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Symposium New Voices on the War on Drugs

FOREWORD

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SIX years ago, the *Villanova Law Review* sponsored a Symposium that addressed sentencing issues arising from the war on drugs.¹ As evidenced by this Symposium—*New Voices on the War on Drugs*—six years later America continues to wage war on drugs.² Recent events indicate that the war on drugs is being fiercely fought at America's borders, and in America's streets and courtrooms. For example, two months ago, drug enforcement agents unearthed a 1,200-foot-long tunnel used to haul narcotics across the border between Mexico and the United States.³ And this event is neither isolated nor rare. Every day, the headlines reflect skirmishes in the war on drugs. On April 12, 2002, for example, the New York Times News Service reported arrests of Mexican police officers in a drug sweep,⁴ the dropping of a drug charge against a Texas woman and the questioning of the police anti-drug tactics that led to the charge,⁵ and the discovery of a 12-year-old being used as an international drug courier.⁶

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1. See Symposium, *The Sentencing Controversy: Punishment and Policy in the War Against Drugs*, 40 VILL. L. REV. 301 (1995).

2. See Symposium, *New Voices on the War on Drugs*, 47 VILL. L. REV. 747 (2002); see also Ellen Marrus, *Crack Babies and the Constitution: Ruminations About Addicted Pregnant Women After Ferguson v. City of Charleston*, 47 VILL. L. REV. 299, 307-39 (2002) (considering how to address problem of addiction among pregnant women).

3. See Leonel Sanchez & Anna Cearley, *Officials Call Tunnel Key Artery for Drugs*, SAN DIEGO UNION-TRIBUNE, Mar. 1, 2002, at B1.

4. See Tim Weiner, *Mexico Arrests 41 Officers, Including Tijuana Chief, in Drug Sweep*, N.Y. TIMES NEWS SERVICE, Apr. 12, 2002, available at 2002 WL-NYT 0210200052.

5. See Jim Yardley, *Drug Charge Dropped in Texas Case Criticized by Rights Groups*, N.Y. TIMES NEWS SERVICE, Apr. 12, 2002, available at 2002 WL-NYT 0210200107.

6. See Al Baker, *12-Year-Old Used As Courier by Swallowing Heroine in Condoms*, N.Y. TIMES NEWS SERVICE, Apr. 12, 2002, available at 2002 WL-NYT 0210200114.

(747)

The events of September 11, 2001 not only marked the beginning of a new war—the war on terrorism—but also prompted the government to intensify the war on drugs. The Bush Administration's new anti-drug advertising campaign, for example, portrays drug use as supporting terrorism. These advertisements have themselves generated renewed discussion about the war on drugs. Proponents contend the advertisements are powerful and factual. Critics condemn the advertisements as wartime propaganda.⁷ Despite such criticism, the Bush Administration continues to link the war on drugs with the war on terrorism, as it recently did during the unveiling of a new \$19 billion anti-drug strategy.⁸

The war on drugs also continues to be felt in the courts, generating challenges to governmental anti-drug efforts. For example, in *Department of Housing & Urban Development v. Rucker*,⁹ a resident of public housing argued that she should not be evicted simply because, unknown to her, her caretakers had used drugs.¹⁰ Nevertheless, the Supreme Court unanimously held that the eviction was proper, noting in its opinion that the Anti-Drug Abuse Act of 1988 was enacted because “drug dealers ‘increasingly impose[] a reign of terror on public and other federally assisted low-income housing tenants.’”¹¹

This survey of recent events demonstrates that, as we move into the 21st century, the drug war has been neither won nor lost, and America continues to wage war on drugs. This Symposium therefore gives voice to new scholars currently addressing the social and legal consequences flowing from the U.S. government's approach to drug enforcement at all levels.

The Symposium was divided into three panels, each focusing on a specific topic: Street Enforcement, Issues in Sentencing, and Responses and Consequences. The Articles in this Symposium issue are grouped accordingly. All the panelists examine the impact of drugs on society and of the drug war itself, but each group examines a different facet of the issues raised by the war on drugs. The first, and largest, panel focuses on the way in which the government wages the war on drugs at the street level, considering the impact of the war on the rights of all in our society. The second panel examines some specific problem areas in drug sentencing. The final panel discusses the collateral consequences of the war on drugs as well as possibly more effective approaches to the drug problem.

The Street Enforcement panel elucidates the ways in which drugs and the war on drugs affect society. William Ryan, Deputy Attorney General

7. See Allison North Jones, *Strong Views, Pro and Con, on Ads Linking Drug Use to Terrorism*, N.Y. TIMES, Apr. 2, 2002, at C7 (discussing reaction to Bush Administration's anti-drug advertising campaign linking drug use to support of terrorism).

8. See Christopher Marquis, *Bush's \$19 Billion Antidrug Plan Focuses on Law Enforcement and Treatment*, N.Y. TIMES, Feb. 13, 2002, at A28.

9. 122 S. Ct. 1230 (2002).

10. See *Rucker*, 122 S. Ct. at 1232 (establishing resident's argument).

11. *Id.* (quoting Anti-Drug Abuse Act of 1988, 42 U.S.C. § 11901(3) (1994)).

for the Commonwealth of Pennsylvania, sets the stage effectively. He summarizes the progress of the war on drugs from the perspective of a 27-year veteran prosecutor. Mr. Ryan recounts the escalation of the use of drugs and the acceptance, even glorification, of the drug culture during the 1960s and 1970s. He argues that in the 1980s society demanded an aggressive response, precipitating a true war on drugs, which has, in his view, contained the spread of drug use. Government, he contends, has appropriately done what it must to address the corrupting influence of the drug culture.¹²

The other members of the panel on Street Enforcement are more critical of the government's methods of waging the war on drugs. Graham Boyd condemns the government's method of waging the war on drugs as generating too many civilian casualties and too much social harm.¹³ Professors Luna, Moran, Johnson and Cooper all describe ways in which the war on drugs distorts the legal system and skews the development of the law. Professor Luna considers the phenomenon of drug exceptionalism, encouraging discussion of whether drug offenders should receive disparate, meaning reduced, constitutional protection in the courts.¹⁴ Continuing that theme, Professor Moran considers *Atwater v. City of Lago Vista*,¹⁵ the "soccer mom" case. In his Article, Professor Moran contends that *Atwater* represents the natural culmination of the United States Supreme Court's decisions authorizing law enforcement incursions into the privacy of automobiles and their occupants, a jurisprudence of accommodating law enforcement in the pursuit of the drug war.¹⁶ Professor Johnson examines the impact of the drug war at the borders, arguing that the effort to stem the flow of both drugs and illegal immigrants across the borders leads to a corrosive reliance on racial profiling.¹⁷ Professor Cooper argues that law enforcement has effectively "encoded" the drug war, leading the courts to "un-balance" the Fourth Amendment, giving inappropriate latitude to law enforcement. He points to the Court's recent decision in *United States v. Arvizu*¹⁸ as reflecting the Court's willingness to accommodate the requests of law enforcement to the detriment of substantial Fourth Amendment rights.¹⁹

12. See William H. Ryan, Jr., *Fighting the War on Drugs in the Twenty-First Century: A Prosecutor's Perspective*, 47 VILL. L. REV. 809 (2002).

13. See Graham Boyd, *Collateral Damage in the War on Drugs*, 47 VILL. L. REV. 839 (2002).

14. See Erik Luna, *Drug Exceptionalism*, 47 VILL. L. REV. 753 (2002).

15. 532 U.S. 318 (2001).

16. See David A. Moran, *The New Fourth Amendment Vehicle Doctrine: Stop and Search Any Car at Any Time*, 47 VILL. L. REV. 815 (2002).

17. See Kevin R. Johnson, *U.S. Border Enforcement: Drugs, Migrants, and the Rule of Law*, 47 VILL. L. REV. 897 (2002).

18. 122 S. Ct. 744 (2002).

19. See Frank Rudy Cooper, *The Un-Balanced Fourth Amendment: A Cultural Study of the Drug War, Racial Profiling and Arvizu*, 47 VILL. L. REV. 851 (2002).

The panelists on the second panel consider two problem areas in drug sentencing. Drug sentencing occurs in the context of stiff, arguably harsh, mandatory minimums, and of sentences that vary substantially depending on the quantity and type of drug involved. Professor Simons discusses the disparity in sentencing of drug offenders that results from uneven exercise of prosecutorial discretion. He documents the disparity in drug sentencing both within federal districts and across districts and advocates that more prosecutors should offer drug defendants the opportunity to earn reduced sentences for cooperation. Although he acknowledges that the practice could result in even more disparity in sentencing, he argues it is a necessary palliative to address the dysfunctional sentencing scheme that currently exists.²⁰ Professor Ross tackles another problem of drug sentencing currently vexing the courts. In light of *Apprendi v. New Jersey*,²¹ Professor Ross tackles the controversy surrounding judicial fact-finding at sentencing and advocates a solution that preserves judicial distinctions among variants of a crime. At the same time, Professor Ross contends that at sentencing a judge should be precluded from asking questions whose answers would raise the culpability grade of the crime if the issue were treated as an element. Through her proposals, Professor Ross maintains that the respect accorded to verdicts would be enhanced, while the importance of the sentencing inquiry would be preserved.²²

The final panel considers both responses to and consequences of the war on drugs. Doctor Marlowe brings his expertise as a psychologist and researcher to bear on the problem and argues for government policies based on proven success, rather than political mood. He demonstrates convincingly that only an integrated public health/public policy approach, involving the criminal justice system in the program of treatment, produces meaningful and consistent reduction in drug use and recidivism.²³ Professor Demleitner catalogues the collateral consequences that we currently impose on drug offenders, such as denying funds to finance education, proscribing access to food stamps and temporary assistance to needy families, restricting employment opportunities, and long-term or permanent disenfranchisement. She advocates a Marshall Plan to repair the far-reaching harm to society generated by the drug war.²⁴

The messages of this Symposium assume greater significance in light of the ongoing war on terrorism. Like the war on drugs, the war on terrorism engages our government in wide-ranging offensive and defensive ini-

20. See Michael A. Simons, *Departing Ways: Uniformity, Disparity and Cooperation in Federal Drug Sentences*, 47 VILL. L. REV. 921 (2002).

21. 530 U.S. 466 (2000).

22. See Jacqueline E. Ross, *What Makes Sentencing Facts Controversial? Four Problems Obscured by One Solution*, 47 VILL. L. REV. 965 (2002).

23. See Douglas B. Marlowe, *Effective Strategies for Intervening with Drug Abusing Offenders*, 47 VILL. L. REV. 989 (2002).

24. See Nora V. Demleitner, "Collateral Damage": No Re-entry for Drug Offenders, 47 VILL. L. REV. 1027 (2002).

tiatives targeting an ill-defined and ever changing enemy. Like the war on drugs, the war on terrorism is not avoidable. But it must be waged with caution. The messages of this Symposium suggest that the government should not sacrifice civil liberties to the cause of the war, should not so burden those implicated that they can never reclaim full membership in society, and should make decisions based on data and demonstrated theories rather than on political rhetoric. As we expand our national effort from the war on drugs into the war on terrorism, we should read these Articles with interest and consider carefully their critique of our past efforts.

