UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**No. 5:15-cr-00087-DCR-REW**
	)	
v.	)	
	)	
SAMUEL A. GIROD,	)	
	)	
Defendant.	)	

DEFENDANT'S OBJECTION TO JUROR'S OATH

COMES the Defendant in the above-entitled action, Samuel A. Girod, and moves this Court to refrain from giving the jurors in his trial the "Juror's Oath" as it is presently given in the federal courts for the following reasons:

1. The Juror's Oath, as it is presently given, has no foundation in the common law.

2. The Juror's Oath, as it is presently given, has no foundation in the original intent of those who authored the United States Constitution.

3. The Juror's Oath, as it is presently given, has no foundation in any legislative enactment by Congress.

4. The Juror's Oath, as it is presently given, has no foundation in any of the Federal Rules of Criminal Procedure.

5. The Juror's Oath, as it is presently given, allows the Court to control, manipulate, and direct the verdict against this Defendant, regardless of the evidence presented at trial or the laws enacted by Congress.

This objection is based on the trial by impartial jury clause of the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury …"

See Memorandum of Law in support, attached hereto.

WHEREFORE, Defendant Samuel A. Girod, moves this Court to refrain from giving the jurors in his case the Juror's Oath referred to herein or, at the very least, explain to the jury that jury instructions are not law—they are merely helpful suggestions.

Respectfully submitted,

Dated: February _____, 2017

_____

Samuel A. Girod
409 Satterfield Lane
Owingsville, KY 40360

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FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

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Plaintiff,	)	**No. 5:15-cr-00087-DCR-REW**
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SAMUEL A. GIROD,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of February, 2017, placed a true and exact copy of the above and foregoing

DEFENDANT'S OBJECTION TO JUROR'S OATH
WITH MEMORANDUM OF LAW IN SUPPORT

in the U.S. Mail, first class postage prepaid, addressed to:

Kate K. Smith, AUSA
U.S. Attorney's Office, EDKY
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

_____
Samuel A. Girod
409 Satterfield Lane
Owingsville, KY 40360

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Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S OBJECTION TO JUROR'S OATH

COMES the Defendant in the above-entitled action, Samuel A. Girod, and would show this Court why the conviction rate in the federal courts is so high at the present time, even among the innocent and despite the Constitutional "protections" that American citizens are supposed to enjoy.

As Texas attorney Terrence W. Kirk in an address to a legal seminar for Texas attorneys put it:

> Finally, this speech does not deal with federal practice. A citizen accused in federal court needs a priest, not a lawyer.
>
> The Ten Commandments of Preserving Error (1996).

The problem is this:

> The Federal Judicial Center's *Benchbook for U.S. District Court Judges* includes the following among its list of standard voir dire questions to prospective jurors:
>
> > If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trial and *in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict?*
>
> *Benchbook for U.S. District Court Judges*, *supra*, at 93 (emphasis supplied).
>
> *United States v. Thomas*, 116 F.3d 606, 616-617 n. 10 (2d Cir. 1997).

Jurors are led to believe that it is a violation of their oath to do anything but slavishly adhere to the instructions given them by the judge. Worse, jurors are led by the judge to believe this is the *law*.

There are two problems here.

First, information is withheld from the jury concerning jury instructions and their source.

> Norton correctly notes that the Model Criminal Jury Instructions for the Eighth Circuit (rev. ed. Sept. 1986) supports his position.
>
> *United States v. Norton*, 846 F.2d 521, 524 (8th Cir. 1988).
>
> The Model Instructions, however, are not binding on the district courts of this circuit, but are merely helpful suggestions to assist the district courts.
>
> *Id.* at 525.

This is not what juries are led to believe.

> The title of this Manual is perhaps somewhat misleading. The instructions contained in the Manual are "model," and they are for the "Eighth Circuit," but they are not drafted by this Court, or indeed by any court, nor do they have this Court's automatic approval. As the preface to the Manual states, the instructions are "model, not mandatory" and "the Eighth Circuit cannot give prior approval to the [model] instructions." *Id.* at iii. *See also id.* at xiii ("The Model Instructions . . . are not binding on the district courts of this circuit, but are merely helpful suggestions to assist the district courts.") (quoting *United States v. Norton*, 846 F.2d 521, 525 (8th Cir. 1988)).
>
> *United States v. Evans*, 272 F.3d 1069, 1081 n. 3 (8th Cir. 2001).

Second, judges are the chief competition to the jury. Moore, *The Jury, Tool of Kings, Palladium of Liberty*, p. 159 (1973).

Courts must presume that jurors, conscious of the gravity of their task, attend closely the trial court's instructions in a criminal case, *Francis v. Franklin*, 471 U.S. 307, 324, 105 S.Ct. 1965, 1976, 85 L.Ed.2d 344 n. 9 (1985), and that they follow those instructions. *United States v. Houlihan*, 92 F.3d 1271, 1287 (1st Cir. 1996).

What is unacknowledged and unaddressed by today's federal judiciary is the following:

(1) What if those instructions are wrong, as they quite frequently are?

(2) What if the judge slants those instructions even when correct, in order to manipulate the jury into a guilty verdict?

The answer given, that such a miscarriage of justice can be corrected on appeal, ignores the years that an innocent person must spend in prison until he is finally exonerated.

The federal judiciary of today appears to have replaced the British Empire's legal system prior to 1776, when Colonial residents were taken to England for trial. In those times an innocent person, who was eventually acquitted, would still have to endure an average of two years on board ship and in Newgate Prison until he was eventually returned home (if he survived).

The juror's oath was not always in so slanted a favor of judicial manipulation.

> Q. If you are accepted as a juror, an oath will be administered to you that you will well and truly try the issues between the Commonwealth and these defendants, according to the evidence, which means that you should serve with an open mind and decide the case purely on the evidence as it will be presented here, uninfluenced by any preconceived notion, ideas, or opinions that you may now have. Do you think you could take that oath and adhere to it faithfully? A. I do, your Honor.

Geagan v. Gavin, 292 F.2d 244, 248 (1st Cir. 1961).

Notice that the reference to judge's instruction is wholly absent.

> Tis most true, Jurors are Judges of matters of Fact, that is their proper Province, their chief business but yet not excluding the consideration of matter of Law, as it arises out of, or is complicated with, and influences the Fact. For to say, they are not at all to meddle with, or have respect to Law in giving their Verdicts, is not only a false position, and contradicted by every days experience but also a very dangerous and pernicious one, tending to defeat the principal end of the Institution of Juries, and so subtilly to undermine that which was too strong to be batter'd down.
>
> Sir John Hawles, *The English-man's Right*, pp. 10-11 (1680).

As *United States v. Thomas*, *supra*, illustrates quite plainly, the federal judiciary has in fact undermined that which was too strong to be battered down. A good example of this is given in a 3rd Circuit case.

> Boone notes that these decisions generally involved allegations of mid-trial jury misconduct rather than of a juror's refusal to deliberate properly. According to Boone, investigations that implicate the content of jury deliberations are by their nature much more intrusive than investigations of jury misconduct during trial, and the former should be severely limited. Boone points to *United States v. Thomas*, 116 F.3d 606 (2d Cir.1997), in which the Second Circuit suggested that a judge should be particularly cautious in conducting investigations of juror misconduct during deliberations. In *Thomas*, jurors complained during trial that one juror was behaving disruptively, and the judge conducted an examination of each juror individually to investigate the issue. *Id.* at 609-10. The judge determined that the trial should continue. *Id.* at 611. Once deliberations began, however, jurors again complained about the juror, alleging that he was bent on acquittal for reasons unrelated to the evidence in the case. *Id.* The judge again conducted individual juror questioning, and concluded that the disruptive juror should be dismissed because he intended to commit jury nullification. *Id.* at 612. The Second Circuit reversed. Although the court agreed that a juror's intent to nullify would justify dismissal in principle, it found that the evidence was not "beyond doubt" that the juror in this case had an intent to nullify rather than simply having permissible reservations about the sufficiency of the evidence. *Id.* at 614, 624. The court held that where an allegation of jury nullification arises, "'if the record evidence discloses any possibility that the request to discharge stems from the juror's view of the sufficiency of the government's evidence, the court must deny the request.'" *Id.* at 622-23 (quoting *United States v. Brown*, 823 F.2d 591, 596 (D.C.Cir.1987)).
>
> The *Thomas* Court noted that an accusation that a juror intends to nullify is difficult to prove, and that obtaining definitive evidence could require significant intrusion into a juror's thought process. *Id.* at 621. Emphasizing the importance of secret deliberations to the effective operation of the jury system, the court concluded that a trial judge generally should not conduct extensive investigation of jury nullification claims, even if some juror misbehavior might be go unaddressed. *Id.* at 622-23. Choosing "to protect deliberative secrecy at the risk of leaving some juror misconduct beyond the court's power to remedy," *id.* at 623, the court adopted the rule that a "presiding judge faced with anything but unambiguous evidence that a juror refuses to apply the law as instructed need go no further in his investigation of the alleged nullification," *id.* at 622. Under this rule, juror questioning presumably would be impermissible absent clear evidence of juror nullification.
>
> *United States v. Boone*, 458 F.3d 321, 327-328 (3d Cir. 2006) (footnotes omitted).

The problems with the decisions upholding the "Juror's Oath" and denigrating "jury nullification" are the following.

The jury has the power to bring in a verdict in the teeth of both law and facts. *Horning v. District of Columbia*, 254 U.S. 135, 138, 41 S.Ct. 53, 54, 65 L.Ed. 185 (1920). *See also Sparf and Hansen v. United States*, 156 U.S. 51, 15 S.Ct. 273, 39 L.Ed. 343 (1895).

A judge is not required to inform the jury of its power to nullify, but the First Circuit goes further. *See United States v. Manning*, 79 F.3d 212, 219 (1st Cir. 1996) ("a district judge may not instruct the jury as to its power to nullify").

Judges in some western and southern states were not allowed to state the law (to overcome judicial interference). 5 The Law Reporter 1, 10 (1842).

I.e., there is more support for jury nullification than there is for allowing judges to mislead jurors into thinking that what were intended to be merely "helpful suggestions" are actually the law.

Defendant is well aware that this Court will attempt to portray this Objection as an argument for "jury nullification." This objection is no such thing.

Defendant is simply attempting to point out that the author(s) of The Federal Judicial Center's *Benchbook for U.S. District Court Judges* (4th ed. 1996) had no authority to make law and that this Court has no authority to mislead members of the jury into thinking that jury instructions are law.

> [T]he Court has no power to add to or subtract from the procedures set forth by the Founders. I realize that it is far easier to substitute individual judges' ideas of "fairness" for the fairness prescribed by the Constitution, but I shall not at any time surrender my belief that that document itself should be our guide, not our own concept of what is fair, decent, and right.
>
> *In re Winship*, 397 U.S. 358, 377, 90 S.Ct. 1068, 1079, 25 L.Ed.2d 368 (1970) (Black, J., dissenting).

Since those "standards of fairness" have all but evaporated, our burgeoning prison population illustrates that the indicted now almost always get convicted.

> As I have said time and time again, I prefer to put my faith in the words of the written Constitution itself rather than to rely on the shifting, day-to-day standards of fairness of individual judges.
>
> *Id.*, 397 U.S. at 378, 90 S.Ct. at 1080.

The problem with the "shifting, day-to-day standards" referred to by Justice Black is that those standards are shifting more and more in favor of the government, as any casual reader of the *Almanac of the Federal Judiciary* can readily perceive. All of today's federal judges are viewed by today's lawyers as "pro-government" to one degree or another.

The propensity of today's federal judges to lean toward the prosecution's side is understandable when one considers that the Department of Justice, in particular the Office of Legal Counsel, is involved in garnering support for judicial nominees. This is accomplished by writing speeches for Senators, ghostwriting newspaper articles and leaking information to the media in connection with judicial nominations and confirmations. *See Carney v. U.S. Dept. of Justice*, 19 F.3d 807, 811-812 (2nd Cir. 1994).

Why would the Department of Justice promote a district court judge to the press and the Senate as a circuit court nominee if the judge has a tendency to lean to fairness and justice?

As an example, *see United States v. McLain*, case no. 0:08-CR-00010-PJS-FLN, in the District of Minnesota to illustrate the point. In that case McLain's attorney tried to point out to Judge Patrick J. Schiltz the problem with the juror's oath.

McLain's attorney went on to point out that the juror's oath mandating juror obedience to the judge's instructions has no foundation in the U.S. Constitution, laws enacted by Congress, or

even the Rules of Criminal Procedure. I.e., the "instruction" was made up by the judges themselves out of thin air.

How did Judge Patrick J. Schiltz deal with this issue? He merely sidestepped it. The Magistrate's Report & Recommendation concerning the juror's oath stated the following:

> **H. Defendant's Objection to the Juror's Oath [#64]**
>
> The Defendant objects to the trial juror's oath. This motion must be denied without prejudice as it is more appropriately raised before the trial court.
>
> Magistrate's Report and Recommendation, p. 12 (May 14, 2008).

However, the trial court's ruling read as follows:

> 6. McLain's motion objecting to the juror's oath [Docket No. 64] is DENIED WITHOUT PREJUDICE.
>
> Trial Court's Order of June 4, 2008, p. 2.

Undeterred, McLain's attorney then filed a Motion to Take Judicial Notice, Federal Rule of Evidence 201, to force the judge to acknowledge that there was and is no foundation in the U.S. Constitution, the laws enacted by Congress, or the Federal Rules of Criminal Procedure mandating or allowing such an instruction.

Here is Judge Schiltz's ruling, in his own words:

> [T]he juror's oath administered by this Court in criminal cases is similar to the oath found in the Federal Judicial Center's *Benchbook for District Court Judges*. Far from being unlawful or unconstitutional, the juror's oath "is an essential element of the constitutional guarantee to a trial by an 'impartial' jury." *State v. Godfrey*, 666 P.2d 1080, 1082 (Ariz. Ct. App. 1983).
>
> Order of August 11, 2008, p. 2 (footnote omitted).

The *Benchbook* itself cites no Constitutional provision, Congressional enactment, or Federal Rule of Criminal Procedure as authority for the oath. I.e., it is a book written by bureaucrats, neither elected to office nor appointed to a judicial position.

As for a federal judge in Minnesota citing an Arizona state case as authority (the court ignored the fact that the case refers to an Arizona Rule enacted by the Arizona legislature), even a first-year law student knows better than that. That dishonesty was never challenged in the Eighth Circuit Court of Appeals by McLain's attorney.

Today's juror's oath, combined with the judge's "jury instructions," makes a guilty verdict in almost every federal case a foregone conclusion. The jury is led to believe that they must vote according to their "oath" and their jury instructions. Would such juries have voted to imprison Jews in Nazi Germany if they (the Jews) refused to wear a Star of David on their clothing if it were against the law not to?

There is another problem that either this Court, another court, or Congress is eventually going to have to deal with.

> Let justice be done though the heavens fall.
> Lord Mansfield in *Rex v. Wilkes*, 4 Burrow's Reports 2527, 2562 (1768).

The problem in this respect is two-fold.

There is case law holding to the effect that juries do in fact have the power to nullify the law, a fact well known to the general public until well after our Civil War. There is no case law holding that jury instructions in which the court states, "You must obey the law as I give it to you," is law, even though federal judges routinely lead jurors to believe that this is the case.

In short, the deliberate misleading of jurors to think that a "juror's oath" in this respect is law is a fraud upon the court.

> Abulkhair did not provide a citation to *United States v. Throckmorton*, but it appears that he was referring to the 1878 case, which predates Federal Rule of Civil Procedure 60(b)(3), and addresses when a federal judgement obtained through fraud can be set aside.
>
> *Abulkhair v. Liberty Mutl. Ins. Co.*, No. 11-1584, n. 2 (3d Cir. 8/1/2011).
>
> Additionally, the separate treatment in Rule 60 of the somewhat confusing concept of "fraud on the court" as a distinct ground for relief is traceable to the well known decision in *Hazel-Atlas Glass Company v. Hartford-Empire Company*, 322 U.S. 238, 248-49, 64 S.Ct. 997, 88 L.Ed.1250 (1944), *modified* in *Standard Oil Co. v. United States*, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976) (per curiam), in which it was held that a court has inherent power to set aside a judgment obtained by such a fraud, even in circumstances where the adverse party might be barred by laches or lack of diligence from obtaining relief. As the advisory committee explains:
>
> > [The] rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause. As an illustration of this situation, *see Hazel-Atlas Glass Co. v. Hartford Empire Co.* . . .
>
> Fed. R. Civ. P. 60(b). What is required to trigger the court's inherent power to grant relief even when equitable principles might bar a party from such relief has been a matter of controversy.
>
> > Perhaps the principal contribution of all these attempts to define 'fraud on the court' and to distinguish it from mere 'fraud' is as a reminder that there is a distinction. Any fraud connected with the presentation of a cause to a court is a fraud upon the court, in the broad sense.
>
> *Averbach v. Rival Mfg. Co.*, 809 F.2d 1016, 1022 (3rd Cir. 1987).

I.e., every federal jury trial in which the jurors were misled into thinking that jury instructions were law, as opposed to helpful suggestions, was a fraud upon the court and—if due process means anything—all those judgments must be set aside as they were obtained by fraud.

And this Court must refrain from presenting its jury instructions as anything other than helpful suggestions.

WHEREFORE, Defendant Samuel A. Girod, moves this Court to refrain from giving the jurors in his case the Juror's Oath referred to herein or, at the very least, explain to the jury that jury instructions are not law—they are merely helpful suggestions.

Respectfully submitted,

Dated: February _____, 2017

_____

Samuel A. Girod
409 Satterfield Lane
Owingsville, KY 40360