

Siobhan Reynolds
President of Pain Relief Network

(505) 603-8875

April 9, 2009

To Whom it May Concern,

I have not included any exhibits with this motion because I haven't had time to put them together. If the judge wants to have a hearing, or wishes to see evidence, I trust you will let me know so I can prepare the documents that back up my claims.

I apologize for the lateness of this motion but as I say in the motion, I only just learned that my attorney wasn't working on it.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Siobhan Reynolds', written in a cursive style. The signature is positioned below the word 'Sincerely,'.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

In re Grand Jury Proceedings Scheduled for April 15, 2009

MOTION TO QUASH GRAND JURY SUBPOENAS ISSUED TO SIOBHAN REYNOLDS AND THE PAIN RELIEF NETWORK

In Pro Per

MOTION TO QUASH GRAND JURY SUBPOENAS

COMES NOW, Siobhan Reynolds to quash the subpoena issued to her commanding her presence and listed documents at the Grand Jury seated in Topeka, Kansas on April 15, 2009. In support of this Motion, Ms. Reynolds submits the following:

The subpoenas in question represent the latest in a series of attempts on the government's part to harass, intimidate and destroy my political work taken up against the government's efforts in the Schneider case in Wichita, Kansas and against the government's efforts nationally. AUSA Tanya Treadway attempted to have me gagged, which request was denied by U.S. District Judge Monti Belot, succeeded in having me deposed in a civil case to which my organization and I were utterly unconnected, and has otherwise denounced and slandered me in open court and in public court filings, as well as by releasing private conversations between myself and the defendants in the Schneider case so the recordings would be published, out of context, on the internet. Now, my freedom of expressive association continues to be attacked, by virtue of the issuance of these overbroad and clearly oppressive subpoenas, and I pray the court will quash them.

STANDING TO REPRESENT MYSELF

I have been served by Ms. Tanya Treadway and am in receipt of the offending subpoenas. Ms. Treadway is representing the United States Government and has informed Attorney Charles O'Hara, a Wichita attorney who has represented me in the past but who on Thursday, April 9, 2009 informed me that he is too busy to handle this matter at this time, that I am a "subject" of a Grand Jury investigation into "obstruction of justice". By the time I was informed of Mr. O'Hara's inability to represent me, it was too late to get another lawyer. Additionally, I believe that Pain Relief Network has been unable to secure representation in Kansas due to the chilling effect of the government's actions taken against the organization and against me as its President.

TIMELINESS

Had I, or my organization been able to rely on an attorney, I would not have been forced to appear pro per, as I am now, nor would this motion have been filed so near to the appointed date of the grand jury. It is within the courts discretion to find that I have filed this motion in a timely fashion.

DISCUSSION

Fed. R. Crim. Pro. 17(c)(2)

A subpoena may be quashed “if compliance would be unreasonable or oppressive.” Fed. R. Crim. Pro. 17(c). Conversely, a valid subpoena is not overbroad. *United States v. Gurule*, 437 F.2d 239 (10th Cir. 1970). In *Gurule*, the Tenth Circuit found that the following three requirements must be met in order for a grand jury subpoena to be valid in terms of specificity and reasonableness:

1. That the subpoena may command only the production of things relevant to the investigation of the thing being pursued.
2. Specification of things to be produced must be made with reasonable particularity.
3. Production of records covering only a reasonable period of time may be required.

Here, the government’s subpoena is over broad, does not relate to any particular thing being pursued, lacks particularity and covers a period of over 15 months. Most importantly, the issuing of these subpoenas violates my First Amendment rights so they must, as an initial matter, fail. Indeed, these subpoenas request communications with attorneys for the Schneiders, expert witnesses for the Schneiders and the private phone records of both myself and my elderly mother. It also requests communications between me and members of Pain Relief Network.

To force me to comply with such an offensive command would be both unreasonable and oppressive, and would destroy the work I have undertaken as a political activist.

The organization I head, the Pain Relief Network, has explicitly undertaken, through exercise of the fundamental right of expressive association in the forms of political advocacy and litigation, the task of overturning, in whole or in part, the Controlled Substances Act ("CSA"), with a particular focus on its pernicious effects on pain-treating physicians, patients in chronic and/or severe pain, and the sacrosanct doctor-patient relationship. As PRN's President I have testified before both Houses of Congress and made clear PRN's position on these issues and its status as the loyal opposition.

Pain Relief Network is a tiny nonprofit that has operated on a shoestring since its inception. Its effectiveness is a direct result of the strength of its mission and the volunteers it has attracted, not the health or heft of any bank account. The nonprofit simply does not have funds to hire a full time lawyer; its general counsel is a volunteer who literally works from her sick bed in Oregon and only accepted service for us because we could not get a Kansas lawyer to do so on our behalf. Moreover, it has become impossible to retain a lawyer in any event because every attorney I have merely consulted with in my official capacity as President of PRN has been named in the offending subpoenas.

Without some showing of independent criminality, this subpoena constitutes nothing more than a backdoor investigation of a pending case, which is a highly objectionable use of a grand jury subpoena.

PRN IS AN ADVOCACY ORGANIZATION

Since its incorporation in 2003, PRN has gathered and synthesized information on USDoJ strategies in the prosecution of health care professionals under the CSA. As all of the government's efforts have been stunningly successful, it was PRN's mission to dissect their tactics and legal analysis in order to more effectively oppose the USDoJ's "war-on-drugs"-justified crackdown on medical pain management.

PRN exposes the government's strategies to the press. Heretofore, the government's press strategy of making the defendants look shockingly guilty, and thereby polluting the jury pool, was accepted and trumpeted by the local media in each instance.

PRN educates health care professionals about the enormous force that may be brought to bear against them if they prescribe pain medication in accordance with the science and medical ethics. PRN explains the peculiar ethical dilemmas attorneys face in these cases and warns defendants to avoid traps that the government has exploited heretofore.

PRN supports the abandoned patients when the health care professionals who have prescribed needed pain medication are forced to give up their practices. Often thousands of ill people are kicked to the curb whenever a health care professional is prosecuted, but neither the courts, the legislatures, nor the public at large take note, for patients in chronic and/or severe pain who need "controlled substances" in order to lead reasonably normal lives (and, in many cases, even to survive) fear retribution by the government, are, of course terribly disabled, and have no expertise in handling the press. PRN helps patients by explaining the brutality patients face when they are turned away by practice after practice and endeavors to direct abandoned patients to appropriate medical caregivers.

Because doctors and other targeted health care professionals usually lose in court after they are victimized by the government's "shock and awe" strategy, PRN has taken up the challenge of helping defendants find principled, caring attorneys who understand the government's methods. PRN has paid attorneys for consulting work and appellate work, but never for trial work.

PRN provides attorneys with novel legal arguments that are not immediately apparent, arguments which the attorneys may or may not use as they see fit. PRN acts as a resource in this regard. PRN advances the theory that the CSA is unconstitutional on its face because it operates in an ex post facto manner and because it reverses the presumptions (making the defendants presumptively guilty, requiring them to prove that they met some Federally mandated and ever-changing "standard of care" before a lay jury) thereby making physicians who treat patients in pain unequal before the law.

BACKGROUND

I am a resident of New Mexico. In 2003, I founded PRN when I realized, through bitter personal experience, the terrible disadvantage under which practitioners of ethical pain medicine labor because of misguided Federal law enforcement efforts and the apparently unbridled ambition of Assistant United States Attorneys (AUSAs). My activities include, but are not limited to, providing, as an unpaid advisor, to attorneys and targets of USDoJ investigations and/or criminal allegations, the benefits of my observations and analysis of USDoJ prosecution strategies; assisting pain patients, and explaining to the media the abhorrent consequences of USDoJ's campaign to deprive pain patients of access to appropriate care through its unprincipled, unlawful, and systematic attack on health care practitioners.

For the last twelve years of my marriage, my now-deceased husband, Sean E. Greenwood, suffered from chronic and severe pain caused by a congenital connective tissue disorder (Ehlers-Danlos syndrome). The pain he experienced was such that he could not function in anything approximating a normal way unless he received appropriate pain medication. The only pain medications that were effective were varieties of opioids, all of which are "controlled substances." Understandably, but unfortunately, most physicians are unwilling to prescribe controlled substances because they fear being attacked by federal zealotry as Wichita, Kansas, resident, Dr. Stephen Schneider has been.

Soon after I found a pain specialist (after a 10 year search) who would treat my husband in accordance with the science, prescribing opioids in quantity sufficient to allow him to function as a normal husband and father, federal agents raided the Virginia clinic of Dr William Hurwitz in 2002, jailed the physician, and threw my husband and other patients in chronic and severe pain to the tender mercies of our cowed medical profession. With a high-dose requirement and the stigma of having been Dr. Hurwitz's patient, it was only a matter of time before the high blood pressure caused by unrelieved pain would result in my husband's death. And so, on August 23rd, 2006, in front of our then 14-year-old son Ronan Greenwood, Sean Greenwood suffered what I believe was a cerebral hemorrhage and died in a hotel room in Arkansas at age 50.

PRN has acted as a support group for pain-treating physicians charged with violations of the Controlled Substances Act and for their patients, all of whom have faced increasing obstacles to receiving needed care. PRN has been involved with some 15 cases of such physicians and their patients. I have personally observed the unfolding of these cases and am fully apprised of the patterns of intimidation masquerading as investigation that characterize the approach of AUSAs in all of these cases. The behavior of the AUSA assigned to the case proceeding in this District against Dr. Stephen Schneider and his wife Linda Atterbury is in lock-step with the standard playbook of the United States Department of Justice (USDoJ).

I am a national political figure, having provided substantial Congressional testimony and spoken before many groups interested in public health and liberty issues. I provide an important corrective to the all-too-common, but completely erroneous, view that pain patients are "addicted" to opioids, rather than being physically dependent on them, as are diabetics on insulin.

AN UNMISTAKEABLE PATTERN OF ABUSE OF AUTHORITY

In a pleading, last year in the case of United States v. Schneider (07-10234 WEB, hereinafter "Schneider case") filed unsealed by Assistant United States Attorney ("AUSA") Treadway ("Government's Motion for Determination of Conflict and Memorandum in Support"), included segments of recorded conversations between Dr. Stephen Schneider (or Linda Atterbury) and myself, acting as a political activist.

The pleading in the Brawner Case, filed unsealed by attorney Larry Wall ("Motion to Find Siobhan Reynolds, President of the Pain Relief Network, in Contempt of Court"), included segments of recorded conversations between Dr. Schneider (or Linda Atterbury) and myself. Said pleading explicitly requested that the court abridge my fundamental right of expressive association. In particular, said pleading requested the court to enjoin me from "(a) communicating with current or former patients and employees of the Schneider Medial Clinic, including but not limited to Stephen and Linda Schneider, or [sic] communicating with any counsel who have entered an appearance in the civil and criminal actions involving the Schneiders until the conclusion of this deposition." In addition, because I knew nothing material about the Brawner Case (in which I was nevertheless deposed as a witness), Mr. Wall's request and now the issuing of these subpoenas are a transparent attempt by the USDoJ to compel me to reveal aspects of the criminal defense strategy of the attorneys for Stephen Schneider and Linda Atterbury thereby trampling my right to expressive association. I cannot comply with such a demand without making my assistance in the Schneider case and all other ongoing and future cases a "way in" for disgruntled AUSAs seeking retribution.

In the March 14, 2008, bond hearing in the Schneider Case, Defendant Tanya Treadway accused me, in open court, of committing the crime of practicing law without a license, despite the facts (1) that I was not a party to that action and (2) that practicing

law without a license is a violation of state law and not the concern of the USDoJ or AUSA Treadway. The AUSA's unprofessional and apparently out-of-control rant – to repeat: in public filings and in open court – included the reckless, unsupported allegations that I was in a "sycophantic" and "parasitic" relationship, with the defendants. The AUSA's blistering denunciation was clearly intended, not only to chill PRN's and my fundamental right of expressive association, but also, to do so in a forum in which no rebuttal was possible. Thus the only purpose for the making of these reckless accusations appears to have been to attack the credibility, good faith, and good name of PRN and to demonize me personally.

Agents of the government have engaged in a series of actions, under color of law, designed to intimidate and silence me, thus abridging my fundamental right of expressive association. For example, on or about March 13, 2008, William V. Roland and Andrew G. Stewart, identifying themselves as "federal investigators", forced their way, without a warrant, into the home of PRN Member Debra Sowards, subjected her to physical violence, questioned her about her conversations with me and absconded with private correspondence belonging to Ms. Sowards. Messrs. Roland and Stewart were acting under color of law.

The Attorney General of the State of Kansas has publicly stated that my conduct in the State of Kansas did not constitute the unlicensed practice of law. Nonetheless, the official stated that his office would "monitor" my activities. This threat to "monitor" my legitimate political activities has a chilling effect, is transparent harassment, and constitutes a violation of my fundamental right of expressive association.

I have been told by private attorneys in Kansas that the USDoJ and the State of Kansas have threatened to indict me without specifying any legitimate charges on which I could be indicted. This continuing threat of invoking legal sanctions and the other means of coercion, persuasion, and intimidation outlined in the facts herein recited have caused me – a widow, the single mother of my 17-year-old son, – to live in a state of fear and anxiety and have effectively chilled my First Amendment rights of speech and association. In short, the threat that the USDoJ and/or the State of Kansas may initiate baseless legal sanctions against me is tantamount to the threat that legitimate political activity may be criminalized, a threat that one would expect to find only in authoritarian regimes, not in the United States of America.

AUSA Tanya Treadway has orchestrated a concerted campaign of disinformation regarding me and PRN, thus acting beyond the scope of her official responsibilities as Assistant United States Attorney. I do not contest the right of the USDoJ to listen to the unprivileged recorded conversations of incarcerated persons (to wit, Dr. Stephen Schneider and Linda Atterbury), but I strongly contest the Constitutionality of publishing, in unsealed court documents, snippets of such conversations between myself and Dr. Schneider and/or Ms. Atterbury, -- snippets taken out of context and selected so as to demean and give a false impression of me and PRN.

Under Kansas law, telephone conversations between prisoners and non-prisoners may be recorded for the law enforcement purposes of safety and prevention of escape. And the recordings of such conversations may be provided to law enforcement officers in case of any such threat. However, there is no provision that allows prison officials to routinely provide to the U.S. Attorney's office recordings of conversations that are devoid of threats to the public health or safety. Thus, the state of Kansas and the United States had no legitimate reason to routinely disperse the jailhouse tapes which contained no threat to the public safety nor evidenced escape plans.

Therefore, the actions of employees and/or agents of the USDoJ against PRN and me as its President, and constitute a coherent strategy of discouragement that has the effect of threatening to silence a vital and valid source of criticism of U.S. government statutes and prosecutorial policies and methods.

THE FUNDAMENTAL RIGHT OF EXPRESSIVE ASSOCIATION

In *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000), the Supreme Court reaffirmed its understanding of the right of expressive association as fundamental.

In *Roberts v. United States Jaycees*, 468 U.S. 609, 622, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984), it was observed that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." This right is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas. See *ibid.* (stating that protection of the right to expressive association is "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority"). *Dale*, 530 U.S. at 647-48, 120 S.Ct. at 2451. Thus, deference should be given to an organization's view of what would impair its expression. Under *Dale* the courts will no longer defer to governments' claims that their invasions of expressive association rights serve interests sufficiently compelling to justify those invasions, but will instead skeptically review such claims.

The First Amendment exists to protect pluralism from government attempts to impose orthodoxy. See generally William P. Marshall, "In Defense of the Search for Truth as a First Amendment Justification", 30 *Ga. L.Rev.* 1, 10-16, 38-39 (1995) (discussing the founders' views on the search for truth as a rationale for the prohibition of official orthodoxy).

The Constitution protects our "freedom of association in two distinct senses" from government interference. *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 544 (1987). One is the right to intimate association—a protection of "an individual's choice to enter into and maintain certain intimate or private relationships." *Id.* See also, *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (1993). Many of the documents commanded by the offending subpoenas contain not just information relating

to the ongoing Schneider prosecution but content that is private between the parties as friends and private citizens.

The second is the right to so-called expressive association which encompasses the "right to associate for the purpose of engaging in those activities protected by the First Amendment-speech, assembly, petition for the redress of grievances, and the exercise of religion." *Marcum v. McWhorter*, 308 F.3d 635, 639 (6th Cir.2002) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984)). Indeed, in *Roberts*, 468 U.S. at 623, the United States Supreme Court recognized the right of expressive association as a fundamental right.

Freedom of association, in this sense, is also recognized as a fundamental human right by a number of documents including the Universal Declaration of Human Rights and International Labor Organization Convention C87 and Convention C98 -- two of the eight fundamental, core international labor standards.

MY VIEWS AND THOSE EXPRESSED BY PRN ARE DISTINCTLY UNPOPULAR WITH THE US GOVERNMENT

In *White v. Lee*, 227 F.3d 1214, 1227 (9th Cir. 2000), the court cited *Dale* for the proposition that the right to expressive association rights are not diminished, but are in fact more important, when a group's viewpoint is unpopular with the government. Free association and free speech rights are most crucial in the service of controversial causes because they provide what may be the only opportunity for those with minority views to effectively participate in both public and private discourse. See *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 13 (1988) (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)). It is essential for the maintenance of a free and open democracy that expressive association not be limited to causes deemed "proper" by the government, but be extended to all viewpoints. See *White v. Lee*, 227 F.3d at 1227.

In the First Amendment context, courts must "look through forms to the substance" of government conduct. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963). Informal measures, such as "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation," can violate the First Amendment also. *Id.* See also *Laird v. Tatum*, 408 U.S. 1, 12-13, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972) ("[G]overnmental action may be subject to constitutional challenge even though it has only an indirect effect on the exercise of First Amendment rights."); *American Communications Ass'n, C.I.O. v. Douds*, 339 U.S. 382, 402, 70 S.Ct. 674, 94 L.Ed. 925 (1950) ("[T]he fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions, or taxes."). Courts have held that government officials violate this provision when their acts

"would chill or silence a person of ordinary firmness from future First Amendment activities." *Mendocino Environmental Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir.1999) (citing *Crawford-El v. Britton*, 93 F.3d 813, 826 (D.C.Cir.1996), vacated on other grounds, 520 U.S. 1273, 117 S.Ct. 2451, 138 L.Ed.2d 210 (1997) (internal quotation marks and citation omitted).

U.S. GOVERNMENT'S ABRIDGMENT OF PRN'S RIGHT OF EXPRESSIVE ASSOCIATION VIA THE GRAND JURY SUPBOENA

As a non-profit, public-interest, membership organization dedicated to the defense of the civil rights and liberties of pain-treating health care professionals and their patients, PRN, its members, and its officers have the fundamental right of expressive association reaffirmed by the United States Supreme Court in *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000).

When the actions of government officials directly affect citizens' First Amendment rights, the officials have an affirmative duty to take the least intrusive measures necessary to perform their assigned functions. Articulated herein, the federal and state governments have abysmally performed their affirmative duty to proceed against me or my organization by the least intrusive method of completing their lawful duties.

In sum, the subpoenas directed to me as an individual and to me as the President of Pain Relief Network must be viewed skeptically and hence quashed by this court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Siobhan Reynolds', with a long horizontal flourish extending to the right.

Siobhan Reynolds
President
Pain Relief Network