

The Worst Kind of Ham Sandwich

The vindictive grand jury investigation of pain-relief advocate Siobhan Reynolds.

By Radley Balko

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Grand juries are supposed to act as a buffer between prosecutors and those they accuse of committing a crime. They're intended to protect us from having our reputations ruined by reckless and meritless allegations. In reality, grand juries have been captured by prosecutors. The American Bar Association notes that, particularly at the federal level, grand juries have come to possess "wide, sweeping, almost unrestricted power," which is "virtually in complete control of the prosecutor." In the wrong hands, grand juries can even become a tool for harassing a prosecutor's political enemies. The feud between Assistant U.S. Attorney Tanya Treadway and pain patient advocate Siobhan Reynolds is a good example.

Over the last decade, the federal government has been targeting doctors who treat pain patients with prescription drugs like Percocet and Oxycontin. Advocates like Reynolds argue that doctors who overprescribe painkillers should be disciplined by medical boards if they are sloppy or unscrupulous, not judges and prosecutors. Dumping them into the criminal justice system puts

drug cops in the position of determining what is and isn't acceptable medical treatment. One promising treatment of chronic pain known as high-dose opiate therapy, for example has all but disappeared because doctors are too terrified of running afoul of the law to try it.

Siobhan Reynolds entered this fray when her late ex-husband Sean, began suffering the symptoms of a congenital connective tissue disorder that left him with debilitating pain in his joints. After trying a variety of treatments, he found relief in a high-dose drug therapy administered by Virginia pain specialist William Hurwitz. But Hurwitz was later charged and convicted on 16 counts of drug trafficking. The judge acknowledged that Hurwitz ran a legitimate practice and had likely saved and improved the

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lives of countless people. His crime was not recognizing that some of his patients were addicts and dealers. Meanwhile, Reynolds' husband died in 2006 of a cerebral brain hemorrhage, which she believes was the result of years of abnormally high blood pressure brought on by his pain.

All of this moved Reynolds to start the PainReliefNetwork, a shoestring nonprofit that advocates on behalf of pain patients and physicians. Reynolds quickly learned how to convey the frustration of pain patients and their families. I first met her at a 2005 Capitol Hill forum. She had the entire room in tears. I later commissioned and edited a paper for the Cato Institute about painkiller prosecutions.

Reynolds coached doctors under investigation on how to fight back. She says she's never been compensated to intervene on behalf of a doctor, other than an occasional airline ticket or hotel accommodations while she was in town to help out. "I moved in with my mother," she says. She played a crucial role in getting media outlets like *Newsweek* and the *New York Times* to look at the real problem of undertreated pain. At the same time, Reynolds' passion can make her seem unreasonable and extreme. She has been sharply critical of the medical establishment for failing to stand up for accused physicians, and she has angered

more than a few prosecutors, regulators, and politicians. One of them is Treadway, a federal prosecutor in Kansas. (Treadway's office declined to comment for this article.)

In 2007, Treadway announced the indictment of Kansas doctor Stephen Schneider and his wife Linda for overprescribing painkillers. The indictment followed a familiar pattern: Treadway held a press conference, used terms like "pill mill" and "drug dealer," and, with the aid of some questionable science, linked the Schneiders to 56 alleged patient overdose deaths (Wichita Federal District Court Judge Monti Belot later reduced the number to four). Reynolds went to work on the Schneiders' behalf. She organized patient protests outside their closed clinic, and encouraged them to speak out about how Schneider's treatment had improved their lives. She paid for a billboard proclaiming the

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Schneiders' innocence

The savvy and unusual countercampaign didn't sit well with Treadway. She first tried to get a gag order preventing Reynolds from talking about the case in public. Judge Belot said no. Several of Schneider's patients say they were then visited by federal agents, who forced their way into their homes and took documents (including a letter Schneider had sent one of them from prison). Treadway next asked the judge to move the case out of town, arguing that Reynolds' advocacy had tainted the jury pool (never mind Treadway's own press conference). Belot denied the change of venue request, too.

Treadway then launched a grand jury investigation of Reynolds, presumably for obstruction of justice, though she told Reynolds' attorney that she would neither confirm nor deny that an investigation was under way. She issued Reynolds a sweeping subpoena demanding all of her records for every case in which she has ever advocated on behalf of a doctor or patient—every e-mail, letter, and phone record, as well as Facebook wall posts and status updates. Complying cost Reynolds tens of thousands of dollars and hundreds of hours of labor. With help from the ACLU, Reynolds sued to have the subpoena quashed. She lost. A second judge, Julie

A. Robinson, hit her with a \$200 fine for contempt each day she didn't comply. Robinson also declined Reynolds' request to make the subpoena and related proceedings public, effectively imposing a seal on the subpoena, Reynolds' challenge to it, and any materials related to either.

In the meantime, the Schneiders were convicted in federal court of drug trafficking. During their sentencing, Federal District Court Monti Belot called Reynolds "stupid" and "deranged," and referred to the Pain Relief Network as a "Bozo the Clown outfit."

When Reynolds appealed the subpoena, the United States Court of Appeals for the 10th Circuit upheld it, as well as the seal on everything related to it. While we can't read the ruling, the justification for the seal is ostensibly the secrecy afforded to grand jury investigations. But that

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secrecy is supposed to protect the people the grand jury is investigating. In this case, the person being investigated wants it made public. Reynolds feels the subpoena is harassment and wants to shed some light on it. Treadway and the courts are hammering Reynolds with the very secrecy that is supposed to protect her.

Reynolds had to get special permission just to share information about her case with the Institute for Justice and the Reason Foundation (which publishes *Reason* magazine, my employer). When the organizations submitted an amicus brief on her behalf, that brief was also sealed, even though it's based on publicly available information. *New York Times* Supreme Court reporter Adam Liptak was able to read a portion of the sealed 10th Circuit ruling on the sealing of the *Reason* and Institute for Justice briefs. In November, Liptak reported that the court said one of its reasons for keeping the brief secret was to keep IJ and the Reason Foundation from discussing Reynolds' pain advocacy agenda in public.

That's an astonishing thing to read in a federal appeals court opinion. All of the information in the brief is publicly available. Yet the courts are preventing Reynolds and these organizations from releasing the briefs or the court rulings, at least in part to stifle public discussion

about Reynolds' criticism of government policy.

Reynolds appealed the 10th Circuit rulings on both the subpoena and the seal to the Supreme Court, but it declined to take the case. That means Treadway's deployment of a grand jury investigation to silence Reynolds will stand. The demands of the subpoena have broken the Pain Relief Network. Reynolds is shutting it down because she's out of money. Federal law allows criminal defendants who are acquitted to be reimbursed for their legal expenses. But Reynolds has been neither indicted nor cleared. There's no deadline for ending the grand jury investigation. Can this possibly be how the system is supposed to work?

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