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Special Project: Current Issues in Drug Enforcement Law

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SPECIAL PROJECT: CURRENT ISSUES IN DRUG ENFORCEMENT LAW

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INTRODUCTION

The illegal drug trade and its costs to society have grown exponentially in the past several years. Drug traffickers, both within the United States and abroad, have amassed incredible wealth trafficking illicit drugs while the United States, the world's leading consumer of those drugs,¹ has suffered drug related increases in lost productivity, insurance costs, and health care expenditures.² As the impact of these problems has reached more Americans, popular support for increased enforcement efforts has grown. Politicians have successfully used the drug war as a get-tough-on-crime campaign message.³ Local communi-

1. See Address by Dr. Irving G. Tragen, Drug/Alcohol Education Training Seminar (July 5-9, 1989), reprinted in 135 CONG. REC. E3001, 3002 (daily ed. Sept. 12, 1989) (estimating that 90% of the profits in the international drug trade are realized in the United States); *Presidential Certifications Regarding International Narcotics Control: Hearing and Markup Before the Subcomm. on Western Hemisphere Affairs of the House Comm. on Foreign Affairs*, 100th Cong., 2d Sess. 200 (1988) (testimony of Rep. Dostmayer) (stating that although the United States represents only 6% of the world's population, it consumes over 60% of all illicit drugs).

2. See M. ROTHSTEIN, *MEDICAL SCREENING AND THE EMPLOYEE HEALTH COST CRISIS* 95 (1989) (estimating that illegal drugs are responsible for one-third of the \$99 billion lost to the United States industry each year due to substance abuse).

3. See, e.g., President's Radio Address to the Nation on Federal Drug Policy, 18 WEEKLY COMP. PRES. DOC. 1249, 1250 (Oct. 2, 1982). President Reagan stated that "Drugs are bad and we're going after them. As I've said before, we've taken down the surrender flag and put up the battle flag. And we're going to win the war on drugs." *Id.*; N.Y. Times, Apr. 10, 1988, § 1, at 10, col. 1 (reporting that in 1988, a Presidential election year, only 21% of all Americans believed that fight-

ties have organized themselves to confront drug dealers and to attempt to reclaim neighborhood streets. Events that occurred while this Special Project was being written, such as the invasion of Panama and the drug summit in Colombia, and the public support they received illustrate the extent to which drug law enforcement has become a top priority.

The intensity of political and popular support for drug enforcement efforts and the tremendous wealth and sophistication of drug traffickers have led to increasingly extraordinary enforcement measures by the United States. Enforcement officials have acted aggressively to apprehend and arrest drug traffickers and to locate and destroy drug crops. These efforts have produced many successes. United States enforcement officials have confiscated or destroyed huge quantities of illegal drugs⁴ and successfully extradited a number of prominent drug traffickers.⁵ Most observers believe, however, that these successes only scratch the surface of the drug trade.⁶ The social and economic costs of drug use remain conspicuous and enforcement officials continue to express frustration over the inadequacy of their resources.⁷

Increased drug law enforcement has raised new political and legal issues both in the United States and abroad. Because the United States enforcement strategy has focused upon interdiction of the drug supply, officials have engaged in diplomatic efforts, such as aid leveraging, to encourage the countries that provide the bulk of the world's illicit drugs to cooperate in apprehending drug traffickers.⁸ Within the United States, the extraordinary measures required to apprehend sophisticated drug traffickers have raised issues regarding the sufficient grounds for search and seizure and the appropriate balance between the government's need to test suspects for drug use and that individual's right to privacy.

ing communism was more important than drug control).

4. In 1988 drug enforcement agents eradicated 38,531 plots on which illegal drugs were cultivated. DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, 1988 DOMESTIC CANNABIS ERADICATION/SUPPRESSION PROGRAM FINAL REPORT 5 (1988). In 1987 enforcement officials seized 682 laboratories used to produce amphetamines and methamphetamines. NAT'L NARCOTICS INTELLIGENCE CONSUMERS COMMITTEE (NNICC), THE NNICC REPORT 1987: THE SUPPLY OF ILLICIT DRUGS TO THE UNITED STATES 5 (1988).

5. See, e.g., Bagley, *Narco-Diplomacy: Drug Trafficking and the U.S.-Latin American Relations*, in SELECT COMM. ON NARCOTICS ABUSE & CONTROL, 101ST CONG., 1ST SESS., DRUGS AND LATIN AMERICA: ECONOMIC AND POLITICAL IMPACT AND U.S. POLICY OPTIONS 75, 87 n.4 (Comm. Print 1989) (edited transcript of a Congressional Research Service seminar) (discussing the extradition of Jorge Ochoa from Colombia to the United States to face charges under a drug trafficking indictment).

6. See DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, INTELLIGENCE COLLECTION AND ANALYTICAL METHODS introduction (1987).

7. *Id.*

8. See Bagley, *supra* note 5, at 87.

This Special Project will address four significant areas of drug enforcement law. The Special Project begins with a survey and critique of United States efforts to interdict the supply of drugs entering the country through international diplomacy and extradition efforts. Next, the Special Project explores the courts' response to the increased use of the "drug courier profile" by law enforcement officials as sufficient probable cause for a search of a suspect's property. The Special Project then examines recent United States Supreme Court decisions that have relaxed the individualized suspicion requirement for testing government employees for drug use. Finally, the Special Project discusses the drug proceeds forfeiture statute and its impact on the right of defendants to the counsel of their choice.

S. Douglas Williams, Jr.
Special Project Editor

