

DRCNet Foundation

Raising Awareness of the Consequences of Prohibition

3/22/05

The Honorable Judge Leonard D. Wexler
United States District Court
Eastern District of Virginia, Alexandria Division
401 Courthouse Square
Alexandria, VA 22314

Re: United States v. William Eliot Hurwitz, 03-CR-467-ALL (LDW)

Dear Judge Wexler:

I am writing to express concern about comments made by Ralph Craft, foreman of the Hurwitz case jury, which appeared in the December 21, 2004 edition of *The Washington Post*. Mr. Craft's remarks indicate the jurors fundamentally misconstrued both the legal and medical issues involved in the case. I have observed the pain issue and worked with pain patients, physicians and their advocates for ten years and am well versed in the issue.

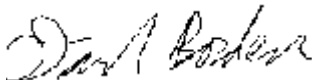
Mr. Craft told the *Post*, "the legitimate doctors out there don't prescribe anywhere close to what Hurwitz did." However, the dosage which according to the *Post* "astounded" Craft, 1,600 5 mg oxycodone pills, adds up to 8 grams daily, of a medication equivalent in its potency to morphine. According to Dr. Russell Portenoy, Chairman of the Department of Pain Medicine and Palliative Care at Beth Israel Medical Center, "[i]n clinical practice, the range of opioid doses required by patients is enormous" and "[d]oses equivalent to more than 35 g morphine per day have been reported in highly tolerant patients..."¹ The 35 grams Dr. Portenoy, one of the world's leading pain specialists, finds appropriate in some cases, is more than 4 times the dosage Mr. Craft and presumably other jurors believed was impossibly large – a serious misconception that appears to have played a major role in the convictions.

Mr. Craft also told the *Post* that Dr. Hurwitz "wasn't running a criminal enterprise." However, the charges of which he and other jurors voted to convict Dr. Hurwitz are clearly intended to apply to persons involved in major criminal enterprises. That Mr. Craft and perhaps other jurors could understand that Dr. Hurwitz did not run a criminal enterprise, and yet convict him for running a criminal enterprise, suggests they were either unable, unwilling, or inadequately prepared to properly interpret the charges on which they were deciding.

Given the multiple, fundamental errors made by jurors, I believe your legal and moral obligation is to reverse the convictions and release Dr. Hurwitz immediately. Short of that, I urge you at least to use the discretion afforded by the recent Booker/Fan Fan Supreme Court ruling to sentence reasonably, and sentence Dr. Hurwitz to time served when he appears before you next month. Since the jurors themselves did not believe Dr. Hurwitz ran a criminal enterprise, it would be unreasonable to hand down a sentence Congress intended for leaders of criminal enterprises.

Thank you for taking my points into consideration. I will be attending the April 14 sentencing hearing in support of Dr. Hurwitz, pain patients, and all enlightened physicians who wish to treat them. I believe this is a matter of the utmost moral gravity and that history will watch and remember the actions you take that day.

Respectfully,



David Borden
Executive Director

¹ Lowinson, Joyce H. et al, *Substance Abuse: A Comprehensive Textbook* ed. 3 (Philadelphia, PA: Lippincott Williams & Wilkins, January 1997), p. 573.

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