

Forced catheterizations are a good reminder that the drug war is as barbaric and cruel as ever

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By Radley Balko

[Here's a disturbing report](#) published last week by the Argus Leader in Sioux Falls, S.D.:

A mesh bag blurred Dirk Sparks' vision.

He lay hooded and handcuffed as four police officers pinned him to a hospital exam table.

Through the patterned light, he saw a fifth officer filming the procedure.

His pants were loosened and pulled below his waist.

Then, pain.

A nurse at Avera St. Mary's Hospital in Pierre inserted a pencil-sized tube into Sparks' urethra to drain his bladder. Moments later, an officer with the Pierre Police Department held a cup of Sparks' urine that soon would be sent off for drug testing.

"It was degrading," Sparks said. "I was angry. I felt like my civil rights were being violated."

Hours earlier, police responded to a domestic dispute at Sparks' home. When officers observed him acting "fidgety," they asked for a urine sample. When Sparks refused, police sought a warrant from a Hughes County judge to obtain a urine sample by "medically accepted means."

In Pierre, those means have repeatedly included forcibly catheterizing people who refuse or are unable to provide a sample. Officers subjected a 3-year-old boy to a similar procedure in February as part of a child welfare investigation, according to the American Civil Liberties Union.

[The paper first reported](#) on Sparks's case last year. Then others came forward with similar stories, including the mother of the three-year-old boy. Sparks's urine did show traces of illicit drugs. So he was arrested and charged to ingestion of a controlled substances and possession of marijuana. He pleaded no contest and was released with time served. Which is to say that the police — with the blessing of a judge — took this man to a hospital, where medical staff held him down and shoved a tube into his penis in order to forcibly extract urine . . . all to prove what police knew at the time would at worst be a possession charge.

With a growing number of states legalizing marijuana, and with all the talk of criminal-justice reform, we can't lose site of the fact that in much of the country the drug war still marches on and that it can still be as cruel, barbaric and inhumane as ever.

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Let's be honest here. South Dakota is no safer because Sparks was forcibly catheterized, charged with possession and given a suspended sentence. This incident was about humiliating and dehumanizing a suspected drug offender. Despite the fact that a majority of Americans now support legalization of marijuana, law enforcement officials in

much of the country are still at war with the drug — and everyone associated with it. When you're at war, it's important to dehumanize your enemy. And there's nothing more dehumanizing than forcibly and painfully invading someone's body — all the better if you can involve the sex organs.

[It was a year ago](#) that we reported here at The Watch the story of Elijah Pontoon, a South Carolina man who claims to have been subjected to a roadside anal cavity search in the town of Aiken, S.C. Pontoon's partner Lakeya Hicks also says her breasts were exposed as officers searched her. The police found no drugs. Audio from the police dash camera seems to corroborate the allegations, though Aiken officials deny them. A lawsuit is pending. [A few days later](#), we reported on another South Carolina traffic stop that led to a man being beaten, taken to the hospital, where medical personnel drew blood from him and gave him an x-ray and a CT scan, all without his consent. The arresting officer claimed police would find a package of drug's that the man had swallowed. There were no drugs.

Those stories too came after [a few years of stories](#) in which other motorists around the country were subjected to [humiliating anal cavity](#) searches, [vaginal searches](#) and forced medical procedures such as [enemas and colonoscopies](#), all in an effort to look for illicit drugs.

None of this is new, of course. Back in 1985, the U.S. Supreme Court decided in [United States v. Montoya de Hernandez](#) that customs agents who suspect an airplane passenger arriving from another country of smuggling ingested drugs can hold that passenger incommunicado, without a warrant, until the passenger defecates on command. In his dissent, Justice William Brennan wrote, "Neither the law of the land nor the law of nature supports the notion that petty government officials can require people to excrete on command." Studies conducted on such searches five years after the decision found that customs personnel were wildly inconsistent in their ability to sniff out drug mules for such treatment. In Miami, more than 65 percent of those forced to defecate were found with drugs. In New York, it was less than half. In Houston, 7 percent.

But the drug war not only continues to dehumanize suspected drug offenders but also enables the dehumanization of entire populations of people. Racial profiling lets police stop, search and hassle black and brown drivers, on the theory that their race happens to fit the profile of the typical drug distributor.

The efforts by Republican legislatures across the country to require drug testing for welfare recipients is another example. Proponents of drug testing claim that welfare recipients are more likely to abuse drugs, therefore the testing is critical to saving taxpayers from subsidizing addiction. But surveys of the states that have passed these laws have found that [they cost far more money than they save](#). Missouri, for example, spent more than \$300,000 to test nearly 40,000 people. Less than 50 tested positive. In Florida, [about 2 percent](#) of welfare recipients tested positive, well under the 8 percent to 10 percent rate of drug use in the general population. [In Utah](#), it was two-tenths of one percent, despite the use of a questionnaire to screen for likely users. In Tennessee, [just 1 in 800](#) welfare recipients tested positive.

Singling out the poor for these tests is also plainly discriminatory. Welfare payouts are dwarfed by government transfers to the wealthy and middle-class, whether it's tax considerations such as the home mortgage deduction, corporate welfare payouts, federally guaranteed loans or agriculture subsidies. Those people aren't tested. Only poor people. The drug war provides a easy way for politicians who oppose social-safety-net programs to humiliate the people who benefit from them: Make them urinate in a cup before they can collect their check. If we must give you welfare, we should at least get to make you a little less human, first.

Former Supreme Court justice Felix Frankfurter warned us about all of this in 1946, [in another Fourth Amendment case](#) (although it wasn't a drug case).

It is easy to make light of insistence on scrupulous regard for the safeguards of civil liberties when invoked on behalf of the unworthy. It is too easy. History bears testimony that by such disregard are the rights of liberty extinguished, heedlessly at first, then stealthily, and brazenly in the end.

Alas, like Brennan in the *Hernandez* case, Frankfurter wrote in dissent.

We've reached the point where state actors can penetrate rectums and vaginas, where judges can order forced catheterizations, and where police and medical personnel can perform scans, enemas and colonoscopies without the suspect's consent. And these procedures aren't to nab kingpins or cartels, but people who at worst are hiding an amount of drugs that can fit into a body cavity. In most of these cases, they were suspected only of possession or ingestion. Many of them were innocent. I'd say we are well past *brazen*.

But these tactics aren't about getting drugs off the street. You'll have no trouble finding drugs or getting high in South Dakota, Texas, New Mexico, South Carolina, or any other state or city in the news for these searches. These tactics are instead about degrading and humiliating a class of people that politicians and law enforcement have deemed the enemy. We've been at this war for generations now, and the state has decided that people even *suspected* of being on the other side — be it because of their race, their “suspicious behavior,” their past, their family, their associations, or their class — aren't worthy of basic human dignity.