Zero Tolerance On Illegal Drugs

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Zero tolerance has become ridiculous when applied to little boys playing cops and robbers or drawing pictures of guns, but it's sound and sensible when applied to illegal drugs. It's one of the ways Congress chose to address the persistent problem of illegal drugs in public housing.
People who live in public housing are entitled to expect a drug- free environment, but the police can't monitor every unit. We need the affirmative assistance of all law-abiding tenants to achieve zero tolerance.

Since the heroes on United flight 93 said "let's roll," Americans have a new respect for citizens who act affirmatively to defend public safety when law enforcement is out of sight. And that includes the grandparents who live in public housing.

The Department of Housing and Urban Development (HUD) evicted two grandparents from public housing units based on the apprehension of their two grandsons for smoking marijuana in the parking lot. HUD also evicted another tenant in whose apartment a caregiver and two others were found with cocaine.

The tenants argued that they should not be evicted because of drug use by others without their knowledge or control. HUD's argument was based on the Anti-Drug Abuse Act of 1988, which provides for eviction of public housing tenants if there is "any drug-related criminal activity on or off such premises, engaged in by ... any member of the tenant's household, or any guest or other person under the tenant's control."

The district court agreed with the tenants. In a decision written by the brother of Supreme Court Justice Breyer, the court forbade eviction "for drug-related criminal activity that does not occur within the tenant's apartment unit when the tenant did not know of, and had no reason to know of, the drug-related criminal activity."

HUD appealed to the Ninth Circuit and won the right to evict a tenant for drug use by any member of his household or guests. Then, in a rare move, the Ninth Circuit reheard the case in an en banc session and reinstated the original district court judgment denying HUD the authority to evict.

By a hefty 7-4 margin, the en banc Court ruled that Congress did not intend to throw people out on the street without a showing of knowledge of wrongdoing. The Court described HUD's action as a "One Strike and You're Out" policy and invalidated it.

Then, the U.S. Supreme Court unanimously reversed in March, upholding the eviction in HUD v. Rucker. The Ninth Circuit is the most reversed of all the federal Circuits, but an 8-0 Supreme Court decision overturning a 7-4 Circuit Court decision is remarkable.

In holding for HUD, the Supreme Court emphasized that a "strict liability" approach to drugs "maximizes deterrence and eases enforcement difficulties." The Court found that neither Congress nor the Constitution requires a showing of knowledge of criminal wrongdoing prior to ousting a tenant who harbors drug abusers or dealers.

Although criminal convictions cannot be based on guilt by association, loss of government benefits can be, if so legislated by Congress. Even though AARP, the powerful seniors group, filed an amicus brief on the side of the tenants, not a single Supreme Court Justice agreed with them.

It is possible that HUD won because the case reached the High Court in the post 9/11 political climate. It meshes perfectly with what might be called the new Bush Law: "Everyone must choose. You're either with the civilized world or you're with the terrorists."

So grandparents, now hear this: the rule applies to you, too, because we need you to help us reduce illegal drug use. You must decide which side you are on, and if you're not going to be on our side, don't expect the taxpayers to subsidize your rent.

In another post-9/11 anti-drug decision overruling the Court of Appeals for the Ninth Circuit, the Supreme Court upheld an investigatory stop of a suspicious minivan in Arizona close to the Mexican border. Relying only on hunches and intuition, the border patrol officer stopped the car, and his assessment proved correct.

The Ninth Circuit parsed each of the factors the officer relied on (e.g., the unusual route taken by an unrecognizable minivan driving about the time of the changing of border patrol shifts), and dismissed them as inadequate. In remarkable unanimity in United States v. Arvizu, the Supreme Court reversed, holding that facts, even if innocuous in isolation, may in the aggregate rise to the level of adequate suspicion.

Common sense tells us this is true. Another example would be four young male non-citizens paying cash for one-way plane tickets and then boarding as a group.

Unfortunately, the biggest news in the war on drugs is that Afghanistan's 2002 opium crop is going to market this spring and will help finance international terrorism. Afghanistan has been providing 70 percent of global illicit opium production.