**UNITED STATES COURT OF APPEALS**
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 14, 2017

Samuel A. Girod
409 Satterfield Lane
Owingsville, KY

Re: Case No. 17-5321, *In re: Samuel Girod*
Originating Case No. : 5:15-cr-00087-1

Dear Mr. Girod:

This court has received from you a motion for disclosure of chamber papers. Your case was decided on 05/05/17 and this case was recently closed.

Because this case is closed I regret to inform you that your motion for disclosure will not be considered and is being returned to you unfiled.

Sincerely yours,

s/Bryant L. Crutcher
Case Manager
Direct Dial No. 513-564-7013

Enclosure

**Case No. 17-5321**

---

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

---

**In re SAMUEL A. GIROD,**

**Petitioner,**

**v.**

**THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY, UNITED STATES OF AMERICA,**
**Real Party In Interest,**

**Respondent.**

---

# MOTION FOR DISCLOSURE OF CHAMBERS PAPERS

---

**SAMUEL A. GIROD**
**409 SATTERFIELD LANE**
**OWINGSVILLE, KY 40360**

**Case No. 17-5321**

---

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

---

**In re SAMUEL L. GIROD,**
**Petitioner,**

**v.**

**THE UNITED STATES DISTRICT COURT FOR**
**THE EASTERN DISTRICT OF KENTUCKY,**
**UNITED STATES OF AMERICA,**
**Real Party In Interest,**
**Respondent.**

---

**MOTION FOR DISCLOSURE OF CHAMBERS PAPERS**

---

COMES the Petitioner in the above-entitled action, Samuel A. Girod, and moves this Honorable Court to provide him with the following documents pertaining to this action:

Case-related correspondence and background material (including but not limited to memoranda between judges and law clerks, drafts of orders and opinions, other correspondence or papers generated in this action).

Defendant is entitled to these documents under existing law.

Defendant suspects he was the victim of a law clerk usurping the function of Article III judges, as no judge has signed the "Order" but the Clerk, Deborah S. Hunt did.

*See* Memorandum of Law, attached hereto.

WHEREFORE, Petitioner Samuel A. Girod respectfully moves this Honorable Court to disclose to him the papers generated in this action *and* whatever software is used as a template for law clerks to use to deny relief to litigants.

Dated: June 5th, 2017

Respectfully submitted,

Samuel A. Girod
409 Satterfield Lane
Owingsville, KY 40360

**Case No. 17-5321**

---

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

---

**In re SAMUEL L. GIROD,**
**Petitioner,**

**v.**

**THE UNITED STATES DISTRICT COURT FOR**
**THE EASTERN DISTRICT OF KENTUCKY,**
**UNITED STATES OF AMERICA,**
**Real Party In Interest,**
**Respondent.**

---

# MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DISCLOSURE OF CHAMBERS PAPERS

---

COMES the Petitioner in the above-entitled action, Samuel A. Girod, and would show this Honorable Court the following.

Petitioner filed and paid for a Petition for Writ of Memorandums in this Court. The mandamus petition was denied and the Order was filed on May 5, 2017.

The problem is that the ruling appears to be issued by a law clerk or staff attorney who didn't actually bother to *read* the Petition or the accompanying exhibits.

Petitioner's evidence is as follows:

The case law on p. 1 appears to be mere boiler plate used to deny writs of mandamus.

On p. 2 there appears to be a misstatement of the facts of the case. The *issue* is *not* standby counsel.

For example:

> Although the defendant is in custody, the document appears to have been drafted though the use of a computer word processing program. Additionally, neither the objection nor the accompanying memorandum has been signed by the defendant. The obvious implication is that someone is preparing filings on the defendant's behalf. However, a nonattorney has no authority to appear as an attorney for an individual other than himself.
>
> Doc #97, Order of U.S. District Judge Danny Reeves (02/08/2017).

Petitioner is just as entitled to use non-lawyers (researchers, typists, secretaries, etc.) to assist him as attorneys are (or for that matter, judges). No one was "appearing" for Petitioner.

Evidently, the lower court only wanted hand written motions written by Petitioner while he was in custody. A far cry from "the accused shall enjoy the right … to have the assistance of counsel for his defense" in the Sixth Amendment.

The *actual* issue Petitioner raised is a judge so biased he "can't see straight." E.g., in a later case in front of the same judge involving a man

who drove for the Amish people in the area, including Petitioner, witnesses stated that this same judge seemed to have "fire coming out of his eyes" when the defendant did not get a conviction in front of a jury. *See* Case #5:17-cr-00020-DCR-REW, *USA v. Parks,* U.S. Court for the District of Kentucky, entry #48, 04/21/2017, Judgment upon Verdict of Acquittal.

In Petitioner's case, Judge Reeves hamstrung the defense standby counsel partway through the trial, as the trial transcripts reflect.

As for "mere speculation" on p. 1, that is contradicted by the Affidavit of Petitioner in Support of his Motion to Recuse, attached hereto (again in support of his Motion to Recuse).

The right to adjudication before an Article III Judge is an important constitutional right. *United States v. Mortensen*, 860 F.2d 948, 950 (9th Cir. 1988), *cert. denied*, 490 U.S. 1036, 109 S.Ct. 1935, 104 L.Ed.2d 406 (1989).

Petitioner is well aware of what he should have expected from the federal courts:

> Richard Arnold of Arkansas, a judge who sits on the U.S. Court of Appeals for the 8th Circuit, is a product of the Old South school of courtly manners. He is equally comfortable holding forth on an early 19th century British case, the U.S. Constitution or a richly embellished anecdote. But he is less genteel when talking about what is happening to the federal courts. Speaking at the Drake University Law School last week, Arnold was asked about a story in The New York Times reporting that because of crushing workloads, some federal appeals courts are resorting to perfunctory one-word rulings—

> "Affirmed" or "Denied"—with no written opinion giving the court's reasoning.
>
> The practice is an "abomination," Arnold said. He told of participating recently in a court session where more than 50 cases were decided in two hours. "We heard many, many cases with no opinions or unpublished opinions," Arnold said. "I felt dirty. It was a betrayal of the judicial ethos. It makes me feel terrible."
>
> *Perfunctory justice: Overloaded federal judges increasingly are resorting to one-word rulings*, Des Moines Register (March 26, 1999).

Adjudication by law clerks appears to be quite common when pro se litigants are involved.

> [T]he great number of prisoner petitions has forced federal courts to resort to adjudicative systems in which decisions are handed down with only the tangential involvement of Article III judges. The use of staff counsel and other alternative modes of judicial decisionmaking has been increased for the specific purpose of handling these claims. *Doumar*, *supra*, at 27-29. Whenever claims are disposed of without the closest attention of the judges, the legitimacy of the federal courts is at risk. Furthermore, where Article III judges are directly involved, the predominance of these cases threatens to convert the job of judging, particularly at the trial level, into a subspecialty of prison litigation.
>
> *Nasim v. Warden*, 64 F.3d 951, 958 (4th Cir. 1995).

This practice started over 30 years ago.

> The Trouble With Law Clerks
>
> But some lawyers, including former law clerks, hotly dispute this idea that law clerks should be innovators who fiddle with

> the law.
>
> They argue that the law clerk is not appointed by the President or Governor, is not confirmed by the Senate, is not elected, and has not been qualified under the Constitution to perform judicial functions.
>
> O'Neill, for example, points out that most activist judges do not need the intervention of law clerks. "That's so naive," he says. "What about Mr. Justice Douglas?" As O'Neill sees it, "the function of the law clerk ought to be to find what the law is, and a lawyer who's practiced a long time [the judge, for example] ought to make the policy decisions."
>
> Judge Black, who teaches in law school himself, disagrees with the idea that his chambers are "an ivory tower" that needs a recent graduate to provide "a pipeline to reality. "
>
> And Rob Johnson, who was the single clerk for an intermediate state appellate court and who served three judges by himself back in the days when "I'm not sure we even had an electric typewriter," is more blunt. "I don't like the idea of wild-eyed twenty-four and twenty-five year olds, who come right out of law school, tinkering with the law in a way that might affect my life," he says.
>
> David Crump, *How Judges Use Their Law Clerks*, New York State Bar Journal 43, 45 (May 1986) (footnotes omitted).

It even appears that law clerks, after more than 20 years of this pernicious practice, actually started copying the style of prior law clerks rather than the judge(s) they work for:

> Whatever the judge's personal style, most judges prefer that their law clerks try to write in the manner that the judge has adopted. The judge issues opinions year after year; continuity

> in style is desirable. Read several of the judge's prior opinions to become familiar with his or her style. If in doubt, ask the judge what stylistic embellishment he or she desires.
>
> *Chambers Handbook of Judges' Law Clerks and Secretaries*, p. 146 (FJC 1994).

This Court should have no objection to the disclosure of its chambers papers in order for this Defendant to see exactly how much of its Order of May 5, 2017 was actually authored by a law clerk or staff attorney.

The case law is quite uniform on this point.

> Openness in court proceedings not only gets to the truth more readily, but also results in all those connected with the trial—parties, counsel, witnesses, jurors and Judges—performing their functions more conscientiously. *See Gannett Co. v. DePasquale*, 443 U.S. 368, 383, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979). Criminal proceedings conducted in secret have had from time immemorial an odious tinge that carries with it a scent of grave injustice reminiscent of the Spanish Inquisition and the English Star Chamber. In marked contrast to the openness in which the common law jury functioned, the Lords of the Star Chamber proceeded as inquisitors. A defendant's trial was based on charges made by persons whose identities were not disclosed, and he could be examined under torture, with the ultimate decision left to a court sitting without a jury. *See* Geoffrey Radcliffe and Geoffrey Cross, *The English Legal System* 107-08 (5th ed. 1971); 8 John H. Wigmore, *On Evidence* § 2250, at 282-84 (1961). Thus, the right accorded the press and the public to be present at a criminal trial is rooted in history and derived from English common law in response to the Star Chamber.
>
> *United States v. Cojab*, 996 F.2d 1404, 1407 (2d Cir. 1993).

The question here is: how are the interests of the public served by nondisclosure? If 25-year-old clerks ghostwriting for federal judges is perfectly acceptable, what possible objection could there be to the granting of this motion?

There has been a long-established common law right of access to judicial records filed in court. It is a common law right that has been recognized by the Supreme Court. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978):

> It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.
>
> *Id.* at 597 (footnotes omitted).

Courts have also recognized that cases may involve matters of particularly public interest. *See, e.g., Smith v. United States District Court for Southern Dist.*, 956 F.2d 647, 650 (7th Cir. 1992) (appropriateness of making court files accessible is accentuated in cases where the government is a party) (citing *FTC v. Standard Financial Management Corp.*, 830 F.2d 404, 410 (1st. Cir. 1987)); *United States v. Beckham*, 789 F.2d 401, 413 (6th Cir. 1986) (a district court must set forth "substantial reasons" for denying requests for access to court materials, and "when the conduct of public officials is at issue, the public's interest in the operation of government adds

weight in the balance toward allowing permission to copy judicial records.") (citing *United States v. Criden*, 648 F.2d 814, 822 (3d Cir. 1981)).

A quote from this Circuit deserves repeating.

> A mere articulation of rational justifications will not suffice in this context. A district court must set forth substantial reasons for denying such request. We agree further with *Criden* that when the conduct of public officials is at issue, the public's interest in the operation of government adds weight in the balance toward allowing permission to copy judicial records. *See Criden*, 648 F.2d at 822.
>
> *United States v. Beckham*, 789 F.2d 401, 413 (6th Cir. 1986).

The right of public access derives from two independent sources: the common law and the First Amendment. The common law presumes a right of public access to inspect and copy all judicial records and documents. *Stone v. University of Md. Medical Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988) (citing *Nixon, supra*, at 597).

A court may seal judicial documents if competing interests outweigh the public's common law right of access. *Nixon*, *supra*, 435 U.S. at 598-99, 602-03.

The court's balancing of interests is reviewable only for abuse of discretion. *Nixon*, 435 U.S. at 599; *Stone*, *supra*, 855 F.2d at 180. Unlike the common law right, the First Amendment guarantee of access has a more

limited scope that "has been extended only to particular judicial records and documents." *Stone*, *supra*, 855 F.2d at 180.

The right of access attaches under the First Amendment if: (1) "the place and process have historically been open to the press and general public"; and (2) "public access plays a significant positive role in the functioning of the particular process in question." *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8-9, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986), quoted in *The Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989).

The First Amendment guarantee of access, however, provides much greater protection than the common law right because "it must be shown that the denial [of access] is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606-07, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982); *Stone*, *supra*, 855 F.2d at 180.

The Third Circuit applies a standard that focuses on the "technical question of whether a document is physically on file with the court." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 782 (3d Cir. 1994); *see Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 161-62 (3d Cir. 1993) (listing cases in which "other courts have also recognized the principle

that the filing of a document gives rise to a presumptive right of public access.").

The Second Circuit applies a different standard that focuses on the document's use and requires that the document be "relevant to the performance of the judicial function and useful in the judicial process." *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995); *see Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st Cir. 1986) (stating that "courts have not extended [the common law presumption] beyond materials on which a court relies in determining the litigants' substantive rights").

Defendant strongly suspects that the May 5, 2017 Order was actually authored by a law clerk.

> Although Article III, section 1 does not say in so many words that the judicial power of the United States shall be exercised by judges rather than by bailiffs, criers, and other court employees, the implication is unmistakable. The judges can have assistants who are not themselves judges, but cannot just hand over their authority to those assistants. If they do, the assistants become judges—judges whose conditions of employment violate Article III. A district judge cannot tell his law clerk, "You try this case—I am busy with other matters—and render judgment, and the losing party can if he wants appeal to the court of appeals." The judge cannot do this even if the parties consent, and even though the statute authorizing federal district judges to appoint law clerks (28 U.S.C. Sec. 752) does not specify the duties of law clerks. In my example the law clerk is acting as a judge, though not called a judge; and the authors of Article III could not have intended to guarantee federal judges life tenure and assured compensation only if they were called "judges." Unless the word is read generically,

> Article III could be nullified by a change in title. Judges were called all sorts of things in 1787 besides "judge"—not only the familiar "justice" (not mentioned in the Constitution) but also "chancellor," "recorder," "commissioner," "baron," "president," "assistant," "delegate," "lord keeper," "master of the rolls," and, yes, "magistrate." What they are called is not important; what they do is important.
>
> *Geras v. Lafayette Display Fixtures, Inc.*, 742 F.2d 1037, 1046 (7th Cir. 1984).

Petitioner is well aware that this Motion for Disclosure of Chambers Papers will be denied. Since the appearance of Jack Abramoff on the 60 Minutes TV program and his book, *Capital Punishment*, it is obvious that the federal courts are operating under the same corrupt system that a large part of Congress did.

I.e., the cowardly, evasive and dishonest law clerks actually writing the "judicial" orders denying deserved relief to defendants against an oppressive government agency in court simply do not want to irritate those (such as the Department of Justice) who might hire them later.

WHEREFORE, Defendant Samuel A. Girod respectfully moves this Honorable Court to disclose to him the papers generated in this action *and* whatever software is used as a template for law clerks to use to deny relief to litigants, and:

The name or names of each individual who actually authored the May 5, 2017 Order and the amount of *time* each individual spent reading, researching, and writing the Order of May 5, 2017.

Dated: June 5th, 2017

Respectfully submitted,

Samuel A. Girod

Samuel A. Girod
409 Satterfield Lane
Owingsville, KY 40360

**CERTIFICATE OF COMPLIANCE**

Pursuant to FRAP 27(d)(2)(A), the undersigned certifies that this motion contains fewer than 5,200 words as measured by the undersigned's word processing software program, Microsoft Word 2010. According to the word count feature of said word processing software, there are a total of 3,108 words in this brief. This brief was prepared using a proportionally-spaced, 14-point font known as "Times New Roman."

Samuel A. Girod

Samuel A. Girod

**CERTIFICATE OF SERVICE**

This certifies that I have on this 5th day of June, 2017, placed two true and exact copies of the

**MOTION FOR DISCLOSURE OF CHAMBERS PAPERS 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
Phone: 859-685-4855
Email: Kate.Smith@usdoj.gov

Gary Todd Bradbury, AUSA
U.S. Attorney's Office, EDKY
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612
Phone: 859-685-4898
Email: Gary.T.Bradbury@usdoj.gov

and

Clerk of Court
U.S. District Court, Eastern District of Kentucky, Lexington
U.S. Courthouse
101 Barr Street
Lexington, KY 40507

Samuel A. Girod

**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.** | ) | |

---

**AFFIDAVIT OF SAMUEL A. GIROD IN SUPPORT OF MOTION TO RECUSE**

---

COMES the Defendant in the above-entitled action, Samuel A. Girod, and as Affiant deposes and says:

1. Defendant was not aware of the deep-seated animosity the Court holds against him until he read the Court's Order of February 21, 2017.

2. That Order stated that the Court held a *Faretta* hearing on April 18, 2016.

3. That Order addressed a motion for enlargement of time, which the Court denied.

4. The current trial date was set on January 12, 2017.

5. The government issued a superseding indictment on February 2, 2017.

6. The Court made the statement that, "Thus, the defendant has been aware of the trial date for more than a month."

7. Not on the superseding indictment the Defendant was not.

8. Any *attorney* would have been given *at least* another 30 days to prepare for trial on a superseding indictment.

9. The Defendant has submitted *several* pretrial motions that require additional time to research on the part of the Court.

10. Given the demonstrable bias on the part of the Court, it is obvious how Defendant's pretrial motions will be handled, as Defendant's Objection to Jurors Oath motion has already been handled. I.e., the Court simply side-stepped the issue.

11. Defendant is well aware that this Court will side-step, ignore, or mis-rule on *any* dispositive motion Defendant submits in order to favor the government and maintain the status quo.

12. "A passive judiciary merely ratifies the status quo; instead of acting as a bulwark against undue political power, it becomes an actor in concert with the political branches against the individual." Bandes, *Reinventing Bivens: The Self-Executing Constitution*, 68 So.Cal.L.Rev. 289, 317 (Jan. 1995).

13. As more and more of the innocent are swept up in today's criminal "justice" system, the appearance of justice will soon be exposed as an evil surpassing the Soviet system described in the *Gulag Archipelago* by Aleksandr Solzhenitsyn:

> Seventy-five percent of the time, the particular choice of whom to arrest . . . was determined by human greed and vengefulness . . . (p. 152)
>
> An acquittal is, in fact, unthinkable from an economic point of view! (p. 291)
>
> Don't fear the law, fear the judge. (p. 298)
>
> . . . what was important in every trial was not the charges brought nor guilt, so called, but expediency . . . (p. 355)

Even licensed attorneys realize the slippery slope on which the justice system teeters.

> Our criminal justice system, as presently practiced, is basically a plea bargain system with actual trials of guilt or innocence a bit of showy froth floating on top.
>
> Glenn Harlan Reynolds, *Ham Sandwich Nation: Due Process When Everything Is a Crime*, 113 Colum. L. Rev. Sidebar 102, 107 (2013) (footnote omitted).

14. Defendant predicts that the Court will deliberately mislead the jury into thinking that jury instructions are *law* (as opposed to helpful suggestions) and take away, through some sort of subterfuge, the ability of the jury to determine the main fact in dispute in this case: were Defendant's products herbs or drugs?

15. This was never how our legal system was supposed to work even before 1776: "Let justice be done though the heavens fall." Lord Mansfield in *Rex v. Wilkes*, 4 Burrow's Reports 2527, 2526 (1768).

16. Or after.

> It is the duty of the grand jury to protect the citizen from unfounded accusations and the duty of the court alone to protect the defendant from unjust conviction'
>
> *United States v. Mattues*, 27 F.2d 137 (D.Pa. 1928).

Further deponent saith naught.

Sworn to under penalty of perjury, 28 U.S.C. § 1746.

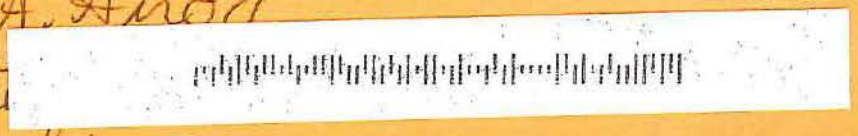
Dated: February 27th, 2017

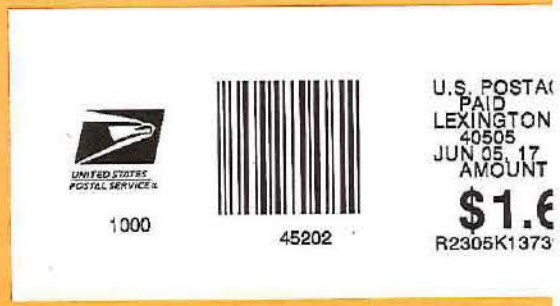
Respectfully submitted,

Samuel A. Girod

Samuel A. Girod
409 Satterfield Lane
Owingsville, KY 40360

Samuel A. Arnold
409 Satt
Owingsville, Ky 40360






United States Court of App
100. E. Fifth Street R
Cincinnati, Ohio 45