LEGAL ISSUES

1. Is Section 518B.01, Subd. 22, of Minnesota Statutes (and presumably its successor provision, Section 609.75 of Minnesota Statutes effective with respect to events from and after August 1, 2010, by operation of Sections 13-15 of Chapter 299, Minnesota Laws of 2010) null and void on its face insofar as the language, from which authority of the court to issue domestic abuse no-contact orders might be inferred, is unconstitutionally vague?

This precise question was not raised below, but the appellant pressed similar questions before the Itasca County District Court, and he raises this precise question here on appeal for the first time. The appellant does so of right under the doctrine of *State v. Jones*, 516 N. W. 2d 545 at 549 fn. 5 (Minn. 1994), in light of newly acknowledged law as recently determined in the State of Minnesota, to wit:

The leading case is the opinion and order of Hon. Casey J. Christian, Judge, filed on June 28, 2011, in State of Minnesota v. Keith Lee Kelling, No. 74-CR-11-254 on the docket of the Steele County District Court, reproduced on pages B1-B10 of the appendix hereof. Judge Christian held that domestic abuse no-contact orders issued under Section 609.75 of Minnesota Statutes are unauthorized by law, because the provisions concerning issuance are void for vagueness under the due process clause of the 14th Amendment (and presumably under the due process clause in Article I, Section 7 of the Minnesota Constitution). The language regarding issuance of domestic abuse no-contact orders in Section 518B.01, Subd.

22, of Minnesota Statutes is even more obscure than the language on issuance of such orders in Section 609.75 of Minnesota Statutes.

2. Under the common law of the State of Minnesota, should Section 518B.01, Subd. 2, of Minnesota Statutes, be strictly construed against the State and liberally interpreted in favor of the accused insofar as it is a criminal statute, so as not to authorize conviction of anyone targeted by a domestic abuse no contact order, unless the State can prove that there is an actual or claimed victim who has complained and sought protection, or whenever, as here, the person in whose favor the order was ostensibly issued insists that she was not battered or threatened, was never harmed or victimized, did not seek the assistance of peace officers, never asked for the arrest or prosecution of the anyone, and never asked for or needed such order, but actually contacted the accused herself, after the unwanted order was issued, and sought his urgently required assistance with household water, heat, finances, and other such problems?

The Itasca County District Court, by Hon. Jon Maturi, Judge, held in the negative.

Apposite and controlling authorities on this question are *State v. Haas*, 259 N. W. 2d 118 at 121 (Minn. 1968); *Graves v. Meland*, 264 N. W. 2d 401 at 404-405 (Minn. 1978); *State v. Olson*, 325 N. W. 2d 13 at 19 (Minn. 1982); *State v. Soto*, 378 N. W. 2d 625 at 627-628 (Minn. 1985); and *State v. Colvin*, 645 N. W. 2d

449 at 452 (Minn. 2002), which require strict construction of criminal statutes, exactly on the lines here proposed.

3. Under the fundamental law of the United States and the State of Minnesota, should Section 518B.01, Subd. 22, of Minnesota Statutes be construed so as to avoid collision with constitutionally protected enjoyment of privacy in intimate relationships, and thus not to authorize conviction of anyone targeted by a domestic abuse no contact order, unless State can prove that there is an actual or claimed victim who has complained and sought protection, or whenever, as here, the person in whose favor the order was ostensibly issued insists that she was not battered or threatened, was never harmed or victimized, did not seek the assistance of peace officers, never asked for the arrest or prosecution of the anyone, never asked for or needed such order, but actually contacted the accused herself, after the unwanted order was issued, and sought his urgently needed assistance with household water, heat, finances, and other such problems? N. B. By "fundamental law" the appellant here means the law of the constitution.

The Itasca County District Court, by Hon. Jon Maturi, Judge, held in the negative.

The most apposite cases, which require statutory construction to avoid collision with constitutional principles include *National Labor Relations Bd. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 at 30 (1937), and *Holy Trinity Church v. United States*, 143 U. S. 457 at 459-461 (1892), and those which concede broad

constitutional protection to the right of privacy in intimate relationships, include *Griswold v. Connecticut*, 381 U. S. 479 (1965), and *Eisenstadt v. Baird*, 405 U. S. 438 (1972), which are ultimately rooted in the comments of Justice Louis Brandeis in *Olmstead v. United States*, 277 U. S. 438 at 478 (1928), these reinforced by several important decisions of the Minnesota Supreme Court

4. Did the district court commit prejudicial error in this case by ordering separate trial of charges of violations of a domestic abuse no contact order, and disallow joint trial of such charges with underlying charges of domestic assault, over protest of the accused, (1) where the domestic abuse no-contact order was issued on demand of the State at the time the accused was charged with domestic assault but without any inquiry whether there was an victim of domestic assault; (2) where in fact there was no such victim, as the State and the district court well knew at the time of the demand in behalf of the accused for such joint trial; and (3) where the State admitted by official act, after the separate trial for violations of the no-contact order, that there was in fact no victim, and that the underlying charges for domestic assault were groundless?

The Itasca County District Court, by Hon. Jon Maturi, Judge, denied the demand by the accused for joint trial of the charges for domestic assault and charges of violating a no contact order, and ordered separate trial of the charges of violating the no-contact orders.

Recent and apposite cases on joint trial of related offenses, suggesting the impropriety of such severance over the protests of the accused are *State v. Kendell*, 723 N. W. 2d 597 (Minn. 2006), and *State v. Ross*, 732 N. W. 2d 274 (Minn. 2007).

5. Under the fundamental law and criminal jurisprudence of the United States, and the general law of the State of Minnesota, must the accused be guilty not only of knowledge of the order, but an intention to disobey it and affront the authority of the court, in order to be guilty of violation of a no-contact order under the Domestic Abuse Act?

The Itasca County District Court, by Hon. Jon Maruri, Judge, held in the negative.

The most apposite authorites, apart from natural reason and classical exposition, is *Peterson v. Peterson*, 153 N. W. 2d 825 (Minn. 1967), which describes criminal contempt as an intentional affront to the authority of the court; the language of Section 588.20(4) which describes criminal contempt as intentional disobedience of a court order; and *Morisette v. United States*, 342 U. S. 246 (1952), which discusses the general law on criminal intent.

6. Under the fundamental law of the United States and the general law of the State of Minnesota, where charges are brought for violating a domestic abuse no-contact order enhanced to the level of a felony essentially by a conviction for first-degree criminal conduct within the previous ten years, may the accused prove, as part of his defense, (1) that the previous conviction for first-degree criminal sexual

conduct was groundless; (2) that the said previous conviction was based on a guilty plea coerced by many months of imprisonment; (3) that the said previous conviction was corruptly secured by battered women's advocates who threatened the State's main witness with loss of her children unless she gave evidence against the accused; (4) that, respecting such previous offense, the State's main witness insisted on the innocence of the accused; and (5) that the said previous conviction was also significantly advanced by the work of a deputy sheriff who had viewed a private video tape as part of the State's evidence and pronounced the activity depicted on the tape to be felonious, yet was himself later convicted of sexually molesting his step son and sentenced to prison for eighteen years?

The Itasca County District Court, by Hon. Jon Maturi, Judge, excluded any possibility of such defense in behalf of the accused.

The most apposite cases, clearly indicating the error of such exclusion, are *Brady v. Maryland*, 373 U. S. 83 at 86 (1963), which forbids prosecutorial use of false evidence in criminal prosecutions, and also *Washington v. Texas*, 388 U. S. 14 (1967); *Chambers v. Mississippi*, 410 U. S. 284 (1973); and *Rock v. Arkansas*, 483 U. S. 44 (1987), which concede to the accused in a criminal case an ample opportunity to defend himself, even if rules of evidence must be relaxed somewhat. This constitutional right to set up an ample defense has been emphatically endorsed by the Minnesota Supreme Court in *State v. Jones*, 678 N. W. 2d 1 at 15-21 (2004).

7. Especially in the extraordinary circumstances of this case, did counsel for the accused have the right, based on Anglo-American legal tradition defining the intended meaning of jury trial in criminal cases under the fundamental law of the United States and the State of Minnesota, to advise the jury in final argument that they were the judge of the law and the facts, that the law as given by the court did not fit or apply to the particular facts proved up by the State, and that the jurors should exercise their inherent and irreversible prerogative to find the accused not guilty?

The Itasca County District Court, by Hon. Jon Maturi, Judge, held in the negative, and forbade counsel for the accused to make such an argument to the jury.

Aside from the plain indications of our Anglo-American legal tradition allowing such argument of counsel for the accused, the most apposite contemporary authority on this perennial and interesting question is the opinion of Judge David Bazelon in *United States v. Doherty*, 473 F. 2d 1113 at 1138-1144 (D. C. Cir. 1972).

8. Was the sentence unconstitutionally severe in this case?

The Itasca County District Court, by Hon. Jon Maturi, imposed the sentence in this case over protest of the defendant and his counsel.

The most apposite case is *Weems v. United States*, 217 U. S. 349 (1910), which now applies to the several States.

STATEMENT OF THE FACTS AND THE CASE

1. The origins of this case are found in circumstances so bizarre that a fiction writer could not have conjured up the plot himself.

The appellant Steven Scott Samuelson and his then wife Kelli liked to engage in kinky sex in front of their private video camera, and they watched the tapes to get "turned on" during cold winter evenings in Itasca County. Steven's mother-in-law found one of the tapes, and took it to the local battered women's center which called itself the "advocates for family peace." The ladies there took it to the sheriff's department, where it was watched by one Greg Snyder, a deputy specializing in sex crime investigations, who pronounced the episode he saw as indicative of rape. The evidence on this tape is summarized by Judge Maturi in his findings and order entered on October 13, 2010. See finding 5 on page A40 of the appellant's appendix and addendum. Judge Maturi did not mention the fact (then not known to counsel for the accused but later discovered by him), nor will the State dare to deny that "investigator Snyder" (mentioned in finding 7 of Judge Maturi's findings, again on page A40 of the appendix hereof) was later convicted of sexually molesting his step son on many occasions, and sentenced on March 9, 2010 to prison for eighteen years, as appears unmistakably of public record in State of Minnesota v. Gregory Alan Snyder, No. 31-CR-09-1016 on the docket of the Itasca County District Court.

Part of the evidence against Mr. Samuelson was a statement given by his then wife Kelli to Mr. Snyder under circumstances which she later described in an affidavit voluntarily executed by her in the spring of last year, and appearing in several places on this record (e. g., exhibit A, pages A34-A36 of the appellant's appendix and addendum). Notwithstanding pretended doubts about an earlier version of the document, the authenticity of this affidavit as sworn on February 18, 2010, was established on this record by sworn testimony in open court from a daughter of the affiant who drafted the document as dictated by her mother, as appears in the Transcript, Vol. II, pp. 22-26 (August 31, 2010); the notary public, by whom the oath was administered, as appears in the Transcript, Vol. III, pp. 497-501 (January 4, 2011); and by Mrs. Samuelson herself as affiant, who was prepared then and there to affirm the truth thereof in open court, as appears in the Transcript, Vol. III, pp. 501-505 (January 4, 2011). The affidavit reads in parts 7-13 (page A35 of the appendix hereof):

> "7. I told the Advocates for Family Peace that I did not want to discuss this matter. However, I was told by the Advocates for Family Peace Office that, if I wanted to get my children back, I had to show them that I could protect them, and I was not protecting them if I was not willing to give testimony against Steven Samuelson. Therefore, that threat or promise made by the Advocates for Family Peace led to the statement I gave to investigator Greg Snyder on December 21, 2001.
>
> "8. The statements in there, as well as my cooperation to prosecute and proceed with this matter, were an effort for me to get my children back.
>
> "9. Since this time and after Steven's conviction, I have gotten my children back, and they can no longer use this threat against me. I want the Court

to know that the allegations that I made against Steven Samuelson were not in any way correct.

"10. The events that transpired on the tape that Chad Sterle, Steven Samuelson's attorney, has in his possession were voluntary.

"11. Steven and I have used a video camera many times in our relationship to tape various aspects of our relationship. Everything on the tape was voluntary.

"12. I understand that an outsider looking in may have issues with what happened on this tape. However, as the Court could also see if the Court ever viewed the tape, which I know the Court has not at this point in time, while the act was happening, my sister called.

"13. Steven Samuelson allowed me to talk to my sister on the phone, and, obviously, if I needed help or assistance from law enforcement, I would have asked for it," etc.

Notwithstanding these circumstances, the State charged Mr. Samuelson with first-degree criminal sexual conduct in State of Minnesota v. Steven Scott Samuelson, No. K5-01-2263 on the docket of the Itasca County District Court, and his lawyer allowed him to plead guilty to a felony which he never committed. Counsel justified himself at the sentencing hearing by this telling comment,

"I think there's a very, very, very [sic] strong potential for an acquittal or a decision by a jury of not guilty. That being said, Judge, the State has put an offer in front of Mr. Samuelson that effectively lets him out of jail today. He's weighed the options, Judge. He wants his freedom. He's been in custody since the fall of 2001." -- Transcript, Vol. I, 2nd segment, p. 6 (May 14, 2002).

Despite these remarkable protests of counsel for the accused, the plea was allowed, and the plea led to revocation of a stay of adjudication on another felony case (by the same title and venue, No. K5-01-531), thus setting the stage for the

charges now on appeal before this Court. The point here is that both convictions really turn on the charge against Mr. Samuelson for first-degree criminal conduct, adjudicated on May 14, 2002, based on an act of coitus with his own wife, completely voluntary as his wife herself attested by affidavit sworn on February 18, 2010, tendered as an offer of proof, authenticated, and left uncontradicted by the State on this record.

2. The current charges arose in a likewise bizarre manner. On November 25, 2009, Mr. Samuelson was living with his new female companion Jennifer Bardine, when peace officers showed up at his home in Itasca County and arrested him. They witnessed no physical violence, Jennifer complained of no physical violence, and she had made no 911 call. On November 30, 2009, Mr. Samuelson was charged with two counts of domestic assault, these enhanced to the gravity of a felony because of the convictions adjudicated on May 14, 2010, as appears on pages A1-A4 of the appellant's appendix and addendum (No. 31-CR-09-3704 on the docket of Itasca County District Court). He was brought into the district court for his initial appearance on November 30, 2009. Jennifer was not present. There was no suggestion in the proceedings that Jennifer had ever been consulted or interviewed. There was no expression of or inquiry about her wishes or needs. It was indicated only by court administrator's rubber stamp on the first page of the complaint that Jennifer was a "victim." (page A1 of the appendix hereof). A prosecutor asked for a no-contact order under the Domestic Abuse Act, i. e., Section 518B.01, Subd. 22, of

Minnesota Statutes, and Mr. Samuelson's public defender, then a member of the board of directors of the battered women's center (exhibit B, page A37 of the appendix hereof) whose agents had earlier indulged in witness tampering to injure Mr. Samuelson's rights (exhibit A, page A35 of the appendix hereof, quoted on page 9 hereinabove) offered no objection, and the order was issued, forbidding Mr. Samuelson to have any contact with Jennifer over the course of the next year. See pages A5-A10 of the appellant's appendix and addendum.

Soon thereafter, Mr. Samuelson was charged with thirty-four counts of violating the no-contact order issued on November 30, 2009, between and including December 2 and 20, 2009, each count being enhanced to the gravity of felony based on the convictions adjudicated on May 14, 2002 (No. 31-CR-10-169 on the docket of the Itasca County District Court), as appears on pages A11-A28 of the appendix hereof. The public defender who offered no objection to the no-contact order under the Domestic Abuse Act, but was a fiduciary of the so-called "advocates for family peace," advised Mr. Samuelson to plead guilty to two of these thirty-four felony counts, subject to dismissal of all other charges in the two files (Ns. 31-CR-09-3704 and 31-CR-10-169), and he succumbed, as appears in the Transcript, Vol. I, third segment, pages 1-14 (June 8, 2011).

Up to this point, nobody working in the courthouse had the presence of mind to ask Jennifer whether she actually was a "victim" as labelled by the court administrator's stamp on the first page of the complaints charging domestic assault

and violations of the no-contact order (pages A1 and A11 of the appendix hereof). But on several occasions during the course of the proceedings against Mr. Samuelson after he found a new lawyer -- a former public defender and public prosecutor not inclined to recommend irresponsible pleas of guilty --, Jennifer had something to say. Under counsel's questioning, Mme Bardine was allowed to speak the truth which had previously been ignored. Her words are noteworthy and uncontradicted on this record. First, on August 31, 2010, she testified as follows:

"Q. Jennifer, are you aware that Steven Samuelson is charged with acts of domestic violence?

"A. Yes.

"Q. That is, he's charged with battering?

"A. Yes, I'm aware

"Q. And also of causing you to fear for your own safety?

"A. Yes.

"Q. And you also understand that he's charged with contacting you on several occasions contrary to the no-contact order of the court?

"A. Yes.

"Q. Okay. Now I'm going to ask you, you are the individual?

"A. The victim.

"Q. Who is supposed to have been assaulted, right?

"A. Yes.

"Q. And you are the person with whom he made contact?

"A. Yes.

"Q. On several occasions while a no-contact order of the court was outstanding?

"A. Yup.

"Q. You understand all that?

"A. Yes.

"Q. And on or about the 25th of November, 2009, did Mr. Samuelson do anything by way of an assault or causing you to be fearful of harm or by way of a battery or hitting or anything of the kind?

"A. No.

"Q. No?

"A. No.

"Q. Did you ever ask that Mr. Samuelson should be arrested?

"A. No.

"Q. Did you ask that he should ever be charged?

"A. Nope.

"Q. Do you feel that in any way you were victimized by Mr. Samuelson?

"A. No, we were only arguing.

"Q. When Mr. Samuelson contacted you, were those contacts welcome or unwelcome?

"A. Welcome.

"Q. How did you communicate your wishes to him?

"A. I left messages on the message line.

"Q. What message line?

"A. In jail.

"Q. So you – were these by e-mail?

"A. No, it's a phone number I dial and you type in or press in the first three initials of his last name and you have about 30 seconds to leave a message.

"Q. What did you contact him for?

"A. Different things about the house.

"Q. Like what?

"A. Like the furnace breaking down, how to get wood, um --

"Q. Domestic necessities?

"A. Yeah." -- Transcript, Vol. II, pages A65-A67.

Then on January 4, 2011, the gentlewoman reiterated her earlier testimony in substance, disclaiming any battery, threat, or harm at the hands of Mr. Samuelson, whereupon she elaborated somewhat on the urgent domestic necessities which prompted her to contact her lover in the county jail, seeking his help:

"Q. When you contacted Mr. Samuelson on the 2nd of December, what was the purpose of your contacting him?

"A. For the 2nd of December, I would imagine it was what to do with his checks, how to cash them, what he wanted me to pay, or pay a lawyer or hire an attorney, questions like that. If it was the 2nd, I would imagine that's what it was.

"Q. Were there any questions of domestic need at the house"

"A. There was no propane so there was no heat unless there was wood for the stove.

"Q. What did you ask him to do about that?

"A. Yeah. I didn't know if he wanted me to, if I was able to cash his checks to buy firewood and from who [sic], who installed the furnace so I could call them to hopefully come repair it since it was like only a year old.

"Q. How far about animals around the house?

"A. Um, at that time I think mainly the -- we had four mallards with two geese, and the mallards had disappeared -- whether they flew away or not --, but I didn't know what to do with the geese, because I never raised them before, and I didn't know what to do with them.

"Q. How about running water?

"A. It was freezing up in places where the heat couldn't get to. I wasn't -- I don't know -- ducted out right.

"Q. Okay. Did you talk with him about any other domestic needs that you can think of?

"A. There was [sic] also septic problems. I don't know if it was freezing or backing up, but the water wasn't going down out the showers or toilets.

"Q. Did you ever -- Did you ever ask him what to do with these problems?

"A. Yeah, yes.

"Q. Was that the substance of your contacts with Mr. Samuelson between the 2nd of December and the 20th of December, 2009.

"A. Yes. That's all I can recall." – Transcript, Vol. III, pp. 507-509.

Continuing her testimony on January 4, 2011, Mme Bardine recounted her repeated, but obstructed attempts to contact public officers of Itasca County, including the county attorney and his staff, trying to tell them that she was not victimized in any way, that she did not want a no-contact order, and that she did not want Mr. Samuelson prosecuted. But she was stonewalled by official indifference. See the Transcript, Vol. III, pp. 509-512. Again her testimony was uncontradicted.

The undersigned submits that the facts related by Mme Bardine are indelibly established as a matter of law on this record under the doctrine of *O'Leary v. Wangensteen*, 221 N. W. 430 at 431-432 (Minn. 1928).

Shortly before sentencing on August 3, 2010, on two felony counts of violating the domestic abuse no-contact order issued on the last day of the previous November, the undersigned made an appearance and interposed two motions in behalf of the accused, the first seeking leave to withdraw the pleas of guilty on grounds that such pleas were improvident and on advice of a public defender who had a manifest conflict of interest, and the second seeking to present evidence described in of Kelli Samuelson's affidavit of February 18, 2011, as an affirmative defense against the enhancement in the charges against the appellant for domestic assault and violating a domestic abuse no contact order on grounds that such evidence was indispensable to the accused in defending himself. See pages A29-A38 of the appellant's appendix and addendum.

After a long hearing on August 31, 2010, Judge Maturi denied leave to withdraw the plea of guilty, and in his memorandum he rejected the argument in behalf of Mr. Samuelson that the enhancing convictions on May 14, 2002, could be collaterally attacked either by petition for post-conviction remedy or by affirmative defense. See the Transcript, Vol. II, pp. 3-121 (August 31, 2010), and the addendum item on pages A39-A50 of the appendix hereof (October 13, 2010). In behalf of Mr. Samuelson, the undersigned made an elaborate motion for the protection of the accused at the proposed sentencing on November 1, 2010, reasserting and buttressing the motions previously noticed for August 31, 2010, and, especially in light of the testimony of Jennifer Bardine then and there given, to dismiss all charges of domestic assault (No. 31-CR-09-3704), and violating a domestic abuse no-contact order (No. 31-CR-10-169). See the appellant's appendix and addendum, pp. A51-A59. On November 1, 2010, Judge Maturi reversed himself from the bench, and granted Mr. Samuelson leave to withdraw his pleas of guilty entered on June 8, 2010, then ordered trial by jury as demanded by the accused. See the Transcript, Vol. II, pp. 122-128.

Thereupon the counsel for the accused made a series of motions for the protection of Mr. Samuelson, these noticed for November 29, 2010, the eve of the scheduled trial by jury. Counsel asked for dismissal of all charges of domestic assault (No. 31-CR-09-3704) and violations of a domestic abuse no-contact order (No. 31-CR-10-169), because both offenses necessarily contemplate an actual or

claimed victim, of which there was manifestly none in light of the testimony of Mme Bardine on August 31, 2010. The common law principle of strict construction of criminal statutes was pleaded as the primary justification for reading Section 518B.01, Subd. 22, of Minnesota Statutes so as to require an actual or claimed victim before anybody could be charged with violation of a no-contact order under the Domestic Abuse Act. Counsel also sought leave to present in the hearing of the jury the testimony of Mme Bardine in keeping with her testimony of August 31, 2010, and the testimony of Mme Samuelson in keeping with her affidavit of February 18, 2010, in exercise of the constitutional right of the accused to defend himself against the charges pending. See pages A60-A68 of the appellant's appendix and addendum. These motions, together with all related offers of proof, were rejected from the bench. See the Transcript, Vol. II, pp. 133-173, 234-238, 241-281 (November 29, 2010). In delivering his opinion from the bench, Judge Maturi strictly forbade counsel for the accused, over protest, from arguing that the jury could and should exercise its inherent right to acquit the accused. See in particular the Transcript, Vol. II, pp. 155-159 (November 29, 2010), which was confirmed on the Transcript, Vol. III, pp. 463-464 (January 4, 2011).

When it became evident on the eve of the trial that the State insisted on trial only of the charges of violating a domestic abuse no-contact order (No. 31-CV-10-169), distinct and separate from trial on the charges of domestic assault (No. 31-CV-09-3704), counsel for Mr. Samuelson objected, and demanded a speedy joint

trial on both criminal complaints together, because the former was premised upon the latter, but the demand was refused, subject to exception. Judge Maturi then ordered immediate trial only on charges of violating a domestic abuse no contact order. See the Transcript, Vol. II, pp. 229-231 and 238-241 (November 29, 2010).

At the trial by jury the primary evidence against the accused consisted of three witnesses:

-- Jennifer Bardine, who testified that she was the lover of Mr. Samuelson, and contacted him in the county jail, and that his responsive contacts with her between and including December 2 and 20, 2010, about domestic necessities, were welcome; but, over objections and offers of proof by counsel for the accused all overruled by Judge Maturi, she was denied any opportunity to say that she had never been battered or threatened or harmed by Mr. Samuelson, that she never asked for the assistance of peace officers, that she never complained against the accused, that she never asked for the arrest of prosecution of the accused, or that all her attempts to contact public officers of Itasca County in behalf of the accused were ignored, etc. See the Transcript, Vol. III, pp. 311-325 (November 30, 2010); and

-- Sheriff's deputies who testified concerning the contacts between Jennifer and Steven between and including December 2 and 20, 2010, based on observations within, or business records of the county jail where Mr. Samuelson remained from

the time of his arrest until the time of the jury trial. See the Transcript, Vol. III, pp. 303-311 (November 30, 2010), and pp. 354-370 (December 1, 2010).

During the discussion on instructions to the jury, counsel for the accused asked for an instruction that, in order for the jury to find the accused guilty, the State had to prove, not only that the accused knew of the order and acted contrary to it, but that he actually intended to disobey the order and affront the authority of the court. Judge Maturi rejected this request, and, subject to exceptions by counsel for the accused in keeping with previous motions and requests, the district court instructed the jury that, if the State proved that the order existed, that the accused knew of the order, and that he intentionally contacted Jennifer Bardine while the order was outstanding, he was guilty as charged. See the Transcript, Vol. III, pp. 389-392, and 417 (December 1, 2010).

Given strict limitations imposed by the district court -- including denial of the right to argue that the accused was not guilty, because he did not intend to disobey the order, and that the jury had a general right to find him not guilty --, counsel did his best before the jury. See the Transcript, Vol. III, pp. 401-410 (December 1, 2010). But the result was inevitable, -- guilty on thirty-three counts, as appears on pages A68-A72 of the appendix hereof (December 1, 2010).

3. Upon receipt of the verdict, the undersigned filed post-trial motions for new trial, acquittal, and leniency in sentencing. These motions were noticed for January 4, 2011.

The first motion asked for acquittal or new trial in view of the facts established by the testimony of Mme Bardine on August 31, 2010, and/or improper exclusion of her full story as then and there given and as offered by Mr. Samuelson at trial. The premise pleaded was the Section 518B.01, Subd. 22, of Minnesota Statutes must be strictly construed to authorize issuance of a no-contact order or conviction for disobedience thereof, only if there is an actual or claimed victim. The underlying premise was at this point enlarged to include not only strict construction of criminal statutes as a principle of common law, but also the need to avoid collision with the constitutionally protected right of privacy between persons having an intimate relationship. See pages A73-A77 of the appellant's appendix and addendum.

The second motion asked for new trial, because of inappropriate severance of trial between the charges of violating a domestic abuse no-contact order from the charges of domestic assault. See pages A77-A78 of the appendix hereof.

The third motion sought a new trial on grounds that the district court did not give ample instructions on criminal intent. See pages A78-A80 of the appendix hereof.

The fourth motion sought a new trial because the district court did not allow counsel for the accused to argue that the jury is the judge of the law and the facts, and should in this case exercise its inherent right to find the accused not guilty. See pages A80-A84 of the appendix hereof.

The fifth motion sought leniency in sentencing on grounds that there was no actual or claimed victim to support charges of violating a domestic abuse no-contact order, and that the main felony-enhancing conviction within ten years was secured by criminal acts of agents of the local battered women's center but was groundless in fact since it entailed a voluntary sexual encounter between husband and wife. See pages A84-A85 of the appendix hereof.

Despite dramatic testimony and spirited argument, showing that Mr. Samuelson had victimized nobody, but was himself a victim of courthouse politics, a grievous sentence was imposed, as if he were a threat of public safety, disallowing even credit for time served over thirteen months in jail: Mr. Samuelson was sent to an additional term in prison for five years and five days. See the Transcript, Vol. III, pp. 440-564 (January 4, 2011). The State will not deny that Mr. Samuelson was shipped off the next day before he could enjoy a customary opportunity to say good-bye to his children. He now lingers at Bayport.

4. The telling proof on this record that the State had maliciously prosecuted Mr. Samuelson for domestic assault over many months came the day after sentencing, when the State filed a dismissal of the charges of domestic assault (No. 31-CR-09-3704) which was groundless, as appears unmistakably in the testimony of Jennifer Bardine hereinabove quoted and referenced on pages 13-16 of this submission. The State admitted lack of evidence, then added in the dismissal a dubious reference to a supposed "recantation" by the victim. See pages A86 of the

appendix hereof (January 5, 2011). In fact, Jennifer had tried to tell public officers of Itasca County that no crime had been committed, but nobody listened to her or took her seriously. At sentencing she testified as follows:

> "Q. Did you want to tell public authorities in this county that you were not a victim?
>
> "A. Yes.
>
> "Q. When did you make these attempts? Give us an approximate time frame.
>
> "A. I would say maybe January through March [2010] or so." -- Transcript, Vol. III, p. 512 (January 4, 2011).

The prosecutor in this case was aware of Jennifer's testimony on August 31, when, on November 29, 2010, he asked for a separate trial on charges of violating a domestic abuse no-contact order (31-CR-10-169), so as to keep from the jury information concerning the prosecution for domestic assault (No. 31-CR-09-3704) on the which domestic abuse no-contact order was premised. See pages A6-A10 of the appellant's appendix and addendum (November 30, 2009). While Jennifer was trying to explain what really happened, the State turned a deaf ear. She "recanted" nothing, because, as the State well knew at the time of the dismissal (No. 31-CR-09-3704), she had never been harmed and had never made a complaint.

5. This timely appeal followed. See pages A87-A91 of the appellant's appendix and addendum.

ARGUMENT CONCERNING THE MERITS ON APPEAL

A. This prosecution under Section 518B.01, Subd. 22, of Minnesota Statutes, covering events before August 1, 2010, must be dismissed, because the language, from which authority to issue no-contact orders might perhaps be inferred, is unconstitutionally vague. This prosecution (31-CR-10-169) was commenced under Section 518B.01, Subd. 22, of Minnesota Statutes, because it concerned events allegedly taking place between and including December 2 and 20, 2009. Section 518B.01, Subd. 22, was repealed as of August 1, 2010, by operation of Sections 13-15 of Chapter 299, Minnesota Laws of 2010. The effect of this repeal would normally have been to suspend this prosecution, as can be seen from *State v. Coolidge*, 282 N. W. 2d 511 at 514 (Minn. 1979). But said Sections 13-15 contain a saving clause which also enacts Section 609.75 of Minnesota Statutes, thereby preserving all prosecutions under Section 518B.01, Subd. 22. Therefore, the conviction below is not abated under *Coolidge*, 282 N. W. 2d at 524. The new Section 609.75 contains some cosmetic changes, but is otherwise very similar to the old Section 518B.01, Subd. 22.

However, in proceedings up to June 28, 2011, **Judge Casey J. Christian** examined the language in the said Section 609.75, purporting to authorize issuance of domestic abuse no-contact orders, which have long been issued abusively in the State of Minnesota. In **State of Minnesota v. Keith Lee Kelling, No. 74-CR-11-254 on the docket of the Steele County District Court**, Judge Christian denied a

motion for a domestic abuse no-contact order, on grounds that the language purporting to authorize issuance of such orders is unconstitutionally vague**. His opinion is reproduced on pages B2-B10 of the appendix hereof.**

Battered women's centers routinely demand such orders or pressure the county attorneys to seek them, and in such practice the circumstances of individual cases are seldom given much thought. Under the chilling impact of political correctness, these organizations have been allowed to run wild upon on an uproar of our time over domestic violence. They have become notorious for government-sponsored misandry or hatred of men, based on a cunning concoction that men are brutes responsible for nearly all episodes of domestic violence. The origins and magnitude of this thought-stopping falsehood are described in an impressive corpus of literature which began with the work of bright university women holding doctorates. These scholars discovered the immense fraud underlying this energetic propaganda.

Among many responsible works in this growing field of contemporary literature is a book by Philip W. Cook, *Abused Men: the Hidden Side of Domestic Violence*, Praeger, West Port (CN), 1997. See especially his comments on pages 121-122 concerning Erin Pizzey, a British subject who founded the first battered women's center in the world, then discovered the other side of the story, and now denounces the excesses of the movement she started. Minnesota has produced an important author in this field: Thomas James, *Domestic Violence: the 12 Things*

You Aren't Supposed to Know, Aventine Press, Chula Vista (CA), 2003. There is also an internet-accessible article by Professor Linda Kelly Hill, *Disabusing the Definition of Domestic Violence: How Women Batter Men and the Role of the Feminist State,* 30 Florida State University Law Review 791 (2004). The undersigned has had the pleasure of meeting or corresponding with a number of these scholars, both men and women, and he attests to their good character and high intelligence. Many in public and private life are so intimidated by the facts that they hide their heads in the sand, as illustrated by the now conveniently buried case of William Hageman et al. v. Rick Stanek, No. A03-2045 in the office of the Clerk of Appellate Courts, although the actual papers of record, including a huge body of sociological research then and there offered for judicial notice, should be available in the Minnesota State Law Library. An excellent internet-accessible, frequently-updated bibliography of the astonishingly large corpus of literature, including large empirical studies and significant commentaries, is found on the website of Professor Martin S. Fiebert, whose work can easily be accessed through Google.

In the opinion of the undersigned, the best **introductory** article is by Professor Murray Strauss, published as Chapter 4 entitled "Physical Assaults by Wives: A Major Social Problem," on pages 67-87 of Richard J. Gelles and Donileen Loseka (eds.), *Current Controversies on Family Violence*, Sage Publications, Newbury Park (CA), 1993, which explains and analyzes the meaning of confidentially

gathered, but professionally recorded empirical data concerning over 8,000 households. The sample was so large that statistical significance was easily achieved. For those who are willfully ignorant, even the gods are impotent, but **the best inferences from the now available and inescapable facts are that, among cohabiting couples in the United States, women assault men as often as men assault women, although such assaults are not necessarily the most injurious antagonisms between the sexes, and that domestic violence is more frequent than we thought, perhaps affecting one out of every four or five households every year.**

While this problem should not be minimized, neither should it become a political gimmick for individuals with personal axes to grind. It must be approached with disciplined sympathy, as happened about twenty years after the repeal of the 18th Amendment when we awakened to the reality that we had more alcoholics than we could hide in our closets. What a tragedy it would have been if we had been misled by unreasoning fanatics into believing that alcoholism was a problem of men or a problem of women! The same holds for domestic violence.

One of our pathetic responses to domestic violence, punctuated by mean-spirited lies about men in legislative debates, has been the public funding of battered women's centers. The evil consequences of these misguided ventures have been worse than we ever dared to anticipate, and **this appeal illustrates the kind of criminal activity against the administration of public justice** which these

centers can generate, but prosecutors deliberately ignore. The current proceedings against Mr. Samuelson has its genesis in witness tampering and attempted suborning of perjury by battered women's advocates, which are described in the authenticated and confirmed affidavit of Kelli Samuelson, quoted in important part on pages 9-10 of this submission, and it was engineered by willful indifference to, and active camouflage of the known truth explained in open court in the testimony of Jennifer Bardine as quoted on pages 13-17 hereof. The prosecution against Mr. Samuelson was pursued not to promote civilized order, but to discredit an innocent man as way of concealing dark secrets of a courthouse in northern Minnesota.

This appeal illustrates why domestic abuse no-contact orders are dangerous instruments of tyranny. It remains to be seen whether this appeal induces judicial appreciation of this melancholy reality, or the public scandal in this case is brushed under the rug. But if Mr. Samuelson is left to suffer in these circumstances, the reputation of public justice in Minnesota will suffer also.

In any event, **this appeal illustrates why Judge Christian in Steele County was right in his broad and sweeping condemnation of domestic abuse no-contact orders**, -- broader and more sweeping that the undersigned dared to argue in the oppressive ambiance of Itasca County. **The undersigned cannot improve on the logic of Judge Christian, which he can only adopt with admiration as an argument in behalf of Mr. Samuelson: the language purporting to authorize issuance of a domestic abuse no-contact order in Section 609.75 of Minnesota**

Statutes is unconstitutionally vague. Therefore, any conviction for disobedience of such an order is a nullity. The corresponding language in Section 518B.01, Subd. 22, of Minnesota Statutes is even worse, because that provision merely defines what domestic abuse no-contact order is, but does not in express words authorize issuance. **A fortiori, a no-contact order issued, and any conviction for disobedience of such an order under the Domestic Abuse Act as it stood before August 1, 2010, is unconstitutional, and must be set aside.** Mr. Samuelson must be set free from prison to which he should never have been sent.

The undersigned raises this issue for the first time on appeal, because Judge Christian's holding was not handed down until six months after the final sentence and judgment in this case, and he may do so here in keeping with the observations of the Minnesota Supreme Court in *State v. Jones*, 516 N. W. 2d 545 at 549 fn. 5 (1994) where the following language was quoted with approval: "In exceptional cases, especially in criminal cases, appellate court, in the public interest, may of their own motion notice errors to which no exception has been made, . . . if they . . . seriously affect the fitness, integrity, or public reputation of judicial proceedings." -- *United States v. Atkinson*, 297 U. S. 157 at 160 (1935).

B. Under the common law, Section 518B.01, Subd. 22, of Minnesota Statutes must be strictly construed, so as to authorize no order or conviction unless there should be an actual or claimed victim, of which there was none in this case.

On this record Judge Maturi advised us that Section 518B.01, Subd. 22, of Minnesota Statutes was unambiguous on the authority of the court to issue domestic abuse no-contact order whenever a charge involved domestic abuse. Hence, he held, there is no problem of strict construction of criminal statutes according to the common law. Yet it is an undeniable fact that Section 518B.01, Subd. 22, contains no language which actually authorizes a district court to issue one of these writs, for the power is left entirely to implication, nor does the provision include any statutory guidance whatever on when such an order as an order may be appropriate or inappropriate.

Whenever as here there are ambiguities in criminal statutes, those ambiguities must be resolved by construction strictly against the State and liberally in favor of the accused. See, e. g., *State v. Haas*, 259 N. W. 2d 118 at 121 (Minn. 1968); *Graves v. Meland*, 264 N. W. 2d 401 at 404-405 (Minn. 1978); *State v. Olson*, 325 N. W. 2d 13 at 19 (Minn. 1982); *State v. Soto*, 378 N. W. 2d 625 at 627-628 (Minn. 1985); and *State v. Colvin*, 645 N. W. 2d 449 at 452 (Minn. 2002). This prudent rule of the common law lessens the risk that an ambiguous criminal statute may be found prima facie unconstitutional, and thus null and void as if never enacted: the rule accomplishes this objective by narrowing the circumstances in which the statute may be deemed applicable. The common law includes a number of such prophylactic rules, as in *Chanhassen v. Chanhassen Estates*, 342 N. W. 2d 335 at 340 (Minn. 1984), where strict construction of land use regulations was

mandated whenever ambiguity appears, lest it be necessary to consider whether the provision should be struck down altogether as too intrusive upon the use of private property without due process of law.

Let it then be said that, **since the Domestic Abuse Act was obviously meant to protect victims of domestic abuse, including domestic assault, and since circumstances of proper issuance are not clearly delineated, the statute must be strictly construed to allow issuance and conviction for disobedience of a no-contact order only when there is an actual or claimed victim who complains.** This reading is sensible and dictated by sound principle: it avoids the larger constitutional question, yet demands reversal of the conviction in this case, because Mme Bardine never complained, and insisted she was never battered or threatened or otherwise harmed by Mr. Samuelson. An inquiry remaining will then be what on earth the prosecutor in Itasca County was doing, acting like a white knight to protect a lady fair who wanted him to mind his own business and leave her alone.

The attention of the panel entertaining this appeal is called to the first of the five motions made by counsel for the accused in the district court, and noticed for November 29, 2010, as such first motion appears on pages A60-A65 of the appendix hereof for a fuller exposition of this argument.

C. In keeping with the fundamental law of the United States and the State of Minnesota, Section 518B, Subd. 22, of Minnesota Statutes must be construed strictly so as to avoid collision with the recognized constitutional

right of privacy between persons having an intimate relationship, and under such construction no conviction can be sustained in this case, because, read in this light, a no-contact order may not be issued to interrupt a mutual and voluntary relationship between man and woman as lovers, at least without an actual or claimed victim who complains or other equally serious circumstances which are not found on the record of this cause.

During the testimony at trial, Jennifer Bardine answered affirmatively the questions of the prosecutor and counsel for the accused on her intimate relationship with Mr. Samuelson, so there is no dispute about this fact on this record. See, e. g., the Transcript, Vol. III, pp. 312 and 320 (November 30, 2011). So the question is whether, under the Domestic Abuse Act, a no-contact order may be issued to break up or obstruct an intimate relationship. The undersigned concedes that, in some circumstances which a fertile imagination may furnish, such a court order may be issued, but maintains that these situations are limited, and do not include the kind of circumstances such as we have here. Hence, the conviction below must be reversed on appeal. The undersigned substantially repeats here an argument made in support of the first post-verdict motion made in the district court, reproduced on pages A76-A77 of the appellant's appendix and addendum:

If possible, a statute must be read so as to avoid an interpretation which is unconstitutional or constitutionally doubtful. See, e. g., *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 301 U. S. 1 at 30 (1937):

"We have repeatedly held that, as between two possible interpretations of the statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to save the act. Even to avoid serious doubt, the rule is the same." Likewise, a statute must be construed so as not to apply in such a way that it yields a particular result which is unconstitutional or constitutionally doubtful. See, e. g., *Holy Trinity Church v. United States*, 143 U. S. 457 at 459-461 (1892). Numerous decisions to the same effect, or at least very similar in tenor and spirit, have been handed down by the appellate courts of Minnesota. There are implicit constitutional restrictions imposed on the application of statutes to concrete particulars.

There is a currently recognized and regularly enforced constitutional right of privacy between persons in intimate relationships, whether married or unmarried. See, e. g., *Griswold v. Connecticut*, 381 U. S. 479 (1965), and *Eisenstadt v. Baird*, 405 U. S. 438 (1972), which is ultimately rooted in the comments of Justice Louis Brandeis in *Olmstead v. United States*, 277 U. S. 438 at 478 (1928), in these words: **"The makers of our Constitution understood to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, against the government, the right to be let alone -- the most comprehensive of rights,**

and the right most valued among civilized men." The appellate courts of Minnesota have handed down a formidable body of case law which recognizes a substantial right of privacy, free of intrusion by public authority or by private persons. The classic, pioneering case is *Thiede v. Scandia Valley*, 14 N. W. 2d 400 (Minn. 1944). See also *Price v. Sheppard*, 239 N. W. 2d 905 (Minn. 1976), and *Elli Lake v. Walmart Stores*, 582 N. W. 2d 231 (Minn. 1998). The State may intrude upon the sacred right of privacy only for serious and pressing reasons, not including political pressures generated by an over-pampered and too-powerful organization such as the advocates of family peace in Grand Rapids, or excessive solicitude for prosecutorial demands unrelated to public safety. If there has evidently been domestic violence, criminal charges have been properly filed, and a person injured sincerely seeks protection without selfish ulterior motives, a domestic abuse no-contact order to assure such protection may constitutionally be issued upon impartial inquiry. **But if a domestic abuse no-contact order has been issued to cut off or obstruct such an intimate relationship even though there has been no domestic violence or other like cause, or when neither person wants or needs such an order for personal protection, then there has been a breach of such constitutional right to privacy.** Therefore, whatever judicial authority be vested thereby, **Section 518B.01, Subd. 22, of Minnesota Statutes must be construed not to apply or to authorize an order in any case such as we have here.** Hence, in light of the uncontradicted and unimpeached testimony of

Jennifer Bardine offered into evidence in the first motion noticed for hearing and heard on November 29, 2010, and the testimony actually given by her on August 31 and November 30, 2020, and again on January 4, 2011, the accused is entitled to a judgment of acquittal in the cause numbered 31-CR-10-169 in the district court.

D. The district court committed prejudicial error in ordering, over protest of the accused, separate trial of the charges of violating a domestic abuse no-contact order, wholly apart from the charges of domestic assault in consideration of which the no-contact was issued.

If at the eve of trial by jury the prosecutor had honest reason to believe that Jennifer had been beaten up or threatened by the appellant, he might have justifiably insisted that the charges of domestic assault and the charges of violating a domestic abuse no-contact order should be tried together. And so manifestly interrelated are the two cases, so obviously is violation of a domestic abuse no-act order related to the underlying domestic assault, that the greatest defense lawyer in the world could not have prevented joint trial of the two complaints in this case (Ns. 31-CR-09-3704 and 31-CR-10-169). See, e. g., *State v. Kendell*, 723 N. W. 2d 597 (Minn. 2006), and *State v. Ross*, 732 N. W. d 274 (Minn. 2007).

But the prosecutor in Itasca County knew that his case against Mr. Samuelson for assaulting Jennifer was utterly unfounded. If per chance he actually believed that Jennifer had been battered or threatened on November 25, 2009, all such illusions were shattered irreparably by the end of business on August 31, 2010.

Jennifer spoke too plainly to be misunderstood, and counsel for the State was powerless on cross-examination. See the Transcript, Vol. II, pp. 64-70 (August 31, 2010). Whatever bogus cause counsel for the State may have had before summer's end, it evaporated when Jennifer spoke with obvious candor in his presence on the last day of August last year. From and after that point, counsel knew that he was prosecuting an innocent man for domestic assault.

But the undersigned reminds this Court of the ethical prohibition in Rule 3.8 of the Minnesota Rules of Professional Conduct: **no public prosecutor may ethically continue a prosecution once he becomes aware that his probable cause has definitively evaporated.** If criminal proceedings have been commenced in good faith but cast in doubt by subsequent events, a prosecutor may temporarily maintain the complaint of record, and investigate, as recently occurred in New York in the prosecution of Dominique Strauss-Kahn, who, as was later learned, had been accused of rape by a woman whose credibility was unexpectedly and seriously impeached by the discovered lies she told concerning her background, her connections with drug trafficking, and her desire to reach into the deep pockets of the accused; but, **once probable cause irretrievably disappears, the prosecutor must dismiss the accusation,** as has been done in the case of Monsieur Strauss-Kahn, **nor may he maintain the complaint to oppress the accused, or to accommodate pressures of courthouse politics**. Cyrus Vance Jr. acted ethically,

and is to be commended. The prosecutor in Itasca County in this case did not act ethically, nor can any excuse be pleaded in his behalf.

If, in consideration of Jennifer's unshakable testimony under oath and in open court as counsel for the State heard it with his own ears -- the same quoted hereinabove on pages 13-16 of this submission --, the prosecutor had then and there done his duty and dismissed the complaint charging domestic assault for want of evidence, the charges of violating a domestic abuse no-contact order would have collapsed then and there on account of political imbecility. Not even the perverse theory on which this case went to trial on November 30 and December 1, 2010 -- as explained by reference to this record on page 21 of this submission --, could have saved such a farce. If counsel had followed the rules of legal ethics, Mr. Samuelson would not be in prison, public justice would not be embarrassed, and this appeal would not have to be argued.

On this basis alone, a reversal of the judgment below is requisite.

E. The district court committed prejudicial error in giving improper instructions to the jury on the question of criminal intent.

The perverse theory on which this case went to trial -- see page 21 of this submission -- is that the accused was guilty of a felony, if Mr. Samuelson knew of the domestic abuse no-contact order, yet contacted Mme Bardine. The district court held that nothing else mattered under what he called "the law." It did not matter that Jennifer was not harmed, never wanted or needed and was inconvenienced by

the no-contact order, was never consulted, was in deep distress and sought help, and that Mr. Samuelson merely tried to assist his lady with urgent needs. Where did such thoughts come from? What has happened to legal education?

The attention of this Court is called to the argument in support of the third motion noticed by the undersigned for argument on January 4, 2011, as reproduced on pages A78-A80 of the appellant's appendix and addendum.

The classic case is *Morisette v. United States*, 342 U. S. at 246 (1952): **For any public offense subject to infamous punishment, -- especially for any felony, an intent to do what the statute actually prohibits is essential to a conviction, and must be included in the instructions to the jury; otherwise, any conviction for such crime must be set aside.** This undeniable principle is based on centuries of wisdom and experience which have been embedded into the common law of every State, and the fundamental law of the United States and Minnesota.

Under the Domestic Abuse Act, what was Mr. Samuelson forbidden from doing? Was it contacting Jennifer, or disobeying Judge Maturi? This question is the crux of the debate here.

The the Domestic Abuse Act, as applicable to this case, prohibited intentional disobedience of Judge Maturi, -- not intentionally contacting Jennifer at her request for help, but contumacious defiance of the order issued by the judge, i. e., defying the authority of the court.

It is an old and salutary rule that statutes dealing with the same subject should be read together so we may see how related provisions shed light on each other, avoid redundancy, and eliminate contradiction. Hence, in the classic case of *Gibbons v. Ogden*, 9 Wheaton 1 at 190-191 (U. S. 1819), the third clause in Article I, Section 8 was read together with the sixth clause in Article I, Section 9 of the United States Constitution. The former allows Congress to regulate commerce general, but the latter prohibits Congress from regulating commerce in a certain way. The latter was read as an exception to the former, thus avoiding internal contradiction, but also as shedding light on the power of Congress. The extent of a power is defined by its limits. The no preference clause concerns navigation yet qualifies the power to regulate commerce, from whence it was correctly inferred that the power to regulate commerce includes authority to prescribe rules for navigation.

The same logic governs the comparison of Section 588.20(4) with Section 518B.01, Subd. 22, of Minnesota Statutes.

The Section 588.20(4) concerns criminal contempt in general, which is about vindicating the authority of the court issuing an order. Cf. *Peterson v. Peterson*, 153 N. W. 2d 825 (Minn. 1967). Criminal contempt in general requires **intentional disobedience of the judge's order, an affront to the court's authority.**

Section 518B.01, Subd. 22, touches upon a special kind of criminal contempt under the Domestic Abuse Act. The law of criminal contempt in general sheds

light on criminal contempt in this special case. The requisite intent for violation of a domestic abuse no-contact order is the requisite intent for criminal contempt in general. Therefore, **the requisite intent in this case is that Mr. Samuelson must have consciously meant to defy Judge Maturi's order, and affront the authority of Judge Maturi's court.** Such an instruction would have been due in a prosecution under Section 588.20(4) of Minnesota Statutes, and is also due under a prosecution under the Domestic Abuse Act. It would have been much easier for the undersigned to argue to the jury that Mr. Samuelson was merely trying to help Jennifer, and had no thought of an affront to the authority of Judge Maturi. Trying to help someone in distress is not in and of itself rebellion against government.

In a case of this kind, the jury must decide whether, by helping a lady in distress, Mr. Samuelson really intended to affront the authority of the district court. Therefore, the instruction given by Judge Maturi on criminal intent was prejudicial error. A reversal is on that account due.

F. The district court unconstitutionally denied the accused a full opportunity to defend himself by excluding testimony from both Kelli Samuelson and Jennifer Bardine.

This point was argued extensively in the second motion noticed for August 31, the motion noticed for November 1, the third and fourth motions noticed for November 29, 2010, and the fifth motion noticed for January 4, 2011, these respectively reproduced on pages A32-A36, A53-A55, A60-A65, A66-A68, A84-

A85 of the appendix hereof. These several motions, all denied, are cumulative upon the arguments made hereinabove in parts B, C, and D hereof, -- pages 30-38 of this submission. In other words, Mr. Samuelson could not fairly defend himself, unless he could show, in light of the testimony of Kelli Samuelson, as set forth on pages 9-10 of this submission, and the testimony of Jennifer Bardine, as set forth on pages 13-16 of this submission, that he was guilty of no enhancing felony within ten years, that he was guilty of no domestic assault, and that he had been kind to the women in his life.

In *Brady v. Maryland*, 373 U. S. 83 at 86 (1963), it was noted that the 14th Amendment forbids prosecutorial use of knowingly false evidence in criminal proceedings. Does it not also forbid deliberate and misleading omissions which, in order to gain unfair advantage, falsely portray the accused as an evil character?

In *Washington v. Texas*, 388 U. S. 14 (1967); *Chambers v. Mississippi*, 410 U. S. 284 (1973); and *Rock v. Arkansas*,483 U. S. 44 (1987), it was held that the 14th Amendment mandates an opportunity for the accused to vindicate himself, even if exclusionary rules of evidence must in some degree be relaxed to allow the defense. In this case, the prosecutor in Itasca County, with the approval of the district court, excluded all evidence showing that the accused is a gentleman, and not the character which the State had portrayed him to be. How can a man defend himself if he is denied to opportunity to present evidence which shows his good character and innocence of victimization which the accusations themselves, on the

first page of each document, say he caused, and the crimes charged naturally presuppose?

Having been denied an opportunity to show his innocent past and intent, his trial was a masquerade. For this further reason, a reversal of the judgment below is required.

G. The district court wrongfully forbade counsel for the accused permission to advise the jury that they were the judge of the law and the facts, and that they should, in the extraordinary circumstances of this case, exercise their inherent right to find the accused not guilty.

The undersigned pleaded this point in detail, by reference to undeniable and impeccable Anglo-American legal tradition in the fourth motion noticed for January 4, 2011, as appears on pages A80-A84 of the appellant's appendix and addendum and in the Transcript, Vol. III, pp. 449-456 (January 4, 2011), and he offers these arguments again on this appeal.

The term "jury nullification" is a misnomer, because the jury never actually obstructs or suspends the law when it returns a verdict of not guilty in a criminal case. In fact, **a verdict of not guilty in a criminal case is always the law**, greater in finality than a judgment of the United States Supreme Court, and it is more powerful than absolutist Kings. It was a verdict of not guilty, seemingly against the instructions of the court, in the *Seven Bishops Case*, 12 Howell's St. Tr. 183 (K. B. 1688), which triggered the Glorious Revolution whereby the Crown was transferred

from James II to William and Mary. **The right of a jury to return an irreversible verdict of not guilty in a criminal case is embedded the intended meaning of our constitutional guarantees of jury trial in criminal cases.** And to deny this right is like saying that George Washington was guilty of treason when he took command of the continental army near Boston in 1775. Actually, Washington then did exactly what the 61st article of the Magna Carta of King John allowed Englishmen to do in the kind of situation in which the father of our country found himself. Let doubters verify by reading the venerable document for themselves.

Many members of the judicial fraternity are terrified by this prerogative which makes trial by jury a palladium of liberty, but this prerogative cannot be abolished by judicial pronouncement. If any court were to say that a jury is not judge of the law and the facts in a criminal case, it would be as if the court were to say that the governor may not veto a bill passed by the legislature. The jury and the governor would still have the prerogatives vested by law in them and the judges saying otherwise would merely blight the reputation of the bench..

The taboo against express recognition of this right of a jury in a criminal case was debunked in the opinion of Judge David Bazelon in *United States v. Doherty*, 473 F. 2d 1113 at 1138-1144 (D. C. Cir. 1972). When Judge Bazelon expounded this truth, his standing as a statesman of the law was much enhanced.

The right of a jury to find the accused not guilty in any criminal case is important because of the indelible and timeless truth which is preserved in the

venerable maxim: **"Cessante ratione legis, cessat et ipsa lex," -- for every rule of law, there is a reason which determines its scope of application and exceptions.** This principle is expressed in breathtaking prose in the first book of Blackstone, on page 91. If the rationale for a rule applies in a certain situation, then, even if imperfectly formulated by a particular judge, the rule should apply in a case under consideration. But if the just purpose of the rule is not served in certain circumstances, then, however framed by a particular judge, the rule does not apply to a case under consideration. This principle is indispensable to the civilized jurisprudence in every nation. It prevails in both civil law and common law. **When it is said in a criminal case that the jury is judge of the law as well as the facts, the meaning is not that the jury may disregard the instructions of the court with impunity, but that the jury may always determine that the reasons for the rules given by the court do not apply to a criminal defendant in a particular case. And counsel for the accused is free to argue to the jury that the reasons for the rules given by the court do not apply in the circumstances.** This kind of argument can be effective and is necessary only in rare cases, which is why good criminal lawyers use it only in abnormal situations, and why frank recognition of the jury's prerogative is not a threat to the rule of law. In fact, salutary use of this prerogative will do more than all else to prevent oppression and uphold the reputation of the law, especially as here where public authority has abused its powers in a way which shocks conscience. And there can be no doubt that, in

Minnesota, prosecutors and judges abuse their powers more often than juries abuse their rights.

If the jury in this case had not been kept in the dark about the facts, it would have been easier for them to discern whether the just purpose of the rules given them by the court really prevailed in the case pending before them; but, in any event, the jury could find the accused not guilty, and the counsel for the accused could remind them of it. For this reason the forbidding instructions of the district court to counsel for the accused amounted to prejudicial error.

For this further reason, a new trial is warranted in this case.

H. It needs to be added here, in closing of argument on the merits of this appeal, that the sentence imposed by the presiding judge in Itasca County was excessive and unreasonable. See the proceedings recorded in the Transcript, Vol. III, pp. 539-564 (January 4, 2011). Mr. Samuelson and his counsel made their protests by allocution, whereupon **the prisoner was sentenced to another five years and five days, with no credit for time served over thirteen months, as punishment for trying to help a lady in distress, based on domestic assault which, as the district court well knew, never happened, and an aggravation which, as the district court well knew, also never happened.** Mr. Samuelson was subjected to this excessive punishment based on a hyper-technical conviction built upon obtuse fictions, yet the presiding judge said (as recorded on page 560) that

Mr. Samuelson did not "get it." The undersigned, frankly, wonders whether somebody else perhaps did not "get it" in this case.

Some citizens naturally wonder whether Mr. Samuelson was really punished for exposing unpleasant facts of courthouse politics. The punishment was, frankly, vindictive, -- what discerning and generous minds might well suppose was overcompensation for a guilty judicial conscience.

The undersigned wonders whether, in emerging from our recent state budget crisis, our governor and our legislative leaders in the house and senate would approve of such a waste of resources to punish a man who, as we all know, committed no serious moral wrong.

Even if there was no "technical" error in the sentence imposed under current guidelines, the incarceration imposed in this case was excessively severe and prolonged to be constitutionally sustainable under principles of *Weems v. United States*, 217 U. S. 349 at 368-382 (1910), based on the 8th Amendment which has since, in numerous cases, been applied to the several States through the 14th Amendment.

The sentence here was pronounced by an "experienced" judge whose original appointment was justifiably praised by all. Yet this case causes one country lawyer to wonder whether, if popular election of judges is inappropriate as some people are saying these days, the time has not come for serious consideration of a constitutional amendment which would permit judicial appointments by the

governor with the advice of a privy council for one substantial but limited term, so that, subject to necessary qualifications and exceptions, no judge could serve more than, say, ten or twelve years. History has taught us, after all, the melancholy truth that only a very few human beings have ever been ennobled by significant power over an extended period of time.

CONCLUSIONS

1. The conviction below must be reversed, because the language in the Domestic Abuse Act, from which authority to issue no-contact orders might be inferred, is unconstitutionally vague.

2. The conviction below must be reversed, because the pertinent language in the Domestic Abuse Act, as a criminal statute, must be strictly construed in keeping with the common law.

3. The conviction below must be reversed, because the pertinent language in the Domestic Abuse Act must be construed to avoid collision with the constitutional right of privacy between men and women in intimate relationships.

4. The conviction below must be reversed, because the district court improperly ordered severance of trial on charges of violating a no-contact order issued under the Domestic Abuse Act, from trial on charges of domestic assault.

5. The conviction below must be reversed, because the district court improperly instructed the jury on criminal intent.

6. The conviction below must be reversed, because the district court deprived the accused of his constitutional right to defend himself.

7. The conviction below must be reversed, because the district court did not allow the jury its constitutional prerogative to be judge of the law as well as the facts.

8. Even if there was no technical error in sentencing under the guidelines, the district court imposed a grievous, outrageous, and unconstitutional sentence to punish what the presiding judge well knew entailed no serious moral wrong.

Respectfully submitted,

Dated: **August 26, 2011** **/s/ John Remington Graham**

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CERTIFICATE OF COMPLIANCE

In reference to Rule 132.01, Subd. 4, of the Minnesota Rules of Civil Appellate Procure so far as applicable to criminal appeals, the undersigned hereby certified as an officer of the court that the foregoing submission, including this certificate, but excluding the tables, appendix, and addendum, contains about 12,500 words. The foregoing submission has been prepared in 14-point Times New Roman Font.

August 26, 2011 **/s/ John Remington Graham**

Dated:_____ _____

JOHN REMINGTON GRAHAM (#3664X)