UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No: 14-50585

United States of America
Appellee
v.
Noah Kleinman
Appellant

Appeal from the United States District Court for the Central District of California
(No. 2:11-cr-893-ODW)
Honorable Otis D. Wright, II, United States District Judge

AMICUS CURIAE BRIEF OF

FULLY INFORMED JURY ASSOCIATION ("FIJA")

IN SUPPORT OF APPELLANT NOAH KLEINMAN

AND IN SUPPORT OF REVERSAL

Submitted by
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STATEMENT OF IDENTITY OF AMICUS CURIAE, ITS INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE

The Fully Informed Jury Association (FIJA) is a corporation, duly registered and headquartered in the state of Montana. FIJA is a nonprofit, nonpartisan, educational outreach organization, pursuant to IRC §501(c)(3). Its mission is to preserve the full function of the jury as the final arbiter in our courts of law by informing everyone of their rights and responsibilities—including the right of conscientious acquittal—in delivering just verdicts when serving as jurors. FIJA conducts its educational efforts through a variety of programs and materials, research and publication on jury-related issues, outreach via an array of media, both traditional and modern, and other appropriate means. The group also maintains a website, www.FIJA.org, which provides information and materials in furtherance of its mission and purpose at no charge to the public.

It is not within the scope of FIJA's mission or activities to advocate for specific jury verdicts in any case in progress. Rather, FIJA educates the general public, which includes potential jurors, regarding the historic and constitutional role of the jury as a protector of criminal defendants (and hence the community)

from unjust laws, malicious prosecutions and government abuses. As part of its educational mission, FIJA sometimes files amicus briefs when matters regarding the jury are at issue to clarify and illuminate jurors' full constitutional authority and the crucial role of the jury in protecting human rights and restraining government.

FIJA submits that the jury instructions given in the District Court below were among the most unnecessarily overbearing, abusive and intimidating jury instructions ever administered in a federal trial. Trials by jury are already in danger of extinction, with well over 90% of criminal charges being adjudicated unilaterally by the government. The Sixth Amendment guarantee of jury trial will be further eroded if such instructions are upheld as lawful or become a norm in this Circuit.

STATEMENT OF COMPLIANCE

This brief is wholly the product of the Fully Informed Jury Association ("FIJA") and its counsel. Counsel for the parties did not author any part of this brief. Nor did any party or their counsel contribute anything toward the production, preparation or filing of this brief.

FACTUAL STATEMENT RELEVANT TO THIS AMICUS BRIEF

The Appellant's brief adequately summarizes the background of the state/federal controversy regarding California medical marijuana, the advent of the communal marijuana growing operation involved in this case, and the factual background behind Noah Kleinman's prosecution.

Most relevant from the perspective of this amicus brief is the factual background behind the District Court's "anti-jury nullification" instructions and efforts. The government expressed concern over the threat of "jury nullification" from virtually the very onset of the Kleinman prosecution. The topic was the focus of at least one pretrial hearing, prosecution motions and several trial interludes during the proceedings as described in Appellant's Brief.

The District Court addressed the jurors themselves regarding the issue of jury nullification at least three times during *voir dire,* asking whether or not the jurors could follow the law even if they disagreed with it, and even lecturing the jurors that they were not to question the law (ER 445-46, 448; 05/28/14 RT 48-49, 05/28/14 RT 64).

In response to reports during trial that there were jury rights educators demonstrating outside the courthouse, the District Court held a bizarre early-morning hearing on June 4, 2014. The District Court repeatedly implied that Kleinman or his attorneys were responsible for or even controlling a demonstration outside, openly hinting that defense counsel or Kleinman might need the

protections of the "Fifth Amendment" and telling defense counsel that the "appearance now is that this is something you all staged . . ." (Tr. Transcript 6/4/14 at 7).

The District Court even suggested that jury rights educators might influence the jury to render a "wrong" verdict, and hinted that there would be repercussions to Defense counsel if such a "wrong" verdict were produced:

> THE COURT: Okay. You know, at the end of the day *if this thing goes wrong*, there's only one person to pay. That person needs to do whatever it is in his power to make things right.

Tr. Transcript 6/4/14 at 8 (emphasis added).

From the context of these remarks, it is clear that the District Court meant that a "wrong" outcome would be a failure of the jurors to find Noah Kleinman guilty. A "correct" outcome would be conviction on all counts.

Faced with a suggested involvement of the defense with jury nullification demonstrators, the District Court aligned itself with the prosecutor to root out the alleged threat of jury nullification. Assistant U.S. Attorney MS. SHEMITZ stated that "I think that the -- this is a very important inquiry that we're about to embark on and it is critical that they understand the gravity of what they're doing . . ." Trscpt 6/4/14 at 9-10.

The District Court, agreeing with the prosecution that "gravity" and "seriousness" needed to be impressed upon the jurors, remarked that jurors "lie like

hell:" "First they lie not to get in that seat; now they will lie to keep that seat" (p 10). The government agreed, and the District Court and the prosecution devised a plan to relax the jurors and then individually ply out "the truth" from them (obviously from the context meaning any indication that the "lying" jurors might be inclined to exercise any jury nullification).

But the District Court had difficulty identifying any juror who actually possessed the forbidden knowledge of jury nullification. Most of the jurors hadn't even noticed any demonstrators or read their signs. Of those who read any signs, most didn't even know if the signs were intended for them or involved the Kleinman trial. Tr. Transcript 6/4/14 at 11-23. Only Juror Christina interpreted the protestors' signs to be "pro-pot" and "guessed" the signs were trying to sway readers "towards the legalization of marijuana, which has nothing to do with this case" (p. 15-16). Juror Casey came closest to admitting top secret knowledge, saying he assumed the signs referred "to juries being able to say no to a law even if, like, that's what the law says, if they feel that it's an unjust law" (pp. 17-18). But the juror indicated that the taboo information couldn't be directed toward the Kleinman jury because no unjust laws were at issue in the Kleinman trial (p. 18).

The District Court continued to badger the jurors regarding their lowly role as mere fact-finders throughout the trial. Finally, at trial's end, the District Court

delivered several jury instructions repeating the catechism that jurors are to obey the interpretations of the Court, including the following jury instruction:

> **You cannot substitute your sense of justice, whatever that means, for your duty to follow the law, whether you agree with it or not. It is not your determination whether a law is just or whether a law is unjust. That cannot be your task. There is no such thing as valid jury nullification. You would violate your oath and the law if you willfully brought a verdict contrary to the law given to you in this case.**

(ER 21-22.)

SUMMARY OF FIJA'S ARGUMENT

"Jury nullification" is popular nomenclature for the exercise of conscientious acquittal by jurors: the declaration by jurors that a defendant is "not guilty" even in circumstances where the defendant may have technically violated some statute, but where a law is unjust, a prosecution is abusive, or other circumstances may forgive or justify the defendant's actions or inactions. Of course, conscientious acquittal cannot "nullify" any law; the law will continue to be in effect after a verdict in any given case.

Contrary to the extreme prosecutorial ideology and culture that prevails in contemporary court practice, juror knowledge of jury nullification power is in no way improper, unethical or destructive of justice. In fact, juror knowledge that juries may use "jury nullification" to protect Americans from tyrannical government is the true purpose for the constitutional right and enshrinement of trial

by jury. Courts should celebrate, embrace and openly inform jurors of their absolute right to acquit rather than seeking to deceive or conceal this knowledge and power from jurors.

The Appellant, Noah Kleinman, doubtlessly made many technical and legal mistakes during his participation in a medical marijuana-growing operation. Yet the jury that convicted him was deprived of its right to provide Kleinman with any grace or mercy. The District Court's approach and treatment of the jury, and its jury instructions, so deprived the jury of its ability to deliberate over Kleinman's fate that Kleinman was utterly deprived of trial by jury.

The entirety of these instructions, together with the repeated nagging of the District Court, communicated to the jury that the District Court and prosecutor were overly concerned with detecting, dampening and deadening any sign amongst the jurors that they might be inclined to forgive any of Mr. Kleinman's errors, or to consider the constitutionality, justice or propriety of Kleinman's federal drug prosecution in light of the clear trend favoring decriminalization of medical marijuana among Californians. The jury understood that they were expected to deliver a verdict of exacting compliance with the most technical aspects of federal drug laws from a prosecution perspective.

Under the Constitution's original intent, jurors were to act as a check against the power of government rather than as a mere fact-finding device. All of the

principal Constitutional Framers, including Madison, Adams, Jefferson, Hamilton, and others, are on record stating that juries are to protect the community from the abusive acts and encroachments of prosecutors, judges and legislators.

ARGUMENT

Over the past forty years, America's criminal courts have gradually moved from "may convict" to "must convict" jury instructions, consistent with an ascendance of certain theories of the prosecution bar that jurors are to be considered mere fact-finders and are never to be informed of their true constitutional role as a check on government power. Such "must convict" instructions are wholly alien to constitutional law, without sanction in constitutional history, wholly divorced from Framers' intent, and divorced from the jurisprudence of the Supreme Court.

While jury instructions have increasingly taken on a tone and orientation reflecting the prosecution bar's desire to repress jury discretion, *never before has a jury been instructed in such an overtly ham-fisted manner as the jury in Noah Kleinman's trial below.*

Appellant Noah Kleinman was subjected to a jury "trial" in which the jurors were repeatedly nagged regarding their alleged subservience to the District Court and the supposed unlawfulness of jurors applying any discretion regarding the application of criminal law. Under such circumstances, the jurors would be

forgiven if they surmised that "not guilty" verdicts would need to be delivered in a chilled moment of awkwardness, anxiety and discomfort, or else the trial might be followed by their interrogation, investigation, or detention on the way to their cars. The jury did what was easiest and safest in these circumstances; they convicted Kleinman on every count rather than provoking the wrath of the court and the prosecution team.

Under the pretense of seeking to ward off any influence of jury nullification demonstrators holding signs near the courthouse, the District Court offered the most extreme anti-jury nullification instruction ever given in a federal trial:

> **You cannot substitute your sense of justice, whatever that means, for your duty to follow the law, whether you agree with it or not. It is not your determination whether a law is just or whether a law is unjust. That cannot be your task. There is no such thing as valid jury nullification. You would violate your oath and the law if you willfully brought a verdict contrary to the law given to you in this case.**

(ER 21-22.)

This extreme language appears to have descended from language in a notorious case, *United States v. Krzyske*, 836 F.2d 1013 (6th Cir. 1988), in which a split panel of the Sixth Circuit upheld (over a vigorous dissent) the delivery of an instruction that "[t]here is no such thing as valid jury nullification" and told a jury that its "obligation is to follow the instructions of the Court as to the law given to you." The only differences are that (1) the *Krzyske* language was in response to a

note passed from jurors asking about jury nullification, whereas the trial below featured not a trace of evidence of juror interest in nullification, and (2) the extreme *Kzryske* language was extended significantly by the Kleinman District Court with additional instructions that "You cannot substitute your sense of justice, whatever that means, for your duty to follow the law," and that jurors are not to determine "whether a law is just or . . . unjust."

A JURY'S APPLICATION OF ITS "SENSE OF JUSTICE" IS THE VERY PURPOSE AND ESSENCE OF TRIAL BY JURY

Unleashing a jury's sense of justice is precisely the constitutional design behind the right to trial by jury. Even a casual glance at the statements of the Constitution's Framers regarding jury independence yields a record that belies the District Court's marginalization of the jury as a body of submissive robotic citizen fact-finders. *See* William E. Nelson, *The Eighteenth-Century Background of John Marshall's Constitutional Jurisprudence*, 76 Mich L. Rev. 893, 904 (1978) ("juries rather than judges spoke the last word on law enforcement in nearly all, if not all, of the eighteenth-century American colonies").

The Founders viewed jurors as participants in the political system no less than senators or congressional representatives. *See* Akhil R. Amar, *The Bill of Rights: Creation & Reconstruction* 83-94 (1998). Some Framers suggested the jury "could function like a sitting constitutional convention, an authoritative interpreter of the meaning of constitutional documents." *See* Roger Roots, *The Rise and Fall*

of the American Jury 13 (2011). The Framers repeatedly spoke of juries as playing a role of spoiler in the judicial branch, protecting local citizens against arbitrary acts of government power. *Id.*

A jury's absolute right to act as a check on government is plainly implied in the language of Article III, Section 2 (in which the right to jury trial makes its entrance in the Constitution as the "lower chamber" of the Judicial Branch—and the most important limitation on the Judiciary). See Akhil R. Amar, *The Bill of Rights* 94 (1998).

By contrast, there are no provisions in Article III, or anywhere in the Constitution, which say that judges are to have the final power of interpreting the law. Article III speaks only of "the judicial Power" and indicates in Section 2 that juries—as much as or more than judges—wield this power in the "trial of all crimes."

The double jeopardy clause of the Fifth Amendment also places in the jury's hands the ability not only to nullify a law's application but to effectively end the government's prosecutorial attack on a fellow countryman altogether. "[T]he hard core of the double-jeopardy clause is the absolute, unquestionable finality of a properly instructed jury's verdict of acquittal," writes Professor Amar, "even if this verdict is egregiously erroneous in the eyes of judges." *The Bill of Rights* at 97.

THE RECENT ADVENT OF "MUST CONVICT" JURY INSTRUCTIONS

Throughout the first century of American criminal law, judges expressly informed juries of their discretion and nullification powers. But by the mid-twentieth century, judges generally kept silent regarding the issue.

In 1972, a three-judge panel of the D.C. Circuit issued a sharply-split, thirty-six-page decision in *United States v. Dougherty*, 473 F.2d 1113 (D.C. Cir. 1972). The case involved the question of whether federal trial judges are under an obligation to inform jurors of their inherent right to acquit a criminal defendant even if the jury concludes that the government has proven beyond a reasonable doubt that the defendant violated a criminal statute. There is no question that juries have this power of jury nullification. The only question in *Dougherty* was whether, when or how jurors are to be informed of this prerogative.

Jury instructions given by trial judges have discernibly changed regarding this issue over the course of American history. In the eighteenth and early nineteenth centuries, it was common for judges to either fully inform juries of their law-vetoing authority or to provide very few instructions of any kind and let juries do as they will, which invited jurors to resolve all questions of both law and fact. *See* Roger Roots, *The Rise and Fall of the American Jury*, 8 Seton Hall Circuit Review 1 (2012). But today most criminal trial judges instruct juries that they may only judge the facts and must follow the judges' interpretations of the law.

In the Noah Kleinman trial below, the District Court went further than simply telling jurors they must convict Kleinman if the government proved its case; the Court explicitly told jurors that they *would be breaking the law* if they dared to considered their own conscience or sense of justice in their verdicts.

Jury instruction practices have varied greatly over time and between jurisdictions, so it is difficult to make general statements about them. But as a mark of original intent behind the Constitution's jury trial provisions, we can look to the jury instructions given by the Chief Justice in the only jury trial ever recorded with any detail in the chambers of the U.S. Supreme Court. In *Georgia v. Brailsford*, 3 U.S. (3 Dall.) 1, 4 (1794), Chief Justice John Jay (himself a Framer of the Constitution and coauthor of *The Federalist Papers*) gave the following instructions to the jury:

> **"It is presumed, that juries are the best judges of facts; it is, on the other hand, presumed that courts are the best judges of law. But still both objects are within your power of decision… you [juries] have a right to take it upon yourselves to judge both, and to determine the law as well as the fact in controversy."**

These are the only jury instructions regarding juror prerogatives ever recorded as having been delivered by the U.S. Supreme Court.[1]

[1] Of course the Supreme Court is mostly an appellate court with an extremely limited "original" or trial jurisdiction—arising only when suits between states or nations are filed directly in the Court. It appears that there may have been three jury trials in Supreme Court history (all during the 1790s) and the records are quite

In the 1972 *Dougherty* trial, the defendants tried to get the judge to inform the jury of their inherent nullification powers. The trial judge refused, the jury convicted, and the Defendants appealed to the D.C. Circuit. On the question of whether a judge is under an obligation to fully inform juries about jury nullification, the three judges of the D.C. Circuit split sharply. Chief Judge Bazelon, arguably the highest ranking judge outside the Supreme Court, issued a dissenting opinion explaining why the refusal of the trial judge to fully inform the jury constituted outright deception. "On remand the trial judge should grant defendants' request for a nullification instruction," wrote Bazelon, or "[a]t the very least "permit defendants to argue the question before the jury."

'JUDGES WOULD "NEVER" INSTRUCT JURIES THAT THEY "MUST" CONVICT!'

Unfortunately, however, Judge Bazelon was outnumbered by Judges Leventhal and Adams, who held that trial judges are under no obligation to inform jurors of their "unreviewable and unreversible power . . . to acquit." The two-judge majority decided that juries did not need to be explicitly informed because the power of jury nullification is implicit in the overall tone of commonly-given jury instructions.

According to Judge Leventhal (with emphasis added):

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paltry regarding two of them. *See* Robert A. James, *Instructions in Supreme Court Jury Trials*, 1 Green Bag 2d 377 (1998).

> The jury knows well enough that its prerogative is not limited to the choices articulated in the formal instructions of the court. . . . Even indicators that would on their face seem too weak to notice — like the fact that the judge tells the jury it must acquit (in case of reasonable doubt) but never tells the jury in so many words that it must convict — are a meaningful part of the jury's total input. Law is a system, and it is also a language, with secondary meanings that may be unrecorded yet are part of its life.

The problem with Judge Leventhal's 1972 statement is that it is no longer true. During the 1970s, when *Dougherty* was decided, the common practice was for judges to use the word "must" only when instructing jurors to acquit when prosecutors fail to establish proof beyond a reasonable doubt. In contrast, the word "should" was used when instructing jurors about their obligations when prosecutors *prove* their cases. But today, many courts have switched to using "must" in both commands.

Thus, a central tenet supporting the opinion of the *Dougherty* majority—perhaps the lynchpin of the decision—is no longer accurate.

The *Dougherty* ruling—built upon a carefully-analyzed split decision—has been something of the law of the land for forty years. The decision has been referenced more than 300 times by subsequent judicial opinions. As federal case law has developed, the *Dougherty* rule that judges need never inform jurors of their power to veto laws (or the application of laws to specific situations) has become the rule in all thirteen federal circuits. The Supreme Court has declined to directly address the issue in many years.

But in Noah Kleinman's trial, jurors were not only deprived of information regarding their historic constitutional role, powers and purpose. They were *falsely* instructed.

THE DISTRICT COURT'S INSTRUCTION DEFIED WELL-SETTLED CONSTITUTIONAL LAW

It is not the law that juries must find a defendant guilty when the Government meets its burden of proof, though they may do so. *See United States v. Martin Linen Supply Co*., 430 U.S. 564, 572-73 (1977) (trial judges are prohibited from "directing the jury to come forward with [a guilty] verdict, regardless of how overwhelming the evidence may point in that direction"); *Gregg v. Georgia*, 428 U.S. 153, 199 n.50 (1976) (saying any legal system that would rob jurors of their discretion to acquit against the evidence would be "totally alien to our notions of criminal justice"); *Brotherhood of Carpenters v. United States*, 330 U.S. 395, 408 (1947) ("a judge may not direct a verdict of guilty, no matter how conclusive the evidence"); *United States v. Mentz*, 840 F.2d 315, 319 (6th Cir. 1988) ("Regardless of how overwhelming the evidence may be, the Constitution delegates to the jury, not to the trial judge, the important task of deciding guilt or innocence"); *Konda v. United States*, 166 F.91, 93 (7th Cir. 1908) (an accused has a right to a chance of a jury acquittal even where "the evidence against him is clear and uncontradicted, as he unquestionably would have if it were doubtful and conflicting"); *Buchnanan v United States*, 244 F.2d 916 (6th Cir. 1957) (a trial judge cannot instruct a jury to

convict even if the facts of guilt are undisputed); *Dinger v. United States*, 28 F.2d 548, 550, 551(8th Cir. 1928) (trial judge's instruction that "if you believe the testimony of these agents . . . you would be justified, and in fact required, to find the defendant Dinger guilty" was a "most serious error" "not permissible in a criminal case"); *Billeci v. United States*, 184 F.2d 394, 399 (D.C. Cir. 1950) (must-convict instruction "is not the law. The law is that if the jury believes beyond a reasonable doubt that the defendant has committed the alleged offense it *should* find a verdict of guilty"). (emphasis added)

Never has the Supreme Court issued a decree that jurors must abandon their senses of justice, their assessment of the justness of laws, or their consciences if the government proves its case beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 317 n.10 (1979) (referring to the jury's "unassailable" power to issue an "unreasonable verdict of 'not guilty'"); *McCleskey v. Kemp*, 481 U.S. 279, 311 (1987) (criminal juries have an inherent discretionary power to "decline to convict," and such "discretionary exercises of leniency are final and unreviewable"); *Batson v. Kentucky*, 476 U.S. 79, 86-87 n.8 (1986) (the jury's role "as a check on official power" is in fact "its intended function"); *United States v. Spock*, 416 F.2d 165 (1st Cir. 1969) (discussing jurors' well-established "power to follow or not to follow the instructions of the court"); *United States v. Wilson*, 629 F.2d 439, 443 (6th Cir. 1980) ("a jury is entitled to acquit the defendant because it

has no sympathy for the government's position. It has a general veto power"); *United States v. Spock*, 416 F.2d 165, 182 (1st Cir. 1969) ("the jury, as the conscience of the community, must be permitted to look at more than logic . . . . The constitutional guarantees of due process and trial by jury require that a criminal defendant be afforded the full protection of a jury unfettered, directly or indirectly"). See also *State v. Koch*, 85 P. 272, 274 (Mont. 1906) ("the jury has power to disregard the law as declared and acquit the defendant, however convincing the evidence may be, and . . . the court or judge has no power to punish them for such conduct"); *Titus v. State*, 7 A. 621, 624 (N.J. 1886) ("some of the jurors were called as witnesses, . . . to prove their own official misconduct, or that of their fellows. Such course was conspicuously illegal.").

The only Supreme Court justice ever impeached, Samuel Chase, was impeached in part for "endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give" during a 1798 treason trial. See William H. Rehnquist, *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* 59-60 (1992). (Chase later recanted and acknowledged that the jury had power to deliberate upon matters outside the limited scope of his instructions, and the U.S. Senate declined to convict and remove Chase.)

Since *Bushell's Case* in 1670 (Howell's State Trials, Vol. 6, Page 999 (6 How. 999)), Anglo-American law has enshrined the principle that no juror can ever be punished for his verdict, no matter how nonsensical or seemingly illogical the verdict might seem to presiding judges or prosecutors. Jurors have had the common law and constitutional right to deliberate freely and to exonerate any defendant regardless of the seeming appearance of great weight of evidence.

THE DISTRICT COURT'S ERRORS IN INSTRUCTING THE JURY CANNOT BE HARMLESS ERROR

The Supreme Court has repeatedly stated that the scope and meaning of "trial by jury" must be construed in accordance with their scope and meaning under the common law of 1789-1791. *See, e.g., United States v. Bailey*, 444 U.S. 394, 415 n. 11 (1980). As already described, the District Court's approach to the jury, and the Court's jury instructions, were far removed from the "trial by jury" intended by the Framers of the Constitution and Bill of Rights.

Jurors who deliberate in fear that 'not guilty' verdicts might be considered illegal or a violation of their oaths are not deliberating freely. Cf., *Weare v. United States*, 1 F.2d 617, 619 (8th Cir. 1924) ("In reading portions of the instructions, it would be difficult to tell whether one were reading the instructions of a court or the argument of a prosecutor. . . . The whole tenor of the instructions was apparently to influence the jury to return a verdict of guilty.")

Such a fundamental error of due process cannot be harmless error. *See Rose v. Clark*, 478 U.S. 570, 578 (1986) (harmless-error analysis presumably inapplicable where court has invaded the province of the jury, as "the wrong entity judged the defendant guilty").

CONCLUSION

FIJA submits that the instructions, proclamations, and warnings given by the District Court to the jury in the trial below were the most unnecessarily overbearing, abusive and intimidating jury instructions administered in a federal trial. Trials by jury are already in danger of extinction. The Sixth Amendment guarantee of jury trial will be further eroded if such instructions are upheld as lawful or become a norm in this Circuit or in federal trials generally.

For the reasons described above, Noah Kleinman is entitled to a reversal of his convictions, and a new trial by a jury properly instructed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 25, 2015. All parties are registered CM/ECF users, and I certify that I electronically served the parties by the appellate CM/ECF system.

By *Roger I. Roots, Esq*. Dated Nov. 25, 2015