US law enforcement cracks down on opioid users, lets drug companies off the hook

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The response of the ruling class to the opioid epidemic in the US has been to crack down nationwide on drug users and low-level dealers, while ignoring the pharmaceutical companies and drug distributors that are largely responsible for the crisis.

According to the Centers for Disease Control and Prevention (CDC), opioids—including prescription drugs, heroin, and fentanyl—killed more than 33,000 people in 2015. Many of the people who become heroin users first became addicted to opioids after taking prescription painkillers, but turn to heroin as a cheaper alternative.

The number of overdose deaths resulting from prescription drugs has quadrupled since 1999. The CDC estimates that more than 183,000 people have died from overdoses on prescription drugs between 1999 and 2015.

According to an article that appeared Monday in the *Wall Street Journal*, law enforcement agencies are now treating overdose deaths as homicides. Prior to this change, police officers' only involvement in overdose deaths would be to check the scene to make sure the accidental death was not in fact a murder.

In response to the opioid crisis, police officers are now viciously pursuing overdose victims' friends and acquaintances who bought and used heroin together with the victim. In Hamilton County, Ohio, one of the areas looked at by the *Journal*, individuals have been charged with involuntary manslaughter, which carries a maximum sentence of 11 years.

According the *Journal*, 86 people were sentenced last year for crimes related to the distribution of drugs that resulted in an overdose death or serious injury. Prosecutors in these cases are drawing on the reactionary legislation passed to address cocaine and heroin use in the 1980s and 1990s, but rarely enforced until now. And it is not only drug dealers who are being charged, but also anyone who shared drugs with the overdose victim or sold small amounts to support their drug habit.

For example, the U.S. Attorney for eastern Kentucky, Kerry B. Harvey, made drug-overdose deaths a priority starting in 2015, using federal laws to sentence defendants from 20 years to life. Earlier this year, a 38-year-old drug trafficker in Kentucky, Navarius Westberry, was sentenced to life for supplying the heroin and fentanyl that led to the overdose death of 25-year-old Cory Brewer. Westberry admitted that his drug trafficking organization had distributed between 750 and 1,000 grams of heroin and 50 grams of fentanyl.

The harsher enforcement of the law, however, will do little to stem the tide of drug overdoses. Moreover, the behavior of opioid users is in many ways dictated by their addiction, which the National Institute on Drug Abuse defines as "a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences."

The treatment of opioid users and low-level drug dealers by law enforcement stands in stark contrast to the kid gloves used on the drug companies that flooded these very same communities with prescription opioids in the first place.

For example, over the course of five years drug distributor Miami-Luken shipped 11 million doses of oxycodone and hydrocodone into Mingo County, West Virginia, which has a total population of only 25,000 persons. Drug distributor Cardinal Health alone shipped 241 million pills into West Virginia between 2007 and 2015.

What were the consequences for these companies that have unleashed untold harm and damage upon the residents of the state? Miami-Luken agreed to pay $2.5 million and Cardinal Health paid $20 million in settlements reached with West Virginia. Another drug distributor, AmerisourceBergen, paid the state $16 million.

For drug companies and distributors, minor fines like these simply represent the cost of doing business. Drug distributors—the big three being McKesson, Cardinal Health, and AmerisourceBergen—act as middlemen between drug companies and retail pharmacies. Together, these three companies account for 85 percent of all drug shipments and have combined annual revenues of over $450 billion.

McKesson, the largest drug distributor, stands at number 5 on the *Fortune 500* list. According to the company's most recent annual report, McKesson pulled in $190.8 billion revenues and $2.3 billion in profits in 2016. The company has 30 warehouses located across the country that deliver more than a third of all medicines in the US. The company's long-time CEO, John Hammergren, is consistently one of the most highly paid CEOs in the country, taking home $639 million over the last 10 years.

These companies repeatedly failed to comply with the federal Controlled Substances Act (CSA), which requires drug distributors to report suspicious orders of controlled substances to the Drug Enforcement Agency (DEA). However, due to successful lobbying efforts on the part of drug companies the DEA's ability to enforce this law has been sharply curtailed.

According to an ongoing joint investigation by 60 Minutes and the *Washington Post* published in October of this year, the DEA began to crack down on drug distributors in 2005, but eased up starting in 2011 as top DEA officials approved fewer and fewer "freeze" orders against opioid distributors. Civil cases filed by the DEA dropped from 131 in 2011 to only 40 in 2014.

Between 2014 and 2016, the three largest drug distributors, along with an industry trade group, spent $13 million lobbying Congress. (The drug industry as a whole spent $102 million on lobbying during this same time period).

Their investment paid off in the form of the Patient Access and Effective Drug Enforcement Act, legislation first proposed in 2014 by Republican representatives Tom Marino of Pennsylvania and Marsha Blackburn of Tennessee.

The bill, which was written by a former DEA lawyer, had bipartisan support with Democratic cosponsors and the approval of Attorney General Loretta Lynch and the leader of the White House Office of National Drug Control Policy at the time, Michael Botticelli. The bill was passed without debate and by unanimous consent. Obama signed the law in April 2016.

The Act raises the standard that must be met before the DEA is allowed to suspend the licenses of drug wholesalers. Instead of showing that the

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company's operations pose an "imminent" threat, a more expansive standard, the DEA must now show they pose an "immediate" threat, which is much more restrictive and difficult to meet because of the distance between the drug distributors and the consequences of their actions in the neighborhoods and communities afflicted by the opioid epidemic.

Republicans and Democrats placed pressure on the DEA to back off of drug companies even before Congress approved the legislation. In 2015, congressional Republicans and the Obama Justice Department pushed Joe Rannazzisi to step aside as the head of the Office of Diversion Control, and eventually forced him to retire all together. Rannazzisi, the primary whistleblower for the October story, told 60 Minutes that it is "a fact" that drug companies knowingly flooded communities with drugs that were killing people. "That's exactly what they did," he said.

"These weren't kids slinging crack on the corner," Rannazzisi told 60 Minutes correspondent Bill Whitaker. "These were professionals who were doing it. They were just drug dealers in lab coats."

None of the politicians involved in the legislation were willing to give interviews to 60 Minutes or the *Washington Post*. Aides to congressman Marino called Capitol Hill police when a camera crew showed up at his office asking for a comment.

The Trump administration nominated Marino to become the next "drug czar," but had to withdraw the nomination after the 60 Minutes/ *Washington Post* story broke. The bill's chief co-sponsor, Blackburn, will likely run for a US Senate seat from Tennessee in 2018. Both Marino's and Blackburn's districts have been particularly hard hit by the opioid epidemic.

Over the weekend, CBS News published additional findings from the 60 Minutes/*Washington Post* joint investigation highlighting how the powerful case that the DEA and US Attorneys had built over the course of two years against the drug distributor McKesson was undermined.

The report is largely based on an interview by Whitaker with David Schiller, a 30-year veteran of the DEA who recently retired from the agency. He served as the Assistant Special Agent in Charge for the Denver Field Division where he supervised about 100 people investigating drug trafficking and money laundering cases.

"It's the inside story of the biggest case the DEA ever built against a drug company: the McKesson Corporation, the country's largest drug distributor," writes Whitaker. "It's also the story of a company too big to prosecute."

Schiller notes that McKesson was pouring millions of opioids into pharmacies, many of which were simply fronts for criminal drug rings, without conducting any due diligence. This took place not only in Denver, but cities across the country, including Los Angeles, Detroit, and New York City.

In the interview, Whitaker asks about the responsibility of the McKesson Corporation for the opioid epidemic:

BILL WHITAKER: One of the former D.E.A. Administrators said that the McKesson Corporation has fueled the explosive prescription drug abuse problem in this country. Do you agree with that?

DAVID SCHILLER: 100%. If they woulda [sic] stayed in compliance with their authority and held those that they're supplying the pills to, the epidemic would be nowhere near where it is right now. Nowhere near.

"They had hundreds of thousands of suspicious orders they should have reported, and they didn't report any," Schiller said. "There's not a day that goes by in the pharmaceutical world, in the McKesson world, in the distribution world, where there's not something suspicious. It happens every day."

60 Minutes also interviewed Helen Kaupang, a retired DEA agent who worked with Schiller on the McKesson investigation.

"McKesson is supplying enough pills to that community [unclear, but most likely Denver] to give every man, woman and child a monthly dose of 30 to 60 tablets," Kaupang said. "Is that not shocking? I found it shocking."

Red flags like these, however, were completely ignored by the company. In order to hide suspiciously large orders, Kaupang says the company simply rigged the system: whenever the number of pills ordered by the pharmacy crossed the threshold that would require reporting the order as suspicious, the company would simply raise the threshold.

A 2014 DEA memo obtained by 60 Minutes and the *Washington Post*, says the company had a pattern of "dramatic increases in thresholds without justification…" It noted that McKesson had "supplied controlled substances in support of criminal…Activities [sic]" to pharmacies.

Special agent Schiller and his team wanted to hold McKesson accountable for its criminal actions, including a fine of billions of dollars and jail time for company executives. But the DEA and the Justice Department got cold feet in the summer of 2014 because they were, Schiller says, "intimidated" by the company's legal representation:

BILL WHITAKER: Did a DEA attorney actually tell you that they were not going to pursue McKesson because they had lawyers who had gone to Harvard and Yale?

DAVID SCHILLER: They told me those exact words, because the case would take too much time and too much effort and, by the way, "What if we lost?" I said, "What if you lost?" I go, "You—you can't have a better case on a silver platter."

At the time, attorneys from Obama's Justice Department were encouraging Ranazzisi, the DEA's deputy administrator at the time, to lay off of McKesson. Ranazzisi found the request inappropriate, especially since the company refused to comply with the law, despite repeated meetings and warnings.

"The time for meetings and reports are over," Ranazzisi said. "You either comply or you lose your registration."

The DEA dragged its feet for over two years before reaching a $150 million settlement with McKesson this past February, a mere slap on the wrist. The figure represents about what McKesson makes in profits in a week and a half, and is only $50 million more than McKesson CEO Hammergren's total compensation last year, the third highest in the country. Hammergren, 60 Minutes reports, received a $1.1 million performance bonus this year based on his actions regarding ethics and accountability.

"There was [sic] backdoor deals being cut that we didn't know about, I didn't know about, and I was representing DEA nationally on the investigation at the highest level," said Schiller.

"How do you settle? How do you say its okay just, 'Here, write this check this time and—and close this place for a little bit, sign this piece of paper.' How do you do that? No. Put 'em in jail. You put the people that are responsible for dealing drugs, for breaking the law, in jail," he said. "Nobody's in jail. They wrote a check."

Schiller talked to his supervisor. "David [Schiller]… I am totally against settling," his supervisor wrote to him in an e-mail, "but how do we hold their feet to the fire…? Our attorneys have us over a barrel with their refusal to go to court."

"There is not a man or woman in the DEA today that's happy with the settlement and morale has been broken because of it," Schiller said.

A senior DEA official spoke to the *Washington Post* on the condition of anonymity when the newspaper reached out for comment.

"We could have fined them out of existence, or indicted the company and put them out of business," the official said. "I'd rather have one of the largest drug distributors be the poster child for detection and reporting of suspicious orders."

Another problem hindering the enforcement of the law is the revolving door between the DEA and the drug industry they purportedly regulate. A story published in the *Washington Post* in December 2016 found that pharmaceutical companies or their law firms had hired at least 42 former

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DEA officials since 2005. This includes 31 former employees of the DEA's Diversion Control Division, the very division responsible for preventing prescription drugs from reaching the black market and holding the authority to suspend or revoke the licenses of doctors, pharmacies, and drug companies. Five former employees of the Division went to work at McKesson.

Legal action has been taken against drug distributors, but the fines are minuscule compared to the money the companies make by violating the law. For example, before McKesson paid the record $150 million civil penalty, it had been forced to pay a $13.5 million civil penalty in 2008 to settle similar allegations. In December 2016, Cardinal Health agreed to a $44 million settlement.

While these and smaller distributors collectively have paid $400 million in fines over the past 10 years, in that same time period the gross revenues for the companies was more than $5 trillion.

US attorney generals in 41 states so far have filed lawsuits against pharmaceutical companies. Inevitably, any settlement reached with the drug companies will be a mere pittance compared to money the companies make by violating the law and wreaking havoc on communities across the country.

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