

DEPARTMENT OF INJUSTICE

When I was a boy," an exasperated Winston Churchill once told a cravenly expedient Parliament, "there was one thing at the carnival that above all others drew my attention and my interest: The Boneless Man. Despite my pleading, my parents, probably for fear of the effect that such a sight should have on my character, would not permit me to see him. Ever since, I have wondered what a Boneless Man could look like. I look about me today, and I am satisfied."

The quotation, though approximate, is brought to mind by the recent opinion on the civil rights of AIDS victims, handed down by the (in this case) egregiously misnamed U.S. Department of Justice. It set new marks in weather-vane spinelessness and affront to the underpinnings of American law. In Justice's opinion (which is legally binding on the behemoth of the U.S. Executive Branch), victims of acquired immune deficiency syndrome have no legal recourse from any kind of harassment—firing, eviction, denial of medical treatment, exclusion from federal programs—as long as the person doing the firing, evicting, denying, or excluding believes he is taking those actions to prevent the spread of the disease. And this despite overwhelming medical evidence (cited dismissively in the opinion) that casual contacts do not contribute in any way to the progress of the disease.

In short, Justice has raised unreasoning fear and blind prejudice to the status of legal principle. And in the process, it has dispensed with the sacred presumption of innocence. As the *New York Times* reported on June 23, "Those [AIDS victims] alleging discrimination...bear the burden of showing that the risk they pose to the health of others 'can be calculated with a high degree of medical certainty and is low enough' to be safely disregarded."

This ushers in a great new age in American jurisprudence. How different today's world might be if these legal minds had been around in the 1950s and '60s to interpret the Constitution and civil rights laws.

Judge (to Sheriff "Bull" Redman): "Have you anything to say to the charge that you conspired to deny the plaintiff his right to register and vote?"

Redman: "Your Honor, I was seriously concerned that allowing ni...Negroes to vote would lead directly to the triumph of the international communist conspiracy."

Judge: "And can you prove that it would?"

Redman: "No, sir."

Judge (to plaintiff, gaily decorated with bandages for dog-bites and bludgeonings): "And can you prove that allowing you to vote would *not* lead directly to the triumph of the international communist conspiracy?"

Plaintiff: "Well, no, your honor. I just want to vote like the Constitution says I can."

Judge: "I see. That changes things. Redman, the charges against you are dismissed. Plaintiff, you better watch your step."

From now on, the central precept of American law must be written with an asterisk, like Roger Maris's home run mark or a sprint record set with a tailwind: "The accused is innocent until proven guilty*."

Writing in the Winter 1986 *Issues in Science and Technology*, Albert Jonsen laid out ethical standards for restricting an individual's rights:

First, the threat to public safety must be serious and verifiable; rumors and suspicions do not suffice. Second,...the threat...must be specific and recognizable... Third, the carriers of the threat must be surely identifiable... Finally, the restrictions imposed must be efficacious in containing the threat.

The actions allowed by the Department of Justice opinion meet none of these criteria. This kind of thinking could hit much closer to home than most of us may realize. What the opponents of biotechnology want us to bear, despite a preponderance of scientific opinion on the low risk posed by most biotech experiments, is the environmental version of "the burden of showing that the risk [biotechnologies] pose to the health of others 'can be calculated with a high degree of medical certainty and is low enough' to be safely disregarded." It is a quest not for reasonable safety, but zero risk. It is wrong to apply such a standard to biotechnology; it is wrong to apply it to anyone.

—Douglas McCormick

*except where a couple of our lawyers have decided otherwise.

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