An Excerpt From Doreen Hendrickson's Motion To Vacate Her Conviction Which Details A Fraud Committed By Government Attorneys In Her Second Trial

1. Government attorneys committed a fraud upon the Court during trial, misrepresenting evidence in a fashion calculatedly and enormously prejudicial to Mrs. Hendrickson.

At trial on July 24, 2014, Defendant Doreen Hendrickson testified on direct examination that the government had engaged in efforts to enjoin her husband from publishing his first book (and various research and blog posts on his Web site) on the allegation that his writings promoted an illegal tax shelter. She also testified that each of those efforts had been dismissed upon the government's own motions, presenting those dismissals and withdrawals as Defense Exhibit 562. [See documentation of all the foregoing here.] On the following day, during cross-examination of Mrs. Hendrickson, United States attorney Melissa Siskind falsely declared to the jury that documents she held were evidence that these several actions were really concerned with a mere tax audit. This declaration of Ms. Siskind was false and misleading. Further, Ms. Siskind knew or should have known that the declaration was false and misleading. The devastating effect of this misrepresentation to the jury is that it reasonably, but wrongly, assumed Mrs. Hendrickson to be a liar, and voted to convict.

The actions to which Mrs. Hendrickson testified were brought by the government in the first months after her husband's book became available to the public. Mrs. Hendrickson discussed the government injunction actions, and their subsequent dismissals, as well as the government summonses, and their subsequent withdrawals, as evidence of the government's contradictory behavior over the years. Such evidence is

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plainly relevant to her state of mind with respect to the orders at issue in this case, as well as to the objective truth of the actual government view of the content of her husband's book (or to the government's inability to characterize that content as promoting an illegal tax shelter).

In February of 2004, the government initiated these actions by issuing to Mr. Hendrickson a summons for documents, books and records; the cover letter to this summons explicitly states the government's goal of "possible action under sections 6700 and 7408 of the Internal Revenue Code relating to penalties and an injunctive action for promoting abusive tax shelters." A true and correct copy of that cover letter dated February 18, 2004 from Revenue Agent Heidi Beukema to Peter Hendrickson is attached hereto as EXHIBIT 1.

Ms. Siskind attempted to impeach Mrs. Hendrickson's direct testimony by confronting her with 41 pages of government filings in these actions, while omitting the cover letter which declares the purpose of these actions. After the Court made cursory examination of the documents, Ms. Siskind asserted loudly to the jury that the documents were evidence that the dismissals presented by Mrs. Hendrickson were dismissals of actions concerned merely with an *audit* of Mr. Hendrickson.

It is not possible that Ms. Siskind could have been unaware of the truth. The cover letter presented here as EXHIBIT 1 is the first page of the materials from which Ms. Siskind extracted the documents she misrepresented. Ms. Siskind had been in possession of Defense Exhibit 562 for more than eight months.

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Further, even the documents presented by Ms. Siskind plainly refer to the true purpose of the actions she falsely declared to have been a mere audit. See, *e.g.,* the government's Memorandum of Law in Opposition to Petition to Quash Summons, Case no. 5:04-MC-07023-MMC-JCS, included as part of the 41 pages with which Mrs. Hendrickson was confronted, a true and correct copy of which is attached hereto as EXHIBIT 2. On page 6 of this memorandum, in the third paragraph, the Department of Justice states: "[T]he IRS in this case issued the summons as part of a legitimate investigation to determine whether petitioner is liable for civil penalties under I.R.C. § 6700 **and whether petitioner can be enjoined under I.R.C. § 7408 for such violations.**" (emphasis added). This memorandum was filed in one of the actions subsequently dismissed or withdrawn as shown by Mrs. Hendrickson in her Defense Exhibit 562 (see EXHIBIT 3). Plainly, Mrs. Hendrickson's testimony on direct had been completely correct, and Ms. Siskind's assertion completely false, as she knew or should have known.

On the decision of the Court these documents, which were falsely represented by Ms. Siskind as impeaching of Mrs. Hendrickson, were kept from the jury. Thus, the jury was prevented from discovering the truth (see EXHIBIT 4 Trial Transcript, Volume 5, page 17, lines 16, 17) .

[The government (that is, Melissa Siskind) had no real defense against the charge above, answering instead with several ridiculous arguments just as mendacious as the fraud itself. They are presented and discussed below in an excerpt from Doreen's Reply.]

1. The government fails to save its case from the fatal taint of its fraud committed during trial, and simply extends the fraud in its effort to do so.

The government suggests that Melissa Siskind's misrepresentations in Court of the actions involved in Defense Exhibit 562 as being simply audit-related were not misrepresentations at all. It says, "In fact, none of the three civil actions referenced in Exhibit 562 were injunction suits" (Response, p. 6).

Nonsense! As proven by the content of one of its own misrepresented exhibits, (Govt. Ex. 48), and Mrs. Hendrickson's Motion and her accompanying Exhibits 1 and 2, the summonses involved in these cases were all issued in an effort to determine whether 'Cracking the Code' author Peter Hendrickson could be found liable to penalties for promoting an abusive tax shelter, <u>and enjoined</u>. These summonses were in no way concerned with a mere audit, and they were entirely concerned with an injunctive effort targeting Mr. Hendrickson.

That the actions were labeled "summons enforcements" instead of "injunction suits" is irrelevant-- the government's own documents declare the summonses to have been issued *to determine "whether [Hendrickson] <u>can be enjoined..</u>."* (Motion Ex. 2, emphasis added; see also Motion Ex. 1). The attempt to suggest otherwise in the government's Response is simply a stubborn continuation of Siskind's fraud in trial, by which she sought to falsely impeach Mrs. Hendrickson in apparent recognition of having failed to carry the government's burdens of proof as to the charges in the case.[1] The complete mendacity of this fraud is illustrated by Siskind's astonishing effort to excuse

[1] Why else go to the trouble and risks of digging up and misrepresenting documents as she did?

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her mischaracterization of the dismissed actions: "Because revenue agents are responsible for conducting civil tax audits, it was entirely proper for government counsel to refer to [RA Heidi Beukema's] activities in that manner." (Response, p. 8.) Siskind reasons that because these agents do the one thing, EVERYTHING they do can be properly described that way, even when so doing knowingly misstates facts to a trial jury.

[Judge Victoria Roberts played along with Siskind. She denied Doreen's motion on this issue because Doreen, who had nothing to do with the ten-year-old events about which Siskind lied in her surprise exhibit tossed at Doreen five minutes before she was confronted with it on the stand, didn't confidently debunk it right then and there. The following from Doreen's Motion for Reconsideration summarizes that "reasoning" and why it was improper.]

1. The Court Has Mistaken The Issue Of The Prosecutorial Fraud On The Court Raised In Mrs. Hendrickson's Motion To Vacate

In its denial of Mrs. Hendrickson's Rule 29/33 motion on the issue of the undisputed fraud committed by US attorney Melissa Siskind, the Court misunderstands the issue Mrs. Hendrickson raises on this subject. That issue is that the government actions against Peter Hendrickson about which Mrs. Hendrickson had testified and presented in her Defense Exhibit 562 were, in fact, efforts to prevent him from publishing his book, and the prosecutorial fraud <u>falsely pushed that actual and undisputed defense-critical fact from the minds of the jurors</u>.

Mrs. Hendrickson includes specific evidence of the fact that the government had, in fact, been engaged in a multi-step effort to enjoin her husband, in exhibits with her Motion to Vacate, to which the Court makes no reference in its Denial. That evidence

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includes the letter from Revenue Agent Heidi Beukema that initiated all the actions involved in Def. Ex. 562, in which Beukema explicitly declares the purpose to be:

> "possible action under sections 6700 and 7408 of the Internal Revenue Code relating to penalties **and an injunctive action** for promoting abusive tax shelters."

Letter of Heidi Beukema; Exhibit 1 in Mrs. Hendrickson's Motion to Vacate (emphasis added)

All of the actions involved in Def. Ex. 562 were pursuant to this purpose.

In filings in those actions themselves, as also exhibited to the Court with Mrs. Hendrickson's Motion (and as also apparently overlooked), the DOJ declares them to be for the purpose of determining:

> **"whether [Peter Hendrickson] <u>can</u> be enjoined under I.R.C. § 7408..."**

Government's Memorandum of Law in Opposition to Petition to Quash Summons, Case no. 5:04-MC-07023-MMC-JCS, labeled Government Exhibit 48 in Mrs. Hendrickson's trial, p. 6; Exhibit 2 in Mrs. Hendrickson's Motion to Vacate (emphasis added)

Note that the government does not say "whether [Peter Hendrickson] SHOULD be enjoined", but "whether [he] CAN be enjoined". The actions involved in Mrs. Hendrickson's Def. Ex. 562 plainly *were* part of an effort seeking to enjoin Mr. Hendrickson from publication of his book.

The Government itself offers no dispute to this fact. It responded to Mrs. Hendrickson's Motion only with an effort to distract the Court into a focus on what Mrs. Hendrickson said about the events, and away from the reality of the events and the government deceiving the jury about those events. The Government attempts this misleading-into-irrelevancy by making a (false) assertion that Mrs. Hendrickson had

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claimed the government's action reflected in Def. Ex. 562 were "injunction suits", and that technically, this was inaccurate.

In fact, Mrs. Hendrickson had not *said* the government had filed "injunction suits". As quoted in the Court's own Denial, citing to Trial Tr. vol. IV, at 80-81, Mrs. Hendrickson said, rather, "Well, they were trying to enjoin my husband..." "Trying to enjoin" means only that the government was engaged in an effort to have Mr. Hendrickson enjoined-- just as it was. The actions involved in Def. Ex. 562 were preliminary steps in furtherance of that explicitly-declared purpose.

But the nuances of Mrs. Hendrickson's expressions are irrelevant, because the point of the fraud--however conducted, and however rationalized and distracted-from with hair-splitting evasions-- and the substantive evil of its effect, was <u>driving from the jurors minds the true fact</u> that the government *had* actually engaged in an effort to enjoin Mr. Hendrickson before eventually giving it up as a bad job and asking each court hearing those actions to dismiss them.

Thus the Court's focus in its Denial on the significance of Siskind's use of the term "audit" in her misrepresentation to the jury about the actions involved in Def. Ex. 562 is misplaced, as is its attention to the fraud's effect on the jury's perception of Mrs. Hendrickson credibility. The Court has overlooked the real issue involved in this fraud, as is reflected in each of the reasons given for its denial on this issue.

Briefly reviewing those reasons, the Court says first that Mrs. Hendrickson "did not object to the misnomer" (meaning the duplicitous use of the term "audit"). Denial, p.

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4. But what matters is not Mrs. Hendrickson's recognition of the misnomer. What matters is that it WAS a misnomer, and deceived the jury.

The Court's says next that the "the Government properly impeached Hendrickson," Denial, p. 4, defining "impeachment" as the use of a witness' "prior inconsistent statements to attack her credibility and to cast doubt on the testimony given." This definition illustrates the Court's oversight of the real issue here, because the relevant "testimony given" is that the government targeted Peter Hendrickson with a series of actions pursuant to hindering or preventing the publication of his book *Cracking the Code*, which *did* happen. There can be no excusable prosecutorial "casting of doubt" on that testimony.

The Court proceeds to declare that, "[T]he Government got Hendrickson to admit that the cases referenced in Exhibit 562 were not cases to hinder publication of *Cracking the Code*." Denial, p.5. Later, it says, "Hendrickson acknowledged on the stand that the actions listed in Exhibit 562 were not lawsuits brought to enjoin publication of the book." Denial, p. 6.

The Court then goes on to say, "A reasonable jury could have determined that Hendrickson's contradictory testimony and unfamiliarity with her own exhibit suggested she was untruthful or lacked credibility." No one would argue with that. But no one needs to, because it is irrelevant. What matters is not Mrs. Hendrickson's *memory* of events; what matters is *what really happened*.

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The Court offers as its final reason for its denial on this issue the seeming *non sequitur* that "Hendrickson fails to establish her conviction is not supported by substantial and competent evidence." It is difficult to see how this declaration relates to the issue of prosecutorial fraud on the court, but it is enough to observe in reply that what has been established is that Mrs. Hendrickson's conviction was "supported" and accomplished by a *falsification of evidence* at the hands of the government's prosecutors.

The Sixth Circuit's doctrine on a fraud on the court has nothing to do with the fraud's effect on a witness made use of in its commission, or its effect on the apparent credibility of that witness itself. What matters is only the effect of the deception on the court's accurate understanding of the facts about which the fraud intends to deceive:

> "Accordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court."

Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting *Carter v. Anderson*, 585 F.3d 1007, 1011–12 (6th Cir. 2009)).

It is simply that a fraud was committed as defined by points 1 through 4, and went undetected at the time, per point 5, that matters. The fraud committed by the government meets all these criteria.

In fact, the government itself not only fails to dispute its commission of the fraud and its success, but even admits the deception and to committing it intentionally, by way of Melissa Siskind's expression of her warped view of her responsibilities as an officer of the court and as a human being when attempting to rationalize the crime:

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> "Because revenue agents are responsible for conducting civil tax audits, it was entirely proper for [me] to refer to [RA Heidi Beukema's] activities in that manner."

Dkt. #109, Govt. Resp. to Motion, p. 8.

Mrs. Hendrickson respectfully submits that the Court has overlooked its mandatory duty to vacate the conviction tainted by this undisputed fraud:

> “We think, however, that it can be reasoned that a decision produced by fraud on the court is not in essence a decision at all, and never becomes final.”

Kenner v. C.I.R., 387 F.2d 689, (7th Cir., 1968)

> “[D]enying a motion to vacate a void judgment is a per se abuse of discretion.”

Burrell v. Henderson, et al., 434 F.3d 826, 831 (6th Cir., 2006)

The Court is squarely faced with a government-perpetrated fraud committed in trial and calculated to insert into the minds of the jury a false belief-- or at minimum a fraudulently-based uncertainty-- about factual events and a related defense exhibit. Once revealed, such a fraud must be axiomatically recognized as having fatally tainted the outcome of the contest in which it is committed. The Court should RECONSIDER and GRANT Mrs. Hendrickson's Motion to Vacate.

[Judge Roberts' answer: "Naw..."]