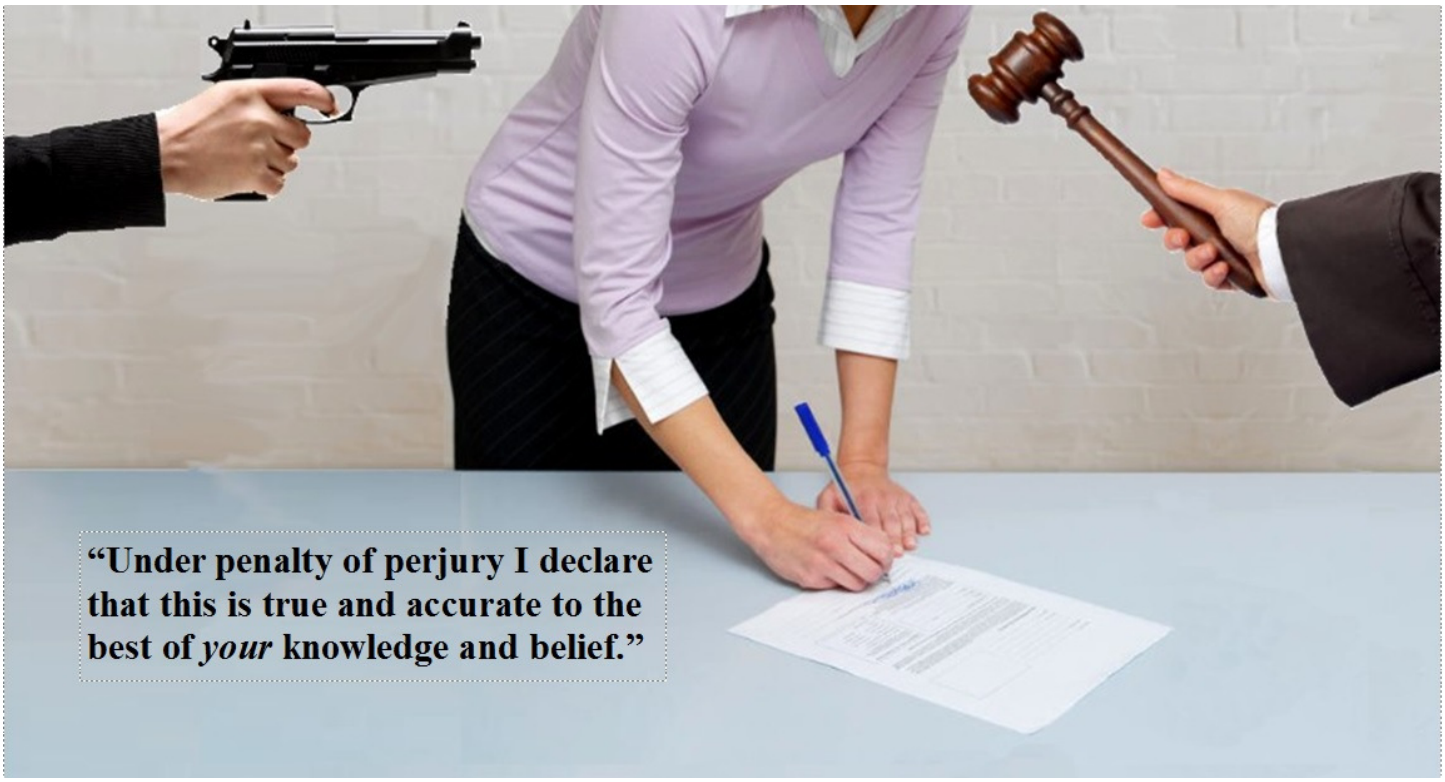

Because the federal government can legally require a person to provide sworn testimony the 5th Amendment includes an explicit guarantee that he (or she) shall not "be compelled in any criminal case to be a witness against himself" (or herself.)

But what if a sworn statement is provided as required, but the government challenges the accuracy of what it says?

The answer seems self-evident. Anyone who knowingly and willfully provides testimony under oath that contains provable misstatements of fact should expect to be charged with perjury. Indeed, most of us would be hard put to imagine any other government recourse. Which means, I suppose, that none of us is imaginative enough to get a job at DOJ — where prosecutors devised an amazing (make that unbelievable) alternative.

In just such a circumstance Justice Dept. attorneys recently sought — and were granted — a federal court order requiring a person whose testimony they claimed was factually inaccurate to change her sworn statement to say what they wanted it to say. The court order included a mandate that she sign the government-dictated statement under penalty of perjury and explicitly prohibited her from including any disclaimer. She was ordered to attest that the revised version was true and accurate to the best of her knowledge and belief!

Here's a situation Joseph Heller would have loved. Even if the government is correct and she in error about the disputed facts, signing this second statement would provide irrefutable evidence that one or the other of her statements must necessarily have been falsely sworn. Q.E.D.

Then there is, of course, the exquisite irony that in compelling her to swear to this revised testimony — which all concerned are, of course, acutely aware is not her own — the court is actually ordering someone to commit perjury!

In cornering the defendant with this Hobson's Choice the DOJ neatly sidestepped the twin challenges of having to prove both that her original testimony was false and that she could not have had a good faith belief that it wasn't. Instead they simply charged her with contempt of court for refusing to comply with the order that she swear to a statement she neither made nor believed to be true.

Any who think this entire scenario is too bizarre to be true should look into US v. Doreen Hendrickson (Case No. 13-cr-20371). Public records show that on July 25th of last year Mrs. Hendrickson was convicted of criminal contempt of court for which she was just sentenced on April 9th to a term of 18 months in a federal prison. Given 60 days to report, her attorneys are frantically working on an appeal while friends and family mount a campaign to get the Michigan governor and/or attorney general to intervene in defense of one of our fellow citizens against this blatantly unconstitutional attack by the federal government.

Incidentally, the court added a requirement that Mrs. Hendrickson must sign her name to the government dictated testimony, attesting that it is her own, within 30 days or report for immediate imprisonment.

The feds certainly seem determined to get this woman to officially and publicly recant.

Perhaps it's like the witch trials during the Inquisition where confession was thought to bring the accused some measure of cleansing redemption. Those were certainly the good old days for prosecutors — no need to twist the law into grotesque contortions when you can just twist the victim's body on the rack.

CONTACT Pete Hendrickson at newsman@losthorizons.com to learn more.

Regarding the Inherent Unlawfulness on First Amendment Grounds of the Orders Involved in the Charges Against Doreen Hendrickson

Doreen Hendrickson was charged with criminal contempt of court for her refusal to create false sworn testimonial documents, the content of which was ordered to be as dictated to her by the government and consists of declarations she believes to be untrue, but which she is commanded to represent as being her own words. Such orders have never been made to an American before.

To begin with, let us recognize that it is not, and cannot be a crime to resist or disobey an unlawful or unconstitutional order. This is axiomatic.

Next, let us recognize that any order commanding what someone must or must not say is unlawful. This is so first because there is no law providing for such an order; second because there is and can be no valid equity interest on anyone's part in the dictated or controlled testimony of another; third because the laws concerning declarations that can be required of anyone or that anyone can make with legal significance all uniformly require that such declarations be the freely-made and sincere declarations of the signer, not anyone else; and fourth because the First Amendment to the United States Constitution prohibits the government in any and all its forms and organs from issuing or enforcing such orders. As the Supreme Court said just two years ago, repeating-- unanimously, on this point-- what is possibly the most well-settled legal doctrine in American jurisprudence:

> "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.").
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> "[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., 133 S. Ct. 2321 (2013)

As a working principle, it can be fairly said that the very essence of the First Amendment is that whatever the government wants to have said, for whatever reason, is precisely what no one can lawfully be made to say; and whatever the government wants not said is precisely what no one can be lawfully enjoined from saying-- and in both cases because it is the government which wishes the thing said or not said. The First Amendment is there to prevent anyone from being made a tool of the government or being subordinated in his or her expressions to the purposes of the government, whatever those purposes may be.

This is not to say that Americans cannot be told to speak. They can, under certain circumstances. They simply cannot be told what they must say.

An example is illustrative. In 2007, a case came before the Sixth Circuit Court of Appeals: *United States v. Conces*, 507 F.3d 1028 (6th CA 2007). In this matter, defendant Charles Conces was facing a civil contempt action for refusing to respond to certain discovery orders, such as to furnish the government with lists of persons for whom he had performed services. The Court relevantly held that, "[T]he courts have rejected comparable claims ... that [] First Amendment rights or privileges were violated through orders directing them to comply with discovery requests..." However, it is clear that had Conces been faced with orders *commanding him to list specific names, dictated by the government, and to declare their appearance on the list to be his own testimony that these specific people were customers of his services*, the Court would of course have denounced such orders as egregious First Amendment violations.

Doreen Hendrickson was told what she must say, in just such an egregious First Amendment violation as would have been the case had Charles Conces been told who he must declare to have been his customers. Doreen was *not* simply told to speak; rather, *she was told what words to say, and that she*

must declare them to be her own.

In fact, Doreen had already spoken. She had long-since provided freely-made testimony as to the matters involved in the orders made to her. That freely-made testimony was simply not pleasing to the government, or not sufficiently subordinated to the government's purposes, and so she was lawlessly ordered to change that testimony or be punished.[1]

Likewise, there are no circumstances in which anyone can lawfully be enjoined against making expressions disfavored by the government, and be punished-- not for some evil or unlawful characteristic of the expression itself, but merely for having disobeyed the unlawful attempt at prior restraint. Mrs. Hendrickson has executed no "disclosure agreement", nor any other kind of agreement with the government on the basis of which it can claim her to have violated any kind of duty when saying or not saying what she will on sworn declarations to which her own signature is affixed. *See Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931).

Here, while one of the orders given to Mrs. Hendrickson commands that she repudiate her freely-made testimony and swear to alternate testimony dictated to her by the government, the other enjoins her from testifying "based on" a view that the order-requesting government and the order-issuing judge deem to be false and frivolous, even though the testimony involved is simply as to what Mrs. Hendrickson herself believes to be true, complete and correct.[2] Existing "prior restraint" case-law

[1] In trial, the government requested and received the unprecedented instruction to the jury that "It is not a defense to the charge of contempt that the court order that the defendant is accusing of violating is unlawful or unconstitutional."

[2] The disapproved "view" Mrs. Hendrickson is enjoined against embracing is not a "view" to which she adheres, as she has testified repeatedly, in contradiction of which neither the government nor the district court have managed to produce any evidence. Nonetheless, even were Mrs. Hendrickson to subscribe to a "view" that the world rides the back of a giant tortoise, and to "base" her testimony on, and in light of, that view, she cannot be lawfully enjoined against doing so, although the government is free to introduce testimony or other evidence based on its own preferred view of things anywhere Mrs. Hendrickson's disfavored testimony is relevant. Further, the book to which the government and court falsely ascribe the "view" upon which Mrs. Hendrickson is falsely said to have based her testimony as to what she believes

provides no support for such an injunction, but instead is uniform in denouncing all such efforts as unconstitutional. Further, punishment for the exercise of speech rights is particularly proscribed under the First Amendment. *See Newsom v. Morris*, 888 F.2d 371 (6th Cir. 1989). While there are very narrow exceptions to the otherwise monolithic case-law on prior restraint, none are relevant to the circumstances here; if this case represents any exception to those precedents and that well-settled law, it is a matter of first impression.

To summarize, the orders Doreen Hendrickson is accused of having criminally resisted or disobeyed are illegal. Those orders impose no valid duty on Mrs. Hendrickson, and they cannot be, or have been, the legitimate basis for any prosecution.

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true, correct and complete has long-since been established, *res judicata* pursuant to FRCP Rule 41(a)(1)(B), as *not* containing enjoinable "false or frivolous" content, through a series of previous actions toward that end, all of which were ultimately dismissed on the government's own motions.