

StopTheDrugWar.org: the Drug Reform Coordination Network (DRCNet)

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8/22/03

The Honorable Rufus G. King III
Chief Judge
Superior Court of the District of Columbia
Moultrie Courthouse
500 Indiana Ave., NW, Room 3500
Washington, DC 20001

Re: Jury Summons, August 25, 2003, JIN # 559075

Dear Judge King:

I write you from a different corner of the world of law than the one you oversee for the District of Columbia: the community of advocates striving to change laws and policies. For the past ten years, I have worked as founder and executive director of StopTheDrugWar.org: the Drug Reform Coordination Network (DRCNet), an organization which calls for an end to prohibition and the so-called "war on drugs."

It is with sadness for our country, but hope for its future, that I write to inform you that conscience does not permit me to appear for jury service as your court has directed.

US drug policy is in a state of moral and humanitarian crisis, shaming us before history: Half a million nonviolent drug offenders clog our prisons and jails. Mandatory minimum sentences and inflexible sentencing guidelines condemn numerous low-level offenders to years or decades behind bars, often based solely on the word of compensated, confidential informants. Profiling and other racial or economic disparities assault the dignity and safety of our poor and minorities and deny them equal justice. Overall, criminalization has become a reflexive, default reaction to social problems, as opposed to its more limited, proper role as a last resort after other methods have failed. As a result, more than two million people are imprisoned in the United States, the highest incarceration rate of any nation.

The external consequences of the drug laws wreak a devastating toll on large segments of our society and on other countries: Prohibition creates a lucrative black market that soaks our inner cities in violence and disorder, and lures young people into lives of crime. Laws criminalizing syringe possession, and the overall milieu of underground drug use and sales, encourage needle sharing and increase the spread of HIV and Hepatitis C. Our drug war in the Andes fuels a continuing civil war in Colombia, with prohibition-generated illicit drug profits enabling its escalation. Thousands of Americans die from drug overdoses or poisonings by adulterants every year, most of their deaths preventable through the quality-controlled market that would exist if drugs were legal. Physicians' justifiable fear of running afoul of law enforcers causes large numbers of Americans to go un- or under-treated for intractable chronic pain. And frustration over the failure of the drug war, together with the lack of dialogue on prohibition, distorts the policymaking process, leading to ever more intrusive governmental interventions and ever greater dilution of the core American values of freedom, privacy and fairness.

Raising Awareness of the Consequences of Prohibition

Drug policies have significantly driven a deep corrosion of the ethics and principles underlying our system of justice: Police officers routinely violate constitutional rights to make drug busts, often committing perjury to secure convictions; or resort to trickery and manipulation to cause individuals to give up their rights, enabled by an intricate web of legalistic court rulings stretching the letter of the law while betraying its spirit. Manipulation of evidence and process is standard procedure. Many prosecutors, though thankfully not all, treat their position as a stepping stone to elected office, subjugating their oaths to seek justice to a political calculus based instead on individual career advancement. Corruption and misconduct among enforcers and within agencies is widespread. And all these problems, while not officially sanctioned, are in practice largely tolerated: criminal prosecution for police abuse is the exception, and disbarment for prosecutorial misconduct is almost unheard of. Meanwhile, false or unfair convictions occur with unacknowledged frequency, with persons thus victimized often spending years in prison while seeking exoneration.

Jurors in the United States cannot therefore confidently rely on the information we are provided for deciding criminal cases. We cannot know if we have been told the whole truth of a case – as in the trials of Ed Rosenthal and Bryan Epis, whom California jurors convicted without knowing they were medical marijuana providers. We cannot trust the testimony of witnesses for the state to be truthful and balanced; for example, Andrew Chambers, a “super-snitch” used by the US Drug Enforcement Administration (DEA) for numerous prosecutions, even after a court found him to be a repeat perjurer. We are not permitted knowledge of the possible consequences a defendant may face if we vote to convict – and in a society that hands out decades-long punishments as a routine matter, and which fails to provide adequate safety or medical care to our incarcerated, we cannot have faith that a judge will be able, even if willing, to pronounce a sentence that is just. We are instructed to decide verdicts based solely on facts, showing no consideration to larger moral principles, with those daring to inform potential jurors of their power to do otherwise themselves subjected to criminalization to an increasing degree. And we subsidize the injustices by providing our time for mere travel cost as members of the jury pool, and for less than a living wage while serving as jurors on cases.

We in the District of Columbia have attempted multiple times to effect modest changes to our drug policy, only to have our voices rebuffed or silenced. A voter initiative to permit medical use of marijuana, Measure 63, was struck from our ballot by Congress; and an initiative to divert a limited class of offenders from jail into treatment, Measure 62, which the electorate of the District approved overwhelmingly, was blocked from being implemented by a court in a proceeding initiated at the behest of our own Mayor. Despite a significant degree of reform sentiment among District residents, our criminal justice policies largely parallel the unceasing arrest and incarceration program of the nation as a whole. Indeed, our justice system is heavily influenced by a Congress that makes use of our taxes but affords us no voting representation within its ranks, and by a federal enforcement bureaucracy which this Congress funds and to which it has granted substantial authority over our local criminal justice matters.

None of the foregoing is intended to reflect any condemnation or disrespect of your office or profession – and no such sentiment is harbored toward the son of Rufus King II, a great crusader for justice and a member of my organization. I take heart from your tenure as well as from the efforts of the majority of individuals working in the criminal justice system who strive with integrity to serve the public weal. But judges and jurors alike are in the grip of larger political and social forces; and the moral obligations of the private citizen vs. the official duties of the appointed public servant are not always one and the same.

I do not lightly exclude myself from jury service, which in a just society I would consider a privilege and honor. But while the past ten years have seen some encouraging developments in drug policy reform, the fundamental punitive, prohibitionist focus of the government's anti-drug program remains unchanged, as does the extremity of its execution and the corrupting toll it takes on the administration of justice as a whole. On that latter concern, I also do not dismiss the need for, or the validity of, legitimate laws protecting safety and property, even in the face of injustice in their administration; the District has a defensible need for jurors to serve on such cases, and I do not call for that process to cease or wait.

But the untrustworthiness of the system in its overview, a result to a significant degree of the drug war, presents potential jurors with a moral dilemma whose resolution lies beyond their power: to serve, at least on cases involving laws that are just in and of themselves, but risking committing wrong by enabling the system to commit an injustice that they cannot reliably identify in advance (a significant possibility for any juror in the current state of affairs), and in any case still facilitating injustice indirectly by enlarging the total size of the available juror pool; or to commit a different wrong by refusing to serve even on cases involving such laws (the system's overall unreliability being a valid justification for such refusal in and of itself), but continuing to receive the benefits of the protection which those laws provide.

It may be that the lesser wrong, and the greater good, lie in refusing to serve a corrupted system entirely, in hopes of, through such a choice, provoking needed discussion and increasing the public and political will for reform. As the great American philosopher and abolitionist, Henry David Thoreau, expounded in his famous essay *Civil Disobedience*, "It is not a man's duty, as a matter of course, to devote himself to the eradication of... even the most enormous wrong... but it is his duty, at least, to wash his hands of it, and, if he give it no thought longer, not to give it practically his support."

My service as a juror in the District of Columbia would directly or indirectly support injustice, and would help to fuel the illusion that drug prohibition serves the health and safety of the public; when in reality only some form of legalization can adequately address the combined harms of drugs and drug prohibition, which in the currently one-dimensional public dialogue are commonly attributed only to drugs; and when in reality only some form of legalization can satisfy the fundamental obligation of society to respect individual freedom while requiring individual responsibility.

Lastly, should I report to your court as a potential juror, it is an all but foregone conclusion that my profession, which was asked of me on the juror registration form, would cause me not to be selected for a jury, as has happened in the past. Those of us who place greater importance on conscience and individual justice than on the enactments of legislatures, and who do so outspokenly, are effectively disenfranchised from jury service for this reason. For me to report as a potential juror, then, would amount to participation in a game, devaluing both the system you administer and the principles to which I ascribe.

For all these reasons, I have determined that unjust drug laws, and the corrosion wrought by the drug war on the criminal justice system as a whole, compel me to conscientiously refuse jury service. I take this action with knowledge and acceptance of the possible consequences, and request no special consideration.

Respectfully,

David Borden
Executive Director, DRCNet/StopTheDrugWar.org, and citizen of the
District of Columbia

Cc: Duane B. Delaney, Clerk of the Court