in the interior of the country.

Justice Brennan disagrees. To say that he just dissents is to match the understatement with which Japan's emperor announced surrender after two atom bombs. ("The war situation has developed not necessarily to Japan's advantage.")

Brennan has an Olympic-class capacity for alarm and for finding portents of a police state in police procedures. His dissent packs two walloping words ("disgusting" and "saddening") into its first six, and then shifts into high gear, describing what the customs officials did as "the hallmark of a police state" and "unbridled authoritarianism" in "an authoritarian twilight zone on the border."

Brennan charges that the customs officials had "at most, a reasonable suspicion." But why the "at most"? The Fourth Amendment is founded on the idea of reasonableness, no matter what the Court has said. And the suspicion was not just reasonable, it was right.

The woman had a painful, humiliating experience as the customs officials did their job, which is to prevent her from practicing her chosen profession. She made a bad choice. And Justice Rehnquist, writing for the majority, cites an early Court opinion that "creative judges, engaged in post-hoc evaluations of police conduct, can almost always imagine some alternative

means by which the objective of the police might have been accomplished."

The unpleasant facts of this case deserve dissemination so Americans can contemplate the nasty details of the fight to protect the nation from pandemic poisoning by drugs. Balloon smugglers are not the core of the problem. The core is the millions of stupid and criminal Americans who comprise a brackish pool of addiction and money. The law should attack demand as well as supply, and do so by making the lives of drug users as unpleasant as that woman's experience at Los Angeles airport.

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Reagan ever popular Critics 'throw in the towels'

We know the sounds of summer. A basketball going cleanly through a hoop is "swish," a nice wet dive is "splash," the frog in the pond croaks "ribbit" and a ball hits the mitt with a "thunk." These are things we know. But what is the sound of Washington throwing in the towel to Ronald Reagan?



Richard Cohen

Whatever the sound, you could hear it repeatedly in recent weeks. One by one, towels came flying from the hands of Reagan critics. From Atlanta and the convention of the National Women's Political Caucus, came a towel from outgoing president Kathy Wilson. Although she is a Republican, Wilson led her organization to an endorsement of Walter F. Mondale and to implacable hostility towards Reagan. Yet, in her farewell speech, Wilson said the President is not the anti-feminist he used to be — and that she once said he was. Some people in the hall, knowing the sound of a towel, booed.

Hardly had Wilson dismounted her platform then Mary Hatwood Futrell mounted hers. The president of the National Education Association said she had something for the President — her hand: "Mr. President, we have disagreed with you in the past, and we will undoubtedly disagree with you in the future. But as the Bible tells us, there is a time to mend and a time to heal." And a time to throw in the towel.

What is going on here? The quick answer is: Ronald Reagan. By now is ought to be clear that he is not a mere politician, not even simply a political genius, but a genuine political force. He was, we were told, mortally wounded by Bitburg and would, lame duck that he was, limp to the end of his term — a genial but irrelevant old man.

Later came the hostage crisis. Critics from the left and (even) from the right volleyed and thundered but Reagan, as in a movie, rode through to even greater popularity. Indeed, it's possible that most people neither approve nor disapprove of the way he handled the hostage crisis but simply feel that if Reagan could not have done better, then no one could have done better. This, in politics, is the highest praise of all.

I leave it to history to say whether Reagan's near-total dominance of this town and its political agenda is a reflection of the man or the times or, as is probably the case, a combination of the two. Whatever Reagan's political gifts, it seems indisputable that the country is tired, bored and somewhat cynical. A harrowing report on childhood poverty is a newspaper story one day, carpeting for the birdcage the next and, soon, is forgotten. Like a jazz-age flapper, we only want a good time.

Over at Democratic Party headquarters, they must be out of towels altogether. A gaggle of governors and other officeholders traipse around the country proclaiming that they are an echo not a choice to Reagan Republicanism. On Capitol Hill, the towels come fast and furious. After making a stand on Nicaragua, the House caved and gave the President most of what he wanted. Ditto the MX and, give or take several billion, the arms budget. Everyone knows that the only way to substantially reduce the deficit is by raising taxes, yet no one thinks that's going to happen as long as Reagan opposes it. Even fiscal reality has thrown in the towel to Ronald Reagan.

Ironically, the biggest and fluffiest towel of all may have come from the old civil rights coalition. It managed to kill the confirmation of William Bradford Reynolds, but not on the issues that mattered to it — his civil rights record — but on the somewhat extraneous issue of character. Even so, Reynolds remains in charge of precisely the area in which his insensitivity is — civil rights — and there, to the general silence of his critics, he says he will remain. Gag me with a towel.

Old-timers may contend that Franklin Roosevelt or Dwight D. Eisenhower does his. Maybe. But the fact remains that in what was predicted to be the beginning of the end of the Reagan Era, his political presence is commanding. One by one his political and ideological opponents seem to have concluded that criticizing the President is the task for Sisyphus, the legendary king condemned to roll a heavy rock up a hill in Hades only to have it roll down again as it nears the top.

Listen. The sound of the Washington summer is the soft flutter of many towels. It's what Simon and Garfunkel would call the sounds of silence.

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