

The DEA's War on Doctors:

A Surrogate for the War on Drugs

by

Ronald T. Libby
University of North Florida
(rlibby@unf.edu and rtl2129@aol.com)
Tel (904) 808-4612 and
(904) 806-4404

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- * There is an historical parallel with the DEA's current prosecution of medical doctors in its war on drugs. Before World War I, narcotics were legal and widely used to relieve pain and treat illness. The public was unaware of the addictive potential of these drugs. For example, morphine was commonly used in hospitals to relieve post operative pain. In the process, some patients inadvertently became addicted to the drug. Just before WW I, there was estimated to be about 250,000 addicts. Most were productive members of society. They had jobs and took care of their families but they depended upon the drugs to live normal lives. Doctors managed their addiction while attempting to reduce and eliminate their drug dependency.
- The Prohibition movement successfully lobbied Congress in 1914, to adopt the Harrison Narcotics Act. The Act criminalized use of narcotics in the United States for the first time. Section 2 of the Act specifically banned physicians from prescribing morphine, opium and cocaine to treat addicts. Under the pretext of eradicating a dangerous and immoral addiction epidemic, the federal Bureau of Narcotics launched a "war on doctors." The law enforcement strategy was to force doctors, under the threat of felony prosecution, to deny treatment to addicted patients. During the 1920s, an estimated 35,000 physicians were thus indicted for

prescribing narcotics to their patients. Many doctors were arrested, put on trial and had their careers and lives destroyed. Likewise, the addict population was prosecuted and imprisoned. By 1928, more than 19 percent of all federal prisoners were sentenced for narcotics offenses.

- The prosecution of doctors for prescribing narcotics to treat addicts ended in 1932, on the eve of the repeal of Prohibition. Harry J. Anslinger, the Narcotics Commissioner, said that no investigation of a doctor could begin without written order from a supervisor. He hoped to eliminate the “desire of some of our field men to build up a good record at the expense of the professional classes, and made up a lot of petty cases which we didn’t feel should be called to the attention of the United States Attorney, or even reported to the bureau cases that have merit” (Pharmaceutical Law Enforcement Offices. Proceedings of the Fourth Annual Conference, August 25, 1932. Stenographic Transcript. Archives of the American Pharmaceutical Association).
- In 1970, the Harrison Narcotics Act was repealed and replaced with new legislation called the Drug Abuse Prevention and Control Act (DAPCA). This Act, plus a 1975 Supreme Court decision in U.S. v. Moore, reaffirmed the Harrison Act’s criminality of doctors who treat addicts. The Supreme Court ruled that physicians, who are licensed by the DEA to prescribe narcotics under Title II of the DAPCA, called the Controlled Substances Act (CSA), “can be prosecuted when their activities fall outside the usual course of professional practice” [United States v. Moore, 423 U.S. 122, 124 (1975)].
- From its founding in 1973, the DEA has focused its mission primarily upon illegal black market drugs such as heroin, cocaine, “crack” cocaine, ecstasy and marijuana in urban areas of the country. In 1999, the agency came under heavy criticism from Congress on the grounds that there was no measurable proof that the DEA had reduced the illegal drug supply in the country (GAO/GGD-99-108, “Drug Control, DEA’s Strategies and Operations in the 1990s,” July 1999, p. 5, 10). Senator Charles E. Grassley, Chairman of the Caucus on International Narcotics Control and Bill McCollum, Chairman of the Subcommittee on Crime Committee on the Judiciary stated that despite the fact that funding for the DEA almost doubled from about \$806 million in

1990 to \$1.5 billion in 1999, there was no measurable proof that the DEA had reduced the supply of illegal drugs in the country.

- The Department of Justice (DOJ), which administrates the DEA, responded to congressional criticism by identifying a major new drug threat that the DEA allegedly ignored. Glen A. Fine, the Inspector General of DOJ claimed that prescription drug abuse was a “problem equal to cocaine” which to this point the DEA said was the “primary drug threat to the U.S. population” (GAO/GGD-99-108, p. 10). Without presenting any evidence, Fine claimed that 4.1 million Americans used cocaine in 2001, while 6.4 million used narcotic pain killers which accounted for 30 percent of all emergency room drug-related deaths (www.usdoj.gov/oig/inspection/DEA/0210/exec.htm).
- In October of 2001, the DEA announced a new anti-drug campaign called the OxyContin Action Plan (DOJ, OxyContin Special, Vol. 01, p. 3). The agency claimed that doctors and pharmacists were primarily responsible for the diversion of legal drugs to addicts (GAO/GGD-99-108, 1999: p. 119). This is comparable to the Harrison Act’s criminalizing doctors who prescribed narcotics to addicts. Asa Hutchinson, the DEA Administrator said that the non-medical use of OxyContin constituted a deadly new drug epidemic spreading throughout towns and cities in the rural heartland of America (www.cpmission.com/main/painpolitics/libby1.html). The agency had thus created a new mission for itself; a less dangerous and easier mission to provide proof of success.
- In order to carry out its new mission, the DEA has hired more than 500 Diversion Investigators and has multiplied its forces by deputizing 1,554 state and local offices from police departments throughout the country to coordinate drug investigations. This is called the DEA State and Local Task Force (SLTF) Program. There are 1,172 DEA Special Agents working alongside 1,916 police officers in 207 task forces. The task forces account for about 40 percent of all DEA cases and seizures. (Statement of Rogello E. Guevara, DEA before the House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security, May 6, 2003, p. 5). In 2001, asset forfeitures resulted in seizing \$179,264,498 which was shared by the DEA, state and local law enforcement agencies.

- * The DEA's investigation and prosecution of doctors and pharmacists is a self-financing, autonomous law enforcement program that is unaccountable to Congress. In 1993, Congress created a self-financing Diversion Control fund derived from DEA license fees that all manufacturers and dispensers of narcotics must pay. About 85 percent of all those registered by the DEA are physicians. The DEA is required to fully finance its investigation and prosecution of drug diversion from the license fees paid by about one million doctors, manufacturers and dispensers of narcotics (the fee was doubled in 2003 to \$131 annually per physician). In addition to the license fees, the Diversion Control Program receives funding from the DOJ's Asset Forfeiture Fund which is financed by seizure of assets from doctors and pharmacists who are under investigation for illegally dispensing drugs (www.usdoj.gov/dea/programs/af.1). The Attorney General controls this fund which is currently more than \$1.8 billion.**

- * In 2001, there were 3,097 diversion investigations and 861 investigations of doctors (DEA Update, National Association of State Controlled Substance Authorities, Myrtle Beach, South Carolina, October 2002). During 2003, There were 732 investigations of doctors and 584 sanctions including the arrest of 50 physicians (DEA, Last Acts Partnership, Pain & Policy Studies Group, University of Wisconsin, "Prescription Pain Medications," 2004: p. 42-43)**

- * The DEA claims that since there are more than 972,000 narcotics prescribers, diversion investigations constitutes 0.075% of all physicians—a tiny percentage of all doctors and therefore no cause for concern. However, since there are estimated to be fewer than 4,000 doctors in the entire country who are willing to risk prescribing high dosages of narcotics to chronic pain patients, it means that as many as 18 percent or one out of every 20 doctors who prescribe opioids are potential targets for DEA investigation. Comparable to the Harrison Act of 1914, therefore, the DEA's prosecution of doctors to eradicate an alleged addiction epidemic has made doctors a substitute for its failed war on drugs. Comparable to the 1920s, therefore, many innocent physicians who are dedicated to treating chronic pain sufferers have become targets in the DEA's war on drugs thus depriving pain patients of treatment they need to live normal and productive lives**