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COMMENTARY

BENNIS AND THE WAR AGAINST DRUGS

*George E. Ward**

The United States Supreme Court recently rejected a claim that the Constitution prevents a state sanction for violations of assumed ownership obligations that occur without the owner's actual knowledge or consent.¹ In *Bennis v. Michigan*,² Tina Bennis asked the Court to overturn the Michigan Supreme Court's ruling that her interest in the family car could be abated as a public nuisance after her husband used the vehicle to solicit a prostitute.³ Mrs. Bennis argued that Michigan's nuisance abatement scheme violated her Fourteenth Amendment Due Process rights or, alternatively, that Michigan unconstitutionally seized her property for public use without just compensation in violation of the Fifth Amendment Takings Clause.⁴ The Court agreed with the Michigan Supreme Court that the nuisance abatement statute did not violate Mrs. Bennis's constitutionally protected property rights.⁵

In the majority opinion, Chief Justice Rehnquist explained that neither the Fourteenth Amendment Due Process Clause nor the Fifth Amendment Takings Clause prevented Michigan from keeping the proceeds

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1. See *Bennis v. Michigan*, 116 S. Ct. 994 (1996).

2. *Id.*

3. See *id.* at 997-98. The Michigan Supreme Court ruled that Michigan need not prove that Mrs. Bennis knew of or acquiesced to her husband's illegal use of the vehicle. See *id.*

4. See *id.* Mrs. Bennis contested the abatement on due process grounds by arguing that "she did not know her husband would use [the car] to violate Michigan's indecency law." *Id.* at 998.

5. See *id.* at 998 (noting that Supreme Court precedent illustrates that "an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use"); *id.* at 1001 (ruling that there is no taking under the Fifth Amendment where the government lawfully acquires the property "under the exercise of government authority other than the power of eminent domain").

from the sale of the Bennis car.⁶ The Chief Justice first determined that the use of civil forfeiture laws to fight crime was “too firmly fixed . . . to be now displaced.”⁷ The Chief Justice then disposed of Mrs. Bennis’s Fifth Amendment claim by explaining that Michigan did not have to compensate her for the seizure because the state lawfully acquired title to the vehicle under the nuisance abatement statute, rather than by exercising its eminent domain powers.⁸

Justice Ginsburg and Justice Thomas joined in the majority opinion, but wrote concurring opinions.⁹ Justice Ginsburg found that Michigan did not unfairly apply the nuisance abatement law to Mrs. Bennis in light of the statute’s important crime fighting objectives, and explained that “the State’s Supreme Court stands ready to police exorbitant applications of the statute.”¹⁰ Justice Thomas wrote separately to address the lack of clarity regarding the scope of forfeiture law; he concluded that forfeiture may be improper where an innocent owner’s property was not an “instrumentality” of the crime.¹¹

In a dissenting opinion, Justice Stevens, joined by Justices Souter and Breyer, made no distinction between “abatement” and “forfeiture,” but attempted to distinguish the Court’s prior forfeiture decisions.¹² Justice Stevens disagreed that Michigan could forfeit Mrs. Bennis’s property interest, arguing that the car did not facilitate Mr. Bennis’s criminal activity.¹³ Alternatively, he argued that the civil forfeiture doctrine required proof that the owner negligently entrusted the property to the criminal wrongdoer.¹⁴

THE PROSECUTOR’S PERSPECTIVE

Unfortunately, the term “abatement” is as vague as a Rorschach Test. Opponents of civil forfeiture can see in it whatever they choose to see. While the majority of the Supreme Court in *Bennis* favored Detroit’s campaign to drive vice crime off its streets as an “abatement endeavor

6. See *id.* at 998, 1001; see also *supra* note 5.

7. *Id.* at 999.

8. See *id.* at 1001.

9. See *id.* at 1003 (Ginsburg, J., concurring); *id.* at 1001 (Thomas, J., concurring).

10. See *id.* at 1003 (Ginsburg, J., concurring).

11. See *id.* at 1002. (Thomas, J., concurring).

12. See generally *id.* at 1004-07 (Stevens, J., dissenting) (arguing that because of “the tenuous connection between the property forfeited . . . and the illegal act that was intended to be punished,” this case may be distinguished from this Court’s long line of forfeiture holdings).

13. See *id.* at 1005-06 (“[T]he forfeited property bore no necessary connection to the offense committed by petitioner’s husband.”).

14. See *id.* at 1007-09.

[that] hardly warrants this Court's disapprobation,"¹⁵ dissenting justices denounced it, asserting, "Fundamental fairness prohibits the punishment of innocent people."¹⁶ The holding unleashed a torrent of media criticism¹⁷ that treated a wholly reasonable sales order in the nature of partition¹⁸ as if it were a government burglary.

WHAT REALLY WAS AT ISSUE IN *BENNIS*?

Detroit has two programs aimed at suppressing vice-markets in its neighborhoods. The first, *PUSH-OFF*,¹⁹ targets recreational drug buyers. The second, *Operation Save Our Neighborhood*,²⁰ targets "johns," the customers of prostitution. Both are demand-side enforcement programs, and rest on the proposition that no person has a right to use a vehicle on public streets to facilitate vice-markets in goods or services. They operate under different statutes, but similarly.

When a police officer has probable cause to believe that the driver of a vehicle is seeking to purchase drugs or sex, the officer seizes the car, announces an intent to begin court proceedings to extinguish the owner's interest, and advises the driver that further discussion about trial proceedings or possible settlement must be taken up with the prosecutor. Since the programs were instituted, over 13,450 vehicles have been seized in Wayne County, Michigan; challenges to the seizures have been brought in only 225 cases; the prosecutor's standard settlement terms have generated almost \$5.3 million for enhanced law enforcement; and the recidivism rate for these offenders is less than two percent.²¹

The *Bennis* case grew out of Detroit's anti-prostitution campaign, *Operation Save Our Neighborhood*.²² On October 3, 1988, in a 1977 Pontiac

15. *Id.* at 1003 (Ginsburg, J., concurring).

16. *Id.* at 1007 (Stevens, J., dissenting).

17. See, e.g., George E. Ward, *Checkout Time For Balancing the Budget*, N.Y. TIMES, Mar. 13, 1996, at A18 (Letter to the Editor); Editorial, *Government's Grand Seizures*, DETROIT NEWS, Mar. 13, 1996, at 8A; *Nasty Attack of Seizure*, TIME, Mar. 18, 1996, at 80; *Nation's Founders Would Gasp at Court's Stance*, USA TODAY, Mar. 5, 1996, at 10A; Debra Saunders, *High Court Takes Low Road on Forfeiture*, DETROIT FREE PRESS, Mar. 13, 1996 at 9A; David G. Savage, *Innocence Punished*, A.B.A. J., May 1996, at 47; George Will, *High Court Deals a Setback to Property Rights*, CHICAGO SUN-TIMES, Mar. 10, 1996, at 40.

18. See *Godfrey v. White*, 27 N.W. 593, 595 (Mich. 1886) ("Courts of equity have exclusive jurisdiction of suits for partition of personal property.").

19. See MICH. COMP. LAWS ANN. § 333.7521 (West 1987); *id.* § 600.3801; see also 'Customers' Risk Losing Their Cars, DETROIT NEWS, June 13, 1995, at 5D.

20. See MICH. COMP. LAWS ANN. § 600.3801.

21. See Records of the Wayne County Prosecutor's Office (on file with author).

22. Over sixty percent of the 'johns' and other customers of vice markets operating in Detroit are non-residents, and over ninety percent are non-residents of the particular

automobile, John Bennis patronized a well-known vice market for prostitution on Sheffield Street in north central Detroit.²³ The evidence indicated that Mr. Bennis was a repeat customer of the market, although he had not previously used the 1977 Pontiac.²⁴ Officers of the Detroit vice section arrested Mr. Bennis for gross indecency, and seized the automobile, which he and his wife jointly owned.²⁵ Upon confirming Mr. Bennis's one-half ownership interest in the automobile, the Wayne County Prosecutor filed an abatement claim.²⁶

Under Michigan law, a vehicle may be abated if it can be established that the vehicle was used to *continue*²⁷ an open and notorious nuisance.²⁸ If abated, the court can fashion an appropriate equitable remedy. In our experience, Michigan courts handling co-tenancy cases typically impose a forfeiture order that is limited to the culpable party's interest, an equitable approach.²⁹ In *Bennis*, Justice Ginsburg took particular pains to evaluate *Operation Save Our Neighborhood* for evenhandedness.³⁰ Upon demonstration of the fairness of this anti-prostitution program, Justice

neighborhood suffering the unpleasantness. See Statistics Regarding Solicitation Citations (July 1-31, 1996) (on file with author).

23. See Michigan *ex rel.* Wayne County Prosecutor v. Bennis, 527 N.W.2d 483, 486 (Mich. 1994).

24. See *id.* at 488 (noting that two separate witnesses had seen Mr. Bennis talking with prostitutes on three occasions).

25. See *id.* at 486. A vehicle title had been issued in the names of both husband and wife. At oral argument before the Supreme Court, Mrs. Bennis analogized the nature of the ownership to a tenancy in common. See Official Transcript Proceedings at 3-10, Bennis v. Michigan, 116 S. Ct. 994 (1996) (No. 94-8729); Bennis v. Michigan, 116 S. Ct. 994, 1003 (1996) (Ginsburg, J., concurring). "The sole question, then, is whether Tina Bennis is entitled not to the car, but to a portion of the proceeds (if any there be after deduction of police, prosecutorial, and court costs) as a matter of constitutional right." *Id.*

26. See Complaint for Abatement of Public Nuisance (No. 88-824379 CZ), reprinted in Joint Appendix at 2-6, Bennis v. Michigan, 116 S. Ct. 994 (1996) (No. 94-8729).

27. See *Bennis*, 527 N.W.2d at 491 ("Vehicles that enter the neighborhood in order to solicit acts of prostitution are being 'used for' the continuance of this nuisance.").

28. See MICH. COMP. LAWS ANN. § 600.3825 (West 1987).

29. Under Michigan law, the ownership of husband and wife in personal property, like an automobile, may be a tenancy in common. See *DeYoung v. Mesler*, 130 N.W.2d 38, 40-41 (Mich. 1964) (Souris, J., dissenting); John F. MacArthur & George C. Cabot, *Tax Aspects of Creating Non-Spousal Joint Tenancies*, 65 Mich. B.J. 706, 707 n.20 (1986). When dividing a tenancy in common, the Michigan term for the equitable remedy involved is *partition*, not forfeiture. Cf. MICH. CT. R. 3.403 (providing for a forced sale of a real estate asset and a division of proceeds as a substitute for partition). Even where Michigan law allows cars used to facilitate drug crimes to be *forfeited*, it expressly recognizes an "innocent owner's" defense. See MICH. COMP. LAWS ANN. § 333.7521(1)(d)(ii) (West 1992). In practical effect, there is no difference between a sales order of partition and a forfeiture order that is limited to the offending party's interest.

30. See *Bennis*, 116 S. Ct. at 1003 (Ginsburg, J., concurring).

Ginsburg refused to assume an "inequitable administration of an equitable [remedy]."³¹

The Wayne County Prosecutor created *Operation Save Our Neighborhood* in response to a demand by residents of north central Detroit for relief from the blighting effects of vice.³² The program is as solicitous of the constitutional rights of "johns" and the owners of the cars the johns drive as it is of the prostitutes and neighborhood residents. For example, the standard first-offender's settlement offer in the case of seized vehicles is \$650.³³ If an owner chooses trial, the burden of proof is on the County.³⁴ If the owner wins at trial, the car is returned and the City may be assessed costs.³⁵ The Bennis probably did not find a voluntary settlement attractive because the seized car had been purchased earlier for only \$600.³⁶ They chose trial and lost.

At trial on the claim for abatement, the judge commented on each of three competing interests: those of neighborhood residents, prostitutes, and the Bennis.

Neighborhood Residents

The officer himself said . . . he has made three arrests in this immediate area. One extrapolates from that testimony that he . . . has assisted other officers in making arrests. . . .

. . . .
Miss Kirksey indicated a necessity has arisen for the creation of a CB patrol in the area of the Green Acres . . . in the months of July, August and September, there were some 32 observations

. . . .
At all times, day and night, every day, 365 days of the year, . . . [Mrs. Wilson] . . . has had to . . . put up with the acts and frustrations of those engaging in some forms of [prostitution] ac-

31. See *id.* at 1003 ("It shows no respect for Michigan's high court to attribute to its members tolerance of, or insensitivity to, inequitable administration of an equitable action.").

32. The Detroit Police Department's Eleventh Precinct Police-Community Relations Council was amicus curiae in a brief filed by the General Counsel of the American Alliance For Rights and Responsibilities in Washington, D.C. Brief for the American Alliance for Rights and Responsibilities, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729).

33. See Settlement Terms of the Wayne County Prosecutor's Office (on file with author).

34. See *Michigan ex rel. Wayne County Prosecutor v. Bennis*, 527 N.W.2d 483, 489 (Mich. 1994).

35. See MICH. CT. R. 2.625(A) (1996).

36. See *Bennis*, 116 S. Ct. at 997 (noting that the car had been purchased by the Bennis for \$600).

tivity in front of her home . . . [she] cannot even walk along Eight Mile Road now; . . . even when she wants to go for a little walk in the morning, she has to have her husband trailing behind her³⁷

The Prostitutes

[W]e [male judges] are insensitive [P]ut the prostitutes in jail [and] [n]o one sheds a tear, but let the john run the risk of the loss of some of his property, and everybody cries, "How harsh, how severe a remedy."

. . . It's classic chauvinism and sexism where we are so concerned about . . . mere property loss versus the loss of one's [the prostitute's] freedom³⁸

The Bennis

Finally, the trial judge, as Chief Justice Rehnquist's opinion noted, found that the Bennis owned another automobile, so they would not be left without transportation.³⁹ Moreover, although Michigan trial courts may partition proceeds from the sale of a co-owned vehicle and order payment of one-half to "the innocent co-title holder,"⁴⁰ in this instance, the trial judge believed this authority should be exercised on a *net basis*, finding that, given "the age and value of the car . . . [t]here's practically nothing left minus costs in a situation such as this."⁴¹

The Bennis did not dispute the Court's finding that there would be no *net* sales proceeds to divide between the interest holders.⁴² At the time, the charge to tow a vehicle off the street was \$75 and to store it was \$8 per day. The state of Michigan charged \$11 to transfer title to a buyer at auction. The salvage company charged \$60 to hold the auction.⁴³ Forty-three days had already elapsed by the entry of the trial court's order.⁴⁴ Given these unit costs, the trial judge properly estimated expenses

37. Transcript of Bench Ruling of Trial Court at 181-84, *reprinted in* Joint Appendix at 15-18, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729).

38. *See* Transcript of Bench Ruling of Trial Court at 192-93, *reprinted in* Joint Appendix at 24-25.

39. *See* Transcript of Bench Ruling of Trial Court at 193, *reprinted in* Joint Appendix at 25; *see also Bennis*, 116 S. Ct. at 997.

40. *See Bennis*, 116 S. Ct. at 997.

41. *See id.*

42. *See* Official Transcript Proceedings at 7, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729).

43. Information furnished by Vice Enforcement Section, Detroit Police Department.

44. The Complaint was filed October 4, 1988, and the judgment entered November 16, 1988. *See* Complaint for Abatement of Public Nuisance, (No. 88-824379 CZ), *reprinted in* Joint Appendix at 2-6, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729); Order of

in the Bennis case to be in excess of the car's value. Meanwhile, the blue book value for the 1977 Pontiac was only \$450.⁴⁵ Clearly, the sale proceeds from the aging vehicle were so small, both ownership shares—the husband's to which the state succeeded and Mrs. Bennis's—would have been consumed by cost.

THE ISSUE BEFORE THE MICHIGAN COURTS

In Michigan, the Bennis family resisted any form of abatement order, arguing that even assuming the truthfulness of the prosecutor's allegations, a once-only use of a motor vehicle to patronize an open and notorious vice market should not make it "abatable" under the Michigan statute.⁴⁶ If that position had been upheld, the entire strategy of Operation Save Our Neighborhood would have been crippled. Unfortunately, from our point of view, the Michigan Court of Appeals did uphold it,⁴⁷ and during the appeal to the state Supreme Court, Detroit's anti-prostitution campaign was suspended. Ultimately, the Michigan Supreme Court rejected the statutory challenge:

Where testimony surrounding proof of an incident of prostitution unequivocally establishes that the neighborhood has a reputation for prostitution, the property contributing to the continuance of the nuisance may be abated pursuant to the statute. To hold otherwise would allow the criminal actors to circumvent the statute where a *different* vehicle was used in the commission of *each* offense. The result would permit the continuing blight of neighborhoods, contrary to the clear intent of the statute.⁴⁸

Rejecting the contention that the Michigan statute, as so construed, would violate the due process rights of the co-owner who was innocent of the prostitution offense, the Michigan Supreme Court accepted the view that obligations *assumed* upon becoming an auto owner can be enforced, even as to later harms that the owner has no part in causing.⁴⁹

Abatement (No. 88-824379 CZ), *reprinted in* Joint Appendix at 27-28, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729).

45. See National Auto Dealers' Ass'n, N.A.D.A. Appraisal Guide: Official Older Used Car Guide C-73 (James H. Lawrence et al. eds., 1988).

46. See *Michigan ex rel. Wayne County Prosecutor v. Bennis*, 527 N.W.2d 483, 489-92 (Mich. 1994); *Michigan ex rel. Wayne County Prosecutor v. Bennis*, 504 N.W.2d 731, 733-34 (Mich. Ct. App. 1993).

47. See *Bennis*, 504 N.W.2d at 732.

48. See *Bennis*, 527 N.W.2d at 492 (emphasis added).

49. See *id.* at 494. "It is clear that the abatement of property stolen from the owner or taken without the owner's knowledge would be prohibited. However, on the basis of the facts before us, the argument cannot be made that the vehicle was stolen or initially driven without Mrs. Bennis' knowledge." *Id.*

Later, Chief Justice Rehnquist's opinion recognized a parallel between Mrs. Bennis's attempt to avoid an *assumed* responsibility by pleading "innocence" and what personal-injury defendants attempted in the early part of this century when automobiles first appeared on the scene. In the 1917 Michigan case of *Stapleton v. Independent Brewing Co.*,⁵⁰ for example, the defendant asserted a defense of "innocence," arguing that if the statute "impose[s] a liability upon the owner of an automobile for an accident happening through its operation whether the owner is at fault or not," then it "would violate both the federal and state Constitutions."⁵¹ But this kind of argument was rejected long ago. Chief Justice Rehnquist noted:

[B]ecause Michigan also deters dangerous driving by making a motor vehicle owner liable for the negligent operation of the vehicle by a driver who had the owner's consent to use it, petitioner was also potentially liable for her husband's use of the car in violation of Michigan negligence law. "The law [requiring *assumption* of ownership responsibility] thus builds a *secondary* defense against a forbidden use and precludes evasions by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the alleged innocent owner."⁵²

This historical example of attempts to escape an *assumed* obligation conjures up the delicious irony of a hypothetical lawyer who, if retained by the wife of a "john" to oppose an abatement, could wax indignant about the injustice of an innocent owner losing a \$300 interest. If retained by the prostitute, however, to sue the wife for personal injury caused by the co-owned vehicle, the same lawyer, despite the wife's innocence in the same degree, might seek to impose monetary damages of an untold amount on her, with the dismissive attitude toward "innocence" exhibited by plaintiff's lawyer in *Stapleton*.

Because the wife's innocence would not immunize the husband's half interest from abatement, it was clear that a hostile co-ownership between the state and Mrs. Bennis resulted from the husband's conduct. The trial judge chose to partition the two half-interests by ordering the sale of the vehicle, rather than forfeiting the vehicle in kind to the state.⁵³ As the incidental expenses exceeded the proceeds, neither interest holder received anything.

50. 164 N.W. 520 (Mich. 1917).

51. *Id.* at 521.

52. *Bennis v. Michigan*, 116 S. Ct. 994, 1000-01 (1996) (emphasis added) (citations omitted).

53. See Transcript of Bench Ruling of Trial Court at 188, (No. 88-824-379 CZ), reprinted in Joint Appendix at 21, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729) (emphasizing the trial court's discretion to shape an appropriate remedy).

HOW THE FOCUS OF THE DISPUTE CHANGED

Only the wife appealed the Michigan abatement order to the United States Supreme Court.⁵⁴ When our office heard that the Supreme Court had issued its writ of certiorari for a “big test” case of forfeiture, we at the Wayne County Prosecutor’s Office were, to say the least, surprised.

It was clearly the triumph of semantics over substance. Not only is the word “forfeiture” absent from the trial court order, the order uses the word “abate” in a context that clearly means “forced sale.” The text of the state court order reads:

IT IS HEREBY ORDERED THAT the 1977 Pontiac, jointly owned by JOHN CHARLES BENNIS and TINA B. BENNIS, for those reasons fully stated by this Court on the record made on the trial date, is a public nuisance and that said vehicle shall be *abated* as provided by the controlling statute.

IT IS FURTHER ORDERED THAT the proceeds derived from the *sale* of said vehicle pursuant to statute shall be disposed of in the following order of priority: the filing fee of this action shall be returned to the Office of the Wayne County Prosecutor, all police costs shall be paid to the Detroit Police Department, all attorney costs shall be paid to the Office of the Wayne County Prosecutor⁵⁵

Responding to a question Justice Ginsburg asked at oral argument, counsel for Mrs. Bennis quickly made clear that her case was really nothing more than a challenge to the net proceeds rule.⁵⁶ If a division of gross proceeds was not required, he insisted with much heat, Mrs. Bennis’s one-half interest must be *deemed* to be a forfeiture.⁵⁷ Thus, instead of treating it as a simple question of how to apply proceeds in a co-ownership case, it reached the high court as an alleged violation of the Fifth and Fourteenth Amendments.

The Michigan decision in *Bennis* did not lead logically to the position taken by Mrs. Bennis’s lawyer. Responsibility for out-of-pocket expenses inflicted on the public by a vehicle left on the street generally belongs to the owner, apart from any claim of forfeiture. Because co-owners bear

54. See *Bennis*, 116 S. Ct. at 994.

55. Order of Abatement, (No. 88-824-379 CZ), reprinted in Joint Appendix at 27-28, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729). The last phrase in the standard form of abatement order used in Michigan courts, including the *Bennis* case, directs that “any remaining balance shall be paid to the general treasury of the state of Michigan.” See *id.*

56. See Official Transcript Proceedings at 7, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729).

57. See Petitioner’s Brief for Rehearing, *Bennis v. Michigan*, 116 S. Ct. 994 (1996) (No. 94-8729) (filed Mar. 29, 1996).

the expenses of a partition suit,⁵⁸ Mrs. Bennis was required to pay the expenses of removing and storing her car. This requirement is no more remarkable than a situation in which a teenager illegally parks a parent's car in a towing zone: to reclaim the car, the parent must pay out-of-pocket expenses the public incurred in removing and storing the vehicle.

CONCLUSION

The *Bennis* case deserved a great deal of media attention, but not the coverage it received. In a much-quoted statement, Justice Stevens declared, "As far as I am aware . . . it was not until 1988 that any State decided . . . [to combat prostitution] by confiscating property in which, or on which, a single transaction with a prostitute has been consummated."⁵⁹ Justice Stevens's comment seems inaccurate in several respects. Certainly, vehicles are confiscated regularly in single-transaction illegal-drug cases. And, on the record in *Bennis*, Justice Stevens himself did not dispute that, at the very least, the City of Detroit could succeed to the husband's half-interest in the automobile, which alone would have necessitated a forced sale. In the final analysis, this was simply a case, decided correctly by the majority, about whether out-of-pockets expenses caused by the removal, storage, and partition of a 1977 Pontiac had to be borne by both owners, or just the municipal owner that had taken over the husband's interest.

Significantly, the *Bennis* case's potential use for the fight against illegal drugs has been ignored. While the Nation's policy of keeping dangerous drugs illegal remains firm, and public officials founder in their search for enforcement techniques that will achieve policy goals, no one has yet taken note of this technique's success in bringing neighborhood relief or its incredibly low two percent recidivism rate.⁶⁰ It is a textbook example of how swift and certain punishment deters crime. It is inexpensive, extremely effective, and could put real teeth in the "Just Say No" campaign against demand.

Thus, if the *Bennis* case grabs headlines again, hopefully, it will be to announce that its been "discovered" as an enforcement technique to support the policy of keeping drugs criminal in a way that is credible, proportional, and does not burden the public treasury.

58. See MICH. CT. R. 3.403(d)(3); 59A AM. JUR. 2D *Partition* § 218 (1987).

59. *Bennis*, 116 S. Ct. at 1003 (Stevens, J., dissenting).

60. See *supra* note 21.