IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 13-cr-20371
	:	Judge Victoria A. Roberts
DOREEN HENDRICKSON,	:	
	:	
Defendant.	:	

DOREEN HENDRICKSON'S MOTION FOR RECONSIDERATION OF HER MOTION TO VACATE OR FOR NEW TRIAL ON MULTIPLE GROUNDS

Doreen Hendrickson respectfully suggests that the Court has misunderstood the substance of her Motion to Vacate and for Other Relief (Dkt #103) to which it issued a denial November 14, 2014 (Dkt #112). She asks the Court to reconsider its decision in light of the following facts and arguments, all more fully laid out in the accompanying brief. Reconsideration in light of these clarifications, corrections and points of law and fact will result in a different decision.

1. The Court has misunderstood that the primary issue concerning the undisputed fraud on the Court committed by the Government during trial was its removal from the jury's minds of the actual fact that the government DID target Peter Hendrickson with efforts to hinder or prevent publication of his book prior to bringing its lawsuit in Nancy Edmunds' court. In its denial the Court focuses

entirely on Mrs. Hendrickson's own brief confusion regarding this fact, and on the Government's misuse of the term "audit" while entirely overlooking that the intent and effect of the fraud was to implant into the juror's mind a false history of events relevant to the case, and the defense theory of the case.

2. The Court has been misled into applying an inaccurate standard regarding the compromise of Mrs. Hendrickson's rights by stand-by counsel Andrew Wise's breach of duty. The United States Supreme Court has explicitly declared Mr. Wise's specific breach to be a fatal compromise of Mrs. Hendrickson's *Faretta* rights, and the Sixth Circuit has declared such a compromise to be a structural defect. But the Court, apparently unaware of both of these facts, has been misled into applying an inappropriate standard and analysis on this issue.

3. The Court has mistaken the "good-faith"-defense standard as only relevant to a failure to comply with an order because of "the indefiniteness of the order or some other inability" to comply, Denial, p. 9. This standard is incorrect, and is directly contradicted by the Court's own instructions to the jury on "good faith".

The Court has also been misled concerning "willfulness". In its Denial the Court also construes "willfulness" contrary to its own jury instructions, and fails to account for the fact that "willfulness" is an element imposing a government burden of a positive showing of evidence that Mrs. Hendrickson believed herself under a valid legal duty with which she did not comply. In regard to both "good faith" and

'willfulness", the Court has failed to construe the "reasonable juror" analysis in light of its actual instructions to the jury in trial on these elements.

4. The Court has been misled on the issue of "ability to comply" both as to the actual nature of Mrs. Hendrickson's argument on this issue, and the standard laid down by the United States Supreme Court as to the prosecution's burden on this factor. The Court has entirely overlooked Mrs. Hendrickson's issue in her Motion on the matter of 'comprehensibility".

5. The Court has been misled on the issue of "lawful" and the jury. As two recent cases illustrate, when charges allege criminal violation of a statute in which "lawful" is a specified element, the element must go to the jury for determination.

In light of the new information, clarifications, and authorities presented herein and in the accompanying brief, all of which can be reasonably expected to result in a different Mrs. Hendrickson Moves the Court to RECONSIDER its ruling on her Motion to Vacate.

Concurrence was sought from the United States' attorneys and was refused.

Respectfully Submitted,

_____

Doreen Hendrickson, *in propria persona*
December 1, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 13-cr-20371
	:	Honorable Victoria A. Roberts
DOREEN HENDRICKSON,	:	
	:	
Defendant.	:	

BRIEF IN SUPPORT OF DOREEN HENDRICKSON'S MOTION FOR RECONSIDERATION OF HER TO VACATE OR FOR NEW TRIAL ON MULTIPLE GROUNDS

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STATEMENT OF ISSUES

On November 14, 2014, the Court denied Doreen Hendrickson's timely-filed Motion to Vacate and for other relief Pursuant to Rules 29(c) and 33(a) of the Federal Rules of Criminal Procedure. Mrs. Hendrickson's Motion identified and discussed issues invalidating the outcome in trial, including:

- an undisputed fraud on the court committed by prosecutors in which government attorneys lied to the jury about factual events relevant to the case and critical to the defense theory of the case;
- a breach of duty by stand-by counsel for Mrs. Hendrickson who the Court had designated as responsible for questioning her as Mrs. Hendrickson directed, and who then refused to do so faithfully;
- an insufficiency of evidence as to willfulness and none impeaching Mrs. Hendrickson's good faith;
- an insufficiency of evidence as to Mrs. Hendrickson's guilt of violating any comprehensible order with which it is possible to comply; and

- an insufficiency of evidence as to the lawfulness of the order Mrs. Hendrickson is accused of criminally resisting-- an element on which the Court directed a verdict and kept entirely from the jury's consideration.

Perhaps misled by Government efforts to distract and re-direct the Court's attention to irrelevancies or to misconstrue the issues raised, the Court failed to consider and address a single substantive aspect of any of these issues in its denial of Mrs. Hendrickson's Motion.

On the issue of the fraud, the Court overlooked its attack on the jury's understanding of factual events relevant to the defense, instead focusing solely on propriety or impropriety of its having generated confusion in a witness. On the breach of duty, the Court expressed doubt that any had occurred, due to the questions standby-counsel had refused to ask Mrs. Hendrickson not having been attached to the Motion. The Court applied a "reasonable juror" analysis to several "insufficiency of evidence" issues while using definitions of the relevant elements contradictory of those given to the jury in trial, and mistakes others as arguments of principle where they actually concern factual matters. The Court fails to address in any fashion at all the issue of its direction of a verdict on the element of lawfulness.

The Court's attention to the actual issues Mrs. Hendrickson raised and argued in her Motion will result in a different decision by the Court.

CONTROLLING AUTHORITY

The issues addressed here are most closely controlled by Local Rule 7.1(h), which provides for reconsideration of the Court's decision on a Motion upon a showing of a palpable defect by which the Court has been misled and that correcting the defect will result in a different disposition.

ARGUMENT

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 falsely pushed that actual and undisputed defense-critical fact from the minds of the jurors.

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 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 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 driving from the jurors minds the true fact 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. 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*.

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:

> "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.

2. The Court Has Mistaken The Law Regarding Standby-Counsel Andrew Wise's Breach Of Duty

In its Denial, the Court suggests that Mrs. Hendrickson's Motion is insufficient on the issue of standby-counsel Andrew Wise's refusal to ask questions Mrs. Hendrickson had prepared for her direct examination. But the Court has overlooked the explicit holding by the United States Supreme Court in *McKaskle v. Wiggins*, 465 U.S. 168 (1984), that standby-counsel acting to "control the questioning of [a] witness" is a fatal *Faretta* right infringement, and the Sixth Circuit's position that such an infringement is a structural error in which prejudice to the defendant need not be shown.

In its denial on this issue, the Court first refers to Mrs. Hendrickson's failure to attach the questions that went unasked, making the gravity of the harm difficult for the Court to assess. The Court goes on to say in passing that it "may be the case" that Mrs. Hendrickson's objection now is waived due to her failure to object to Wise's breach of duty during trial. But this also may not be the case, and in any event, as shown in the Declaration of Doreen Hendrickson accompanying her Motion to Vacate and the arguments within that Motion, Mrs. Hendrickson was thwarted from objecting in any manner that would not cause her harmful and undue prejudice before being then misled by Mr. Wise as to her available and appropriate options for rectifying the breach.

The Court continues with a speculation that the questions it suggests may not really have existed (referring to them at one point as "alleged questions") would have been "cumulative", first saying,

> "According to *Faretta v. California*, 422 U.S. 806, 819 (1975), a pro se defendant has the right to self-representation at court proceedings. This right is undermined when standby counsel...makes tactical decisions which substantially interfere with the right of self-representation."

Ruling on Motion, Dkt. #112, p. 8

and then continuing with,

> "Hendrickson fails to demonstrate how standby counsel's omission of questions from direct examination amounted to interfering with a significant tactical decision, since presentation of the cases that supposedly furthered her First Amendment argument would be cumulative.
>
> For example, throughout trial Hendrickson argued Edmunds' Order (sic) was unconstitutional, and the First Amendment excused her from compliance."

Ibid.

But this assertion by the Court is untrue, and would be irrelevant in any event.

Having been prevented from doing so during her own testimony by standby counsel Wise's breach of duty, Mrs. Hendrickson did not read from a single court ruling regarding the First Amendment throughout the entire trial. Nor did she testify even one single time as to her views of the Constitutionality or lawfulness of Judge Edmunds orders. All of that critically-important testimony, like the reading of the numerous Supreme Court and Sixth Circuit rulings supporting her

conclusions to that effect, were left to the latter portion of her direct testimony, which standby counsel Wise then unilaterally decided to deny her.

Perhaps the Court is thinking back to the first trial in this matter, in which standby counsel Wise DID ask Mrs. Hendrickson [most of] the questions he later unilaterally decided to deny her, and which resulted in quite a different outcome. That very different outcome makes clear that by his breach of duty, Wise "interfer[ed] with a [VERY] significant tactical decision".

But this evaluation is moot. The U.S. Supreme Court directly holds that a standby counsel's exercise of "control [over] the questioning of witnesses" is by itself a violation of a defendant's *Faretta* right, disjoined from any other consideration, including whether or not the Court deems the usurpation to involve a "significant tactical decision":

> "First, the pro se defendant is entitled to preserve actual control over the case he chooses to present to the jury. This is the core of the Faretta right. If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, **or to control the questioning of witnesses**, or to speak instead of the defendant on any matter of importance, the *Faretta* right is eroded."

McKaskle v. Wiggins, 465 U.S. 168 (1984) (emphasis added)

In taking control of the questioning as he did, Mr. Wise violated Mrs. Hendrickson's rights.

As noted above, the Court indicates some doubt about the existence of missing questions, to which it refers at one point as "alleged questions" (Ruling, p.

8). Mrs. Hendrickson respectfully points out that a sworn and entirely unrebutted Declaration was attached to her Motion on this subject. Further, were her assertion untrue, Mr. Wise, who was served with the Motion to Vacate months ago, would have been duty-bound to bring this to the Court's attention, as would Mr. James Gerometta, also a witness to the events, and mentioned as such in Mrs. Hendrickson's Motion. Both gentlemen, and other witnesses, could have resolved any such uncertainties in a hearing, as well, of course.

Further, this very Court was the venue in which Mrs. Hendrickson had been asked most of these very same questions 10 months earlier. Nonetheless, Mrs. Hendrickson attaches those questions and her responses now so as to put this matter at rest, as EXHIBIT 1.

This circuit has said denial of a defendant's right to control her own defense is "a structural error for which [the defendant] need not show any prejudice." *Washington v. Renico*, 455 F.3d 722, 734 (6th Cir. 2006). The Court should RECONSIDER and GRANT Mrs. Hendrickson's Motion to Vacate.

3. The Court Has Misapplied The "Good Faith" And "Willfulness" Standards, Contradicting Its Own Instructions In Trial

In its denial of Mrs. Hendrickson's Motion, the Court has mistaken the "good-faith" defense and the nature of "willfulness" and the government's burdens thereto. Correctly applying either will result in a reversal of the Court's denial.

The Court mischaracterizes the 'good-faith" defense as only available to someone who has attempted to comply with an order but fails because of "the indefiniteness of the order or some other inability" to comply. Denial, p. 9. This is not accurate, and is, in fact, contradicted by the Court's own instructions to the jury in this case. There, the Court, quoting verbatim the Government's own requested instruction on the subject, declares:

> "the term good faith ... means among other things an honest belief"

Trial Transcript, Vol. V, p. 95, attached here as EXHIBIT 2

THIS is the measure of good faith-- an honest belief that one is not under a valid legal duty to do other than she has done. Contrary to the Court's misconstruction in its denial of Mrs. Hendrickson's Motion to Vacate, this has nothing whatever to do with some kind of difficulty complying with an order. The Court goes on to emphasize the accurate fact that good-faith as a defense rests in the defendant's perception of her actual legal duty, and in nothing else:

> "A person who acts on a belief or on an opinion honestly held is not punishable merely because that honest belief turns out to be incorrect or wrong."

Ibid.

The Court has also failed to recognize that "willful" as a legal issue in a criminal trial is not 'willful' as a parent might describe a headstrong child, but refers to a deliberate violation of a known legal duty, and that "known" in that

definition means "personally believed". This is shown in the Court's declaration on p. 10 of its denial:

> "She says such orders "are unlawful and impose no valid legal obligation upon her." Essentially Hendrickson argues that she can disobey any court order she disagrees with. That is nothing more than an intentional violation of a valid court order. That is willfulness."

In this formulation-- "That is nothing more than an intentional violation of a valid court order. That is willfulness."-- the Court resorts to some *other person's* assessment of the validity of an order, and then equates "willfulness" with acting contrary to that external assessment. But it is *Mrs. Hendrickson's assessment* of validity that matters, and no other. As the Court also says in its instructions to the jury in this case: "Willfulness means a deliberate or intended violation..." Trial Tr. Vol. V, p. 95. One can only *deliberately* or *intentionally* violate what *one herself* believes to be her duty.

"Willfulness" is an element of the charged offense, not some kind of available defense. Therefore, the government has a positive burden on "willfulness" which cannot be met by merely showing other people's assessment of Mrs. Hendrickson's legal duties, and that Mrs. Hendrickson did not act in accordance with those external assessments. Nor is it enough for the government to have argued strenuously that Mrs. Hendrickson *should* have adopted those external assessments.

Rather, to meet its burden, the government must show evidence that Mrs. Hendrickson DID take that meaning and came to believe what the government wants believed, and then acted contrary to that belief. Here, the government showed no such thing. On the contrary, the evidence shows unequivocally and without variation that Mrs. Hendrickson DID NOT believe herself to under a valid legal duty to act other than as she did.

In fact, the Court itself, even in its denial of Mrs. Hendrickson's Motion on this very issue, recognizes what the evidence in trial actually showed: "Despite numerous government agencies ... repeatedly telling her that her theories were wrong and violated the law, **Hendrickson stayed firm in her beliefs.**" Denial, p. 11, emphasis added. As the record in trial makes clear, these referenced agencies consistently mischaracterized Mrs. Hendrickson's "theories" before saying they were wrong, but even that is beside the point, which is that Mrs. Hendrickson, as the Court says, is firm in her beliefs. Plainly this was evident even while she was under no burden whatever to prove it, and plainly the Government utterly failed to carry its burden to prove otherwise.

The Court goes on to again indicate having been misled on the issue of good faith: "A jury could reasonably conclude that Hendrickson was not entitled to the good faith defense because her actions demonstrate an unwillingness to comply with Edmunds' Order, rather than an honest inability to comply." Again, this

formulation mistakes the nature of the "good faith defense", conflating it with "inability to comply"-- which is a complete irrelevancy-- and failing to recognize that "unwillingness" arises because one doesn't believe herself legally obligated.

In order to reach its conclusion that the Government had produced sufficient evidence to carry its burdens on "willfulness" and overcome Mrs. Hendrickson's "good faith" defense, the Court had to rely on constructions of those concepts contradictory to the instructions given to the jury. Thus, a reasonable juror, diligently following those instructions, *could not* have reached the same conclusions, and come to a valid verdict of guilty.

As shown, then, the Court has been misled on the issues of good faith and willfulness, the Government failed to carry its burdens, and the Court should RECONSIDER and GRANT Mrs. Hendrickson's Motion to Vacate.

4a. The Court Has Been Misled As To Mrs. Hendrickson's Argument In Regard To "Inability To Comply", And Applied An Incorrect Standard

In its denial, the Court describes only one way in which one could be unable to comply with an order-- physical impossibility-- and indicates the mistaken idea that the kind of inability argued in Mrs. Hendrickson's Motion on this issue is a "self-induced inability". Denial, p. 13. The Court appears to mistake Mrs. Hendrickson's argument as being that "her principles" made compliance impossible, or some similar notion. But this is not Mrs. Hendrickson's argument.

Mrs. Hendrickson's argument is that just as an order outside someone's physical ability cannot be complied with, so, too, an order to do what is *technically impossible for other reasons*. The "other reasons" to which she refers are NOT "reasons of conscience". Rather, they are reasons of *objective* impossibility because the order commands the creation of something which cannot exist.

An order to deliver a five-legged horse would plainly fall within the proper scope of "inability to comply"-- not because the person ordered is out of town, or hospitalized, but because there is no such thing as a five-legged horse (nor could be-- something otherwise like a horse but with five legs would not be a horse at all). Just so an order to produce valid tax returns (meaning, by definition, freely written and sincerely sworn) containing content which the signer disputes.

It is a plain and objective impossibility to produce such five-legged horses. "Coerced as to content and attestation of belief" and "valid" are mutually-exclusive concepts in regard to any sworn statement. Further, such "returns" could not be produced without the forced relinquishment of the signer's unalienable rights of freedom of speech and conscience, and to due process and equal protection under the law (the latter pair because one is forced to adopt and declare views serving the interests of others in a legal contest over who owes what to whom). Unalienable rights cannot be alienated. The same is true of an order seizing control of the content of future returns.

Further, the United States Supreme Court has held that "ability to comply" is an element that must be proven by the prosecution in a criminal case, rather than merely a defense that can be argued. See *Hicks v. Feiock*, 485 U.S. 624 (1988), analyzing a California statutory provision on "contempt":

> "As interpreted by the state court here, 1209.5 requires respondent to carry the burden of persuasion on an element of the offense, by showing his inability to comply with the court's order to make the required payments. If applied in a criminal proceeding, such a statute would violate the Due Process Clause because it would undercut the State's burden to prove guilt beyond a reasonable doubt. See, e. g., *Mullaney v. Wilbur*, 421 U.S. 684, 701 -702 (1975)."

Hicks v. Feiock, 485 U.S. 624 (1988)

Thus, as argued in Mrs. Hendrickson's Motion, it was the Government's burden to prove that it is somehow possible to create legally valid coerced returns (and without the forcible waiver of unalienable rights). The Government made no effort to carry this burden whatsoever, putting on not a single witness from whom evidence to this effect was sought on direct (and only witnesses who did everything in their power to evade and obfuscate the issue on cross).

4b. The Court has Overlooked Mrs. Hendrickson's Argument Regarding The Incomprehensibility Of The Order To Not File Returns Based On Claims Falsely-Ascribed To *Cracking the Code*

In Mrs. Hendrickson's Motion to Vacate, she points out that the Government offered no evidence on behalf of its prosecutorial burden to prove that the order of Judge Edmunds prohibiting the filing of returns based on the claim falsely ascribed

to *Cracking the Code* that only federal, state and local workers are subject to the income tax, etc. is comprehensible, in light of the fact that *Cracking the Code* says no such thing. In its denial of Mrs. Hendrickson's Motion, the Court has overlooked and made no mention of this issue.

In light of the foregoing misunderstandings and oversights, and further clarification and authorities, Mrs. Hendrickson respectfully urges the Court to RECONSIDER and GRANT her Motion to Vacate.

5. The Court Mistakes The Issue Concerning Lawfulness In At Least Two Different Ways

The Court has mistaken the issue raised in Mrs. Hendrickson's Motion to Vacate concerning "lawfulness". The Court bases its denial on this issue on the non-sequitur that an order must be obeyed "until a proper authority decides it is unlawful." Denial, p. 12. But all this "obligation to obey until..." means is that an alleged failure to obey an order not yet "declared unlawful" is amenable to prosecution. It *doesn't* mean that lawfulness is moot to such a prosecution, or is to be assumed or "found" by direction of the Court in such a prosecution.

In Mrs. Hendrickson's case, however, this impropriety is precisely what happened: the jury, at the governments' request, was explicitly instructed that it is not a defense that the orders Mrs. Hendrickson is accused of criminally violating are unlawful or unconstitutional. Thus, the Court relieved the prosecution of its burden on this element of the charged offense, and took the determination of

"lawfulness" from the proper authority under the circumstances, Mrs. Hendrickson's jury.

This removal from the jury of the determination concerning "lawfulness" is a plain misapplication of the proper standard, as is illustrated by two recent appellate court rulings, both dealing with this precise point. In *Evans v. State of Florida*, No. 4D08-258 (2009), the District Court of Appeals of the State of Florida for the Fourth District reversed a felony conviction for allegedly resisting a police officer engaged in a lawful investigation because the court kept the statutory element of "lawfulness" from the jury's consideration. The appellate court quoted the Florida Supreme Court in *State v. Anderson*, 639 So. 2d 609, 610 (Fla. 1994):

> "[I]n those cases where the defendant maintains that the arrest was unlawful and requests that the jury be instructed on that defense, an instruction should be given to insure that the jury understands that it must decide the issue."

Evans v. State of Florida, No. 4D08-258 (2009)

In 2013, the Michigan Court of Appeals heard the case of *Michigan v. Reed*, No. 311067. Here the prosecution was the appellant, challenging the district court's dismissal of charges against Reed of assaulting, resisting or obstructing a police officer. The appellate court did reverse, but on the same basis as that of the *Evans* court in Florida. Here, the prosecution was protesting the trial court's taking upon itself the determination of "lawfulness", deciding that the officer's behavior was

unlawful, and the case should therefore be dismissed. The appellate court described the appeal and explained its decision as follows:

> On appeal, the prosecution argues that the trial court erred by usurping the fact-finding function of the jury and deciding an element of the charged offense. We agree. In *People v Moreno*, 491 Mich 38, 52; 814 NW2d 624 (2012), our Supreme Court held that, in order to convict a defendant of the offense of assaulting, resisting, or obstructing a police officer, the prosecution must prove that the conduct of the officers from which the defendant's resistance arose was lawful. Accordingly, by determining that Muczynski illegally seized and arrested defendant, the trial court decided an essential element of the charged offense.
>
> This Court has previously held that, when lawfulness of an arrest is an element of the charged offense, it becomes a question of fact to be decided by the jury, *People v Dalton*, 155 Mich App 591, 598; 400 NW2d 689 (1986), and it is well established that it is an error requiring reversal for the trial court to undermine the essential fact-finding function of the jury, *People v Tice*, 220 Mich App 47, 54; 588 NW2d 245 (1996). By determining that Muczynski did not act lawfully, the trial court removed consideration of an essential element of the offense from the jury and usurped its fact-finding function. Therefore, the trial court abused its discretion by dismissing the criminal charge. *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005).

Michigan v. Reed, Michigan Court of Appeals No. 311067 (2013)

Throughout all the proceedings in the year and a half that this case has dragged along the Government, and the Court itself, have cited a few cases in regard to "lawfulness", but all merely to the effect that obedience to an order was required until it was declared unlawful, just as the Court does here. There has been no authority cited for the proposition that once a charge of disobedience is brought and the case goes to trial, the question of 'lawfulness" can be kept from the jury's

determination-- because there are no such cases. On the contrary, all relevant authority says the jury must determine this element, just as it must determine all other elements of an offense.

In Mrs. Hendrickson's case, lawfulness was kept from the jury's consideration. It is therefore axiomatic that the prosecution produced insufficient evidence to sustain a conviction on this element, in that at the Government's request, no evidence was considered and no conviction on this element was rendered. The Court should RECONSIDER and GRANT Mrs. Hendrickson's Motion to Vacate and dismiss for insufficiency of evidence on this element of the offense.[1]

CONCLUSION

In its denial of each and every issue raised in Mrs. Hendrickson's Motion to Vacate, the Court has been misled as to the actual substance and nature of the issue

---

[1] Mrs. Hendrickson will forego discussion here of her additional points on the "lawfulness" issue in her Motion to Vacate, concerning the fact that the U.S. Supreme Court and Sixth Circuit, along with virtually every other court in the land, have explicitly denounced any claim by anyone of authority to lawfully dictate the speech or expressions of belief of any person. See, e.g. *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943); *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 61 (2006); *Newsom v. Morris,* 888 F.2d 371 (6th Cir. 1989); *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998).

She will only point out here that those endless rulings surely constitute "a proper authority decid[ing] unlawful" the orders she is charged with criminally resisting, and for that reason as well, by the Court's own declared standard in its Denial, Mrs. Hendrickson's Motion to Vacate and Dismiss should be granted.

raised, all as detailed point by point above. Reconsideration in light of the clarifications and additional points and authorities provided here will surely lead to a different outcome.

The Court should RECONSIDER Mrs. Hendrickson's Motion and VACATE HER CONVICTION AND ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL

Respectfully Submitted,

_____

Doreen Hendrickson, *in propria persona*
December 1, 2014

Attached:

EXHIBIT 1: Questions standby counsel Wise was instructed to ask during Mrs. Hendrickson's direct examination but did not, along with the intended responses and related exhibits; the transcript pages from the July 2014 trial showing the breach of duty; and the corresponding transcript pages from the October, 2013 trial in which most of these same questions were asked.

EXHIBIT 2: Page 95 from Trial Transcript Vol. V

EXHIBIT 1

Notated pages 15-17 of Direct Examination (DE) questions provided to and unasked by standby counsel, with intended responses

July 24, 2014 Trial Transcript-Volume Four

Pages 99 - 104, leading up to standby counsel's unilateral and improper discontinuation of Direct Examination

Def. Ex. 526, corresponding to unasked DE questions/responses, pp. 15-16

Def. Ex. 527, corresponding to unasked DE questions/responses, pp. 16-17

Def. Ex. 571, corresponding to unasked DE questions/responses, p. 17

Def. Ex. 572, corresponding to request for judicial notice, p. 17

November 1, 2013 Trial Transcript-Volume Three

Pages 49 - 52, first trial direct exam excerpt corresponding to unasked DE questions during second trial

Found at Trial Transcript Vol. 4

Q. You said the appeals court never let you appear in person. Did it at least read all your appeal arguments? — P. 99 L. 11-12

A. No, it did not.

[Introduce EXHIBITS 513 and 514]
Q. What are these and why are they significant to your view of the appellate ruling upholding Judge Edmunds orders? — P. 99-100

A. These are two memoranda of law filed with our reply in the appeal. But the government attorneys immediately asked the court to strike them from the record and not consider them.

Q. What did the court do? [Introduce EXHIBIT 517] — P. 101 L. 4
The appellate court did as it was asked, and never read our arguments in those filings.

Q. When the appellate court issued its denial of your appeal, did it deem it a decision fit to be published?
[Introduce EXHIBITS 518 and 519]

A. No it did not. It only issued it as not-to-be-cited unpublished decision. The government asked for it to change its mind and treat it as a full-blown decision able to be cited in other cases. But the appellate court refused. — P. 102 L. 19-24

Q. Weren't you persuaded to change your mind when the Supreme Court didn't select your petition about the case for review? — P. 103 L. 13-15

A. No. I have reason to view that result as completely meaningless.

Q. What do you mean?

A. I've seen statistics posted on the Supreme Court's own website that make this clear.
[Introduce EXHIBIT 526- Supreme Court.com FAQ pages]

Q. Would you share them with us, please?

A. As it says here [read the highlighted Q&A about how many petitions the court gets and how many it hears as cases]. Not getting a hearing from a court that only

Not asked

takes .008% of its petitions means nothing about the rightness or wrongness of the decision someone is trying to appeal.

Q. Yesterday, Daniel Applegate read a portion of the transcript from the June, 2010 hearing in which Judge Edmunds changed her order so that you could finally comply without perjuring yourself. He read a portion in which Judge Edmunds responded to something your husband said with, "And you've lost on that..." What does that mean to you?

A. It just means a judge has chosen to rule against something. It doesn't mean the something is right or wrong, or true or false. It doesn't even mean the judge understood or considered the real issue in the case.

Q. You've made clear throughout this trial that you don't believe the government really has the authority to dictate or control your speech, even through its courts. Are there any authorities you rely on to support that belief?

A. Yes there are--several rulings from courts that have actually considered the issues in this case, unlike those that have been directly involved in my case. All of the latter have evaded the issue by denying my husband and me hearings where we could personally ensure that our testimony and arguments were being understood. Instead, these courts have relied on lies like the ones by Robert Metcalfe saying my husband's book claims that "wages are not income", or that only federal, state and local government workers are subject to the income tax. But when the courts have actually issued rulings on the matters at issue with these orders by Judge Edmunds that came in response to Mr. Metcalfe's lies, they have stood directly with us and denounced orders like these.
[Introduce Exhibit 527 into evidence and put the attached copy on the overhead]

Q. Can you tell us what we are looking at?

A. The first is a recent United States Supreme Court case citing and re-iterating some of its many identical rulings over the years. I'll read it for everyone...

Q. And the second one?

A. This is a Sixth Circuit case from 1989. I'll read it...

Q. What do these rulings say to you? [So, you find these cases to support your view that no one can be under a valid legal duty to allow her speech or declarations

Found at Trial Transcript Vol. 4

Not asked

P. 103 L. 13-25

Andrew ended Direct Exam P. 104 L. 1

Not asked

NOT Found at Trial Transcript Vol. 4

of belief to be dictated to her by the government in any fashion whatsoever or for any reason, even by way of a court order?]

A. [Doreen explains].

Q. Are there any others?

A. Yes.
[Introduce EXHIBIT 571]

Q. Would you read these please?

A. Doreen reads the case excerpts.

Q. What do these rulings say to you? [So, you find these cases to support your view that no one can be under a valid legal duty to allow her speech or declarations of belief to be dictated to her by the government in any fashion whatsoever or for any reason, even by way of a court order?]

A. [Doreen explains].

Q. To the best of your knowledge, in all of American history has anyone other than you and your husband ever been ordered by a court to put his or her signature on a testimonial document like a tax form, or any other sworn document, along with content dictated by someone else?

A. No. And I sincerely hope it never happens to anyone ever again.

Your Honor, I'm requesting judicial notice of the text of 18 U.S.C. 401(3), the statute under which I am charged, and would like it admitted into evidence. [It is our EXHIBIT 572]

Thank you, Doreen. It's a pleasure talking with a woman as principled and courageous as you.

Not Asked

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 13-20371

-vs-

DOREEN HENDRICKSON, **Detroit, Michigan**

Defendant. **July 24, 2014**

----------/

TRANSCRIPT OF TRIAL - VOLUME FOUR

BEFORE THE HONORABLE VICTORIA A. ROBERTS

UNITED STATES DISTRICT COURT JUDGE, and a Jury.

APPEARANCES:

For the Government:	**Melissa Siskind, Esq.**
	Jeffrey McLellan, Esq.
For the Defendant:	**Doreen Hendrickson, Pro Per**
Standby Counsel:	**Andrew Wise, Esq.**

Proceedings taken by mechanical stenography, transcript produced by computer-aided transcription

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made. They completely dodged most of the arguments that we made and made almost, without being disrespectful when I say nonsensical, I mean you couldn't make sense of it, a ruling that was incomprehensible. It didn't make any sense to me anyhow. I kind of expected them to at least address the issues we had --

THE COURT: (Interjecting) Mrs. Hendrickson, wait for a question please.

Q. (By Mr. Wise continuing) Now as part of that appeal, were you given oral argument or an ability to directly address the Court to present the issues that you raised on your appeal?

A. We requested that, but it was denied.

Q. Do you believe that the Court of Appeals gave due consideration to all the arguments and authorities that you presented to it ?

A. The ruling makes it obvious that they did not. If I may continue on that?

Q. Let's wait a second. I'm going to ask you to take a look at Defendant's Exhibit 513 and ask you what that is?

A. It's a Memorandum of Law Regarding the Meaning of Income and Includes in the Income Tax Statutes and the Particulars of Wage, Withholding and FICA taxes. That's the title of it.

Q. Okay, and who prepared that document?

A. I believe my husband did this one.

Q. And was it submitted as part of your appeal of Judge Edmunds' Order?

A. It was.

Q. Move for the admission of Defendant's 513.

MS. SISKIND: Your Honor, this document was stricken by the 6th Circuit and was not permitted to be filed in that case.

THE COURT: Is that true, Mrs. Hendrickson?

MR. WISE: That is true. That's part of our point.

THE COURT: It's not admitted. Excuse me. Wait for a question.

Q. (By Mr. Wise continuing) And could you tell us what Defendant's Exhibit 514 is?

THE COURT: Five what?

MR. WISE: Five-14.

A. This is another Memorandum of Law that Mr. Metcalfe moved to have the Appeals Court not consider, but this is on procedural errors in the District Court.

Q. For the record, I'll move for admission of 514, but I think it's subject to the same objection.

MS. SISKIND: That's correct, Your Honor.

THE COURT: Was it stricken?

MS. SISKIND: Yes, Your Honor.

THE COURT: Okay, it's not in.

Q. (By Mr. Wise continuing) But those are essentially documents that you filed with the Court of Appeals asking them to consider certain points of which you believed to be law and procedure, correct?

A. Yes, that's true, and when we filed them it was to supplement their understanding of the issues that we were raising, but as I said, Mr. Metcalfe moved to have them taken out of consideration so that the Court would not be fully informed.

Q. And did as Miss Siskind just indicated, the Court of Appeals strike those from the record and not consider those documents?

A. Correct. We still had a fully informed brief, appeals brief filed, but these were supplemental to it for additional information that I would think that if you're making a

major decision --

THE COURT: (Interjecting) Mrs. Hendrickson, Mrs. Hendrickson, you have answered the question.

Q. (By Mr. Wise continuing) Could I have you take a look at Defendant's 517?

A. Yes, I have it.

Q. Could you tell us what that is?

A. It's an Order from the United States Court of Appeals for the 6th Circuit and it says upon -- sorry. I probably shouldn't read it yet.

Q. This is the Order striking those two pleadings from -- that consideration by the Court of Appeals?

A. Yes. Upon consideration of appellee's motion to strike portions of the appellant's reply --

MS. SISKIND: Your Honor --

THE COURT: It's not necessary to --

MR. WISE: I'll move its admission, Your Honor.

MS. SISKIND: Object on relevance grounds, Your Honor.

THE COURT: Sustained.

Q. (By Mr. Wise continuing) And ultimately the Court of Appeals issued an Opinion in your case upholding Judge Edmunds's Order, is that correct?

A. Yes; I think a poorly informed Opinion.

Q. And was that Opinion to be published or unpublished?

A. It was an unpublished Opinion.

Q. And what's your understanding of the significance of an unpublished Opinion?

A. Normally if you want something published or whatever, it's because I'm embarrassed about it, but I don't know what their reasoning was.

Q. At some point did the Government seek to have that Opinion published?
A. They did.
Q. And I'm going to ask you to take a look at Defendant's Exhibit 518.
A. I have it.
Q. And ask if you recognize it?
A. I do.
Q. And again, without going into detail about what it contains, can you tell us what it is?
A. Well, you asked if the Government had wanted --
THE COURT: (Interjecting) Mrs. Hendrickson, this has a title. What is it.
MRS. HENDRICKSON: Oh, I'm sorry. I was looking at the wrong page. Appellee's Motion to Publish Opinion, the Appellee being the Government.
Q. (By Mr. Wise continuing) And there's a cover letter that goes along with that, correct?
A. That's the one I was looking at, yes. Sorry.
Q. I'd move for admission of Defendant's Exhibit 518.
MS. SISKIND: Objection; relevance.
THE COURT: Sustained.
Q. (By Mr. Wise continuing) To your knowledge the Government in this case did or in the Judge Edmunds case did ask the Court of Appeals to publish its Opinion?
A. They did request that the 6th Circuit Court publish this Opinion against my husband and I.
Q. And the Court of Appeals ultimately denied that request, correct?
A. That's correct. They did not want the Opinion published.
MS. SISKIND: Objection, Your Honor.

THE COURT: Ladies and gentlemen of the Jury, just please disregard the last portion of Mrs. Hendrickson's testimony.

Mrs. Hendrickson, you are unduly prolonging this examination because of your editorial comments and because you are adding much more to the answer than is required by the question, and the Court has been quite patient with you and I've run out of patience.

Q. (By Mr. Wise continuing) Then after the Court of Appeals issued its Opinion, you and your husband sought what's called a Writ of Certiorari from the United States Supreme Court asking them to agree to review your case?

A. We did.

Q. And the Supreme Court declined to review the case, is that correct?

A. They did.

Q. So would it be fair to say that in your mind the failure of the Supreme Court to review the case on the merits -- what's your opinion of the significance of the failure of the Supreme Court to review the case on the merits?

A. Having read some other information, I don't think that having the Supreme Court decline to hear a case says too much about the merits of the case.

Q. Mrs. Hendrickson, do you believe the Government has authority to control or dictate your speech even through an Order by the Court?

A. No, I do not.

Q. Why do you believe that?

A. Because we have a First Amendment in this country.

Q. And do you believe that that position is supported by cases from the Supreme Court and other Courts of the United States?

A. I know that it is.

Q. One moment, Your Honor. I think that concludes my Direct Examination.

THE COURT: Thank you. Do you have a Cross-examination?

MS. SISKIND: I do and can I request a brief side bar before Cross-examination?

THE COURT: Yes.

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Supreme Court Information

Frequently Asked Questions (FAQ)

General Information

- How are Supreme Court Justices selected?
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Supreme Court Justices

(top)

How long is the term of a Supreme Court Justice?

The Constitution states that Justices "shall hold their Offices during good Behaviour." This means that the Justices hold office as long as they choose and can only be removed from office by impeachment.

Has a Justice ever been impeached?

The only Justice to be impeached was Associate Justice Samuel Chase in 1805. The House of Representatives passed Articles of Impeachment against him; however, he was acquitted by the Senate.

Who decides how many Justices are on the Court? Have there always been nine?

The Constitution places the power to determine the number of Justices in the hands of Congress. The first Judiciary Act, passed in 1789, set the number of Justices at six, one Chief Justice and five Associates. Over the years Congress has passed various acts to change this number, fluctuating from a low of five to a high of ten. The Judiciary Act of 1869 fixed the number of Justices at nine and no subsequent change to the number of Justices has occurred.

Do the Justices have any responsibilities other than hearing and deciding cases?

The federal circuit courts of appeals and district courts are organized into 13 federal circuits and each Justice is responsible for emergency applications and other matters from one or more of these circuits. For example, individual Justices may be asked to halt the implementation of a circuit court order, set bond for a defendant, or stop the deportation of an alien. Justices are also asked to act on applications for a stay of execution.

Do all of the Justices have to be present in order to hear a case?

A quorum of six Justices is required to decide a case. Justices may also participate in a case by listening to audio recordings of the oral arguments and reading the transcripts.

How many cases are appealed to the Court each year and how many cases does the Court hear?

The Court receives approximately 10,000 petitions for a writ of certiorari each year. The Court grants and hears oral argument in about 75-80 cases.

(top)

When did the Supreme Court first meet?

The first meeting of the Court was scheduled to take place in New York City on Monday, February 1, 1790, but the lack of a quorum (only three of the six Justices were present) delayed the official opening until the following day, Tuesday, February 2, 1790.

Who were the members of the first Supreme Court?

As stipulated by the Judiciary Act of 1789, there was one Chief Justice, John Jay, and five Associate Justices: James Wilson, William Cushing, John Blair, John Rutledge and James Iredell. Only Jay, Wilson, Cushing, and Blair were present at the Court's first sitting.

Where did the Court first meet?

The Court met in New York City at the Exchange Building (also known as the Royal Exchange, or the Merchants' Exchange).

Where else has the Court met?

From 1791-1800, the Court met in Philadelphia, twice in the Pennsylvania State House

Def. Ex. 527 The United States Supreme Court On Government Efforts To Dictate Speech, Reiterating Its Never-Disturbed, Rock-Solid, No-Exceptions Position

"It is, however, a basic First Amendment principle that "**freedom of speech prohibits the government from telling people what they must say**." *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 61 (2006) (citing *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943), and *Wooley* v. *Maynard*, 430 U. S. 705, 717 (1977)). "**At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.**" *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 641 (1994); see *Knox* v. *Service Employees*, 567 U. S. ___, ___–___ (2012) (slip op.,at 8–9) ("**The government may not . . . compel the endorsement of ideas that it approves.**").

...

"[W]e cannot improve upon what Justice Jackson wrote for the Court 70 years ago: "If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**" *Barnette*, 319 U. S., at 642."

Agency for Int'l Development v. Alliance for Open Society Int'l, Inc., 570 U.S. __ (2013) (Emphasis added.)

The Sixth Circuit Court Of Appeals On The Subject When Actually Considering The Issue, With Lockstep Support From Every Single Other Circuit

"The Supreme Court has unequivocally admonished that **even minimal infringement upon First Amendment values constitutes irreparable injury** sufficient to justify injunctive relief.

> It is clear therefore that First Amendment interests were either threatened or in fact being impaired at the time relief was sought. **The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.**

Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976) (plurality opinion of Brennan, J.); *id.* at 374-75, 96 S.Ct. at 2690 (Stewart, J., concurring in judgment) (termination from employment for political reasons violated First Amendment rights; injunctive relief properly accorded under such circumstances).

...

> "**It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury** justifying the grant of a preliminary injunction." *Deerfield Medical Center v. City of Deerfield Beach,* 661 F.2d 328, 338 (5th Cir. Unit B 1981).... **So too, direct penalization, as opposed to incidental inhibition, of First Amendment rights constitutes irreparable injury.** *Johnson v. Bergland,* 586 F.2d 993, 995 (4th Cir.1978) (transfer of employee allegedly for exercise of First Amendment rights; "[v]iolations of first amendment rights constitute per se irreparable injury"); *Citizens for a Better Environment v. City of Park Ridge,* 567 F.2d 689 (7th Cir.1975)....
>
> **One reason for such stringent protection of First Amendment rights certainly is the intangible nature or the benefits flowing from the exercise of those rights; and the fear that, if these rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future.... This does not mean, however, that only if a plaintiff can prove actual, current chill can he prove irreparable injury. On the contrary, direct retaliation by the state for having exercised First Amendment**

freedoms in the past is particularly proscribed by the First Amendment. *Mt. Healthy City School Dist. v. Doyle,* 429 U.S. at 283-87, 97 S.Ct. at 574-76; *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Cohen v. California,* 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971).

Cate v. Oldham, 707 F.2d 1176, 1188-89 (11th Cir.1983); *accord Romero Feliciano v. Torres Gaztambide,* 836 F.2d 1, 4 (1st Cir.1987); *Mariani Giron v. Acevedo Ruiz,* 834 F.2d 238, 239 (1st Cir.1987); *Branch v. Federal Communications Comm'n,* 824 F.2d 37, 40 (D.C.Cir.1987), *cert. denied,* 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988); *Jimenez-Fuentes v. Torres Gaztambide,* 807 F.2d 230, 234 (1st Cir.1986), *cert. denied,* 481 U.S. 1014, 107 S.Ct. 1888, 95 L.Ed.2d 496 (1987); *Shondel v. McDermott,* 775 F.2d 859, 866-67 (7th Cir.1985); *Stegmaier v. Trammell,* 597 F.2d 1027, 1032 n. 4 (5th Cir.1979); *Johnson v. Bergland,* 586 F.2d 993, 995 (4th Cir.1978); *compare In re School Asbestos Litigation (School Dist. of Lancaster Manheim Township School Dist. v. Lake Asbestos of Quebec, Ltd.),* 842 F.2d 671, 679 (3rd Cir.1988); *In re Providence Journal Co.,* 820 F.2d 1342, 1352 (1st Cir.1986), *modified en banc on other grounds,* 820 F.2d 1354 (1st Cir.1987), *cert. dismissed for lack of jurisdiction,* 485 U.S. 693, 108 S.Ct. 1502, 99 L.Ed.2d 785 (1988); *Taylor v. City of Fort Lauderdale,* 810 F.2d 1551, 1554 (11th Cir.1987); *Parents Ass'n of Public School 16 v. Quinones,* 803 F.2d 1235, 1242 (2nd Cir.1986); *American Civil Liberties Union of Illinois v. City of St. Charles,* 794 F.2d 265, 274 (7th Cir.), *cert. denied,* 479 U.S. 961, 107 S.Ct. 458, 93 L.Ed.2d 403 (1986); *San Diego Committee Against Registration & the Draft (CARD) v. Governing Bd. of Grossmont Union High School Dist.,* 790 F.2d 1471, 1473 n. 3 (9th Cir.1986); *Lydo Enter., Inc. v. City of Las Vegas,* 745 F.2d 1211, 1214 (9th Cir.1984); *Libertarian Party of Indiana v. Packard,* 741 F.2d 981, 985 (7th Cir.1984); *Ebel v. City of Corona,* 698 F.2d 390, 393 (9th Cir.1983); *Deerfield Medical Center v. City of Deerfield Beach,* 661 F.2d 328, 338 (5th Cir. Unit B Nov. 1981); *Community Communications Co., Inc. v. City of Boulder,* 660 F.2d 1370, 1376 (10th Cir.1981), *cert. dismissed by agreement of parties,* 456 U.S. 1001, 102 S.Ct. 2287, 73 L.Ed.2d 1296 (1982); *Florida Businessmen for Free Enter. v. City of Hollywood,* 648 F.2d 956, 958 (5th Cir. Unit B June 1981); *cf. Lowary v. Lexington Local Bd. of Educ.,* 854 F.2d 131 (6th Cir.1988); *Damiano v. Matish,* 830 F.2d 1363 (6th Cir.1987); *Tierney v. City of Toledo,* 824 F.2d 1497, 1507 (6th Cir.1987).

Newsom v. Morris, 888 F.2d 371 (6th Cir. 1989).

UNITED STATES v. DICKINSON 465 F.2d 496 (1972)

"[I]t is obvious that if the order requires an *irrevocable* and permanent surrender of a constitutional right, it cannot be enforced by the contempt power. For example, a witness cannot be punished for contempt of court for refusing a court order to testify if the underlying order violates Fifth, Fourth or perhaps First Amendment rights. Malloy v. Hogan, 1964, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653; Silverthorne Lumber Co. v. United States, 1920, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319; Gelbard v. United States, 1972, 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed.2d 179. In each of these cases the unconstitutionality of the court's order served as a valid defense to a charge of contempt. The rationale of these cases is that once the witness has complied with an order to testify he cannot thereafter retrieve the information involuntarily revealed, even if it subsequently develops that compelling the testimony violated constitutional rights. In such a predicament, the damage is irreparable.[17] No remedies are available which can effectively cure the constitutional deprivation after the order has been unwillingly obeyed."

Def. Ex. 571 Rulings On The Subject Of Void Judgments

> "[A void judgment is one that] has been procured by extrinsic or collateral fraud, or entered by a Court that did not have jurisdiction over subject matter or the parties."

Rook v. Rook, 353 S.E. 2d 756 (Va. 1987);

> "[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 CA 2006);

> "If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio.*"

State v. Swiger, 125 Ohio.App.3d 456, (1998);

> "[I]t is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute."

Hudson v. Coleman, 347 F.3d 138, 141 (6th Cir. 2003).

> "A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by habeas corpus). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not *res judicata*, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wounds and once more probe its depths. And it is then as though trial and adjudication had never been."

Fritts v. Krugh, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (1958).

> "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)).

> "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 CA, 1968);

Black's Law Dictionary, Sixth Edition, page 1574

Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901.

UNITED STATES v. DICKINSON 465 F.2d 496 (1972)

[I]t is obvious that if the order requires an *irrevocable* and permanent surrender of a constitutional right, it cannot be enforced by the contempt power. For example, a witness cannot be punished for contempt of court for refusing a court order to testify if the underlying order violates Fifth, Fourth or perhaps First Amendment rights. Malloy v. Hogan, 1964, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653; Silverthorne Lumber Co. v. United States, 1920, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319; Gelbard v. United States, 1972, 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed.2d 179. In each of these cases the unconstitutionality of the court's order served as a valid defense to a charge of contempt. The rationale of these cases is that once the witness has complied with an order to testify he cannot thereafter retrieve the information involuntarily revealed, even if it subsequently develops that compelling the testimony violated constitutional rights. In such a predicament, the damage is irreparable. No remedies are available which can effectively cure the constitutional deprivation after the order has been unwillingly obeyed.

Def. Ex. 572 18 U.S. Code § 401(3) - Power of court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 13-20371

-vs-

DOREEN HENDRICKSON, **Detroit, Michigan**

Defendant. **November 1, 2013**

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TRANSCRIPT OF TRIAL - VOLUME THREE

BEFORE THE HONORABLE VICTORIA A. ROBERTS

UNITED STATES DISTRICT COURT JUDGE, and a Jury.

APPEARANCES:

For the Government:	**Melissa Siskind, Esq.**
	Jeffrey McLellan, Esq.
For the Defendant:	**Doreen Hendrickson, Pro Per**
Standby Counsel:	**Andrew Wise, Esq.**

Proceedings taken by mechanical stenography, transcript produced by computer-aided transcription

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correct?

A. That is correct.

Q. And they did not select your case for review?

A. No, they didn't.

Q. Did that in any way change your -- or persuade you with respect to the correctness or lawfulness of Judge Edmunds's Order?

A. Not really. The Supreme Court gets about 10,000 cases a year to review and they took 75 or 80 of them and I would guess that they would be taking a very small amount of maybe popular topics or something, something that's current and that they feel like everybody knows about it and it needs to be ruled on.

Q. And then yesterday Mr. Applegate read a portion of the transcript from the June, 2010 hearing in which Judge Edmunds changed her Order to make it possible for you to comply without perjuring yourself. He read it -- a portion in which Judge Edmunds responded to something that your husband said with "and you've lost on that". What does that mean to you?

A. Well, Judges are people too, so they can have an opinion about something. That doesn't make it correct or right. People are wrong and Judges can be wrong as well.

Q. And you've made it clear throughout this trial that you don't believe the Government really has the authority to dictate or control your speech. Have you relied on any authorities to support that belief?

A. There's a lot of Supreme Court authority to support my belief. In all of the motions that we filed even in my case here, we've cited all kinds of authorities that indicate that your speech cannot be dictated by the Government. I think one of them was actually at the end of June just this year. They were very clear that your speech

cannot be dictated.

Q. I'll approach and show you what is marked as Defendant's Exhibit 527. Would you tell me what that -- summarize for me what that Exhibit is?

A. This is just a couple of instances. One is a Supreme Court case, one is a 6th Circuit Court case which is the Appeals Court down in Cincinnati verifying that your speech cannot be controlled.

Q. These are in fact quotations from passages from those cases?

A. Yes, they are.

Q. And are these some of the authorities that you've relied on in support of your belief that your speech can't be controlled by the Government?

A. Yes, it is.

Q. Move for the admission of Defendant's Exhibit 525.

THE COURT: Is there objection?

MS. SISKIND: No objection if there's a limiting instruction.

THE COURT: Thank you. Ladies and gentlemen, Exhibit Number 527 contains law and to the extent it is different from anything that I instruct you on, please follow my instructions.

Q. (By Mr. Wise continuing) You've got this in front of you?

A. I do, and I don't have to come forward to read it.

Q. Could you read to us the -- I guess it's after the caption of the document, the first quotation?

A. Yes. This is the one that was just decided this past June after I'd already been arrested: It is, however, a basic First Amendment principle that freedom of speech prohibits the Government from telling people what they must say. All the italics are just citations within the ruling. At the heart of the First Amendment lies the principle

that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration and adherence and more citations. The Government may not compel the endorsement of ideas that it approves. We cannot improve upon what Justice Jackson wrote for the Court 70 years ago. If there's any fixed star in our constitutional constellation, is it that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein.

Q. And then going down on that document, could you read starting from the Supreme Court has unequivocally admonished?

A. This is the 6th Circuit Appeals Court: The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief. It is clear, therefore, that First Amendment interests were either threatened or in fact being impaired at the time relief was sought. The loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable injury and then some citations. It's a plurality Opinion and concurring and so on. It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction. So too direct penalization as opposed to incidental inhibition of First Amendment rights constitutes irreparable injury. Continuing. One reason for such stringent protection of First Amendment rights certainly is that the -- is the intangible nature or the benefits flowing from the exercise of those rights and the fear that if these rights are not jealously safeguarded, persons will be deterred even if imperceptibly from exercising those rights in the future. This does not mean, however, that only if a Plaintiff can prove actual current chill can he prove irreparable injury. On the contrary, direct retaliation by the state for having exercised First

Amendment freedoms in the past is particularly proscribed by the First Amendment and then if you look at the next page, the 6th Circuit has half a page of citations that it used in support of its ruling and so I wouldn't worry with all those citations, but those are what the Court -- the Appeals Court used to support its own interpretation how to protect -- or why protect First Amendment rights.

Q. So in reviewing these authorities and other authorities, you've -- do you find support for your view that it's improper for the Court to be seeking control of your speech for any reason even by way of a Court Order?

A. Yes, I do.

Q. To the best of your knowledge in all American History has anyone other than you and your husband ever been ordered by a Court to put his signature or her signature on a testimonial document like a tax return or any other sworn document along with content dictated by somebody else?

A. We searched throughout the entire Internet trying to find any case law that would support that, because we figured in our motions for this case certainly if the Government could find any support for the notion that speech can be controlled, they would have put it in their replies to our motions or responses. I forget which comes first -- responses and we couldn't find any because we wanted to find it first so that if there was something we needed to rebut, we'd be able to do it and to the best of my knowledge there's absolutely no precedent for controlling someone's speech.

Q. Thank you, Mrs. Hendrickson. I do not have any additional questions.

THE COURT: All right. Thank you. Who is doing Cross-examination?

MS. SISKIND: I am, Your Honor.

THE COURT: All right.

MS. SISKIND: May I proceed, Your Honor?

EXHIBIT 2

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 13-20371

-vs-

DOREEN HENDRICKSON, **Detroit, Michigan**

Defendant. **July 25, 2014**

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TRANSCRIPT OF TRIAL - VOLUME FIVE

BEFORE THE HONORABLE VICTORIA A. ROBERTS

UNITED STATES DISTRICT COURT JUDGE, and a Jury.

APPEARANCES:

For the Government:	**Melissa Siskind, Esq.**
	Jeffrey McLellan, Esq.
For the Defendant:	**Doreen Hendrickson, Pro Per**
Standby Counsel:	**Andrew Wise, Esq.**

Proceedings taken by mechanical stenography, transcript produced by computer-aided transcription

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crime of Contempt. For you to find her guilty of this crime, you must be convinced that the Government has proved each and every one of the following elements beyond a reasonable doubt: First, that a Court issued a clear and definite Order. Second, that the Defendant knew of the Order. Third, that the Defendant wilfully disobeyed the Court's Order in one of the ways set forth in the Indictment. Wilfulness means a deliberate or intended violation as distinguished from an accidental, inadvertent or negligent violation.

Now the good faith of the Defendant is a complete defense to the charge of criminal Contempt because good faith is simply inconsistent with wilfulness. While the term good faith has no precise definition, it means among other things an honest belief, a lack of malice and the intent to perform all lawful obligations.

A person who acts on a belief or on an opinion honestly held is not punishable merely because that honest belief turns out to be incorrect or wrong. The reasonableness of a belief is a factor for the Jury to consider in determining whether the Defendant actually held a belief and acted upon it.

The more farfetched a belief is, the less likely it is that a person actually held or would act on that belief. If a person acts without a reasonable ground for belief that his conduct is lawful, it is for the Jury -- it is for the Jury to decide whether that person has acted in good faith in order to comply with the Court Order or whether that person has wilfully violated the Court Order.

The burden of proving good faith does not rest with the Defendant because the Defendant has no obligation to prove anything to you. The Government has the burden of proving to you beyond a reasonable doubt that the Defendant acted wilfully.

If the evidence in the case leaves the Jury with a reasonable doubt as to whether the Defendant acted in good faith or acted wilfully, the Jury must acquit the