SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	:	Index No. 152656/2014 Hon. Peter H. Moulton

MEMORANDUM OF LAW OF IN OPPOSITION TO PLAINTIFF'S MOTION REQUIRING DEFENDANTS TO WITHDRAW ALLEGEDLY "ILLEGALLY OBTAINED DOCUMENT"

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Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd. ("Advertiser Newspapers" or "*The Advertiser*"), Amy McNeilage, and Fairfax Media Publications Pty Limited ("Fairfax Media" or "*The Herald*"), by and through their undersigned attorneys, submit this memorandum of law in opposition to Plaintiff Roy Den Hollander's ("Plaintiff" or "Hollander") Motion Requiring Defendants to Withdraw Allegedly "Illegally Obtained Document."

PRELIMINARY STATEMENT

In this application, Plaintiff, an attorney appearing *pro se*, falsely claims that Defendants' counsel or some unknown party acting at her behest hacked into Plaintiff's personal computer or website, stole a document, attached that document to Defendants' opposition to Plaintiff's oral motion for an immediate trial, and then tried to cover it up by "falsely" characterizing it as a media release as opposed to "Responses to Media." These statements are categorically false and irresponsible. As accurately described in the affidavit submitting the document to the Court, it was freely available on Plaintiff's website. Plaintiff's Motion should be denied.

The real reason Plaintiff wants this Court to order Defendants to withdraw the document is clear: it is both embarrassing and fatal to his lawsuit. The allegedly stolen document discloses, among other things, that Plaintiff brought this suit "[t]o have fun fighting these bimbo book burners," compares Defendants to Joseph McCarthy and Nazis, questions Defendants' sexuality and mocks the sexuality of Justice Joan Lobis, before whom Plaintiff appeared, describes Defendants as "female-dog-in-heat journalists," discloses that Plaintiff is out for "vengeance," and argues that Defendants are "stupid little girls wagging their tongues." Plaintiff also admits the truth of several statements he claims are false in the articles he challenges here as injurious falsehoods, conceding for example that he was, in fact, published on the website *A Voice for Men*. It is, therefore, hardly surprising that Plaintiff does not want the Court to see it. Plaintiff's allegations of hacking, however, are meritless, and the Motion should be denied.

BACKGROUND

A. Procedural Posture

Plaintiff commenced this action for injurious falsehood and tortious interference with prospective economic advantage arising out of the publication of articles written by two Australia-based reporters and published in two separate Australia-based papers in January 2014. Dkt. 1. After Defendants moved to dismiss the complaint, Plaintiff filed an Amended Complaint ("FAC"), adding claims for defamation against Defendant Shepherd and *prima facie* tort against Defendants Shepherd and McNeilage. Dkt. 11.

On October 27, 2014, Defendants filed a motion to dismiss Plaintiff's lawsuit because this Court lacks personal jurisdiction over all four of the Australia-based Defendants. Dkt. 43. In the alternative, Defendants moved to dismiss this action for failure to state a claim because the statements complained of were either substantially true or statements of opinion (the "Motion to Dismiss"). Dkt. 44. The Motion to Dismiss is currently pending.

At a hearing before Justice Milton A. Tingling on November 24, 2014, Plaintiff made a motion for an immediate trial, arguing (falsely) that Defendants had committed "perjury" in their affidavits, and, therefore, they should be brought to the Court and cross-examined (the "Motion for a Trial"). Defendants opposed that Motion on January 12, 2015, and Plaintiff submitted a reply on January 20, 2015. Dkt. 69; Dkt. 75. The Motion for a Trial is currently pending.

B. Plaintiff's Publicly Available Website and the Media Release

In drafting the opposition to the Motion for a Trial, an associate at the law firm that represents the Defendants conducted factual research online. Affidavit of Matthew L. Schafer ("Schafer Aff.") ¶ 2. In the process, a Google search directed him to Plaintiff's website, http://www.mensrightslaw.net. *Id.* He clicked that link and was redirected to the website, which

he was able to navigate freely. *Id.* At no time was he prompted to enter a password. *Id.*; *see also id.*, Ex. 1 (a screenshot of part of the website as of December 30, 2014). He then sent a link to the website to the undersigned, Affidavit of Katherine M. Bolger ("Bolger Aff.") ¶ 2, who clicked the link and immediately accessed the website, *id.* ¶ 3. The undersigned was never asked for a password either and was able to navigate freely. *Id.* ¶ 3.

About a week later, the associate visited Plaintiff's website again. Schafer Aff. ¶ 3. At that point, he clicked on a link on Plaintiff's website that directed him to a document entitled "Responses To Media." *Id.* Plaintiff's website did not require a password to access that document. *Id.* ¶¶ 3, 4. Instead, the associate accessed the website and the document as he would have any other webpage and document on the Internet. *Id.* ¶ 3.

On January 12, 2015, Defendants filed the opposition to Plaintiff's Motion for a Trial. Dkt. 69 ("Opp."). Defendants explained that Plaintiff chronicled his legal battles with feminists on his website and noted that the website had been "last visited on Jan. 12, 2015," the day of the filing. *Id.* at 4-5. Defendants also attached a copy of the allegedly illegally obtained document, which Plaintiff titled "Responses to Media" and which featured a question-and-answer between Plaintiff and the media about this lawsuit. *Id.*; Bolger Aff., Ex.1 (copy of document). Relying in part on that document, Defendants argued that an immediate trial would be inequitable because it was clear, based on the vitriolic document, that Plaintiff merely wanted to exact litigation costs on Defendants. Opp. at 17.

C. <u>Plaintiff Files an Order to Show Cause</u>

The very next day, Plaintiff filed an order to show cause why Defendants should not be required to withdraw the document and why Defendants' attorney should not be referred to "the proper authorities," Dkt. 72, and an affidavit in support, Dkt. 73 ("OSC Aff."). Plaintiff alleged that Defendants or their counsel violated "Federal and New York" law "[b]y hacking into a

website not viewable to the public." OSC Aff. ¶ 3. Plaintiff also asserted that Defendants' counsel perjured herself by characterizing the "Responses to Media" document as a "Media Release," because doing so was intended to "cover up" the fact that the document was not publicly available. *Id.* ¶¶ 3-6.

Upon receipt of the order to show cause, both the undersigned and her colleague visited Plaintiff's website. Schafer Aff. ¶ 6; Bolger Aff. ¶ 6. For the first time, the website was no longer publicly accessible, and they were asked to enter a username and password.[1] Schafer Aff. ¶ 6; Bolger Aff. ¶ 6. A "cached" copy of Plaintiff's publicly available website, captured by Google on January 3, 2015, however, still remained accessible on Google. The Google cache copy showed the full text of the homepage for Plaintiff's website. Schafer Aff. ¶¶ 7, 8 & Ex. 2 (the "cached" version of the website).

The undersigned emailed Plaintiff informing him that the website had been publicly available and asked him to withdraw the order to show cause. Plaintiff refused to do so. Bolger Aff. ¶ 8. This Court then denied Plaintiff's request, allowing Plaintiff to refile the order as a motion "if appropriate." Dkt. 99.

D. <u>This Motion</u>

Just hours after this Court declined to issue Plaintiff's order to show cause, Plaintiff refiled it as a motion and filed an accompanying affidavit in support. Dkt. 100; Dkt. 101. In the affidavit, he now argues that Defendants or Defendants' counsel "hack[ed]" his computer or server, "eliminate[ed] the authorization codes" on his server, and violated his right to privacy

[1] Previously, Plaintiff brought a lawsuit for copyright infringement against counsel in another case after counsel submitted articles that Plaintiff wrote that "convey[ed] his aggressively anti-'Feminazi' worldview," as exhibits. *Hollander v. Swindells-Donovan*, No. 08-CV-4045 (FB) (LB), 2010 WL 844588, at *1 (E.D.N.Y. Mar. 11, 2010), *aff'd sub nom. Hollander v. Steinberg*, 419 F. App'x 44 (2d Cir. 2011). In an eerily similar turn of events, after defendants submitted those articles to the Court, Plaintiff removed them from his website. *Id.* at *1 n.1.

"under the U.S. Constitution" and rights under federal and state law. Dkt. 101 ¶ 3 ("Mot. Aff."). He also swears under oath that the undersigned knows the document is not a media release and that Defendants characterized the document as a media release "in order to trick this Court into believing the hacked document had actually been presented to the media." *Id.* ¶¶ 7-8. Plaintiff now asks this Court to order Defendants to withdraw the exhibit and turn over all copies of the release and order counsel to identify anyone involved in obtaining the release and refrain from "publicizing" the media release. *Id.* (wherefore clause).

ARGUMENT

Instead of litigating the merits of this case, Plaintiff yet again accuses the Defendants and counsel of breaking the law – this time for allegedly hacking his computer and perjuring themselves. Plaintiff's Motion is frivolous and should be denied.

As set forth in the affidavits submitted herewith, neither Bolger nor anyone acting at her direction "hacked" Plaintiff's website. Schafer Aff. ¶ 5; Bolger Aff. ¶ 7. In fact, they merely browsed Plaintiff's publicly available website exactly as they would have browsed any website. Schafer Aff. ¶ 3; Bolger Aff. ¶ 3. Browsing the Internet is not "hacking" or "eliminate[ing] authorization codes" to Plaintiff's website. That is the end of the analysis.

Moreover, Plaintiff's allegations also are refuted by independent documentary evidence. First, the Google "cache" of Plaintiff's website states that it captured a "snapshot of the page as it appeared on Jan. 3, 2015." Schafer Aff. ¶¶ 7-8 & Ex. 2. The homepage is visible in its entirety. Additionally, the Columbia Business School alumni club lists Plaintiff's website under the "Alumni Businesses" section of their "Useful Links" webpage, describing it as a "nonprofit fighting for the rights of men in America." *Useful Links*, Columbia Business School Alumni Club of New York, http://www.cbsacny.org/links.html (last visited Feb. 3, 2015). This too refutes Plaintiff's statement that his website was not publicly available. Mot. Aff. ¶ 3.

Plaintiff's allegation that counsel committed perjury by characterizing his "Responses to Media" document as a "Media Release" does nothing to change this analysis. *Id.* ¶ 5. Plaintiff appears to argue that describing it as a release suggests that the "document was made public to the press" and this is somehow false. *Id.* ¶ 6. This is nonsensical. Defendants' counsel was explicit in her affidavit that the document was available on Plaintiff's website. Dkt. 70 ¶ 2. There is no mischaracterization. Plaintiff's Motion should be denied.

Indeed, Plaintiff's application is frivolous on its face. Conduct is frivolous when it "is completely without merit in law and cannot be supported by a reasonable argument for an extension," when it is "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another," or where "it asserts material factual statements that are false." 22 NYCRR § 130-1.1(c). Here, Plaintiff, an attorney, has made baseless, false allegations that Defendants and their counsel are criminals based on no evidence and *after* receiving an email from Defendants' counsel stating that the allegations are false. Throughout this litigation, Plaintiff has filed no fewer than six filings accusing Defendants' counsel of perjury, forgery, and hacking, and he has called Defendants "harp[ies]," "bacchanalian," "Japanese comfort girls," Nazis, and "dogs-in-heat." FAC ¶¶ 80, 105, 123. More remarkably, this is Plaintiff's established *modus operandi* in many litigations in which he appears, accusing other opposing counsel of misrepresenting facts and "prevaricat[ing]," and judges who rule against him as being biased in favor of women and "antagonis[tic]" toward men. *Hollander v. United States*, No. 08-6183-cv, 2009 WL 8248275, at *6-11 (2d Cir. Sep. 10, 2009) (Plaintiff's Reply Brief); *Hollander v. Swindells-Donovan*, No. 08-cv-04045 (E.D.N.Y. Dec. 21, 2009) (Plaintiff's Memorandum of Law, Dkt. 44 at 17 n.4, annexed as Ex. 2 to Bolger Aff.); *Hollander v. Copacabana Nightclub*, No. 07-cv-05873 (S.D.N.Y. Oct. 9, 2007) (Plaintiff's Memorandum of

Law, Dkt. 21 at 1, 3, 4, 10, annexed as Ex. 3 to Bolger Aff.). This Court should not allow Plaintiff to continue with these irresponsible allegations; it is time to apply the "doctrine of 'enough is enough.'" *Shangold v. Walt Disney Co.*, No. 03 CIV 9522 WHP, 2006 WL 2884925, at *1 (S.D.N.Y. Oct. 11, 2006) (quotation marks and citation omitted), *aff'd*, 275 F. App'x 72 (2d Cir. 2008). Plaintiff's Motion is frivolous, and should be denied.[2]

CONCLUSION

Therefore, Defendants respectfully request that the Court deny Plaintiff's Motion, together with costs, attorneys' fees, and such other relief as the Court deems appropriate.

Respectfully submitted,

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[2] Indeed, the First Department has found sanctions appropriate in this context. In *Weisburst v. Dreifus*, the trial judge awarded fees in the amount of $35,500 where one party filed "an emergency stay contain[ing] 'false charges [against the opposing party] that were expressed by means of a tortured and very partial rendering of the facts.'" 89 A.D.3d 536, 536 (1st Dep't 2011) (citation omitted); *see also Capetola v. Capetola*, 96 A.D.3d 612, 613 (1st Dep't 2012) (awarding fees where one party "submitted an affidavit to the court that was intentionally misleading" and his attorney accused the opposing party of violating criminal law without basis). The court further noted – based on the false charges and lack of facts – that the motion could "'only have been deliberately crafted to mislead.'" *Dreifus*, 89 A.D.3d at 536 (citation omitted).

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AFFIDAVIT OF KATHERINE M. BOLGER

City of New York)
) ss.:
State of New York)

KATHERINE M. BOLGER, being duly sworn, deposes and says:

1. I am a member of Levine Sullivan Koch & Schulz, LLP, counsel to Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage, and Fairfax Media Publications Pty Limited, defendants in the above-captioned action. I submit this affidavit in response to Plaintiff Roy Den Hollander's ("Plaintiff") Motion Requiring Defendants to Withdraw Allegedly "Illegally Obtained Document." I make this statement upon my personal knowledge, and I would be competent to testify at trial to the facts set forth herein.

2. On December 30, 2014, my colleague, Matthew Schafer, sent me a link to Plaintiff's website, http://www.mensrightslaw.net/main/index.html.

3. I clicked on the link and immediately accessed the website, which I was able to navigate freely. On no occasion was I ever asked to enter a username or password to access the Plaintiff's website. I simply visited the link like I visit other websites.

4. I believe that I accessed Plaintiff's website on at least two other occasions in the same manner, before January 13,2015 and did not encounter a password of any kind.

5. I also accessed the document that is the subject of this Motion and attached as Exhibit 1 to my affidavit in opposition to Plaintiff's Motion for a Trial on at least one occasion and was not asked to enter a username or password in order to access it. A true and correct copy of the document is attached hereto as **Exhibit 1**.

6. On January 13, 2015, after Plaintiff filed his Order to Show Cause, I again visited Plaintiff's website. When I visited the website on January 13, 2015, I was prompted, for the first time, to enter a username and password.

7. I did not "hack" the website, nor did anyone else to my knowledge. Indeed, I have no training or skills on how to "hack" or gain unauthorized access to Plaintiff's website, and I do not know how to do so. Moreover, I did not direct anyone to "hack" Plaintiff's website.

8. On January 13, 2015, I sent an email to Plaintiff explaining that his website was open to the public and, as a result, requested that he withdraw the frivolous order to show cause. Plaintiff refused to do so.

9. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff's Memorandum of Law filed in *Hollander v. Swindells-Donovan*, No. 08-cv-04045 (E.D.N.Y. Dec. 21, 2009).

10. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiff's Memorandum of Law filed in *Hollander v. Copacabana Nightclub*, No. 07-cv-05873 (S.D.N.Y. Oct. 9, 2007).

Katherine M. Bolger

Sworn to and subscribed before me
this 3rd day of February, 2015.

Notary Public

LISAMARIE APPEL
Notary Public, State of New York
No. 01AP4869703
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires Sept. 2, 2018

EXHIBIT 1

Responses to Media

Do you have a copy of the Complaint? You can take anything you want from the complaint and attributed it to me as a quote.

Why bring the suit?

To have fun fighting these bimbo book burners who think they are the chosen ones. [I like the alliteration. Of course given Tory's apparent age, she's really a bimbat and Amy a bimbette].

There were Feminists to the right of me, Feminists to the left of me, Feminists in front of me volley'd and thunder'd from down under, so I decided to sue.

Tory the Torch and Amy McNeuter are just like Joseph McCarthy and Roy Cohn from the 1950s. They targeted the guys involved in the course for our political beliefs.

It's another witch hunt; only today the witches are doing the hunting.

If these two Feminist book-burners had not jumped on their broomsticks and scared the bejesus out of the University of South Australia, students would have had an opportunity to acquire information and consider views not available anywhere else in higher education.

Reporters like Tory and Amy have taken the place of the 1950s "loyalty review boards" that carried out investigations for universities, governments and businesses to certify that their employees were not Communists or lefties. Only today, those who are not politically-correct are excluded.

If this case is successful, the private pinklisters, similar to the blacklisters of the 1950s, and those who use them will be put on notice that they are legally liable for the professional and financial damage they cause with their falsehoods and interference in business relations.

Bimbo?

The term bimbo refers to Tory the Torch and Amy "McNeuter." McNeuter because she wants to neuter men, unless she's in bed with them, assuming she's heterosexual.

In 1920, composer Frank Crumit recorded "My Little Bimbo Down on the Bamboo Isle", in which the term "bimbo" was used to describe an island girl of questionable virtue. Australia's an island, isn't it? Considering how Tory and Amy operate as reporters—they're of questionable virtue.

How do you view what happened or what's the big deal?

Under the Nazis, it was the German Student Union's Office for Press and Propaganda that started the book burning of those writers who opposed Nazi ideology.

At the Nazi book burning in 1933, Joseph Goebbels said, “The era of extreme Jewish intellectualism is now at an end.” Tory and Amy can’t wait to say the same about any intellectualism that isn’t pro-Feminist.

So what’s the difference here with Tory and Amy stopping the teaching of a course on men and the law by claiming it expressed “radical” and “extreme” male views?

So they didn’t go into the University and take knowledge, ideas and facts in the form of books and throw them on a bonfire. Instead they used the modern-day torch of the electronic media to incinerate opposing views.

The end result is the same—censorship of ideas, or verbal mutilation.

Why should anyone who does not believe in this Feminist mumbo-jumbo be punished for their beliefs, speech or actions, unless they commit a crime or are running for office. As to beliefs, there are no crimes and as to speech very few, such as yelling “bomb” in Times Square.

As President Truman wrote, "In a free country, we punish men for the crimes they commit, but never for the opinions they have." Not so in Australia.

Are you comparing them to the Nazis?

Yes. I guess that makes them Feminazis.

I’m also comparing them to the Commies. The Soviet Union ostracized anti-commies into Gulags. The Feminist just keep anti-Feminists out of the universities. What are they afraid of? I thought they were strong and independent females.

Tory and Amy wrapped themselves in the rag of Feminism to justify the imposition of a unitary belief-system of Feminist orthodoxy for dictating the thought, speech, and conduct of members of the educational community and society-at-large.

Were you surprised?

Yes, but I should have expected such from yellow, female-dog-in-heat journalists and the press in a penal colony.

Wasn’t Noonien Singh Khan born there?

Did the articles anger you?

Of course they did, but at least I’m in touch with my feelings.

Although, one thing Tory does not realize is that insults from an opponent is the highest form of compliment for an attorney.

In these causes of action, it's not what I think that matters, but what Tory caused others to think.

Are you out for vengeance?

Hey, what's wrong with a little quid pro quo—one bad turn deserves another.
I'd call it justice.

Sounds like vengeance.

So what's the difference.

Do you feel persecuted?

Not if the Feminist is hot, she can walk all over me in her stiletto heels. Hmm, maybe I'll contact the dominatrix trio I ran into the other night?

Anyway, Feminists, assuming they are human beings, which has yet to be proven, can do whatever they want so long as they stay off of my rights. If they don't, which they don't, then it's a fight.

And I'm going to fight them to my last dollar and last breath, and, if there is anything after death for eternity.

Sounds like hate?

I don't hate the Feminists—I despise them. It's a great motivator.

Do you think the people who rose up in the Ukraine loved their President? No, they despised and hated him.

What did the Feminists do to you?

Just because they are unable to accept that Mother Nature condemned them to mood swings, do they have to make life trying for the rest of us.

VAWA

At least in the Inquisition you got to appear before your judges, although you were probably tied to the rack, with VAWA you never know who your judges are, and they skip the rack and go right to finding you did what the alien says you did.

The Edgar Allen Poe tale of horror divorce I went through before a Lesbian judge (Joan Lobis) who was probably jealous that my face had been where she wanted to put hers.

All cost me a lot of money, time, and possibly a job with the CIA. Such would not have happened but for the Feminists.

Do you consider Feminists witches?

I thought NOW stood for the National Organization of Witches?

Most of them are. The witchcraft label has been applied to practices people believe influence the mind, body, or property of others against their will.

Did you ever censor your speech because it wasn't politically correct? Isn't that constraining your will to be free?

Feminist linguistics is an obvious effort to control thought, speech, and action. As George Orwell wrote, "if thought corrupts language, language can also corrupt thought," *Politics and the English Language,* 1946, and once thought is corrupted, so is a person's beliefs, and corrupted beliefs are the real power for controlling people against what otherwise would be their free will.

What are the falsehoods?

It can be false or misleading.

Tory: "member of extreme right-wing groups," from an email; "linked to extreme views on men's rights," second headline 1/12/14 article

Amy: "hardline anti-feminist advocate[]," "hardline" may have been a Freudian slip when she becomes emotional over men; "published on radical men's rights websites," 1/14/14 article.

Tory's disparaging and libelous publications

1/9/14, on information and belief - "[RDH] identified as belonging to extreme right wing groups in the USA." 1/9/14 Gouws wrt Tory questioning Gary Misan.

1/12/14 article: ***Lecturers in world-first male studies course at University of South Australia under scrutiny***

"LECTURERS in a 'world-first' male studies course at the University of South Australia have been linked to extreme views on men's rights and websites that rail against feminism." Second headline 1/12/14 article.

"The lecturers' backgrounds are likely to spark controversy." 1/12/14 article.

"Two lecturers have been published by prominent US anti-feminist siteA Voice for Men, a site which regularly refers to women as 'bitches' and 'whores' and has been described as a hate site by the civil rights organisation Southern Poverty Law Centre." 1/12/14 article.

"One American US lecturer - US attorney and self-professed 'anti-feminist lawyer' Roy Den Hollander - has written that the men's movement might struggle to exercise influence but that

‘there is one remaining source of power in which men still have a near monopoly – firearms’.” 1/12/14 article.

“He also argues that feminists oppress men in today’s world and refers to women’s studies as ‘witches’ studies’.” 1/12/14 article.

“He has likened the position of men today to black people in America’s south in the 1950s ‘sitting in the back of the bus’, and blames feminists for oppressing men.” 1/12/14 article.

“The course, which has no prerequisites . . . .” 1/12/14 article.

“Dr Michael Flood, from the University of Wollongong’s Centre for Research on Men and Masculinity, said these types of male studies ‘really represents the margins’.” 1/12/14 article.

“ ‘It comes out of a backlash to feminism and feminist scholarship. The new male studies is an effort to legitimise, to give academic authority, to anti-feminist perspectives,’ he said.” 1/12/14 article.

“Flinders University School of Education senior lecturer Ben Wadham, who has a specific interest in men’s rights, said there was a big difference between formal masculinity studies and ‘populist’male studies.” 1/12/14 article.

“He said there were groups that legitimately help men, and then the more extreme activists.” 1/12/14 article.

“‘That tends to manifest in a more hostile movement which is about ‘women have had their turn, feminism’s gone too far, men are now the victims, white men are now disempowered’,’ he said.” 1/12/14 article.

“ ‘I would argue that the kinds of masculinities which these populist movements represent are anathema to the vision of an equal and fair gendered world.’” 1/12/14 article.

“Dr Wadham said that universities needed to uphold research based traditions instead of the populist, partisan approach driven by some.” 1/12/14 article.

1/14/14 *University of South Australia gives controversial Male Studies course the snip* Headline

“CONTROVERSIAL aspects of a Male Studies course will not go ahead” Second headline 1/14/14 article.

“The Advertiser revealed yesterday that some of the lecturers listed for the professional certificates <u>had links to extreme men’s rights organisations</u> that believe men are oppressed, particularly by feminists.” Emphasis in 1/14/14 article.

“US ‘anti-feminist’ lawyer Roy Den Hollander . . . .” 1/14/14 article.

"National Union of Students president Deana Taylor said a course like that proposed for the university provided 'a dangerous platform for anti-women views'." 1/14/14 article.

1/14/14 ***Pathetic bid for victimhood by portraying women as villains***

a. "Pathetic bid for victimhood by portraying women as villains"

b. "Big ups to UniSA for having the sense to reject anything linked to those at the very fringe of the men's rights spectrum . . . overseas ring ins. ("Ring in" is a gang term meaning persons that are called to help in gang wars/fights—sounds a little like Tory).

c. "They are - misogynists, I mean. And we're talking old-school misogyny - the hatred of women - as well as the new-school misogyny - entrenched prejudice against women."

d. "Not just harmless condescension or unthinking stereotypes, but some serious anger."

e. "The problem is, the circle (Tory is referring to "circle-jerk misogynists") is no longer closed, no longer just a bunch of angry guys in a basement. They're trying to get up the stairs and into the light.

f. "They want to play outside with legitimate experts in men's issues . . . ."

g. "It's a classic tactic, used by pseudoscientific fraudsters . . . [to create] a Hannibal Lecter-style creation that mimics valid inquiry."

h. "Try to sound like the real deal, and look enough like them to fool some people, some of the time."

i. "[T]rying to make women into villains . . . ."

j. "It could be dismissed if they weren't trying to creep in where they are not needed, or wanted."

k. "But these guys drown out any real discussion with their endless angry spittle. And that's the real bitch.

6/18/14 ***Men's rights campaigner Roy Den Hollander attacks The Advertiser's Tory Shepherd in bizarre legal writ filed in New York County***

a. "[B]izarre legal writ . . . ."

b. "UniSA was planning a course in men's studies that included men with links to US men's rights extremists . . . ."

c. "Mr Den Hollander thinks he was in line to be paid $1250 to lecture."

d. “Mr Den Hollander is a proudly “anti-feminist” lawyer with a fairly unsuccessful track record.”

e. “WATCH: THE COLBERT REPORT ON ROY DEN HOLLANDER”

f. Roy believes in “censor[ship of] a journalist . . . .”

g. Roy is “an extremist by sounding like an extremist.”

h. Tory sarcastically demeans Roy’s legal complaint against her as “Brilliant, no?”

i. “He [Roy] also talks of his concern that ‘alien wives and girlfriends’ are making up phony abuse cases against men, and that men are being targeted by feminists because they were trying to escape said feminists by going overseas for girlfriends.”

j. Tory communicated that Roy does not believe in equality for women because he demeans males who do by calling them “girlie-guys.” Tory wrote “In the men’s rights vernacular, ‘girlie-guys’ are usually known as ‘manginas’. The terms refer to males who believe in equality for women . . . .”

k. “Why on Earth give such a man more publicity? But it’s important, I think, to remain aware and wary of people like Mr Den Hollander.”

l. “I suspect the people at UniSA who flirted with the idea of bringing him over to teach may not have really understood his philosophy.”

Tenor and innuendos of the two articles are false, and use the same tactic as Joseph McCarthy and Roy Cohn did in the 1950s. Back then, certain words were used to label persons as sub-human, anathemas, and not deserving of rights—“communist sympathizer,” “fellow traveler,” and “red,” while today Tory and the Feminists use the opprobrium associated with words such as “antifeminist,” “right winger,” “hardliner,” and “masculine.”

Both used the description “anti-feminist” the way a reporter for *Pravda* in the old Soviet Union would have used the term “anti-communist.” At least the Russian commie reporters could point to intellectuals such as Marx and Lenin to define “Communism,” who can Tory and Amy point to for a definition of Feminism—their fellow groupies at consciousness lowering sessions?

Amy uses “radical” the way Tory uses “extreme,” to depict Plaintiff as a dangerous loony because she knows her readers will never realize that the following were also called “radicals”: America’s founding fathers, abolitionists, the South Australian Fabian Society, Australian Lucy Morice, Radical Women of Australia, the Paris Commune, anti-Vietnam War demonstrators, Environmentalists.

Where’s the malice?

These two don't hate all men, just the ones who stand up for their rights and don't bow down to the pedestal on which they delusionally believe they recline.

They hate, loathe and fear men's rights advocates, so when they learn that a bunch will be teaching a course, they jump on their electronic broomsticks railing demon men are invading the college and will convince all the pretty young co-eds to drop their pants.

With Amy, look at the cartoon in the beginning of her article that mocks men. Why include it? It's an expression of an unreasonable desire to see someone else suffer denigration = malice.

With Tory, she headlined her second and last article dated January 14, 2014 with "University of South Australia gives controversial Male Studies course the snip." Why did she use the word "snip"? Snip means to make a quick cut. Were her hate-filled fantasies of male emasculation or circumcision at work? At the very least, it connotes feelings of malice toward men and the guys involved in the course.

Reckless disregard with both is that neither interviewed me before their initial articles and, to my knowledge, never reviewed the content of the proposed course.

They saw the term "men's studies" and jumped on their broomsticks to attack.

There are militantly anti-male groups out there that are led by man-hating females. Tory and Amy most likely belong to such.

With injurious falsehood, malice is presumed if the statement was published, was false and injuries resulted.

You use the reporters' first names, why?

An expression of my disrespect for such rag journalists.

Also an expression of my opinion that they are stupid little girls wagging their tongues to harm people they don't like. It's how girls in high school fight, only these two have the power of the press which they use for their personal vendettas.

Are you anti-feminist?

Of course, I'm anti-Feminist; I'm too intelligent not to be.

So what's wrong with that? I speak out against a snake-oil ideology and that's my right.

Feminist have come to believe in their exceptionalism and their sense of being the chosen ones. That they can decide the destinies of men; that it is only them who can be right—just like a bossy wife.

Opposition to the ideology Feminism is not a crime—not yet anyway. My freedom of speech is not limited to parroting pro-Feminist propaganda as desired by self-appointed members of the PC Ministry of Truth.

I'm also anti anything that infringes my Constitutional rights.

I'm an anti-feminist, and proud of it, while they are man-haters or misandrists, and I'm sure they are proud of it.

I define Feminist as a person who believes that all men are guilty and all females innocent until they are proven guilty—but even then a man is at fault.

A collection of people many of whom could hardly bake a cake, fix a car, sustain a friendship or a marriage, or even solve a quadratic equation, yet they believe they know how to rule the world. They justify any reprehensible act so long that it's committed by a Feminist.

Are you a right winger?

No, unless you consider Students for a Democratic Society and the New Democratic Coalition as right wing organizations.

In the 1960s, I was accused of being a communist because of my SDS membership. Today, I'm accused of being a right wing extremist. So have my political views changed or just the epithets that conformists use to make others agree with their weak minded beliefs?

I know what I like and what my rights are. I'm not about to sacrifice either just to satisfy some special interest group that only has my harm at heart.

A number of experts also criticized the course.

You call those girlie-guys Tory enlisted experts or are they sexperts? Those androgynies are simply scared of being hexed by the Feminists.

Dr. Flood obviously sides with Tory, and if he lived in America in 1776 would have also sided with the Tories, since the founding fathers were responding to injustices and clearly on the "margins" of the British Empire.

Dr. Ben Wadham surely would have opposed the progressive programs of Teddy Roosevelt because they were "populist," and would have gleefully "crucif[ied] mankind upon a cross of gold" because William Jennings Bryan was a "populist."

Amy used an alleged female, Eva Cox, who said, "men who want to complain that they haven't had enough attention as victims, and that does worry me." What, Cox worry? Absurd, no man would want attention from her, now Amy is a different story.

I don't consider myself a victim but a target. Hopefully a moving one.

Weren't you published on the Voice of Men website that calls girls "bitches"?

Yes, but I don't use that term. I think it gives girls too much credit.

So what? You're published in _____, and I am sure it has used some language you may disagree with.

Your comment on guns?

A girl's tongue is her gun, so why should men disarm unless females are muzzled.

My comment is true—isn't it?

Mostly men exercise their right to bear arms, so how can the exercise of a right be extreme or even subject to criticism. When the media starts criticizing the exercise of rights, it deters people from exercising them, which is the same as not having them.

The power of the Second Amendment is to give people a fighting chance against unjust state violence, such as the revolution that occurred in Kiev.

Tory and Amy?

They're like the pigs in *Animal Farm*, squealing about equality when they really mean they're more equal than others, and the others are men.

I'm sure they bring a lot of joy whenever they leave the room.

They're ideologically corrupt, and not unlike a *de facto* cult preventing the spread of what they deem are heretical ideas.

They're prime candidates for natural de-selection.

Misogynist?

When I go out to nightclubs or my hip hop class, believe me, what's in my heart is not malice.

I like music, I like dancing, I like drinking, and I like pretty young ladies. But as with drinking, a guy has to be careful with the young ladies.

Look, would you rather drive a new car or a used one? And if you are the car, would you rather be driven by a student driver or one with a license.

Girls aren't rated Double X for nothing, which is why I chase them.

Why bother bringing these cases?

There are some people who will do anything for money, but there are others who will do anything for justice. I like to think I'm the later, but that just might be my ego talking.

What's at stake?

Universities were supposed to be open to differing views, but today under Feminism the winds of a cult-like conformity blow through the halls of academia when centers of learning and the press believe they have discovered the one and only truth.

The message is clear. On college campuses, everybody's freedom of speech is limited to parroting pro-Feminist propaganda as determined by the self-appointed members of the PC Ministry of Truth.

Freedom of speech. It is key to the flow of ideas and forbids treating differently those with unpopular viewpoints by suppressing their speech in favor of popular speech. Tory, Amy and the Feminists are out to eradicate discussion of the currently unpopular masculine perspective beneficial to males.

"To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." *Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 603 (1967)(Brennan, J.).

Are you advocating revolution?

I've been advocating that in one form or another since I was a member of SDS—Students for a Democratic Society.

I almost joined the Weathermen, but couldn't see the relevance in blowing up bathrooms.

As Abraham Lincoln said, "The people of the United States are the rightful masters of both Congress and the Courts, not to overthrow the Constitution, but to overthrow the men [and now females] who pervert the Constitution."

For me, it is just about time for civil disobedience.

Sure that can include violence, but I have not decided to start up the Eliot Ness truck yet. It's a figure of speech.

The only way to stop the discrimination against men is for 100,000 armed guys to show up in Washington, DC demanding their rights. The problem is there are perhaps only 200 men left in America.

What are they going to do to me—send me to Guantanamo? I like warm climates, besides if I escape, I get to drive around in 56 Chevys with hot Latinas and smoke Cuban cigars.

Or, they take away my license to practice law. So what? The only reason I got it was to defend my rights, but that's impossible in a judicial system prejudiced against men. So my law license is pretty much as useless as basing arguments on the Torah in a court of the Third Reich.

My allegiance is to the Constitution and Declaration of Independence—not to a government that's been corrupted by ideological Feminists, nor a government that sacrifices men's rights to give girls preferential treatment.

Feminism has created a de facto tyranny over men by government. As James Madison said, a tyranny exists when one group controls the executive, legislative, and judicial branches. The belief system of Feminism now has an overriding influence in all three. America is now a Feminarchy that tramples the rights of men.

Insurrection seems better than living as slaves to the Feminists and a government that enforces their male-hating policies. If we fail, we'll be gone, and then the ladies can fight among themselves and with the androgynies who are left.

Throughout history the failure of governments to uphold individual rights have caused violence—not prevented it. Today, the preferential treatment of girls violates the rights of guys, there's no justice within the system because the Feminist Establishment prevents the institutions in this country from upholding the Constitution as it applies to men seeking equal treatment.

"[W]here there is only a choice between cowardice and violence, I would advise violence." Gandhi.

Sometimes a social evil is so egregious, so entrenched, that violence is the only answer. Violence is often necessary in the name of a principle, and is admirable when waged in the name of democratic principles.

Never underestimate the influence of violence.

How do the laws discriminate?

Currently, just look at the three anti-feminist cases I brought:

<u>Ladies Nights</u>: The suit would have ended guys having to subsidize girls to party. I think that's called prostitution.

The owner of the China Club told me that he held Ladies Nights to get a lot of guys to come to the club thinking there would be plenty of girls. To which I added that when there wasn't, they'd console themselves by drinking.

Religion and Women's Studies case: Religion requires irrationality and acting against one's self-interest. So think irrationally and do something stupid and you've got a trait of femininity.

"'[I]ntensely personal' convictions which some might find 'incomprehensible' or 'incorrect' come within the meaning of 'religious belief'…." *Welsh*, 398 U.S. at 339 (internal quotes *Seeger*, 380 U.S. at 184-185):

Amy harps on the innuendo that allegations of Feminism as a religion are absurd. To Feminists and those scared of them, yes, but the U.S. Supreme Court and Court of Appeals cases on religion indicate otherwise.

Academic freedom does not give any University the right to provide a wide range of benefits to one group based on sex but not the other as a result of stereotyping. "Fairness in individual competition for opportunities … is a widely cherished American ethic. Indeed, in a broader sense, an underlying assumption of the rule of law is the worthiness of a system of justice based on fairness to the individual," which still includes males. *Regents of University of California v. Bakke*, 438 U.S. 265, 319 n. 53 (1978).

By 2016 in the U.S., females will receive 64% of the Associate's Degrees, over 60% of the Bachelor's Degrees, 53% of the Professional Degrees, and 66% of the Doctor's Degrees. National Center for Educational Statistics, *Digest of Educational Statistics*, Table 258.

VAWA: The reputation and careers of Americans, usually men, are destroyed by secret, Star Chamber like hearings in which aliens testify but not the accused.

Why did the Feminist get VAWA passed?

Why do females squeeze their feet into tiny shoes with stilts on one end, constrict the lower part of their bodies in panty hose, interfere with their respiration with tight push-up bras, paint their faces with cancer causing dyes, pluck their eyebrows, glue fake eyelashes to their eye lids, conduct chemical reactions on their heads to change hair color? To catch a guy.

If they are willing to do all that to land a guy, they are sure willing to use the government to violate a guy's rights if it increases their chances.

You lost that case?

And every case I brought where the rights of men conflicted with the preferential treatment of females.

The chances of the courts upholding the rights of men are about equal to some pretty young lady paying my way on a date.

One of these days the courts may do what they are supposed to—then again, maybe they never will.

Give me some examples of how the laws discriminated in the past?

1. The British Factory Acts in the 19th century limited the hours beyond which no woman was to work during any one day, the time which was to be allotted to meals, the sanitation of the workrooms, and other matters of a similar nature. Cleveland at 250-51.
2. In America in the 19th and early 20th centuries, statutes existed in all the States with a view to regulate and prescribe for the employment of women in hazardous occupations. Such laws forbid the employment of women in excess of a specified number of hours per day and per week. A few of the States had also established a minimum wage to be paid to women engaged in stated occupations.
3. In England females could not vote for members of Parliament but could vote on county and local matters. Cleveland at 254.

Flogging

4. An 1820 English Act forbade the flogging of women either in public or private, but not men. It was also okay to flog school boys with a cane but not a school girl.

Paternity Fraud

5. Under the 19th century common law when a mother had a child while married, the husband was presumed to be the father. Of course that was not always the case, but only lately has DNA testing been able to disprove such, but in around 30 states, it does not matter.

Liable for wife's acts

6. In England, marriages before 1870, the husband was liable for his wife's contracts, torts or civil wrongs before they were even married.
7. In America in the 1800s, if a wife rented and occupied premises, her husband would be liable for the rent.
8. A suit could be brought by or against a married woman only for contracts made by her previous to her marriage. And even in such cases she had to be joined by her husband as co-plaintiff or defendant.
9. A wife could not be sued for receiving stolen goods, if she received them from her husband.
10. In America in 19th and early 20th centuries, if a husband abandoned his wife, even with justification, he was nevertheless liable for her support.
11. In America in 19th and early 20th centuries, when a husband refused to supply his wife with necessaries suitable to her rank and condition, the wife could obtain them from any tradesman or tradesmen, and the husband had to pay the bills.

Liable for support of wife

12. Tradesman could supply a wife with goods which she had been in the habit of purchasing, whether the same be necessaries or not, and the husband had to pay.
13. In America in 19th and early 20th centuries, a woman could complain of her husband's laziness, and compel him at court to give bonds for the support and also for the maintenance of his children.

Liable for wife who left

14. If a wife, who had left her husband, offered to return and the husband refused to receive her, the wife could, then purchase necessaries in his name without his consent, and the husband was liable for all necessaries so supplied.
15. Any man who shall unlawfully neglect or refuse to support his wife or children, unless owing to physical incapacity or other good cause, might be convicted of a felony in some States, but liable to punishment in every State.
16. In America in 19th and early 20th centuries, an unmarried adult woman who becomes poor and unable to support herself, might, by legal process in some of the States, compel her father, mother, grandfather, grandmother, or any one or more of them, to furnish such support or to contribute towards it. If these relatives are not able to do so, the State, town or municipality would support the woman as a pauper.

Restriction on husband's property but not wife's

17. In America in the 1800s, during the life of a wife, a husband could not sell nor make a conveyance of his real estate either in whole or in part without her knowledge and consent. She had a one-third interest in his real estate and in NY one-half his personal property.
18. In America in the 1800s, except for five states, every woman possessed at marriage of property or acquired property during marriage by any means held it and all rents, profits and income from, to her separate use, free from the control of her husband and from attachment by creditors for his debts. A married woman could without her husband's consent sell, convey, and devise her separate estate, or any interest or interests in any and every part thereof, the same as if she were single.
19. In England, The Married Woman's Property Act of 1882 allowed married women to acquire, hold, and dispose of property in the same way as could a single woman, which except for primogeniture, was the same as a male. All property belonging to a woman at the time of her marriage, or which came to her after marriage, including earnings and property acquired by the exercise of any skill or labour, was absolutely her own, and the husband had no rights whatever over the property of his wife.
20. In England in 1870, under the Married Woman's Property Act:
    a. All the earnings of a married woman were her own property, as also were her deposits in any Savings Bank.
    b. Every married woman was allowed to insure her own or her husband's life for her separate use. This opened the way for wives taking out insurance on their husbands and then killing them.
    c. Where husband and wife are both liable, the property of the husband must first be taken to satisfy the liability.

Debtors' prison

21. In England, under the Married Woman's Property Act of 1882, a married woman trading on her own account could be made a bankrupt, but she could not be committed to prison for non-fulfillment of an order under the Debtor's Act of 1869. Arthur Rackham Cleveland, *Woman under the English Law the Landing of the Saxons to the Present Time*, at 282, London: Hurst and Blackett, 1896. For 1837-1895. Husbands, however, could be committed to prison for failing to pay certain debts.

a. Under the 1882 Act, every married woman had the same remedies, civil and criminal, against all persons, including her husband, for the protection of her separate property, as if she were a single woman. *Id.* at 283.

22. In 19th century England, judicial separation or divorce courts could grant alimony only to the wife and direct that the custody of the children of the marriage be given either to the innocent party.
23. In 19th century America, a wife was legally entitled to alimony, except for adultery, but not the husband, and the husband had to pay for the wife to bring a divorce action against him. Today in America with no-fault divorce, the entire structure of American marriage and divorce is geared to financially supporting faithless females. Men are 4 times more likely to lose their homes. One million American men are preemptively ordered out of their homes each year, even when no physical abuse is even alleged.

Heart balm

24. In the 19th and early 20th centuries in America, where a woman, who was of age, is seduced under a promise of marriage, she could personally sue the seducer. When the seducer was a single man, the latter would be compelled to make reparation by marriage. Where this could not be affected, exemplary damages would generally be obtained. If the seducer was a married man and the girl did not know it, she could obtain aggravating damages.
25. By 1929, with very few exceptions, women could hold any office in any of the States. They may have been members of a State legislature and they may have been members of Congress.

Sentencing

26. For the 41 classes of crimes to which the Federal Sentencing Guidelines apply, the average sentence for males is 278.4 percent greater than that of females (51.5 versus 18.5 months). David Mustard, *Disparities in Sentencing: Evidence from U.S. Federal Courts*, Journal of Law and Economics, vol. XLIV (April 2001).
27. Males not only receive longer sentences but also are less likely to receive no prison term when that option is available; more likely to receive upward departures, and less likely to receive downward departures. When downward departures are given, males receive smaller adjustments than females. *Id.*

Female value greater

28. A drunk driver will receive an average of a 3-year higher sentence for killing a female than for killing a male. *Unconventional Wisdom*, Washington Post, Sept. 7, 2000.
29. Black widows: Chicago female homicide cases resulting in non-convictions by 1914 had become a national scandal. Illinois State's Attorney Maclay Hoyne, declared that: "The manner in which women who have committed murder in this county have escaped punishment has become a scandal. The blame in the first instance must fall upon the jurors who seem willing to bring in a verdict of acquittal whenever a woman charged with murder is fairly good looking and is able to turn on the flood gates of her tears, or exhibit a capacity for fainting."

30. Female Defenses unavailable to males:

Menstruation and PMS, or I kill whomever I want and blame it on my biology:

At four o'clock in the afternoon on January 30, 1865, Mary Harris fired two shots at her former fiancé, as he walked down the hallway of the U.S. Treasury Building leaving work for the day. Burroughs fell dead and Harris was tried for murder.

Mary's prior fiancé had broken off their engagement and married another girl, so Mary followed him to D.C. and shot him dead. Mary tearfully testified that Burroughs had promised to marry her but married someone else. After a 12-day trial in which she pleaded "not guilty by reason of being 'crossed in love and suffering from painful dysmenorrheal at the time of the shooting' or what is now called premenstrual syndrome, Mary was acquitted.

N.Y. Times, July 20, 1865 printed: The verdict only furnishes a new illustration of what must be regarded as a settled principle in American law—that any woman, who considers herself aggrieved in any way by a member of the other sex, may kill him with impunity, and with an assured immunity from the prescribed penalties of law.

Battered Female Syndrome or he's dead so I can say whatever I want about him and the courts will believe me.

Svengali Defense or the devil, a man, made me do it.

Contract killing or get a guy to do it and then blame him.

Injurious Falsehood (form of interference with economic concerns) [Defamation protects a person's reputation while Injurious Falsehood protects economic concerns; it is an economic tort].

Intentional publication
Of false and misleading information
Malice = done with intent to interfere with another's interests or done without regard to consequences. A reasonably prudent person would anticipate economic damages [if show statement made and false then there exists presumption of malice]
That results in special damages, including loss of prospective economic advantage

Tortious interference with prospective contractual relations [Protects person in acquiring property. Where a contract would have been entered into but for malicious conduct of 3P].

Relationship with 3P that creates expectancy of future contractual relations
Defendant interferes with that relationship
Malice = Defendant's sole purpose is to harm plaintiff or defendant engaged in fraud
Economic injury, which includes loss of opportunities for profit

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

Case No. 08-cv-4045(FB)(ECF)

v.

DEBORAH SWINDELLS-DONOVAN,
PAUL W. STEINBERG, and
JANE DOE,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

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STATEMENT OF FACTS

The plaintiff created in tangible form six essays: A Different Time, Fear Corrupts, Two Sides, Invisible Weapon, Do Men Cause Wars, Some Differences: Men v. Girls. (Den Hollander Decl. ¶ 2).

At some unspecified time and from some unspecified source, defendant Steinberg copied all six essays and distributed them to defendant Swindells-Donovan. (Den Hollander Decl. ¶ 9). The copying and distribution was without the plaintiff's authorization. (Den Hollander Decl. ¶ 10). It is unknown to the plaintiff whether Steinberg received some form of compensation for the essays from Swindells-Donovan. (Den Hollander Decl. ¶ 9).

On October 24, 2007, defendant Swindells-Donovan filed papers in the men's rights case Den Hollander v. Copacabana *et al.*, No. 07 CV 05873 (580 F.Supp.2d 335 S.D.N.Y.), referred to as the "Ladies' Nights" lawsuit.[1] Swindells-Donovan's papers contained as an exhibit the six essays. (Den Hollander Decl. ¶ 11). The papers were opposing a motion by the plaintiff to recuse the Judge in the "Ladies' Nights" lawsuit for the appearance of bias against the putative plaintiff class of men. (Den Hollander Decl. ¶¶ 11, 13). The only essay registered with the Copyright Office on October 24th was A Different Time, which was part of a larger provisional work Stupid Frigging Fool. (Den Hollander Decl. ¶ 4). The other five essays had already been fixed in a tangible form; therefore, protected under the Act, but not eligible for statutory damages. Swindells-Donovan's infringement of the other five essays, however, makes her liable for a portion of her profits attributable to the infringement. 17 U.S.C. § 504(b). In preparing and

[1] Various nightclubs in New York City charge males more for admission than females on certain nights referred to as "Ladies' Nights." The case challenged this practice as an unconstitutional discrimination against men in violation of the Equal Protection clause of the 14th Amendment. The case is now on appeal in the Second Circuit, 08-5547-cv.

filing her papers, defendant Swindells-Donovan, without authorization from the plaintiff (Den Hollander Decl. ¶ 12)

(1) made copies of A Different Time and the other five essays;

(2) made the essays available to the public on the Internet for a price through the U.S. Courts' Public Access to Court Electronic Records ("PACER"); and

(3) put the essays on display, since the general public can view the essays by either requesting the files in the case or using the PACER website.

Defendant Steinberg, following the effective dates of copyright registration of all six essays (Den Hollander Decl. ¶¶ 4-7), filed them in two separate state cases in two different courts: (1) on December 19, 2007 in a defamation action in the New York County Civil Court in which Steinberg, a defendant, opposed a motion to amend the complaint and (2) on March 11, 2008 in a noise nuisance action in which Steinberg, acting as an attorney, opposed a motion for default judgment in the New York County Supreme Court. (Den Hollander Decl. ¶¶ 19, 21). In order to prepare and file his papers in both cases, defendant Steinberg, without the plaintiff's authorization (Den Hollander Decl. ¶ 20)

(1) made copies of the six essays;

(2) distributed the six essays by handing them over to the two courts;

(3) made the six essays available to the public for a price, since they were entered into the public record systems of both courts from which the general public can make copies for a fee; and

(4) put the six essays on display, since the general public can view the essays by requesting the files in either case.

Defendant Steinberg has so far not submitted any papers other than a one-page letter to Judge Block, Exhibit I, even though he used all six essays without authorization after they were registered with the Copyright Office, which means statutory and enhanced statutory damages for willful infringement apply under 17 U.S.C. § 504(c).

ARGUMENTS

The arguments presented here supplement the plaintiff's arguments in his opposition papers to the defendants' motion to dismiss under Rule 12(b), which was converted into a motion for summary judgment by Senior Judge Block.

The following fair use argument focuses on the Second Circuit's requirements set out in cases such as NXIVM Corp. v. Ross Inst., 364 F.3d 471 (2d Cir. 2004), *cert, denied*, 543 U.S. 1000 (2004).

I. The doctrine of "Fair Use" does not apply to the defendants placing six unpublished, copyrighted works on the World Wide Web and making them publicly available through the records departments of three different courts by submitting the works in three different judicial proceedings where the works were not relevant to the issues for which they were submitted.

Fair use purpose

> "I do not suggest, of course, that every productive use is a fair use. A finding of fair use still must depend on the facts of the individual case …. The fair use doctrine must strike a balance between the dual risks created by the copyright system: on the one hand, that depriving authors of their monopoly will reduce their incentive to create, and, on the other, that granting authors a complete monopoly will reduce the creative ability of others. The inquiry is necessarily a flexible one, and the endless variety of situations that may arise precludes the formulation of exact rules. But when a user reproduces an entire work and uses it for its original purpose, with no added benefit to the public, the doctrine of fair use usually does not apply. There is then no need whatsoever to provide the ordinary user with a fair use subsidy at the author's expense."

Sony Corp. Am. v. Univ. City Studios, Inc., 464 U.S. 417, 479, 104 S.Ct. 774, 78 L.Ed.2d 574 (1984)(Blackmun, J., dissenting).

Fair use factors

Factor 1. The "purpose and character" inquiry

a. Defendants' use was not transformative

In determining whether a defendant has met its burden of proof on Factor 1 of the fair use defense, the courts look to see

> "whether the new work merely 'supersedes the objects' of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message …, in other words, whether and to what extent the new work is 'transformative.'"

NXIVM Corp., 364 F.3d 471, 477 (quoting Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579, 114 S.Ct. 1164, 127 L.Ed.2d 500 (1994)). Where a defendant's use fails to alter an original work's expression, meaning or message and is unauthorized, Factor 1 will likely weigh in favor of the plaintiff. NXIVM, 364 F.3d at 478-79.

Defendants Swindells-Donovan and Steinberg did not add any new creativity by filing the essays with three different courts. They did not alter the essays expressions, meanings or messages. They did not create new intellectual works. The defendants' remarks referencing the essays do not even comment or critique the essays but rather criticize the plaintiff personally for his "bias against females," his "misogyny," and innuendos of "rape" and "murder [of females]." (Den Hollander Decl. Ex. E ¶ 11, Ex. I ¶ 14, Ex. J ¶ 12).

The issue of whether a secondary use is transformative often involves a scholarly critique or parody of the original work. A.V. v. iParadigms, LLC, 562 F.3d 630, 643 (4th Cir. 2009)(citation omitted). The defendants did not critique or parody the essays; they just demonized the author—the plaintiff.

In the recusal motion, the issue was not whether anyone in the courtroom was biased, but whether the Judge had exhibited an appearance of not acting fairly towards the putative class of

men under 28 U.S.C. § 144 and 28 U.S.C. § 455. The plaintiff's recusal motion alleged that the Judge's actions during a pre-motion conference created an appearance of bias toward the putative class of men—not as Swindells-Donovan keeps falsely saying that the plaintiff alleged the Judge was actually sexually biased. (Den Hollander Decl. ¶ 13).

Even assuming that the essays prove the plaintiff is biased against females, the essays relevance depends on whether they tend to prove or disprove that the Judge's actions at the conference created an appearance of bias. McLaughlin, Weinstein's Federal Evidence, § 401.02(2), 2d ed. The essays do no such thing. They were written before the conference, so they could not possibly tend to show or not show that the Judge's action's at that conference amounted to an appearance of bias. As far as Steinberg's use of the essays, they were not submitted on motions to recuse for the appearance of sexual bias but on motions to amend a complaint and for a default judgment involving him and one of his male clients.

The defendants' efforts in using the essays were neither new nor creative—either politically or under the copyright law. They merely used the plaintiff's words against him—something lawyers always do. The defendants' tactics were obvious—use a party's nonconformist statements, which are not relevant to the issues involved, in an attempt to (1) sway a court against him, or (2) make his efforts at fighting for his rights so uncomfortable that he will give up. It is simply the strategy that he's a bad person, so rule against him, or maybe enough social opprobrium will cause him to go away. If this were the 1950s, the defendants would be calling the plaintiff a communist rather than a misogynist and try to use his writings to black-list him before the courts and the public. If such litigation tactics are written into the law, they will chill the future creation of new and nonconformist works of creativity.

The Second Circuit Court in Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605 (2d Cir. 2006), considered in the determination of whether a defendant's use was transformative the "percentage the allegedly infringing work comprises of the copyrighted work;" that is, the amount of the copyrighted material used is the numerator, but the denominator is the size of a defendant's secondary work. Id. at 611 (followed in United States v. ASCAP, 599 F. Supp. 2d 415, 425 (S.D.N.Y. 2009); Lennon v. Premise Media Corp., L.P., 556 F. Supp. 2d 310, 324 (S.D.N.Y. 2008)). The Bill Graham Archives Court noted NXIVM Corp. for the proposition that in determining Factor 3, "amount and substantiality," the percentage of the copyrighted work actually used is considered and not the amount used as compared to the infringing work as earlier courts had done, *e.g.* Salinger v. Random House, Inc., 811 F.2d 90, 98-99 (2d Cir. 1987); *see* Craft v. Kobler, 667 F. Supp. 120, 129 (S.D.N.Y. 1987). The Court in Bill Graham Archives, however, transferred to Factor 1 the previous Factor 3 consideration of the amount that copyrighted material bears to the infringer's entire work. Bill Graham Archives, 448 F.3d at 611.

The Second Circuit's analysis in Bill Graham Archives, while different than NXIVM Corp., follows the Supreme Court's ruling that extensive copying by an infringer

> "may reveal a dearth of transformative character or purpose under the first factor, or a greater likelihood of market harm under the fourth; a work composed primarily of an original, particularly its heart, with little added or changed, is more likely to be a merely superseding use, fulfilling demand for the original."

Campbell v. Acuff-Rose Music, 510 U.S. 569, 587-88 (1994).

In Harper & Row, Publrs. v. Nation Enters., 471 U.S. 539, 565-66, 105 S.Ct. 2218, 85 L.Ed.2d 588 (1985) the Supreme Court found that 13% of the infringer's magazine article consisted of the copyrighted work, which weighted against a finding of fair use. In Salinger 811 F.2d 90, 98-99, the Second Circuit found that copyrighted material appeared on approximately

40% of the infringer's book, which weighed against a finding of fair use. Both courts found that fair use did not apply.

Swindells-Donovan's opposition to the plaintiff's recusal motion, including memorandum, declaration and exhibits, consists of 14 double-spaced pages and six (6) single-spaced pages that are the essays. Since one single-spaced page generally equals two (2) double-spaced pages, Swindells-Donovan's recusal opposition actually consists of 13 single-spaced pages of which six (6), or 46%, are the plaintiff's copyrighted works.

Steinberg's opposition to the motion to amend a complaint in N.Y. Civil Court comprises 13 double-spaced pages plus six (6) single-spaced pages that are the essays, so Steinberg's entire work equals 13.5 single-spaced pages. That means 44% of Steinberg's opposition are the essays. His opposition to the motion for default in the N.Y. Supreme Court consists of 24 double-spaced pages plus 15 single-spaced pages, which includes the six (6) pages of essays. That entire work of Steinberg's equals 27 single-spaced pages; therefore, 22% of it is the essays.

Swindells-Donovan's 46% usage and Steinberg's 44% and 22% usage of the plaintiff's unpublished works weighs against fair use under this part of the transformative analysis used by the Second Circuit in Bill Graham Archives.

b. Defendants use marked by bad faith

Another integral part of the analysis under Factor 1 is whether defendants "knew that [their] access to the manuscript[s] [were] unauthorized." NXIVM Corp., 364 F.3d at 478. The defendants admit they knew the plaintiff had authored the six essays. (Den Hollander Decl. ¶¶ 17, 23). They had reason to believe the essays were copyrighted under the Copyright Act, since four of the essays carry the mark "©". (Den Hollander Decl. ¶ 25). And they knew the plaintiff

did not authorize their use of the essays. (Den Hollander Decl. ¶¶ 10, 12, 20). The defendants, therefore, acted willfully and improperly without good faith or fair dealing. Harper & Row, Publrs., 471 U.S. at 562-63 (fair use presupposes good faith and fair dealing).

c. Defendants use commercial

In addition to the subfactors that the defendants' uses of the essays did not make some contribution of new intellectual value and were done without good faith or fair dealing, the defendants used the essays in their business enterprises as lawyers. "The practice of law can be characterized as a profit making venture …." Healthcare Advocates, Inc. v. Harding, Earley, Follmer & Frailey, 497 F. Supp. 2d 627, 636 (E.D. Pa. 2007). "[A] concurrent commercial purpose on a defendant's part" is a subfactor in considering whether a defendant's use is unfair. NXIVM Corp., 364 F.3d at 477-78.

Profit-making, or in the alternative commercial use, is not limited to making money.[2] Monetary gain is not the sole criterion for determining a commercial or profitable motive but includes gaining recognition among a person's peers, Weissmann v. Freeman, 868 F.2d 1313, 1324 (2d Cir. 1989), and other personal gain from exploitation of the copyrighted material without paying the customary price, Rogers v. Koons, 960 F.2d 301, 309 (2d Cir. 1992)(citation omitted). Defendant Swindells-Donovan may have taken on the Ladies' Nights case *pro bono*. In such a scenario, her time and effort in chalking up a victory against a "misogynist" lawyer, according to her, would bring her recognition among her feminist peers and other attorneys. In the more likely scenario, she was well compensated, and her victory increased her marketability.

[2] The Ninth Circuit in Worldwide Church of God v. Philadelphia Church of God, Inc., 227 F.3d 1110, 1117 (9th Cir. 2000), used the Webster's Third New International Dictionary (1971) definition of profit as "an advantage, [a] benefit."

Swindells-Donovan's victory was dependent, in part, on her use of the six essays in preventing the recusal of the District Court Judge; otherwise, why oppose the recusal. Cases are won in incremental steps of which motions are a significant part, so preventing the recusal of the District Court Judge aided Swindells-Donovan's victory. The essays, therefore, were used for a profitable, or commercial, purpose because they aided her in winning the case.

Steinberg is also an attorney by profession, and he used the copyrighted essays to try to prevent a motion to amend a defamation complaint in a case in which he is a defendant. That case is still pending and a lost by Steinberg will cost him money. In the other case, Steinberg is acting solely as an attorney, and his use of the essays were made in his successful opposition to the plaintiff's default motion. Once again, any victory increases an attorney's prestige among his peers and, therefore, falls within the profit or commercial purpose subfactor.

Factor 2. The "nature of the copyrighted work" inquiry

"The fact that a work is unpublished is a critical element in its 'nature,'" and "the scope of fair use is narrower with respect to unpublished works," NXIVM Corp., 364 F.3d at 480 (citing *see* Harper & Row, 471 U.S. at 564). As argued in the plaintiff's Opposition Memorandum to Defendants' Motion to Dismiss under Rule 12(b), there exists a novel question of whether the temporary display of the six essays on a website constitutes publication, assuming that's where defendant Steinberg obtained the essays. (Plaintiff Opp. pp 5 - 9). The numerous authorities cited by the plaintiff indicate such a display is not a publication, or at least an unresolved question in the law. Swindells-Donovan, however, cavalierly dismisses these traditional authorities for determining a legal question. She ignores the value of legislative history, law review articles, treatises, international conventions, and even brushes aside case law concerning not just the Internet but analogous electronic transmissions of copyrighted material.

Defendant Swindells-Donovan misleadingly claims that Agee v. Paramount Communs., 59 F.3d 317 (2d Cir. 1995), found no distribution of a work, which is a requirement for publication under 17 U.S.C. 101, because the transmission of the work was "transitory" in that it was transmitted by television which made the work available for a shorter period of time than one transmitted over the Internet. The Court in Agee did not use the word "transitory" in that manner. It used "transitory" to describe the TV transmission of the work as contrasted with a transmission that transfers a "material object" or "copy" of the work. Agee at 325. The Court's ruling was not based on the amount of time that a work is displayed as Swindells-Donovan claims. The Court held that because a "material object" or "copy" of the work was not transferred to the public, there was no distribution. Id. Where there is no distribution, there cannot be any publication under 17 U.S.C. 101.

In an odd objection, Swindells-Donovan claims the use of any authorities dated before the existence of the Internet have little or no value. If that were so, all law would be handicapped by an inability to extrapolate and grow. Besides, the Copyright Office and Congress recognized as early as 1965 that satellites and other means would link computers allowing people worldwide access to works by electronic images. Patry on Copyright at § 15.2 (extensively quoting from Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill, 89th Cong., 1st Sess. 20-21 (House Comm. Print 1965)).

Swindells-Donovan also argues that the use of Copyright Office Circulars to resolve new copyright issues is misplaced. She finds her authority by selectively quoting from Morris v. Business Concepts, 283 F.3d 502, 505 (2d Cir. 2002), but ignoring that Morris actually found a

Copyright Office Circular persuasive and ruled consistent with that circular's interpretation of a novel copyright question.

Factor 3. The "amount and substantiality" inquiry

Where a defendant uses a significant percentage of the material in a copyrighted work or the "heart" of the work, then this third factor favors the plaintiff. NXIVM, 364 F.3d at 480. The Second Circuit also considers "whether the quantity of the material used was reasonable in relation to the purpose of the copying." Am. Geophysical Union v. Texaco Inc., 60 F.3d 913, 926 (2d Cir. 1994)(internal quotation marks omitted).

a. Percentage of material used.

In general, fair use does not exist when the entire work is reproduced. *See* Infinity Broad. Corp. v. Kirkwood, 150 F.3d 104, 109 (2d Cir. 1998). Defendants Swindells-Donovan and Steinberg used 100% of five works by the plaintiff: Fear Corrupts, Two Sides, Invisible Weapon, Do Men Cause Wars, Some Differences: Men v. Girls.

b. Heart of a work

A Different Time was copyrighted as part of a draft of a larger provisional work by the plaintiff called Stupid Frigging Fool. (Den Hollander Decl. ¶ 4). In July and August 2007, media coverage of the plaintiff and his Ladies' Nights lawsuit made him a public figure. (Den Hollander Decl. ¶ 26). At the time of the defendants' verbatim use of the plaintiff's expression in A Different Time—October and December 2007 and March 2008, the public interest that existed in the work Stupid Frigging Fool was the plaintiff's views on the inequities that males incur in this society that favors females. Those views are the core of the provisional work Stupid Frigging Fool as the text of A Different Time makes evident:

> "A propeller driven plane drones somewhere overhead far out of sight. Its low monotone humming envelops a warm, spring Sunday afternoon somewhere in the

> 1950s. I sit on my 24 inch, black, single-gear Schwinn bicycle, keeping my balance by holding onto the door handle of an old, blue, four-door 1947 Dodge.
>
> My consciousness pauses at the moment, feeling vaguely sad for no discernible reason. The week's events ended with this gift of nothing to do: no homework, no television shows, no new housing developments to explore or classmates able to come out and play.
>
> The dead-end street needs a new asphalt topping. Where I am balance on the side, the asphalt has broken up into small gravel-like stones with an isolated weed sprouting up here and there. It is still early spring, the lawns are just beginning to turn green and the tulips and dogwood buds remain closed, waiting for a few consecutive days of warm weather. The air smells fresh, warmed slightly by a gentle breeze.
>
> The droning airplane fills the vacuum of silence on this street with modest middle-class houses in this small suburban town, whose claim to fame will not come until the end of the next decade. Of all the towns in America, this town will have the second highest number of persons per capita to die in Vietnam—all of them men, of course, and all of them guys I knew."

Numerous courts have rejected fair use claims when a defendant copied a small but qualitatively important part of a work, such as its heart. Patry on Copyright, § 10:141 n. 8. Infringement was found when a few pages out of a 20,000 page database were used, Telerate Systems, Inc. v. Caro, 689 F. Supp. 221, 229 (S.D.N.Y. 1988), and 300 words from a manuscript of 200,000 words, Harper & Row, Publrs., 471 U.S. 539, 564-65. Swindells-Donovan and Steinberg used the expression of A Different Time in its entirety, which comprises 240 words out of a draft manuscript of around 250,000 words. (Den Hollander Decl. ¶ 4). As Judge Learned Hand remarked, "no plagiarist can excuse the wrong by showing how much of [her] work [she] did not pirate." Sheldon v. Metro-Goldwyn Pictures Corp., 81 F.2d 49, 56 (2d Cir. 1936).

c. Quantity of material used in relation to defendants' purpose.

The amount of copying allowed depends on whether the quantity and value taken is reasonable or justified in relation to the purpose of the copying. Blanch v. Koons, 467 F.3d 244, 257 (2d Cir. 2006)(citation omitted).

Defendant Steinberg's purpose was to prevent the amendment of a complaint in a state defamation action and avoid a default judgment in a state private nuisance action. (Den Hollander Decl. ¶¶ 19, 21).

The issue a New York State court considers on whether to include additional or subsequent occurrences in any complaint is whether the inclusion prejudices the opposing party. Siegel, N.Y. Practice, § 237, 4th ed. Steinberg did not submit the essays to show that the amending of the defamation complaint prejudiced him and his male client but to attempt to prejudice the state court against the plaintiff.

The issues on a motion for default due to law office failure is whether the opposing party raises a meritorious defense and sets forth a reasonable excuse for its default. Weinstein, N.Y. Civil Practice CPLR, ¶ 2005.02(2). Steinberg raised the alleged defense that the private nuisance action against his male client was harassment and used a somewhat strained law office failure excuse for filing an answer eight months late. The essays submitted by Steinberg have nothing to do with tending to prove or disprove the allegation of harassment against Steinberg's male client. The essays do not mention or even refer in an oblique manner to Steinberg's client. The essays also have nothing to do with tending to prove or disprove that Steinberg's law office failure was reasonable. The essays do not deal with the functioning of Steinberg's office or his effectiveness in communicating with his clients.

In opposing a motion to amend a complaint and one for default judgment, there was no conceivable need to submit the entire text of five copyrighted works and a portion of another that had nothing to do with the facts in either motion.

Defendant Swindells-Donovan used the copyrighted material in a motion to oppose recusal. The issue was not whether the Judge was biased against the putative class of men, nor

whether one of the parties was biased toward females. The only issue was whether the Judge had exhibited an appearance of not acting fairly towards the plaintiff class under 28 U.S.C. § 144 and 28 U.S.C. § 455. The purposes behind §§ 144 and 455 are to promote public confidence in the judicial process; therefore, the question is not whether a judge is actually biased, prejudiced, or partial toward a party, but whether the Judge's actions create an appearance of such. Liteky v. United States, 510 U.S. 540, 548, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994); United States v. Brinkworth, 68 F.3d 633, 637 (2d Cir. 1995)(citing H.R. Rep. No. 1453, 93d Cong., 2d Sess., 1974 U.S.C.C.A.N. 6351, 6355).

The Judge decided not to recuse herself, and in her opinion dismissing the case held "[t]he essays submitted by Lotus [Swindells-Donovan's client] as exhibits in opposition to Den Hollander's motion for recusal are irrelevant to this case, and any claim that Den Hollander may seek to pursue in relation to the submission of those essays is beyond the scope of this action." (Den Hollander Decl. ¶ 14). Swindells-Donovan disingenuously tries to claim that the recusal action was not part of the case before the Judge. But of course it was because the Judge made a decision on the matter as part of the overall proceeding. So, logically, the Judge's reference to "case" includes the recusal proceeding.

Defendant Swindells-Donovan herself, in commenting on a letter the plaintiff sent the Judge concerning the essays, admitted the letter's subject matter was "completely irrelevant to any existing issue in the case...." (Den Hollander Decl. ¶ 15). The interesting fact question is whether at the time Swindells-Donovan sent the letter, she was aware of the Judge's decision to deny the recusal motion. If not, then Swindells-Donovan still believed the recusal issues were "existing issue[s]" in the case and the essays were irrelevant to those existing issues.

Regardless of how Swindells-Donovan's *mens rea* pans out, the essays do not serve the purpose of tending to prove or disprove that the Judge's actions at a pre-motion conference infer an appearance of bias against the putative class of men. The essays do not deal with that conference or what took place there—other writings of the plaintiff, which are not the subject of this action, however, do. As such, there was no need for Swindells-Donovan to place on the PACER website the entire text of five copyrighted works and a portion of another.[3]

Factor 4. The "market" inquiry

The focus in the "market" inquiry is whether the defendants by placing the essays on the PACER website and in the public records of three courts—two state and one federal, usurped the market of the original works. NXIVM Corp., 364 F.3d at 482.

This Court may take judicial notice that once I became a public figure through media coverage of the Ladies' Nights case, which involved the hot-button issue of sexual discrimination, the value of the six essays to the public increased. (Den Hollander Decl. ¶¶ 26, 27). A district court can properly take judicial notice of the public reaction to a court case and consider it in making its decision. United States v. Shenberg, 89 F.3d 1461, 1476-77 (11th Cir. 1996), *cert. denied*, 519 U.S. 1117 (1997)(systematic corruption in high state court caused actual loss of public confidence in the government).

Courts may also recognize current political conditions. McLaughlin, Weinstein's Federal Evidence, § 201.12(6), 2d ed. In the never-ending culture wars where the personal is political,

[3] Defendant Swindells-Donovan complains that the plaintiff's submission of evidence as to Defendant Steinberg's willingness to cheat on his taxes and perhaps lie to the N.Y. State Bar has nothing to do with this case—that the Tax Warrants against Steinberg and other submitted evidence are irrelevant. That is not necessarily so. The evidence provides an illustrative example of what the defendants did in submitting the plaintiff's six essays in three different cases where the essays had nothing to do with those cases. In addition, Swindells-Donovan's objection to the Tax Warrants and other evidence reveals the hypocrisy of the defendants' position, which was the purpose in submitting the evidence about Steinberg in the first place. Under the defendants' reasoning, when an opponent submits extraneous documents, he operates far outside the bounds of objectively reasonable litigation. But when they do it—it is okay.

the *ad hominem* criticisms directed by the politically correct against a specific person for "misogyny," and innuendos of "rape" and "murder [of females]" actually increase the marketability for that individual's expressions because it publicizes him as a controversial figure. (Den Hollander Decl. Exhibit E ¶ 11, Exhibit I ¶ 14, Exhibit J ¶ 12). Unlike in NXIVM Corp., 364 F.3d at 482, the defendants' *ad hominem* attacks on the plaintiff did not harm the market for the essays but rather improved it. It was their making those essays available through less expensive ways that harmed the plaintiff's ability to profit from the improved marketability.

When the plaintiff became a public figure, he intended to profit from the increase value of the essays by selling them through a website or licensing them to men's rights groups. (Den Hollander Decl. ¶ 27). At that time, the essays were not available to the public. (Den Hollander Decl. ¶ 27). The defendants, however, undercut the value to the plaintiff of that potential market by making the text of the essays available to the general public at a cost of $.08 a page from PACER, $.35 from U.S. Southern District Court, and $.35 from N.Y. State Court records. When the unauthorized use becomes widespread, it adversely affects the potential market for a work. *See* Sony Corp. of Am., 464 U.S. 417, 451. The defendants' unauthorized use placed the essays on the World Wide Web—cannot get much more widespread than that.

The potential loss of revenue in markets that an author was reasonably able to develop and exploit or license others to do so weighs against fair use, Am. Geophysical Union, 60 F.3d 913, 930, and it does not matter if the copyright holder has not yet entered a potential market, Umg Recordings v. Mp3.com, Inc., 92 F. Supp. 2d 349, 352 (S.D.N.Y. 2000). Before the plaintiff was able to enter the market to take advantage of his new status, the defendants made the essays available to the general public within three months of the media coverage on the Ladies' Nights case. People interested in these six essays by a person billed in the N.Y. Times

as an "antifeminist lawyer" were not about to pay dollars for them when thanks to the defendants the essays were available for pennies.

5. Summary

All the above factors need to be weighed with none dominating the determination of whether fair use exists. NXIVM Corp., 364 F.3d at 482.

The defendants—without authorization—intentionally copied, distributed, made available to the public, and caused to be displayed the copyrighted six essays in efforts to influence three different courts into making decisions based on a party's political and social beliefs rather than on the facts in issue, and to use social opprobrium to intimidate that party into relinquishing his legal rights to prosecute three cases. If fair use permits such tactics, it will seriously deter the creativity protected by the Copyright Act.[4]

II. The Court's subject matter jurisdiction depends on the works being registered, not the Certificates of Registration being mailed to the plaintiff.

Defendant Swindells-Donovan claims the registration of a work, and therefore a court's subject matter jurisdiction, depends on the Copyright Office mailing the actual certificates, which means issuing them. The Copyright act, however, states:

> "The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a

[4] When the plaintiff's opposition to the defendants' motions to dismiss under Rule 12(b)(6) was filed, neither the plaintiff nor the defendants had found authority for deciding fair use without an analysis of the facts because fair use is a fact driven inquiry. The defendants questioned the veracity of that statement, but to do so, they prevaricated. The District Court in Shell v. Devries, 2007 WL 324592 at *1 (D.Colo. 2007) specifically stated its finding of fair use was based, in part, on the Magistrate's "findings of fact." On appeal, the Tenth Circuit specifically referred to Shell as a motion for judgment on the pleadings that "should not be granted unless the moving party has clearly established that no material issue of fact remains to be resolved," which the Circuit found the moving party had done. Shell v. Devries, 2007 WL 4269047 *1 (10th Cir. 2007), *cert. denied*, 128 S.Ct. 2434 (2008). The defendants subsequently ferreted out a fair use decision on a motion for failure to state a cause of action. Burnett v. Twentieth Century Fox Film Corp., 491 F.Supp.2d 962 (C.D.Cal. 2007). That court, however, relied on documents referenced in the complaint. Id. at 966. So wherever the defendants search and however they describe their findings, it still comes back to fair use as a fact driven analysis.

> court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office." 17 U.S.C. § 410(d)

The plaintiff has shown that the copyright applications for the two essays Fear Corrupts and Two Sides were filed and, according to the Copyright Office, accepted, and that the Office's website lists the two essays as being registered effective November 13, 2007. (Den Hollander Decl. ¶ 5). Defendants, however, claim the actual certificates must first be mailed by the Copyright Office for this Court to have jurisdiction concerning the two essays.

Such a position creates a Catch-22 when factoring in the statute of limitations of three years for infringement. The alleged infringements of those two essays were discovered approximately two years ago and 1.75 years ago. (Den Hollander Decl. ¶¶ 11, 19, 21). Given the Copyright Office's backlog—it receives an estimated 12,000 works a day—the certificates may not be issued until after the three years has expired; thereby, barring any infringement claim not because the plaintiff sat on his rights but because the Copyright Office sat on his essays.

The defendants' position also concomitantly raises the open question as to whether subject matter jurisdiction exists when a copyright application is still pending. An application would be pending right up until issuance of a certificate, according to the defendants' position. Authorities in the Southern District are clearly in conflict as to whether just the filing of an application grants jurisdiction or the Copyright Office must actually mail out, or issue, a certificate. "[I]f an application for copyright registration has been filed, jurisdiction exists while the application is pending." Lennon v. Seaman, 84 F.Supp.2d 522, 524 (S.D.N.Y. 2000). The treatise Nimmer on Copyright supports this position: "application for registration [is] the condition to filing an infringement action whereas issuance of a registration certificate is a condition to statutory damages…." M. Nimmer & D. Nimmer, Nimmer on Copyright, §

7.16(B)(1)(a)(i), Matthew Bender (2008). Cases, such as National Ass'n of Freelance Photographers v. AP, 1997 U.S. Dist. LEXIS 19568 *39 (S.D.N.Y.2004), however, require issuance, the actual mailing of a certificate, before an infringement action can be brought.

Regardless of where the Southern District Court finally comes down on whether jurisdiction is satisfied by just filing an application or the Copyright Office must first issue a certificate, any dismissal for lack of subject matter jurisdiction has no claim preclusive or *res judicata* effect. Thompson v. County of Franklin, 15 F.3d 245, 253 (2d Cir. 1994); Tabachnik v. Dorsey, 2005 WL 1668542 at *4 (S.D.N.Y. 2005); Singer v. Livoti, 741 F.Supp. 1040, 1044 (S.D.N.Y.1990). So if the claims of infringement concerning the essays Fear Corrupts and Two Sides are dismissed for lack of jurisdiction because the certificates have not been issued, the plaintiff will still be able to re-instituted those claims once the certificates are mailed—assuming the statute of limitations allows.

RELIEF

The plaintiff refers to his argument for relief in his Opposition Memorandum to Defendants' Motion to Dismiss under Rule 12(b) at pp. 24-25, which includes statutory and enhanced statutory damages against the defendants, and, in the alternative under 17 U.S.C. § 504(b), a portion of the profits the defendants earned from their cases by infringing the essays. The amounts by which the defendants profited are peculiarly within their knowledge, and, without limited discovery, the plaintiff has no way of determining those amounts.

ATTORNEY'S FEES

The Second Circuit has held that "objective reasonableness is a factor that should be given substantial weight in determining whether an award of attorney's fees is warranted." Matthew Bender & Co. v. West Publ'g Co., 240 F.3d 116, 122 (2d Cir. 2001). Reasonableness in

bringing an action includes whether the case involves novel or close questions that clarify the boundaries of copyright law. Earth Flag Ltd. v. Alamo Flag Co., 154 F.Supp.2d 663, 666 (S.D.N.Y. 2001)(plaintiff's flag contained only public domain material; therefore, copyright suit unreasonable). This action has presented three novel questions:

1. Is the display of a work on the Internet publication?

2. Does fair use require that copyrighted works submitted in judicial proceedings be relevant to the issues of those proceedings?

3. Does registration of a work, as opposed to the mailing of a certificate, determine whether a court has jurisdiction over an infringement action?

The plaintiff initiated this action only after the defendants copied, distributed, and displayed six copyrighted essays of his in three different courts and three distinct cases in which those essays were not relevant to the issues for which they were submitted.[5] When the initial infringement occurred in the Ladies' Nights case, the plaintiff requested that Court to "instruct attorney Donovan to reveal how, when, and, if applicable, from whom she acquired the essays." (Den Hollander Decl. ¶ 15). The Court, however, ruled that "any claim that Den Hollander may seek to pursue in relation to the submission of those essays is beyond the scope of this action." (Den Hollander Decl. ¶ 14). So, the plaintiff filed this action for infringement and to prevent the further unauthorized use of the essays by the defendants, which it has so far succeeded in doing.

CONCLUSION

The purpose of the Copyright Act is to encourage creativity by securing the profits of such to the author. NXIVM Corp. v. Ross Inst., 2005 U.S. Dist. LEXIS 44789 *14 n. 11 (S.D.N.Y. 2005). Allowing others to make copyrighted material available to the general public through the courts when that material has nothing to do with the issues before those courts will

[5] In two of the cases all the essays had already been registered and in the other, the Ladies' Nights action, one of the essays was registered as part of a larger work.

stifle creativity because authors will know that the benefits of any and all of their creative endeavors may be dissipated by the appearance of their works on a court's website and in a court's files.

WHEREFORE, the plaintiff requests his cross motion for summary judgment be granted.

Dated: December 12, 2009
New York, N.Y.

/S/

Roy Den Hollander, Esq.
Attorney and plaintiff
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(917) 687-0652

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Roy Den Hollander,

Plaintiff on behalf of himself and all others similarly situated,

Docket No. 07 CV 5873 (MGC) ECF

-against-

Copacabana Nightclub,
China Club,
A.E.R. Nightclub,
Lotus,
Sol, and
Jane Doe Promoters,

Defendants.

----------x

MEMORANDUM OF LAW IN SUPPORT OF NAMED PLAINTIFF'S MOTION FOR DISQUALIFICATION OF JUDGE CEDARBAUM

Dated: October 7, 2007

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ARGUMENT

Introduction

Although the plaintiff-attorney acting on behalf of the class of men made an oral request at the October 3rd Conference that Judge Cedarbaum disqualify herself, which was denied during the Conference, the request did not meet the requirement that oral motions must be officially recorded. Alger v. Hayes, 452 F.2d 841, 843 (8th Cir. 1972)(citations omitted). Since the request never rose to the status of a motion, this is the initial motion by the plaintiff-attorney acting on behalf of the class for disqualification of Judge Cedarbaum on the grounds of the appearance of sexual bias, sexual prejudice, and partiality against the class of men, including the named plaintiff.

The term "bias" implies a mental leaning in favor of or against someone or some persons that interferes with impartial judgment. Webster's New World, Roget's A-Z Thesaurus, 1999 edition.

The term "prejudice", similar to bias but stronger, implies preconceived and unreasonable judgment or opinion marked by suspicion, fear or hatred. Id.

The term "partiality" also includes bias and prejudice but is broader and also includes "intolerance". Id.; c*f.* Liteky v. United States, 510 U.S. 540, 552, 114 S. Ct. 1147, 1156, 127 L. Ed. 2d 474, 489 (1994)(Scalia, J. wrote the majority opinion).

Legal Bases for Disqualification

All parties to a case have a constitutional right to a neutral and detached judge. Ward v. Monroeville, 409 U.S. 57, 62, 93 S. Ct. 80, 84, 34 L. Ed. 2d 267, 272 (1972).

> A fair [hearing] in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the [hearing] of cases. But our system of law has always endeavored to prevent even the probability of unfairness. … [so] to perform [the

> courts'] high function in the best way "justice must satisfy the appearance of justice." In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942, 946 (1955)(words in quotation marks from Offutt v. United States, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11, 14 (1954)(Frankfurter, J.)).

The federal statutes used for protecting a class of men and an individual male from an unfair tribunal are 28 U.S.C. § 144 and 28 U.S.C. § 455. The purpose behind §§ 144 and 455 is to promote public confidence in the judicial process; therefore, the question is not whether a judge is actually biased, prejudiced, or partial toward a party, but whether her actions make it appear so. Liteky v. United States, 510 U.S. 540, 548, 114 S. Ct. 1147, 1154, 127 L. Ed. 2d 474, 486 (1994); United States v. Brinkworth, 68 F.3d 633, 637 (2d Cir. 1995)(citing H.R. Rep. No. 1453, 93d Cong., 2d Sess., *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355). The courts consider outward manifestations and the reasonable inferences drawn from them in deciding whether there exists an appearance sufficient for disqualification. Nichols v. Alley, 71 F.3d 347, 351 (10th Cir. 1995). Procedurally, § 144 requires an affidavit or affirmation, but it's substantive elements are encompassed by § 455.

This motion to disqualify Judge Cedarbaum for the appearance of sexual bias, sexual prejudice, and partiality toward the named plaintiff and the putative class of men relies on 28 U.S.C. §§ 455(a) & (b)(1). To disqualify her for violating their due process rights that every litigant have fair notice of a court's proceedings, the motion relies on the fundamental fairness doctrine of the due process clauses in the Fifth and 14th Amendments to the U.S. Constitution.

These type of motions are fact driven and must not be determined by comparisons to other cases. United States v. Jordan, 49 F.3d 152, 157 (5th Cir. 1995)("each … case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence.").

28 U.S.C. § 455(a) Lack of Impartiality

§ 455(a) requires a judge to disqualify herself "in any proceeding in which [her] impartiality might reasonably be questioned." § 455(a) expands the protection of § 455(b) but also duplicates some of its protection as well, such as with regard to bias and prejudice. Liteky, 510 U.S. at 552, 114 S. Ct. at 1156, 127 L. Ed. 2d at 489. Subsection (a) requires recusal in some circumstance where subsection (b) does not because it covers all aspects of partiality and not merely those specifically addressed in subsection (b). Liteky, 510 U.S. at 553 n. 2.

In determining whether to disqualify, the courts look to see whether a reasonable person given all the facts would question whether the judge was impartial. Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 861, 108 S. Ct. 2194, 2203, 100 L. Ed. 2d 855, 873 (1988)(citing with approval the 5th Circuit decision appealed from). Or, stated differently, how the events appear to an objective observer, and "an observer of our judicial system is less likely to credit judges' impartiality than the judiciary." Jordan, 49 F.3d at 157.

This motion requests Judge Cedarbaum's disqualification under § 455(a) for her appearance of intolerance toward the named plaintiff and the putative class on whose behalf this action was brought. During the October 3rd Case Management and Scheduling Conference pursuant to Fed. R. Civ. P. 16, Judge Cedarbaum repeatedly and with animosity prevented the named plaintiff from completing his answers to her questions by constantly interrupting him. (Affirmation ¶ 12). The plaintiff was not running off at the mouth with long-winded and circular answers but trying to explain the factual allegations and the law on which the case was based.

For example, in trying to answer the Judge's question as to what legal authority existed for state action in regulating facilities that sold alcohol for consumption on the premises, the named plaintiff, amid numerous antagonistic interruptions, tried to recount two decisions

factually similar to this action that Judge Cedarbaum was apparently unaware of: Seidenberg v. McSorleys' Old Ale House, Inc., 317 F. Supp. 593 (1970)(Mansfield, J. found state action in granting plaintiff's motion for summary judgment); Seidenberg v. McSorleys' Old Ale House, Inc., 308 F. Supp. 1253 (1969)(Tenney, J. found state action in denying defendant's motion for a Rule 12(b)(6) dismissal). In the McSorleys' case, two females from N.O.W. were refused service at McSorleys' Old Ale House because of their sex. In the process of explaining these two decisions, Judge Cedarbaum kept interrupting that Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1965), was dispositive, which is not so because the Supreme Court factually distinguished Moose Lodge from Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L.Ed.2d 45 (1961), which was the case relied on in the McSorleys' decisions. This would have been made clear had the plaintiff been allowed to finish his answers.

Throughout the 40 minute conference, Judge Cedarbaum persistently and inimically interrupted the named plaintiff acting on behalf of the class which demonstrated an appearance of intolerance for a lawsuit aimed at eliminating a form of invidious discrimination against men.

§ 455(a) requires that the judge's lack of impartiality derive from judicial predispositions that go beyond what is normal and acceptable. Liteky, 510 U.S. at 552, 114 S. Ct. at 1155-56, 127 L. Ed. 2d at 489. Judicial conduct during the course of a hearing that is critical or disapproving of, or even hostile to, counsel, the parties, or their case, may support a partiality challenge if it reveals an opinion that derives from an extrajudicial source and reveals such a high degree of antagonism as to make fair judgment impossible. *See* id. 510 U.S. at 555, 114 S. Ct. at 1157, 127 L. Ed. 2d at 491.

The October 3rd Conference was the very first before Judge Cedarbaum, and the plaintiff-attorney had never appeared in any prior proceeding before her. The source of Judge Cedarbaum's predisposition for her apparent intolerance toward the plaintiffs' could only have come from outside the court—most likely the result of the past 40 years of feminism turning man into the new post-modern devil.[1] Further, Judge Cedarbaum kept referring to the type of discrimination alleged as defendant nightclubs charging males more for drinks than females, but that accusation does not appear anywhere in the papers filed with the Court. It is, however, the common perception among the public as to what occurs on Ladies Nights, indicating that Judge Cedarbaum's apparent intolerance was formed outside of judicial proceedings.

28 U. S. C. § 455(b)(1) Personal Bias and Prejudice

Disqualification under § 455(b)(1) also requires an objective basis. What matters is not the reality of bias or prejudice but its appearance. Liteky, 510 U.S. at 548, 114 S. Ct. at 1154, 127 L. Ed. 2d at 486. Even if the judge does not have any personal bias or prejudice toward a party or group, the appearance of such that reasonably leads one to question the judge's impartiality calls for disqualification. Thode, Reporter's Notes to Code of Judicial Conduct, pp. 60-61 (1973).

In addition to the continuing interruptions by Judge Cedarbaum (Affirmation ¶ 12), her Honor also verbally disparage the plaintiff-attorney, and presumably the class of men on whose behalf this civil rights suit was brought, with a vituperative invective communicating that it was questionable whether the man standing before her was an attorney at all. (Affirmation ¶ 13). This remark evinces a bias and prejudice against guys fighting for their rights when their success will end up reducing the preferential treatment given to females. When males pay more for the

[1] Prejudice towards a class inferred prejudice toward individual members of that class. *See* Berger v. United States, 255 U.S. 22, 27-29 41 S. Ct. 230, 231, 65 L. Ed. 481, 483-84 (1921)

same admission, the economics permit the defendant clubs to charge females less. Judge Cedarbaum's appearance of bias and prejudice in her denigrating remark most likely has its source in the continuing culture wars of America.

The normality of television talk shows with their catchy sound bites of personal destruction is not the normality in a court of law that's interested in the whole story, not just a sliver that serves a predisposition. Nor is it an acceptable belief in court, as with talk shows, that civility in allowing someone to finish their answer is a sign of weakness. Taken as a whole, the 40 minute conference could only be viewed by a reasonable man in post-modern America as raising serious questions of an appearance that Judge Cedarbaum has a preconceived and unreasonable opinion marked by suspicion, or at least a mental leaning against the named plaintiff and the putative class of men in this civil rights action.

No Fair Notice

The Due Process clauses of the Fifth and 14th Amendments guarantee a fundamentally fair governmental procedure when citizens' rights are at stake.[2] Rotunda & Nowak, Treatise on Constitutional Law, Vol. 3 § 17.8, 3rd edition. Fundamental fairness includes providing the persons whose interests are in jeopardy from court action or inaction with a form of notice reasonably designed to apprise the party of the nature of a proceeding. *See* id. at "Notice". "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information,

[2] The right raised in this case is equal protection under the law, which is a right guaranteed by both the 14th Amendment and the "due process clause" of the Fifth Amendment. Bolling v. Sharpe, 347 U.S. 497, 498-99, 74 S. Ct. 693, 694, 98 L. Ed. 884, 886 (1954).

and it must afford a reasonable time for those interested to make their appearance." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950)(citations omitted). This right to be heard has little reality or worth unless one is informed that a particular matter will be addressed. *See* id.

Judge Cedarbaum denied the due process rights of the named plaintiff and the putative class of men by holding a hearing on AER's motion to dismiss without providing proper notice to the plaintiffs. She also made the finality of that hearing a *fait accompli* by indicating there would be no other subsequent oral hearing on motions to dismiss even though the four other defendants had not yet filed their motions. She accomplished this by refusing to appoint the plaintiff-attorney as interim class counsel which allowed her to treat the case as a *pro se* matter. *Pro se* matters under her rules are not allowed a hearing.

The October 3rd Case Management and Scheduling Conference, at which the beginning stages of a case's tentative schedule are normally set, was turned into a hearing on the named plaintiff and the putative class of men's opposition to defendant AER's motion to dismiss. The problem was that the plaintiff class' opposition wasn't due until October 17th with a hearing set for October 25th. The original date for the Case Management and Scheduling Conference was October 16th. Had the Court kept to that date, the plaintiff-attorney would have already conducted the necessary legal research and written an opposition, so by using the original date of October 16th as a hearing on the plaintiff class' opposition to dismissal would not have jeopardize the equal protection rights of the named plaintiff and the putative class of men. But the Court chose not to do that. Instead, after receiving on Friday at 4:46 PM, September 28th, AER's motion to dismiss, the Court, three days later, began on Monday afternoon, October 1st, to move up the Case Management and Scheduling Conference to an earlier date. By Tuesday

morning, October 2nd, the Conference's new date was set for the very next day, Wednesday, at 10:30 AM on October 3rd. Even had the plaintiff class been notified, which it wasn't, to come prepared to counter AER's motion to dismiss, it would have been impossible to complete the necessary research and organize it into a cogent argument in opposition. It may be that the changing of the original Conference to an earlier date was pursued, perhaps with some fortuity, perhaps not, to maximize the chances that the plaintiff-attorney would not be in a position to counter Judge Cedarbaum's arguments for dismissing the case.

The substance of Judge Cedarbaum's arguments for dismissal were similar to those in AER's motion to dismiss papers. Her Honor apparently adopted AER's key argument that there is no state action involved in the defendants discriminating against men. The Judge and AER argued that licensing alone by the State of New York or New York City is not state action and no federal court has held such, which is correct. But that's not the test for state action. The entire nature of the relationship between New York's Division of Alcoholic and Beverage Control and the New York City Department of Consumer Affairs with the defendant nightclubs must be examined. Normally that's done in discovery—not a Scheduling Conference. The Judge and AER also relied on the U.S. Supreme Court decision: Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1965), as holding that a liquor license did not infer state action. But neither the Judge nor AER pointed out that this case was distinguishable from Moose Lodge. Moose Lodge No. 107 was a private club; the defendants here are all public accommodations. When appraised of that fact by the plaintiff-attorney, her Honor stated she doubted whether the phrase "public accommodation" even appeared in the Moose Lodge case. It does—five times. The Judge and AER, in their arguments for dismissal, also failed to mention two decisions, by two different judges, in the very same court that Judge Cedarbaum sits and

where this action was brought. Those decisions in the McSorleys' case found state action when McSorleys' Tavern, regulated by the New York State Division of Alcoholic and Beverage Control, discriminated against two females from N.O.W. by refusing to serve them because of their sex. Seidenberg v. McSorleys' Old Ale House, Inc., 317 F. Supp. 593 (1970)(Mansfield, J. found state action in granting plaintiff's motion for summary judgment); Seidenberg v. McSorleys' Old Ale House, Inc., 308 F. Supp. 1253 (1969)(Tenney, J. found state action in denying defendant's motion for a Rule 12(b)(6) dismissal). Both of the McSorleys' decisions relied on Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961), for finding state action. When the U.S. Supreme Court decided Moose Lodge, that Court distinguished Moose Lodge from Burton, in part, by stating, "Unlike Burton, the Moose Lodge building is located on land owned by it, not by any public authority. Far from apparently holding itself out as a place of public accommodation, Moose Lodge quite ostentatiously proclaims the fact that it is not open to the public at large. Nor is it located and operated in such surroundings that although private in name, it discharges a function or performs a service that would otherwise in all likelihood be performed by the State. In short, while [in Burton there] was a public restaurant in a public building, Moose Lodge is a private social club in a private building." While Burton isn't completely similar to this case, Moose Lodge is clearly distinguishable. But both Judge Cedarbaum and AER ignored that.

They also ignored that the U.S. Supreme Court cited with approval to the 1970 McSorleys' decision on state action when it stated, "both federal and state courts uniformly have declared the unconstitutionality of gender lines that restrain the activities of customers of state-regulated liquor establishments…." Craig v. Boren, 429 U.S. 190, 208, 97 S. Ct. 451, 462, 50 L. Ed. 2d 397, 413 (1976)(This is dicta, although persuasive dicta.)

In addition to the deprivation of the due process rights of the plaintiff class by failing to provide adequate and timely notice, Judge Cedarbaum has succeeded in reducing a civil rights class action, on behalf of thousands of men, into a *pro se* action by a lone, individual male. Reality would seem to imply that it is more publicly palatable to dismiss a case against one, lone man than thousands, although in this day and age in America, it is becoming increasing commonplace to ignore the rights of all men.

A dismissal without certifying the class, likely assures that no other man will bring another individual or class suit for the same or similar invidious discrimination because of the expense, judicial hostility, and the barrage of social opprobrium engendered by his audacity to fight for the rights of a man or men. The end result will be that questionable procedural decisions will enshrine invidious discrimination against males while in virtually identical situations, such as the McSorleys' case, females rights will remain protected.

CONCLUSION

Judge Cedarbaum's conduct during the 40 minute conference revealed a high degree of favoritism to the beneficiaries of the defendant nightclubs' discrimination—females. Every extra dollar a guy pays is a dollar a female doesn't pay for admission. The Conference also revealed a high degree of antagonism to the named plaintiff and the class of men on whose behalf he was acting. Both the favoritism and antagonism make a fair judgment in this civil rights case near impossible.[3]

If there is any doubt about Judge Cedarbaum's appearance of sexual bias, sexual prejudice, and partiality, just switch the sexes. Consider how the named plaintiff would have

[3] Where the question is a close one, then the judge should disqualify herself. Nichols, 71 F.3d at 352.

been treated had an accident of nature made him a female, and she was suing on behalf of thousands of other females because the defendant nightclubs charged ladies more for admission than guys on “Men’s Nights”.

Dated: New York, NY
October 7, 2007

/S/
_____
Roy Den Hollander (RDH 1957)
545 East 14 Street, 10D
New York, NY 10009
(917) 687 0652

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	Index No. 152656/2014

AFFIDAVIT OF MATTHEW L. SCHAFER

City of Washington, D.C.)
) ss.:
District of Columbia)

MATTHEW L. SCHAFER, being duly sworn, deposes and says:

1. I am associated with Levine Sullivan Koch & Schulz, LLP, counsel to Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage, and Fairfax Media Publications Pty Limited, defendants in the above-captioned action. I submit this affidavit in response to Plaintiff Roy Den Hollander's ("Plaintiff") Motion requiring Defendants to Withdraw Allegedly "Illegally Obtained Document." I make this statement upon my personal knowledge, and I would be competent to testify at trial to the facts set forth herein.

2. I first located the website http://www.mensrightslaw.net on December 30, 2014 when I conducted several Google searches related to this lawsuit. I clicked on the link and immediately accessed the website, which I was able to navigate freely. On no occasion was I ever asked to enter a username or password to access the Plaintiff's website. I simply visited the

link like I visit other websites. Attached hereto as **Exhibit 1** is a true and correct copy of a screenshot of part of the webpage as it appeared on December 30, 2014.

3. I accessed the document attached to the Affirmation of Katherine M. Bolger, sworn to on January 12, 2015 as Exhibit 1, by visiting the website http://www.mensrightslaw.net on or about January 7, 2015. The website and the .pdf document were publicly available, and I accessed them as I would have any other webpage and document on the Internet.

4. At no time between December 30 and January 12 was I required to enter a username or password, and I did not encounter any other requirement in accessing the website.

5. I did not "hack" the website, nor did anyone else to my knowledge. Indeed, I have no training or skills on how to "hack" or gain unauthorized access to Plaintiff's website, and I do not know how to do so. Moreover, I did not direct anyone to "hack" Plaintiff's website.

6. On January 13, 2015, after Plaintiff filed his Order to Show Cause, I again visited Plaintiff's website. When I visited the website on January 13, 2015, I was prompted, for the first time, to enter a username and password.

7. On January 13, 2015, I also conducted a Google search for Plaintiff's website. Plaintiff's website continued to be displayed in Google search results and a Google cache from January 3, 2015 was still publicly accessible when I clicked "Cached" on the Google search engine.

8. A true and correct copy of the "Cached" version of Plaintiff's website available on January 13, 2015 as depicted in screenshots is attached hereto as **Exhibit 2**.

Matthew L. Schafer

Sworn to and subscribed before me
this 3rd day of February, 2015.

Notary Public

BRIDGETTE B. SIMMONS NOTARY PUBLIC DISTRICT OF COLUMBIA MY COMMISSION EXPIRES 11/14/2016

EXHIBIT 1

TRILOGY of CASES!

Lady Judge ruled that under the U.S. Constitution nightclubs can charge men more for admission than females, but in reaching her decision, she had to find that nightclubs cannot charge guys more for a drink. So if you can make it to the bar, you're home-free. September 29, 2008.

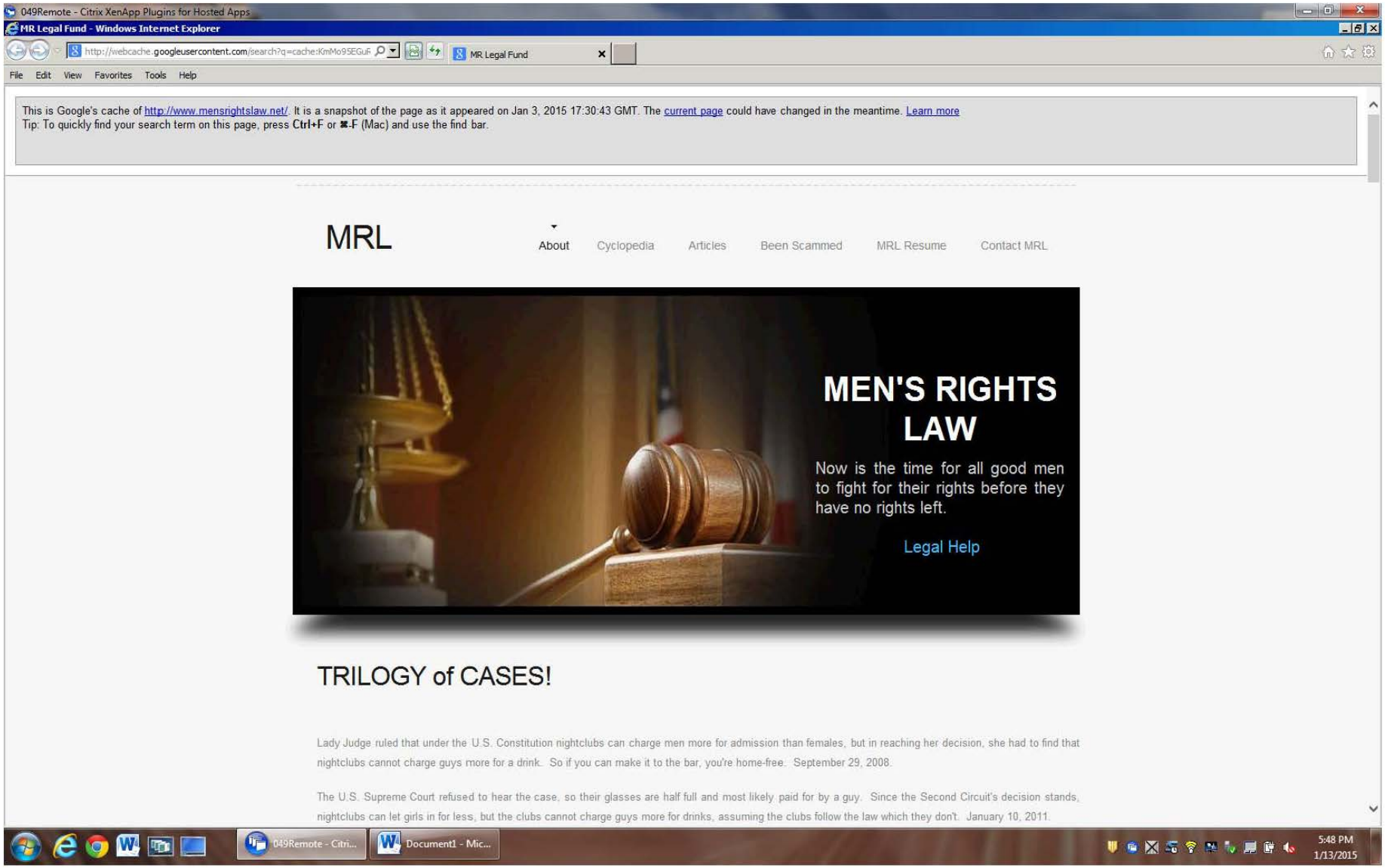
The U.S. Supreme Court refused to hear the case, so their glasses are half full and most likely paid for by a guy. Since the Second Circuit's decision stands, nightclubs can let girls in for less, but the clubs cannot charge guys more for drinks, assuming the clubs follow the law which they don't. January 10, 2011.

U.S. Court of Appeals for the Second Circuit affirmed the lower court's decision. It's half a victory, since the case can be used as authority to challenge Ladies' Nights that charge guys more for drinks anywhere in the country because of the prestige of the Second Circuit. September 1, 2010

Ladies' Nights

- Complaint
- Press Releases
- Media Coverage
- Plaintiff Motion to Disqualify Judge
  Affirmation
  Memo of Law
- Defendants Opposition to Disqualify
  Affirmation
  Memo of Law
- Plaintiff Reply
  Affirmation
  Reply Memo
- Defendants Motions to Dismiss I
  AER Memo of Law
  Lotus Memo of Law
  SOL Memo of Law
  SOL Supp Memo of Law
- Plaintiff Opposition I

EXHIBIT 2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File Edit View Favorites Tools Help
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Articles
Been Scammed
MRL Resume
Contact MRL
MEN'S RIGHTS LAW
Now is the time for all good men to fight for their rights before they have no rights left.
Legal Help
TRILOGY of CASES!
Lady Judge ruled that under the U.S. Constitution nightclubs can charge men more for admission than females, but in reaching her decision, she had to find that nightclubs cannot charge guys more for a drink. So if you can make it to the bar, you're home-free. September 29, 2008.
The U.S. Supreme Court refused to hear the case, so their glasses are half full and most likely paid for by a guy. Since the Second Circuit's decision stands, nightclubs can let girls in for less, but the clubs cannot charge guys more for drinks, assuming the clubs follow the law which they don't. January 10, 2011.
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nightclubs cannot charge guys more for a drink. So if you can make it to the bar, you're home-free. September 29, 2008.
The U.S. Supreme Court refused to hear the case, so their glasses are half full and most likely paid for by a guy. Since the Second Circuit's decision stands, nightclubs can let girls in for less, but the clubs cannot charge guys more for drinks, assuming the clubs follow the law which they don't. January 10, 2011.
U.S. Court of Appeals for the Second Circuit affirmed the lower court's decision. It's half a victory, since the case can be used as authority to challenge Ladies' Nights that charge guys more for drinks anywhere in the country because of the prestige of the Second Circuit. September 1, 2010
So why are the girls laughing?
A Clinton District Court Judge ruled that the Violence Against Women's Act doesn't injure American men. Judge William H. Pauley III's decision ignored the democratic and legal standard of fairness, applied the wrong legal test for injury on a dismissal motion, and invented a fact not before the Court. VAWA allows alien females to acquire citizenship by falsely accusing their American husbands or ex-husbands or even boyfriends of mistreating them. Homeland Security uses proceedings kept secret from U.S. citizens to find that they committed "battery," "extreme cruelty," or an "overall pattern of violence," even when no
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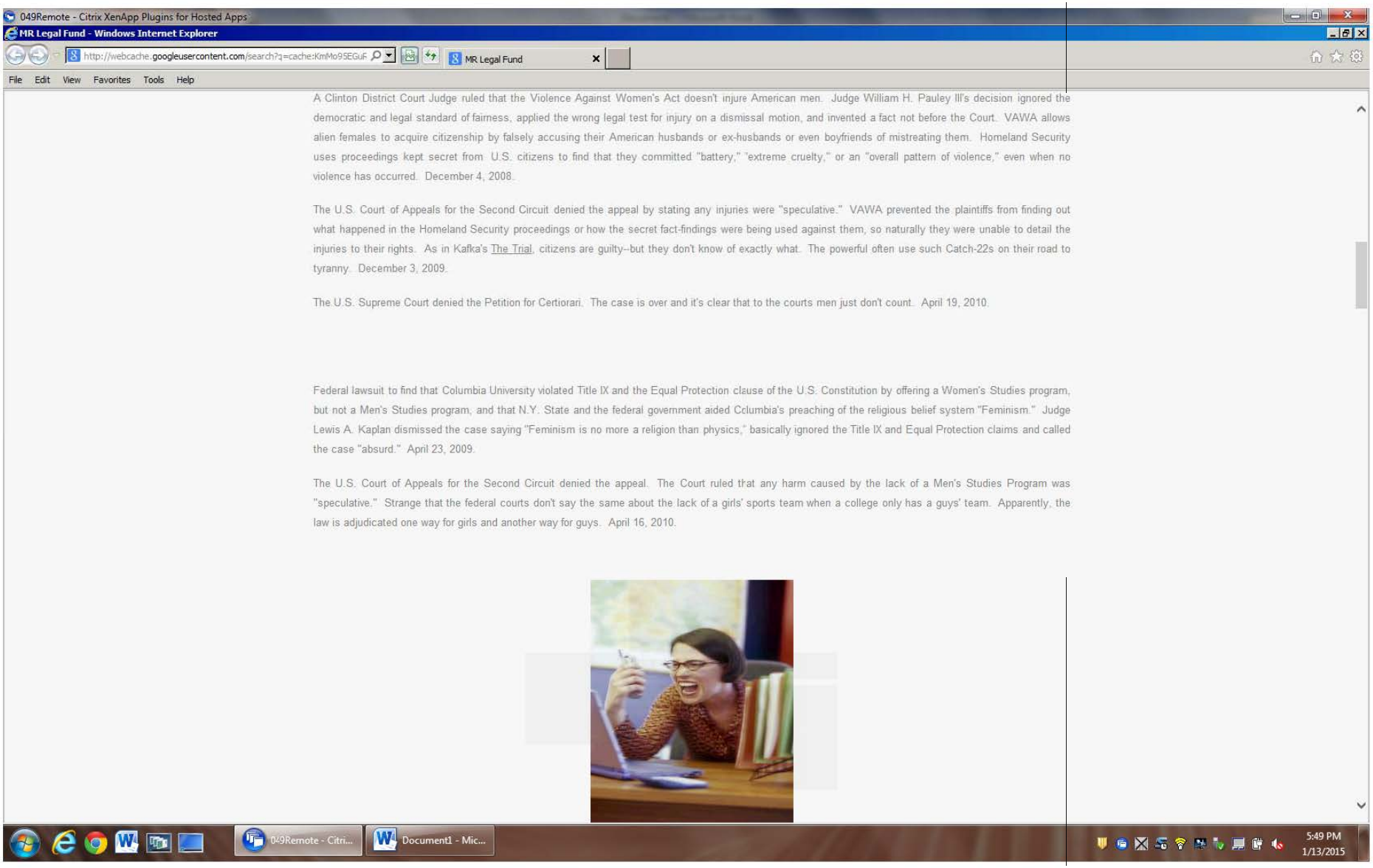
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A Clinton District Court Judge ruled that the Violence Against Women's Act doesn't injure American men. Judge William H. Pauley III's decision ignored the democratic and legal standard of fairness, applied the wrong legal test for injury on a dismissal motion, and invented a fact not before the Court. VAWA allows alien females to acquire citizenship by falsely accusing their American husbands or ex-husbands or even boyfriends of mistreating them. Homeland Security uses proceedings kept secret from U.S. citizens to find that they committed "battery," "extreme cruelty," or an "overall pattern of violence," even when no violence has occurred. December 4, 2008.
The U.S. Court of Appeals for the Second Circuit denied the appeal by stating any injuries were "speculative." VAWA prevented the plaintiffs from finding out what happened in the Homeland Security proceedings or how the secret fact-findings were being used against them, so naturally they were unable to detail the injuries to their rights. As in Kafka's The Trial, citizens are guilty--but they don't know of exactly what. The powerful often use such Catch-22s on their road to tyranny. December 3, 2009.
The U.S. Supreme Court denied the Petition for Certiorari. The case is over and it's clear that to the courts men just don't count. April 19, 2010.
Federal lawsuit to find that Columbia University violated Title IX and the Equal Protection clause of the U.S. Constitution by offering a Women's Studies program, but not a Men's Studies program, and that N.Y. State and the federal government aided Cclumbia's preaching of the religious belief system "Feminism." Judge Lewis A. Kaplan dismissed the case saying "Feminism is no more a religion than physics," basically ignored the Title IX and Equal Protection claims and called the case "absurd." April 23, 2009.
The U.S. Court of Appeals for the Second Circuit denied the appeal. The Court ruled that any harm caused by the lack of a Men's Studies Program was "speculative." Strange that the federal courts don't say the same about the lack of a girls' sports team when a college only has a guys' team. Apparently, the law is adjudicated one way for girls and another way for guys. April 16, 2010.
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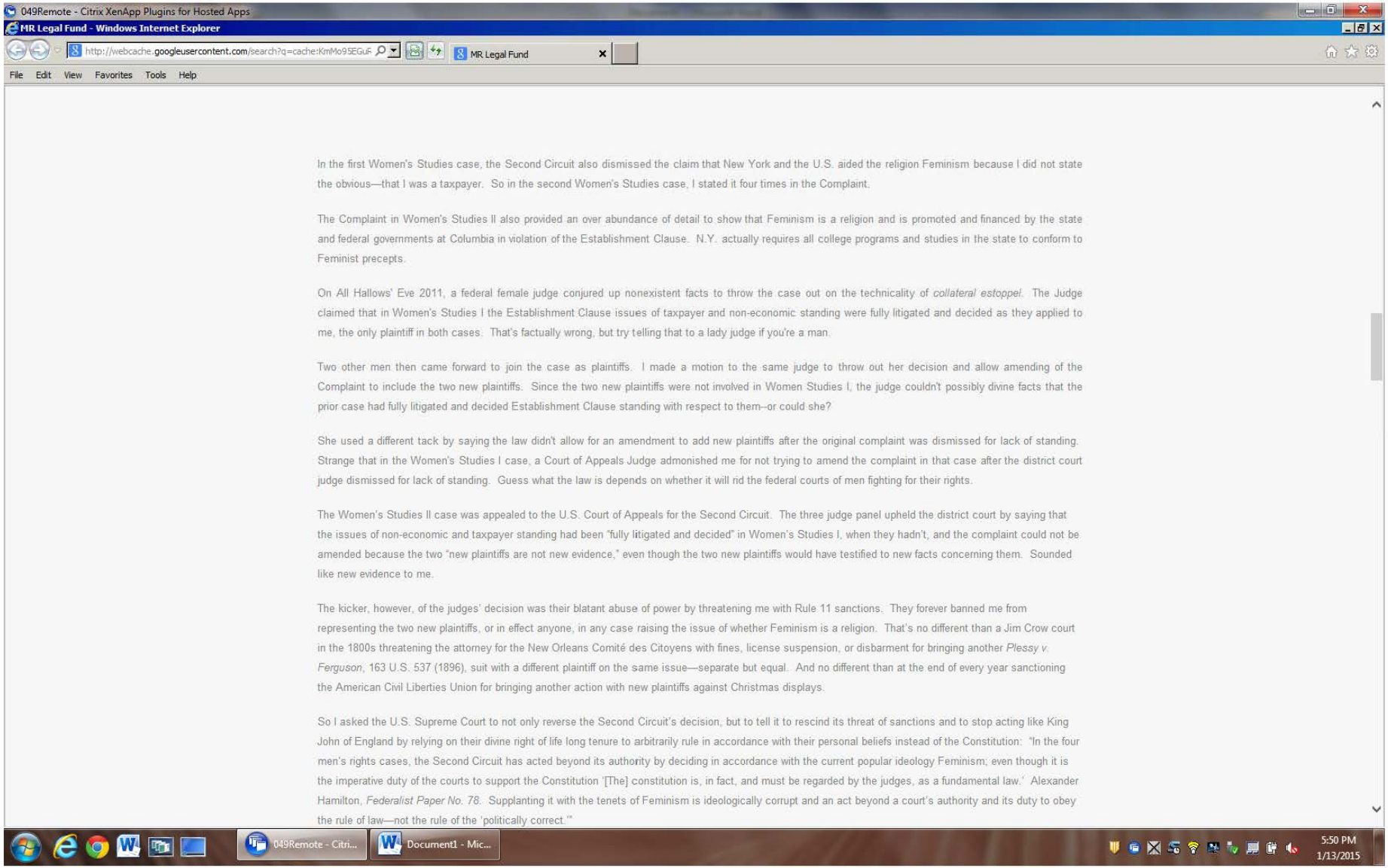
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http://webcache.googleusercontent.com/search?q=cache:KmMo95EGuF
MR Legal Fund
File Edit View Favorites Tools Help
In the first Women's Studies case, the Second Circuit also dismissed the claim that New York and the U.S. aided the religion Feminism because I did not state the obvious—that I was a taxpayer. So in the second Women's Studies case, I stated it four times in the Complaint.
The Complaint in Women's Studies II also provided an over abundance of detail to show that Feminism is a religion and is promoted and financed by the state and federal governments at Columbia in violation of the Establishment Clause. N.Y. actually requires all college programs and studies in the state to conform to Feminist precepts.
On All Hallows' Eve 2011, a federal female judge conjured up nonexistent facts to throw the case out on the technicality of collateral estoppel. The Judge claimed that in Women's Studies I the Establishment Clause issues of taxpayer and non-economic standing were fully litigated and decided as they applied to me, the only plaintiff in both cases. That's factually wrong, but try telling that to a lady judge if you're a man.
Two other men then came forward to join the case as plaintiffs. I made a motion to the same judge to throw out her decision and allow amending of the Complaint to include the two new plaintiffs. Since the two new plaintiffs were not involved in Women Studies I, the judge couldn't possibly divine facts that the prior case had fully litigated and decided Establishment Clause standing with respect to them--or could she?
She used a different tack by saying the law didn't allow for an amendment to add new plaintiffs after the original complaint was dismissed for lack of standing. Strange that in the Women's Studies I case, a Court of Appeals Judge admonished me for not trying to amend the complaint in that case after the district court judge dismissed for lack of standing. Guess what the law is depends on whether it will rid the federal courts of men fighting for their rights.
The Women's Studies II case was appealed to the U.S. Court of Appeals for the Second Circuit. The three judge panel upheld the district court by saying that the issues of non-economic and taxpayer standing had been "fully litigated and decided" in Women's Studies I, when they hadn't, and the complaint could not be amended because the two "new plaintiffs are not new evidence," even though the two new plaintiffs would have testified to new facts concerning them. Sounded like new evidence to me.
The kicker, however, of the judges' decision was their blatant abuse of power by threatening me with Rule 11 sanctions. They forever banned me from representing the two new plaintiffs, or in effect anyone, in any case raising the issue of whether Feminism is a religion. That's no different than a Jim Crow court in the 1800s threatening the attorney for the New Orleans Comité des Citoyens with fines, license suspension, or disbarment for bringing another Plessy v. Ferguson, 163 U.S. 537 (1896), suit with a different plaintiff on the same issue—separate but equal. And no different than at the end of every year sanctioning the American Civil Liberties Union for bringing another action with new plaintiffs against Christmas displays.
So I asked the U.S. Supreme Court to not only reverse the Second Circuit's decision, but to tell it to rescind its threat of sanctions and to stop acting like King John of England by relying on their divine right of life long tenure to arbitrarily rule in accordance with their personal beliefs instead of the Constitution: "In the four men's rights cases, the Second Circuit has acted beyond its authority by deciding in accordance with the current popular ideology Feminism; even though it is the imperative duty of the courts to support the Constitution '[The] constitution is, in fact, and must be regarded by the judges, as a fundamental law.' Alexander Hamilton, Federalist Paper No. 78. Supplanting it with the tenets of Feminism is ideologically corrupt and an act beyond a court's authority and its duty to obey the rule of law—not the rule of the 'politically correct.'"
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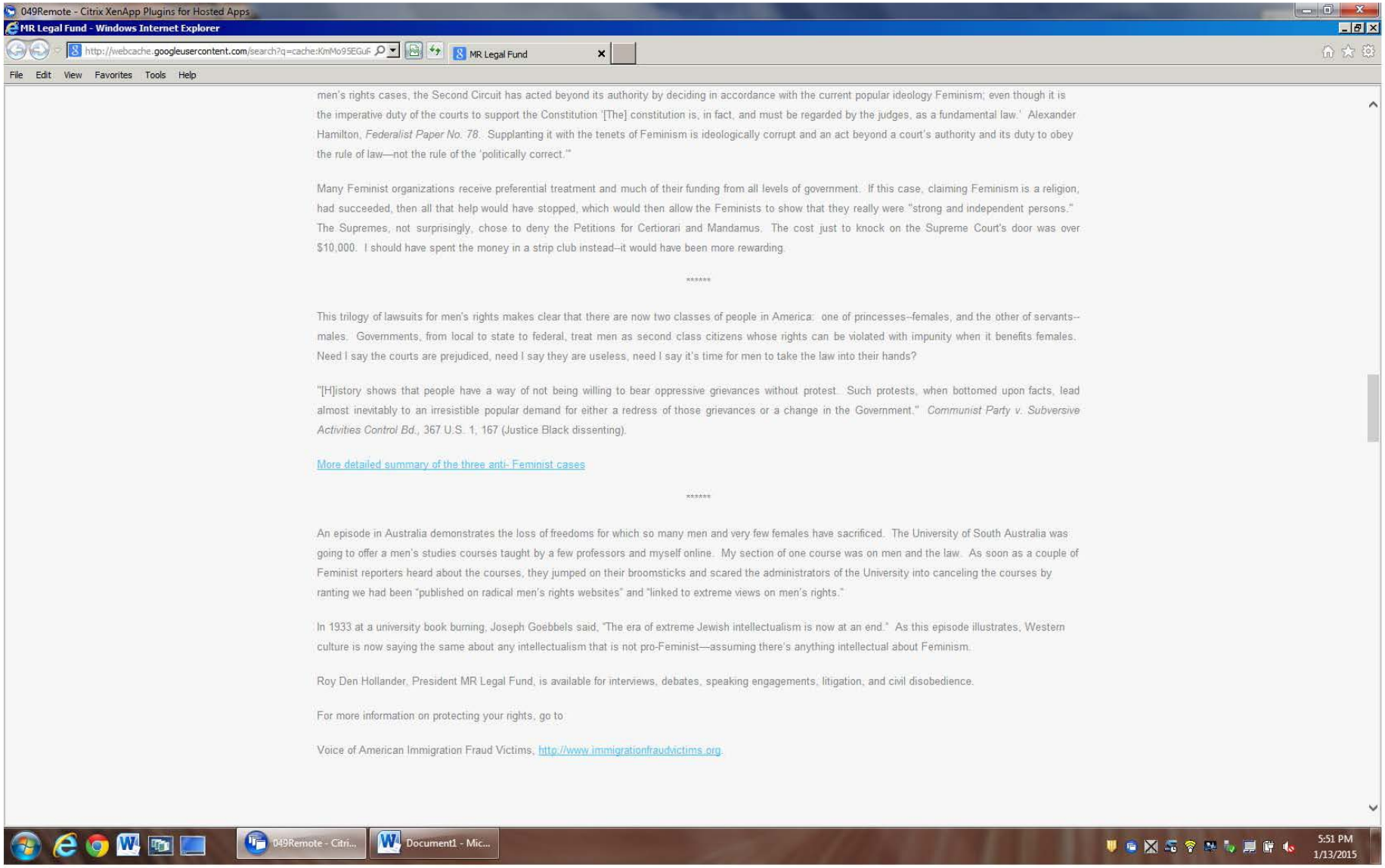
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Many Feminist organizations receive preferential treatment and much of their funding from all levels of government. If this case, claiming Feminism is a religion, had succeeded, then all that help would have stopped, which would then allow the Feminists to show that they really were "strong and independent persons." The Supremes, not surprisingly, chose to deny the Petitions for Certiorari and Mandamus. The cost just to knock on the Supreme Court's door was over $10,000. I should have spent the money in a strip club instead--it would have been more rewarding.
******
This trilogy of lawsuits for men's rights makes clear that there are now two classes of people in America: one of princesses--females, and the other of servants--males. Governments, from local to state to federal, treat men as second class citizens whose rights can be violated with impunity when it benefits females. Need I say the courts are prejudiced, need I say they are useless, need I say it's time for men to take the law into their hands?
"[H]istory shows that people have a way of not being willing to bear oppressive grievances without protest. Such protests, when bottomed upon facts, lead almost inevitably to an irresistible popular demand for either a redress of those grievances or a change in the Government." Communist Party v. Subversive Activities Control Bd., 367 U.S. 1, 167 (Justice Black dissenting).
More detailed summary of the three anti- Feminist cases
******
An episode in Australia demonstrates the loss of freedoms for which so many men and very few females have sacrificed. The University of South Australia was going to offer a men's studies courses taught by a few professors and myself online. My section of one course was on men and the law. As soon as a couple of Feminist reporters heard about the courses, they jumped on their broomsticks and scared the administrators of the University into canceling the courses by ranting we had been "published on radical men's rights websites" and "linked to extreme views on men's rights."
In 1933 at a university book burning, Joseph Goebbels said, "The era of extreme Jewish intellectualism is now at an end." As this episode illustrates, Western culture is now saying the same about any intellectualism that is not pro-Feminist—assuming there's anything intellectual about Feminism.
Roy Den Hollander, President MR Legal Fund, is available for interviews, debates, speaking engagements, litigation, and civil disobedience.
For more information on protecting your rights, go to
Voice of American Immigration Fraud Victims, http://www.immigrationfraudvictims.org.
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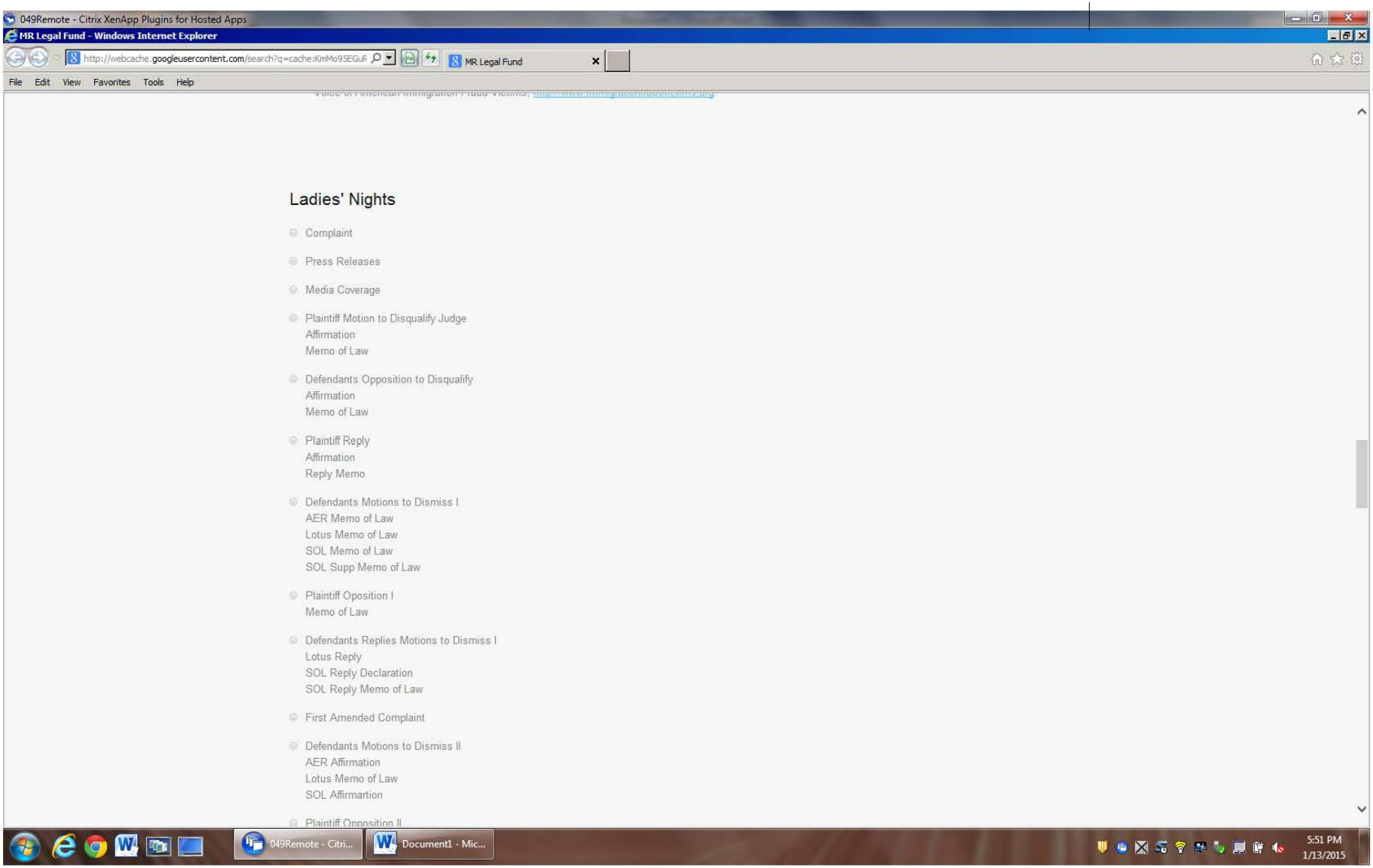
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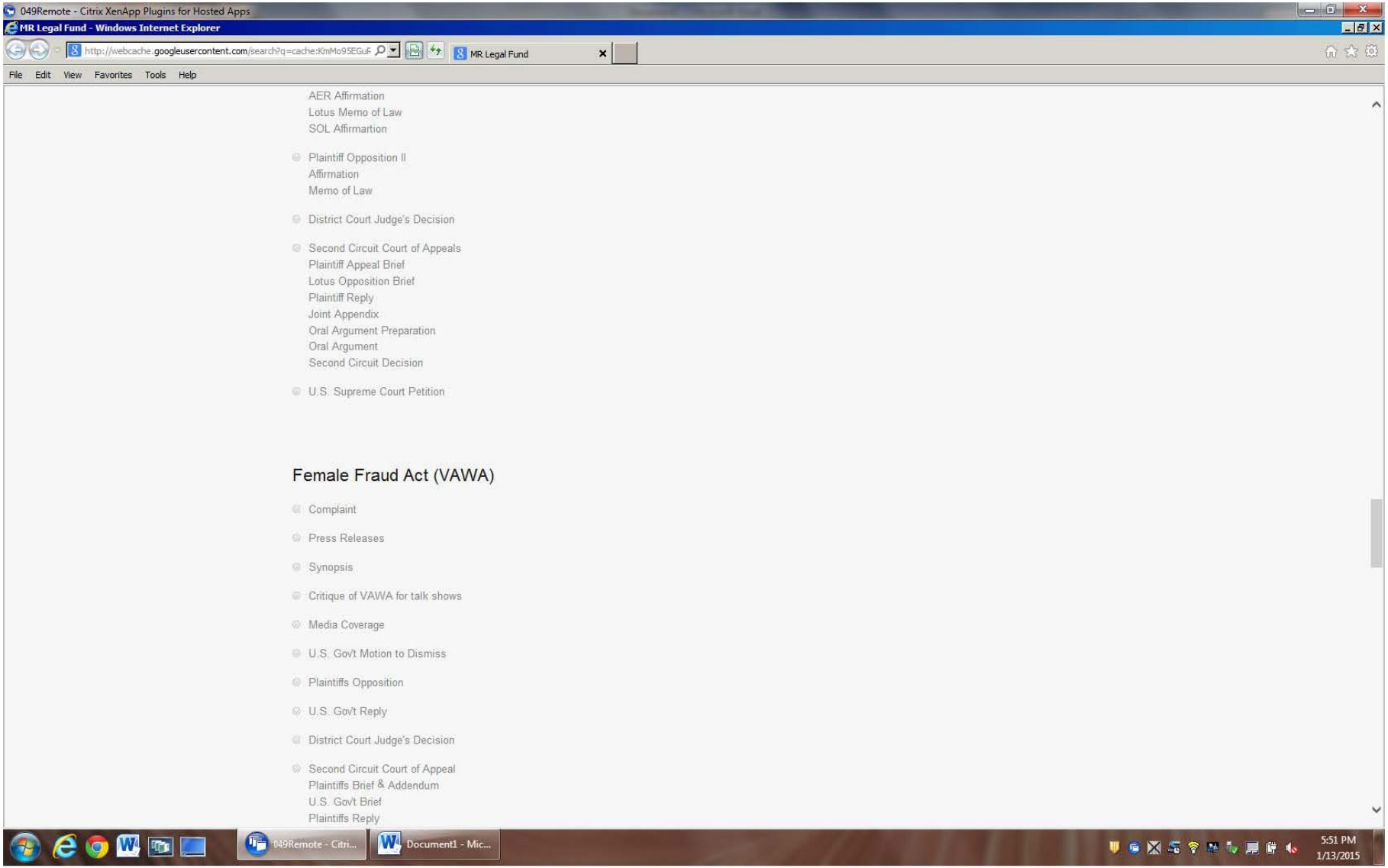
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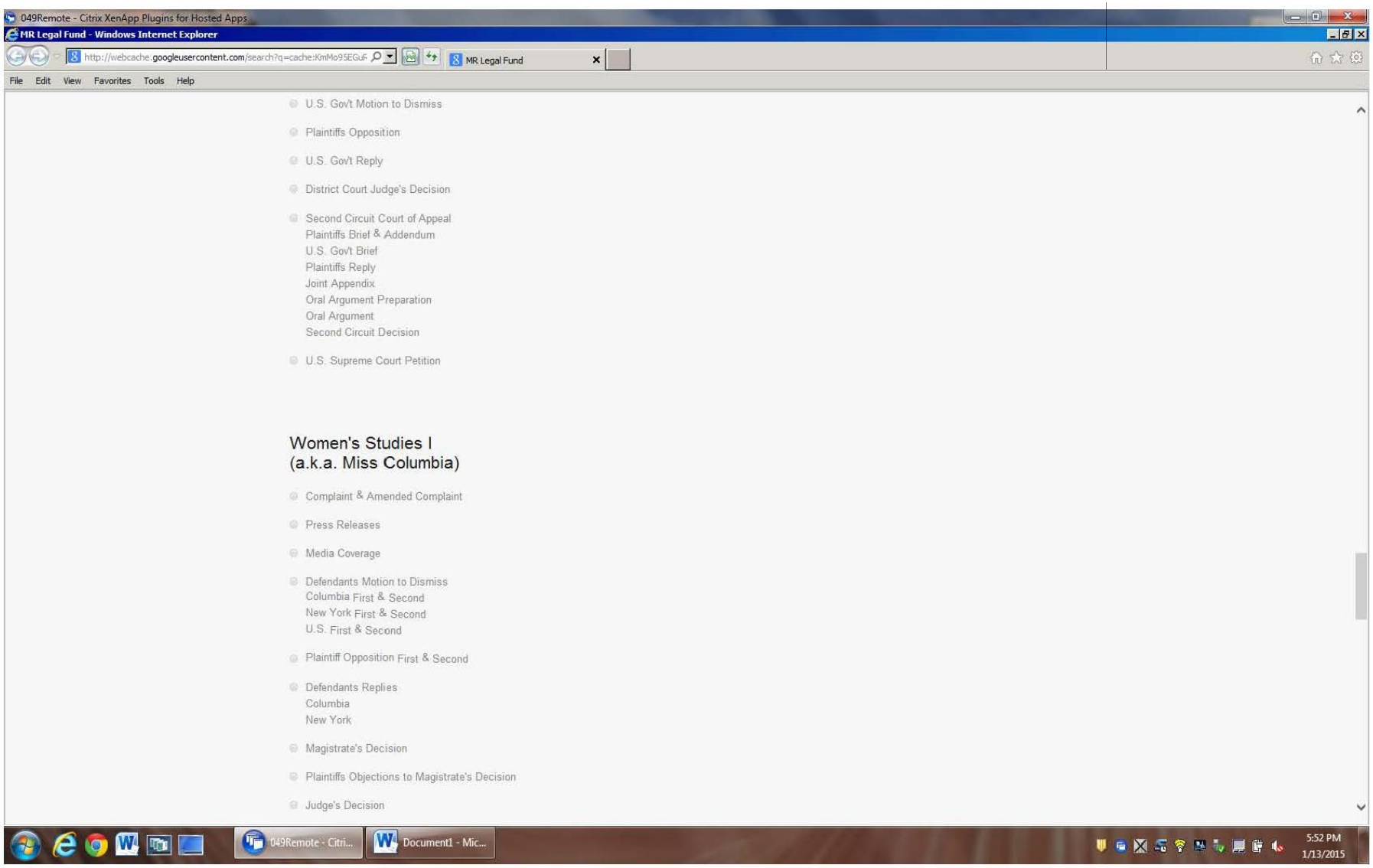
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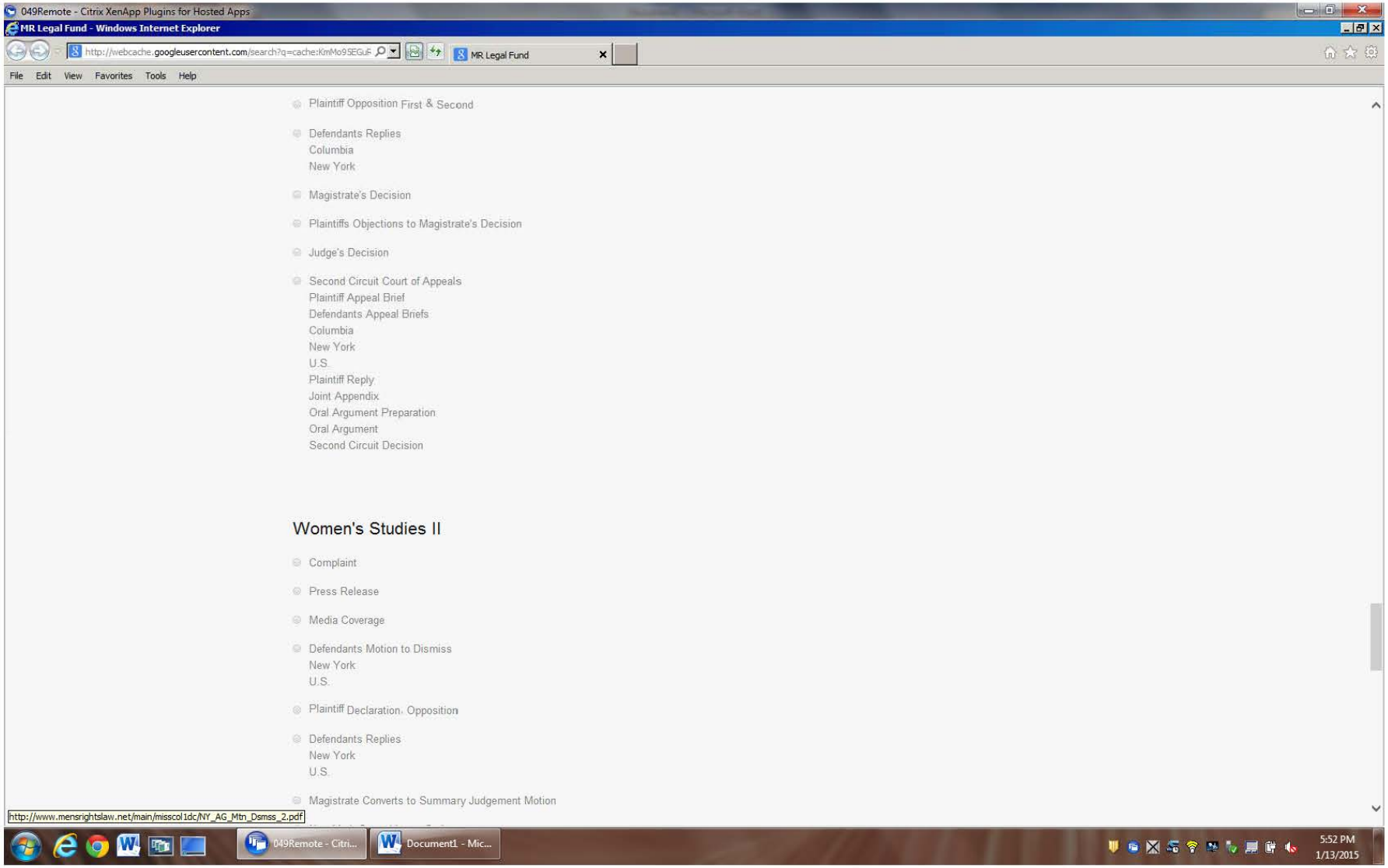
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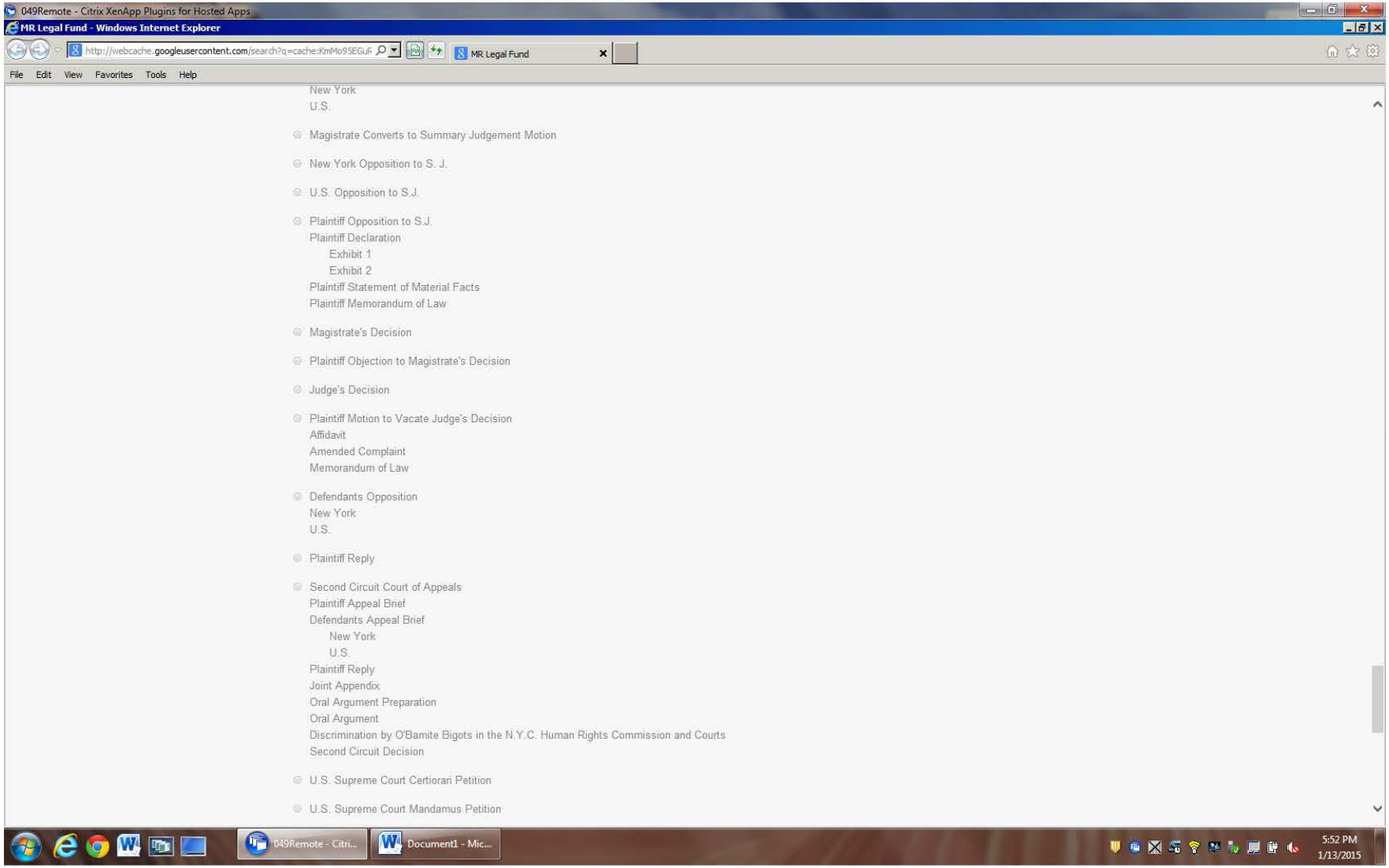
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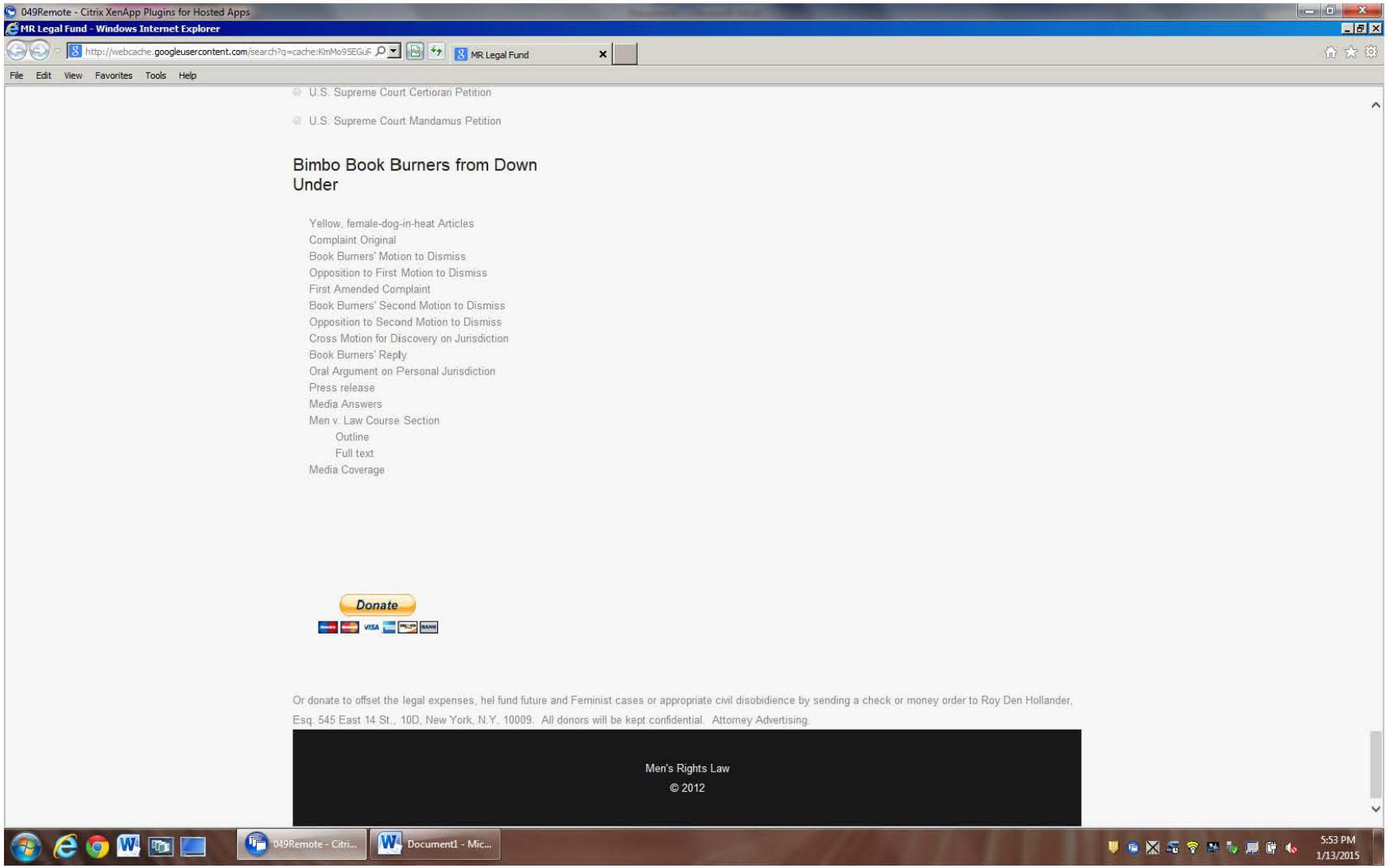
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