

September 2018

## Healing Appalachia: Keynote Address

Follow this and additional works at: <https://trace.tennessee.edu/tjlp>



Part of the [Law and Politics Commons](#)

---

### Recommended Citation

(2018) "Healing Appalachia: Keynote Address," *Tennessee Journal of Law and Policy*. Vol. 13 : Iss. 3 , Article 3.

Available at: <https://trace.tennessee.edu/tjlp/vol13/iss3/3>

This Symposium Material is brought to you for free and open access by Volunteer, Open Access, Library Journals (VOL Journals), published in partnership with The University of Tennessee (UT) University Libraries. This article has been accepted for inclusion in Tennessee Journal of Law and Policy by an authorized editor. For more information, please visit <https://trace.tennessee.edu/tjlp>.

# TENNESSEE JOURNAL OF LAW AND POLICY

---

VOLUME 13

SUMMER 2018

SPECIAL EDITION

---

## TRANSCRIPT

# HEALING APPALACHIA: KEYNOTE DISCUSSION

*Eric Eyre*

*Patrick C. McGinley*

*Becky Jacobs, Moderator*

INTRODUCTION: Welcome to "Healing Appalachia, The Role of Professionals in Solving the Opioid Crisis." My name is Michael Deel. On behalf of the *Tennessee Journal of Law and Policy* and the University of Tennessee College of Law, thank you for attending.

Today we have gathered experts who are working to find legal and political solutions to this public health crisis while also working with individuals who are suffering on a day-to-day basis. I invite you to not only listen to their stories but to learn from them and to remember their efforts when you make your own everyday decisions, decisions like how to help a friend, how to effect policy, how to find hidden information, or simply how to vote in the next election.

I would like to thank all the panelists and moderators that are participating today and also thank everyone who helped put this event together. So many

people gave their time and energy to make this symposium possible.

Mr. Eric Eyre and Professor Patrick McGinley will deliver our keynote address which will be followed by two panel discussions and a documentary viewing. We will take a 15-minute break between each session and there will be a transcript available after we get it published in the next issue of TJLP.

Mr. Eyre won the Pulitzer Prize for investigative reporting for his articles regarding the distribution of 750 million prescription pills in West Virginia and the tragic overdoses that followed those pills. He currently works as a statehouse reporter for the *Charleston Gazette-Mail*.

Professor McGinley is a Charles H. Hayden II Professor of Law at West Virginia College of Law. Professor McGinley teaches administrative law, environmental law, and appellate advocacy. He also represented the *Charleston Gazette-Mail* in a lawsuit that resulted in a court order unsealing the documents that led to Mr. Eyre's articles.

Professor Becky Jacobs from the University of Tennessee College of Law will moderate this discussion. Please join me in welcoming them.

MS. JACOBS: So just to like frame our discussion this afternoon, I want to give you just a few facts. So opioid painkillers are a nine-billion-dollar-a-year market in the U.S. alone. In pharmaceutical companies such as Purdue Pharma, Johnson & Johnson, Teva, and Allergan have all earned many billions over the years from the sale of these drugs. Wholesaler distributors like McKesson, Cardinal Health, and AmerisourceBergen also have profited, as have the physicians and pain clinics that prescribe these medications, some legitimately, some not so legitimately.

These profits, though, have had a very, very high public health cost as the work of our guests today helped

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

to expose. According to the CDC, from 1999 to 2016, more than 200,000 people have died in the U.S. from overdoses related to prescription opioids. That's just the prescription opioids. In 2016 alone, more than 46 people every day have died from overdoses involving prescription opioids. Also in 2016, three of the five states with the highest rates of death due to drug overdoses were close to us: West Virginia had 52 per 100,000, Ohio had 39.1 per 100,000, and Kentucky had 33.5. Tennessee's rate was 24.5. And our guests today fought to make these data public. So I want to thank them very much for being here.

I want to start by asking you, for those who aren't familiar with kind of what these drugs are, can you describe the specific painkillers that we're talking about and which ones are the focus of this investigation?

MR. EYRE: Sure. The two that we primarily focused on, because we got the DEA data on were hydrocodone, which is Lortab and Vicodin, and oxycodone, which is OxyContin. And there's plenty of other pills that are distributed, but those were the two that we focused on primarily.

MS. JACOBS: Okay. So how did you get interested in the topic, and how and when did Pat get involved?

MR. EYRE: I kind of wound up in it in a different way. I covered the legislature for West Virginia, so I'm based at the Capitol, and we had a new attorney general elected in our state. There had been a lawsuit filed about six months prior to his win by our former attorney general, and that lawsuit was against the drug wholesalers. When our new attorney general got elected, I got this phone call that this woman wanted to meet with me outside the Capitol; she had some information for me.

She brought this envelope of stuff. She had— I remember it was crazy because she had a dog with her named Bernard the Pekinese. So she's literally handing stuff out and I'm worried I'm going to get bit by this dog, Bernard the Pekinese. What it was was information about the new incoming attorney general's ties to these drug wholesalers. The one company that you mentioned, Cardinal Health, had paid for his inauguration, and then when we also looked back at contributions, a lot of these drug wholesalers after the lawsuit was filed in July of 2012 had given money to the attorney general. And so we did a story about that and he said over and over that he had recused himself from the case at the beginning of when we assume he took office, but we had heard from staff that that wasn't the case. So we actually filed a number of Freedom of Information Act requests and that wound up in court.

This photo here is— the attorney general is on the right there. This was a photo taken by a New York Times reporter, Eric Lipton, who actually won the Pulitzer Prize two or three years ago and he was writing about both the Republican Attorneys General Association and the Democratic Attorneys General Association wining and dining various attorneys general to get them— to try to persuade them to drop lawsuits or not file lawsuits. And the woman there is Pam Bondi. I believe she's still the attorney general in Florida.

And the story was about her being pushed— this was in the Hotel del Coronado in San Diego, a beautiful resort there— she was being pushed to drop a lawsuit against 5-hour ENERGY. And these guys are lobbyists. I think it was something like three thousand dollars a night to stay there. I met the reporter at the Pulitzer ceremony. And eventually when they found out what he was doing, he got kicked out of course but . . . So the next step was the FOIA lawsuit, and maybe Pat can talk a little bit about that. This is back in 2013, 2014.

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

MR. MCGINLEY: Yeah. So—

MS. JACOBS: Before you do that, step back a little bit and—

MR. EYRE: The lawsuit—

MS. JACOBS: —the first lawsuit that Darrell McGraw filed.

MR. MCGINLEY: So in was it 2012 a long-time West Virginia attorney general, Darrell McGraw, filed the first case against drug distributors of opioid drugs, recognizing the impact of opioids in West Virginia, and, really, the first public official to take some kind of action. The lawsuit, the cause of action, was new and it was suggested that this is a loser, the attorney general's office is up against Big Pharma, billion-dollar enterprises, lawyers from New York and Philadelphia and Cleveland. But that lawsuit was filed. And then in a very narrow election, Attorney General McGraw lost to Patrick Morrissey. He's pictured there in blue jeans with a lobbyist and the attorney general of Florida. And so within six months of the time that these "pill mill" cases, that's what they were referred to, were filed in the summer of 2012, a new attorney general who had formerly been a lobbyist for trade associations from the pharmaceutical industry took office.

MR. EYRE: And what I forgot to mention, his wife was the lead lobbyist for Cardinal Health in Washington D.C. and made millions of dollars.

MR. MCGINLEY: Cardinal Health being one of the three leading opioid drug distributors in the country. And she continued to be a lobbyist until after our lawsuit. There was an ethics complaint filed against the attorney general at some point and said, well, I don't have to do

this but I won't have my fingers on any of these cases. But that took a couple of years. In the meantime, Eric and the *Gazette-Mail* are interested in what this new attorney general was going to do in terms of supervising these "pill mill" cases, considering his former relationship with the industry. And Eric filed several FOIA requests and he was basically stonewalled, the responses didn't meet the requirements of the West Virginia Freedom of Information Act. I think the first one, they said, well, if we had these documents you're requesting that relate to whether the attorney general is supervising the "pill mill" cases, if we have them, they would be exempt.

And, you know, at that point the *Gazette* asked me to be of assistance, because I've done a lot of FOIA stuff, and so I wrote to the attorney general and I said, well, that's not good enough, you've got to look for it, you can't just say if you have it. And then there was a series of back and forth with nonresponsive answers from the attorney general, and I would say, well, let's read the law, you know, you must have something. And then, ultimately, after about six months, they said— they called Eric and said, okay, you can come and look at the documents but they are totally redacted and you can't take photographs, and they set a time for it. And we talked and we responded, that's not what the law requires, no, we're not doing that. And they said, we'll get back to you.

They didn't get back to us. We filed a FOIA suit. It went on for almost a year. We did discovery. We found out they had documents that they hadn't mentioned before but they claimed were attorney-client privilege, work product. And we thought we had a really good paper trail, a good case for joint motions for summary judgment, cross motions for summary judgment. And the judge ruled against us and granted summary judgment. And I was depressed. I thought this is a winner. Eric and the others at the *Gazette* were taken aback. And then something happened that was interesting.

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

MR. EYRE: So after we lost the FOIA case, somebody— I was not home. This is a recreated— actually I found this— this is actually the envelope that it came in but somebody walked up to our house and my son texted me at work and said some man just came up to our house and dropped something in the mailbox with your name on it.

Go to the next slide. You can't see it there but that was one of the e-mails that was being withheld, and what it said in the e-mail was that the attorney general has specific instructions regarding this case. So it was hard to believe— he had done multiple interviews, not just with me but with other media, over and over again saying that he was completely recused from the case, he had had nothing to do with it since the day he took office. And this countered his assertions for sure. And then where do you want—

MR. MCGINLEY: Well, so Eric wanted to write about this of course—

MR. EYRE: Oh yeah.

MR. MCGINLEY: —because this is exactly the opposite of what the attorney general had stated in court proceedings. And so, Eric, you can tell the story. As reporters usually would do, you asked him for comment.

MR. EYRE: Yeah. They required all their questions to be e-mailed, so I e-mailed a bunch of questions about when you said that you recused yourself from the case, it would seem this contradicts what you are saying. We also found at around the same time there had been some documents saying that a court hearing related to this drug distributors lawsuit had to be canceled because Attorney General Pat Morrissey can't fit it into his schedule and can't make it. And so if he was

recused from the case, why would they be saying he couldn't be there and things like that. So I e-mailed to their press person these questions about what's going on. And then the next thing you know, their general counsel called or e-mailed you, Pat.

MR. MCGINLEY: Their solicitor general.

MR. EYRE: Became solicitor general.

MR. MCGINLEY: We never had a solicitor general in West Virginia but it sounds like a good title. Yeah, he called me, and I was actually here in Knoxville, at the time I was on my way to the Public Interest Environmental Law Conference, and I get the call on my cell phone from Misha—

MR. EYRE: Misha Tseytlin.

MR. MCGINLEY: —Tseytlin.

MR. EYRE: He's now the solicitor general at Wisconsin.

MR. MCGINLEY: —and there were documents that were in the files of the court in our FOIA case that were produced by (inaudible) and that were examined by the court, quashed by the court *in camera* before it granted summary judgment against us. And so he called me and he said you better tell your client not to publish this story about documents that are under seal in the court, you're going to be sanctioned, and we're not going to tolerate this. And, you know, I'm in the rental car and—

MR. EYRE: And I'm like am I going to jail or .

..

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

MR. MCGINLEY: And I said, Misha, have you ever heard of the Pentagon Papers case? Misha was a law clerk to Justice Kennedy, so he knew the story. I said you do what you want but I can assure you this is going to go to print. But that wasn't the end of the story. We had to have conversations with the editor and publisher and they were concerned with are they going to sue us. And I said they can sue you, anybody can sue you, but this is a winner.

And they went ahead and Eric told the story. It didn't have much impact. He continued to deny and it just sort of went over people's heads. But we knew about that, it was clear the relationship there. The overarching concern was that the attorney general would somehow dump the "pill mill" cases, that it would settle them cheap or make errors, who knew, who knows. But he certainly with the appearance of impropriety with his prior relationships and the representations made to the Court, he shouldn't have been involved at all.

MS. JACOBS: Well, in fact, he wasn't very aggressive about the data that you guys had to intervene to get. So tell us about that. Because that's what broke—

MR. EYRE: That was— that was the next thing. So if we sort of flash forward, I kind of kept following the story and started seeing stuff in various legal filings. But in I think it was around March 2016 we got wind that there had been what was called a second amended complaint or a revised complaint. When they filed the original lawsuit back in 2012, the judge in this rural county that was handling it said we need some specifics here, we need some examples of, you know, this sending these larger quantities of drugs, these "pill mill" pharmacies. So they had filed an updated complaint called the second amended complaint and it was filed under seal. So this was the State of West Virginia filing a complaint outlining its allegations against the drug

distributors and you couldn't see it. It was just completely filed under seal. And I went to Pat and said, is this possible.

MR. MCGINLEY: Yeah. I said, well, that certainly violates the West Virginia Constitution, violates West Virginia Freedom of Information Act, and the West Virginia Rules of Civil Procedure. So the general rule is that public documents should be public when they are filed with the court. And here he had a complaint on behalf of the State that says on behalf of the people of West Virginia against these drug companies, but the people don't know what the allegations are. And so the State itself had come around to the point where it wanted the second amended complaint to be unsealed, but the Court did nothing and they didn't assert that aggressively. So I talked to Eric, and I got other things to do at the law school, and I'm thinking well they are going to act, nothing happened, so we filed a motion to intervene for the purposes of seeking unsealing of the second amended complaint, which is in the materials that you have. And we basically argued that there's no law on the side of the drug companies.

Their response, which I think is in the material as well, was that these are essentially trade secrets, confidential business information about how many pills, opioids, that we sell to pharmacies, so our competitors would find out who the pharmacies are and how much. And, you know, we read that and said, what? And not only that, it was old data. And we went to Boone County Circuit Court for a hearing. There were lawyers from everywhere. The court was filled.

MR. EYRE: It's a picture from the courtroom.

MR. MCGINLEY: That's our co-counsel from Boone County, Tim Conaway. And we were totally outnumbered. There must have been 40 lawyers there

for the various drug companies and pharmacies. And we argued the case. And the judge eventually said he was going to rule to unseal the documents, and then one of the drug companies filed a motion and wanted to have a conference call and— what did they say—

MR. EYRE: There was like this 11th hour try to block the release of this— to unseal this complaint and what they said was they wanted to redact 18 words. We had a conference call about it, and I think they filed something too. And they said— and it was probably 70 pages long. And they said we just want to redact 18 words. They just kept saying if you can keep these 18 words out, we're good with that. Well, it turned out— I'm making a spoiler alert here, I'm jumping ahead— but it turned out the 18 words were 18 numbers and it was numbers of pain pills. They said words.

MR. MCGINLEY: Yeah. And, well, the judge didn't buy that. He ordered the complaint to be unsealed. And then that gave Eric insight into the bigger story, the sheer volume of opioids that were being marketed in the places they were being marketed. When we saw that first information, we were stunned. We're talking about a couple hundred million doses over a five-, six-year period. But there was more. But Eric wrote a story that was part of the Pulitzer recognition in May of 2016. You can describe what—

MR. EYRE: That one was some of these numbers were— these orders were shipped— you have 20,000 oxycodone to one pharmacy in a little town of a couple hundred people, and then it would say on the following week they'd get another 50,000, and then the next week they'd get another 20,000. So it was just these large shipments over consecutive days or consecutive weeks. And what the average hydrocodone I think nationally is 90,000 per pharmacy per year, and oxycodone is probably

like 50,000 doses per year. So these small-town pharmacies were getting the equivalent of what they should have gotten in a year in a matter of a week or two. But what ultimately happened though, where this really opened things up, is throughout the complaint that was unsealed, they kept referring to DEA data shows, DEA data shows, DEA data shows this, that, and the other. So I did a FOIA asking the attorney general's office for all the DEA data that they used to cite all these various figures. And it turns out that there was a 2015 e-mail sent from DEA to the attorney general's office outlining every shipment to every pharmacy in West Virginia of hydrocodone and oxycodone and also it was broken down by the name of the company and how many pills they distributed to each county in West Virginia. And what we— just to sum it up, after we got this DEA data, there was a disproportionate number of pills sent to the southern part of the state, the coalfield region.

And you had these situations where you had pharmacies with— one town had a pharmacy— 400 people— and got nearly nine million hydrocodone pills in two years, in just two years. There were cases like this all over southern West Virginia, Logan County, Boone County, Mingo County. They had a town of 3,000 in Mingo County, they got 20 million hydrocodone over eight years. Just these incredible numbers. And then we looked at, you know, we did the (unintelligible) maps and looked at where most of the overdose deaths were, and they don't line up perfectly, but they match up pretty closely. And these counties here, not only are they number one for prescription drug overdose deaths in West Virginia, but they are I think of the top 10 about six or seven of them were all in West Virginia in the country for overdose death rates. So it was an incredible thing. And, in addition, I don't have a slide to show it, but the DEA agent who sent the data to the attorney general's office, he also did a— he mapped out the strength of the pills of the OxyContin, the milligram levels had

increased. So you had in 2007 the most popular milligram level of OxyContin was five milligrams, and then the next year it was like 10 milligrams. So the strength of the pills were actually getting stronger too in terms of—

MR. MCGINLEY: How high did they go?

MR. EYRE: They had OxyContin 80, but that was outlawed I believe.

MR. MCGINLEY: But they went beyond 10, it went pretty far above it.

MR. EYRE: Yeah, I think it went to like 30.

MS. JACOBS: I know there's a quote from your article that there were 433 pain pills for every man, woman, and child in West Virginia.

MR. EYRE: Just those two, right. I mean, we're not even doing hydromorphone, oxymorphone, Xanax, and all the others.

MS. JACOBS: That's astounding.

MR. MCGINLEY: There's one parenthetical that Eric was— when he filed actually a Freedom of Information Act request with the attorney general seeking the DEA data in August of 2016. And under West Virginia law, a FOIA law response is required within five working days. Well, the attorney general's office kept delaying, we're looking for the data, we'll get back to you, we'll get back to you. Meantime, there's an election going on where the attorney general is running for re-election. His opponent has a lot of cash and is running— has spent several million dollars on TV ads trumpeting the relationship of the attorney general to the drug companies and the opioid epidemic. And there was an

infusion of cash into Morrissey's campaign in October of— what was it— six million dollars from the National— the Republican Attorneys General Association, more money that flowed from that association than any other attorney general race. That money is sort of dark money. The contributors are the Koch brothers, pharmaceutical companies. And so the attorney general continued to delay responding. And what happened then?

MR. EYRE: Pat came up with a good idea that we should file a FOIA asking them— because they kept responding that they are searching for the records, they are searching for the records, and they would just keep every five days saying we're still searching for the records— Pat came up with an idea just to do a FOIA saying any documents that would show you're actually searching for the records. Of course there were none. And then about two or three weeks before the election he did, to his credit, he did release the DEA data.

The backdrop, as Pat was describing, was this immense pressure in terms of ads from the democratic opponent. Actually, CBS News had picked up on our story and came to West Virginia multiple times. And the attorney general agreed to do an interview with CBS News, which I can't— I don't know who told him to do that. But of course they did the things where they are asking all these happy questions and then they say what about your wife works for Cardinal Health and you have this lawsuit and, you know, they zero in on your face and you start seeing the twitches and all that. Well, the democratic guy that was running against him just kept running that interview over and over in his ad. But that was countered by all the money from the Republican Attorneys General Association who said that the democratic opponent was big friends with Hillary Clinton and Obama and they pounded that over and over and over, which is a simple effective message that worked.

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

MR. MCGINLEY: And Attorney General Morrissey won the election. It was close but he prevailed. I don't know that I would give him credit because he knew that Eric and the *Gazette* were going to write stories and we were considering a lawsuit against him, a FOIA suit, that would have come out right before the election. So I think he had some good political counselors in-house that said you better get this information out there. And it's really a question whether that information should be— should not be available to the public because it came from the DEA. And that's more the problem, all this information the DEA has but it's not shared, the public doesn't have access to it. So the public knows because of Eric's reporting the volume of prescription opioids that were sold in West Virginia. But we don't know, we don't have the data at this point, about the sales in Ohio, in New Jersey, Tennessee, Kentucky, and so forth. And that's a real flaw in the system. But subsequent to Eric's reporting there have been numerous lawsuits that have been filed here in Tennessee, for example, by Municipalities, Indian tribes, Cities, States, against the drug manufacturers and distributors seeking compensation for the cost of dealing with the opioid epidemic, which is enormous.

The American Enterprise Institute report just came out pegging the cost to the gross domestic product in West Virginia of eight billion dollars. That sounds high to me but I don't know. And the human cost, you can't calculate that. And, hopefully, in these cases that are, you know, following up on what West Virginia did, that litigation and exposure. But the volume— I was looking at the audience here, we were talking about how many oxycodone, OxyContin pills, and the total is 780 million. And when we saw that, I said oh my God. I think that's what a jury would do, if you've got a case where you could get it to the jury. It's a question of creative lawyering, having statute or common law remedies that will make these— hold these billion-dollar companies responsible.

And that's one of the grossest things about this whole story is the billions of dollars that these companies have made and there have been very few repercussions, certainly not to the companies. Three of the top 15 Fortune 500 companies are drug distributors and were parties in the "pill mill" litigation in West Virginia. McKesson, Cardinal Health, Amerisource Bergen, not household names, but they're right up there with Wal-Mart and Apple. And what do they do? I mean, what—

MR. EYRE: They ship drugs from factories to warehouses to pharmacies and hospitals.

MS. JACOBS: Purdue Pharma who produces OxyContin—

MR. MCGINLEY: The manufacturer.

MS. JACOBS: —they're the manufacturer, privately owned by a family, and they are I think the wealthiest, or maybe behind Bill Gates, in the country.

MR. EYRE: Well, like McKesson is the number five on the Fortune 500. And that shocked me. I didn't even figure that all out until we were in the courtroom and I turned around and introduced myself, and somebody was telling me they were from D.C. and like Cardinal Health or the other companies would have three or four lawyers there. We don't have the rankings but I think it's Wal-Mart, Apple is number two on the Fortune 500, or Berkshire Hathaway, Exxon, and then McKesson is number five. And then I'm not going to get these exactly right but I think AmerisourceBergen is 12 and Cardinal Health is 15. And they've actually climbed—since my story has come out, they've actually climbed in places in the Fortune 500. These are CEOs that are making— a guy in McKesson— there's been stories in

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

Fortune or Forbes— Forbes— making over 60 million dollars a year in compensation.

MR. MCGINLEY: The McKesson CEO one year was the highest paid CEO of any corporation in the United States.

MR. EYRE: And nobody had heard anything.

MS. JACOBS: I've heard another topic you've done. You were talking about the distribution outlets, some of the pharmacies. It wasn't Wal-Mart or Walgreens or— tell us about where these pills were being distributed in West Virginia.

MR. EYRE: Yeah. That was surprising. Because before I covered the— as you guys know a lot about the meth epidemic when they're doing the shake and bake bottles and making it with Sudafed, and we used to identify the pharmacies that were selling the most Sudafed in the state and they were typically the Wal-Marts and the Rite Aids. But in this case it was these independent pharmacies, these mom and pop pharmacies. They were literally drive-thru pharmacies. They didn't sell Band-Aids, they didn't sell Q-tips. They literally had names like Meds To Go Express and Larry's Drive-thru Pharmacy. And you'd see people lined up up and down the block. People would come from all over. You know, I've seen recent stories where some of these pharmacies are defending themselves saying we just didn't serve the town of 400, people came from all over. But I think that's more damning than— I mean, they were literally coming from Tennessee, Kentucky, Ohio, Pennsylvania to these little small towns in the southern part of West Virginia. Whitfield, Virginia is another place.

And you had these— you know, I wasn't there— but everybody describes these scenes that there's one

pharmacy in Kermit, which is this little town of 400 people, because there were so many people in line, they started handing out bags of free popcorn just as a bonus. They had bags for the people in town where if it was opioids, you'd get it in one color bag, and if not, like if it was blood pressure medication, you'd get it in another color bag, because they didn't want the senior citizens in town getting robbed. Because if the people would see you had the color bag that wasn't opioids, then they wouldn't rob you. They actually set up a hotdog stand with hamburgers and hotdogs while people were waiting in line. It was just an unbelievable scene from what's been described to me.

MR. MCGINLEY: What about the doctors? I refer to this as a legal cartel. You have the Mexican brown heroin cartel or Columbian cocaine cartel. You have the legal cartel, you've got manufacturers, you've got the distributors, you've got the doctors who were writing the scripts, you've got the pharmacies who were filling the prescriptions, they all had to know. With those numbers, all of them knew. And where was the law enforcement? Where is the Pharmacy Board? Where was the DEA? And this was going on for more than a decade. And I think the numbers, when we finally saw the numbers, the light went on and the country woke up to realize that this was all legal and they had— the defense was of the manufacturers, well, we're just making stuff to help people with their pain. The distributors, we're just taking them to the pharmacies. The pharmacies, we're just filling the doctors' prescriptions. And the doctors saying we're helping our patients with pain. They are all pointing fingers, they didn't do anything wrong. The doctor's office, what was that like?

MR. EYRE: Just last week or this week they busted what's called The Hope Clinic. I think at one point they had— yeah, what a name for a "pill mill" pain clinic,

The Hope Clinic, we're giving people hope— I had actually written about them. One of the prisms of my stories is they only focused on the drug wholesalers. My mom called me the day that story came out, when it first came out back in December 2016, she said what about the doctors. And I said I've been writing about the doctors for years. They had these pain clinics where the doctors didn't even show up. The one that just got busted that we wrote about back in 2014, 2015, they had former cops, retired cops, who were taking people's blood pressure, doing the weight, doing their charts. They carried guns holstered at the site. They had these special machines, I can't remember the exact name of them, but they were these electronic machines that would crank out prescriptions by the hundreds. They would have the doctor's signature on them, but they were just being reproduced through the machines. And I would get calls back in 2014, 2015 from legitimate pharmacists that would call me up and say come up and let me show you what they are doing, you know. But they would set up special relationships with some pharmacies that were disreputable, and they would fill those prescriptions. And it was an all cash basis. There was no insurance or anything like that. It was just a cash only business.

MS. JACOBS: It's astounding that— where was the Board of Pharmacy? In your third article you talked about the responsibility to file reports about large shipments. What happened with all of that?

MR. EYRE: Well, our Board of Pharmacy is almost exclusively made up of independent mom and pop, including some that were involved in this "pill mill" stuff. Their directors are all appointed by the governor and they are all independent pharmacists. So they had some rules on the books related to something called "suspicious orders" and those are orders of large numbers of drugs over consecutive days or massive quantities over one day.

MR. MCGINLEY: Those are Federal rules; right?

MR. EYRE: It was a DEA rule that the State had copied and put into their rules at the Board of Pharmacy. And I asked our executive director of our Pharmacy Board, because it was cited in the lawsuit, I said what are you doing with that. They said that hasn't been on my radar, we just don't enforce that rule. So there had been no suspicious order reports filed by any of these drug wholesalers before 2012. But when the lawsuit was filed by the former attorney general, a couple of them— two of them started sending suspicious order reports to the Board of Pharmacy, sometimes two or three a day. I went and said can I take a look at them. I thought they would be cataloged, they'd have a total number or something. And they just came— I came into the office and they came in with two big bankers boxes full and they dropped them on the table and they said here is all our suspicious order reports. And I said, well, what have you done with them. And they said we haven't done anything with them, we just shelve them. And they hadn't cataloged them, so I literally had to count through each one to figure out how many had been filed.

MS. JACOBS: Were they included in the lawsuit, the warrant?

MR. MCGINLEY: Not at that point, no.

MS. JACOBS: That's amazing. So talk a little bit about the consequences, like the kind of after-effect. Your work had a significant impact on all the lawsuits that happened. And what else do you think you have done, your work has done?

MR. EYRE: Well, the biggest development is there is a congressional investigation in the House Energy and

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

Commerce Committee and what they're doing that we hadn't been able to do for the most part is linking up exact numbers from each company to each of these pharmacies, and many of them were shuttered, a lot of them are still open actually, and they've been able to sort of dovetail or expand upon our work. They were originally stonewalled by the DEA. I think in some respects the Congressional Committees were still being stonewalled. But they've come out with some more shocking numbers like McKesson over a two-year period they figured out of those nine million pills like five million were from McKesson alone, 76 percent of the business. They've gotten some real granular detail. And they've identified other regional wholesalers. Another name is Miami-Luken, H.D. Smith. They're starting to get more numbers. But what's frustrating is, we talked a little bit about this earlier, the DEA, they have all this data. I get calls from all over the country saying can we replicate what you did. And I said the DEA in a matter of I can't imagine it would take more than an hour to do the spreadsheets that we got, it's a simple sort, but they just won't do it. They point to there's data available on their Web site called ARCOS data but it's broken down by grams and by zip code prefixes. Which I tried to look up our zip code prefixes in West Virginia and they span sometimes four or five counties or they dig into half of a county, and it's very complicated to do it that way. There are ways to see the overall number of grams by state, things like that, but nothing like what we got.

MS. JACOBS: Yeah. So what do— I mean, I've noticed—

MR. MCGINLEY: Can I add something there?

MR. EYRE: Yeah.

MR. MCGINLEY: With regard to the DEA, some of you may have saw the story, the DEA had an official that was in charge of checking on the drug distributors, you know, for suspicious orders and volumes and was trying to organize enforcement actions, at least the story that's been told publicly, and wasn't permitted to go forward. I think there was pressure from higher up in the agency or political pressure in the regional offices. But there were people in the DEA enforcement that wanted to do something about the enormous volume of opioids that were being distributed. And the trade associations for the pharmaceutical industry hired a former member of the DEA's general counsel's office to draft legislation that essentially took away the DEA's enforcement power. That's the old revolving door. You know, anybody that's been around government knows about that. And that bill was written in language that was not penetrable by those who don't really understand the legal terminology and what the DEA does, and so it was sponsored by a congressman from northeast Pennsylvania and it was passed on a voice vote in both the House and the Senate unanimously. I think the attorney general did raise some question about it. President Obama signed it and nobody— clearly, no one read it and knew what was in there. So here is an effort funded by the industry to talk about DEA oversight and enforcement power and it just goes totally under the radar until the *Washington Post*— was it—

MS. JACOBS: *60 Minutes*.

MR. MCGINLEY: —*60 Minutes* last fall did this exposé. At that time the congressman of Pennsylvania had been nominated by President Trump to be the new head of the DEA.

MS. JACOBS: Yeah, the drug czar.

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

MR. EYRE: The drug czar.

MR. MCGINLEY: Drug czar.

MS. JACOBS: It's very interesting. It's very Orwellian. The name of the legislation was "Ensuring Patient Access and Effective Drug Enforcement Act". That was the name of the legislation. It sounds really great, so if you didn't read it, you would vote for it thinking this is great for enforcement. But it basically—the DEA, to take any kind of enforcement action, they have to show a substantial likelihood of an immediate threat. Immediate. So it's a higher bar than they ever had. And they also cannot sanction any company unless they allow them first to put in place a corrective action plan.

MR. MCGINLEY: Which did not exist in the prior legislative plan.

MS. JACOBS: Yeah. So it's a very different enforcement regime than they had previously.

MR. MCGINLEY: A little bit of good news is the congressman's nomination was withdrawn a few days after the 60 Minutes show ran.

MS. JACOBS: Well, apparently, there's a lot of outrage about it in the House and Senate, so I think there's a move to repeal it. So, hopefully, that might happen. I think there's a lot on the legal side, and hopefully the next panel will talk about some of the legal fallout from this, but I think there are over 250 public lawsuits, you know, Cities, Counties, and State attorneys general. I think every state either has a lawsuit pending or they are investigating lawsuits against the opioid industry, some faction of it. And they consolidated a lot of those in this multi-district lawsuit in Ohio and— but

the companies have tried to like get settlement discussions going and to seal a lot of the data that's been coming out of that. Interesting development I read about yesterday, there's some lawsuits in Michigan on RICO, which I think is a really great kind of cause of action, a really creative theory. Hospitals have begun to sue, which is another really interesting— looks like if the cities can do it, we should be able to do it. Insurance companies are probably next. And legislatively, I think people have started— I don't know if it's happened in West Virginia— they a resetting prescribing limits, which I think should have been—

MR. EYRE: We have a bill pending that was just approved by the Senate that's been turned over to the House for seven-day. Do you guys have three-day or—

MS. JACOBS: I don't know what Tennessee is, if we have one.

MR. EYRE: Some states have three-day, some have five-day limits.

MS. JACOBS: And there are other— and just last week I think, the OxyContin manufacturer, Purdue Pharma, said they are not going to market to doctors anymore. I'm not sure at this point that makes any difference since they're firmly entrenched but . . .

MR. MCGINLEY: Marketing to doctors often means paying doctors large amounts to give a talk at some proceeding sometimes in Rome or Paris or resorts, and it can be very lucrative for doctors and inroads to doctors prescribing particular drugs. It's not only in the opioid field but certainly makes a difference. Purdue Pharma has one of the worst records in terms of they're really marketing their opioids as not being addictive. That was the first round. I mean, that's when the opioids

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

really started to kick off, you know, doctors prescribing them, manufacturers saying they are not addictive. Am I right about that?

MR. EYRE: Yeah, absolutely right.

MS. JACOBS: They said it was something like ibuprofen.

MR. EYRE: Our public health commissioner is one of the champions at trying to reduce that the opioid epidemic— he's really a good guy. He's like— he actually came from Tennessee and he's like, you know, we just were fed a bill of goods, and he's regressed and he's like I was a big prescriber of OxyContin. When I talk about these "pill mills", I mean, these were guys that had been like disciplined in other states, that lost their license in other states, and then show up in southern West Virginia. These were bad, bad guys.

MR. MCGINLEY: Can I say just one thing about that?

MR. EYRE: Yeah.

MR. MCGINLEY: The legal actions now that have multiplied, I mean, they are looking for reliable legal theory, might be RICO, might be common law, whatever, but the thing that exists is intent and knowledge. You can't look at those numbers and believe that this was a legal operation. And the doctors made millions. The pharmacies made millions. The distributors and the manufacturers made billions. So, you know, there's the intent, there's the knowledge. It's looking for creative lawyers and law that would at least try to bring some money back to the communities and try to figure out what the solutions are. And I know you're going to be talking about that on panels this afternoon. I mean, this is a long

road. It's difficult. Money is important and it's just one of the parts of the puzzle.

MS. JACOBS: So we don't have tons of time left but do you have questions? Anybody have questions?

UNIDENTIFIED SPEAKER: I missed whether or not you got that all unsealed or not.

MR. MCGINLEY: Yes.

MR. EYRE: Well, actually, companies that settled previously were allowed to keep their numbers under seal, who had settled previously with the State. But we got most of the larger companies.

MR. MCGINLEY: The complaints in— the second amended complaint is in the materials and it does say redacted, that was almost wholly redacted, so we have some of the ones that settled. The judge let them off the hook. I think we could still get that through—

MR. EYRE: Miami-Luken was the one— probably the one— the largest of the ones that were nonexempt. But a lot of them are real small and didn't have large distributions in the state. And I could see from the DEA data that I had later which ones were, you know, larger. We got Amerisource Bergen, we got Cardinal Health. The McKesson case is a separate lawsuit that's still pending.

UNIDENTIFIED SPEAKER: Well, the same way that the states sue tobacco companies, is that going on yet?

MR. EYRE: Yeah. And one thing we haven't talked about yet is that there's been some evidence, in particular with McKesson and Miami-Luken, that there were concerns brought to higher-ups, to executives, from

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

regional managers, and things like that, that these numbers were extraordinarily high. There was something with the McKesson, there's a separate action against McKesson by shareholders in Delaware and there's allegations that there were actually concerns brought by certain employees to the Board of Directors and they didn't do anything, allegations.

MS. JACOBS: And, interestingly, one of the main tobacco lawyers, Mike Moore, is involved in a lot of these suits, the pharmaceutical suits, also on the plaintiff's side. So they're getting that same coalition together to work on these pharmaceutical cases.

MR. MCGINLEY: One of the problems with those suits is if the plaintiffs are awarded compensation, will it go to deal with the problem. That's one of the problems with the tobacco suits and the lawyers— there's a lot of good lawyers. Moore is, you know, he's effective but— and they will make money. That's what lawyers do. But will the proceeds go to help solve the problem.

UNIDENTIFIED SPEAKER: I have some family there, married into family that's from Boone County. So I guess what I'm thinking is what now. There's all of this. Obviously your work has exposed a lot of this. But what is happening in West Virginia to try to help these people?

MR. EYRE: They did take the money from the settlements and put it towards treatment beds but the sad thing is—

UNIDENTIFIED SPEAKER: The trouble with those towns, like when I go to visit my husband's grandmother who is in Madison, you know, she's lived there—

MR. EYRE: That's where all this started, in Madison.

UNIDENTIFIED SPEAKER: Yeah.

MR. EYRE: Everything started in Madison.

UNIDENTIFIED SPEAKER: Like I know where Larry's is, you know, I've driven past there. There's no one hardly left in the town, I mean, they've either moved away, died.

MR. MCGINLEY: One of the problems is that, you know, people who are disempowered who have lost their jobs in the coal industry, you know, they've lived in the area, their family has been there for generations, what do you do. And, you know, coalminers that were injured, they take painkillers, and it just steamrolls. And an economy that is already going down is plagued by this epidemic. And it's an enormous problem. I would say— I mean, there are certainly well-meaning people throughout West Virginia who are trying to come up with solutions, but there's a lot of talk too and there are people who are trying to make a profit off of the solutions.

UNIDENTIFIED SPEAKER: And not enough money, right—

MR. MCGINLEY: Right.

UNIDENTIFIED SPEAKER: —to actually help all the people that actually have problems?

MR. MCGINLEY: Right.

UNIDENTIFIED SPEAKER: So unless it's on a national level—

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

MR. EYRE: And the problem is it keeps shifting, you know, it went to heroin, and then it went to Fentanyl. And now— I was just a week-and-a-half ago in Madison talking to Judge Thompson— you probably knew Judge Thompson— he said now I'm seeing all this crystal meth and cocaine overdoses. So it keeps shifting when you—

UNIDENTIFIED SPEAKER: What about the pharmacists and the doctors, any disciplinary action, anything happening to the people who—

MR. MCGINLEY: A little.

MR. EYRE: The pain clinic, they— but that was like three years too late— but they finally indicted 12 doctors that were affiliated with The Hope Clinic for something that occurred back in 2012 to 2015.

UNIDENTIFIED SPEAKER: I'm from Tyler County. I did my undergraduate at WVU. I just recently last summer spent the summer working with the drug court of the Circuit of Marshall, Tyler, and Wetzel, so I've seen first-hand the experience of the issue. Just kind of piggybacking off of her question, it seems like the Suboxone is becoming a replacement for the addiction. I just wondered if you had looked into or, you know, this could speak to that issue that we are replacing a drug dependency with another prescription that has a high risk of dependency.

MR. EYRE: Well, the Boone County judge has his drug court too and he is very upset because he's directed to do the treatment with Suboxone and they are diverting the Suboxone. Another problem that's cropped up is many of these "pill mill" doctors that lost their licenses and went to jail, they are out of jail now and now they are opening up Suboxone clinics next to legitimate, you know, the more corporate Suboxone clinics. They're opening up

and they are not doing any counseling, they're not doing anything but just handing out the sublingual things that they take.

MR. MCGINLEY: That's a really important question. I know that there is some discussion in the panels this afternoon. I know Suzanne Weise is here and she's going to talk about it from her experience with the Child & Family Law Clinic at WVU. I want to give Suzanne the shoutout too because she was co-counsel in the FOIA cases and in our intervention in the "pill mill" cases. But I think that's going to come up in discussion this afternoon.

MS. JACOBS: That's another interesting legal consequence though. Suboxone's maker is a British company, Reckitt Benckiser, and they actually are being sued by 35 U.S. states for artificially inflating their prices and for fraudulently trying to delay their patent expiration so to prevent generics coming in. So the kind of collateral consequences, again, you know, they are making all this money off of the crisis and now you have to address their bad actions because they've got a product that everybody suddenly needs, so . . .

MR. EYRE: Yeah. The drug money that they distributed, they did some new grants for treatment, Suboxone people have a very strong lobby down at the Legislature, so all faith-based, peer-to-peer type programs were excluded from funding because they got it written in that you had to do medication-assisted treatment in order to qualify for funding into the grants. You've probably seen that with the drug courts; right?

UNIDENTIFIED SPEAKER: Yeah.

MS. JACOBS: One more. I think we have time for one more.

HEALING APPALACHIA: KEYNOTE DISCUSSION  
13 TENN. J.L. & POL'Y 285 (2018)

UNIDENTIFIED SPEAKER: Tell us what it's like the afternoon you get a telephone call and they tell you you've won the Pulitzer Prize.

MR. EYRE: I was in shock for about three months. Yeah. We're— unlike the— we're just a little-bitty paper, 30-some thousand in Charleston, West Virginia. I had always thought when you got the Pulitzer Prize that it was— if you've ever seen the photos in the New York Times and Washington Post, they're standing there with champagne bottles like they get tipped off. And then I realized later, they didn't really get tipped off but they just win one every year. Yeah, it was a bit crazy and . . . I don't know. The sad end of this, and I don't want to end on a sad note, but the numbers have continued to climb of the overdose deaths, as yours has as well. I think yours went up by I think 12 or 15 percent, again, because it's a moving target. But we at least have good people on the ground that are trying to work on it.

MS. JACOBS: Thank you for the work you've done, and Suzanne. Thank you, guys.