

## **PROPOSED INSTRUCTION NO. 14**

### **LAWFULNESS**

- (1) I told you that in order for Mrs. Hendrickson to be guilty of the charge in this case, the order she is accused of resisting must be lawful. The statute under which she is charged only concerns "*Disobedience or resistance to [a court's] lawful writ, process, order, rule, decree, or command.*"
- (2) Because "lawfulness" is an element of the offense charged, and the burden of proof as to every element rests entirely on the government, you must presume the orders given to Mrs. Hendrickson to be unlawful, unless proven by the government to be otherwise beyond a reasonable doubt.

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...".

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)."

## **Proposed Jury Instruction- Lawfulness**

### **Additional Argument in Colloquy**

In its argument for preventing my jury from considering the "lawfulness" element explicitly included as such by Congress in its statute at 18 U.S.C. 401(3), the government quotes from *United States v. United Mine Workers* in hopes of putting the Court in mind of the "collateral bar" doctrine against the lawfulness of the underlying order being considered in a contempt proceeding. But that doctrine does not apply here. As the Fifth Circuit observes in analyzing that doctrine in *United States v. Dickinson*, 465 F.2d 496 (5th Cir. 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.<sup>17</sup> No remedies are available which can effectively cure the constitutional deprivation after the order has been unwillingly obeyed."

The testimony dictated to me by the orders involved in this case is designed to irremediably compromise my own freely-made contrary testimony, and to put me on record as having sworn to certain government-favored beliefs. I would have no practical, effective means of reversing the legal effects of making these coerced declarations, nor any way of restoring my reputation for veracity, the reliability of my sworn signature, or my dignity. All would be forever compromised.

What's more, all this would have been done for a patently frivolous reason. If the government has legitimate grounds for asserting what it seeks to force me to say, it is fully-equipped by law to satisfy all its relevant interests without one word from me. As the Supreme Court makes clear in *Walker v. City of Birmingham*, 388 US 307 (1967), the collateral bar doctrine does not apply to orders that are, "transparently invalid or ha[ve] only a frivolous pretense to validity." The orders in this case are made for a frivolous purpose, and they are transparently invalid. What might be the most well-settled law in American jurisprudence unequivocally prohibits any official-- judges not excepted-- from dictating speech and expressions of belief to a woman. See *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321 (2013) and *Newsom v. Morris*, 888 F.2d 371 (6th Cir. 1989).

Even *United Mine Workers* itself illustrates this limitation. The mere plurality opinion in that ruling hinged entirely on the question of the validity of the Norris-LaGuardia Act, which

prohibited injunctions in some specified instances. The plurality held that the Act was not valid under the circumstances of the case. The minority held otherwise, and that therefore the injunction was void.

It is merely the validity of the act under which the injunction was issued that is being referred-to when the court says, in the out-of-context quote offered by the government,

"It is for the court of first instance to determine the question of the validity of the law..."

Here, the "act" at issue is the First Amendment of the United States Constitution. I hardly think the validity of the First Amendment is up for challenge, and if any question were entertained as to its applicability to orders dictating speech and declarations of belief, the Supreme Court AND the Sixth Circuit have unequivocally declared that the Amendment does so apply, and specifically prohibits any injunction dictating the speech of anyone, as noted and supported above.

The "lawfulness" of the orders I am accused of criminally violating is very much an element of the charge, as the supporting authority provided with my proposed instruction on this issue makes clear. That element is NOT barred from relevance, and it SHOULD be decided *de novo* in the course of these proceedings, by my jury. The jury should be so instructed.