

No. 74818-1-1

COURT OF APPEALS, DIVISION I OF THE STATE OF
WASHINGTON

DAVID WILEY, Appellant

V.

JENNIFER WILEY, Respondent

BRIEF OF APPELLANT

David Wiley
Appellant, Pro Se
20721 Olympic Pl. NE #A7
Arlington, Wa 98223
(425) 420-4030

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2013 JUN 27 PM 4:25

TABLE OF CONTENTS

	Page
I. Assignments of Error	1-2
Issues Pertaining to Assignments of Error	
No. A	2
No. B	2
No. C	2
No. D	2
No. E	3
No. F	3
No. G	3, 4
No. H	4
II. Statement of the Case	4-10
III. Arguments	
1. Abuse of Ex Parte orders is a due process violation	10
2. Equal Protection is a Right that extends to the Rules of the Court	13
3. Rules of Evidence Apply Normally	14
4. The Court can only find you committed those acts which you are accused of	15
5. Pick a Position, the Estoppel doctrines	17
6. Your personal space cannot be a violation, because its your right	20
7. Fear does not justify Stalking	22
8. Its inappropriate for the Court to question religious beliefs	24
IV. Summary of Argument	27
V. Conclusion	31
VI. Appendix	
1. DV Manual for Judges	15
2. University of Puget Sound Law Review Vol. 16:741	25
3. -35 DVPO abuse well known 3-35	28

TABLE OF AUTHORITIES

	Page
Table of Cases	
<i>Blackmon</i> , 155 Wn. App. At 722.	24
<i>CITY OF BELLEVUE v. JACKIE</i> 96 Wn. App. 209	20
<i>Gourley</i> , 158 Wn.2d. 460, 145, 468 P.3d 11835 (2006)	12, 14-15, 24
<i>Karas</i> , 108 Wn App. At 700;	24
<i>New Hampshire v. Maine</i> 532 U.S. 742 (2001)	17
<i>Parker v. Sager</i> . No. 9686 U.S. 174 F.2d 657 (1949)	19
<i>Spence v. Kaminski</i> , 103 Wn. App. 325, 12 P.3d 1030 (2000).	11, 24
<i>State v. Parker</i> , 139 Wash. 2D 486, 493, 987 P.2d 73, 78 (1999);	20
<i>State v. Ferrier</i> , 136 Wash. 2D 103, 111, 960 P.2d 927, 931 (1998);	20
<i>State v. Hendrickson</i> , 129 Wash. 2D 61, 69 n.1, 917 P.2d 563, 567 n.1 (1996)	20
<i>In re Det. of Petersen</i> , 145 Wash.2d 789, 799, 42 P.3d 952 (2002).	27

Constitutional Provisions

U.S. Const. amend. XIV, § 1	1, 2, 11
U.S. Const. amend. IV	3, 13, 20
Wa. Const. section VII	3, 4, 20
U.S. Const. Amend. V	16
Wa. Const. section XI	4, 25

Statutes

RCW 26.50.070 “Ex Parte Orders”	2, 13
RCW 9A.46.120 “Stalking”	4, 31
RCW 26.09.191 “Parenting Plan Restrictions”	5
RCW 26.50.010 “Domestic Violence Definitions”	12, 21, 27
RCW 9a.46.110 “Stalking”	24
RCW 10.99.010 “Domestic Violence statute intent”	24
RCW 26.44.015 “Abuse of Children limitations”	25
RCW 9A.16.100 “Use of force on children”	25
RCW 26.50.060 “Relief”	25, 30, 31
RCW 4.84.185	32

Regulations and Rules

Code of Judicial Conduct 2.3.	4, 22, 28
Code of Judicial Conduct 2.2	13
Evidence Rule 1101(c)(4)	14
Evidence Rule 610 “Religious Beliefs or Opinions”	24, 25
R.A.P. 18.1 “Attorney Fees and Expenses”	32

Other Authorities

Judicial Estoppel	1, 3, 17-19, 31
Equitable Estoppel	1, 3, 16, 18, 31
18 C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure § 4477, p. 782 (1981)	17
Department of Defense Directive 5220.6	30

I. Assignments of Error

1. The trial court erred when it granted a Protection Order after dismissing the imminent harm invoked during Ex Parte orders
2. The trial court erred in arbitrarily allowing the Petitioning party over twice the speaking time in hearing allowed to the Respondent's Party.
3. The trial court erred in admitting hearsay and allowing the rules of evidence to be suspended.
4. The trial court erred in ruling there was cause for a Protection Order based on injury to the children when David Wiley had not been accused of injuring the children.
5. The trial court erred in violating the principle of Judicial Estoppel
6. The trial court erred in violating the principle of Equitable Estoppel
7. The trial court erred in ruling when it considered Jennifer's unauthorized intrusion into David Wiley's bedroom the cause of an infliction of fear.
8. The trial court erred by finding David Wiley had placed a paper target in front of Jennifer's closet.

9. The trial court erred in allowing the appearance of religious bias during proceedings.

Issues Pertaining to Assignments of Error

- A. Was due process violated when the imminent harm claimed to grant Ex Parte orders (per RCW 26.50.070) is found to be false or without merit? (Assignment of Error 1)
- B. Does it violate the due process rights of equal protection under the 14th amendment to arbitrarily grant one side in a hearing speaking time which multiply exceeds the local rules and what was allotted to the other party? (Assignment of Error 2)
- C. Did the trial court abuse its discretion by admitting hearsay and suspending the rules of evidence set forth by case law?

(Assignment of Error 3)
- D. Did the trial court commit obvious error and render proceedings useless in ruling that injury to the children constituted Domestic Violence when David Wiley had not been accused of injuring the children? (Assignment of Error 4).

- E. Did the trial court violate the *Estoppel* doctrines by allowing Jennifer Wiley to assert multiple contradictory positions?
(Assignment of Error 5 & 6)
1. Is *Judicial Estoppel* violated by Jennifer's alleging David is abusive in initial filings for divorce and then alleging she only felt safe in the shared home because David would never harm anyone in front of the children? (Assignment of Error 5)
 2. Is *Equitable Estoppel* violated by Jennifer asserting she had the right to privacy in her bedroom during divorce while denying David the same right to his bedroom? (Assignment of Error 6)
- F. Can an intrusion into the privacy of another protected by the U.S. 4th Amendment and the Washington State Constitution, section VII constitute an Infliction of Fear on the intruder? (Assignment of Error 7).
- G. Did the trial court err in finding that David Wiley had placed paper targets in Jennifer's closet? (Assignment of Error 8)
1. Did Jennifer's photos clearly show manipulation of evidence?
(Assignment of Error 8)

2. Do Jennifer's photos support the trial court's decision that targets were placed in front of her closet? (Assignment of Error 8)
 3. Did Jennifer have a right to intrude without permission on David's privacy under Wa. Const. section VII and caselaw when entering his bedroom? (Assignment of Error 8).
 4. Did Jennifer's unauthorized reading of David's mail, pictures of his Facebook account, and entering his room violate his right to privacy under the U.S. 4th amendment and/or Washington Constitution section VII? (Assignment of Error 8)
 5. Did Jennifer's unauthorized reading of David's mail, pictures of his Facebook account, and entering his room constitute stalking under RCW 9A.46.120? (Assignment of Error 8)
- H. Did the trial court commit probable error by violating David's religious freedom under Wa. Article 1, Section 11 and create the appearance of bias that violate C.J.C. Rule 2.3 in questions about David's religious beliefs? (Assignment of Error 9)

II. Statement of the Case

David and Jennifer Wiley were married on February 28th, 2004 in Milwaukie, Oregon. They have three minor children: Their daughter Jennie born July 11th, 2005. A daughter Rana born November, 6th, 2006 and a son Tristan born on April 16th, 2009. They have resided together in Snohomish County, Washington since Summer of 2008.

On Friday July 31st, 2015 Jennifer Wiley filed for divorce from David Wiley in case 15-3-01947-5 of the Snohomish County Superior court. Her motion filed in the court requested a temporary order for Child Support, sole residence of the family home and restraint of David Wiley from the family home. In her Parenting Plan (CP 974) she asked to restrain David Wiley's time with the children, sole possession of the house, and maintenance based on alleged physical abuse of the children in accordance with RCW 26.09.191. This abuse was declared in Declarations from Jennifer Wiley (CP 1053) and Joanne Wasilko. There were no statements that Jennifer was in fear of imminent harm to herself when Divorce was filed. David Wiley denied allegations of abuse in his response declaration.

Jennifer motioned for David Wiley to vacate the family home (CP 985) A hearing was noted for August 17th but rescheduled and heard on August 31st, 2015.

On August 31st, 2015 an agreed order (CP 934 – 936) was entered between the two parties. Both parties agreed in order to reside in the home, not monitor each other, have split parenting schedules, made for an arrangement of payments from David Wiley to Jennifer Wiley, and Jennifer Wiley agreed to seek full time employment.

On November 25th, 2015 David Wiley filed a motion to Amend temporary orders (CP 914-920) to amend parenting time, allow spanking and clarify bill payments. Jennifer responded December 11th, alleging David had slapped Tristan and that David had a “*sudden interest he has developed in shooting guns. See shooting photo and his shooting target attached as Exhibit D*” (CP 859, CP 880-881). Jennifer again alleged that David was dangerous and physically abusive around the kids (CP 859) David Wiley addressed those allegations in his reply. Both parties prevailed in part on December 17th with amended orders increasing the Father's parenting time, clarification of payments denied and permission to spank denied. Jennifer still had not alleged at this time a fear of imminent harm during these proceedings. However, Jennifer additionally alleged

David watched pornographic videos in front of the children with additional allegations of physical abuse (CP 857). Jennifer included pictures in her response showing she had been monitoring David's communications with his family on Facebook (CP 904-5)

The parties held mediation on December 29th, 2015. A CR2A agreement appointing a Parental Evaluator was agreed to. That evening David Wiley was invited by Tristan Wiley (Age 6) into the room he shared with his Mother where he photographed the living conditions and emailed Jennifer Wiley an objection to them on December 30th, 2015 (CP 400-405). Jennifer's Attorney Andrea Seymoure submitted a letter to David Wiley's attorney Jeff Jared that Jennifer Wiley had not looked for full time employment (CP 393-394) on January 4th, 2016.

On January 6th, 2016 Jennifer Wiley filed a Petition for an Order for Protection and had an Ex Parte hearing for an order of Protection on January 6th, 2016 without her attorney present or co-signing filings (CP 449). Filed under case 16-2-00015-9. Jennifer cited in court as cause for imminent harm that David Wiley had insisted on having her bedroom door lock removed (RP 1-6-16 pages 5-6 & CP 445) and that she was afraid if David was served this second time she would be in danger. The order was

served that night and David Wiley was removed from the family home by the Snohomish County Police Department.

The initial hearing was continued to January 15th. On January 15th both parties agreed to amend the protection order and continue the hearing to February 1st. The amended temporary protection order allowed David Wiley back in the family home during his parenting time with the children (except Tuesdays) (CP 330-331, 759). On the evening of January 18th while in Jennifer Wiley's care, Jennie Wiley (Age 10) was admitted to the hospital Emergency Room for a hematoma from having her fingers slammed in a door (CP 589-692) .

David Wiley presented a clean background check with no criminal history (CP 419). He repeatedly objected to Jennifer's contradictory positions throughout his responses. David never threatened to harm Jennifer Wiley (CP 447). Jennifer neither refuted David's declaration that the closet regarding the targets was in David's personal bedroom nor that the papers were not displayed (CP 448). Jennifer claimed the bedroom David occupied as shared (CP 335 ITEM #13) and the room with their son Tristan as hers.

Does the Respondent use firearms, weapons or objects to threaten or harm you?

No. he is too smart for that. He only threatens me indirectly, like by putting the shooting targets in front of my closet.

Regarding violence Jennifer stated David had never been physically violent towards her, the children or anyone around the children.
(CP 445)

He is very careful not to physically hurt me, but I believe he will if he can figure out how to do so without getting caught.

(CP 446)

I have essentially been using my kids as shields because I don't think he will seriously harm them or me in their presence.

In the February 1st hearing Commissioner Stewart dismissed the cited reason for imminent harm of the lock on the door (*RP 2-1-16 pg. 9-10*). Commissioner Stewart acknowledged himself to giving Jennifer's Attorney Andrea Seymoure over 10 minutes of speaking time prior to also allowing their reply (*RP pg. 17*). David Wiley's attorney Jeff Jared is kept to 5 minutes (*RP pg. 18*) with a few additional minutes of responding to the Commissioner's questions. During proceedings Hearsay was not overruled over objection of Attorney Jeff Jared (*RP pg. 17*) in an apparent suspension of the rules of evidence. Commissioner Stewart & Attorney Andrea Seymoure brought up in hearing the issue (*RP pgs. 13, 14, 19, 24,*

25) of David's religious beliefs. Commissioner Stewart granted the Domestic Violence Protection and Order, citing the injury to the child and targets in a closet (RP pg. 31).

New temporary orders were issued the day of the hearing February 1st, 2016 which superseded all previous orders (CP 554-557). The new temporary orders did not retain clauses for Jennifer not to monitor David nor to restrain either party from corporal punishment (spanking) their children. David Wiley was restrained from his home, not granted a civil standby to obtain any personal possession. David was not restrained from owning or obtaining a weapon (CP 324) or child contact and custody (CP 322-3). However, David and Jennifer still had to be present together for child exchanges and David was not granted a civil standby to obtain any personal possessions from his home. David filed Pro Se a Motion to Vacate (CP 23-185) and a Motion to Reconsider (CP 186-317) without Note which were not considered by Commissioner Stewart.

Jennifer Wiley submitted a Motion for Revision (CP 542-553) of the Parenting plan approved February 1st. Both parties prevailed in part on February 24th, 2016 and modification of the Judge's Order on Revision (CP 493-494) is not sought on appeal.

III. Argument

1. Abuse of Ex Parte orders is a due process violation

As noted by Commissioner Waggoner (RP 1-6-16 page 8) “the proper mechanism for dealing with that issue in the bigger picture is to bring a motion and, you know, explain the change of circumstance and why that's not any longer a tenable situation.” A final order of protection can be issued without a showing of a recent overt act of domestic violence, so long as the victim, based on prior acts of domestic violence, remains in fear of the respondent. In contrast, an ex parte order cannot be issued unless there is a danger of “irreparable injury” to the petitioner – which generally will require a recent act. *The temporary protection order is issued ex parte, without the notice and hearing found in the permanent or fixed-time protection order processes that protect the respondent's due process rights. The immediacy of the threat to the victim justifies a temporary infringement on the constitutional rights of the alleged abuser. Spence v. Kaminski, 103 Wn. App. 325, 12 P.3d 1030 (2000).*

For Jennifer Wiley's Order of Protection the only alleged recent event since their previous hearing or mediation was the allegation of David insisted she take the lock off her bedroom door (RP 1-6-16 pg 6 and

CP 325). The result was that David Wiley was deprived of his home, his property, access to evidence in the case, by an Ex Parte action. Also, having had two hearings in the previous few months since Jennifer served David with divorce papers, what was the immediacy of the threat?

Per RCW 26.50.010 "*Domestic violence means (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.*"

Since there was no history of violence, sexual assault, threats, or stalking in order to grant a Domestic Violence Protection Order the trial court needed to validate the three part requirement of an infliction of fear of imminent harm. It appeared that the only recent act which constituted domestic violence could have been the allegation that David was trying to have Jennifer's lock removed. This allegation was refuted in the Respondent's response attachment 3 and there was no finding by Commissioner Stewart (RP 2-1-16, pg 9-10) of this amounting to Domestic Violence. If Petitioners are allowed to Petition on false or non-

meritorious basis without penalty; then the court will have exceeded the authority and intent granted in statute RCW 26.50.070. If there is no penalty for misleading during an Ex Parte hearing then why wouldn't every intransigent litigant abuse the courts to put any accused person at a disadvantage and loss of due process?

2. Equal Protection is a Right that extends to the Rules of the Court

The Trial court made an obvious error of due process when it allowed Jennifer's party to greatly exceed the 5 minutes allotted per side without allowing the same extension of speaking time to David's party. Attorney Andrea Seymoure spoke for over 13 minutes initially and was allowed over 5 minutes again in her reply. During Attorney Jeff Jared's response, Commissioner Stewart reminded him that he only had 5 minutes to speak after having allowed 13 minutes to the other party. This violated David's Due Process right under the 14th amendment and is reversible error. While the rules of the court may be waived or suspended particularly in a Domestic Violence hearing, equal protection under the law is a constitutional right and cannot be suspended. Commissioners, like Judges must abide by C.J.C. 2.2 and shall perform all duties of judicial office fairly and impartially. Arbitrary settings of time that advantage one

party over another are not impartial or fair, and work against Justice. Even upon review the party of David Wiley is disadvantaged because we were not allowed to adequately address the case. This should be cause for a retrial, but I believe there is sufficient evidence to show under a preponderance of evidence that David Wiley did not commit acts of Domestic Violence.

3. Rules of Evidence Apply Normally

“ER 1101(c)(4), which was adopted in 1999, provides that the Rules of Evidence, except for the rules and statutes concerning privileges, need not be applied during hearings for protection or anti-harassment orders. *Gourley v. Gourley*, 158 Wn.2d. 460, 145 P.3d 11835 (2006) (Recognizing that ER1101(c)(4) permits the admission of hearsay in hearings for protection orders).

In *Gourley*, the court concluded that there was no due process violation in not requiring testimony or cross-examination at the hearing for protection order, but states that such might be “*appropriate in other cases*.”

However, if a protection order is being requested as part of another type of proceeding, i.e., a dissolution action, it may be

appropriate to apply the rules of evidence in making any final orders. The rationale for not mandating application of the rules of evidence in protection order hearings was to further public policy in creating a simple, pro se friendly procedure. However, when the parties are afforded a full trial with sufficient time to call witnesses and engage in discovery, such as a dissolution trial, the rationales for dispensing with the rules of evidence are far less persuasive.” 1

Almost all the exceptions named in *Gourley v. Gourley* were present in the trial court hearing. Jennifer was not Pro Se, a dissolution action was ongoing and Jennifer was not Pro Se. It is clear the legislature intended the rules to be in effect except in emergency domestic violence situations which this was not for all the reasons already brought forth. The suspension of the rules of evidence and admission of hearsay was a reversible error which unfavorably colored proceedings.

4. The Court can only find you committed acts you are accused of

Commissioner Stewart found that one of the two issues for the preponderance of evidence was the “injury to the child” (RP 2-1-16 pg 31). While David had been accused of many forms of abuse throughout the ongoing divorce proceedings (without findings of abuse) there had

been no allegations of abuse which have lead to the injury of the children.

A School nurse report (CP 470 & CP 365) reads “*RN interviewed student – alone student did not report slap – interviewed with mom – reported slap with open hand to right cheek – no physical marks present -*”.

Therefore, there was no evidence or accusation for the trial court to make this finding with. Losing Liberty and Property on the basis of something you're not accused of is a 5th amendment due process violation.

Furthermore, David Wiley in attachments to both the Response to the Petition for Order for Protection and Respondent's Response to Amend Temporary Orders provided attachments which documented dangerous conditions the children were exposed to while with Jennifer. Jennifer's history of spanking (CP 395-400). Tristan Wiley exposed to unsafe living conditions (CP 401-406). Face injury to daughter Rana (CP 415-417) while in Jennifer's custody. An Emergency Room visit by their daughter Jennie for injury to the hand while she is in Jennifer's custody and the Father had been restrained from the home. All of these incidents were reported by the Father only (CP 589-692) and occurred during the childrens' time with their Mother Jennifer. Commissioner Stewart's finding made a travesty of Justice by reversing victim and offender;

restraining the childrens' protector (their Father, David) while ignoring the harm caused by Jennifer and enabling it to continue.

This amounts to obvious reversible error. Additionally, if David was responsible for injuring the children and a danger to the children then why did the Trial court place any restrictions on him being with the children in either the Order for Protection or Temporary orders? Upon further review on Petition for Revision by Jennifer Wiley, the honorable Judge Okrent did not make any findings upon which David's parenting rights or visitation should be restrained.

5. Pick a Position, the Estoppel doctrines

"The doctrine of Judicial Estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding"; 18 C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure § 4477, p. 782 (1981). The U.S. Supreme Court has held that a party cannot bring subsequent civil litigation that is contradicted by the stance taken in earlier litigation. *New Hampshire v. Maine* 532 U.S. 742 (2001). Throughout the divorce proceedings Jennifer Wiley has been alleging that David Wiley is physically and sexually abusive towards their children. Regardless that no abuse has been found

by any neutral witness or reporting party. Jennifer's Domestic Violence Petition relies not on alleging Domestic Violence towards the children but towards herself. It reverses her previous stance that David abused the children and now contends that she was abused and only felt safe because "he will never seriously harm them or me in their presence" (CP 446). Under initial pleadings in both cases Jennifer asked for the same relief as well; possession of the house, spousal maintenance and restraint against David Wiley. Jennifer can hold that she truly is afraid and only staying in the house because David would never harm anyone in front of the kids and therefore her statements of harm to the children are false. Otherwise Jennifer can hold the children are being abused and Jennifer isn't using the children as a shield and her claims of being afraid are false. The doctrine of Judicial Estoppel means that once one of these contradictory claims has begun litigation then you cannot bring the other. To consider this contradictory position after it was objected to (CP 433) violates the doctrine of Judicial Estoppel and is reversible error. The court should consider the possibility that neither are true and Jennifer is fabricating claims for benefit in dissolution proceedings.

"The essential elements of equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or

concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts.” *Parker v. Sager*. No. 9686 U.S. 174 F.2d 657 (1949). It is acknowledged that prior to the divorce the couples separated bedrooms with Jennifer moving into the bedroom of their son Tristan after David's nephew Kendrick moved out of the house all prior to the divorce filing.

Throughout all of her written materials Jennifer never describes a room, closet or lock as “David's” and only occasionally distinguishes which room she had shared with David (CP 568 #13) or the room she shared with their son Tristan (CP 567 #3). This not only obfuscates and misleads the court, but violates the principle of Equitable Estoppel because it creates contradictory statements regarding the living arrangements in the Wiley residence. David Wiley claimed the paper targets were in his solely occupied bedroom (CP 428). Jennifer did not refute that it was in his room but stated that it was in front of her closet (CP 568 item #13). I ask the court in the interest of Justice to require Jennifer to affirm on penalty of felony perjury who resided in the bedroom

with paper targets and if this bedroom contained what she described as her closet.

6. Your personal space cannot be a violation, because its your right

The right to privacy is one of our most important rights enshrined in our country's 4th amendment. It is axiomatic that article I, section 7 of the Washington state constiution provides greater protection to an individual's right of privacy than that guaranteed by the Fourth amendment. *State v. Parker*, 139 Wash. 2D 486, 493, 987 P.2d 73, 78 (1999); *State v. Ferrier*, 136 Wash. 2D 103, 111, 960 P.2d 927, 931 (1998); *Stave v. Hendrickson*, 129 Wash. 2D 61, 69 n.1, 917 P.2d 563, 567 n.1 (1996).

Privacy is not just the right to shut your doors to the government. First and foremost it is the right to shut your doors to any other person and prohibit unwelcome intrusions. Boundaries are difficult to draw in a shared dwelling of two parties who have ownership in the property. However, the right to privacy still exists between parties in a dissolution. Courts in Washington and elsewhere have recognized that one spouse's right to possession of real or personal property may be superior to that of the other spouse. *CITY OF BELLEVUE v. JACKIE* 96 Wn. App. 209. I ask

the Court if we do not have the right to privacy in a solely occupied bedroom of your home, then where does our right to privacy exist at all? Equitable Estoppel prohibits Jennifer from claiming a division of privacy in the home if it is not also granted to David.

It is not Domestic Violence simply that one person is afraid of another. Domestic Violence from fear is one component of the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members per RCW 26.50.010. But what constitutes infliction? Infliction cannot reasonably be an action that one imposes on themselves against another's expressed desire.

If this right to private space is denied it will open up much more difficult litigation regarding protected speech in areas considered private. If a paper target is not okay, why not a violent movie poster? What about people who own or must own firearms such as hunters, police officers, or security and military personnel? Would they not automatically be guilty of Domestic Violence by an intimate partner by the same standard?

If what you possess in your private space can be constituted to be a harmful infliction on any intruder then how does privacy still exist in any meaningful way? In contrast Commissioner Stewart's suggestion (RP 2-1-16 page 31) that the targets should have been put in the garage could cause

an infliction. Placing things in a shared space like a garage essentially makes things public rather than private. Privacy should not depend on you placing things in a notebook or safe or any other redundancies. The right to privacy exists in your personal space or else privacy is violated.

7. Fear does not justify Stalking

Jennifer's photos of paper targets in the Petition for Order for Protection contradict her stated claims about them. Jennifer claimed I hung up a paper target in the children's room (CP 445) but the photo exhibit of the children's room shows a paper target draped on a child's chair displayed for photographing (CP 480).

The other photo exhibited of two paper targets is therefore the photo which Jennifer is claiming was displayed in front of her closet (CP 470 & CP 881). However, the photo does not show a closet. The photo shows one paper target laid out on David's bed. David took pictures of the the bunk bed Jennifer and Tristan were sharing (CP 402-5) and Jennifer did not contest the fact that it was their shared bunk bed. Furthermore one paper target is laid out on David's bed for display and the other is being held in the air. Note that the target being held has sharp fold marks which would not be indicative of having been flat for display either. A closet is

not in the margins of the photograph. If the pictures were displayed in front of her closet as Jennifer contends then this manipulation of the paper targets has no logical purpose. Given the statements and evidence, Commissioner Stewart's finding that the targets were in a closet (Regardless of who's) is probable error. Additionally Commissioner Stewart once again contradicted his own finding. If David was Domestically Violent due to misuse of Firearms then why was he not restrained (CP 325-6) from purchasing or obtaining weapons?

All of Jennifer's photos from the Petition for Order for Protection show that Jennifer was monitoring David in violation of his requests and their temporary orders agreed on 8-31-15 (CP934-936). Jennifer has supplied in her exhibits photos of objects from David's room (pictures & paper targets), photos of a letter addressed solely to David (CP 355-7), and pictures of David's Facebook postings (CP 904-5, 354-9) which were not shared with Jennifer. That David's Facebook account was not sufficiently hidden for Jennifer not to find it is not a defense of the agreed order not to monitor each other (CP 934-936). Jennifer's exhibits are submitted after the agreed orders meaning Jennifer knowingly invaded David's privacy. Jennifer placed David in fear of losing his property. Worse still, through the restraining order not including civil standby (CP 326) David has lost

possession of his property, had his freedom restrained and placed in fear and duress. Under RCW 9a.46.110 this constitutes the crime of Stalking and itself is subject to restraint.

The intent of the Domestic Violence statutes per RCW 10.99.010 is to provide equal protection under the law between violence of partners and strangers. “The purpose of DVPA proceedings is to prevent domestic violence” Spence, 103 Wn. App. At 335; Karas, 108 Wn App. At 700; Gourley, 158 Wn.2d at 468; and Blackmon, 155 Wn. App. At 722. At no point in proceedings did Jennifer Wiley, Stewart or Waggoner articulate what violence was to be stopped with this restraining order. Is it reasonable to presume if a stranger had stalked someone on social media, read their mail and invaded their private space as a prelude to requesting a restraining order that would it be granted? Domestic Violence law is meant to prevent likely aggressive action from one party. David Wiley has not aggressed on the Petitioner nor can it be found to be reasonably likely under a preponderance of evidence as presented. Shall it be a defense to Stalking that the Stalker claims fear of their victim?

8. Its inappropriate for the Court to question religious beliefs

Only if a person's actions were abusive or not should be relevant in court. Religious beliefs should not even be considered. E.R. 610 prohibits evidence of the beliefs or opinions of a witness on matters religion is not admissible. This rule of evidence is grounded in Article 1, Section 11 of the Washington state constitution stating that nobody should be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Commissioner Stewart's question to opposing counsel if David believed "Freedom of religion to what, beat your kids?" was a violation of E.R. 610 and David's constitutional rights. Stewart's further questioning of David's religious beliefs during hearing was a further violation of C.J.C. Rule 2.3. by which Commissioner Stewart should not have even allowed the appearance of religious bias to enter the courtroom. ² What matters is whether child abuse has occurred and questions of religious belief are not relevant or permissible. Whether in error or dishonesty, Attorney Seymoure's response "it does not say spank, the request was to use capital punishment" was false. David's Motion by Attorney Jeff Jared clearly stated "Allows Spanking" (CP 914). Spanking is expressly legal per statute (RCW 26.44.015, RCW 9A.16.100) and does not constitute abuse or domestic violence.

Even if the ultimate outcome of the case was not impacted, accepting these tactics impair the integrity of the legal profession and a loss of faith in the courts. However, David Wiley believes this was actual bias deserving of sanctions. When the subject of David's religious beliefs was entered into the hearing Commissioner Stewart then allowed the party to continue oral argument past the allotted 5 minutes per side. Stewart's last question to David prior to ending his oral argument was regarding religious emails. If Commissioner Stewart was concerned about abuse or legal spanking (RP pg. 19), then why was the prohibition against corporal punishment not retained in the temporary orders (CP 554-557)? Why was Domestic Violence found on account of injury to children and weapon related displays (RP pg. 31), but David was not restrained from his children or weapons(CP 322-325)? Why was David not only restrained from Jennifer Wiley, but not permitted civil standby to reclaim his personal property (CP 326) from his home? Why did Commissioner Stewart agree to split the family combined income in half (RP pgs. 30-31) and then proceed to award more than half of David's net monthly income (CP 556) to Jennifer? If Stewart reasonably believed David was a Domestic Violence threat to Jennifer then why were they instructed to exchange children together (CP 555 order #2) at the same location ?

Commissioner Stewart's stated rulings contradict his given Orders. There are too many logical inconsistencies to believe the stated reasons for the Domestic Violence finding and make it likely that Commissioner Stewart based his decision on the religious bias he improperly allowed to enter his courtroom.

D. Summary of Argument

Appellate courts review de novo the legal conclusion of law whether probable cause is established. In re Det. of Petersen, 145 Wash.2d 789, 799, 42 P.3d 952 (2002). Commissioner Stewart did not show adequate cause for the three part condition of RCW 26.50.010 of an Infliction of Fear of Imminent Harm. It is not sufficient under the statute that Jennifer declare herself afraid of the paper targets and Commissioner Stewart find them terrifying. That fear must be inflicted by David on Jennifer. No reasonable person can find a willful intrusion into David's social media, mail and personal bedroom as was done by Jennifer to be an infliction on her. While only one's self can give expert testimony to their emotional state (Fear) you cannot legally claim contradictory positions which violate the estoppel doctrines. Finally the portion of "Imminent Harm" was not demonstrated and the Ex Parte hearing basis for it was

seemingly dismissed by Commissioner Stewart in trial court. No stated harm was about to happen to Jennifer Wiley if the Ex Parte restraint had not been granted. There was no imminent harm that warranted going from mediation following a court hearing one week into a restraining order the next week. Commissioner Stewart's interest in the religious beliefs of David Wiley gave the appearance he decided the case on personal religious bias in violation of C.J.C. Rule 2.3 and David Wiley's constitutional rights.

Although Jennifer had frequently alleged David Wiley was abusive, she had not alleged any of this abuse amounted to injuries. There is not one piece of evidence or testimony to support Stewart's finding that David was responsible for injuring the minor children. Contrarily there was evidence and testimony that Jennifer was responsible for child injuries and endangerment.

Protection Orders are not intended by the legislature as a side-step to the dissolution process. The Court of Appeals should not condone the misuse of Orders for Protection even in a bitter, acrimonious divorce. It does not help the public image of the Courts or individuals of good faith if Restraining Orders are readily abused for leverage during divorce. Doing so only encourages vexatious and intransigent litigants to continue the

abuse of the restraining order system for which it is well known (Appendix entries 3-35). Anyone can Google search “how to get your husband out of your house” and it will produce a long list of links on how to abuse Domestic Violence proceedings and attorneys to hire for it. Some people have even obtained restraining orders against TV personalities.

“A Santa Fe, New Mexico judge recently granted a temporary restraining order against TV talk show host David Letterman for a woman who alleges that Letterman—who works in New York City and whom she has never met--has mentally harassed her through his TV broadcasts. The woman also claims that Letterman and fellow celebrities Regis Philbin and Kelsey Grammer have been conspiring against her... Letterman’s attorneys were able to get the order dropped, and the judge’s decision has made good fodder for gossip columns and news of the bizarre. However, the case also demonstrates a much larger though rarely discussed problem—it is far too easy to get a restraining order based on a false allegation.” -- Albuquerque Tribune (1/17/06).

Furthermore a preponderance of evidence shows that Jennifer violated David's privacy with ill intent despite an agreed court order against the parties monitoring each other. The court may re-align the parties where the courts finds the original petitioner is the abuser and the

original respondent is the victim and may issue a temporary order for protection until the victim is able to prepare a petition. RCW 26.50.060

As a result of the Superior Court's orders David Wiley was restrained from his home and his property (in example his furniture, appliances and his Father's ashes), placed under extreme financial duress, lost his ability to afford an attorney, the violations of David's privacy were condoned, and David closed his social media in self-protection to prevent further privacy invasions in communicating to his family. David & Jennifer's children have sustained further injuries and the children have endured documented psychological distress. Jennifer has notified David of the destruction of some of his property such as his television and video game console used by their children. David's employment has been damaged due to lost time, the highest levels of stress and a damage to his reputation. Under Department of Defense Directive 5220.6, David Wiley can be denied security clearance to work on military parts in the Aerospace industry – limiting his career. The Dissolution trial which could have been completed has been unnecessarily delayed; in detriment to the entire Wiley family. With a finding of Domestic Violence against David Wiley it is highly unlikely the Superior Court will give him an equitable outcome in the Divorce.

E. Conclusion

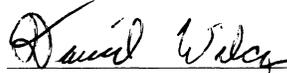
I ask the court to find that there is no imminent harm if for a Protection Order if the cause for an Ex Parte is not substantiated. The court should find that Due Process requires that each side be given an extension of oral argument time if granted to one side. The court should find that rules of evidence should not be suspended where both sides are represented by an attorney and litigation is ongoing. I ask the court to find that Judicial & Equitable Estoppel precluded Jennifer from bringing her contradictory claims. The Appellate court should find Jennifer knowingly invaded David's privacy to abuse the courts for leverage against him in dissolution and did cause David harm. Additionally an intrusion into the privacy of another individual or stalking per RCW 9A.46.120 should not constitute an infliction onto the intruder. Finally that Commissioner Stewart committed multiple errors in proceeding as justification for admitting religious bias.

In relief I request the court vacate the Order for Protection entered 2-1-16 and sections 1, 3, 6 of the February 1st Temporary Order. The parties should be realigned per RCW 26.50.060 with Jennifer restrained from David, the house & their children until a new anti-stalking order and

an amended parenting plan is entered by the trial court by law within 14-24 days. The Children should reside in the home with David Wiley until a revised parenting plan is entered. I request that Jeff Jared's original request for attorney's fees be honored to David Wiley as well as awarding expenses per RCW 4.84.185 and RAP 18.1 for costs incurred during the appeal. The court should consider any appropriate sanctions against Commissioner Stewart for admitting religious bias in violation of Washington state's constitution and the Code of Judicial Conduct to protect the integrity of the court.

Signed July 25th, 2016

Respectfully submitted,



David Wiley, Pro Se

APPENDIX

1. DV Manual for Judges page 8-22
2. University of Puget Sound Law Review Bias in the Washington Courts: A Call For Reform by Melisa D. Evangelos Vol. 16:741 published 1993
3. Lisa Scott, Gender Bias No Cure for Domestic Violence, THE SEATTLE TIMES, Oct. 24, 2001
4. Ripped Apart Divorced dads, domestic violence, and the systemic bias against men in King County family court. Seattle Weekly, Jan 17, 2012
5. Access Denied: The Problem of Abused Men in Washington by Melody M. Crick. Seattle University Law Review Vol 27:1035
6. Altman, MG. Litigating domestic abuse cases under Ch. 209A. *Massachusetts Lawyers Weekly*, Oct. 23, 1995. p. B6
7. Basile, S. A measure of court response to requests for protection. *Journal of Family Violence*, Vol. 20, June 2005. pp. 171–179. <http://www.mensnewsdaily.com/archive/ce/charalambous/2005/charalambous072505.htm>
8. Basile, S. Comparison of abuse alleged by same- and opposite-gender litigants as cited in requests for abuse prevention orders. *Journal of Family Violence* Vol. 19, No. 1. 2004. Table III. DOMESTIC RESTRAINING ORDERS
9. Dunlap DH. The Adult Abuse Act: Theory vs. practice. *UMKC Law Review*, April 24, 1995
10. Epstein, E. Speaking the unspeakable, *Massachusetts Bar Association Newsletter*, 1993.
11. Foster, BP. Analyzing the cost and effectiveness of governmental policies. *Cost Management* Vol. 22, No. 3, 2008.

12. Cook, P. *Abused Men: The Hidden Side of Domestic Violence*. Westport, CT: Praeger, 1997. pp. 83–84.
13. Heleniak, DN. The new Star Chamber: The New Jersey family court and the prevention of Domestic Violence Act. *Rutgers Law Review*, Spring 2005. pp. 1009–1042.
14. Hession, GA. Restraining orders out of control. *The New American* August 4, 2008.
15. Quinn DC. Ex parte protection orders: Is due process locked out? *Temple Law Quarterly* Vol. 58, Winter 1985.
16. Hines, DA, Douglas EM. A closer look at men who sustain intimate terrorism by women. *Partner Abuse* Vol. 1, No. 3, 2010.
17. Johnston, J et al. Allegations and substantiations of abuse in custody-disputing families. *Family Court Review*, Vol. 43, No. 2, 2005.
18. Kasper, T. Obtaining and defending against an order of protection. *Illinois Bar Journal*, June 2005.
http://www.ancpr.org/obtaining_and_defending_against_.htm
19. Kiernan, T. Re: False Claims. *New Jersey Law Journal*, April 21, 1988, Vol. 121, p. 6.
20. Leving, JM and Sacks G. Some progress for California fathers, but still a long way to go. *Ifeminists.net* July 5, 2006.
<http://www.ifeminists.net/introduction/editorials/2006/0705sacks.html>
21. Miller, N. What does research and evaluation say about domestic violence laws? A compendium of justice system laws and related research assessments. Alexandria, VA: Institute for Law and Justice, 2006. pp. 39-40.
<http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>
22. Norman-Eady, S. Restraining orders. *OLR Research Report* 2005-R-0861. Dec. 8, 2005.
23. McElroy W. Abuse of temporary restraining orders endangers real victims. *FoxNews.com*, December 27, 2005.
<http://www.ifeminists.net/introduction/editorials/2005/1228.html>

24. Office of the Commissioner of Probation, Massachusetts Trial Court: *The tragedies of domestic violence: A qualitative analysis of civil restraining orders*. October 12, 1995.
25. Pines, ZA. 2004 Caseload statistics of the Unified Judicial System of Pennsylvania. December 13, 2005.
<http://www.aopc.org/Index/Aopc/Research/caseloads/2004report.pdf>
26. Robe, L. & Ross, M. Extending the Impact of Domestic Violence Protective Orders. *Family Law News*, Vol.27, Num.4 (2005)
27. Roberts, C. Restraining orders for abusive grandmas? *Ifeminists.net*. August 10, 2005.
<http://www.ifeminists.net/introduction/editorials/2005/0810roberts.html>
28. Rutkin, A. From the editor. *Family Advocate*, Vol. 18, Winter 1996.
29. Scott, L. What to do before the restraining order comes. *Real Family Law*, August 4, 2004. www.realfamilylaw.com
30. Straus, MA: The controversy over domestic violence by women: A methodological, theoretical, and sociology of science analysis. In XB Arriaga and S Oskamp (eds.): *Violence in intimate relationships*. Thousand Oaks, CA: Sage Publications, 1999.
<http://www.menweb.org/straus21.htm>
31. Survivors in Action. Domestic Violence Reform. February 1, 2011.
<http://apps.facebook.com/causes/petitions/201?m=a4681d42> .
32. Virginia Crime Commission. Protective orders in Virginia: FY 2003. A data collection project by the Crime Commission Family Violence Subcommittee, November 2003.
33. Walsh, T. Restraining orders: Shield or Strategic Weapon. *The Patriot Ledger* (Quincy, MA), Vol. 13-217, News Section, Nov. 30, 1999
34. Young, C. Domestic violence: An in-depth analysis. Washington, DC: Independent Women`s Forum, 2005. p. 25.
35. Young, C. Hitting below the belt. *Salon.com*, October 25, 1999.
http://www.salon.com/mwt/feature/1999/10/25/restraining_orders/