STATE OF MINNESOTA
IN COURT OF APPEALS

In the Matter of:

Court of Appeals No.: **A11-1797**

Peter Stephenson, a/k/a Peter Rickmyer

Appellant,

v

Tom Roy, in his official capacity as Commissioner of Corrections, State of Minnesota,

Respondent.

APPELLANT'S BRIEF

& ADDENDUM

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STATEMENT OF LEGAL ISSUES

I. Is the revocation process which all parolees are due deficient?

District Court: Did not address the issue.

Most apposite law: *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972); *State ex rel Taylor*, 273 N.W.2d 612 (Minn. 1978); *Carillo v. Fabian* 701 N.W.2d 763, 768 (Minn. 2005); Minn. Stat. §244.05, Subd. 2; *State v. Richardson*, 670 N.W.2d 267 (Minn. 2003).

II. Should Rickmyer's petition for habeas relief have been granted?

District Court: Denied the petition for habeas corpus.

Most apposite law: Minn. Stat. §241.01, subd. 3a(b); *DuBose v. Kelly*, 187 F.3d 1999 (8th Cir. 1999) *Henderson v. Fabian*, 2007 Minn. App. Unpub. LEXIS 1126, *5-6 (Minn. Ct. App. 2007) *Wolff v. McDonell*, 418 U.S. 539, 579 (1974) (civil rights actions); *Jackson v. Procunier*, 789 F.2d 307, 311 (5th Cir. 1986) *Turner v. Safley*, 482 U.S. 78, 79 (1987).

III. Should Appellant have been granted an evidentiary hearing on his habeas corpus petition before the petition was denied?

District court: Denied Rickmyer's request for evidentiary hearing.

Most apposite law: *State ex rel. Roy v. Tahash*, 152 N.W.2d 301, 305 (Minn. 1965).

STATEMENT OF THE CASE

Appellant Peter Rickmyer (whose name in the corrections system is Stephenson, "Rickmyer") was released by the Department of Corrections from prison (hereinafter "parole"). At the time his parole was revoked, Will McDonald was serving as Appellant's probation officer, monitoring his parole.

When Appellant sued out a *pro se* civil case against certain defendants, some of them contacted McDonald, requesting that he use his government authority to protect them from civil liability (27-cv-10-3378, the "10-lawsuit" (Case History at A:181)).[1] Some of the defendants filed a Rule 9 frivolous litigator motion. While the motion was pending, by April 1, 2010, Rickmyer's Parole Agent gave him a verbal instruction not to file any more legal documents. (Add:3).

Even though Judge Belois had already found that Rickmyer's civil case was not frivolous, the outcome of that case was a May 17, 2010 Order of the Honorable Robert A. Blaeser, which required that,

> Until further order of this Court, Plaintiff may not **file** any **new cases** unless an attorney licensed to practice law in Minnesota has signed the **complaint** and the **Chief Judge** or the Presiding Judge of Civil has approved. The Clerk of Court is instructed to not accept any filings from Plaintiff unless these conditions are met.

(Order at Add:1-15, see Add:2) (emphasis added) (hereinafter the "2010-Order").

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[1] The undersigned did not represent Rickmyer at the time of the 10-case, but began to represent him in that action in late March 2011, when he was facing the contempt action.

On July 29, 2010, Parole Agent McDonald verbally instructed Rickmyer to inform him of any legal research of filings Rickmyer was working on and to inform the Agent of the name of the attorney that would be signing off on any documents. (Add:4).

In March 2011, Rickmyer had a process server serve the original 2010-Lawsuit complaint (not a new case) on one of the defendants in that 2010-Lawsuit: John Hoff. There is no evidence that Rickmyer *filed* any documents.

Hoff and another quickly contacted Agent McDonald. McDonald met with the Fourth Judicial District Judge from the 10-case *ex parte*. Parole Agent McDonald memorialized that ex parte communication in his chronological,

> ...Met with Judge Blaeser. He states that the Summons is not proper and will not be accepted.

(A:166, see 03/03/2011 entry entitled "Judicial Contact"). Quickly, the Johnny Northside blog was informed of this *ex parte* communication,

> Mr. Hoff, Judge Blaeser may be the better authority in this case. According to my conversation with the Judge, his order was clear that nothing can be filed without going through him.

(A:175, 03/03/2011 Note McDonald, Will). Compare the real text.[2]

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2 "Until further order of this Court, Plaintiff may not **file** any **new cases** unless an attorney licensed to practice law in Minnesota has signed the **complaint** and the **Chief Judge** or the Presiding Judge of Civil has approved. The Clerk of Court is instructed to not accept any filings from Plaintiff unless these conditions are met." (Add:2).

And Johnny Northside blogged about it,

> "When I was in court this morning, Will McDonald of HennCo. Corrections came and got my attention. He informed me that John does not need to respond to the regurgitated lawsuit, he doesn't need to answer, he doesn't need to do anything. Judge Blaeser is handling everything directly with the HennCo c/o Will McDonald."

(A:43). Indeed, the Department of Corrections based its arrest order for Rickmyer on the pre-hearing, *ex parte* judicial determination that the 2010-Order had been violated.

> The subject prepared legal documents and served [] them without being reviewed or signed by an attorney. Further, these legal documents were not reviewed by the Presiding Judge of Civil Court prior to service. <u>The subject did not follow the order of the court and therefore did not follow the directive of this Agent</u>.

(A:4) (emphasis added). The hearing on the (already decided) contempt action was set for March 23. And the revocation hearing conveniently set for March 24. It's clear to Rickmyer that it had already been decided that the Judge would find a violation of his order on March 23, paving the easy path to revocation on March 24.

Following the appearance of the undersigned in the 2010-Lawsuit (A:237), the filing of a limited appearance (challenging jurisdiction) (A:238), a motion to remove without cause or compel recusal (A:187), the District Judge who had issued the 2010-Order recused and the show cause hearing was cancelled (A:181).

Rickmyer filed a pre-hearing motion with the Department of Corrections challenging the revocation process, including that he was denied due process by not being afforded subpoena power. (Motion at A:7). The revocation hearing went forward in the Hennepin County jail. Because Corrections could no longer prove a violation of a court order, it changed its allegation mid-hearing, alleging Rickmyer had violated a verbal instruction of Agent McDonald. (HO decision, *infra*, appeal to DOC Hearings and Release Unit (HRU), A:210).

The Hearing Officer revoked Rickmyer's parole at the end of that hearing (and later issued a written order, Add:16). And Rickmyer was sent to the Department of Corrections, Lino Lakes Facility, located within Anoka County.

Rickmyer exhausted his administrative remedies by appealing his revocation to the Commissioner of the DOC. (A:210). That was denied without much comment. (Add:21).

Rickmyer first filed his *habeas* action in the Fourth Judicial District. He had already been accused of violating the 2010-Order, which was not limited to Hennepin County cases. Chief Judge Swenson approved an IFP application (finding the action not to be frivolous), approved the filing of the action, and it was assigned to the Honorable Susan N. Burke. Judge Burke quickly bifurcated the case, so that the habeas action could be filed in Anoka County. (Add:23). The rest of the case remains in the Fourth Judicial District. *Id.*

Rickmyer changed the caption to Anoka County, and signed a verified complaint, which was filed in the Tenth Judicial District. (A:242).

While he was incarcerated at Lino Lakes, Rickmyer's house in North Minneapolis was hit by a tornado. Rickmyer filed a motion for temporary restraining order, seeking immediate release to deal with the fallout of the tornado. The District Court denied Rickmyer's *ex parte* TRO and his TRO. (Add:31 and 36).

The Honorable Bethany A. Fountain-Lindberg issued an order to show cause to the Department of Corrections why a writ of *habeas corpus* should not issue. (Add:28). The Attorney General delegated the matter to the DOC. (6-2-11 Tr. p. 4, 9). The District Court ordered Hennepin County Attorney to appear, and it did. But at the first opportunity that agency sought to withdraw. (6-2-11 Tr. p. 29-30). Respectfully, Rickmyer believes the District Court first believed that Rickmyer was pursuing some relief from his *conviction*. That was never the case. Rickmyer was always seeking relief from the revocation of his parole.

The District Court held a hearing on June 2, 2011. (See 6-2-11 Tr.). The District Court thereafter denied Rickmyer's petition for habeas corpus with prejudice. (Add:46).

This timely appeal was filed.

FACT STATEMENT

The petition for writ of *habeas corpus* was verified by Rickmyer. Further, Rickmyer filed with the petition (later duplicated in the affidavit of his counsel, and his supplemental affidavits) the numerous exhibits cited within the body of the petition. The quotes to the Johnny Northside blog (Exhibit 1 at the revocation hearing) are found in backwards chronological order at A:19 through 164. The quotes from probation officers come from their internal "chronologicals," which were Exhibits 2 and 3 at the revocation hearing, found at A:165-174 and A:175-180. The footnotes are from the original complaint, except where [inserted in brackets] to signal that they were added for this Brief. Paragraphs not relevant to the habeas issue have been deleted for purposes of this Brief.

With only minor modifications, following is the fact statement from the petition, with citation to District Court documents:

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1a. Plaintiff **Peter Rickmyer** is a resident of Hennepin County, with a dwelling in Hennepin County, who was arrested in Hennepin County on or about March 9, 2011 by the Minnesota Department of Corrections (DOC), and who was detained in Hennepin County Adult Detention by the Hennepin County Sheriff...

1b. Plaintiff is imprisoned and restrained of liberty by the Minnesota Department of Corrections, Tom Roy, current Commissioner, currently at Lino Lakes Correctional Facility.[3]

1c. A writ of *habeas corpus* is the proper way to contest the revocation of supervised release.

1d. Plaintiff is not imprisoned by virtue of a final judicial judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of a judicial execution issued upon such judgment.

1e. Plaintiff is imprisoned by virtue of an arbitrarily-conducted and motivated proceeding that denied due process, and which was termed a supervised release revocation proceeding. The arbitrariness of this determination and denial of due process are further discussed below.

1f. Plaintiff has not been able to obtain a copy of the warrant for his arrest that was issued by the DOC. Plaintiff will [file other documents].

1g. Plaintiff's release date is June 6, 2011. []

1h. Plaintiff is currently subject to an Order dated May 17, 2010 signed in Hennepin County. []

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3 [Rickmyer was released from physical custody June 6, 2011 (Add:5), has remained on house arrest since that time (Add:7). Rickmyer was *not* on Intensive Supervised Release (ISR) at the point that he was arrested by the DOC (A:178). Since his release June 6, however, the DOC has told him that now he will remain on Intensive Supervised Release until his sentence expires in 2016 (A:250).]

1i. Plaintiff submits that this petition establishes a *prima facie* case for a writ of habeas corpus to be issued[].

2. **Joan Fabian['s]** successor is **Tom Roy**, the current Commissioner. The DOC operates a supervised release program, and a hearings program, and holds a purported "hearing" when an Agent requests the offender's release be revoked. The DOC also operates prisons, including the location where Plaintiff is currently imprisoned. []

18. Plaintiff was incarcerated in the DOC and released, initially on Intensive Supervised Release (ISR). The State of Minnesota no longer allows offenders to "live out" their entire sentence in the DOC.[4] Offenders are *required* to be released into the community where they are supervised by a government agent.

19. It is well-established law that a person on supervised released has a liberty interest in remaining out of prison, and not to be returned to prison without constitutional safeguards being followed.

20. It is well-established law that no person can be deprived of life, liberty, or property without due process of law. Plaintiff had a liberty interest in not being deprived of liberty without due process of law.

21. Plaintiff was arbitrarily deprived of his liberty as set forth below. In sum, the State took the arbitrary action of depriving Plaintiff of his liberty, not for

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4 [See Minn. Stat. §244.05, Subd. 1.]

some legitimate correctional reason, but to please the individual defendants in this case: Hoff, Browne, and Goodmundson.

22. Hoff, Browne and Goodmundson worked in concert with government officials to arbitrarily deprive Plaintiff of his liberty, also known as "joint action" and/or "meeting of the minds."

23. Until the individual defendants became interested in running Plaintiff out of their neighborhood and ultimately depriving him of his liberty, Plaintiff was living in the community, cognizant of his conditions of release.

24. Although there are certain standard and predictable terms of supervised release, there is not one standard set of conditions. The conditions do vary, depending on the circumstances and the individual at issue.

25. At various times herein, Hoff, McDonald, and Goodmundson have made inaccurate claims about what Rickmyer's conditions were, and then demanded that he follow the (inaccurate) condition. This was done with intent to harm Rickmyer, in the form of more and more restrictive conditions from his Agent,[5] or to prevent him from exercising First Amendment rights, and ultimately, with the intent of taking his liberty from him.

26. As set forth below, this was also done for the improper purpose of assisting certain defendants in litigation, improperly using a government agency to

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5 Will McDonald and/or then-agents.

gain an advantage in civil litigation, as well as to favor the complainers' own personal interests in those civil actions.

27. After being released, Plaintiff was required by the DOC to locate housing, and he did so - in the Jordan neighborhood, Minneapolis. Plaintiff has a right to reside in the community of his choice.

28. Each person who resides in the Jordan neighborhood is automatically a member of the Jordan Area Community Council (JACC), as long as they have attended one JACC-sponsored meeting in the previous year. Each JACC member has the privilege of making motions, debating, and voting.

29. JACC's Articles of Incorporation declared its mission to be: "organiz[ing] people, knowledge and capital for the collective good of Jordan residents." And, JACC received public funding so that it could operate within this mission. Plaintiff was a "Jordan resident."

30. JACC receives public funding through the Minneapolis Department of Community Planning & Economic Development (CPED). JACC meetings are required by the terms of that funding to be open to the public.

31. Kip Browne was at times a member of JACC, its Board Chair, and its Board Vice Chair.[6] The members of the JACC Board are volunteers and many "office"

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6 These terms are used here for brevity but do not waive the dispute about the proper JACC board.

from their homes. In his role on the JACC Board, Kip Browne often received communications at his home.

32. Plaintiff tried to be helpful in the community, spending time picking up garbage and brush to make the neighborhood look better. (A:71;139).

33. Plaintiff also attempted to participate in neighborhood meetings, where he expressed his opinion about issues he felt were important to the neighborhood. This speech is protected by the First Amendment.[7]

34. Plaintiff also exercised his right to travel in the community, to observe public court hearings and trials.

35. But when Plaintiff exercised his rights that people have come to call "freedom," he was retaliated against, berated, and vilified by certain defendants.

36. When Plaintiff observed a public court trial in April 2009, Hoff quickly took up the issue on his public blog, berating Plaintiff for attending the public trial, and stating, "So the question is WHAT WAS STEPHENSON doing at the Maxwell trial?" The harassment of Plaintiff for attending public hearings and trials would continue. (A:160).

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7 "First Amendment" here is used as a summary word to include speech/expression, the right to petition (which some courts discuss as a bundle of rights), freedom of association, and the right of access to courts as well as encompassing the concept of prior restraint of speech.

37. Hoff further berated Plaintiff in his April 25, 2009 blog, because Plaintiff had exercised his opinion that Hoff was an "agent" of JACC. Plaintiff has a First Amendment-protected right to criticize Hoff's close relationship with a government-funded entity and/or public officials. (A:160).

38. Hoff joked on his blog that "if I'm an 'agent' then my 'principal' needs to pay me in something more than grilled burgers and green tea ginger ale." That sentence shows Hoff's close relationship with Kip Browne, who was then, and is now, a government official.

40. In May 2009, Plaintiff filed a case in the Fourth Judicial District, seeking a harassment restraining order against John Hubbard, who was at that time a Board member of JACC.

41. Plaintiff was upset because two males who indicated they were on official JACC business showed up at his home without notice. Plaintiff felt intimidated and was concerned they were trying to run him out of the neighborhood.

42. Although the HRO was dismissed by a Referee, Plaintiff filed an appeal with a District Judge.

43. Certain defendants, or those closely associated with them, communicated with Plaintiff's then-[parole]-agent, and with the intent of punishing Plaintiff for his exercise of First Amendment rights. (A:98).

44. In July, 2009, and in response to these communications from defendants or those closely associated with them, agents conducted a search of Plaintiff's home, and left with Plaintiff's computer.

45. On July 7, 2009, Hoff blogged,

> A respected community leader in the Jordan Neighborhood passed on a very interesting piece of information about Pete Rickmyer, a/k/a The Pedophile, a Level III Sex Offender who is the annoying bane of [JACC]. Some days back word reached me Pete had filed some kind of appeal in regard to the denial of his attempt to get a temporary restraining order against some of the JACC leadership....
>
> Well, today, according to dependable information, Pete's probation officer Will McDonald was seen at Pete's house, displaying a badge upon entry...
>
> When Will McDonald left, he was seen to be carrying what appeared to be carrying [Plaintiff's computer].

(A:158).

46. Plaintiff alleges that the computer was removed from Plaintiff's home, not for any legitimate correctional reason, but to appease Hoff and his group, which includes defendants Browne and Goodmundson.

47. Within a short time, on July 22, 2009, defendant Browne had begun what would be a long campaign of communications to Plaintiff's Agent, intending to misuse that system in order to benefit himself in civil litigation, and to harm Rickmyer and infringe his rights. (A:180).

48. On July 22, 2009, through his wife (who is also a government employee), Browne sent an email to Plaintiff's then-agent, requesting to see Plaintiff's conditions of release. Brown specifically referenced Plaintiff having filed an appeal on the HRO matter, stating that Plaintiff had mentioned JACC in his appeal. Of course, Plaintiff had a right to file the appeal, and a right to mention JACC. (A:180).

49. [Parole] Agents acquiesced in sending Browne a copy of Plaintiff's conditions and faxed them to Browne.

50. A day later, Hoff blogged "Word is 'Pete the Pedophile' was spotted walking near 26th and Penn Ave. N. this afternoon, free as a dirty bird, but he was soon arrested. Video exists of the arrest and this video is apparently making its way toward this blog." (A:153).

51. A day later, Hoff blogged,

> **Level 3 Sex Offender Stuffed and Mounted Like a Trophy Fish, an Object of TERROR and WARNING to All North Minneapolis Sex Offenders!!!**
>
> ...'The Pedophile,' could have lived a low-key life in North Minneapolis, checking in with his probation officer in a surly-yet-dutiful way, and generally minding his p's and q's so the non-sex-offender world wouldn't lower the boom on his miserable, deviant hide.
>
> Instead, Peter went around trying to slap a restraining order on a member of JACC, and he generally frolicked around violating his legal boundaries.

(A:151).

52. This blog shows Hoff's malice over Plaintiff being able to exercise First Amendment rights, such as: i) participating in a neighborhood meeting; and ii) filing lawsuits. It shows Hoff's malice toward Plaintiff because Plaintiff exercised his First Amendment rights with regard to a member of JACC. And it shows Hoff's malice toward Plaintiff for being at liberty.

53. Hoff's blog that day continued, "Abide by the terms of your probation, or FACE THE CONSEQUENCES." This shows the goal of getting Plaintiff violated for some alleged infraction regarding his conditions of release. (A:152).

54. Hoff also blogged that day, "You might even want to think hard about living somewhere else." This shows Hoff's intent to get Plaintiff out of the neighborhood. (A:152).

55. On November 15, 2009, Hoff complained in his blog that Rickmyer had filed a grievance with JACC. Plaintiff had a right to file a grievance with an organization supported in part by public dollars.[] Indeed, CPED required JACC to have a grievance process []. (A:147).

56. Hoff continued in that blog, "Why is Pete showing his rancid, minor-molesting, rotting hide around JACC meetings again? Hasn't Pete learned his lesson after his last episode of sticking his nose into JACC business?" (A:148).

57. Plaintiff alleges that this comment shows Hoff's knowledge that public authorities took action because a small group of people associated with JACC were upset that Plaintiff had exercised his First Amendment rights.

58. Hoff went on in his November 15 blog,

> SECOND, due to his status as a Level 3 Sex Offender, Pete isn't allowed to touch a computer, be on a computer, write things on a computer, etc. YET THIS DOCUMENT WAS OBVIOUSLY WORD PROCESSED and includes a print-out of an email, which obviously originated on the internet. I suspect somebody will be having a talk with Peter's probation officer/case manager/pedophile zoo keeper/whatever on Monday morning, so Pete might want to be sure to enjoy the weekend.

(A:148).

59. This statement shows Hoff's: a) intent to retaliate against Plaintiff for his exercise of First Amendment rights; and b) Hoff's association with individual(s) who intended to misuse the then-agent to have harm befall Plaintiff, a form of retaliation, but also intent to infringe upon Plaintiff's liberty interest. Indeed, Hoff said as much, blogging, "Pete should be locked away for life...." (A:148).

60. Hoff later blogged that he sent the following email to Plaintiff's then-[Parole] agent,

> I am forwarding a document which was apparently created by Peter Richard Stephenson, Level III Sex Offender. This document was OBVIOUSLY word processed and includes an email which OBVIOUSLY originated on the internet. As you're well aware, Peter is not supposed to have anything to do with computers.

The document was provided to me (and my blog) by a neighborhood leader, who I am "blind cc'ing" on this email.[8] Recently, Peter handed the document over at a neighborhood meeting of the Jordan Area Community Council, describing the document as his "grievance."

This matter has already been written about on my blog, and here is a link to that post.

http://adverturesofjohnnynorthside.blogspot.com/2009/11/pete-pedophiles-latest-obsessoin-church.html

Would you please look into this matter and deal with Peter's latest episode? Thanks so much for your assistance.

John Hoff

(A:138).

61. It is not accurate that Plaintiff had a condition-of-release-condition that he could not have "anything to do with computers." Certainly not in the broad and indirect definition used by Hoff. Hoff's definition would mean that Plaintiff could not receive a paper copy of an email, and then utilize it to his protection or benefit, or to petition government for redress of grievances. Those were not Plaintiff's conditions.

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8 Upon information and belief this refers to Kip Browne.

62. The email shows that Hoff was not only retaliating against Plaintiff for exercising his First Amendment rights, but he was attempting to enlist a government official to assist him to accomplish his goal.

63. As early as November 16, 2009, Hoff knew that Plaintiff was, indeed, allowed to use the Internet while on supervision. That clearly upset Hoff.

64. According to Hoff, Kip Browne also made repeated phone calls to Plaintiff's then-[Parole]-agent. Plaintiff alleges that Browne called in an attempt to enlist the government official to aid and abet his retaliation of Plaintiff.

65. In February 2010, having borne what he considered frequent harassment, Plaintiff commenced a lawsuit against Kip Browne, John Hoff, JACC and several others associated with them (the "10-lawsuit").

66. Before it was filed, the Honorable Patricia L. Belois determined by court order dated February 17, 2010, that the 10-lawsuit was not frivolous.

67. Hoff expended significant resources, and used his connection with a "high-ranking" official in the City of Minneapolis deliberately to evade service of process for a number of months. Although defendants in that case would blame Plaintiff for over-use of Sheriff services, had Hoff merely accepted service, the Sheriff would have only had to go out once.

68. Quickly after Plaintiff filed his 10-lawsuit, Hoff began to retaliate against Plaintiff, who had a First-Amendment right to file a lawsuit.

69. Defendants had Plaintiff removed from a public courtroom where he was watching a public hearing.

70. On February 20, 2010, Hoff blogged,

> Common sense would argue somebody in such a highly-publicized, pariah-like status would do best to just keep their head down and avoid giving offense to the world by, for example, showing up at a JACC meeting....
>
> But Peter Rickmyer ... doesn't appear to accept his short leash or the severe-yet-sensible restrictions placed upon his rancid, sexually-deviant, dirty-old-man hide. []
>
> Yes, Peter may have the "right" to show up at public functions—until his overworked zoo handlers tell him otherwise and reel him in, which it appears has happened a few times ... but does Peter have a "right" not to have his actions questioned in public? []
>
> Somehow this Level Three Sex offender manages to put sheriff's deputies at his service, serving his worthless paper. It is blasphemy and an outrage: armed, trained, socially valuable sheriff's deputies at the beck and call of a Level Three Sex Offender serving his frivolous legal paper!
>
> Somebody needs to talk to Pete's keeper, Bobbi Chavalier-Jones, and find out how Pete has managed to carve out this unacceptable latitude beneath her very nose.
>
> Just the day before yesterday, Vice Chairman Kip Browne was served with the purported lawsuit document, as well as attorney David Schooler, while they waited outside a courtroom for a hearing on "Old versus New Majority"

> JACC issues. Other people named in the suit include myself [] numerous citizens involved in JACC [].
>
> Rickmyer has fired the first salvo in this conflict...a lawsuit....that's war. [T]hat "shot across the bow" will be answered with legal "shock and awe." ... [T]he reverberations of his outrageous legal paper will echo far beyond his small, desperate, pathetic life.

(A:142).

72. As noted above in Hoff's blog, Kip Browne was served with the 10-lawsuit. Quickly thereafter, he called Plaintiff's then-[Parole]-agent to complaint that Plaintiff had had the Sheriff serve him with process, and that this was an "abuse" of the system.

73. On February 24, 2010, Browne again called Community Corrections. Browne specifically asked what the government agent was going to do about the 10-lawsuit Plaintiff had brought against him. Browne complained that Plaintiff's lawsuit was "frivolous." (A:179).

75. The then-agent [Chavalier-Jones], properly, told Browne that that topic was not related to the supervision role. The then-agent, properly, stated that Corrections could not infringe Plaintiff's civil rights by directing him not to file a lawsuit.

76. Browne requested that government restrict Plaintiff from contacting him or his family. This request was not borne of any legitimate concern for safety or security, but rather was an attempt to prevent Plaintiff from being able to effectively litigate against Browne.

77. T[]he Brownes were sent a special communication from Community Corrections (obviously catering to them) informing them that Plaintiff had been re-structured, and giving them Rickmyer's new conditions (see below). (A:186).

78. That same day, Defendant Goodmundson, who uses the handle "NoMi Passenger," posted a public comment to Hoff's blog showing how she turned against Plaintiff when he exercised his First Amendment rights or liberty.

> I gotta admit – I used to have a slight bit of respect for this man because I would see him working his fingers to the bone around the 26th/Penn 2 block area – chopping brush, picking up litter etc etc.
>
> Now all that good he put out to keep up his area is totally voided with his continued mission to persue (sic) extended liberties that he should not have.
>
> Pete, you should have stuck to tearing down overgrown brush. You are good at that.

(A:139).

79. Goodmundson also began emailing Community Corrections to get action. (A:169;174;176;178). [And] calling[]. (A:175).

80. On February 25, 2010 Plaintiff removed without cause a judicial officer assigned to the 10-lawsuit. By March 1, 2010, a new judicial officer was on the case. Plaintiff does not know whether or how he was assigned. (A:181)

87. When Plaintiff's then-[Parole]-agent [Bobbi Chavalier-Jones] did not instantly do as Hoff demanded, he blogged, "it appears she is overly sympathetic to the deviant psychopath rapists ... and/or perverts under her control." (A:114).

88. When the then-agent refused to take part in Hoff's retaliation, and refused to infringe Plaintiff's First Amendment rights, Hoff (for himself and as an agent, aider or abetter of Browne) publicly vilified and humiliated the then-[Parole]-agent on Hoff's blog. This became so severe that the then-[Parole]-agent was removed from supervising Plaintiff because she was fearful about retaliation against herself and her family.

89. Plaintiff alleges that Hoff and Browne sought to bully the then-[Parole]-agent off Plaintiff's case, because she was defending his rights and liberty (as she was required by law to do), which was counter to their agenda.

91. On or about March 24, 2010, the attorneys for some of the defendants in the 10-lawsuit filed a motion asking the [district] court to find that Plaintiff was a "frivolous litigant." On March 24, 2010, Hoff blogged about that motion. (A:104).

92. On May 27, 2010, Hoff began asking why Plaintiff was allowed to have a cell phone. Hoff blogged, "[b]efore I even hit "publish" on this blog post, I'll be sending an email to Pete's probation officer and asking those question (sic)." (A:64-66).

93. Kip Browne, a defendant in the 10-lawsuit, continued his demands to Community Corrections. By April 1, 2010, he had gotten action.

94. At the very time that Browne's attorney had a motion for "frivolous" litigant pending in district court, Community Corrections agreed to use its government authority to exercise prior restraint of Plaintiff's First Amendment rights.

95. On April 1, 2010, an email was sent to Kip Browne [], disclosing that Plaintiff had been "re-structured" and informing them of his new conditions. []

> 2. Mr. Rickmyer must cease the filing of any new motions, briefs or law suits until after the JACC motion is heard by [the judge] on April 20th.
>
> 3. We have suspended Mr. Rickmyer's use of the internet completely.
>
> 4. Mr. Rickmyer has been ordered to [] not attend any JACC meetings what so ever (sic).

(A:186).

96. The email ended by saying, "I hope you find this acceptable and it provides you the relief you are seeking." *Id.*

97. These new conditions provided Browne with "relief" in the 10-lawsuit.

98. These conditions also began the continued restrictions upon Plaintiff, which were designed to protect Hoff, Browne and Goodmundson from future lawsuit(s).

99. As would become clear from future blogposts by Hoff, Browne and Goodmundson did not want Plaintiff to be able to use the Internet or a computer, *so that he could not use those tools to work on a lawsuit(s) against them.*

100. But the April 1, 2010 email also laid the groundwork for the campaign to punish Plaintiff for his exercise of rights. It stated, "Do not hesitate to contact us should you be aware first hand that Mr. Rickmyer has violated these conditions." *Id.*

101. Browne clearly shared this email with Hoff and Goodmundson. And they set up a campaign to get Plaintiff "violated" – that is, to have the DOC find he had violated his conditions, and therefore should be sent to prison.

102. This government agency(ies) was clearly responding to the angry blogposts, emails and calls it was receiving from Hoff, Goodmundson and Browne.

103. Government agencies need to be able to withstand that type of pressure, while still being careful not to infringe Plaintiff's rights.

104. This agency lacked the authority to prevent Plaintiff from filing lawsuits or motions. [] Indeed, at that time the DOC did not support the directive that Plaintiff could not file any lawsuits/motions.

105. On or about April 9, 2010, Kip Browne emailed the program manager about Plaintiff making filings in court.

106. Browne was making frequent calls, and pressuring this agency to assist him in defending against the 10-lawsuit.

110. Browne knew that [his] lawyer had filed a motion to have Plaintiff declared a frivolous litigant, and Browne was improperly seeking the assistance of a government agency in order to gain an advantage in civil litigation against him.

115. When Hoff covered the April 20, 2010 hearing in his April 23 blog, he noted that one of the first comments made by Browne's attorney at the hearing was that Plaintiff had not filed any papers in opposition to the "frivolous litigant" motion.

116. Of course, Browne knew that he had worked in concert with others and government to prevent Plaintiff from being able to file a response to that motion.

117. Hoff's April 23 blog poked fun at Plaintiff for alleging that defendants had had him removed from the community.

119. On May 17, 2010, the [Hennepin] district judge issued an order declaring Plaintiff a frivolous litigant, and stating

> Until further order of this Court, Plaintiff may not file any new cases unless an attorney licensed to practice law in Minnesota has signed the complaint and the Chief Judge or the Presiding Judge of Civil has approved. The Clerk of court is instructed to not accept any filings from Plaintiff unless these conditions are met.

[Add:2].

127. Judge Belois had already ruled that the 2010-Lawsuit was not frivolous.

128. Plaintiff alleges that another district judge lacked jurisdiction to overrule that order. Plaintiff further alleges that "frivolousness" was used as a weapon, designed to use government courts to protect government officials and those acting in concert with them.

129. This was confirmed by Hoff's blogging.

130. Hoff blogged on May 19, "I think I will also send an email to his parole officer in the next few minutes. Now that Pete's lawsuit has been declared frivolous, I think I will complain about him filing it against me."

131. When Plaintiff tried to work on an appeal of the state district judge's order, in the Law Library at the Government Center, where there are computers with word processing capability but no internet capability, Hoff harassed and stalked [Plaintiff] there, taking pictures of him and posting them on his blog.

132. Hoff also used a frequenter of the library to gather Plaintiff's drafts from tables and wastebaskets and feed them to Hoff.

133. Hoff was able to glean that Plaintiff was working on an appeal of the frivolous litigant issue (May 17 Order). Hoff blogged on June 3, 2010, "If I had to guess, I'd say Spanky Pete is appealing the dismissal of his case to a higher court." Shortly thereafter, Plaintiff was forced to abandon his appeal because there was no way/place he could work on it.

134. No court order had prohibited Plaintiff from filing complaints with other agencies.

135. In June 2010, Plaintiff filed a complaint with the Minneapolis Department of Civil Rights (MDCR) about JACC. This First-Amendment-protected conduct enraged Hoff and Browne, who, again, pressured Community Corrections to do their bidding. (A:178).

136. On June 27, 2010, Hoff blogged,

> JACC has until July 5 to respond to the complaint. Thus this tiny volunteer neighborhood organization—already harassed by Rickmyer's previous frivolous crap—must deal, yet again, with Spanky Pete's madness. And where, in all of this, are Spanky Pete's keepers from the MDOC?
>
> ...

> On the bright side...maybe this will be the stupid move which finally puts Spanky Pete back behind bars for good. Spanky Pete's latest filing appears to be an attempted "end run" around the judge's strictly worded order to STOP FILING FRIVOLOUS LEGAL COMPLAINTS.

137. Had Browne put the time toward responding to the charge of discrimination, that he put toward influencing Community Corrections, he could quickly have responded to the charge. Time was not the issue.

138. The next day, on June 28, 2010, Browne called Plaintiff's then-[Parole]-agent stating that Plaintiff had filed a complaint with the MDCR.

141. Hoff further asked that Plaintiff be prohibited from using any word processor to write out complaints to, for example, city inspectors.

142. Upon information and belief Hoff feared building inspectors and sought to protect himself from inspections by city inspectors, at the expense of Plaintiff's First Amendment rights.

143. Hoff complained that he did not even want Plaintiff accessing the Mn-CIS system which shows public court dockets for the state courts.

144. These were all designed to prior-restrain Plaintiff's exercise of First Amendment rights.

145. Hoff specifically objected that Plaintiff had found reference to an HRO once filed against Hoff by a former roommate.

146. On July 12, 2010, Plaintiff's then-[Parole]-agent gave him a directive that he could not contact the Government Center to make a complaint about Hoff. This directive violated Plaintiff's First Amendment rights.

147. In August 2010, Plaintiff's agent was changed [to] Will McDonald. (A:178).

150. In McDonald, defendants Browne, Hoff and Goodmundson would find someone who was willing to work together with them to infringe Plaintiff's rights.

151. On August 5, 2010, McDonald gave Plaintiff a directive that he was to bring him any legal papers he was working on, and if he went to an attorney, that McDonald specifically wanted the attorney's name and what Plaintiff was telling him. (A:171).

152. This was a violation of Plaintiff's attorney-client privilege and First Amendment rights.

153. Plaintiff objected [to McDonald] that that would infringe his attorney-client privilege. (A:171).

154. Plaintiff requested that directive in writing so that he could seek a legal opinion about it. *Id.*

155. McDonald refused, ever, to give that directive in writing even though he knew that Plaintiff was [handicapped] in communications (A:5).[9]

156. Also on August 5, McDonald tried to convince Plaintiff not to file a complaint with the MDCR. (A:171)

157. On February 10, 2011, Kip Browne again called McDonald, informing him that Plaintiff was attending a public court session, and asking that Plaintiff be made to leave. (A:178).

158. Plaintiff had a right to attend a public court hearing.

159. On February 12, 2011, Goodmundson sent an email to McDonald, complaining that someone (she had no evidence of who) had put pictures of her on the Internet. (A:169).

160. Goodmundson wanted Plaintiff punished for that. *Id.*

161. But more, she wanted Community Corrections to conduct an investigation to learn who had taken and posted the pictures of her. (*Id*; A:177 (02/22/2011 entry)).

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[9] [Rickmyer suffers from neuro-cognitive impairments. The State's attempt to civilly commit Rickmyer in the early 90's failed, see *In re Rickmyer*, 519 N.W.2d 188 (Minn. 1994).]

162. Also on February 12, 2011, Hoff emailed McDonald stating, "I thought Peter Rickmyer was supposed to stay away from JACC and JACC people." Kip Browne and his wife Kelly are *on the witness list.*" (A:177).

163. Hoff wanted Community Corrections to investigate to determine whether Plaintiff was photographing "us." *Id.*

164. Hoff also complained that he suspected Plaintiff was making calls to the City of Minneapolis 311 number to report Hoff to the city. *Id.*

165. By February 13, 2011, Goodmundson was back dogging McDonald, [stating], "I am surprised I have not heard back from you. It disturbs me that Level 3 is sneaking around taking pictures." (A:169).

166. Based on this flimsy evidence, from people with an obvious agenda and bias against Plaintiff, on that very day McDonald searched Rickmyer's house. (A:168).

169. Also on that date, McDonald demanded that Plaintiff tell him about any legal documents he was *drafting*. (A:168).

170. Plaintiff alleges that McDonald lacked that authority.

171. The directive was not for any legitimate correctional purpose, but to please Hoff, Browne and Goodmundson.

172. To McDonald's credit, he determined that Hoff's 311 complaint, and Goodmundson's picture-taking complaint were unfounded[]. (A:176).

173. Goodmundson objected to McDonald's conclusion, stating that Plaintiff had had *contact* with some people who put her picture on the Internet. (A:176).

174. Even if that were true, Plaintiff has a right, protected by the First Amendment, to associated with people, even people who he knows or may or may not know put Goodmundson's picture on the Internet.

175. But McDonald did further limit Plaintiff's rights: he ordered Plaintiff to stay away from hearings in which Hoff or Goodmundson were "scheduled to appear." (A:176, 177).

176. There was no basis for this directive, and this further restriction on Plaintiff's rights was not supported by fact or law.

177. Further, there is no way that Plaintiff could be sure to know when Hoff or Goodmundson were "scheduled to appear."

178. Hoff and Goodmundson engaged in a continual dialogue with McDonald.

179. On February 28, 2011, McDonald (correctly) stated he could not ban Plaintiff from the Government Center. But he said he would tell him to stay away from court hearings in which Hoff and Megan were scheduled to appear." (A:176).

181. Plaintiff alleges that that directive unnecessarily restricted his First Amendment rights, and that it was not instituted for any legitimate correctional purpose, but to please Hoff and Goodmundson (who wanted to punish Plaintiff for exercise of First Amendment rights and restrict his rights and liberties).

182. On March 2, 2011, Plaintiff had a process server serve Hoff in the hallway on a court floor in the Government Center. (A:5, 166).

183. Plaintiff did not do the serving, and did not attend the hearing.

184. Plaintiff did not **file** any documents (so the [2010-Order] was not triggered).

185. Plaintiff informed his [Parole] Agent that he did not violate the court order (A:4), but the [Parole] Agent would not listen to him. The [Parole] Agent was geared to listen to Goodmundson and Hoff.

186. As it turned out, Plaintiff was right. Plaintiff did not violate the [2010-Order].[10]

187. McDonald had jumped to conclusions (or knowingly ignored the text of the order[11]) in order to please Hoff, Goodmundson and Browne.

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10 *See* Appellant's motion to expand the appellate record or include 2010-Lawsuit filings.

11 [Note how McDonald characterized the 2010-Order as, "that nothing can be filed without going through [Judge Blaeser] (A:175). The *real* Order states, "Until further order of this Court, Plaintiff may not **file** any **new cases** unless an attorney licensed to practice

188. In McDonald's intent-to-revoke-allegations against Plaintiff, McDonald would continue to mischaracterize the court's order rather than paying attention to its precise language.

189. Hoff promptly blogged about the issue, on March 3, admitting he had been dodging service, and that he had finally been served with the 10-lawsuit. (A:38-9).

190. Hoff blogged that he had been busy so, "my girlfriend Megan Goodmundson called Peter's zoo keeper, Will McDonald, who came within a short while to the Hennepin County Law Library and obtained a copy of the crap Peter Rickmyer had served upon me." *Id.*

191. The blog continued, "According to Goodmundson, McDonald appeared to almost have smoke coming out of his ears and was stating something about how he would contact a judge about Pete's latest escapade." *Id.*

192. Goodmundson posted a "NoMi Passenger" comment that same day, stating, "When I was in court this morning, Will McDonald of HennCo. Corrections came and got my attention. He informed me that John does not need to respond to the regurgitated lawsuit, he doesn't need to answer, he doesn't need to do anything.

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law in Minnesota has signed the **complaint** and the **Chief Judge** or the Presiding Judge of Civil has approved. The Clerk of Court is instructed to not accept any filings from Plaintiff unless these conditions are met." (Add:2).]

[the state district court judge][12] is handling everything directly with the HennCo c/o Will McDonald." (A:43).

193. On March 3, 2011, McDonald had an *ex parte* communication with the state district court judge in which they collaborated to set on a show cause hearing which Plaintiff asserts was designed to find he had violated a court order – making the DOC's revocation proceeding a sure thing. (A:166).

194. Plaintiff was not informed of this judicial contact.

195. However, Hoff and Goodmundson *were* informed of it, and took full advantage of it.

196. Indeed, Hoff indicated on his blog that he had the inside track with the state district court judge. (A:202-03).

197. If there was any doubt whether Hoff and Goodmundson were legitimately pursuing some fear of Plaintiff as a sex offender, that was put to rest on March 4, when NoMi Passenger posted,

> This new nonsense about John, or anybody else, being so scared of Spanky Pete [] is just ridiculous.
>
> You do realize it's not about being afraid of Spanky Pete. It is about being so fed up with his deviant, disgusting, deliberate disregard for 1) law 2) societal norms 3) decency 4) safety of children 5) direct orders from his corrections officials (zookeepers!) and court officials that we are sick of him coming to

12 Brackets in original.

functions he is not welcome and not allowed and we want to see him dealt with and we want him OUT OF OUR NEIGHBORHOOD!!!

Nobody is "Scared" of Spanky Pete in the way you mean. Especially not John.

(A:46-7).

198. On March 7, 2011, Goodmundson called again, telling McDonald that Plaintiff had served some papers on Hoff.

199. On March 9, 2011, Goodmundson called to complain that Plaintiff was following her in the Government Center. That claim was false. (A:165).

200. At some point Goodmundson and/or Hoff contacted a "commissioner." Upon information and belief they contacted someone in upper management at the DOC, or they had someone else do it for them. (A:165).

201. On March 9, 2011, DOC signed an arrest warrant for Plaintiff and he was custodially arrested and taken to the Hennepin County jail. (A:4).

204. On March 10, 2011, Hoff blogged,

It is unknown but strongly suspected the arrest has something to do with Rickmyer's recent actions directed at myself and my blog, as documented in this recent post... **JNS blog thanks unknown public officials for this prompt action. I sincerely hope the book is thrown at Pete and he does not walk the streets with decent people for a long, long time. Let me know if you need my testimony or that of Megan Goodmundson or others who are witnesses.**

(A:29) (Emphasis added).

205. On March 17, 2011, the DOC issued a Hearing Notice (Notice) for a March 24, 2011 revocation hearing to be held at the Hennepin County jail. (A:1).

206. Hoff intended to and did communicate with Will McDonald through his blog. (*See supra*).

207. Will McDonald *did* ask Megan Goodmundson to testify as a witness. (A:210 *et seq.*).

208. But Mcdonald did not ask Hoff to testify. *Id.*

209. Plaintiff alleged then and alleges now that without being able to cross-examine Hoff, he could not put on a defense. (A:7 *et seq.*).

210. And he could not get Hoff to come willingly to be cross-examined. *Id.*

211. And, as discussed more fully below, Plaintiff was wrongfully denied subpoena power. *Id.*

212. The Notice alleged, *inter alia*: that Plaintiff had violated his Agent's directives [to follow the 2010-Order]. (A:1-6).

216. Plaintiff was painted [by his Parole Agent] as "bizarre" for wanting to stand up against the harassment of Hoff and others connected with him. (A:6). This

is another form of government retaliation for exercise of First Amendment rights: if you criticize (or even question) government you *must* be *crazy*.

217. Plaintiff asserts that he has a First Amendment right to protest how Hoff, Goodmundson and Browne were working together with his Agent, and that attempting to revoke him for that is impermissible retaliation.

221. This was a serious attempt to take Plaintiff's entire life's freedom from him.

222. This was not for any legitimate correctional reason, but to please Browne, Hoff and Goodmundson in their desire to infringe Plaintiff's liberty, to remove him from their neighborhood, and to prevent him from suing them.

223. Plaintiff retained counsel, who inquired how to assert the right to compulsory process in the proceedings.

224. [HRU's] Jeff Peterson (who had been the one to assign McDonald to Plaintiff's case) told Plaintiff's counsel that the DOC did not provide subpoena's. (Add:16).

225. Plaintiff indicated he needed a ruling on this *before* the revocation hearing, for subpoena power to be effective. *Id.*

226. Plaintiff was told by Brent Wartner of the DOC that there was no process to obtain a ruling prior to the revocation hearing. *Id.*

227. The process which provides for *no* opportunity, in any situation, for a ruling prior to a hearing in which liberty will be revoked, denies due process.

227. Plaintiff, through his counsel, was referred to Jeff Peterson, who said to file something with HRU. Peterson referred to the prosecution desiring to revoke Plaintiff's release as "we" ("we" will offer evidence, the evidence "we" have) which suggests that Peterson is a part of the prosecution-side of the DOC revocation process. He should therefore not fulfill any functions designed for a neutral hearing officer.

228. Peterson had no intention of providing any ruling before the hearing. In fact, Peterson's instruction to file something before the hearing merely allowed management at the DOC to learn what relief Plaintiff was requesting, and to interfere with the Hearing Officer (HO). (Add:21).

229. Plaintiff [challenged this] problem with the process....

230. Plaintiff did file a motion with the HRU (A:7), urging:

- Minnesota Statutes §244.05, Subd. 2 specifically mandated the Department of Corrections to provide due process in revocation proceedings. []
- Due process and the right to compulsory process include subpoena power.
- DOC policy 106.140 claims to ensure the right to "call witnesses," but

if it does not provide for subpoena's, that right is a nullity.

- Without being able to subpoena witnesses, Plaintiff could not get the witnesses there who he needed to defend himself. (Add:16).

231. Plaintiff further notified the HRU/DOC that under due process precedent, he was entitled to a neutral hearing officer. *Id.*

232. Plaintiff alleges that he was not provided a neutral hearing officer. Indeed, the Hearing Officer (HO) was merely an agent of the [prosecution-side of the] DOC, directed by the DOC as to how to rule and what to do (and not do).

233. This is either a structural problem with the entire HRU process, or it was a violation of Plaintiff's rights in this case.

234. Plaintiff received no ruling on his motion [filed with HRU] prior to the hearing.

235. The March 23, 2011 hearing on the "show cause" order, that had been set by the state district court judge, was scheduled to be held the day before the revocation hearing of March 24, 2011. (A:1;181).

236. Plaintiff alleges that, particularly in light of the undisclosed communications between the state district court judge and Agent McDonald, this close timing was not coincidental.

237. On March 22, 2011, Plaintiff moved in the 10-lawsuit to recuse the state district court judge. (A:187-204). This pleading was approved for filing [by the Chief Judge].

238. On March 23, 2011 Plaintiff was told that the show cause hearing was not occurring that day.

239. The HO arrived at the [revocation] hearing and announced at the beginning that the DOC had decided that nothing would be done with the motion. (Add:16).

240. The HO made statements that caused Plaintiff reasonably to believe that the HO had conferred with Peterson before the hearing, and that the HO was doing what he was told to do, by Peterson.

241. Plaintiff also asserts that the HO was told to deny the Goodmundson "stalking" allegation, because that litigation would create a troubling record for the DOC with regard to the compulsory process issue.

242. The HO gave little time to that allegation, pressed Plaintiff's attorney to cease questioning of Goodmundson, did not review the exhibit that Plaintiff provided with regard to that issue, and then ruled in Plaintiff's favor.

251. When Plaintiff showed during the [revocation] hearing that the court order had not been violated, the HO [sua sponte] asked the [Parole] Agent a leading question about whether the Agent's directive had been *broader* than the court order, giving the Agent an opportunity to change the allegation **mid hearing.**

252. This did not give Plaintiff the real opportunity to defend.

253. The HO did not rule on any legal issues [or consider constitutional issues] at the hearing.

255. The HO ruled ..."from the bench...."

256. The HO denied the violation based on Goodmundson's allegations, but revoked Plaintiff's release for 90 days. (Add:16).

257. However, due to the revocation, in order to be released from the DOC, Plaintiff [had to] go through civil commitment review. (Add:16). Rickmyer learned upon release that the DOC will require him to be on ISR until his sentence expired in 2016. (A:250).

260. Plaintiff filed a Motion requesting reconsideration with the HRU. (A:210) Based on what Plaintiff knows, Peterson told the HO not to rule on that motion. (See below.)

261. Plaintiff also appealed the decision to revoke his release, raising issues of due process (as applied, and with regard to the process overall) and in particular

that the DOC was not providing a neutral hearing officer but the HO had merely been an agent of the DOC. (Other evidence in this complaint supports that contention). *Id.*

262. Plaintiff also challenged the constitutionality of the directives given by the [Parole] Agent (or claimed to have been given by the Agent, because there is factual dispute over precisely what the Agent said), and that agent directives cannot be used to protect a small group of people from lawsuits and motions. *Id.*

263. Plaintiff further appealed on the ground that he was entitled to receive the directive in writing, and entitled to obtain a legal opinion about the directive (particularly directives that so obviously impacted First Amendment rights and attorney-client privilege). *Id.*

264. Plaintiff also noted that the evidence was that, even though the directives were not lawful, that he had complied with them to the letter. *Id.*

265. Plaintiff noted in his appeal that the actions of the DOC had violated his First Amendment rights. *Id.*

268. Plaintiff alleges that the appeal process at the HRU denies due process either because of the way the appeal process is set up, or specifically with regard to Plaintiff.

269. In that denial of the appeal, Peterson admitted that he had had a lengthy conversation with the HO before ruling on the appeal. (Add:21)

> Subsequent to the Hearing and following receipt of your Appeal, I discussed the Hearing at length with the Hearing Officer. As recorded in the notes and as relayed to me, the Hearing Officer informs, he reviewed all your exhibits...."

(Add:21).

That communication [wa]s not authorized (if the HO is to be neutral), and adds to the evidence that the DOC does not provide a neutral hearing officer/appeal process. [The "appeal" decision-maker even *added to the record* by talking with the HO during the pendency of the appeal.]

270. After that lengthy conversation, the HO did not respond to the motion to reconsider.

271. The appeal decision failed to deal with the issues appealed on, and instead re-characterized the appeal into a list of issues which were summarily denied. (Add:21).

***

Proceedings in the Anoka district court

Although Rickmyer's out date was June 6, 2011, when he was released from prison, he was on house arrest, found to be a 'wrongful restraint' permitting habeas review. (Add:50-51). Rickmyer also filed evidence that due to a change in "state law" that would apply to any such offender released from prison after August 2010,[13] the DOC had Rickmyer slated to continue on Intensive Supervised Release (ISR) until the conclusion of his sentence, or 2016. As the email at A:250 notes, ISR is a substantial restriction on liberty.

The DOC appeared to oppose Rickmyer's petition for habeas relief. But it is important to note that the DOC *did not dispute any of the facts Rickmyer has set forth above.* The DOC did not dispute Rickmyer's recitation of what had occurred at the revocation hearing on March 24, 2011.

The Anoka district court denied Rickmyer's petition on the merits. (Add:46 et *seq.*).

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13 Rickmyer believes the Agent was referring to Minn. Stat. §244.05, subd. 6.

ARGUMENT

One role of the courts is to protect the constitutional rights of individuals. This role is particularly important when it comes to the modern day lepers: convicted sex offenders. And in preventing the tyranny of the majority.

Convicted sex offenders who are released on parole have constitutional rights. Appellant contends that they have at least as many rights as prisoners. And without court intervention, misguided government officials could continue to trample basic constitutional rights.

Prison officials, and lawyers who advise them, are seasoned in protecting First Amendment rights for prison inmates. That case law is well honed.[14] Supervisees like Rickmyer could benefit from published case law informing government officials that:

i) their authority has limits;

ii) Minnesotans on ISR still have constitutional rights, and trying to protect those rights is not "defiance" punishable by imprisonment. (See A:171).

iii) Minnesotans on ISR are permitted to file lawsuits and otherwise petition for redress of grievances. *It is the activity specifically authorized by the constitutions.*

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14 *See* J. Boston, D. Manville, *Prisoner's Self-Help Litigation Manual*, Oceans Publications, Inc. (3d Ed.), Chapter "Civil Liberties in Prison," p. 147.

I. THE WRIT OF HABEAS AND STANDARDS OF REVIEW.

A. The Writ of *Habeas Corpus* remedy applies here.

A writ of habeas corpus is a statutory remedy that allows a person to seek "relief from imprisonment or restraint," Minn. Stat. § 589.01 (2006). The *habeas* statute applies in situations in which postconviction relief is not applicable. *Kelsey v. State*, 283 N.W.2d 892, 894-95 (Minn. 1979).

> Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.

Fay v. Noia, 372 U.S. 391 (1963). "Vindication of due process is precisely its historic office." *Id.* Habeas corpus lies to challenge unlawful imprisonment or restraint based upon constitutional or statutory violations. McCarr, Nordby, *Minnesota Criminal Practice and Procedure*, West 2000, vol. 9, §40.1.

A petitioner is entitled to a writ of *habeas corpus* if his imprisonment or restraint is caused by a violation of constitutional or statutory rights. *Roth v. Commissioner of Corr.*, 759 N.W.2d 224, 227 (Minn. App. 2008); *Loyd v. Fabian*, 682 N.W.2d 688, 690 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004).

Habeas corpus relief is available when a petitioner asserts constitutional or statutory violations in the parole-review process. *See Kelsey v. State*, 283 N.W.2d 892, 894-95 (Minn. 1979). Or to challenge the revocation of supervised release. *Aguilera v. Fabian*, (A10-393), 2010 Minn. App. Unpub. LEXIS 412 (Minn. Ct. App. 2010) (A:243).

B. Standard required for DOC to set conditions and revoke release.

Minnesota statute §241.01, subd. 3a(b) grants authority to the Commissioner of the Department of Corrections,

> (b) To determine the place of confinement of committed persons in a correctional facility or other facility of the Department of Corrections and to prescribe **reasonable** conditions and rules for their **employment, conduct, instruction, and discipline within or outside the facility**.

(Emphasis added). When Rickmyer was released from prison, he was given a standard condition of release #4, a written condition:

The offender will at all times follow the instructions of the Agent/Designee.

(A:2). The instructions of Rickmyer's Parole Agent were not conditions, but were verbal 'instructions.' It was allegation that Rickmyer had violated two instructions (what Agent McDonald called 'directives') of his Parole Agent that led to the DOC's allegation that Rickmyer had violated standard condition #4.

Rickmyer has contended since prior to the revocation hearing, that there are limits on what the Commissioner/his Parole Agent can 'instruct' him to do. Obviously, if the Parole Agent told Rickmyer to jump off a cliff – he would not be required to do so. Rickmyer has not been successful in getting any tribunal (the HRU, the Hearing Officer, the HRU appeal process or the district court) even to consider that there might be limits on the conditions, or the agent instructions. Rickmyer has contended that he should have *at least* the First Amendment rights afforded a prisoner currently incarcerated.

If a revocation hearing officer finds that an offender is "in violation of [his] . . . supervised release," the hearing officer may revoke the supervised release and return the offender to prison. Minn. R. 2940.3700.[15] Rickmyer contends that for there to be a "violation," the condition must first be "reasonable" pursuant to Minn. Stat. §241.01, subd. 3a(b). Further, Rickmyer contends that a condition or agent instruction that is unconstitutional must be "unreasonable." No tribunal has been willing to address this issue.

Rickmyer notes that Minn. Stat. §241.01, subd. 3a(b) does ***not*** grant the Commissioner the authority to restrict his ***speech***.

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15 "If the executive officer of hearings and release ... finds that releasees are in violation of their parole, work release, or supervised release, the following actions may be taken: ... C. revoke parole, work release, or supervised release and return the releasee to imprisonment for an appropriate period of time not to exceed the time remaining on the releasee's sentence."

An unpublished decision of this Court held that revocation is justified when there is enough evidence to satisfy the decision-maker that the conduct of the offender does not meet the conditions of his release. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23 (Minn. Ct. App. LEXIS 94), citing *United States v. Strada*, 503 F.2d 1081, 1085 (8th Cir. 1974). This Court reviews a decision to revoke an offender's release for a clear abuse of discretion. *State v. Schwartz*, 615 N.W.2d 85, 90 (Minn. App. 2000), *aff'd*, 628 N.W.2d 134 (Minn. June 28, 2001).

However, the above paragraph cites to cases *where there was no dispute that the Commissioner had the authority to restrict the conduct in question*. In Rickmyer's case, he seeks a ruling from this Court that the first level of analysis in any revocation proceeding, is to first analyze whether the Commissioner had the authority to set the condition (or the agent had the authority to give an instruction). And only then to decide whether that condition/instruction was violated.

Rickmyer could not locate any cases on point. However, he notes, that in *Carillo v. Fabian*, 701 N.W.2d 763, 771 (Minn. 2005), the Minnesota Supreme Court stated, "it is inappropriate to analyze [an offender's] liberty interest by looking solely to statutory language . . . ."

C. Standard of reviewing a *habeas* writ action.

In addition to the above discussion, this Court has noted that if the district court makes findings, those are entitled to great weight and should be upheld if

reasonably supported by the evidence. *Northwest v. LaFleur*, 589, 591 (Minn. Ct. App. 1998). However, clearly-erroneous findings need not be deferred to. Questions of law, however, are reviewed de novo. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* 2006 Minn. LEXIS 552 (Minn. Aug. 15, 2006).

Constitutional challenges are questions of law, which this Court reviews *de novo*. *State v. Wright*, 588 N.W.2d 166, 168 (Minn. App. 1998), *review denied* 1999 Minn. LEXIS 129 (Minn. Feb. 24, 1999).

There was no hearing in this case, and the Commissioner of the DOC did not dispute any facts proffered by Rickmeyer. So Appellant believes that this Court may make its decisions based on the application of the law to the facts submitted by Rickmyer.

D. Standard in reviewing procedural due process issues.

Rickmyer also specifically challenges whether the process provided was what is due. What process is required in a particular case is a question of law. *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972); *Alcozer v. N. Country Food Bank*, 635 N.W.2d 695 701 (Minn. 2001). Due process violations are reviewed *de novo*. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005).

The interpretation of statutes, rules and DOC policies are reviewed *de novo*. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 529 (Minn. 2010); *State v. Tlapa*, 642 N.W.2d 72 (Minn. Ct. App. 2002); *Carillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005) (DOC policy requiring only "some evidence" found unconstitutional, and Minnesota Supreme Court dictated the proper standard).

II. The Process Provided by the DOC was Insufficient.

This case is fraught with due process issues. Inmates are entitled to some degree of protection under the due-process clauses of the Minnesota and United States Constitutions, and prison authorities must provide inmates with an appropriate level of due process before depriving an inmate of a protected liberty interest. *Wolff v. McDonnell*, 418 U.S. 539, 555-57 (1974).

Even if a State has no duty to authorize parole, if it does grant it,[16] any decision to deprive a parolee of such conditional liberty must accord that person due process. *Morrissey v. Brewer*, 408 U.S. 471, 480-490 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-782 (1973).

The Minnesota Supreme Court has already decided that a parolee has a liberty interest in a revocation proceeding. *State ex rel Taylor*, 273 N.W.2d 612 (Minn. 1978). In *Carillo v. Fabian*, the Supreme Court held that a prison inmate had

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16 Which Minnesota does, *see, e.g.*, Minn. Stat. §244.04, subd. 1; 244.05, subd. 1; 241.01, subd. 3a(b)l; §609.

a protected liberty interest in his supervised release date that triggered a right to procedural due process. 701 N.W.2d 763, 768 (Minn. 2005).

> "there is no iron curtain drawn between the Constitution and the prisons of this country." Inmates are entitled to some degree of protection under the Due Process Clause; thus, prison authorities must provide inmates with an appropriate level of due process before they are deprived of a protected liberty interest.

Carillo, 701 N.W.2d at 768 (citations omitted).

In addition, Minn. Stat. §244.05, Subd. 2 specifically mandated the Department of Corrections to provide due process in revocation proceedings.

It seems clear that Rickmyer had a liberty interest (he opposed having his body taken into custody and incarcerated). The question is "what process is due." *Morrissey* at 481. Due process is not a technical conception with a fixed content unrelated to time, place and circumstances,'" *Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886, 895, 6 L.Ed.2d 1230, 81 S. Ct. 1743 (1961), but is "flexible[, calling] for such procedural protections as the particular situation demands." *Morrissey, supra*, at 481. The methodology for assessing those demands was the subject of *Mathews v. Eldridge*, 424 U.S. 319 (1976), which prescribed a three-part enquiry to consider:

1. first, the private interest that will be affected by the official action;

2. second, the risk of an erroneous deprivation of such interest through the procedures used;

3. the probable value, if any, of additional or substitute procedural safeguards; and finally,

4. the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id., at 335.

Rickmyer pointed out in the case at bar:

a) he was allowed to 'call witnesses,' but not allowed to subpoena any;

b) he was unable to get any rulings prior to the hearing, and the HO was told how to rule by the DOC; the HO was not neural;

c) his protestations of First Amendment and other constitutional rights fell on deaf ears (those in the revocation system simply presumed that any Agent instruction was gospel);

d) his 'appeal' was not considered, and the appellate decision-maker blurred the line with the HO, admitting to a discussion with him (which was not imparted to Rickmyer).

Applying the *Mathews* factors:

1. Private interest. Rickmyer's private interests are high: his loss of physical liberty through incarceration (grievous harm pursuant to *Morrissey*), as well as continued house arrest and intrusive restrictions on ISR;

2. The risk of erroneous deprivation is high: here, a small group of individuals was allowed to misuse the parole system to prevent Rickmyer from responding to their motions or suing them in civil court. Not one system player stopped this and instead *they facilitated it.* Rickmyer tried to litigate the issues, and was repeatedly told that his motions would not be decided. His poignant issues (including First Amendment rights) were not addressed. His appellate issues were ignored. Clearly, the process is insufficient as it now exists;

3. Substitute procedural safeguards would be valuable: a) provide for a process to file motions and have them heard (before or during the hearing); b) provide a neutral hearing officer (who is not told how to rule by the prosecution-arm of the DOC) and a neutral appellate review that considers the issues raised; c) provide for subpoena power;[17]

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17 *Morrissey* entitles the offender to "(d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)."DOC policy 106.140 (A:229, et seq., see A:233) can be interpreted to include compulsory process (subpoena power). Or it can be declared unconstitutional because it violates the compulsory process clause. (The right to "call witnesses" equates to the right to compulsory process. *State v. Richardson*, 670 N.W.2d 267 (Minn. 2003); *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009) (subpoena power required by Sixth

4. The Government will likely argue that these procedural safeguards are too expensive. But the DOC failed to put anything in the district court record on this. And, if properly instituted, the State would save significant dollars now spend on wasted parole agent resources (think of the public money McDonald spent on pleasing Hoff and Goodmundson) and needless incarcerations. Many administrative courts provide for subpoena power, and those processes could be copied at the DOC.

The District Court erred on the law or the law should be modified

The Anoka district court did not address the above procedural due process issues, and analyzed the "Schoen" requirements only *vis a vis* this case. (Add:53-4).

Rickmyer asserts that this case shows that *going through the motions* of the elements required by *Shoen* is not sufficient.

By compressing the two phases of *Morrissey* hearing: i) probable cause and 2) the guilt phase (33 L. Ed.2d at 494), the DOC has denied due process. It is in the probable cause phase that the tribunal focuses on legal and constitutional issues. The district court analyzed only whether there was "enough evidence to satisfy the decision maker that the **conduct** of the offender does not meet the conditions of release." (Add:54 (emphasis added)). Much of what we were dealing with here was

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Amendment compulsory process clause). The Sixth Amendment right to confront one's accusers is also implicated. See *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009).

not conduct – but speech.[18] And the Commissioner lacks the authority to restrict that.

Further, we should not jump to deciding whether a condition of release was violated *without first deciding whether the condition was* ***reasonable***. Because if it was not – the Commissioner lacked authority to set it, and no incarceration is possible. If standard condition #4 is interpreted to permit the agent to make *any* order (like jump off a bridge), then the condition itself is unreasonable. Or, we can interpret that standard condition to require that the agent's instructions be reasonable (which probably makes more sense). Unconstitutional instructions/directives are unreasonable.

Efficiency is great. But an assembly line of revocation hearings which merely 'goes through the motions' and rubber-stamps everything the agent says, is *expensive*. It is expensive, because the public is paying significant dollars for a worthless system. And it is expensive because it results in needless incarcerations that cost significant dollars.

The District Court cited to the DOC's procedure guide (Add:54), then but did not analyze Rickmyer's arguments regarding subpoena power. (Add:58).

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18 Or other First-Amendment-protected expression or conduct, such as filing lawsuits (and grievances), and attending court hearings. *See, e.g., Buckley v. Valeo,* 424 U.S. 1, 14-23 (1976) (campaign expenditures); *Spence v. Washington,* 418 U.S. 405, 410-11 (1974) (wearing flag); *Tinker v. Des Moines Ind. Community School District,* 393 U.S. 503, 505 (1969) (wearing armbands); and *Toronyi v. Barrington Cmty. Unit Sch. Dist.*, 220, 2005 U.S. Dist LEXIS 3065 (N.D.Ill. 2005) (man standing by his wife while she spoke out in protest was protected from retaliation by the First Amendment).

III. In Rickmyer's case, he was Denied Due Process: the Writ should Issue.

All of Rickmyer's systemic challenges are echoed here: a) no subpoena power, even though allegation of 'harassment' clearly implicated cross-examination of John Hoff; b) he could not get a ruling on his pre-hearing-motion; c) no one examined his First Amendment rights; d) his appeal was not considered.

But in addition, Rickmyer points out that due process was denied to him, because:

- His Parole Agent met *ex parte* with the district judge on the 2010-Lawsuit, and they planned together a 'violation' of the 2010-Order. Hoff and Goodmundson were told about this confab, *but Rickmyer was not.*[19] *Any* revocation allowed to proceed under such facts makes a mockery of due process, and rewards bad conduct *by government officials.* The public needs to be protected all right – but not from Rickmyer. The public (like Rickmyer) need protection from glaring due process violations like these.
- The entire process (from Kip Browne's first request that Rickmyer's 2010-Lawsuit be stopped, right up until Rickmyer was put in prison) was a violation of Rickmyer's right of access to courts. Although some courts analyze this as a First Amendment right, Minnesota courts reviewing *habeas*

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19 Private lawyers fixing a case with a state judge were found to violate the U.S. Constitutional due process right in *DuBose v. Kelly*, 187 F.3d 1999 (8th Cir. 1999). Recusal law also finds its foundation in the due process clause. (*See* A:187 et seq.).

petitions analyze it as a due process right. *See Henderson v. Fabian*, 2007 Minn. App. Unpub. LEXIS 1126, *5-6 (Minn. Ct. App. 2007).

- The HO came to the hearing and announced that the "DOC had decided" that he would not rule on Rickmyer's pre-hearing motion. And then the appellate level *met with the HO* and discussed the hearing before deciding the appeal. (With due respect this is *not* a difficult argument to follow. (Add:54-55)).

The district court stated that, "the allegations that Petitioner ... puts forward are serious. Such allegations [] have serious ramifications against individuals and agencies if they are true. Respectfully, it is Peter Rickmyer who needs to be protected, and whose rights are at issue here, *not the rights or careers of government officials.* It is alarming in a case in which rickmyer paid with his body incarcerated, his house torn up by tornado (and him unable to get to it), and ISR until 2016, that it is the "ramifications" against government officials that were were considered.

- The lack of neutrality shows in the HO decision: he merely accepted everything Agent McDonald alleged *even though Rickmyer submitted* documentary evidence proving the directives in the Charges were not the ones he had been given. See charts below:

Legal discussions/papers chart

McDonald's own contemporaneous writing shows he told Rickmyer to inform him when he brought legal filings to an attorney.

Contemporaneous (A:171)	Charges (A:4)	HO decision (Add:16)	Anoka court (Add:49)
Gave him a directive to inform me if he is working on legal filings and brings them to an attorney. Specifically told Peter I wanted the attorney's name and the reason for the (possible) filings.	The subject was given a clear directive on July 29, 2010 to inform this Agent of any work on legal research or preparations and filings and to inform this Agent of the name of the attorney that would be signing off for him. He was also directed to follow the court's order. ... During that [home] visit the subject was questioned about any legal research he might be conducting or any legal filings he was preparing. The subject replied that he was not doing any legal work and he "would inform me if I did." ... The subject did not follow the order of the court and therefore did not follow the directive of this Agent.	The Agent's directive is clear that subject must inform his Agent of any legal research or preparations or legal filings and name of his Attorney before any such activities were initiated. ... He was given a clear directive on 7/28/10 to inform Agent before any work on legal research or preparation or filing is initiated and to inform Agent of the name of the attorney that would be signing off for him.	[Rickmyer] was directed to inform agent McDonald of any legal research or filings [he] was working on and to inform the agent of the name of the attorney that would be signing off on any documents.

The Anoka district court did not address these facts. Everyone ignored that Rickmyer did not violate the 2010-Order ***as worded.***

'Stay away' from hearings with Hoff and Goodmundson chart

The following chart shows Rickmyer was <u>not</u> told to 'stay away,' but merely not to attend court hearings for Hoff (which he did not).

A:177 (to Goodmundson)	A:168 (contemporaneous)	A:5 (Charges)	HO decision (Add:17)	Anoka court (Add:49)
We have resolved the issue of Mr. Rickmyer being in court; while I cannot ban him from the Government Center, I have given him a directive to **stay [] away** from Court hearings in which either your or John Hoff are scheduled to appear.	At the house I informed Peter that he is not to attend court hearings for John Hoff.	The subject was given a directive to **stay away** from any court appearances for John Hoff or Megan Goodmundson....	The Agent's directive to **stay away** from any court appearances in which John Hoff or Megan Goodmundson are involved was clearly violated on 03/01/11.	[Rickmyer] was given a directive to **stay away** from any court appearance involving John Hoff of Megan Goodmundson.

So Rickmyer did not violate the directives *as they were stated to him.*

Further, it is clear that the Charges (A:1) were drafted assuming the Hennepin district judge would find a violation of the 2010-Order. Once that plan did not work, the HO allowed McDonald to *change the allegations mid hearing.* That violates *Shoen*, which requires "written notice of the subject of the hearing."

Finally, regardless of the precise wording, the record is clear that Rickmyer was told that he could not attend public court hearings, or communicate confidentially with an attorney, or 'prepare' legal filings. This went way beyond the

2010-Order. And no one has articulated any legitimate correctional interest at stake.[20] And generic support would not save this case. Even in prison:

- communications with attorneys are protected;
- retaliation against prisoners who criticize government or otherwise exercise First Amendment rights is prohibited;
- filing grievances is constitutionally protected;
- prisons must acknowledge the right of access to courts (guaranteeing access that is adequate, effective and meaningful) **and the right extends to post-conviction proceedings, civil rights actions and other civil proceedings.**[21]

(*See* Manual cited at footnote 18).

Even if a legitimate correctional interest saved the generic condition of release (here, to follow the Agent's directive), it could not save what the government did here. Here, the government used its authority and resources to protect a small group of citizens from civil litigation. Further, the Anoka district court equated the 'stay away' directive with a no contact order, citing *State v. Schwartz*, 628 N.W.2d 134 (Minn. 2001) (which ordered a convicted sex offender to stay away from children). (Add:55).

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20 *Turner v. Safley*, 482 U.S. 78, 79 (1987).

21 *Wolff v. McDonell*, 418 U.S. 539, 579 (1974) (civil rights actions); *Jackson v. Procunier*, 789 F.2d 307, 311 (5th Cir. 1986).

Respectfully, this misses the point. At issue here is not the pre-printed standard condition #4 (to follow agent directives).[22] The district order continually focused on *conditions* when the issue was the instruction/directive of McDonald. At issue here is whether a parole agent has the authority to verbally order Rickmyer not to attend public court hearings. Or not to be in the halls of a public building *in order to please certain people.* These people were not afraid of Rickmyer: by their own admissions, they wanted him to not sue them civilly, or serve them with lawsuits and the like.

Second, no contact orders that force someone to stay away from a particular individual require *due process*, such as evidence, and a court hearing, and the opportunity to defend. (*See, e.g.*, the process at Minn. Stat. §609.748). Here, McDonald simply did everything that Hoff and Goodmundson asked. And, indeed, when rickmyer protested that *his* rights were being violated (that Hoff was cyberstalking *him*), McDonald not only ignored it, but used it against him, claiming he was 'defiant."

Finally, McDonald did not simply require Rickmyer to obey a court order. McDonald's directives went way behind that. And, Rickmyer's conduct *did not violate the 2010-Order.*

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22 Although even that condition is not 'reasonable' if it is interpreted as allowing agents to order parolees to do anything they desire (like jump off a bridge).

IV. Rickmyer was denied an Evidentiary Hearing.

Rickmyer presented so many documents containing admissions, that he requested an evidentiary hearing only if the DOC raised factual disputes: it did not. Rickmyer seeks remand for a hearing only if this Court finds factual disputes. He believes that the undisputed evidence supports his arguments as a matter of law.

CONCLUSION

Rickmyer respectfully seeks a reversal of the denial of his petition for writ of *habeas corpus*. He seeks remand ordering the district court to issue the writ. He seeks a ruling that he did not violate his conditions/directives, or that the directive was unauthorized by law/improper. He seeks to be put in the position he would have been in but for the unlawful process that got him arrested (based on a pre-hearing 'ruling' of the Hennepin County district judge), and had him incarcerated. In other words, he would go back to non-ISR conditional release. And he would be deemed not to have been released from prison after 1993, so that the DOC does *not* have authority to continue his ISR until 2016.

Rickmyer respectfully seeks a ruling that the process afforded him and others like him by the DOC is insufficient:

1. Agent directives that could give rise to violation and incarceration should be required to be communicated in writing;
2. The DOC should institute a probable cause phase to consider issues

such as constitutional rights and the authority of the condition/instruction, and pre-hearing motions (that phase could be waived if not needed);

3. The statute and/or DOC policy should be interpreted to provide for compulsory process in parole revocation hearings; and
4. There should be a Chinese wall ordered between the hearing officers and the prosecution-arm of the DOC (the hearing officer should decide all motions, not the "DOC"); there should be a wall between the hearing officer and the DOC appellate process; and
5. The DOC should institute a reporting process for retaliation by parole agents (similar to the grievance process within the prisons).

WORD COUNT CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief contains no more than 13,996 words, counted automatically by Microsoft Word 2010 Office-suite software word-counting feature (and including all footnotes).

Dated: November 29, 2011

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