

**PROPOSED INSTRUCTION NO. 12**  
**CONTEMPT- ELEMENTS OF THE OFFENSE**

(1) The crime of contempt under which Mrs. Hendrickson is charged consists of several elements. The government must prove each beyond a reasonable doubt.

(2) In addition to the burden of proving that the orders made to Mrs. Hendrickson were known to her, and were not actually obeyed, the government bears the burden of proving:

A.) That the orders made to Mrs. Hendrickson are lawful;

B.) That the orders made to Mrs. Hendrickson are possible-- that is, are capable of being obeyed, and not a practical or legal impossibility.

C.) That the orders made to Mrs. Hendrickson, if proven to be lawful and capable of being obeyed, were disobeyed willfully-- that is, that Mrs. Hendrickson herself believed the orders were lawful and imposed legal duties upon her and were capable of being obeyed and then, believing these things, disobeyed the orders.

(3) I will instruct you about the nature of each of these elements next.

Authority (all emphases added): 18 U.S.C. 401(3): “*Disobedience or resistance to its **lawful** writ, process, order, rule, decree, or command,*”

NOTE: Authorities continue below, but Mrs. Hendrickson first respectfully directs the Court's attention to the fact that not only does the statute in this case specify "lawful" as an element of the offense, **but the indictment itself specifies "lawfulness" as an element.** See Indictment, Docket #3, paragraph 8, page 2: "On or about and between the dates listed below, in the Eastern District of Michigan and elsewhere, DOREEN M. HENDRICKSON did knowingly and willfully disobey and resist **the lawful orders** of a Court of the United States...".

NOTE II: In its own citation of authorities for its preferred version of this instruction the government omits portions of the very first authority cited, *In re Smothers*, in which the Smothers court specifies "lawfulness" as a element of the contempt offense. The government similarly omits the court's acknowledgement of the "lawfulness" requirement in its quotation of *United States v. Strickland*. Both are accurately quoted below.

Authorities continue:

*United States v. Koblitz*, 803 F.2d 1523, 1527 (11th Cir. 1986) "**A [] contempt order can only be upheld if it is supported by clear and convincing evidence that (1) the underlying order allegedly violated was valid and lawful**, *Smith v. Sullivan*, 611 F.2d 1050, 1052-54 (5th Cir. 1980); *ITT Community Development Corp. v. Barton*, 569 F.2d 1351, 1356 (5th Cir.1978)";

*United States v. Turner*, 812 F.2d 1552, 1563 (11th Cir. 1987) "... Moore has been punished...based on a determination that he was disobedient to **a lawful order** of the district court... **The essential elements of the criminal contempt...are that the court entered a lawful order of reasonable specificity, Moore violated it, and the violation was willful. Guilt may be determined and punishment imposed only if each of these elements has been proved beyond a reasonable doubt.** *Michaelson v. United States ex rel. Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 266 U.S. 42, 66, 45 S.Ct. 18, 20, 69 L.Ed. 162 (1924); *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444, 31 S.Ct. 492, 499, 55 L.Ed. 797 (1911); *In re Stewart*, 571 F.2d 958 (5th Cir.1978).";

*Almendarez-Torres v. United States*, 523 U.S. 224, 228 (1998): "An indictment must set forth each element of the crime that it charges. *Hamling v. United States*, [ 418 U.S. 87] at 117 [1974]. ... See *Staples v. United States* , 511 U.S. 600, 604 (1994) (definition of a criminal offense entrusted to the legislature, " 'particularly in the case of federal crimes, which are solely creatures of statute' ") (quoting *Liparota v. United States* , 471 U.S. 419, 424 (1985)). **We therefore look to the statute before us and ask what Congress intended.... we look to the statute's language**, structure, subject matter, context, and history --factors that typically help courts determine a statute's objectives and thereby illuminate its text. See, e.g., *United States v. Wells* , 519 U. S. --, -(1997) (slip op., at 10-11); *Garrett v. United States* , 471 U.S. 773, 779 (1985)."

*In re Smothers*, 322 F3d 438 (6th Cir. 2003) "The law governing the court's ability to punish Smothers's conduct is 18 U.S.C. § 401(3). This section grants federal courts the power to punish when there is "disobedience or resistance to its **lawful** writ, process, order, rule, decree or command. ... "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their **lawful** mandates." *Chambers*, 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (quoting *Anderson v. Dunn*, 6 Wheat. 204, 227, 5 L.Ed. 242 (1821));

*United States v. Strickland*, No. 89-3815, (6th. Cir. 1990) "...the court **properly** ordered him to answer the questions posed in the grand jury proceeding.";

*In re Holloway*, 995 F.2d 1080, 1082 n.1 (D.C. Cir. 1993) "The elements of contempt under § 401(3) are straightforward. First, the alleged contemnor must "[d]isobe[y] or resist[] ... [the] **lawful** writ, process, order, rule, decree, or command" of the court. 18 U.S.C. § 401(3). ... Second, although § 401(3) does not explicitly mention *mens rea*, wrongful intent is necessary. The disregard of authority must be willful;...";

*United States v. Bryan*, 339 U.S. 323, 330-331, 70 S.Ct. 724, 94 L.Ed. 884 (1950) "[O]ne charged with contempt of court for failure to comply with a court order makes a complete defense by proving that he is unable to comply."