

**PROPOSED INSTRUCTION NO. 26**  
**UNANIMITY IS REQUIRED AS TO BOTH ALLEGED ACTS OF**  
**VIOLATION**

(1) The indictment's single count charges Mrs. Hendrickson with committing two acts, and joins them into one alleged crime by titling them as "violation" in the singular-- rather than "violations" in the plural-- and by the use of the conjunctive "and" between them, rather than the disjunctive "or".

(2) Therefore, it is not sufficient for some of you to believe that Mrs. Hendrickson violated one order and the rest believe she violated the other, or for all of you to believe that Mrs. Hendrickson violated only one order. If you do not unanimously agree that the government has proven the violation of both orders beyond a reasonable doubt, you cannot find Mrs. Hendrickson guilty.

**OR**

(If the Court deems each violation to be separately alleged)

**UNANIMITY IS REQUIRED AS TO AT LEAST ONE ALLEGED**  
**VIOLATION**

(1) Each act or omission alleged in the indictment is, if an offense at all, a complete offense. There is no crime of "bad attitude"-- criminal contempt as is charged in this case consists only of the willful violation of a lawful order.

(2) It is not sufficient for some of you to believe that Mrs. Hendrickson violated one order and the rest believe she violated the other. If you do not unanimously agree that the government has proven the violation of the same order or orders beyond a reasonable doubt, you cannot find Mrs. Hendrickson guilty.

Sixth Circuit Pattern Criminal Jury Instructions (2014), Instruction 8.03B

The Sixth Circuit Pattern Instructions Section 8.03B [Unanimity Not Required - Means] Committee Commentary explicitly declares that the unanimity exception cannot apply to a jury's determination of any matter which itself constitutes an offense or even merely an element of an offense:

"This instruction [Unanimity Not Required - Means] covers situations where the crime charged includes **an element that can be committed by multiple means**, so jury unanimity on a particular means is not required. The use note indicates that **the instruction should only be given if the indictment alleges that the defendant committed a single element through more than one means.**"  
(Emphasis added.)

A willful violation of an order is, in and of itself, an entire contempt offense. It is not only *not* a "means" of an "element"; it is not even a mere element. Criminal contempt under 18 U.S.C. 401(3) consists of: Disobedience or resistance to [a court's] lawful writ, process, order, rule, decree, or command. Such disobedience or resistance to a lawful command is a complete offense, and there IS no crime of contempt which is not a disobedience or resistance to a court's lawful writ, process, order, rule, decree, or command, but is instead something else of which such a violation is merely a "means". There is no crime of "showing contempt", which can be committed in one way or another; indeed, 18 U.S.C. 401(3) explicitly precludes any such construction with the specification "and none other".

This fact is manifest in the fact that all parties here, including the government and the Court, would agree that a complete offense would be properly proven if all jurors agreed on nothing more than that Mrs. Hendrickson had committed either of the violations alleged in the indictment.

What is proposed by the government in its 'Unanimity Not Required - Means' instruction flies in the face of the facts and the law, and even the very authority it cites on its behalf.

What's more, the government's proposed "Unanimity Not Required - Means" instruction is an argument that the indictment names no actual offense. If the unanimity exception applies here, it can only be because the "contempt" allegedly accomplished by the various "means" of the alleged order violations is merely an "element" of something else never named. Again, as the Pattern Instructions Committee declares: **the instruction should only be given if the indictment**

**alleges that the defendant committed a single element through more than one means."**

If the government is right about the applicability of this unanimity exception, then the indictment names only an "element" and two "means" but no offense. It thus fails to invoke the Courts' jurisdiction and should be dismissed.

The specific language of the indictment:

"DOREEN M. HENDRICKSON did knowingly and willfully disobey and resist the lawful orders of a Court of the United States, namely, paragraph 27 of the May 2, 2007, Amended Judgment and Order of Permanent Injunction against DOREEN HENDRICKSON in the case of United States v. Peter and Doreen Hendrickson, case number 2:06-cv-11753-NGE-RSW, by

<b>DATE(S)</b>	<b>VIOLATION OF ORDER</b>
(a) March 23, 2009	filing a 2008 U.S. Income Tax Return for Single and Joint Filers With No Dependents, Form 1040EZ which falsely reported that she earned zero wages in 2008"; and
(b) June 1, 2007- Present	failing to file with the IRS Amended U.S. Individual Tax Returns for 2002 and 2003"

Indictment, Docket #3, paragraph 8, page 2

Additional authorities: *Richardson v. United States*, 526 U.S. 813 (1999); *Schad v. Arizona*, 501 U.S. 624 (1991); Sixth Circuit Pattern Instructions Section 8.03B Committee Commentary ("If a fact is an element, "a jury in a federal criminal case cannot convict unless it unanimously finds that the Government has proved [it]"; and "[non]unanimity [is only acceptable regarding things which] do not themselves constitute a separate offense or an element of an offense."); *United States v. Gaudin*, 515 U.S. 506 (1995); *Sullivan v. Louisiana*, 508 U.S. 275 (1993); *California v. Roy*, 519 U.S. 2, 7 (1996).

## Proposed Jury Instruction- Unanimity

### Additional Argument in Colloquy

From the construction of this indictment (which can be seen on the third page of my proposed instruction no. 26) it can only be concluded that the Grand Jury meant to charge me with a unique crime consisting of two separate alleged contempts joined together as one big offending act, consisting of both failing to file the ordered "amended returns" AND filing a return based on the false notion that only federal workers are subject to the tax. This is clear from the use of the conjunctive "and" linking the two alleged acts together into one alleged violation (and the failure to use the disjunctive "or"), as well as by the use of the singular in "violation" in designating the two acts, rather than the plural "violations".

If this unique charge is not dismissed for failure to state an actual federal offense (even though labeling itself as one), the jury should be instructed according to its plain terms-- that it must unanimously find both contempts to have been committed in order to convict, and that it must otherwise acquit.

Further, unanimity of verdict is required as to each alleged act even if they are deemed not conjoined into one.

The government itself deems the acts alleged in the indictment to be "elements" of the offense charged. In its proposed instruction number 12, 'CONTEMPT-ELEMENTS OF OFFENSE, the government specifically identifies the alleged violating acts as elements of the offense charged.

The government declares that my alleged failure to file amending returns as ordered and that my allegedly filing "false" returns in disobedience to an order are either a combined element or individually elements, but elements in any event:

As it says, Contempt - Elements of Offense

(C) Third, that the defendant willfully disobeyed the court's order in one of the ways set forth in the indictment.

The Court agreed with this assertion, instructing the jury in the previous trial to exactly that effect, as seen on page 97 of Volume Three of the Trial Transcript.

The Sixth Circuit Pattern Instruction Committee on 'Unanimity' explicitly declares that the 'Unanimity Not Required' instruction **can not be given in regard to an element**, but only in regard to alleged "means" by which an element is allegedly satisfied:

"If a fact is an element, a jury in a federal criminal case cannot convict unless it unanimously finds that the Government has proved [it]";

and

"This instruction [Unanimity Not Required - Means] covers situations where the crime charged includes **an element that can be committed by multiple means**, so jury unanimity **on a particular means** is not required. The use note indicates that **the instruction should only be given if the indictment alleges that the defendant committed a single element through more than one means."**

(Emphasis added.)

Since the acts I am alleged to have committed in violation of Judge Edmunds orders are agreed by everyone to be at least elements, unanimity of the jury as to my having willfully disobeyed a lawful order to file amended returns as specified by Judge Edmunds, or unanimity of the jury as to my having willfully filed returns in disobedience to a lawful order of Judge Edmunds per the specifics of that order, or unanimity of the jury as to my having done both of these things together, is required for a guilty verdict. The jury should be so instructed.