IN THE SUPREME COURT OF THE STATE OF NEVADA

LYUDMYLA A. ABID,

Appellant,

vs.

SEAN R. ABID,

Respondent.

S.C. Appeal No.: **69995**
Related S.C. No.: 71042

D.C. No.: D-10-424830-Z
Dept. No.: B

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable LINDA MARQUIS, District Judge
District Court Case No. D424830

PETITION FOR REHEARING

COMES NOW, Appellant, LYUDMYLA A. ABID, ("Lyuda"), in Proper Person, and hereby petitions this Court to reconsider its Order of Affirmance entered on December 7, 2017.

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18-07586

This Petition for Rehearing is based upon all Papers and Pleadings on file herein, the Points and Authorities submitted herewith, the Declaration of Appellant attached hereto, and is made in good faith and not to delay justice.

DATED this 18th day of February, 2018.

Respectfully Submitted;

LYUDMYLA A. ABID, n/k/a
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Appellant appearing in Proper Person

POINTS AND AUTHORITIES

I. INTRODUCTION

This appeal is taken from two (2) District Court's Orders filed on January 5, 2015 and March 1, 2016, that modified custody.

On December 7, 2017, the court issued a published Opinion, "Affirmed," before the Court En Banc, by: Stiglich, J, with the majority: Stiglich/Cherry/Gibbons/Hardesty/Parraguirre/Pickering; and, **Douglas, J., concurring**. *Abid v. Abid*, 133 Nev. Adv. Opn. No. 94. EN BANC.

In in the Published Opinion, this Court addressed the question "[w]hether the district court **abused its discretion by providing** the **recordings** to a **psychologist appointed by** the **court** to **evaluate** the **child's welfare**." (emphasis added). (*See* page 2, ¶1).

This Court held that "[t]he district court properly exercised its discretion in determining that the recordings would assist the **expert** in **forming her opinion**." (emphasis added). (*See Id.*)

Therefore, this Court affirmed the District Courts Order that modified custody entered on March 1, 2016, based on the significant material ***misrepresentation*** made that the "expert" was an arm of the Court conducting an "interview" **and** "evaluation" of the minor child's welfare. (*See* page 2, ¶ 4).[1]

II. RELEVANT PROCEDURAL HISTORY

On January 9, 2015, Lyuda filed a Motion attempting to enforce Stipulation and Order from Dec. 9th, 2013, (**See** Abid, App. 0020-0025),

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[1] As discussed by this Court in pertinent part: "The district court found that Sean likely violated NRS 200.650 and denied Sean's motion to admit the recordings into evidence. Nonetheless, the court provided the recordings to a **psychologist**, Dr. Holland, whom **the court had appointed to interview and evaluate the child**. The court permitted Dr. Holland to consider the recordings as she formulated her opinions." (emphasis added). (***See*** page 2, ¶4).

that Sean refused to honor. Within matter of days, Sean inserted a recording device into the parties' minor child's school backpack and intercepted about 15 hours of conversations and events between the child, Lyuda, and other members of her family. Sean selectively transcribed the recordings and embedded the transcripts into his **Declaration in Support of a Motion to Change Custody, making the illegal transcripts of surreptitiously recorded conversations a public record.** (**See** Abid, App. 0080-0088).

Sean based his *Motion to Modify Custody* on the illegal transcripts and his summaries of what was allegedly said by Lyuda in privacy of her residence. (**See** Abid, App. 0107- 0115.) Sean alleged that Lyuda was abusing the child and badmouthing Sean to the child. In the motion, Sean stated that he was expecting Lyuda to object to the recordings and accuse him of committing a crime, so Sean asserted that he acted under vicarious consent doctrine, as he was trying to protect his child from abuse and pointed out that experts can rely on this kind of evidence, and that the will provide copies of the recordings to Lyuda at the time of a trial. (**See** *Id.*)

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Over Lyuda's numerous objections and requests to strike the illegal transcripts, the lower court authorized a psychologist, Dr. Holland, **to review the transcripts of alleged conversation and listen to the tapes to form the questions for an interview of Sasha.** (**See** Abid, App. 1513). The court then issued an *Referral Order for Outsourced Evaluation Services*, ("Outsourced Order"), on March 18, 2015. (**See** *Outsourced Order* entered by the lower court on March 18, 2015 attached to *Appellant's Motion for Transmittal of the Complete District Court's Record* (*Record on Appeal*) as **Exhibit "1"**).

After the recordings were altered and then the original recordings were destroyed, the copies of the altered recordings with a copy of Sean's pleadings that contained the illegal transcripts were provided to Dr. Holland to form her interview questions. (**See** Abid, App. XXXX-XXXX).

Eventually, Sean provided the edited tapes to Lyuda with a Receipt of Copy stating that they were true and correct copies. (**See** Abid, App. XXXX-XXXX). Meanwhile, Dr. Holland did not conduct a brief focus child interview, as she was ordered. (**See** Abid, App. XXXX-XXXX). Instead, she conducted unrecorded child interviews and drafted her "expert

reports," based on her interpretation of the interview, the **altered recordings** and Sean's custody pleadings. (**See** Abid, App. XXXX-XXXX).

Subsequently, the court relied almost exclusively on Dr. Holland's opinions as to the issues Dr. Holland was not appointed to give opinions and granted Sean's request to modify custody, based almost entirely on the statements Lyuda allegedly made to Sasha when Sean invaded her privacy by secretly placing a recording device in the child's backpack. (**See** *Minute Order – No Hearing Held* entered by the lower court on July 14, 2016 attached to *Appellant's Motion for Transmittal of the Complete District Court's Record* (*Record on Appeal*) as **Exhibit "3"**; *see also* Abid, App. XXXX-XXXX).

III. LEGAL ARGUMENT

Nevada Rules of Appellate Procedure, Rule 40(C)(2) provides in pertinent part as follows:

> The court may consider rehearing in the following circumstances: (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

With the utmost respect, Lyuda submits that the majority overlooked and misapprehended material questions of law and important facts of this case. First, the Court overlooked the fact that Dr. Holland was only appointed for a child interview, as opposed to a custody evaluation. (**See** *Transcript of Proceedings Held March 18, 2015 - Re: All Pending Motions*, at Abid, APP 1574: 12-15; see also *Outsourced Order* attached to *Appellant's Motion for Transmittal of the Complete District Court's Record* (*Record on Appeal*) as **Exhibit "1"**).

Second, the court overlooked the constitutional issue, when the district court's actions resulted in an uninformed waiver of due process rights and subverted Procedural and Statutory rules of this State, when the custody proceedings were delegated to Dr. Holland. (**See** *Id.*)

Third, the court overlooked the fact that the district court treated Dr. Holland's opinions formed on unspecified evidence and treated as if she was a Special Master. (**See** Abid, App. XXXX-XXXX). When, she acted outside the scope of her appointment and based her "expert" opinions on unrecorded child interviews, pleadings written by the parties' counsel that contained illegal transcripts of the altered recordings and altered copies of the recordings. (**See** *Transcript of Proceedings Held*

March 18, 2015 - Re: All Pending Motions, at Abid, APP 1574: 12-15; see also *Outsourced Order* attached to *Appellant's Motion for Transmittal of the Complete District Court's Record* (*Record on Appeal*) as **Exhibit "1"**).

This court also overlooked the fact that, considering the contents of the illegal transcripts, Dr. Holland's "expert" opinion as to the issues of child abuse, detriment and alienation purportedly committed by Lyuda against the child is nonsensical. (**See** Abid, App. XXXX-XXXX).

Also, the court overlooked the fact that Sean did not Contact CPS to report alleged abuse, neither did the mandatory reporter, Mr. Jones his counsel, and the psychologist Dr. Holland. (**See** Abid, App. XXXX-XXXX). In fact, it took almost two years for the lower court to change joint custodial arrangements and make findings of "detriment" and "abuse." (**See** *Minute Order – No Hearing Held* entered by the lower court on July 14, 2016 attached to *Appellant's Motion for Transmittal of the Complete District Court's Record* (*Record on Appeal*) as **Exhibit "3"**).

Even worse, the court made the findings of "detriment" and "abuse" based on the same exact set of allegations and purported facts Sean previously made in an attempt to change custody, yet he chose to stipulate to Lyuda having joint physical custody after extensive custody

evaluation as requested by Sean. (**See** Abid, App. 0020-0025; *see also Transcript of Proceedings Held December 9, 2013 - Re: Evidentiary Hearing*, at Abid, APP 0546 - 0637.)

The court also overlooked that Respondent's purported heroic act of "protecting" the child from purported "abuse," in violating Federal Wiretap Act and criminal statutes, combined with his litigation misconduct, such as spoliation of evidence and lack of candor toward the tribunal throughout this action, is nothing more than litigation abuse. (**See** Abid, App. XXXX-XXXX).

The court also overlooked that Dr. Holland was acting in capacity of Sean's retained expert when she was initially appointed by the Court for impartial child interview. (**See** Abid, App. XXXX-XXXX). Also, the court overlooked that during her supposedly "neutral" appointment, Dr. Holland sent *ex parte* correspondence to the Court with "recommendations" to change the parties previously stipulated vacation timeshare when Sean filed an *ex parte* request to modify the schedule. (**See** Abid, App. XXXX-XXXX).

The Court overlooked the fact that Mr. Jones manipulated the proceedings by strategically "amending" certain orders and filing hearing

scheduling orders when the hearing date passed, for his client's advantage. (**See** Abid, App. XXXX-XXXX). For example, Mr. Jones filed numerous pleadings misstating the correct standard for custody modification applicable to this action, even after the former lower court specifically corrected him on several occasions. (**See** Abid, App. XXXX-XXXX). Not surprisingly, the custody modification order appealed from is based on the standard that the district court specifically told Jones does not apply, and he needs to cite a higher standard. (**See** Abid, App. XXXX-XXXX).

A. DUE PROCESS

1. The Court's Reliance on Purported Statements During an Unrecorded Child Interview is in Violation of Due Process.

Parent's interest in care, custody and control of their children is constitutionally protected. Both the Federal and State constitution's guarantee the right to due process of law. U.S. Const., Am. XIV; Const. 1963, art. 1, § 2. "Due process requires fundamental fairness and applies to any adjudication of important rights." Due process demands notice before such a right is affected. *Wiese v. Granata,* 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994). Accordingly, a "party threatened with loss of parental rights must be given opportunity to disprove evidence

presented." *Wallace v. Wallace,* 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (citing *Wiese,* 110 Nev. at 1413, 887 P.2d at 746).

In *Gordon v. Geiger*, 133 Nev. Adv. Op. 69 (Sept. 27, 2017), this court stated that Uniform Child Witness Testimony by Alternative Methods Act sets forth constitutional safeguards, such as requirement of the court to canvas the parties when important constitutional rights are being waved, to ensure informed waiver of protected rights. Thus, the district court **must afford each** party with a full and fair opportunity to examine or cross-examine the child witness. ***See*** NRS 50.610. The principle applies to adult witnesses as well. Further, court appointed expert cannot transform inadmissible hearsay and argument of counsel into credible evidence, or to transform an altered tape into original. However, this is exactly what the court did here.

2. The Court's Findings of Detriment and Abuse of the Child by Lyuda, Based on Edited Tapes and Transcripts, While the Originals are Destroyed by the Offering Party, Violates Nevada Law and Due Process.

When the lower court was informed that tapes were edited and that the originals were destroyed, the court should have denied Sean's motion to modify custody. (**See** Abid, App. XXXX-XXXX). Lyuda relied on Sean's representations that the recordings will be provided to her for trial. Had

she known that the original recordings were destroyed, she would not have relied on these misrepresentations made by Sean and the Court. (**See** Abid, App. XXXX-XXXX).

It is telling that Sean did not want the district court to appoint Dr. Paglini, the expert who did a custody evaluation for the parties about a year prior to Sean's most recent request for custody modification and child interview. (**See** Abid, App. XXXX-XXXX). Taking into consideration that Sean lobbied the prior lower court to use Dr. Holland as a parenting coordinator for the parties but refused to follow the terms of the stipulated order to use a different PC when the court stated that it does not use Dr. Holland's services in his department. (**See** *Transcript of Proceedings Held December 9, 2013 - Re: Evidentiary Hearing*, at Abid, APP 0629:8 through 632: 24.)

In the hind sight, counsel's arguments shed some light as to use and abuse of "experts" in the family court:

> **Atty Jones**: The question is, what do you put in place to try to protect this child? Do you modify the timeshare between now and then? Do you order the child interview with say Dr. Holland? Recently, I've had experience where Dr. Paglini, after doing a report, doesn't want to do a subsequent report. That may be his position on the case as well.... But if he wanted to do a child interview, he might be willing to do that as a first choice. Next choice I would probably suggest would be Dr. Holland, followed

thereafter by Dr. Lenkeit **as my trier of** –of who I think should do the forensic interview. (**See** *Transcript of Proceedings Held March 18, 2015 - Re: All Pending Motions*, at Abid, APP 1549:8 through 1550: 4.)

Clearly, counsel uses his pre-selected experts as "his" "trier of fact for [custody cases.]" In doing so, the Court improperly delegated its fact-finding role and ultimate determination to the forensic evaluator. (*See* generally *Matter of Millett v Millett*, 270 AD2d 520, 522 (2000); compare *Moor v Moor*, 75 AD3d 675, 677 (2010); *Matter of Vezina v Vezina*, 8 AD3d 1047, 1047 (2004); *Salerno v Salerno*, 273 AD2d 818, 819 (2000); *Matter of Aldrich v Aldrich*, 263 AD2d 579, 579 (1999). We emphasize that "[t]he recommendations of court[-]appointed experts are but one factor to be considered" and, although entitled to some weight, such recommendations are not determinative and should not usurp the trial court's independent impressions of the evidence and conclusions drawn from that evidence. (*Matter of Nikolic v Ingrassia*, 47 AD3d at 821; *see Baker v Baker*, 66 AD3d 722, 723 (2009), lv dismissed 13 NY3d 926 (2010); *Matter of Kozlowski v Mangialino*, 36 AD3d 916, 917 (2007); *Matter of Maliha v Maliha,* 13 AD3d 1032, 1033 (2004).

3. The District Court's Failure to Specify the Manner, Conditions, and Scope of Expert Appointments in Accordance with Nevada Law Give Mental Health

Professionals a.k.a. "Experts" and Attorneys a Carte Blanche to Manipulate Custody Proceedings and Subvert the Process, Resulting in a Miscarriage of Justice.

In *Maddox v. Bullard*, 141 So.3d 1264 (Fla. 5th DCA 2014) court stated that "the failure of an order to specify the manner, conditions, and scope of an examination effectively gives the psychologist **"carte blanche"** to perform any type of psychological inquiry, testing, and analysis and, as such, an open-ended order departs from the essential requirements of the law, **resulting in a miscarriage of justice**. *See In Interest of T.M.W.*, 533 So.2d 260 (Fla.1st DCA 1989) (quashing order for compelled psychological examination of child because order did not specify manner, scope or conditions of exam).

4. **The Courts Should Not Permit a Parent Attempting to Record the Other Parent's Conversations to "Get Back" at the Other Parent**

Here, Sean admitted that he altered the original recordings and then destroyed them before filing the illegal transcript into the lower courts record. (**See** A. App, at XXXX-XXXX.) In addition, Dr. Holland admitted that "if" she knew that the original taped "recordings" had been edited and then destroyed, that it could change her opinion about Lyuda. (**See** A. App, at 1238-1240.) Yet, Dr. Holland accepted edited copies of the original recordings and illegal transcripts to perform only a child

interview of the minor child, (**See** A. App, at XXXX-XXXX), in direct violation of NRS 52.235 which provides, "To prove the content of a writing, recording or photograph, **the original writing, recording or photograph is required**, except as otherwise provided in this title."

Further, NRS 47.250 (3) creates a "disputable presumption" that evidence willfully suppressed would be adverse if produced. Clearly, Sean did not want to produce the original recordings as they are presumed to be adverse towards his allegations. (**See** A. App, at XXXX-XXXX).

Despite Sean's "admittance" that he edited and then destroyed the original recordings, this Court held, "[T]he illegally acquired recordings contained no **dispositive evidence** - they reflected at most one parent's attempt to alienate the child from the other parent. This exemplifies a manifest abuse of discretion which is unjust since this Court cannot draw these mere conclusory statements based on altered and then destroyed recordings that would have demonstrated that Lyuda in no-way "attempted" at best to "alienate the child from the other parent."

This Court is in place to afford all of those equitable redress of an unbiased judiciary by looking for an abuse of discretion, at a minimum.

However, when this Court further held, that "[M]ore concerning, however, would be a scenario in which an illegally obtained recording contains evidence of physical or sexual abuse of a child", this Court proceeded to render a decision that dismantled all fundamental rights of due process afforded to parents – citing that the best interest outweighs those fundamental rights. This Court is to review each matter on a case by case basis and is not to foreshadow anything on an "if come" basis that it may happen.

B. PREEMPTION AND WIRETAP ACT TITLE III

1. Decision weakens and violates Wiretap Act Title III

Under our Constitution Page 392 U. S. 386 no court, state or federal, may serve as an accomplice in the willful transgression of "the Laws of the United States," laws by which "the Judges in every State [are] bound..."[2]

[2] "[T]he Laws of the United States . . . shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, U.S.Const.

The doctrine of federal preemption is grounded in the Supremacy Clause of the U.S. Constitution.[3] The Supremacy Clause gives Congress[4] the power to preempt state legislation as long as it is acting within the powers granted it under the Constitution.[5] According to the Supreme Court, "State laws that 'interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" **are invalid**.[6] In the case of field preemption, even state laws that do not frustrate any purpose of Congress or conflict in any way with federal statutory

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[3] U.S. Const., Art. VI, cl. 2. See *Gade v. Nat'l Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) ("[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, **must yield**.")

[4] Preemption doctrine is not limited to Congress it also applies to actions by the Executive Branch. See, e.g.,*American Insurance Association v. Garamendi*, 539 U.S. 396 (2003) (holding state law was preempted by ExecutiveOrder).

[5] *California Div. of Labor Standards Enforcement v. Dillingham Construction*, 519 U.S. 316, 325 (1997).

[6] *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991) (quoting *Gibbons v. Odgen*, 22 U.S. 1 (1824)).

provision are invalid **because the states are considered to have no regulatory jurisdiction at all in the field.**[7]

Title III sets forth minimum procedural requirements for state and federal orders authorizing wiretapping. These requirements are **a floor, not a ceiling.** States may choose to enact wiretapping statutes imposing more stringent requirements, or they may choose to forego state-authorized wiretapping altogether. "[S]tates are 'free to adopt more restrictive legislation, or no legislation at all, but not less restrictive legislation." *State v. Verdugo*, 883 P.2d 417, 420 (Ariz. Ct. App. 1993) (quoting S. Rep. No. 90-1097 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2187); *see also United States v. Marion*, 535 F.2d 697, 702 (2d Cir. 1976) ("But whether the proceedings be federal or state, **interpretation of a state wiretap statute can never be controlling where it might impose requirements less stringent than the controlling standard of Title III.**"); *Sharpe v. State*,350 P.3d 388, 390 (Nev. 2015) ("[S]tates were allowed to adopt their own wiretap laws, **as long as they were at least as restrictive as federal legislation.**"); *State v. Serrato*,

[7] Viet D Dinh, *Reassessing the Law of Preemption*, 88 Geo L. J. 2085, 2105 (2000); Garrick B. Pursley, *The Structure of Preemption Decisions*, 85 Neb. L. Rev. 912, 930 (2007)

176 P.3d 356, 360 (Okla. Crim. App. 2007) ("Under . . . Title III, a **state wiretapping law can never be less restrictive than federal law**."); *State v. Rivers*, 660 So.2d 1360, 1362 (Fla. 1995) ("[T]he federal wiretap statute envisions that States would be free to adopt more restrictive legislation . . . but not less restrictive legislation." (citation and internal quotation marks omitted)); *People v. Teicher*, 425 N.Y.S.2d 315, 321 n.3 (N.Y. App. Div. 1980) ("It was intended that the minimum standards contained in the Act be binding on the states."); *State v. Hanley*, 605 P.2d 1087, 1091 (Mont. 1979) ("If a state chooses to allow electronic surveillance by adopting a statutory scheme, the scheme must be at least as or more restrictive than the regulations of Title III."); *State v. Farha*, 544 P.2d 341, 348 (Kan. 1975) ("**If a state wiretap statute is more permissive than the federal act, any wiretap authorized thereunder is fatally defective and the evidence thereby obtained is inadmissible under 18 U.S.C. § 2515**.").

Courts have articulated different standards for determining whether state wiretapping statutes are "less restrictive legislation" and therefore preempted by Title III. The Wiretap Act "'prohibits all wiretapping activities unless specifically excepted'" by the Wiretap Act.

Kempf v. Kempf, 868 F.2d 970, 973 (8th Cir. 1989) (quoting *Pritchard v.Pritchard*, 732 F.2d 372, 374 (4th Cir. 1984); *accord Milke v. Milke*, 2004 WL 2801585, Case No. 03-6203 (D. Minn. June 14, 2004).

A respected commentator has observed that "[m]any courts have been reluctant to accept the straightforward prohibition in Title III of all surveillance that the statute does not authorize." Hon. James Carr & Patricia L. Bellia, Law of Electronic Surveillance § 8:29 (Westlaw Feb. 2011). This court agrees with the authors' assessment that, "[w]hile the notion that a parent or guardian should be able to listen to a child's conversations to protect the child from harm may have merit as a matter of policy, **it is for Congress, not the courts, to alter the provisions of the statute.**" *Id.*

There is no dispute that Sean violated Title III by recording Lyuda's private conversations at her home and her vehicle or that disclosure of the contents of Lyuda's conversations with her two kids is prohibited by Title III. The statute 18 U.S.C.A. § 2515 seems to clearly and unambiguously prohibit the use in court of improperly intercepted communications:

> "Whenever any wire or oral communication has been intercepted, no part of the contents of such communication

> and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter."

Title III prohibits not just the wrongful *interception* of communications, but the *disclosure* of improperly intercepted communications. A disclosure in court of a private conversation violates the privacy of the victim as much as any other kind of disclosure, and the lack of government involvement does not diminish the intrusion into the victim's privacy. *See Vest,* 813 F.2d at 481 ("[A]n invasion of privacy is not over when an interception occurs but is compounded by disclosure in court or elsewhere.

In *Collins v. Collins,* 904 S.W.2d 792 (Tex. App. 1995) court stated:

> "The tape-recorded conversations were not admissible **because the criminal statute** dealing with the use of the intercepted communications **criminalizes their dissemination**, and the civil statute provides a method to prevent dissemination. To permit such evidence to be introduced at trial when it is illegal to disseminate it **would make the court a partner to the illegal conduct the statute seeks to proscribe**. *Gelbard,* 408 U.S. at 51, 92 S.Ct. at 2362-63; *Turner,* 765 S.W.2d at 470. We hold the illegally obtained tapes were not admissible and should not have been given to the expert for her to use in forming her opinion on the issue of custody." (emphasis added).

Congress made clear from the outset that the exclusionary rule is essential to the Wiretap Act's robust privacy protections and therefore should not be limited. The Senate Judiciary Committee described the broad exclusionary provision in § 2515 as necessary and proper to protect privacy" and "an integral part of the system of limitations designed to protect privacy."

Congress also intended the exclusionary rule to be a sanction for those that engaged in unlawful wiretapping. The report describes section 2515's exclusionary rule as an "evidentiary sanction." *Id.* The Senate report also states **that the perpetrator must be denied the fruits of his unlawful action in civil and criminal proceedings.**" *Id.*at 69.

Suppression of evidence acquired in violation of Title III **is not optional, it is required under the statute. 18 U.S.C. § 2515.** Accordingly, the courts should defer to Congress to make any changes to the statutory scheme rather than adopt a textual exemption by judicial fiat.

In the case of, *Sackler v. Sackler*, 15 N.Y.2d 40, 255 N.Y.S.2d 83, 203 N.E.2d 481 (1964) and other cases cited by this court, to justify court

dissemination of illegally obtained and edited tapes to Dr. Holland and public, **were decided before Wiretap Act was enacted.**

IV. CONCLUSION

This Court overlooked Constitutional issues involved in this case and misapprehended material questions of fact. In affirming its opinion, this Court approached the issue and issued a decision from idealized view of Family Court. In doing so, this Court created a slippery slope, since a pervasive problem of misuse of "experts" in unlimited scope in family law arena cases is a problem yet to be addressed by this court.

This case is a clear example of litigation abuse happening in Family Court. If this Court allows this opinion to stand, it will see additional Judges and attorneys citing to it to justify denial of due process, and there has already been instances where the district court has cited this published opinion to justify egregious violations of due process when unsupported emergency or potential harm are alleged.

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For the foregoing reasons, the court should grant rehearing on issues discussed above.

DATED this 18th day of February, 2018.

Respectfully Submitted;

LYUDMYLA A. ABID, n/k/a
LYUDMYLA A. PYANKOVSKA
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Appellant appearing in Proper Person

DECLARATION OF LYUDAMYLA A. PYANKOVSKA

I, LYUDMYLA A. PYANKOVSKA, the Declarant, under penalty of perjury hereby state as follows:

1. I am the Appellant in the instant matter, that virtue of that fact, have personal knowledge of the matters contained herein and is competent to testify to the same;
2. That Declarant makes this Declaration in Support of the foregoing "*Petition for Rehearing*;"
3. That Declarant has read the said Petition and hereby certifies that the facts set forth in the Points and Authorities attached thereto are true according to the record herein, and Declarant believes them to be true. Declarant incorporates these facts into this Declaration as though full set forth herein.
4. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 18th day of February, 2018.

LYUDMYLA A. ABID, n/k/a
LYUDMYLA A. PYANKOVSKA

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

I further certify that this motion complies with the page- or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the motion exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages, does not exceed 4667 words and is in fact, **4548 words**.

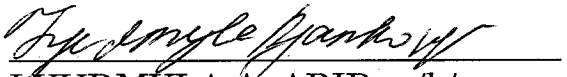
I further certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP Rule 28(e)(1), which requires every assertion in the motion regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 18th day of February, 2018.

Respectfully Submitted;



LYUDMYLA A. ABID, n/k/a
LYUDMYLA A. PYANKOVSKA
2167 Montana Pine Drive
Henderson, NV 89052
Appellant appearing in Proper Person

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this *Petition for Rehearing* on the parties to the appeal as follows:

By mailing it first class mail, in a sealed envelope, with sufficient postage prepaid to the following address:

JOHN D. JONES, ESQ.
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Attorney for Respondent,
Sean R. Abid

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 20th day of February, 2018.

Respectfully Submitted;

LYUDMYLA A. ABID, n/k/a
LYUDMYLA A. PYANKOVSKA