

The Prosecution of Dr. Hurwitz, and How we can Help

An appeal from The Pain Management Legal Defense Trust (PMLDT)

On December 15, 2004, Dr. William Hurwitz, formerly a pain specialist in McLean, Virginia was convicted of 50 counts of drug trafficking in federal court in Alexandria, Virginia. Sentencing is scheduled for April 14, 2005. The prosecution is seeking a life sentence. He is 59 years old.

The government's case was built around a group of patients – between 5 and 10 percent of the 400 patients in Dr. Hurwitz's practice – who conspired with each other and lied to Dr. Hurwitz about their pain and then abused and/or sold the drugs he prescribed to them for pain treatment. According to the prosecution, Dr. Hurwitz's failure to detect the fraud proved that he intended the unlawful use and distribution of these drugs. As even the prosecutors acknowledged in court, the overwhelming majority of his patients suffered from severe pain, many of whom were ready to testify that they owed their return to active, productive lives to Dr. Hurwitz's care. The court permitted only 4 of his legitimate patients to testify. The prosecutors also relied on an expert witness whose testimony was immediately denounced by 6 past presidents of the American Pain Society as containing "serious misrepresentations." In instructing the jurors, the presiding judge, Leonard Wexler, expressly told them that whether Dr. Hurwitz was practicing in good faith was not relevant to the most serious of the charges.

Dr. Hurwitz's case is a microcosm of the deepening tensions between police authorities and the pain treatment community. Though the prosecution of Dr. Hurwitz is one of the more aggressive and high profile of such cases, scores of physicians have been similarly targeted in recent years. These cases grow out of a misguided "Just Say No" zealotry of Department of Justice drug warriors, applying organized crime law enforcement approaches in the thoroughly inappropriate arena of *bona fide* medical treatment for disabling pain – therapy conducted entirely with lawful drugs approved for that purpose by the Food and Drug Administration.

The implications of letting this unconscionable conviction stand are grave for public policy. Legally, Dr. Hurwitz's conviction in effect establishes negligence in medical practice as a federal crime, and puts Department of Justice policemen in the business of regulating an increasingly important area of medical practice. Socially, this case will worsen an already serious medical problem – the under-treatment of pain in America. The prosecutorial overreaching in this case will have a severe chilling effect on the willingness of doctors in the future to treat severe disabling pain.

The Hurwitz family has retained a Washington, D.C.-based lawyer for the appeal. The trial itself cost more than \$500,000, funded exclusively by Dr. Hurwitz's immediate family. Dr. Hurwitz himself is destitute, and the family is out of resources. For this reason, the Hurwitz family is appealing to the public for financial support for the appeal. Please make your contributions to "The Pain Management Legal Defense Trust" – a fund set up to support Dr. Hurwitz's appeal and defense and not linked to any group or organization – and send them to:

c/o Kenneth Hurwitz P. O. Box 958 Village Station New York, NY 10014	If you have any questions, or wish to write to Dr. Hurwitz, please feel free to contact Kenneth (Dr. Hurwitz's younger brother) or his wife Mi Ling Tsui at mltsui@nyc.rr.com.
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Written by the Pain Management Legal Defense Trust in Support of Dr. Hurwitz: 4/11/2005