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The dragnet of drug arrests.

DEA image in the public domain. In college, on-campus drug use -- and sometimes drug sales, apparently -- ran rampant. I would sometimes be right in the room or in the dorm hallway as others smoked pot or, in one instance, snorted cocaine. If I did not want to be a hermit, it was hard to avoid being with people who smoked pot; this was the early Eighties, and both pot and beer were very popular (and also unlawful for those under twenty-one to purchase). This also having been the Eighties, for small quantities of drugs, drug enforcement, criminal penalties, and collateral consequences were less harsh. Welcome to 2008, where few politicians and prosecutors have enough backbone to support legalizing marijuana, heavily decriminalizing all other drugs, and reducing the penalties for drugs, except that I credit those lawmakers and prosecutors who are at least willing to put some first-time drug cases (I only know of marijuana cases) into diversion to give a chance to avoid convictions, and to enable no convictions or less serious convictions for people who use marijuana for medical necessity. Back to my college experience being around people smoking marijuana, By merely being next to these people -- not even touching nor ingesting the substances -- I was risking arrest, prosecution, and possible conviction, because a drug possession conviction requires nothing more than proof beyond a reasonable doubt that the defendant possessed (defined as knowledge, dominion and control over the drugs) drugs (the prosecutor has the burden to prove the substance was the alleged controlled dangerous substance, ordinarily by bringing in the chemist if any drugs are left and seized). I could have testified until I was blue in the face that I had nothing to do with the drugs, but if I was not believed by the judge or jury, I would have been convicted. Fortunately, neither I nor the others around me were busted for drug possession. So-called controlled dangerous substances remain illegal, often with harsh penalties and tough collateral consequences for convictions, including risks to student financial aid, government security clearances, and risks to immigration status. If anyone needs a reminder about the risks of being a bystander when drugs are possessed, used or sold, just read this September 9, 2008, opinion from Virginia's Court of Appeals finding sufficient evidence to convict a woman for possessing methamphetamines and marijuana with the intent to distribute by having been present in the house where her fiance sold the items. *Dunn v. Virginia*, __ Va. App. __ (Sept. 9, 2008). The evidence may have been sufficient to prosecute Ms. Dunn for simple possession of the substances -- including where a small amount of methamphetamines was found in her jewelry or personal bag -- but the concept of allowing a conviction for intent to distribute just because she knows her fiance is distributing should be a sobering wake-up call to otherwise innocent people who hang around with people possessing or distributing drugs. Curiously, after a three-judge Virginia Court of Appeals panel ruled in Ms. Dunn's favor (by as little as a 2-1 vote), only one judge dissented in this en banc opinion. Query: What made the remaining judge(s) in Ms. Dunn's favor change their minds? It will be a boring world if people choose to avoid arrests by only associating with people as bland as Neil Sedaka, Lawrence Welk, and Pat Sajak hosting Wheel of Fortune. That may be enough of a good reason for legalizing marijuana and heavily decriminalizing all other drugs. Jon Katz.

Posted by Jon Katz in Drugs at 00:00