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OUR FORGOTTEN COLONY: PUERTO RICO AND THE WAR ON DRUGS

By LeeAnn O'Neill and Jennifer Gumbrewicz, Esq.*

Inter arma silent leges—in time of war, the laws are silent¹

In a time where the war in Iraq and the war on terrorism dominates the front page news, the War on Drugs has been relegated to a second class position. However, for decades, the War on Drugs has silently “hunted” minorities, sending them to jails in disproportionate numbers and infringing on their Constitutional rights. Despite the nation’s new focus in the Middle East, the effects of the War on Drugs are still as devastating as when it began. A “country of minorities,” Puerto Rico is not only a prime target of the War on Drugs, it is also a key drug portal to the U.S. and the Caribbean and the rates of crime and drug addiction are among the highest in the world.² The War on Drugs in Puerto Rico has created an inner city ghetto in a beautiful tropical paradise.

HISTORICAL BACKGROUND OF PUERTO RICO

The contentious relationship between the United States and Puerto Rico creates a complicated background for the War on Drugs. The United States acquired Puerto Rico as a colony from Spain through the Treaty of Paris in 1899. In 1900, the Foraker Act allowed Puerto Rico to establish a civil government. The Jones Act followed in 1917, wherein Congress granted Puerto Ricans “statutory citizenship.”³ Although this technically granted U.S. citizenship to Puerto Ricans, the rights of a statutory citizen are different than those of a constitutional citizen. In 1950, Public Law 600 gave Puerto Rico the right to adopt its own constitution and establish a relationship with the United States via a compact.⁴ Just two years later, the Commonwealth of Puerto Rico was established under its own constitution.⁵ Despite several status referendums, Puerto Rico still has a nebulous position as an unincorporated U.S. territory – somewhere in between a colony and a state.⁶ The status debate alone is fraught with constitutional and self-determination issues that cannot even begin to be explored in this article.⁷

This quasi-state, quasi-territory status creates tensions between Puerto Rico and the federal government. Congress and the Supreme Court wield the ultimate authority as to which constitutional provisions apply to Puerto Rico and whether or not federal law preempts local law on the island.⁸ This treatment, however, has been extremely inconsistent. For example, in *Examining Board of Engineers, Architects and Surveyors v. de Otero*, the Supreme Court held that the District Court of Puerto Rico was obligated to enforce the federal civil rights statute to protect rights secured by the Constitution.⁹ Just a year later, in *Harris v. Rosario*, the Court held that rights invoked under the Equal Protection Clause did not have to be protected because “Congress, which is empowered under the Territory Clause of the Constitu-

tion... may treat Puerto Rico differently from States so long as there is a rational basis for its actions.”¹⁰ Equally controversial is the Puerto Rican Federal Relations Act, which states that the statutory laws of the United States apply equally in Puerto Rico as in the rest of the United States unless “locally inapplicable.”¹¹ The Act also provides the Supreme Court with discretion to determine what the U.S. government deems “locally inapplicable.”¹²

THE WAR ON DRUGS

In the early half of the 20th century, a number of federal drug laws passed through Congress criminalizing drug use.¹³ The Nixon administration first coined the phrase “War on Drugs.”¹⁴ The Comprehensive Drug Abuse Prevention and Control Act of 1970 centralized the piecemeal federal legislation involving the prohibition and regulation of illicit drugs.¹⁵ The Act “classifies substances... into five categories of controlled substances... [and]... criminalizes manufacturing, distributing, dispensing, and possessing controlled substances in violation of the Act’s comprehensive regulatory scheme.”¹⁶ The Reagan administration escalated the War on Drugs by passing the Anti-Drug Abuse Act of 1986.¹⁷ The Act “increased penalties and instituted mandatory minimum sentences for most drug offenses.”¹⁸ The 1980s brought a massive increase in the number of drug cases brought to federal courts. “While the overall rate of criminal cases filed in the United States district courts rose sixty-nine percent [from 1980 to 1990], the number of drug cases increased nearly three hundred percent.”¹⁹

The War on Drugs is primarily adjudicated in the federal criminal justice system. Given the transient nature of drug smuggling, which crosses not only national but international borders, only the federal government has the proper jurisdiction and enough resources to combat this problem.²⁰

The main U.S. suppliers of cocaine are South and Central American countries. Texas, Florida, California, Puerto Rico and New York consistently lead the country in total cocaine seizures.²¹ Their positions as border states make them ideal for drug trafficking due to access via numerous waterways and infrastructures designed to distribute drugs to large markets.

THE WAR ON DRUGS—DRUG EXCEPTIONALISM

The courts tend to view the War on Drugs in a favorable manner, often giving more leeway to law enforcement officers investigating drug related crimes, and analyzing drug cases using more flexible standards, such as “reasonableness.”²² This concept of viewing the War on Drugs favorably is best described as

DRUG TRAFFICKING IN PUERTO RICO

Central and South American drug traffickers have used Puerto Rico as a portal to the U.S. because of the diminished border scrutiny in that area, allowing for an easier exchange of people and goods from Puerto Rico to the United States.³⁴ “An important incentive for the traffickers in reaching Puerto Rico is the possibility that illicit drugs can be transported to the continental United States in cargo that is not subject to further inspection by [Customs and Border Patrol]. Puerto Rico also is an attractive sea and air transportation site in the Caribbean because the island has one of the busiest seaports in North America, and an abundance of commercial flights to the United States.”³⁵ In 1995, Puerto Rico was designated as a High Intensity Drug Trafficking Area (HIDTA), which prompted the Drug Enforcement Agency to direct more resources to Puerto Rico.³⁶

THE WAR ON DRUGS AS A WAR ON PUERTO RICO

The Federal District Court of Puerto Rico plays a central role in the War on Drugs because approximately 68% of federally sentenced defendants in Puerto Rico are drug offenders.³⁷ Unlike other high drug offense jurisdictions, Puerto Rico is the only one that is a “state” of minorities.³⁸ Coupled with Puerto Rico’s tenuous status as a “commonwealth” with its citizen’s rights dictated by Congress and the Supreme Court and not by the United States Constitution, the War on Drugs has transformed into a war on Puerto Rico. Furthermore, it is important to note that the uncertainty of Puerto Rico’s status magnifies the effects of the War on Drugs as a war on minorities. In addition to the traditional inherent racial bias of the War on Drugs discussed above, the United States justifies trampling on the rights of Puerto Ricans as an extension of the War on Drugs. The government’s violation of the right to a jury trial and due process, its application of the death penalty, and drug exceptionalism are just a few issues highlighted by the War on Drugs in Puerto Rico.

RIGHTS IN A WAR ZONE

Since Puerto Rico is an unincorporated territory, not all of the fundamental rights granted by the U.S. Constitution are granted to the citizens of Puerto Rico. Unlike states, Puerto Rico cannot incorporate these rights through the Fourteenth Amendment.³⁹ Arguably, the biggest exclusion is the *right to jury trial*.⁴⁰ Although Puerto Rico is constitutionally protected under the due process clause,⁴¹ the U.S. Constitution does not grant Puerto Rico the protection of the Sixth Amendment right to jury trial because it is not deemed to be a fundamental constitutional right.⁴² The implication is a devastating psychological injury to Puerto Rico. The logic of the court stigmatizes Puerto Ricans as second class U.S. citizens – they are not “good enough” to be afforded the right to jury trial, which was deemed a fundamental right in *Duncan v. Louisiana*⁴³ and is twice guaranteed by the U.S. Constitution.⁴⁴ However, the local constitution of Puerto Rico grants a right to jury trial for felonies in lieu of the U.S.

“drug exceptionalism” and is explained by Erik Luna in his article entitled, “Symposium: New Voices on the War on Drugs: Drug Exceptionalism.”²³ His argument introduces the proposition that constitutional criminal procedure should be applied the same no matter the crime.²⁴ However, many legal scholars note that, in reality, courts make exceptions in drug cases.²⁵ Primarily in the context of Fourth Amendment cases, the U.S. Supreme Court has found that probable cause is not always necessary in a number of drug related seizures.²⁶ Additionally, in light of the so-called “border exception,” the Supreme Court has decreased the legal protections normally applied for searches, seizures, and detentions that occur near the U.S. borders.²⁷

THE WAR ON MINORITIES

The escalation in drug enforcement dramatically affects minority communities, particularly the African American and Latino communities. The rates of incarceration for minorities are significantly higher than those for Caucasians.²⁸ Consequently, minorities are overrepresented in the federal prison system in relation to their representation in the overall population.

Two major reasons for higher rates of incarceration for minorities involved in drug related offenses are the drug laws themselves and the nature of their enforcement. First, the laws are more likely to be enforced against minorities. Presumably, in an effort to catch more drug offenders, the police are more likely to patrol inner city streets where people are outside in plain view rather than the suburban neighborhoods where much of the drug activity occurs behind closed doors. Not only are there higher rates of patrol in areas where drug use is concentrated, but race is also considered one of a list of legal and acceptable factors law enforcement uses in routine traffic stops and drug courier profiles.²⁹ Most drug courier profiles from various law enforcement agencies include characteristics such as the destination or city of origin, nervousness, at what point a person deplanes, and race.³⁰ Race can also be used as a factor in other brief detentions by law enforcement.³¹

Second, the laws target the minority population. While on their face the laws seem to be racially neutral, they are not racially neutral in their application. (See Table I below). For example, the Federal Sentencing Guidelines have the same sentence for *500 grams* of powder cocaine and *5 grams* of crack cocaine.³² On its face, this crack/cocaine disparity in sentencing does not seem to be a racial issue; however, powder cocaine is generally used by a predominantly suburban, upper class, white population and crack cocaine is used predominately by an urban and minority population.³³

Table I – All Offenders Sentenced in 1989

	Pre-Guidelines	Guidelines
Total	16,027 (100%)	21,057 (100%)
White	10,618 (66.3%)	9,372 (44.5%)
Black	3,580 (22.3%)	5,523 (26.2%)
Hispanic	1,265 (8.5%)	5,538 (26.3%)

Source: Gerald W. Heaney, *The Reality of Guidelines Sentencing: No End to Disparity*. 28 Am. Crim. L. Rev. 161, 204-208 (1991)

Constitution.⁴⁵

To add insult to injury, federal courts in Puerto Rico require jurors to be proficient in English because the “overwhelming national interest served by the use of English in a United States court... justifies conducting proceedings in the District of Puerto Rico in English and requiring jurors to be proficient in that language,” and therefore precludes alternatives like simultaneous translation.⁴⁶ If the Sixth Amendment applied in Puerto Rico, the language qualification would clearly violate the Amendment because it guarantees the right of the accused to have a jury composed from a cross section of his community.⁴⁷ It is nearly impossible to find such a jury that meets the language proficiency because 71.9% of Puerto Ricans are not proficient in English.⁴⁸ Consequently, juries consist of an English-speaking elite and thus systematically excludes the Spanish-speaking population.

The federal government has also preempted local law with federal statutes to facilitate the War on Drugs. For example, the First Circuit Court of Appeals in *United States v. Quinones* held that the Omnibus Crime Control Act, which regulates the use of wiretap evidence, preempts the Puerto Rican constitutional ban against such evidence.⁴⁹ Authorizing wiretapped evidence, despite a local constitutional ban against it, violates the rights of Puerto Rico’s citizens. Considering that 78% of court-authorized wiretaps are used for narcotics-related crime investigations, it is clear that the local rights of Puerto Rico’s citizens are not taken very seriously by the federal government or by the judicial system.⁵⁰ More grievous than the federal government’s preemption with regard to wiretapping is the federal government’s disregard of Puerto Rico’s constitutional ban against the death penalty.⁵¹

U.S. District Judge of Puerto Rico Salvador Casellas expressed his indignation by asserting that “it shocks the conscience to impose the ultimate penalty, death, upon American

citizens who are denied the right to participate directly or indirectly in the government that enacts and authorizes the imposition of such punishment.”⁵² In 1988, the Drug Kingpin Statute allowed federal prosecutors to seek the death penalty for murders that occur during the course of a drug-kingpin conspiracy.⁵³ More notably, the Federal Death Penalty Act (FDPA) of 1994 allowed the death penalty to be sought for the running of a large-scale drug enterprise.⁵⁴ The First Circuit Court of Appeals in *United States v. Acosta-Martinez*,⁵⁵ a case where the U.S. Attorney pursued the death penalty for a murder committed during a drug offense, overturned a successful challenge to the enforcement of the death penalty in the district court of Puerto Rico.⁵⁶ Many jurors were excluded from the *Acosta-Martinez* jury pool because of their anti-death penalty sentiments.⁵⁷ Thus, it should come as no surprise then that the U.S. Attorneys in Puerto Rico have submitted the largest number of potential capital cases for review than any of the other 94 federal judicial districts, making Puerto Ricans subject to more federal prosecutions than other jurisdictions.⁵⁸

Unlike states, Puerto Rico cannot incorporate these rights through the Fourteenth Amendment. Arguably, the biggest exclusion is the right to jury trial

CONCLUSION

As second-class citizens with diminished constitutional rights, Puerto Ricans have been further disenfranchised by the War on Drugs. We have seen that in times of war, including the War on Drugs, certain fundamental rights are pushed to the side. In the case of Puerto Rico, the War on Drugs has affected certain fundamental rights with regards to life, fair trials and privacy. The U.S. government has become the distant slumlord of the fundamental rights of Puerto Rico’s citizens. The U.S. should learn a valuable lesson with regards to the way it has treated Puerto Rico: “treat a nation like a ghetto and it will behave like a ghetto.”⁵⁹

ENDNOTES

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¹ BLACK’S LAW DICTIONARY 811 (6th ed. 1990).

² Ruben Berrios Martinez, *Puerto Rico’s Decolonization*, 76 FOREIGN AFF. 110 (1997) [hereinafter Berrios Martinez].

³ JOSE TRIAS MONGE, PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD, at vii-xi (1997) [hereinafter Trias Monge].

⁴ *Id.*

⁵ *Id.*

⁶ The *Insular Cases* establish the framework for applying the U.S. Constitution to the acquisitions of the Philippines, Cuba, Puerto Rico, and Guam. The doctrine of incorporation asserts that only territories with the express promise of statehood were guaranteed the same constitutional rights incorporated by the Fourteenth Amendment. Territories, such as Puerto Rico, which do not have the

promise of statehood are subjected to a different constitutional standard. See *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Balzac v. Porto Rico*, 258 U.S. 298 (1922); *Examining Bd. of Architects, Eng’rs & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976) [hereinafter *Examining Bd. of Architects*].

⁷ See Berrios Martinez, *supra* note 2.

⁸ See *Torres v. Commonwealth of Puerto Rico*, 442 U.S. 465 (1979), citing *Mul-lany v. Anderson*, 342 U.S. 415, 419-420 (1952) (“Congress may make constitutional provisions applicable to territories in which they would not otherwise be controlling”); *Examining Bd. of Architects*, 426 U.S. at 590 (1976) (holding that Congress left to the Supreme Court the question of what constitutional guarantees apply to Puerto Rico).

⁹ *Examining Bd. of Architects*, *supra* note 8.

¹⁰ *Harris v. Rosario*, 446 U.S. 651 (1980).

¹¹ U.S. CONST. art. IV, § 3, cl. 2.

¹² 48 U.S.C. § 734 (2004).

¹³ Various drugs were criminalized at different times. One of the first laws passed to eradicate drug trafficking was the Harrison Narcotic Drug Act. Passed in 1914, the Act regulated the production and use of opium and coca leaves and

ENDNOTES CONTINUED

their derivatives. See Kathleen Brickey, *Criminal Mischief: The Federalization of American Criminal Law*, 46 HASTINGS L.J. 1135, 1148-1149 (1995) [hereinafter Brickey] (citing Ch. 1, 38 STAT. 785 (1914)).

¹⁴ See Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 SUFFOLK U. L. REV. 235, 246 (2000) [hereinafter Whitebread].

¹⁵ See Brickey, *supra* note 13, at 1149.

¹⁶ See *id.*

¹⁷ See *id.* at 1149, citing Pub. L. No. 99-570, 100 STAT. 3207 (1986) (codified as amended at 21 U.S.C. §§ 801 to 971 (1988 & Supp. V 1993)).

¹⁸ See *id.* at 1149-1150.

¹⁹ See *id.* at 1153, citing Rehnquist, Ch. J., *1989 Year-End Report on the Judiciary 4*, reprinted in ADMINISTRATIVE OFFICE OF THE U.S. COURTS, THE THIRD BRANCH 1 (1990).

²⁰ See *id.* at 1143 (“[B]y crossing the state line, the [criminal offender] could defy hot pursuit by local authorities. But it was precisely at the border that federal jurisdiction began.”).

²¹ U.S. Drug Enforcement Agency, Drug Intelligence Brief on Federal-Wide Drug Seizures: Drug Seizures Ranked by Top Five Areas, (June 2004), available at <http://www.usdoj.gov/dea/pubs/intel/04026.html>.

²² See Erik Luna, *Symposium: New Voices on the War on Drugs: Drug Exceptionalism*, 47 VILL. L. REV. 753, 759 (2002) [hereinafter Luna].

(“[R]easonableness” may well be the law’s favorite weasel word, beyond hard definition, simple in application and sufficiently elastic to reach nearly any result. Nowhere does this seem more evident than in the Court’s drug-related cases testing reasonable expectations of privacy.”).

²³ *Id.*

²⁴ *Id.* at 755.

²⁵ *Id.*

²⁶ See *Florida v. Rodriguez*, 460 U.S. 1, 5 (1984) (The U.S. Supreme Court noted that “Certain constraints on personal liberty that constitute ‘seizures’ for purposes of the Fourth Amendment may nonetheless be justified even though there is no showing of ‘probable cause’ if ‘there is articulable suspicion that a person has committed or is about to commit a crime’ . . . Such a temporary detention for questioning in the case of an airport search is reviewed under the lesser standard enunciated in *Terry v. Ohio*, 392 U.S. 1 (1968), and is permissible because of the ‘public interest involved in the suppression of illegal transactions in drugs or of any other serious crime.’” [Internal citations omitted]); See also *Florida v. Royer*, 460 U.S. 491 (1983).

²⁷ See WAYNE LAFAYE, JEROLD H. ISRAEL, NANCY J. KING, CRIMINAL PROCEDURE 236 (3rd ed., West Group, 2000) (characterizing this “exception” to search and seizure principles of the Fourth Amendment in the following way: “[R]outine searches of persons and things may be made upon their entry into the country without first obtaining a search warrant and without establishing probable cause or any suspicion at all in the individual case.”); see also *U.S. v. Ramsey*, 431 U.S. 606 (1977) (finding that “searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.”).

²⁸ See PAIGE M. HARRISON AND ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2003, at 9 (2004).

²⁹ See Luna, *supra* note 22, at 763 (Racial profiling can best be defined as “the use of race as a proxy for crime, allegedly justified by a propensity toward crime which, in turn justifies the detention and search of individuals in public spaces—standing or walking on the streets, driving on the highways, commuting on buses or trains, flying on airplanes and engaging in other activities of modern life. Under this definition, statistical data, high-profile cases and anecdotal evidence all seem to point toward a pervasive problem in America today.”).

³⁰ See Irene Dey, *Drug Courier Profiles: An Infringement on Fourth Amendment Rights*, 28 U. BALT. L.F. 3, 4 (1998); see Stephen E. Hall, *A Balancing Approach to the Constitutionality of Drug Courier Profiles*, 1993 U. ILL. L. REV. 1007, 1011 (1993) (A source city is defined as “those cities from which drugs are shipped to other points for sale or further distribution and those cities that receive the drugs”).

³¹ See *Florida v. Royer*, 460 U.S. 491 (1983); *U.S. v. Mendenhall*, 446 U.S. 544 (1980); *Md. State Conference of NAACP Branches v. Md. Dept. of State Police*, 72 F. Supp. 2d 560 (D. Md., 1999).

³² See Whitebread, *supra* note 14, at 247.

³³ John Lewis and Robert Wilkins, *Fix Sentencing Guidelines; Move to End Disparity Along Racial Lines Hasn't Worked*, ATLANTA JOURNAL-CONSTITUTION, (Dec. 16, 2004) at 19A.

³⁴ Testimony, Thomas Constantine, Drug Enforcement Agency, Puerto Rico and Law Enforcement Efforts in the Caribbean Region: Hearing Before Subcommittee on Crime, House Judiciary Comm., 104th Cong. (1997); Testimony, Michael Vigil, Drug Enforcement Agency, Hearing Before House Government Reform Comm. (2000).

³⁵ See U.S. DEP’T. OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, THE DRUG TRADE IN THE CARIBBEAN: A THREAT ASSESSMENT 29 (2003); see also Press Release, U.S. Dep’t of Justice, Operation Clear Skies and Operation Dirty Cargo: Twenty-One Individuals Indicted in the District of Puerto for Drug Trafficking Through the Luis Muñoz-Marin International Airport as a Result of Two Organized Crime Drug Enforcement Task Force Investigations (Mar. 11, 2004), available at www.usdoj.gov/dea/pubs/states/newsrel/carib031104p.html.

³⁶ See Whitebread, *supra* note 14, at 247.

³⁷ See *id.*

³⁸ Office of Drug Control Policy, Drug Policy Information Clearinghouse, Puerto Rico Profile of Drug Indicators, Mar. 2004, at p. 2; see U.S. CENSUS BUREAU, CENSUS 2000 (Puerto Rico is 98.8% Hispanic/Latino according to the 2000 Census).

³⁹ See *supra* note 6.

⁴⁰ The other fundamental right denied Puerto Rico is the right to vote for president and representation in Congress. Trias Monge, *supra* note 3, at 161-163.

⁴¹ *Mora v. Mejias*, 206 F.2d 377, 182 (1st Cir. 1953).

⁴² See *Balzac v. Porto Rico*, 258 U.S. 298 (1922); *Santana v. Collazo*, 533 F. Supp. 966 (D.P.R. 1982).

⁴³ *Duncan v. Louisiana*, 391 U.S. 145 (1968).

⁴⁴ U.S. CONST. art. III, § 2 and U.S. CONST. amend. VI. Furthermore, U.S. courts recognize that a right to jury trial extends to misdemeanors with a possible sentence of imprisonment for at least six months, whereas the constitution of Puerto Rico only grants trials for felonies, which creates a gap between the two documents. See *Baldwin v. New York*, 399 U.S. 66 (1970).

⁴⁵ P.R. CONST. art. II, § 11; *Figueroa v. People of Puerto Rico*, 232 F.2d 615, 617 (1st Cir. 1956).

⁴⁶ *United States v. Flores-Rivera*, 56 F.2d 319, 326 (1st Cir. 1995), quoting *United States v. Aponte-Suarez*, 905 F.2d 483, 492 (1st Cir. 1990).

⁴⁷ 28 U.S.C. § 1861 (2004); *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975).

⁴⁸ U.S. CENSUS 2000, Language Use and English-Speaking Ability: 2000 (issued October 2003), available at www.census.gov/population/www/cen2000/briefs.html.

⁴⁹ P.R. CONST. art. II, § 10; *United States v. Quinones*, 758 F.2d 40 (1st Cir. 1985).

⁵⁰ Press Release, Administrative Office of U.S. Courts, Total Wiretap Applications Drop in 2002; Fewer States Report Wiretap Activity (Apr. 28, 2003) available at http://www.uscourts.gov/Press_Releases/02wtreport.pdf.

⁵¹ P.R. CONST. art. II, § 7.

⁵² Press Release, American Civil Liberties Union, U.S. Judge Rules Against Death Penalty in Puerto Rico (July 19, 2000), available at <http://archive.aclu.org/news/2000/w071900a.html>.

⁵³ See the Federal Death Penalty Information Center website at www.deathpenaltyinfo.org.

⁵⁴ See 18 U.S.C. § 3591(b) (2004).

⁵⁵ *United States v. Acosta-Martinez*, 265 F. Supp. 2d 181 (D.P.R. 2003).

⁵⁶ John Gleeson, *Supervising Federal Capital Punishment: Why the Attorney General Should Defer When U.S. Attorneys Recommend Against the Death Penalty*, 89 VA. L. REV. 1719 (2003).

⁵⁷ Adam Liptak, *Puerto Ricans Angry That U.S. Overrode Death Penalty Ban*, N.Y. TIMES, July 17, 2003, at A1.

⁵⁸ Sean Morton, Comment, *Death Isn't Welcome Here: Evaluating the Federal Death Penalty In the Context Of a State Constitutional Objection To Capital Punishment*, 64 ALB. L. REV. 1435, 1446 (2000), citing Rory K. Little, *The Federal Death Penalty: History and Some Thoughts About the Department of Justice's Role*, 26 FORDHAM URB. L.J. 347, 357 (1999).

⁵⁹ See Berrios Martinez, *supra* note 2.