No. 19-7907

IN THE

SUPREME COURT OF THE UNITED STATES

David Allen Olsen — PETITIONER
(Your Name)

vs.

Kaylee Ann Francois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Wisconsin Court of Appeals - District III
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Allen Olsen
(Your Name)

7833 Girard Ave. N.
(Address)

Brooklyn Park, MN 55444
(City, State, Zip Code)

763-561-0829
(Phone Number)

QUESTIONS PRESENTED

1. Does asking someone for help to learn about the controllers that are installed at the plant at which s/he was working for the summer, to talk about what it was like to go to school in her/his hometown, to talk about her/his academic program and career opportunities, and to talk about ideas for improving education 18 months earlier; writing a letter that confronts her/him about some behavioral concerns 17 months earlier; trying to persuade her/him to attend two professional-level short courses with others who were invited and watching some of her/his softball games via a publicly available video link from out-of-state 9 months earlier; returning a fundraiser purchase via mail from out-of-state; and/or any of the statements in the petition that Respondent filed with the Dunn County Clerk of Court on December 19, 2017 specifically indicate, either individually or in combination, the presence of an emergency, a present or imminent threat of danger, and/or that irreparable harm will occur before a motion for injunction can be heard, thereby justifying the use of an ex parte proceeding to obtain a TRO, with respect to which proceeding the Respondent and the court failed to attempt to notify Petitioner or allow him to participate in person or telephonically?

2. In a matter where there is no emergency, present or imminent threat of danger, and/or indication that irreparable harm will occur before a motion for injunction can be heard, if, during the week before the week of Christmas, a court works reduced hours and fails to notify the public that it is not working its normal hours, if the pro se respondent in a case checks the court's website to learn that only the court's normal working hours are posted and plans her/his time accordingly, and if, as soon as s/he knows that it will be physically impossible for her/him to arrive at the court on time for a hearing, the pro se respondent calls the court during normal working hours, approximately 52 hours into the 145 hour window between when s/he was served and when the hearing is scheduled, to try to reschedule the hearing, finds that the court is not answering its telephone, and leaves detailed messages regarding her/his circumstances, is it a violation of due process when the court proceeds with the hearing by involuntary default and denies a motion to reopen the matter because it blames that party for not calling while the court was open, i.e., knowing that the court was closing early for Christmas 33 hours after the party was served?

3. Under the facts described in Questions 1 and 2, above, when a pro se respondent calls a court to inform the court that it is physically impossible for her/him to arrive on time for a hearing, finds that the court has closed early for the Christmas holiday without notifying the public, leaves detailed messages with both the Clerk of Courts and the clerk for the court regarding her/his circumstances and what s/he is doing to get to the hearing as soon as s/he can, and indicates in one or more of these messages that s/he is calling to try to get the hearing "rescheduled", is it a violation of due process when the court proceeds with the hearing by involuntary default, because the party did not request to have the hearing "continued", "adjourned", or "rescheduled", and then denies a motion to reopen the matter?

4. Under the facts described in Questions 1-3 above, in a quasi-criminal matter, is it a violation of due process when the court denies a motion to reopen because it asserts that, even though it was physically impossible for the pro se respondent to arrive at the hearing on time, s/he could have participated telephonically?

5. Under the facts described in Questions 1-4 above, in a quasi-criminal matter, is it a violation of due process to effectively deny a respondent the opportunity to build a defense either via formal discovery or mediation?

6. In an ex parte proceeding regarding a quasi-criminal matter, is it a violation of due process when, in making its decision, a court relies on statements that describe the contents of written communications between the two parties but fails to ask to see the original writings in accordance with the original writings rule of evidence?

7. In an ex parte proceeding regarding a quasi-criminal matter where there is no emergency, present or imminent threat of danger, and/or indication that irreparable harm will occur before a motion for injunction can be heard, and where a pro se petitioner may or may not have been assisted by a ghostwriter who may or may not work for the state or a public institution, who is responsible for ensuring that "the tribunal [is informed] of all material facts known to the [pro se petitioner and/or the ghostwriter] that will enable the tribunal to make an informed decision, whether or not the facts are adverse"?

8. Under the facts described in Questions 1-4 above, when a pro se respondent notifies the court approximately 52 hours into a 145 hour window that it is physically impossible for her/him to arrive on time for a hearing from out of state, that her/his only means to get to the hearing is to rent a car that cannot be picked up until 8:00 a.m. on the day of the hearing, that s/he will try to get there as soon as s/he can, and that the earliest that s/he expects to arrive is between 30 and 60 minutes late and in fact arrives between 65 and 75 minutes late, and when the court receives these messages before the time at which the hearing is scheduled to begin, has the court turned the hearing into an involuntary ex parte proceeding when it waits only 20 minutes before proceeding by involuntary default?

9. When it is shown using original writings that material testimony by a pro se petitioner during a proceeding by involuntary default is erroneous, and perhaps willfully so, is it a violation of due process when the circuit court ignores this revelation and refuses to reopen the case, and the intermediate court of appeals makes up a fiction, which is neither supported by the record nor in fact, to sustain the circuit court's decision?

10. Did the circuit court and the intermediate court of appeals act as impartial tribunals?

11. What is the minimum, constitutionally acceptable, operative level of proof required to show harassment under Wis. Stat. § 813.125, and can it be lower than a preponderance?

12. In an adversarial matter that is quasi-criminal in nature; that may have consequences that include the loss of liberty, reputation, and job opportunities; and where state or public resources are being used to support the pro se petitioner, under due process or equal protection, does the pro se respondent have a right to an attorney to assist her/him?

13. In a matter where there is no emergency, present or imminent threat of danger, and/or indication that irreparable harm will occur before a motion for injunction can be heard, is it a violation of due process or equal protection when a court imposes an injunction that is so broad that it precludes a pro se respondent from serving papers on the pro se petitioner in person or via mail and provides no other accessible means for doing so?

14. After a petition for review is filed with a state supreme court, is it permissible for that court to send the case back to the intermediate court of appeals to correct any mistakes that it might have made in its decision, and to allow the courts to communicate without copying the parties and allowing a party to respond or verify the accuracy of what is said in those communications?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Kaylee Ann Francois v. David Allen Olsen, Case No. 2017CV000316
Circuit Court for Dunn County, Wisconsin
Decisions entered December 26, 2017 (motion for injunction) and January 24, 2018 (motion to reopen)

Kaylee Ann Francios v. David Allen Olsen, Case No. 2018AP000271
Wisconsin Court of Appeals - District III
Decision filed July 16, 2019

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G. Lukianoff and J. Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure*, Penguin Press (2018) 8

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished. The opinion was published on the Internet by Justicia.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was December 10, 2019
A copy of that decision appears at Appendix E.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment XIV Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wisconsin Statutes

813.125 Harassment restraining orders and injunctions.
(1) Definitions.
(am) In this section, "harassment" means any of the following:
1. Striking, shoving, kicking or otherwise subjecting another person to physical contact; engaging in an act that would constitute abuse under s. 48.02 (1), sexual assault under s. 940.225, or stalking under s. 940.32; or attempting or threatening to do the same.
2. Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

(4) Injunction.
(a) A judge or circuit court commissioner may grant an injunction ordering the respondent to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner without the petitioner's written consent; to cease or avoid the harassment of another person; to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both; to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet; to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet; or any combination of these remedies requested in the petition, if all of the following occur:
...
3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

939.23 Criminal intent.
(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result.

947.013 Harassment.
(1) In this section:
(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

910.02 Requirement of original.
To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in chs. 901 to 911, s. 137.21, or by other statute.

SCR 20:3.3 Candor toward the tribunal
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Ex Parte Proceedings
[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosure of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

STATEMENT OF THE CASE

BACKGROUND:

This matter concerns proceedings in northern Wisconsin and the application of Wis. Stat. § 813.125, a general harassment statute that is quasi-criminal in nature. Respondent filed a petition and motion for injunction hearing in Dunn County, Wisconsin on December 19, 2017. A TRO was issued at an ex parte proceeding, and Petitioner was served with a notice of injunction hearing on December 20, 2017. The hearing was scheduled for December 26, 2017 at 9:00 a.m. Petitioner lives in Minneapolis, Minnesota. Because it was physically impossible for him to arrive at the hearing on time, as he will describe in greater detail below, Petitioner apprised the circuit court of this and attempted to get the hearing rescheduled. Nonetheless, the court proceeded with the hearing by default. A motion to reopen and a motion for reconsideration were denied. The matter was appealed to the Wisconsin Court of Appeals – District III, which upheld the circuit court's decision. The Wisconsin Supreme Court denied Petitioner's petition for review without costs. A detailed account of the events that led up to this matter can be found in Petitioner's brief to the Wisconsin Court of Appeals.

The backdrop for this matter is the University of Wisconsin-Stout, which is located in Menomonie, Wisconsin, a small, working-class town of about 16,500 residents. Menomonie is located in Dunn County (approx. pop. 44,800), a rural county in northwestern Wisconsin. The average annual wage for Dunn County is about $41,435. 2019 Workforce Profile for Dunn County, published by the State of Wisconsin. Stout is economically important to the area because of the amount of money that its 8300 - 9600 students pay out for tuition, books, food, housing, entertainment, and other living expenses. Stout is largely a 4-year teaching campus for skilled manufacturing, commercial, and office positions, so it focuses on "hands-on" learning experiences. When Petitioner

taught there, he observed that the student body tends to be emotionally sensitive, but whether this is due to temperament or another factor is unknown. He also observed that an unusual number of students had special needs. About 50% of the students have ACT scores between 20 and 24. U.S. Dept. of Education – IPEDS for Fall 2015-16. According to the USPTO's Patent Full-Text and Image Database (last visited 2/21/2020), two U.S. patents have been issued to someone from the Menomonie area and assigned to Wisys Technology Foundation, Inc. since 2003.

Stout has trouble attracting good faculty. The year that Petitioner taught, the department for which he taught had trouble filling all its teaching positions for the spring semester. He was told that some instructors have left in the middle of the semester for better jobs. Fear and uncertainty were evident among the staff and faculty because the campus was operating under the weight of large budget cuts imposed by the Walker administration and because many felt that the University's administration, which is centralized in Madison, did not care about them (Petitioner thinks there is some merit to this). Those faculty that are promoted into leadership often do not have the people skills or judgment that are needed and tend to be autocratic, aggressive, and defensive. Consequently, a lack of candor and truthfulness are not uncommon, and rumors among the students and faculty are a constant problem. The campus also has a safety problem. During the fall that Petitioner taught, several assaults or attempted assaults were reported. About 5 months after Petitioner left, a foreign student, who may have been in one of Petitioner's classes, was beaten to death.

Petitioner used to teach two professional-level short courses at UW-Madison, where he was recognized as one of the best outside speakers in the engineering professional development program. In contrast to his experiences in Madison, Petitioner was abused by one of Stout's faculty for almost the entire year, which abuse included taking and hiding his students' papers from him. The

department chair told Petitioner there was little he could do because her tenure review was not due for five years, and Petitioner worked in apprehension of what else this person might do. When he mentioned this and other concerns on a self-evaluation that he was asked to complete, the department's review committee retaliated against him (he was told that the committee was "incensed"). Petitioner wrote two letters to Raymond Cross, President of the UW System, that recount many of Petitioner's experiences at Stout.

For his efforts, Petitioner's spring introductory programming students gave him some of the highest student evaluations of any faculty in the department, and his pear review for his upper level classes was one point less than a perfect score. See Appendix G. (On the other hand, he struggled to connect with many of the upper level students and got evaluations from them that reflected this.) Perhaps because he has a legal background, Petitioner eventually chose to start standing up for students who did not know how to stand up for themselves, many of whom were coming from middle and lower-middle income families who had worked hard to give their children an opportunity that they had not had. It is Petitioner's belief that these students and their families deserve a good education for their money, which is another reason why Petitioner wrote Dr. Cross and is one of the reasons why Petitioner tried to stay in touch with many of his A students after the semesters were over.

Respondent was among a small number of students at Stout who seemed genuinely interested in learning, not just getting their degrees, and who were willing to work hard. If Petitioner had not had a high regard for her, he would not have purchased fundraiser items from her to help her softball team, helped her and her partner with their final project for 3 hours, or invited her to come to UW-Madison with others who were invited to attend the two professional-level short courses that Petitioner taught. Petitioner feels caught between the need to defend himself and trying to maintain

the confidences of others such as Respondent.

This matter concerns safetyism, *see, The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure, infra,* and how everyday conflicts are dealt with. It is clear from Respondent's petition and motion for injunction hearing and her testimony at the December 26th hearing that this matter did not concern an emergency, present or imminent threat of danger, or indication of an irreparable harm. Petitioner believes that this matter arose out of a breakdown in communication, possibly due to the pressures of everyday life; possibly for cultural reasons; possibly due to intellectual or emotional maturity; and possibly as a consequence of some trauma that happened in Respondent's life, such as a divorce in her family. Specifically, Petitioner believes that Respondent may have misinterpreted a letter that he wrote to her in August 2016, overreacted, and shut down instead of coming to see him. Instead of opening up communications to try to get to the bottom of what happened here, and possibly resolve this matter in a matter of hours, Dunn County circuit court escalated a matter about words into something more and issued an injunction.

CASE FACTS:

Petitioner is uncertain about how best to concisely set forth the facts surrounding as many issues as he is presenting, so he has set forth facts that are relevant to each of the questions underneath that question. This matter is quasi-criminal in nature. Therefore, cases applying procedural due process are applicable, and cases applying the compulsory process clause may serve as useful guidance.

Question 1:

Respondent told Petitioner that she was working at Green Bay Packaging for the summer. The

trip on which Petitioner had hoped to see the ABB controllers at Green Bay Packaging took him from his residence in Minneapolis to Madison, Manitowoc, Green Bay, and back to Minneapolis. Petitioner had hoped to interview Respondent about what it was like to go to school in Green Bay, a small, industrial city, because he was trying to learn about the educational problems that rural and small town America face. Interviewing several of his former students about what it was like to go to school in their hometowns is consonant with best practice for technology start-ups. E. Ries, *The Lean Start-Up*, Crown Business (2011). The short courses were about intellectual property and were relevant to Respondent's major. The tuition ($1690) would have been waived; meals, parking, and learning materials were provided; and lodging would have been arranged so Respondent could afford to come and interact with a myriad of professionals from industry. Respondent would also have gotten to enjoy Madison's and the U's many summer evening events after class each day. Two others who were invited made the trip. Petitioner watched about 3 of Respondent's softball games. The public video link was provided by her team for fans.

Respondent's motion for injunction is attached as Appendix F. That this matter did not concern an emergency, threat of danger, or indication of an irreparable harm is further supported by the transcript from the December 26th hearing. December 26, 2017 Transcript, pp. 16-19. In the interest of full disclosure, after Respondent got upset about the letter in which Petitioner confronted her regarding some behavioral concerns, and sometime during the time when he was trying to persuade her to attend the short courses, Respondent asked Petitioner to stop writing her. Although Respondent had Petitioner's current email address, she sent her email to an old email address, and Petitioner never saw it.

See, Mennonite Bd. Of Missions v. Adams, 462 U.S. 791 (1983); *Schroeder v. City of New York*, 371 U.S. 208 (1962); *McDonald v. Mabee*, 243 U.S. 90 (1917).

Question 2:

In addition to the facts provided in the question, the following is a chronology regarding the facts leading up to the December 26th hearing:

1. About 9:00 a.m. on Wednesday, December 20, 2017, Petitioner was served with a notice of injunction hearing and a TRO.
2. That same day, Petitioner began to (1) look for a way to drive to the Dunn County Judicial Center to attend the hearing and (2) assemble documents to present as evidence in his defense. Petitioner had enough money to rent a car for one day, so he reserved a car for December 26th, which he could not pick up until 8:00 a.m., the time that Enterprise Rent-A-Car opened.
3. About noon on Thursday, December 21st, Petitioner checked the Judicial Center's website to find out what its hours were for that week. Its normal hours, Monday-Friday 8:00 a.m. - 4:30 p.m., were posted. There was no indication that those hours were not being observed. Nor did Petitioner see a number that could be called in case of an emergency. Accordingly, Petitioner continued to look for ways to arrive at the hearing on time and planned to call the Judicial Center on Friday if, by the end of Thursday evening, he could not.
4. At 4:30 p.m. on Thursday, the Judicial Center closed for the Christmas holiday. It remained closed from 4:30 p.m. on Thursday until 8:00 a.m. on December 26th.
5. Before noon on Friday, December 22nd, Petitioner called the Dunn County Clerk of Courts office and the clerk for Branch 1 of the circuit court. No one answered at either number. Petitioner called again in the afternoon and again on Saturday, in the event that someone was working on the weekend.

6. When no one answered each time, Petitioner left detailed messages on the message machines of both numbers. In his messages, he stated that it was physically impossible for him to arrive at the hearing on time; that he had to rent a car to drive to Dunn County, which rental car could not be picked up until 8:00 a.m. on Tuesday; that he would try to get to the hearing as soon as he could; and that he expected to be between 30 and 60 minutes late at the earliest (in fact, Petitioner arrived between 65 and 75 minutes late). In one or more messages, Petitioner stated that he was calling to try to "reschedule" the hearing. In one or more messages, he left his email address.
7. Petitioner also attempted to call the judge for Branch 1 at his home, but Petitioner could not find a number to call.
8. To the best of his knowledge, no one at the Judicial Center checked their message machines during the 4 ½ days that the Judicial Center was closed.
9. The judge for Branch 1 got Petitioner's messages before the hearing started on Tuesday morning, December 26th. After waiting 20 minutes, the court started the hearing by default.

See, Boddie v. Connecticut, 401 U.S. 371 (1971) (notice must be followed by a meaningful opportunity to appear and present evidence. Justice Harlan's example regarding default judgments should not be interpreted to include cases where failure to attend a hearing is beyond a party's control.); *Hovey v. Elliott*, 167 U.S. 409 (1897); *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80 (1988) ("Where a person has been deprived of [liberty] in a manner contrary to the most basic tenets of due process,...only 'wiping the slate clean...would have restored the [respondent] to the position he would have occupied had due process of law been accorded to him in the first place.'" *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915); *Armstrong v. Manzo*, 380 U.S. 545 (1965)).

Question 3:

Other important facts are provided in the question and in/under Questions 1 and 2. From the contents of Petitioner's messages, it should have been implicit to a reasonable person that Petitioner was calling to reschedule the hearing. Moreover, contrary to what the circuit court said at the December 26th hearing and what the intermediate court of appeals opinion says, that Petitioner had failed to ask to have the hearing "continued", "adjourned", or "rescheduled", Petitioner did say in one or more of his messages that he was calling to try to get the hearing "rescheduled". When Petitioner informed the intermediate court of appeals about this discrepancy, it turned a deaf ear. The circuit court has not included its phone notes as part of the record nor has Petitioner been allowed to see them. Petitioner is concerned that this evidence has been destroyed.

Question 4:

Other important facts are provided in the question and in/under Questions 1 to 3. As one of its arguments for denying Petitioner's motion to reopen, the circuit court asserted that even if it was impossible for Petitioner to attend the hearing in person, he could have attended telephonically. When Petitioner tried to inform the court that he did not have a mobile telephone and that he had temporarily terminated his land line service as a cost cutting measure during a period of financial distress, the court replied, among other comments, "And you know, it's—we just simply don't operate that way." January 24, 2017 Transcript, p. 11:18-19. The intermediate court of appeals opinion repeats many of these comments. Petitioner had thought about using someone else's telephone, but he did not feel comfortable doing so due to his wish for privacy. Regardless, Petitioner asserts, especially since Respondent was assisted by a ghostwriter and possibly others who may have worked for the state or at Stout, that he had a constitutional right to attend the hearing in person so he could confront Respondent and present documentary evidence.

See, Washington v. Texas, 388 U.S. 14 (1967) (right to present a defense); *Greene v. McElroy*, 360 U.S. 474 (1959); *Goldberg v. Kelly*, 397 U.S. 254 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."); *Boddie v. Connecticut*, 401 U.S. 371 (1971)

Question 5:

Other important facts are provided in the question and in/under Questions 1 to 4. The chronology provided under Question 2 shows that the Judicial Center closed for the Christmas holiday 33 hours after Petitioner was served and remained closed until 1 hour before the hearing was scheduled. Because Respondent stopped communicating, the only alternatives available to try to get to the bottom of what happened became formal discovery or mediation. Petitioner did not have the means to locate the case file to which Respondent refers in her petition, gain access to it and examine its contents, and make sense of what he saw within the 145 hour window between when he was served and when the hearing was scheduled to start (which included two weekend days and Christmas).

This matter involves numerous issues, the issues are highly contextual and complex, and Petitioner has many unanswered questions. For example, what did Petitioner say that Respondent thought was "inappropriate"? What was "too personal" for Respondent? Outside of class, Petitioner allowed his students to call him by his first name. Respondent told Petitioner this was too personal for her. Who was the ghostwriter who assisted Respondent and did that person knowingly help draft a petition that was misleading? Finally, there was no emergency, threat of danger, or indication of an irreparable harm.

See, Washington v. Texas, 388 U.S. 14 (1967) (right to present a defense); *Brady v. Maryland*, 373 U.S. 83 (1963) (right to require, on request, the production of evidence favorable to the accused); *People v. Consolazio*, 387 N.Y.S.2d 62 (1976) (same); *State ex rel. Donnley v. Connall*, 475 P.2d 582 (Or. 1970) (right to get discovery in sufficient time for the defense to make use of it); *United States v. Washington*, 263 F.Supp.2d 413 (D. Conn. 2003) (same); *Pitchess v. Superior Court*, 11 Cal.3d 531 (1974) (all relevant evidence must be disclosed); *In Re Brown*, 17 Cal.4th 873 (1998) (same).

Question 6:

In both Respondent's petition and her testimony at the December 26th hearing, she describes the contents of various communications between Petitioner and Respondent. These writings were characterized in vague terms, perhaps willfully, that allowed the courts to make inferences about their contents that are inaccurate. One communication was the August 2016 letter that confronted Respondent about some behavioral concerns, and the primary purpose of the other communications was to persuade her to join the others at the two short courses at UW-Madison. Regarding the latter communications, the circuit court, without asking to see the original writings to verify their contents for itself, suggested to Respondent that they were somehow "creepy" and relied on this unsubstantiated characterization to find an intent to harass. December 26, 2017 Transcript, pp. 17:18-18:2 and 18:11-13.

See, People v. Carroll, 95 N.Y.2d 375 (2000) (citing *Chambers v. Mississippi,* 410 U.S. 284 (1973)) ("A court's discretion in evidentiary rulings is circumscribed by the rules of evidence and the defendant's constitutional right to present a defense."); *Hawkins v. United States*, 358 U.S. 74 (1958) (Potter, J., concurring) ("[A]ny rule that impedes the discovery of truth in a court of law impedes as well the doing of justice.")

Question 7:

Many pro se petitioners are assisted by an unlicensed domestic advocate or ghostwriter who works for the state or a public institution, who may assist in drafting legal documents, coach the pro se petitioner on how to present her/his case in court, and even sit alongside the pro se petitioner. Respondent appears to have been assisted by a ghostwriter whose identity and affiliation are unknown to Petitioner, December 26, 2017 Transcript, pp. 15:24-16:2, and it is beyond dispute that, with respect to both the ex parte proceeding at which a TRO was issued and the December 26th hearing that proceeded by involuntary default, Respondent did not accurately inform the circuit court of all material facts known to her and/or the ghostwriter that would enable the court to make an informed decision, whether or not the facts are adverse. For example, Respondent failed to mention that she told Petitioner that she was working at Green Bay Packaging for the summer, which is why he asked her if she would help him make a connection at the plant so he could see the ABB controllers that it was supposed to be using. She also failed to produce any of the original writings whose contents she described in her petition and during her testimony. Nor did the circuit court request to see them so it could verify their contents for itself, which would have been easy for it to do, or inquire whether Respondent had left anything of material importance out of her petition or testimony. Even though there was no emergency, threat of danger, or indication of an irreparable harm, Respondent's petition included the magic words "unsafe" and "uneasy" near the end. These are trigger words that courts look for regardless of what a petition alleges. Because the adversarial model is inoperative during ex parte proceedings, the system failed, and the circuit court failed to correct the mistakes by reopening the case.

See, Rule 3.3(d) of the Model Rules of Professional Conduct (1983) (Wis. SCR 20:3.3) and the Comments under Rule 3.3(d), especially Comment 14; Fourteenth Amendments to the U.S.

Constitution; J. M. Dennis, *The Model Rules and the Search for Truth: The Origins and Applications of Model Rule 3.3(d)*, 8 Geo. J. Legal Ethics 157 (1994).

Question 8:

Other important facts are provided in the question and in/under Questions 1 to 4. It is noteworthy that neither the Clerk of Courts nor the circuit court judge nor his clerk checked their message machines over the extended holiday weekend (4 of 6 days). Instead, they were not checked until about one hour before the December 26th hearing was scheduled to begin. Nor did they notify the public that they were working a shortened work week or leave an emergency number.

Question 9:

Please see the facts in/under Questions 2 to 4 regarding the involuntary default. In August 2016, Petitioner wrote a letter to Respondent that confronted her about some behavioral concerns.. That letter included the following sentences: "To answer your questions, you are lucky to have been blessed with good looks and a pretty smile, but my guess is that such a blessing can also be a burden, and there are times when you inappropriately use it to try to get your way. One of those times was during our first night exam in CS I, when you acted coy with me in order to try to coax me into telling you how to answer one of the exam questions."

During the December 26th hearing, Respondent testified, "There were portions of the letter that stated that he believed that I used my peers and—used my male peers and used my body to get my grades. And that he believed that I purposefully led another student in my class astray. [Regarding this last sentence, there is an unresolved concern whether Respondent misinformed another student regarding how to do one of the large, take home programming assignments.] ... Just mostly that I used my body to earn my grades." When Petitioner pointed out this discrepancy to the

circuit court, it turned a deaf ear, and, without providing any rational, indicated that it thought that Respondent was credible.

Without revealing what Petitioner actually wrote, the intermediate court of appeals opinion says, "In the same letter, [Petitioner] suggested that [Respondent] used her 'male peers' and her 'body' to earn her grades. [Petitioner] also noted his belief that [Respondent] purposefully 'led another student in [his] class astray' and questioned [Respondent's] motivation for doing so." For the record, Petitioner suggested no such thing, nor would he. It is inconsistent with everything he did to try to help Respondent. Further, the other student who was apparently "led astray" is a female, and Petitioner had informed the courts of this fact as well.

Question 10:

Among other events of concern, the following happened during or after the December 26th (motion for injunction) and January 24th (motion to reopen) hearings:

a. The circuit court has not included its phone notes as part of the record nor has Petitioner been allowed to see them. If those notes are accurate and complete, they will show that, contrary to the circuit court's comments during the December 26th hearing, Petitioner left detailed messages with the Dunn County Clerk of Courts and the clerk for Branch 1, indicating what his circumstances were and how soon he anticipated arriving at the Judicial Center. Even though the court indicated that it waited 20 minutes before proceeding with the December 26th hearing by default, it knew that Petitioner would arrive at least 30-60 minutes late.

b. Without looking at them, the circuit court suggested to Respondent that the emails in which Petitioner tried to persuade Respondent to attend the two short courses with others were somehow "creepy" and relied on its own unsubstantiated characterization to find an intent to harass. The intermediate court of appeals characterized the emails as an "innocent

explanation" without explaining for what or why.

c. When it was revealed that Respondent's testimony was inaccurate regarding the contents of the August 2016 letter that Petitioner wrote, the intermediate court of appeals made up a fiction that is neither supported by the record nor in fact in order to sustain the lower court's decision. Moreover, the intermediate court of appeals failed to recite the actual language of Petitioner's letter so that a reader can compare what the court asserts with what was actually written.

d. In the appendix to his motion to reopen, Petitioner included copies of the two letters that he wrote to Dr. Cross. During the January 24th hearing, the circuit court expressed its displeasure over seeing these letters. The court told Petitioner that this matter had nothing to do with Stout—that it is a "simple harassment" matter. The letters support what Petitioner has said about his intentions for staying in contact with several of the students who were in his classes. This conversation was not "off the record" and is missing from the January 24th transcript.

e. Despite including an appendix of over 71 pages.of documents with his motion to reopen and 29 pages of documents with his motion for reconsideration, which showed numerous inaccuracies and material omissions in Respondent's petition and testimony, and despite being completely candid with the courts, the circuit court chose to disbelieve Petitioner and find that Respondent was credible.

f. In both the December 26th transcript and the intermediate court of appeals opinion, the courts assert that Petitioner failed to ask to have the December 26th hearing "continued", "adjourned", or "rescheduled". In fact, in one or more of his messages, Petitioner did say that he was calling to try to get the hearing "rescheduled", the courts were apprised of this, and they turned a deaf ear. Petitioner has not been allowed to see the circuit court's phone notes.

g. The intermediate court of appeals engaged in substantive ex parte communication with Respondent, see footnote 2 of its opinion, and has refused to give Petitioner a copy of the letter and allow him to respond to it.

h. Without any basis in the record or in fact, the intermediate court of appeals opinion indicates that the circuit court may have believed that Petitioner lied to the court. Opinion at ¶12. Petitioner has produced a letter from an independent third party that shows otherwise, to which the courts have turned a blind eye.

i. Even though Respondent testified that she did not know whether Petitioner had seen her request to stop writing her, which he had not, the circuit court and the intermediate court of appeals both proceeded under the false assumption that he had. December 26th Transcript, p. 16:13-15; Opinion at ¶¶18-19.

j. Neither the circuit court nor the intermediate court of appeals have shown how Petitioner's behavior demonstrates an "intent" to "harass", i.e., "repeated attacks, to vex", *Welytok v. Ziolkowski*, 2008 WI App 67, ¶35. For example, Petitioner cannot see how an invitation to attend two short courses valued at $1690 and the opportunity to interact with professionals from industry is an attack or vexatious, and the August 2016 letter was well-founded and intended to open a dialog. Instead, leaping inferences were made to reach a preferred result.

k. Petitioner was verbally abused by the circuit court without provocation. These comments are repeated in the intermediate court of appeals opinion.

l. The circuit court decided that this matter was "basically [about] unwanted attention". December 26, 2017 Transcript, p. 19:1-3. In her petition and testimony, Respondent failed to mention how she and her partner benefited from 3 extra hours of help with their final project and how Petitioner purchased fundraiser items from Respondent to help her team. Times

when Respondent initiated contact with Petitioner include her fundraiser, when she delivered the items to his office even though he was supposed to pick them up at the recreation center for himself, when she scolded him after class one day, when she came up to his office with a friend to visit with him after her scholarship banquet, and when she asked him whether he was proud of her for how well she had done on her exams. Except for Petitioner's August 2016 letter that confronted Respondent about some behavioral issues and when Petitioner returned the fundraiser items, Respondent was treated about the same or better than others. Petitioner believes that the courts ignored these facts due to at least one attribution error and confirmatory bias.

m. Upon information and belief based on data acquired on Westlaw and the facts stated in the next subparagraph below, the intermediate court of appeals may have deliberately sat on its opinion instead of promptly filing it.

n. On July 15, 2019, at about 11:47 a.m., Petitioner faxed a letter to Jeremiah Van Hecke at the State of Wisconsin Judicial Commission. Among other concerns, Petitioner mentions that an opinion had not been filed as of the time of his fax, over 216 days after the case had been submitted to the intermediate court of appeals for consideration. Further, the briefs for the case were due five months before the case was submitted. Coincidentally, the opinion was officially filed in Madison the next day, July 16th. Respondent was not notified that the court's opinion had been filed until he received his copy between August 19th and August 21st, because standard procedures were not followed by the intermediate court of appeals when it mailed Petitioner's copy of the opinion. Normally, the Clerk of Courts staff in Madison mails the opinions to the parties. Petitioner's copy was mailed from Wausau on July 15th, and the opinion was mismailed. By the time that Petitioner received notification, the deadlines for

filing a motion for reconsideration and for filing a petition for review had passed. If Petitioner had not accidentally learned that the opinion had been filed during an Internet search, what happened would have ended his rights to appeal or at least embroil him in further litigation that probably would have buried him. Because of all that Petitioner has described herein, he cannot rule out that this was not a mistake. After they learned about what had happened, the Wisconsin courts made no attempt to mitigate any potential harm to Petitioner.

See, Marshall v. Jerrico, Inc., 446 U.S. 238 (1980) (citing *Carey v. Piphus*, 435 U.S. 247 (1978); *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951)).

Question 11:

As described in/under other questions herein, the circuit court and the intermediate court of appeals ignored the original writings that are relevant to this matter; ignored other facts that Petitioner brought to the attention of these courts in his motion to reopen, motion to reconsider filed with the circuit court, and his brief to the intermediate court of appeals; made assumptions that were without any basis in the record and patently false; and made leaping inferences to reach a preferred result. A practitioner in Menomonie, Wisconsin told Petitioner, operatively, the "reasonable grounds" standard in Wis. Stat. § 813.125 is so low that it is "lower than a preponderance" and "these kinds of injunctions are given out like candy". Even the intent element, *id.*, failed to serve as a safeguard against abuse, as the facts in this case demonstrate. The standard is so low that it encourages abuses of discretion, a reasonable person does not know how to avoid being accused of harassment, and a government can arbitrarily and maliciously oppress the liberties of citizens based on the political view of those in power.

See, Addington v. Texas, 441 U.S. 418 (1979) (citing *In re Winship*, 397 U.S. 358 (1970)); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Question 12

Because this matter is technically categorized as a civil matter, even though it is quasi-criminal in nature, the circuit court denied Petitioner's motion to appoint an attorney to help him present his defense. The ex parte proceeding at which a TRO was issued, the hearing at which the injunction was issued, and the hearing on the motion to reopen are all adversarial proceedings; Respondent was assisted by a ghostwriter who may have worked for the state or a public institution; the window between when Respondent was served and when the hearing was scheduled was 145 hours; and Respondent's petition and testimony presented only one side of this matter, failed to introduce the original writings, and clearly contained numerous inaccuracies, as Petitioner's motion to reopen and motion for reconsideration filed with the circuit court point out. Further, even though Respondent's petition failed to specify an emergency, threat of danger, or indication of irreparable harm, and her testimony confirms their absence, Respondent's petition included the magic words "unsafe" and "uneasy". Petitioner believes that the ghostwriter who helped Respondent may have encouraged her to insert them. These kinds of matters are highly contextual, involve interpretations of statutes and case law, and require knowledge of the rules of evidence and important constitutional safeguards of which most lay people are unaware.

See, Mathews v. Eldridge, 424 U.S. 319 (1976); *Lassiter v. Department of Social Services of Durham County, N.C.*, 452 U.S. 18 (1981)

Question 13:

Once again, this matter concerned neither an emergency, threat of danger, nor indication of

an irreparable harm. It concerns a breakdown in communication, possibly for cultural reasons, and an abuse of discretion by two courts. Because Petitioner cannot mail documents to Respondent, he cannot serve her with papers via mail. Because Petitioner does not know Respondent's address, he cannot hire a local process server to serve papers on her personally. Moreover, given his financial circumstances, to be asked to pay for a service provider when service via mail is adequate is inappropriate. By making it practically impossible for Petitioner to serve papers on Respondent without any justification, the circuit court has arbitrarily and capriciously discriminated against Petitioner as he pursues his legal rights to appeal. Both the circuit court and the intermediate court of appeals failed to correct this mistake despite being apprised of it.

See, National Union of Marine Cooks and Stewards v. Arnold, 348 U.S. 37 (1954); *Lindsey v. Normet*, 405 U.S. 56 (1972) ("When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.").

Question 14:

After Petitioner filed his petition for review with the Wisconsin Supreme Court, he received a notice from that court, which notice stated that the intermediate court of appeals was being given 30 days to correct any errors in its decision. Petitioner was not copied on whatever communications subsequently occurred between the intermediate court of appeals and the Wisconsin Supreme Court nor allowed to respond to them.

FINAL THOUGHTS:

Petitioner believes that life is a series of decision nodes that get lived out. Wouldn't it have been interesting if, during his trip that took him through Green Bay during the summer of 2016, Respondent had been willing to arrange for Petitioner to see the controllers that Green Bay Packaging

had installed, or they had otherwise met in a safe, public place, and she had told him what it was like to grow up in a small, industrial city and go to school there, and he had shared his ideas about using technology to provide a better educational experience for all students and to help shrink the school-to-prison pipeline? Perhaps she might have become interested in helping to build the team and organization to make those ideas a reality. What an exceptional experience it might have been for someone who wanted to be actively involved ("where the action was"), to work on significant, real-world problems, to get to develop her technical and leadership skills, to innovate and to make a difference, and to meet all kinds of interesting people who also care. That would be something that Stout could be "Stout proud" of.

For the record, until 2019 when Petitioner read about how Google hires, he really didn't know why he had watched some of Respondent's softball games during the spring of 2017 while he was working in Minneapolis. Although he was fascinated by the public video link that her team provided for fans and enjoyed watching Respondent play and rooting for her team, what Petitioner remembers is how, when it was her team's turn to take the field, Respondent used to jog into the outfield while others walked, and her intense concentration as she practiced what her coach had taught her just before it was her turn to bat. In short, he saw her character from yet another perspective.

Eleanor Roosevelt once said, "Great minds discuss ideas; average minds discuss events; small minds discuss people." In today's world where social media and certain activist groups have conditioned the public to think almost always in terms of conduct motivated by money, power, or sex, wanting to share ideas can be a dangerous way to be. What Petitioner has experienced is just another form of ignorance and violence.

As the concluding two paragraphs for his petition for review to the Wisconsin Supreme Court, Petitioner wrote, "...[Petitioner] feels caught between having to disclose things that he was told and

saw in order to defend himself and trying to maintain the confidences of others such as [Respondent]. To be frank, [Petitioner] feels betrayed because [Respondent] did not come to him with her grievance, so that they could resolve it and repair any hurt feelings, rather than escalate the problem by going elsewhere. [Petitioner] hopes that the Court can see that this matter could have been handled in a much less destructive manner if some decision makers had [had] better people skills and used some common sense, but [Petitioner] also has to wonder whether this decision was deliberate."

"Ideology says nothing about integrity, and the ends rarely, if ever, justify the means. When a court has to select and alter facts, make false assumptions and leaping inferences, and misapply [or fail to apply] the law to reach the [preferred] result, perhaps it is appropriate for that court to step back and ask whether there is a better way or the result that it is trying to reach is the wrong one, and whether it has sacrificed its independence and impartiality and the confidence of the public to do so."

REASONS FOR GRANTING PETITION

Petitioner respectfully requests the United States Supreme Court to review this matter because it involves issues of national importance. A state intermediate court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Post-truth politics, "a political culture in which debate is framed largely by appeals to emotion disconnected from the details of policy, and by the repeated assertion of talking points to which factual rebuttals are ignored", has been identified as an ascendant contemporary problem in American politics. "Post-truth differs from traditional contesting and falsifying of facts by relegating facts...to be of secondary importance...." http://en.wikipedia.org/wiki/Post-truth_politics (last visited 3/2/2020). The psychosocial consequences arising out of this kind of politics are significant.

In a recent Public Agenda/USA Today/Ipsos poll, the pollsters found that "[t]he divisive national debate over just about everything has convinced many that the country is heading in the wrong direction even as their own lives are going well. ... The bigger problem, according to more than four in 10, was that people didn't know how to talk about conflicts in a constructive way. Sixty-nine percent said Americans now deal with disagreements in a mostly destructive way. An overwhelming 74% said that situation had gotten worse over the past decade[, and j]ust 22% thought things would get better in [the] next decade. 'People don't know how to have a discussion without getting offended first'...." Still, "[o]nly one in 10 said the problem was that Americans had too many fundamental disagreements and conflicting values. ... The difficulty in having a constructive conversation about disagreements is driven from the top down, most said." Susan Page, *Divided we fall? Americans see our angry political debate as 'a big problem'*, USA Today (https://www.usatoday.com/story/news/politics/elections/-

hiddencommonground/2019/12/05/hidden-common-ground-americans-divided-politics-seek-civility/4282301002/ (last visited 3/3/2020)) (December 5, 2019; updated December 9, 2019).

A more scholarly work by First Amendment expert Greg Lukianoff, president of the Foundation for Individual Rights in Education, and social psychologist Jonathan Haidt, Professor of Ethical Leadership at New York University's Stern School of Business, is their recently published book, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure*, Penguin Press (2018). This book describes how the recent problems on college campuses have their origins in three ideas that have become increasingly woven into American childhood and education: what doesn't kill you makes you weaker, always trust your feelings as opposed to checking them out, and life is a battle between good people and evil people. These three "Great Untruths", they say, contradict basic psychological principles about wellbeing and ancient wisdom from many cultures. Their book also describes how embracing these untruths—and the resulting culture of safetyism—interferes with young people's social, emotional, and intellectual development and makes it harder for them to become autonomous adults who are able to navigate the bumpy road of life.

Today, many if not most states have enacted general harassment laws that are routinely abused by aggressive petitioners and/or advocates, to the point where, as one local practitioner in Menomonie, Wisconsin told Petitioner, operatively, the "reasonable grounds" standard, the level of proof used in Wisconsin to obtain a civil injunction, is so low that it is "lower than a preponderance" and "these kinds of injunctions are given out like candy". (Petitioner has not identified this attorney out of concern that s/he might be retaliated against.) "In such cases, people are often summarily convicted in the court of public opinion," and this predisposition is seeping into courts of law. "'We are in an era of conviction by allegation in this country right now.... It [does] not matter what the truth was....'" B. Smith, *The Defender*, Chicago, Vol. 67:2 (February 2018) 92-97, 114-15.

Whether by design or otherwise, one typical scenario, which happened here, is the following:

1. An innocuous or otherwise legitimate event or series of events triggers a reaction in someone. The catalyst may be something subconscious like hypersensitivity, a past experience with someone else, attribution error, or a cultural communication problem (including socio-economic, gender, or maturity). Either on her/his own volition or the advice of another, the person who is upset seeks a protective order.
2. A petition is completed by the person who is upset, often with the help of a ghostwriter who works for the state or a public institution. An adequate interview and/or investigation is not completed beforehand because completing the petition is treated as an administrative matter. Often, those who are attracted to these kinds of positions have politically aggressive views that may not be consistent with those of the petitioner or her/his best interests. Everyday events and conflicts are cobbled together to create the impression of a pattern and described at a high level of abstraction or written in language that contains negative connotations or innuendos, facts are distorted or even misstated, and material facts are omitted, including facts of which the other party is not aware; perhaps a hint of scandal is added; and magic words like "safety", "comfort", and/or "fear" are added near the end.
3. Although the petition does not specify something that indicates the presence of an emergency, present or imminent threat of danger, and/or that irreparable harm will occur before a motion for injunction can be heard, a court considers the petition in an ex parte proceeding and a TRO is issued, thereby giving the petitioner a significant tactical advantage. No attempt is made to notify the respondent or allow her/him to participate in person or telephonically. The rules of evidence and possibly other safeguards are not followed during

the proceeding. What really happened and why become of secondary importance.

4. A hearing is commenced within a shortened statutory time period, so it is practically impossible for the respondent to adequately prepare. Again, the rules of evidence are not followed. Because the respondent appears pro se and s/he has already been judged in an ex parte proceeding without any opportunity to be heard, s/he may no longer have confidence in the system and feel coerced into giving up rights and accepting a deal that s/he would not have otherwise accepted if the slate were clean, just to get out of the mess.
5. However poorly the hearing goes, the respondent most likely will not appeal. The monetary and time costs are too high, so s/he accepts whatever damage is done to her/his records and reputation. Finality and victory have been achieved but neither fairness nor justice.

The above-described predisposition is exacerbated when local judges are elected by their communities, and community interests and retention affect principled decision-making. When this happens, issues regarding attribution errors to confirmatory bias to corruption arise. Oguzhan Dincer and Michael Johnston, *Measuring Illegal and Legal Corruption in American States: Some Results from the Corruption in America Survey* (December 1, 2014) https://ethics.harvard.edu/blog/measuring-illegal-and-legal-corruption-american-states-some-results-safra (last visited 3/2/2020) (In this study, Wisconsin, historically one of the least corrupt states in the nation, is now ranked among the 11 states having the worst legal judicial corruption, which level of corruption is described as somewhere between slightly common and moderately common.) *See also,* https://en.wikipedia.org/wiki/David_Prosser_Jr. (last visited 2/5/2020); https://madison.com/wsj/news/local/govt-and-politics/jill-karofsky-daniel-kelly-advance-to-wisconsin-supreme-court-general/article_927aab99-eca3-50ac-adcc-cf4f184da10a.html (last visited 3/3/2020).

The following consequences arise out of this system:

1. By using a civil proceeding, even though a matter is quasi-criminal in nature and may have consequences that include the loss of liberty and harm to one's reputation, *Wisconsin v. Constantineau*, 400 U.S. 433 (1971); *Paul v. Davis*, 424 U.S. 693 (1976), the respondent has no compulsory process rights under the Sixth Amendment.
2. Because individual cases are typically viewed as insignificant, and the problems described herein are not self-correcting, failing to hold ghostwriters and courts accountable has enabled, in the mental health sense of the word, the kinds of behavior described herein, leading to the kinds of problems that our society has today. https://en.wikipedia.org/wiki/Enabling (last visited 2/9/2019). While other groups are held to an excessively high standard and called out, the mistakes of one's own group are ignored and/or covered up so that there is no need for them to change.
3. In a diverse and liberal democracy, knowledge is developed through the exchange of ideas and well-founded criticism. People are tired of walking on eggshells and being afraid of whose sensibilities or politically correct views are offended. *See, The Coddling of the American Mind, supra*. We should not promote behaviors that promote a Facebook world and discourage people from trying. (Albert Einstein once said, "A person who never made a mistake never tried anything new.")
4. People will stop helping or accepting help from each other, and the Pence rule will become the norm. Even among Petitioner's more liberal male friends, he is being told to never be alone with a woman who is not your wife (including working late at night on the same floor).
5. The adversarial system, as applied, failed. While a legal result was achieved, it violated the rights of one party and short circuited real conflict resolution. Vengeance may have been

obtained by those wishing it, but the underlying hurt feelings were not repaired; the underlying causes for those hurt feelings still may not be understood by Respondent and certainly are not by Petitioner; the privacy of both parties has been compromised; any communication problems that may have led up to this matter have not been addressed; and Respondent has not learned a better way to resolve everyday conflicts other than "fight or flight". The loss of confidence in government will get worse.

When Petitioner was a child, he saw the movie version of *The Prince and the Pauper*, based on Mark Twain's book. Northern Wisconsin, part of Petitioner's home state, however, is not 16th century England. It is part of 21st century United States. Petitioner thinks it is time to get back to fundamentals and to the business of impartial, principled decision-making. The document that unifies our country is our Constitution, and, most importantly, the protections and guarantees in the Bill of Rights. In an NPR interview, Elizabeth Lesser, cofounder of the Omega Institute, talked about how groups are often not equally mature and how one person has to take the lead and be the bigger person. The Court needs to do that today. The Court needs to tell both sides of the political spectrum, in constructive albeit clear and uncertain terms, that the boundaries on what is allowable may not be ignored *and to create the consequences to make what it says meaningful.*

Finally, if the Court decides to take jurisdiction over this matter, in view of the ethics concerns and irregularities that Petitioner has described herein, he asks the Court, if possible, to refer this matter to the Department of Justice for investigation as well.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Allen Olsen

Date: March 9, 2020