Supreme Court of the State of New York
Appellate Division: First Department

ROY DEN HOLLANDER,

Plaintiff-Appellant,

-against-

TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY MCNEILAGE, AND FAIRFAX MEDIA PUBLICATIONS PTY LTD.,

Defendants-Respondents.

SUPPLEMENTAL APPENDIX FOR PLAINTIFF-APPELLANT

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Supreme Court Appellate Division-First Department Order requiring a supplemental appendix, May 3, 2016 [SA1]

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 3, 2016.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
David Friedman
Richard T. Andrias
Karla Moskowitz
Marcy L. Kahn, Justices.

----------X

Roy Den Hollander,
Plaintiff-Appellant,

-against-

M-1708
Index No. 152656/14

Tory Shepherd, et al.,
Defendants-Respondents.

----------X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about January 12, 2016, and said appeal having been perfected,

And defendants-respondents having moved to dismiss the appeal, or in the alternative, for an order striking plaintiff-appellant's brief and appendix, for certain costs and to adjourn the appeal to the September 2016 Term,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of directing plaintiff-appellant to file a supplemental appendix, at his own expense, which shall include all exhibits attached to the Affirmation of Katherine M. Bolger submitted with defendants' motion to dismiss. Plaintiff-appellant is directed to serve and file said supplemental appendix on or before July 11, 2016. Page 163 of plaintiff-appellant's appendix is deemed stricken and judicial notice is taken of the documents reproduced on pages A.159-162 of said appendix. The motion is otherwise denied. The appeal will be maintained on this Court's calendar for the September 2016 Term.

ENTER:

CLERK

Cathy Young, Women Against Feminism: Some women want equality without anger, Boston Globe, September 2, 2014 [SA2-SA4]

The Boston Globe

CATHY YOUNG

Women Against Feminism: Some women want equality without anger

By Cathy Young

SEPTEMBER 02, 2014

DO AMERICAN women still need feminism? A controversial social media movement called Women Against Feminism features women explaining — mostly in "selfies" with handwritten signs — why they do not. Feminist responses have ranged from bafflement to vitriol or mockery to arguments that these women don't know what feminism is. But while this new movement has its silly aspects, it raises some much-needed questions about feminism's present and future state — and, in the weeks since it first attracted notice, many prominent feminists have helped validate some of the criticisms.

One might assume that Women Against Feminism is a traditionalist backlash against gender equality. Yet many of the women say they reject feminism precisely because they are pro-equality. A blogger who goes by AstrokidNJ has analyzed a week's worth of posts on Women Against Feminism and found that 46 percent were egalitarian, 19 percent endorsed men's issues, and 12 percent criticized feminist intolerance toward dissent. Only 23 percent reflected traditionalist views such as support for distinct sex roles, chivalry, or full-time motherhood.

Some commentators suggest that pro-equality women who reject feminism are misguided. After all, the dictionary defines feminism as belief in the social, economic, and political equality of the sexes. But these women usually know that (and often sarcastically stress that they do). They simply think that real-life feminism has come to mean something else: vilification of men, support for female privilege, and a demeaning view of women as victims rather than free agents.

Are they wrong? Well, one of Women Against Feminism's harshest critics, leading feminist pundit Jessica Valenti, makes it clear that being a feminist means believing that women in America and other modern liberal democracies are "a victimized class." They are "systematically discriminated against in school, work, and politics," "objectified," and "harassed, attacked, and sexually assaulted." This, Valenti asserts, is "not a matter of politics, but of truth."

But contributors to Women Against Feminism disagree. They note that many studies show the pay gap to be largely due to women's choices of more family-friendly — and life-friendly — jobs. (As for school, American women have long outpaced men in educational attainment, currently earning about 60 percent of college degrees.) They take issue with rape statistics that lump alcohol-fueled, judgment-impaired sex with sexual assault. They argue that men face their own negative stereotypes. They point out that men are at higher risk than women for most violent crimes — and may be far more likely than previously thought to experience domestic violence and sexual coercion. They say that in many areas, from divorce to mental health to workplace safety, it's men who have it worse.

These arguments need to be engaged, not dismissed and ridiculed. Yet many feminists have responded with nastiness that would normally be called misogynist: In the New York Observer, Nina Burleigh focused on a few photos showing too much skin or black-polished fingernails to sneer that the women were "dressed and posed like ads for DIY escort services."

Meanwhile, even as feminists deplore accusations of male-bashing, many are embracing "ironic misandry" (hatred of men). Valenti recently tweeted a picture of herself in a t-shirt declaring "I bathe in male tears." Other examples include the mottoes "Ban Men" and "Kill All Men" and Internet jokes that turn book titles into castration one-liners. Feminist commentators such as Slate.com's Amanda Hess defend this practice as a cool in-joke that annoys sexists and mocks the idea that feminists are anti-male.

But aside from the fact that cliquish in-jokes are off-putting and "ironic" hate can still sound pretty hateful, the "misandry" joke falls flat because there are too many real-life examples of feminist anti-male bias. The National Organization for Women has fought against more rights for divorced fathers, often suggesting that men who advocate for such rights are abusers. Feminist groups urging stronger enforcement of domestic violence laws have cried foul when such tough policies have led to more arrests of women. Anti-rape activists have championed campus rules that brand the man an attacker and the woman a victim if they have sex while equally intoxicated.

Women Against Feminism is largely a reaction against this mindset. The anti-feminist egalitarians believe that, whatever feminism's positive past gains, its dominant modern version is hostile to men and demeaning to women. They are right.

I don't like the "anti-feminism" label because of its common meaning of "anti-woman" or "anti-equality." But, call it reformed feminism or egalitarianism, we need a movement for true equality -- against both old-fashioned sexism and new gender polarization.

Cathy Young is a columnist at Newsday and RealClearPolitics.com. Follow her on Twitter @CathyYoung63.

Tory Shepherd, Men's rights extremists go online, The Advertiser, January 10, 2012 [SA5-SA7]

News

Tory Shepherd

Shepherd: Men's rights extremists go online

- by:*Tory Shepherd*
- From: *The Advertiser*
- January 10, 2012 12:00AM

Men's rights extremists typically see middle-aged, straight, white males as the new oppressed. Picture: Paul Burston *Source:* The Advertiser

THERE'S a movement that sees males - generally straight, middle-aged, white males - as the new oppressed. Seriously.

Men's activists have been around for decades, but thanks to the internet they're getting slicker, more organised, more professional, and more visible.

Men's outcomes in some areas really are poor. Male suicide rates are three to four times higher, their life expectancy is lower. Girls often outperform boys at school. Males are more likely to be incarcerated, more likely to be addicted.

But these genuine issues are not the ones that concern the new breed of men's activists. These men are aggrieved because they see misandry - the hatred of males - everywhere in society, from government down.

They have a persecution complex, and aggressively lobby for better rights for men - usually at the expense of women.

Take a bunch of these men's rights activists, blend with fathers' rights groups, add a searing sense of injustice and a healthy dollop of rage, and serve it up online.

In the paranoid words of one popular men's rights blog: "We aren't simply a protest movement anymore, we're going to have to shift to a war mentality".

The same site, A Voice for Men, recently published an article called "A path to Australian apartheid", which outlines how feminists have infiltrated government to spread their ideology and exclude men.

The site compares "feminists, manginas, white knights and other agents of misandry" to clansmen, skinheads and neo-Nazis.

The core claims of the men's rights extremists include:

Women have never been worse off than men - this is a feminist lie and is part of the plot to subjugate men.

Women are all gold-diggers who use marriage and divorce to extort money from men.

Family law courts let women legally steal children from men, and let women get away with false accusations of child abuse.

Women routinely falsely accuse innocent men of rape.

Domestic violence statistics are warped; men are victims as much as women and women make false claims about violence in courts that are too inclined to believe them.

One prominent men's movement go-to guy, "Angry Harry", also says feminism is to blame for traffic congestion and global warming.

Over at The Punch we're devoting a series of articles to debunking each of these claims (although to be honest we probably won't bother with the traffic congestion and global warming stuff).

These false claims are not just sinister ideas confined to the interwebs - they're calls to action. Men's Rights Extremists are actively lobbying to change Australian laws. They are spreading misinformation and trying to discredit good policies and good programs.

For example, they were recently up in arms about White Ribbon Day - the campaign to stop violence against women.

The MREs see it as a feminist plot to portray all men as abusers. They also claim the statistics on violence against women are grossly exaggerated. Dr Michael Flood, White Ribbon Ambassador and expert on men and gender issues, has written extensively on "men's rights" men.

He says the internet has transformed them and allows them to appear a "massive horde" out of proportion to their actual numbers.

But that doesn't mean their bark is worse than their bite. Dr Flood says they have already influenced family law, government policy and community attitudes, subtly shifting the balance to better protect perpetrators and discredit victims.

Online, everyone, to some extent, is equal, and men's rights extremists eloquently bend statistics and anecdotes to underline their arguments. They provide a heady, toxic mix of bitter, self-righteous fury.

There aren't many places for men who feel they've been burnt by the family law courts or the justice system to seek succour.

The MRE world is a place for these wounded, angry men to come together and foment trouble.

-- shepherdt@thepunch.com.au

Tory Shepherd, 'Carnivorous men' versus 'lying bitches' in sex war,
news.com.au, July 17, 2012 [SA8-SA9]

National
news
news.com.au | national

'Carnivorous men' versus 'lying bitches' in sex war

- Hate site's motto is 'F***king their s**t up'
- Linked to site to name, shame "bitches"
- Canning says its a rare place for men
- The Punch on the SCUM Manifesto

An academic stoush between Associate Professor Betty McLellan and Dr Greg Canning has exposed the dark recesses of the gender wars. *Source:* Townsville Bulletin

An academic stoush has exposed the dark recesses of the gender wars. On one side are radical feminists who see men as "carnivorous and necrophiliac" and on the other side are men's rights extremists who see women as "lying bitches" who routinely make false rape accusations.

The Townsville Bulletin revealed last week that Dr Greg Canning quit his James Cook University post in protest because they refused to discipline his feminist colleague Dr Betty McLellan for writing an article which he thought stereotyped all men as sexual abusers.

Dr McLellan wrote on radical feminist website RadFem Hub that in light of male violence and rape we should be asking ourselves what it is about men that leads to these behaviours. Dr Canning said the article painted all men as evil, but the university declined to take any action.

Now it turns out Dr Canning is the Australian news director of a US hate site that claims men have almost no legal rights and should shift to a "war mentality" because women now have "supreme power".

SA9

Dr Canning works for A Voice for Men. AVFM's claims include that there is an "epidemic" of false rape accusations, that rape and domestic violence awareness campaigns are examples of "male sex witch hunting", and that women, literally, get away with murder.

The site's motto is "FTSU" which stands for 'F***king their s**t up' in reference to feminists, and it is closely connected to a site called "Register Her" to name and shame women who are "lying bitches" or bigots. For example, actor Katherine Heigl features on there under the heading "bigot" because she once made a joke about castration.

Dr Canning told News.com.au he disagreed with the tone of some sections of the website and that he did not agree with all the arguments on there, but that he believed it was a rare place where men could speak up.

He does, however, talk about false rape allegations on the site, a topic that is a core issue to AVFM. Men's rights extremists claim women often invent rape, either because they regret sex or because they want to frame men.

When questioned about another claim that there was a "corrupt" domestic violence "industry", Dr Canning said he believed that the domestic violence sphere was controlled by feminists who ignore violence against men. He then went on to attack Dr McLellan afresh, pointing out that the website she wrote on describes men as having "carnivorous and necrophiliac" behaviours.

RadFem Hub also warns about the dangers of "penis in vagina" sex and argues that men "as a class" are trying to destroy women.

Gender and violence expert Dr Michael Flood, a senior sociology lecturer at the University of Wollongong who has had disagreements with Dr Canning and men's rights activists in the past, said vitriol and extremism were rife online.

He said the false rape allegation claims were a standard way men's rights activists tried to discredit rape victims.

"It ends up disempowering victims and protecting perpetrators," he said, adding that false rape allegations were rare and likely made as often by men as by women.

Dr Flood also said the internet could be a dangerous place for women, particularly feminist women.

"The internet has provided a forum for more extreme and vitriolic beliefs and it has provided a forum where angry anti-feminist men can voice the most hostile and toxic kinds of attacks, particularly against feminist women," he said.

SOURCE: http://www.news.com.au/national/carnivorous-men-v-lying-bitches-in-sex-war/story-e6frfkp9-1226427879838

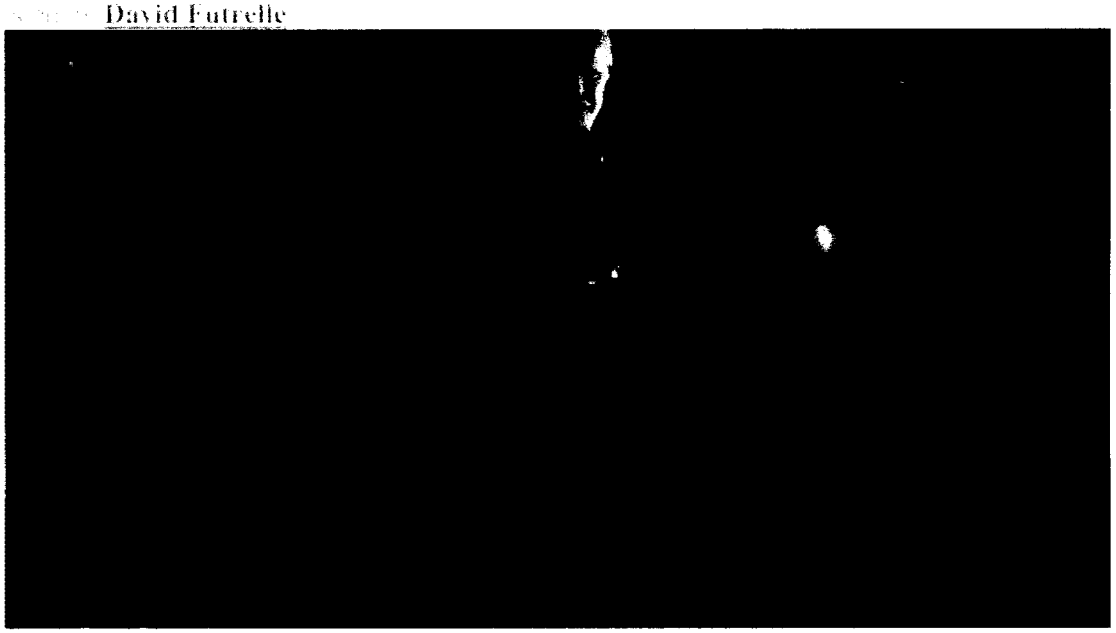
SA 10

David Futrelle, Australian "Male Studies" initiative under fire because of its connections to raving misogynists; raving misogynists blame feminists, January 13, 2014 [SA10-SA13]

Australian "Male Studies" initiative under fire because of its connections to raving misogynists; raving misogynists blame feminists

JAN 13

David Futrelle



Antifeminist attorney, A Voice for Men contributor, and would-be Male Studies lecturer Roy Den Hollander bustin' a move on the Colbert Report.

NOTE: See the end of the piece for an important clarification from the University.

So it seems the new "Male Studies" initiative at the University of South Australia is running into a few problems. Well, one big problem: members of the general public have discovered that some of the people involved with the initiative are raving misogynists, or have chosen to associate themselves with raving misogynists.

Yesterday, a story by journalist Tory Shepherd noted that two of the lecturers have written for a notoriously misogynistic website by the name of A Voice for Men. (You may have heard of it.) One of them, the crankish American attorney Roy Den Hollander, even suggested in a post on that site that men's rights activists may have to take up arms against the evil Feminists who run the world.

The future prospect of the Men's Movement raising enough money to exercise some influence in America is unlikely. But there is one remaining source of power in which men still have a near monopoly—firearms.

Huh. That doesn't sound like a very *academic* analysis of the situtation to me.

Den Hollander also likes to refer to "women's studies" as "witches' studies." And if you don't believe her, here's the AVFM post in which he does just that; it's in the first sentence.

Apparently pointing out some of these basic facts about Den Hollander, and about another of the lecturers, Miles Groth, who has also written for AVFM, is causing some trouble for Dr. Misan and his little Male Studies initiative – at least according to a post on AVFM by the always furious Paul Elam, who informs us somberly that

[s]ources close to the story report that [Shepherd's article] is likely a terminal setback for the new initiative.

Elam fights back against Shepherd's alleged "lies" in a paragraph that is itself nothing but lies:

The article by Shepherd is saturated with the typical lies, e.g.: that the SPLC named AVFM as a hate group, which they did not, and that this website regularly calls women "bitches and whores," which it does not. She also implied a connection between AVFM and those championing the initiative which does not exist.

Actually, Shepherd said that the SPLC described AVFM as a "hate site," not a "hate group." This is in fact true, as the SPLC included AVFM in a list of "woman-hating sites," which would make it a hate site, as the hatred of women is in fact a kind of hate.

And AVFM does in fact refer to women regularly as whores and bitches and other slurs. Indeed, in one notorious post about Rebecca Watson, Elam managed to use the word "whore" more than 30 times; as for the word "bitch," well, check out this compilation of AVFM posts featuring that word *in the title*. As you'll see from that post, Elam also likes referring to women as "cunts," and once referred to the feminist blogosphere as the "cunt-o-sphere."

Do your own searches for "whore" or "bitch" on AVFM to find more recent examples.

Shepherd doesn't, in fact, imply any "connection" between AVFM and "those championing the initiative" beyond the undeniable fact that two of the lecturers have written for AVFM, and that AVFM has heralded the Male Studies initiative. Interestingly, it's Elam, with his talk about "[s]ources close to the story," who implies an even closer connection than Shepherd does.

The rest of Elam's post is a remarkable mixture of self-contradicting lies and self-delusion. First, he declares "Male Studies" to be a pure-as-the-driven snow example of non-ideological scholarship.

In writing this article Shepherd actually served as a mouthpiece for academic feminists invested in blocking the attempt to study human males in a non-ideological, scholarly fashion.

How exactly is someone who describes himself explicitly as antifeminist, who describes women's studies as "witches studies," and who's written for AVFM on several occasions an example of someone who is trying "to study human males in a non-ideological, scholarly fashion?"

Elam then launches into one of his typical chest-beating fuck-their-shit-up ideological rants:

The Men's Human Rights Movement is not going to go away. Indeed, even as we regret the temporary setback of an important and valuable initiative, we do welcome another opportunity to shine a light on the ideologically twisted agenda of people who would undermine an academic program with the ambition to enhance our understanding of an egregiously underserved population.

Yes, that's right. The world's *men* have been "egregiously underserved."

This type of bullying and public deception is precisely what has catapulted the Men's Human Rights Movement into rapid growth and increasing popularity in such a short period of time.

The only bullying and deception I'm seeing here is coming from your side, dude. Women aren't talking about taking up arms against men. You're the one who's lying about what Shepherd said.

From assaultive, criminal demonstrators in Toronto blocking doors to a lecture on male suicide, to this - an obviously orchestrated attack on honorable academicians – the reality of what feminism has become, and the depths to which it has lowered, is again in full public view.

Uh, Roy Den Hollander isn't an "honorable academician." And, frankly, neither is anyone who chooses to associate themselves with your site. I'm not sure how Shepherd's one article counts as an "obviously orchestrated attack," but all she did was point out what Hollander said, and point out the sort of misogynistic shit you publish on your shitty website.

In other words, Mr. Elam, you guys have dug your own hole here – with you, personally, bringing one of the bigger shovels.

Just think: A Voice for Men may be in large part responsible for the collapse of this Male Studies initiative, because you and the others writing on your site can't hide your raging misogyny, and can't resist the temptation to call women "bitches" and "whores."

This is the lesson of all the publicity you guys have gotten in the last year: when members of the general public learn what you guys actually believe, they are repulsed by it. The more attention you get, the more people oppose you.

After some more ranting that he might as well have cut and pasted from any of a dozen previous posts of his, Elam ends with one of his trademark vague threats:

We will force their hand, again and again. And each time they demonstrate their moral bankruptcy; their limitless capacity for tyranny, the more they will generate the contempt and indignation they deserve. And the more people will realize that the only way forward is straight through them.

You're just digging that hole deeper.

EDITED TO ADD: The Universityof Southern Australia has clarified a few things about the Male Studies initiatives. According to a piece in the Sydney Morning Herald, the school *only approved one of the four proposed courses*, and officially *rejected* (back in 2012) the one that would have included Den Hollander and Groth as lecturers. Here's what the newspaper says:
The university has approved one of four proposed graduate courses, a certificate in male health and health promotion, which will begin online next month.
But an original proposal by one of the university's academics outlined three further certificates, including a course called "males and sexism", which named lecturers who have been published on radical men's rights websites. ...
The university emphasised it did not endorse views of the suggested lecturers. It said the courses, which were criticised in the media on Monday, were rejected in 2012.

So that's reassuring to hear.

SA 13

I removed a portion of my post referring to Gary Misan, in charge of the course, because in light of this information it's not clear if he was referring to all four courses, including those involving Den Hollander and Groth, or just to the male health course.

Oddly, though, Dr. Misan seems to think that the University has signed up for more than one course. On his official University of South Australia web site he describes himself as "program co-ordinator for a new suite of courses in Male Studies at UniSA, the first of which will be offered in 2014."

SA 14

Tory Shepherd, Tweet, June 17, 2014 [SA14]

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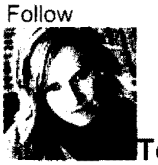

ToryShepherd @ToryShepherd

Harpy, dog-in-heat bacchanalian reporter. Nicest thing anyone's ever said about me. Tomorrow's column @thetiser adelaidenow.com.au/news/opinion/m

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SA15

Who We Are | News Corp, September 8, 2014 [SA15-SA19]

Delivering *extraordinary* experiences for our customers and consumers is at the heart of who we are.

News Corp Australia

Together we're striving to unlock the power of the imagination.

We're obsessed by food. [illegible] 20,000 [illegible] ideas and inspiration to suit all levels [illegible] fastidious foodie.

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FB Newswire

storyful.

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News America Marketing has partnered with Thinaire and Bertolli Olive Oil to launch a point-of-purchase campaign allowing shoppers with NFC-enabled phones to instantly pull up recipes, videos and useful cooking tips while shopping the olive oil aisle of their local grocery store — all with just a tap of a phone.

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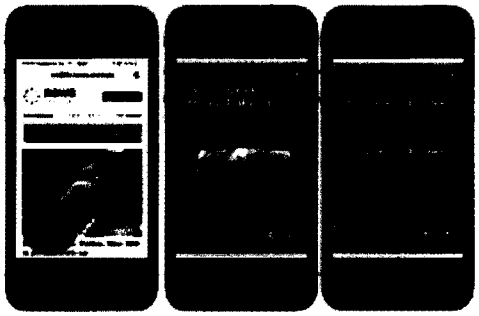
NEWS CORP AUSTRALIA



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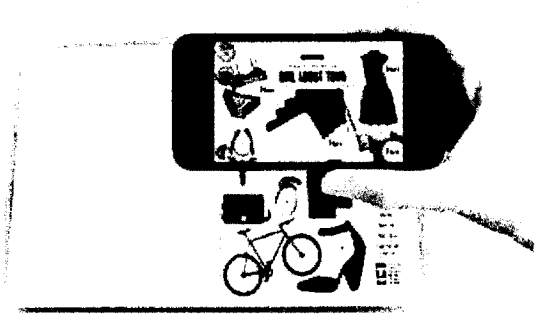
THE TIMES MAGAZINE



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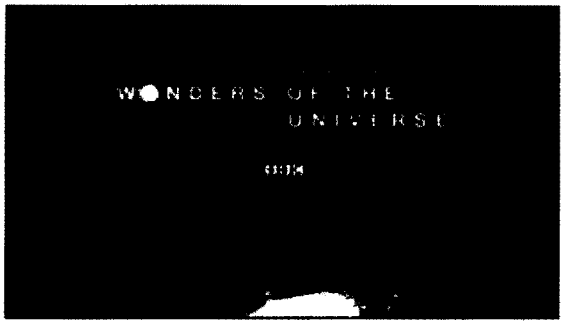

The Wonders of the Universe app developed by HarperCollins UK set the bar for innovation in the book publishing industry.

Marrying gorgeous CGI visuals, BBC video content and an impressive user experience, The Wonders of the Universe app reached No. 1 on the UK's Top Grossing iPad App chart, exemplifying HarperCollins 200-year legacy of achieving maximum reach for authors.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

v.

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

Defendants.

Civil Action 08 4045

BLOCK, J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 03 2008 ★
BROOKLYN OFFICE

COMPLAINT FOR COPYRIGHT INFRINGEMENT

The plaintiff alleges as follows:

Parties, Jurisdiction and Venue

1. The plaintiff is a resident of New York County, citizen of the United States, and does business in all five counties of New York City as a business consultant and attorney.

2. The plaintiff created six essays ("the six essays") of wholly original material that are registered in accordance with the Copyright Act of 1976 either individually or as part of a larger work.

3. The plaintiff is the sole owner of all rights in the six essays.

4. Defendant Donovan is an attorney residing in Nassau County, New York and practices her profession in the Eastern District of New York and the Southern District.

5. Defendant Steinberg is an attorney residing in New York County and practices in New York City, which includes, on information and belief, the Eastern District of New York.

6. On information and belief, defendants Donovan and Steinberg copied the original six essays through unauthorized access of the plaintiff's personal computer, which is connected to the internet and used, in part, for interstate communication and business, or through unauthorized access of an internet computer engaged in interstate commerce and communication, or they obtained the unauthorized copies from some unknown third person: Jane Doe.

7. The Court has subject matter jurisdiction under 28 U.S.C. § 1338(a) because this action arises under the Copyright Act of 1976, 17 U.S.C. § 101 et seq.

8. The Court has personal jurisdiction because defendants Donovan and Steinberg reside in New York State and their acts of infringement took place in New York State, and, on information and belief, defendant Jane Doe also resides in New York State and her acts of infringement took place in the State.

9. The Court has venue under 28 U.S.C. § 1391(b)(1) because defendant Donovan resides in Nassau County, New York, and all the defendants reside in New York State.

Infringement Under 17 U.S.C. § 501

10. On October 24, 2007, Defendant Donovan filed a virtually identical copy of the original copyrighted essay Different Time on the Electronic Case Filing System ("ECF") of the U.S. District Court for the Southern District of New York as an exhibit in opposition to a recusal motion in a civil rights case, Docket No. 07 CV 05873, in which defendant Donovan represents a nightclub that allegedly discriminated against men. Exhibit A, p. 4, copy filed by Donovan.

11. Defendant Donovan also filed virtually identical copies of five other essays by the plaintiff, but at the time of her filing, those five essays had not yet been registered with the U.S. Copyright Office. Exhibit A, copies of all essays filed by Donovan.

12. In preparation for uploading and actually uploading the copyrighted Different Time essay into ECF, defendant Donovan, without authorization by the plaintiff, copied, distributed, published and displayed the essay created by the plaintiff.

13. Defendant Donovan knew or should have known that she was infringing or was acting with reckless disregard of the high probability that she was infringing because she stated, under penalty of perjury in her ECF court filing, that the Different Time essay, as well as the other five essays, were created by the plaintiff. Exhibit B, Excerpt from Donovan's Declaration to which the essays were attached as an exhibit.

14. By filing the unauthorized copy in ECF, defendant Donovan maliciously made the essay available to the general public through PACER (the Public Access to Court Electronic System) at a cost of $.08 a page and through the U.S. Southern District Court's Records department at a cost of $.35 a page.

15. Since the copying fees provide support to the federal courts in which defendant Donovan makes her living, the copying fees, which are essentially sales, will accrue, somewhat, to her benefit.

16. The unauthorized copy of the essay filed by Donovan has telltale markings of €, and ™ in a number of places. These marks and spacing are the only differences between Donovan's unauthorized copy and the original created by the plaintiff, which is attached as Exhibit C.

17. On information and belief, some time after the effective date of registration of the five other essays, defendant Donovan made tangible copies of those five essays and of the Different

Time essay and distributed those copies to defendant Steinberg. The five other essays are: Two Sides, An Invisible Weapon, Do Men Cause the Wars?, Some Differences, and Fear Corrupts. Exhibit D.

18. On December 18, 2007 in a nuisance action in the N.Y. State Supreme Court, 102057-2007 and again on December 19, 2007 in a defamation action in the N.Y.C. Civil Court, 021283 CV 06, defendant Steinberg filed virtually identical copies of the plaintiff's six copyrighted essays as exhibits in opposition papers. Exhibit E and Exhibit F.

19. In preparation to file and by actually filing the six copyrighted essays, defendant Steinberg, without authorization by the plaintiff, copied, distributed, published and displayed the six copyrighted essays created by the plaintiff.

20. Defendant Steinberg knew or should have known that he was infringing or was acting with reckless disregard of the high probability that he was infringing because defendant Steinberg affirmed under penalty of perjury in his court filings that all the essays were created by the plaintiff.

21. By filing the unauthorized copies with the N.Y.S. Supreme Court and the N.Y.C. Civil Court, defendant Steinberg maliciously made the copies available to the general public at a cost of $.35 a page.

22. Since the copying fees provide support to the Supreme and Civil Courts in which defendant Steinberg makes part of his living, the copying fees, which are essentially sales, will accrue, somewhat, to his benefit.

23. The unauthorized copies filed by Steinberg are identical to those filed by defendant Donovan, right down to the telltale markings: Â, €, and ™, and the spacing. Exhibit A. Those marks and the spacing are the only differences between Stenberg's copies and the originals created by the plaintiff, Exhibits C & D.

24. On information and belief, defendant Jane Doe, without authorization by the plaintiff, copied and distributed the six essays created by the plaintiff when she knew or should have known that she was infringing or was acting with reckless disregard of the high probability that she was infringing.

25. On information and belief, defendant Jane Doe distributed unauthorized copies of the six essays to defendant Donovan for a price.

Relief Sought

WHEREFORE, the plaintiff requests:

26. Defendants Donovan, Steinberg, Jane Doe and all persons acting in concert with them be enjoined during the pendency of this action and permanently from infringing the copyright of the

plaintiff in any manner, and from copying, distributing, publishing or displaying any of the six essays.

27. The defendants be required to deliver up to be impounded during the pendency of this action all copies of the six essays in their possession or under their control.

28. Statutory damages under 17 U.S.C. § 504(a)(2) in the amount of $10,000 per essay from defendant Donovan for her willful infringement of the plaintiff's copyrights.

29. Statutory damages of $10,000 per essay from defendant Steinberg for his willful infringement of the plaintiff's copyrights.

30. Statutory damages of $10,000 per essay from Jane Doe for her willful infringement of the plaintiff's copyrights.

31. That under 17 U.S.C. § 505, the defendants pay the plaintiff's full costs for bring this action and reasonable attorney's fees.

32. And such other and further relief as is just.

Dated: October 1, 2008
New York, N.Y.

Roy Den Hollander, Esq.
Attorney and plaintiff
545 East 14 Street, 10D
New York, N.Y. 10009
(917) 687-0652

EXHIBIT "A"

Saturday, September 02, 2006 11:56 AM
Fear Corrupts
Â© Roy Den Hollander 2006
The purpose of the Feminist Movement is not equality, justice or freedom, but powerâ€"power over men. Virtually every female lives with a never-ending fear that just about any man has the physical power to do with her as he wishes. He can beat her up, rape or kill her with his bare hands, providing no one else is present to prevent it. She does, however, have recourse to the courts, and if she is dead, the prosecutor will try to avenge her, but when a female faces a man in a situation of imminent physical violence, sheâ€™s powerless.
This lack of power to protect their own beings has driven many females to an uncontrollable fury and madness that has spawned a slithering, insidious, malicious obsession to control men totally by gutting their freedom of thought and speech and relegating them to the non-human status of beasts.
Feminists, or more appropriately Feminazis, use well-proven totalitarian tricks to reach this end. They propagandize their goal as liberation of all females, but in reality they aim to warp society's institutions into a big sister that relentlessly attacks, humiliates and demoralizes men.
The Feminazis profess their aim is to raise the consciousness of men and females, but they are actually carrying out a campaign of indoctrination and social pressure by assuming the role of scolding mothers or shrews. Their true goal is to domesticate men into sheepish little boys who will blindly obey their self-righteous, hypocritical and bigoted whims.
Having tasted social power, the Feminazis will not stop until they reshape America and eventually the world into an intolerant hell complete with thought-control, inquisitions, intimidation, enslavement and, as one Feminazi priestess advocated, a reduction in the male population to 10%. Perhaps the reduced male population will be kept in protective hamlets surrounded by armed guards and barbed wire where females can safely pick out their pleasure for the night and where females' fears remain entombed.

posted by admin with 0 Comments
Saturday, August 12, 2006 12:43 PM
Two Sides
Â© Roy Den Hollander, 2006

When I worked for Metromedia TV News, now Fox News, there was only one way out of the newsroom and above that door was a sign: "Each story has two sidesâ€"make sure you get both." That maxim is no longer followed by the effete, eastern intellectual, white trash, elitist media.

Today, the fifth estate kowtows to the current, political-correctionalist propaganda of depicting females as victims and men as oppressors. The news media and Hollywood portray the role of wife as dreadful and that of the husband as enviable. As with other superficially, politically naive analyses, the Feminazi infested media often fails to look beyond its members own biased beliefs to the reality of being a husband in feminarchy America

Everyday the husband leaves the house and children to trade 8, 10 or 12 hours of his life for the means to provide for his wife and offspring. Beyond food and housing, he must satiate her voracious appetite for material goods in her Sisyphean effort to keep up with Mrs. Jones; assuage her relentless vanity with expensive jewelry, perfumes, clothes and cosmetics; appease with social status her vindictive, vitriolic ranting as age lines her face; satisfy junior's whining for a new toy, bicycle or car; and fulfill his daughter's limitless greed for MTV hyped products.

At work, the husband must win out over others or jeopardize the means of satisfying his insatiable dependents. Job stress is an ever-present companion that contributes to the seven years shorter life span men have as compared to dames. Many husbands, however, do not have to worry about stress, because

their assigned role as serfs to princesses lands them in jobs that kill before stress has a chance to even raise their blood pressure. In the ten most hazardous jobs in America, over 90 percent of the workers are men. Every year industrial accidents kill twelve times more men than girls.

When an unfriendly nation decides to invade a husband's homeland, he, not his wife, will be drafted. The husband will go fight in order to protect his family and their way of life. In the twentieth century, 99 percent of the soldiers killed in wars were men. Perhaps death is the easy way for men to survive a war. Of the over two million young American men who served in Vietnam, approximately 800,000 suffer from post-traumatic stress syndrome. I wonder if any of these guys would have traded washing dishes for the hell they went through and are still suffering from.

In an emergency situation, females, including wives, and children are rescued first while men, including husbands, wait, hoping the grim reaper's scythe swings slowly enough for them to escape.

When the bottom of the economy falls out, the main provider of a family, usually the husband loses his job, which requires the family to seek government assistance. Some welfare programs require the husband to leave his home before the wife and children can receive support. As a result, the wife still has her children and a roof over her head while the husband walks the indifferent streets alone. Approximately 90 percent of America's three million homeless are menâ€"not a few because of lost jobs stolen by broads.

At the other end of the economic scale where both husband and wife have well paying jobs, government and private support groups' discrimination against men has virtually no effect. But a form of male discrimination still exists. When the wife has a child, she often has the option to leave work to raise the child, to work part-time or return to work full-time. The husband also has three options: to continue working, to continue working and to continue working.

Finally, the burdens foisted on husbands and all men by this wo - man's nation cause men to commit suicide five times more often than females. For example, the Vietnam War killed around 58,000 young men; since that war's end, over 58,000 men who served in Vietnam have committed suicide.

When the Feminazis ask, â€œMy God, who would want to be a wife?â€ Given the alternativeâ€"many.
posted by admin with 1 Comments
Saturday, August 12, 2006 12:25 PM
An Invisible Weapon
Â© Roy Den Hollander, 2006

Physical violence mainly injures the body while emotional distress scars the mind. Contemporary feminazi groups and the political-correctionalist media and politicians incessantly depict husbands and boyfriends as brutal batters of their innocent, defenseless wives and concubines. Trendy beliefs claim that a large percentage of America's 50% divorce rate results from the genetically programmed physical violence of men against females. The media, populace and politicians, however, ignore the incapacitating genetically programmed violence of emotional distress that wives and girls batter their beaus with day after day, year after year, which ends in a divorce, early grave for the husband or lawsuit against the man. Females intentionally or recklessly inflict emotional pain on a man with words, intonation of voice, facial demeanor and acts or patterns of behavior, often over a long period of time. For example, every time a guy leaves the refrigerator door open for more than some arbitrarily time limit set by his girl, the domineering paragon of everything correct barks "shut the door!" Over time, opening the refrigerator can become an unpleasant taskâ€"not unlike touching a live wire. Or the reckless, maybe intentional keeping of letters from the wifeâ€™s lover in a place for the husband to find them in order to shatter the world of a faithful husband, especially if her sexual escapades occurred in the year prior to the birth of a child. As

the genetically evil female well knows, a nauseating doubt will plague the husband until the day he dies that his child may not be his. What redress for the pain she caused would the husband have in feminarchy Americaâ€"none! In Russia, he could find some justice by slapping her around a bit, and if she called the cops, theyâ€™d help him out.

Girls have the advantage in America because physical violence is easy to prove: it leaves physical marks that a camera can record. Emotional violence, however, stalks the invisible world of the mind, which makes it a near perfect weapon. Husbands and boyfriends canâ€™t take pictures of the pain broads intentionally and recklessly cause them. Big Sister America is using that fact to tie menâ€™s hands, so they can no longer defend themselves against their girlfriends or wives twisting the blade of emotional pain through their hearts.

When will we see advertisements paid for by taxpayer dollars giving men a number to call to get some ragging, nagging, malicious broad to shut her yap? Not until science invents a technique for measuring emotional distress. Until then, a man has no choice but to follow Mother Nature, regardless of the cost, and slap the broad across the chops to stop the barrage of emotional bullets spewing from her tongue, which, of course, has always been a girlâ€™s gun.

posted by admin with 0 Comments
Wednesday, July 05, 2006 4:43 PM

A Different Time

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 weekâ€™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 Vietnamâ€"all of them men, of course, and all of them guys I knew.

posted by admin with 0 Comments
Friday, May 12, 2006 3:21 PM

Do Men Cause the Wars?

By Roy Den Hollander

During a trip to the evil empireâ€"formerly the Soviet Union but still as evil as everâ€"a budding middle-aged Feminazi translator sternly ended her exposition about a battle depicted in a World War II museum outside Moscow with â€œMen cause the wars!â€ The American academicians and others along on the tour, including the males who were no longer men, nodded approvingly. Not me, my juvenile delinquent attitude, which Iâ€™ve never been able or wanted to outgrow, made me speak upâ€"â€œTell that to the guys pushing up daises in the Falklands!â€ That shut the broadâ€™s duplicitous mouth.

The Falklands, however, was just one war in which a female, Margaret Thatcher, helped kill 252 British and 655 Argentine soldiers, sailors, and airmen while doing in only three British females. What about all the other wars? Men certainly die in them in greater numbers than girls: the first Iraq war totaled about 22,000 men on both sides to 11 American female combat deaths and in Vietnam 58,185 American men to 8â€"thatâ€™s rightâ€"8 American females. But are guys the sole cause of that which destroys so many more men than broads? The National Organization of Witches (N.O.W.) and other

modern-day matriarchic tyrants would have us believe so because it infers that if men cause the wars, than they get what they deserve in war.

Letâ€™s look at the first Iraq war and April Glassby, the American ambassador to Iraq in 1990. She met Saddam Hussein just before he invaded Kuwait. At that time, there was rising tension between Iraq and Kuwait, Iraq was mobilizing and there were reports that Saddam might move across the border. So what did April tell Saddam at their meeting: the United States had no obligation to defend Kuwait. How dumb can you get! For dames it has no limits, especially in situations suited for men. Maybe April didnâ€™t want to offend Saddamâ€™s sensitivities by popping his illusion as the modern day Saladin. Whatever the reason for her stupidity, after April tells Saddam â€œgreen light,â€ he naturally invadesâ€"as would any guy when a girl gives him the go-aheadâ€"even though April probably meant â€œred light.â€ What was Saddam suppose to doâ€"read the bimboâ€™s mind? So he invades, figuring the U.S. wonâ€™t intervene because thatâ€™s what its ambassador said, and if the U.S. wonâ€™t than no one will.

As for Viet Nam, lots of contributing factors went into bringing us that war, including the 1.8 million more votes Lyndon Johnson received from females than men in 1964. Of course, those bimbos didnâ€™t swing the election and Barry Goldwater might have dragged us into the same quagmire, but just looking at history as it played-out shows that more girls than guys were responsible for re-electing LBJ who turned Viet Nam into a male meat grinder.

How about the big killer of menâ€"World War II? The war that prompted the bimbat Russian translator to blame only men. This requires a little historyâ€"something the Feminazis are excellent at ignoring or re-writing.

The treaty ending the First World War set up the League of Nations. In order for the League, like the United Nations today, to have any power required America as a member. The League ended up including most of Europe, including Germany, as well as Japan and Chinaâ€"but no U.S. Hereâ€™s why: President Woodrow Wilson and the leader of the Senate, Henry Cabot Lodge, had some disagreements over the League. Since the Senate would have to approve the treaty that called for U.S. membership, a compromise was crucial and likely because both men were politicians. But when Wilson suffered a stroke, his wife, in effect, took over as Presidentâ€"that doomed any chance of an agreement. When was the last time you tried to reach a compromise with a female? Itâ€™s not possible! To broads â€œcompromiseâ€ means only one thing: Do it their way! Without the U.S., the League ultimately proved incapable of preventing aggression by the Axis Powers in the 1930s, which culminated in World War II.

Another Mistress of War includes Queen Victoria with her campaigns of imperialism in Africa: the Anglo-Zulu War and the two Boer Wars. The Queen used 250,000 troops to conduct a scorched earth policy against the Boers and throw Africans and Boers into concentration camps: 27,927 Boers (of whom 22,074 were children under 16) and about 20,000 Africans died of starvation, disease and exposure. In all, about 25% of the Boer inmates and 17% of the African ones died. Concentration camps werenâ€™t new in 1900, but under the British matriarch Victoria, they wreaked an unprecedented toll of human misery. The Second Boer War alone cost around 75,000 lives â€" 22,000 British soldiers, 6,000-7,000 Boer soldiers, 20,000-28,000 Boer civilians and perhaps 25,000 Africans. The population of the world back then was 26% of what it is now, so multiply these figures by four to understand the scope of feminine barbarity.

Then thereâ€™s one of the all time Hoing champs: Catherine the Great of Russia. Ho Catherine started or instigated a number of wars in order to expand her domain to the South and East into the Ottoman Empire and bite off pieces of Poland in the West. Her eminence killed plenty men in order to add some 200,000 square miles to Russian territory, and when finished, she had bankrupted the county. The current German chancellor Angela Merkel has a picture of Catherine the Great in her office because, as Angela says, â€œCatherine was a strong woman,â€ which in Feminaziese means an unabashed Ho and destroyer of men.

There are plenty of other female tyrants throughout history who have unleashed the irrational fury of their twisted emotions when slighted, given vent to their insatiable greed and blown mindlessly passed

the chance of a compromise to kill plenty of men and others. The Feminazis conveniently ignored history hoping us guys will do the same and buy into their con of the empathetic female leader. Donâ€™t be fooled; broads are only empathetic so long as theyâ€™re looking in the mirror. The fighting and dying in wars will always fall on the shoulders of men, so it seems wise that to avoid unnecessary wars, men should keep bimbos out of the political decision making process.
posted by admin with 2 Comments
Friday, March 24, 2006 11:54 PM
Some Differences: Men v. Girls

Â© Roy Den Hollander, 2006
Feminazi propaganda claims that except for a few mounds of flesh and "gender" organs, there's basically no difference between men and girls. They say broads can do virtually anything men canâ€"perhaps, but can they do the tasks evolutionarily suited for men as well as men? Not in the real world they can't.
Would you waste time and money watching a bunch of broads trying to play basketball when you can catch a higher quality of ball played by men in college or the NBA? I don't think so. Of course, if the girls play in their tongs and halter tops, that's different. If you need someone to do your taxes, you'd be a fool to use a bimbo. Studies at Vanderbilt University show that thirteen times more boys than girls score above 700 on the math part of the SAT. Why risk going to jail because some feminazi ditz can't add? Or what about investing the money for which you had to put up with so much grief to earn in an economy where over 50% of the jobs are held by dames? Are you going to hand it over to some vain Feminazi such as the former CEO of Hewlett Packard who spent lots of company resources and time aggrandizing herself while the stock dropped 55%? On the other hand, when it comes to prostitution ringsâ€"invest with the sluts. Los Angeles recently busted the largest call girl operation in its history that had raked in five to eight million in just 22 months. It was run by broads: a 42 year-old Russian whore and her 22 year-old harlot daughter who is still on the lam. Money for sex-any broads natural calling.
But when it comes to the work Mother Nature made men for, girls don't cut it. So the next time some Feminazi gives you that stern, serious lookâ€"like the one your mother did when trying to tell you something that made no senseâ€"and says, "I'm a strong and independent woman," meaning she's as good and tough as a guy, ask her to step outside. "Excuse me!" She'll indignantly respond in a tone meant to intimidate. Reply with "I'm challenging you to a duel. Let's see how strong, independent and tough you really are. You can even choose the weapons, so long as they're not T and As or duplicity." That'll shut her yap.
Feminazi proselytizing even demands us to believe that girls are better suited for certain male activities-only the high paying and powerful ones of course-because broads are more compassionate and caring. Nobody wants a compassionate general, but let's see whether bimbos really are "compassionate." Take a husband and wife who both work. While driving, the wife slams into another car-not surprising since she's running her mouth on a cell phone and between breaths and gibberish, she's sucking down a coffee latte. She ends up in the hospital-good-for weeks. The family income is cut, but the husband's main concern is that she's okay and gets well. He knows they'll make it through the financial crunch. Reverse the situation. The husband is broadsided by some bimbo yakking on her cell phone and sipping a coffee latte. The accident, more like recklessness, sends him to the hospital for weeks. The wife's only concern is the impact on her of the loss of income and sex. Sex, unless she's an adulteress, which most wives are until men no longer find them attractive. While this example shows females as being less compassionate than men, it does show them as equals in one sense: both are primarily concerned about the wife.
Although girls are not as competent as men at many tasks; they aren't powerless. Mother Nature gave them the ability to use sex, sexual favors and sympathy to win what they want. But feminarchy America now allows them to habitually get away with conduct they never could have before. Feminazis believe the universe exempted them from civilized conduct by making them female even though that was just an accident.
Some examples: Has a girl ever summarily pushed you out of the way in a crowded night club or in a stampede to squeeze her fat ass into a bus or subway spot that could fit only one of her cheeks? What

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
Roy Den Hollander,

Plaintiff on behalf of himself
and all others similarly situated,

Civil Action No. 07 CV 5873 (MGC)

-against-

See ¶ 11

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

Defendants .
----------x

DECLARATION OF DEBORAH SWINDELLS DONOVAN IN OPPOSITION TO PLAINTIFFS MOTION TO DISQUALIFY JUDGE CEDARBAUM

Deborah Swindells Donovan, an attorney duly admitted to practice in theState of New York, hereby affirms the following under the penalty of perjury:

1. I am a partner with the law firm of Gordon & Rees, L.L.P., counsel for Defendant Lotus, one of the nightclubs named in the within action. As counsel for Lotus, I am fully familiar with the facts set forth herein. This Declaration is submitted in opposition to the frivolous Motion To Disqualify Judge Cedarbaum, filed by Plaintiff Roy Den Hollander on or about October 7, 2007. I attended the October 3, 2007 Initial Pretrial Conference (the "Conference") that Plaintiff unsuccessfully submits provides a basis for his motion to disqualify Judge Cedarbaum.

2. In my twenty-four years as a practicing attorney, who appears primarily in federal court, Plaintiff's contention that he "had no notice that the subject matter of the [Conference] was

antagonism or disdain on the Judge's part toward men. Plaintiff ¶¶ 5, 13, 14. Rather, the exchange reflected the Court's concern that it might lack jurisdiction, and she questioned Plaintiff extensively concerning this potential issue. When Plaintiff identified two lower court decisions in support of his position, Judge Cedarbaum invited him to send her those cases, thereby demonstrating her receptiveness to legal authority that supported Plaintiff's premise that the extensive regulation by the State is sufficient to constitute the necessary state action to confer Section 1983 jurisdiction.

9. Plaintiff's characterization of the Judge as "repeatedly interrupt[ing] him and cut[ting him] off" is inaccurate. Plaintiff ¶ 12. Rather, it was my observation that Plaintiff repeatedly interrupted Judge Cedarbaum, raising his voice in an effort to keep the Judge from finishing her remarks.

10. Plaintiff's accusation that Judge Cedarbaum "was motivated by sexual bias, sexual prejudice, and partiality toward the class of men on whose behalf the male named plaintiff brought this suit" is fantasy. Nothing was said by the Court that possibly could be construed as reflecting discriminatory animus against men. The conference focused solely on the jurisdictional question, not the substance of whether "Ladies Nights" discriminate against men. The accusation that the Judge is sexually biased or prejudiced against men is merely self-serving speculation.

11. This speculation stands in stark contrast to Plaintiff's unrelenting bias against females. Perhaps Plaintiff would prefer a male judge, given his negative stereotypes of women on the Internet, frequently referring to them as "feminazi." The attached Exhibit A includes examples of Plaintiff's invective against women. It is my understanding these "articles" appeared on the Internet. I personally have read diatribes by Plaintiff on the Internet which are entirely consistent with many of the views expressed in this exhibit. Unfortunately, I did not save them because Plaintiff's opinion of women is not at issue in the lawsuit he has brought. Had I

known he would level a baseless charge of gender discrimination against Judge Cedarbaum personally, I certainly would have retained them as they unequivocally reflect his misogyny. The articles suggest Plaintiff is challenging Judge Cedarbaum's impartiality simply because she is female, not biased. Plaintiff is the one who is sexually biased, not Judge Cedarbaum.

Dated: New York, New York
October 23, 2007

Deborah Swindells Donovan (DD 3421)

A Different Time

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.

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D

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By Roy Den Hollander

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indifferent streets alone. Approximately 90 percent of America's three million homeless are men—not a few because of lost jobs.

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Finally, the burdens foisted on husbands and all men by this wo - man's nation cause men to commit suicide five times more often than females. For example, the Vietnam War killed around 58,000 young men; since that war's end, over 58,000 men who served in Vietnam have committed suicide.

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An Invisible Weapon
By Roy Den Hollander

Physical violence mainly injures the body while emotional distress sears the mind. Contemporary feminazi groups and the political-correctionalist media and politicians incessantly depict husbands and boyfriends as brutal batters of their innocent, defenseless wives and concubines. Trendy beliefs claim that a large percentage of America's 50% divorce rate results from the genetically programmed physical violence of men against females. The media, populace and politicians, however, ignore the incapacitating genetically programmed violence of emotional distress that wives and girls batter their beaus with day after day, year after year, which ends in a divorce, early grave for the husband or lawsuit against the man.

Females intentionally or recklessly inflict emotional pain on a man with words, intonation of voice, facial demeanor and acts or patterns of behavior, often over a long period of time. For example, every time a guy leaves the refrigerator door open for more than some arbitrarily time limit set by his girl, the domineering paragon of everything correct barks, "shut the door!" Over time, opening the refrigerator can become an unpleasant task—not unlike touching a live wire. Or the reckless, maybe intentional keeping of letters from the wife's lover in a place for the husband to find them in order to shatter the world of a faithful husband, especially if her sexual escapades occurred in the year prior to the birth of a child. As the genetically evil female well knows, a nauseating doubt will plague the husband until the day he dies that his child may not be his. What redress for the pain she caused would the husband have in feminarchy America—none! In Russia, he could find some justice by slapping her around a bit, and if she called the cops, they'd help him out.

Girls have the advantage in America because physical violence is easy to prove: it leaves physical marks that a camera can record. Emotional violence, however, stalks the invisible

world of the mind, which makes it a near perfect weapon. Husbands and boyfriends can't take pictures of the pain broads intentionally and recklessly cause them. Big Sister America is using that fact to tie men's hands, so they can no longer defend themselves against their girlfriends or wives twisting the blade of emotional pain through their hearts.

When will we see advertisements paid for by taxpayer dollars giving men a number to call to get some ragging, nagging, malicious slut to shut her yap? Not until science invents a technique for measuring emotional distress. Until then, a man has no choice but to follow Mother Nature, regardless of the cost, and slap the slut across the chops to stop the barrage of emotional bullets spewing from her tongue, which, of course, has always been a girl's gun.

Do Men Cause the Wars?
By Roy Den Hollander

During a trip to the evil empire—formerly the Soviet Union but still as evil as ever—a budding middle-aged Feminazi translator sternly ended her exposition about a battle depicted in a World War II museum outside Moscow with "Men cause the wars!" The American academicians and others along on the tour, including the males who were no longer men, nodded approvingly. Not me, my juvenile delinquent attitude, which I've never been able or wanted to outgrow, made me speak up—"Tell that to the guys pushing up daises in the Falklands!" That shut the broad's duplicitous mouth.

The Falklands, however, was just one war in which a female, Margaret Thatcher, helped kill 252 British and 655 Argentine soldiers, sailors, and airmen while doing in only three British females. What about all the other wars? Men certainly die in them in greater numbers than girls: the first Iraq war totaled about 22,000 men on both sides to 11 American female combat deaths and in Vietnam 58,185 American men to 8—that's right—8 American females. But are guys the sole cause of that which destroys so many more men than broads? The National Organization of Witches (N.O.W.) and other modern-day matriarchic tyrants would have us believe so because it infers that if men cause the wars, than they get what they deserve in war.

Let's look at the first Iraq war and April Glassby, the American ambassador to Iraq in 1990. She met Saddam Hussein just before he invaded Kuwait. At that time, there was rising tension between Iraq and Kuwait, Iraq was mobilizing and there were reports that Saddam might move across the border. So what did April tell Saddam at their meeting: the United States had no obligation to defend Kuwait. How dumb can you get! For dames it has no limits, especially in situations suited for men. Maybe April didn't want to offend Saddam's sensitivities by popping his illusion as the modern day Saladin. Whatever the reason for her stupidity, after

April tells Saddam "green light," he naturally invades—as would any guy when a girl gives him the go-ahead—even though April probably meant "red light." What was Saddam suppose to do—read the bimbo's mind? So he invades, figuring the U.S. won't intervene because that's what its ambassador said, and if the U.S. won't than no one will.

As for Viet Nam, lots of contributing factors went into bringing us that war, including the 1.8 million more votes Lyndon Johnson received from females than men in 1964. Of course, those bimbos didn't swing the election and Barry Goldwater might have dragged us into the same quagmire, but just looking at history as it played-out shows that more girls than guys were responsible for re-electing LBJ who turned Viet Nam into a male meat grinder.

How about the big killer of men—World War II? The war that prompted the bimbat Russian translator to blame only men. This requires a little history—something the Feminazis are excellent at ignoring or re-writing.

The treaty ending the First World War set up the League of Nations. In order for the League, like the United Nations today, to have any power required America as a member. The League ended up including most of Europe, including Germany, as well as Japan and China—but no U.S. Here's why: President Woodrow Wilson and the leader of the Senate, Henry Cabot Lodge, had some disagreements over the League. Since the Senate would have to approve the treaty that called for U.S. membership, a compromise was crucial and likely because both men were politicians. But when Wilson suffered a stroke, his wife, in effect, took over as President—that doomed any chance of an agreement. When was the last time you tried to reach a compromise with a female? It's not possible! To broads "compromise" means only one thing: Do it their way! Without the U.S., the League ultimately proved incapable of preventing aggression by the Axis Powers in the 1930s, which culminated in World War II.

Another Mistress of War includes Queen Victoria with her campaigns of imperialism in Africa: the Anglo-Zulu War and the two Boer Wars. The Queen used 250,000 troops to conduct a scorched earth policy against the Boers and throw Africans and Boers into concentration camps: 27,927 Boers (of whom 22,074 were children under 16) and about 20,000 Africans died of starvation, disease and exposure. In all, about 25% of the Boer inmates and 17% of the African ones died. Concentration camps weren't new in 1900, but under the British matriarch Victoria, they wreaked an unprecedented toll of human misery. The Second Boer War alone cost around 75,000 lives — 22,000 British soldiers, 6,000-7,000 Boer soldiers, 20,000-28,000 Boer civilians and perhaps 25,000 Africans. The population of the world back then was 26% of what it is now, so multiply these figures by four to understand the scope of feminine barbarity.

Then there's one of the all time Hoing champs: Catherine the Great of Russia. Ho Catherine started or instigated a number of wars in order to expand her domain to the South and East into the Ottoman Empire and bite off pieces of Poland in the West. Her eminence killed plenty men in order to add some 200,000 square miles to Russian territory, and when finished, she had bankrupted the county. The current German chancellor Angela Merkel has a picture of Catherine the Great in her office because, as Angela says, "Catherine was a strong woman," which in Feminaziese means an unabashed Ho and destroyer of men.

There are plenty of other female tyrants throughout history who have unleashed the irrational fury of their twisted emotions when slighted, given vent to their insatiable greed and blown mindlessly passed the chance of a compromise to kill plenty of men and others. The Feminazis conveniently ignored history hoping us guys will do the same and buy into their con of the empathetic female leader. Don't be fooled; broads are only empathetic so long as they're looking in the mirror. The fighting and dying in wars will always fall on the shoulders of men,

so it seems wise that to avoid unnecessary wars, men should keep bimbos out of the political decision making process.

Some Differences: Men v. Girls
By Roy Den Hollander

Feminazi propaganda claims that except for a few mounds of flesh and "gender" organs, there's basically no difference between men and girls. They say broads can do virtually anything men can—perhaps, but can they do the tasks evolutionarily suited for men as well as men? Not in the real world they can't!

Would you waste time and money watching a bunch of broads trying to play basketball when you can catch a higher quality of ball played by men in college or the NBA? I don't think so. Of course, if the girls play in their tongs and halter tops, that's different. If you need someone to do your taxes, you'd be a fool to use a bimbo. Studies at Vanderbilt University show that thirteen times more boys than girls score above 700 on the math part of the SAT. Why risk going to jail because some feminazi ditz can't add? Or what about investing the money for which you had to put up with so much grief to earn in an economy where over 50% of the jobs are held by dames? Are you going to hand it over to some vain Feminazi such as the former CEO of Hewlett Packard who spent lots of company resources and time aggrandizing herself while the stock dropped 55%? On the other hand, when it comes to prostitution rings—invest with the sluts. Los Angles recently busted the largest call girl operation in its history that had raked in five to eight million in just 22 months. It was run by broads: a 42 year-old Russian whore and her 22 year-old harlot daughter who is still on the lam. Money for sex—any broads natural calling.

But when it comes to the work Mother Nature made men for, girls don't cut it. So the next time some Feminazi gives you that stern, serious look—like the one your mother did when trying to tell you something that made no sense—and says, "I'm a strong and independent woman," meaning she's as good and tough as a guy, ask her to step outside.

"Excuse me!" She'll indignantly respond in a tone meant to intimidate.

Reply with "I'm challenging you to a duel. Let's see how strong, independent and tough you really are. You can even choose the weapons, so long as they're not T and As or duplicity." That'll shut her yap.

Feminazi proselytizing even demands us to believe that girls are better suited for certain male activities—only the high paying and powerful ones of course—because broads are more compassionate and caring. Nobody wants a compassionate general, but let's see whether bimbos really are "compassionate." Take a husband and wife who both work. While driving, the wife slams into another car—not surprising since she's running her mouth on a cell phone and between breaths and gibberish, she's sucking down a coffee latte. She ends up in the hospital—good—for weeks. The family income is cut, but the husband's main concern is that she's okay and gets well. He knows they'll make it through the financial crunch. Reverse the situation. The husband is broadsided by some bimbo yakking on her cell phone and sipping a coffee latte. The accident, more like recklessness, sends him to the hospital for weeks. The wife's only concern is the impact on her of the loss of income and sex. Sex, unless she's an adulteress, which most wives are until men no longer find them attractive. While this example shows females as being less compassionate than men, it does show them as equals in one sense: both are primarily concerned about the wife.

Although girls are not as competent as men at many tasks; they aren't powerless. Mother Nature gave them the ability to use sex, sexual favors and sympathy to win what they want. But feminarchy America now allows them to habitually get away with conduct they never could have before. Feminazis believe the universe exempted them from civilized conduct by making them female even though that was just an accident.

Some examples: Has a girl ever summarily pushed you out of the way in a crowded night club or in a stampede to squeeze her fat ass into a bus or subway spot that could fit only one of her cheeks? What about cutting in line or mouthing off in such a vitriolic manner that if it came from a man he'd end up with a knuckle sandwich? Or take these female teachers caught having sex with their underage students. They receive no prison time or one to three years while male teachers get 15 to 20. Then there's females murdering their children without getting fried, killing their husbands and not even going to jail or butchering incipient human beings on demand because they want the choice to act irresponsibly in satisfying her sexual whim of the moment.

Feminarchy America allows broads to get away with more than Mother Nature intended, not because girls are superior but because females are now making the rules. We have forgotten six million years of hominid evolution: dames aren't here to soothe the "savage beast"; the "savage beast" is here to limit broads' infinite capacity for evil. And the most virulent feminine evil is the Feminazis.

So what's to be done with a Feminazi? Strap her to a missile and drop her it on the Middle East. They'll know how to deal with her.

Fear Corrupts
By Roy Den Hollander

The purpose of the Feminist Movement is not equality, justice or freedom, but power—power over men.

Virtually every female lives with a never-ending fear that just about any man has the physical power to do with her as he wishes. He can beat her up, rape or kill her with his bare hands, providing no one else is present to prevent it. She does, however, have recourse to the courts, and if she is dead, the prosecutor will try to avenge her, but when a female faces a man in a situation of imminent physical violence, she's powerless.

This lack of power to protect their own beings has driven many females to an uncontrollable fury and madness that has spawned a slithering, insidious, malicious obsession to control men totally by gutting their freedom of thought and speech and relegating them to the non-human status of beasts.

Feminists, or more appropriately Feminazis, use well-proven totalitarian tricks to reach this end. They propagandize their goal as liberation of all females, but in reality they aim to warp society's institutions into a big sister that relentlessly attacks, humiliates and demoralizes men.

The Feminazis profess their aim is to raise the consciousness of men and females, but they are actually carrying out a campaign of indoctrination and social pressure by assuming the role of scolding mothers or shrews. Their true goal is to domesticate men into sheepish little boys who will blindly obey their self-righteous, hypocritical and bigoted whims.

Having tasted social power, the Feminazis will not stop until they reshape America and eventually the world into an intolerant hell complete with thought-control, inquisitions, intimidation, enslavement and, as one Feminazi priestess advocated, a reduction in the male population to 10%. Perhaps the reduced male population will be kept in protective hamlets surrounded by armed guards and barbed wire where females can safely pick out their pleasure for the night and where females' fears remain entombed.

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

Roy Ben HOLLANDER

Plaintiff

102057/2007

against

William K. FASANO

Defendant

Affirmation in Opposition

Attorney(s) for

Paul Steinberg

Defendant William Fasano

The Silk Building Suite 408
14 East Fourth Street, NY NY 10012-1141
(212) 529-5400

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated:

Signature

Print Signer's Name

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a entered in the office of the clerk of the within named Court on 20

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on 20 at M.

Dated:

Paul W. Steinberg
Attorney for Defendant

Attorney(s) for

To:

Office Address & Tel. No.:

Attorney(s) for

Saturday, September 02, 2006 11:56 AM
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Â© Roy Den Hollander 2006
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posted by admin with 0 Comments
Saturday, August 12, 2006 12:43 PM
Two Sides
Â© Roy Den Hollander, 2006

When I worked for Metromedia TV News, now Fox News, there was only one way out of the newsroom and above that door was a sign: "Each story has two sidesâ€"make sure you get both." That maxim is no longer followed by the effete, eastern intellectual, white trash, elitist media.

Today, the fifth estate kowtows to the current, political-correctionalist propaganda of depicting females as victims and men as oppressors. The news media and Hollywood portray the role of wife as dreadful and that of the husband as enviable. As with other superficially, politically naive analyses, the Feminazi infested media often fails to look beyond its members own biased beliefs to the reality of being a husband in feminarchy America

Everyday the husband leaves the house and children to trade 8, 10 or 12 hours of his life for the means to provide for his wife and offspring. Beyond food and housing, he must satiate her voracious appetite for material goods in her Sisyphean effort to keep up with Mrs. Jones; assuage her relentless vanity with expensive jewelry, perfumes, clothes and cosmetics; appease with social status her vindictive, vitriolic ranting as age lines her face; satisfy junior's whining for a new toy, bicycle or car; and fulfill his daughter's limitless greed for MTV hyped products.

At work, the husband must win out over others or jeopardize the means of satisfying his insatiable dependents. Job stress is an ever-present companion that contributes to the seven years shorter life span men have as compared to dames. Many husbands, however, do not have to worry about stress, because

their assigned role as serfs to princesses lands them in jobs that kill before stress has a chance to even raise their blood pressure. In the ten most hazardous jobs in America, over 90 percent of the workers are men. Every year industrial accidents kill twelve times more men than girls.

When an unfriendly nation decides to invade a husband's homeland, he, not his wife, will be drafted. The husband will go fight in order to protect his family and their way of life. In the twentieth century, 99 percent of the soldiers killed in wars were men. Perhaps death is the easy way for men to survive a war. Of the over two million young American men who served in Vietnam, approximately 800,000 suffer from post-traumatic stress syndrome. I wonder if any of these guys would have traded washing dishes for the hell they went through and are still suffering from.

In an emergency situation, females, including wives, and children are rescued first while men, including husbands, wait, hoping the grim reaper's scythe swings slowly enough for them to escape.

When the bottom of the economy falls out, the main provider of a family, usually the husband loses his job, which requires the family to seek government assistance. Some welfare programs require the husband to leave his home before the wife and children can receive support. As a result, the wife still has her children and a roof over her head while the husband walks the indifferent streets alone. Approximately 90 percent of America's three million homeless are menâ€"not a few because of lost jobs stolen by broads.

At the other end of the economic scale where both husband and wife have well paying jobs, government and private support groups' discrimination against men has virtually no effect. But a form of male discrimination still exists. When the wife has a child, she often has the option to leave work to raise the child, to work part-time or return to work full-time. The husband also has three options: to continue working, to continue working and to continue working.

Finally, the burdens foisted on husbands and all men by this wo - man's nation cause men to commit suicide five times more often than females. For example, the Vietnam War killed around 58,000 young men; since that war's end, over 58,000 men who served in Vietnam have committed suicide.

When the Feminazis ask, â€œMy God, who would want to be a wife?â€ Given the alternativeâ€"many.
posted by admin with 1 Comments
Saturday, August 12, 2006 12:25 PM
An Invisible Weapon
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posted by admin with 0 Comments
Wednesday, July 05, 2006 4:43 PM

A Different Time

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 weekâ€™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 Vietnamâ€"all of them men, of course, and all of them guys I knew.

posted by admin with 0 Comments
Friday, May 12, 2006 3:21 PM

Do Men Cause the Wars?

By Roy Den Hollander

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The Falklands, however, was just one war in which a female, Margaret Thatcher, helped kill 252 British and 655 Argentine soldiers, sailors, and airmen while doing in only three British females. What about all the other wars? Men certainly die in them in greater numbers than girls: the first Iraq war totaled about 22,000 men on both sides to 11 American female combat deaths and in Vietnam 58,185 American men to 8â€"thatâ€™s rightâ€"8 American females. But are guys the sole cause of that which destroys so many more men than broads? The National Organization of Witches (N.O.W.) and other

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posted by admin with 2 Comments
Friday, March 24, 2006 11:54 PM
Some Differences: Men v. Girls

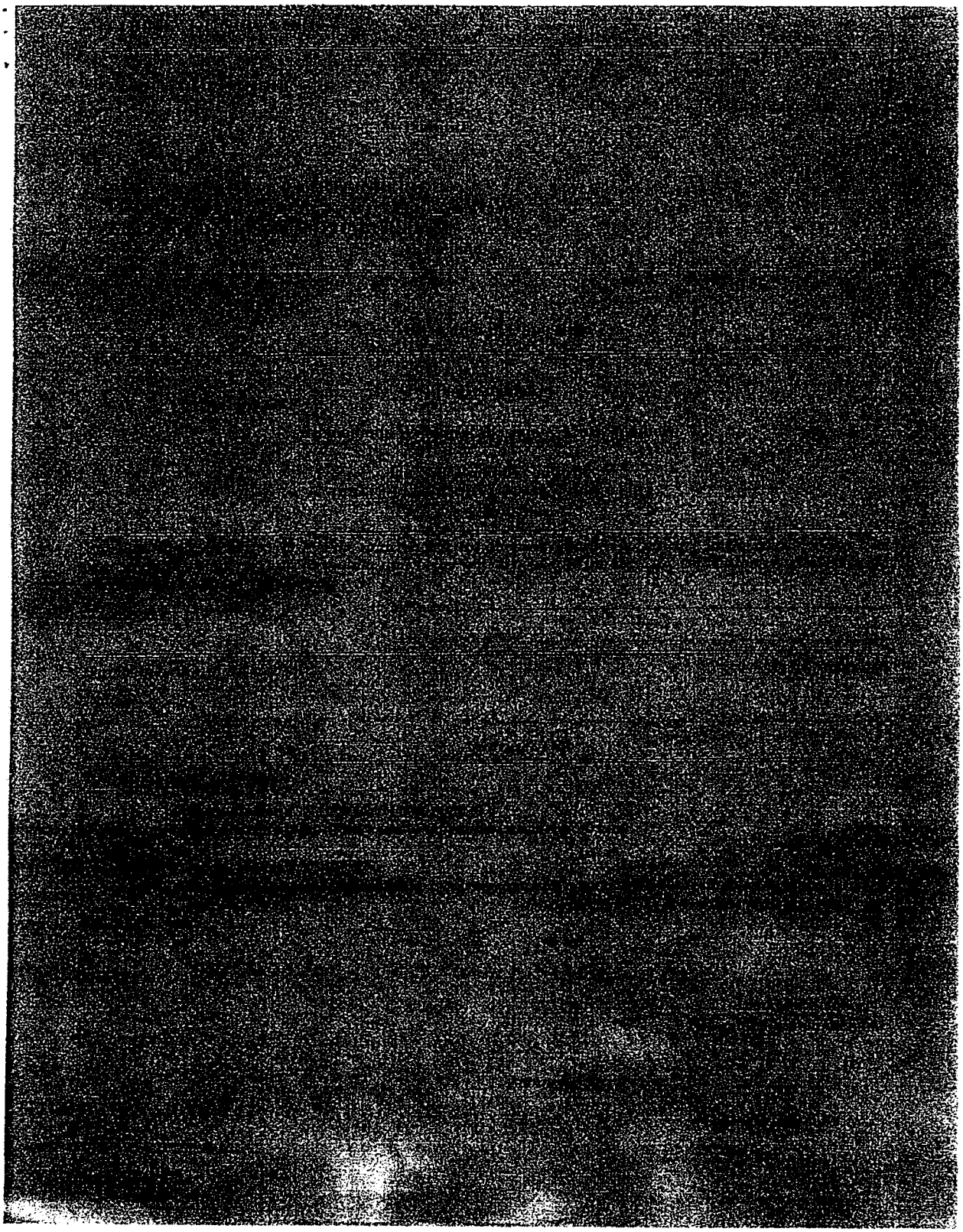
Â© Roy Den Hollander, 2006
Feminazi propaganda claims that except for a few mounds of flesh and "gender" organs, there's basically no difference between men and girls. They say broads can do virtually anything men canâ€"perhaps, but can they do the tasks evolutionarily suited for men as well as men? Not in the real world they can't.
Would you waste time and money watching a bunch of broads trying to play basketball when you can catch a higher quality of ball played by men in college or the NBA? I don't think so. Of course, if the girls play in their tongs and halter tops, that's different. If you need someone to do your taxes, you'd be a fool to use a bimbo. Studies at Vanderbilt University show that thirteen times more boys than girls score above 700 on the math part of the SAT. Why risk going to jail because some feminazi ditz can't add? Or what about investing the money for which you had to put up with so much grief to earn in an economy where over 50% of the jobs are held by dames? Are you going to hand it over to some vain Feminazi such as the former CEO of Hewlett Packard who spent lots of company resources and time aggrandizing herself while the stock dropped 55%? On the other hand, when it comes to prostitution ringsâ€"invest with the sluts. Los Angeles recently busted the largest call girl operation in its history that had raked in five to eight million in just 22 months. It was run by broads: a 42 year-old Russian whore and her 22 year-old harlot daughter who is still on the lam. Money for sex-any broads natural calling.
But when it comes to the work Mother Nature made men for, girls don't cut it. So the next time some Feminazi gives you that stern, serious lookâ€"like the one your mother did when trying to tell you something that made no senseâ€"and says, "I'm a strong and independent woman," meaning she's as good and tough as a guy, ask her to step outside. "Excuse me!" She'll indignantly respond in a tone meant to intimidate. Reply with "I'm challenging you to a duel. Let's see how strong, independent and tough you really are. You can even choose the weapons, so long as they're not T and As or duplicity." That'll shut her yap.
Feminazi proselytizing even demands us to believe that girls are better suited for certain male activities-only the high paying and powerful ones of course-because broads are more compassionate and caring. Nobody wants a compassionate general, but let's see whether bimbos really are "compassionate." Take a husband and wife who both work. While driving, the wife slams into another car-not surprising since she's running her mouth on a cell phone and between breaths and gibberish, she's sucking down a coffee latte. She ends up in the hospital-good-for weeks. The family income is cut, but the husband's main concern is that she's okay and gets well. He knows they'll make it through the financial crunch. Reverse the situation. The husband is broadsided by some bimbo yakking on her cell phone and sipping a coffee latte. The accident, more like recklessness, sends him to the hospital for weeks. The wife's only concern is the impact on her of the loss of income and sex. Sex, unless she's an adulteress, which most wives are until men no longer find them attractive. While this example shows females as being less compassionate than men, it does show them as equals in one sense: both are primarily concerned about the wife.
Although girls are not as competent as men at many tasks; they aren't powerless. Mother Nature gave them the ability to use sex, sexual favors and sympathy to win what they want. But feminarchy America now allows them to habitually get away with conduct they never could have before. Feminazis believe the universe exempted them from civilized conduct by making them female even though that was just an accident.
Some examples: Has a girl ever summarily pushed you out of the way in a crowded night club or in a stampede to squeeze her fat ass into a bus or subway spot that could fit only one of her cheeks? What

about cutting in line or mouthing off in such a vitriolic manner that if it came from a man he'd end up with a knuckle sandwich? Then there's murdering her children without getting fried, killing her husband and not even going to jail or butchering incipient human beings on demand because she wants the choice to act irresponsibly in satisfying her sexual whim of the moment?

Feminarchy America allows broads to get away with more than Mother Nature intended, not because girls are superior but because females are now making the rules. We have forgotten six million years of hominid evolution: dames aren't here to soothe the "savage beast"; the "savage beast" is here to limit broads' infinite capacity for evil. And the most virulent feminine evil is the Feminazis.

So what's to be done with a Feminazi? Strap her to a missile and drop her it on the Middle East . They'll know how to deal with her.

posted by admin with 0 Comments



Saturday, September 02, 2006 11:56 AM
Fear Corrupts
Â© Roy Den Hollander 2006
The purpose of the Feminist Movement is not equality, justice or freedom, but powerâ€"power over men. Virtually every female lives with a never-ending fear that just about any man has the physical power to do with her as he wishes. He can beat her up, rape or kill her with his bare hands, providing no one else is present to prevent it. She does, however, have recourse to the courts, and if she is dead, the prosecutor will try to avenge her, but when a female faces a man in a situation of imminent physical violence, sheâ€™s powerless.
This lack of power to protect their own beings has driven many females to an uncontrollable fury and madness that has spawned a slithering, insidious, malicious obsession to control men totally by gutting their freedom of thought and speech and relegating them to the non-human status of beasts.
Feminists, or more appropriately Feminazis, use well-proven totalitarian tricks to reach this end. They propagandize their goal as liberation of all females, but in reality they aim to warp society's institutions into a big sister that relentlessly attacks, humiliates and demoralizes men.
The Feminazis profess their aim is to raise the consciousness of men and females, but they are actually carrying out a campaign of indoctrination and social pressure by assuming the role of scolding mothers or shrews. Their true goal is to domesticate men into sheepish little boys who will blindly obey their self-righteous, hypocritical and bigoted whims.
Having tasted social power, the Feminazis will not stop until they reshape America and eventually the world into an intolerant hell complete with thought-control, inquisitions, intimidation, enslavement and, as one Feminazi priestess advocated, a reduction in the male population to 10%. Perhaps the reduced male population will be kept in protective hamlets surrounded by armed guards and barbed wire where females can safely pick out their pleasure for the night and where females' fears remain entombed.

posted by admin with 0 Comments
Saturday, August 12, 2006 12:43 PM
Two Sides
Â© Roy Den Hollander, 2006

When I worked for Metromedia TV News, now Fox News, there was only one way out of the newsroom and above that door was a sign: "Each story has two sidesâ€"make sure you get both." That maxim is no longer followed by the effete, eastern intellectual, white trash, elitist media.

Today, the fifth estate kowtows to the current, political-correctionalist propaganda of depicting females as victims and men as oppressors. The news media and Hollywood portray the role of wife as dreadful and that of the husband as enviable. As with other superficially, politically naive analyses, the Feminazi infested media often fails to look beyond its members own biased beliefs to the reality of being a husband in feminarchy America

Everyday the husband leaves the house and children to trade 8, 10 or 12 hours of his life for the means to provide for his wife and offspring. Beyond food and housing, he must satiate her voracious appetite for material goods in her Sisyphean effort to keep up with Mrs. Jones; assuage her relentless vanity with expensive jewelry, perfumes, clothes and cosmetics; appease with social status her vindictive, vitriolic ranting as age lines her face; satisfy junior's whining for a new toy, bicycle or car; and fulfill his daughter's limitless greed for MTV hyped products.

At work, the husband must win out over others or jeopardize the means of satisfying his insatiable dependents. Job stress is an ever-present companion that contributes to the seven years shorter life span men have as compared to dames. Many husbands, however, do not have to worry about stress, because

their assigned role as serfs to princesses lands them in jobs that kill before stress has a chance to even raise their blood pressure. In the ten most hazardous jobs in America, over 90 percent of the workers are men. Every year industrial accidents kill twelve times more men than girls.

When an unfriendly nation decides to invade a husband's homeland, he, not his wife, will be drafted. The husband will go fight in order to protect his family and their way of life. In the twentieth century, 99 percent of the soldiers killed in wars were men. Perhaps death is the easy way for men to survive a war. Of the over two million young American men who served in Vietnam, approximately 800,000 suffer from post-traumatic stress syndrome. I wonder if any of these guys would have traded washing dishes for the hell they went through and are still suffering from.

In an emergency situation, females, including wives, and children are rescued first while men, including husbands, wait, hoping the grim reaper's scythe swings slowly enough for them to escape.

When the bottom of the economy falls out, the main provider of a family, usually the husband loses his job, which requires the family to seek government assistance. Some welfare programs require the husband to leave his home before the wife and children can receive support. As a result, the wife still has her children and a roof over her head while the husband walks the indifferent streets alone. Approximately 90 percent of America's three million homeless are menâ€"not a few because of lost jobs stolen by broads.

At the other end of the economic scale where both husband and wife have well paying jobs, government and private support groups' discrimination against men has virtually no effect. But a form of male discrimination still exists. When the wife has a child, she often has the option to leave work to raise the child, to work part-time or return to work full-time. The husband also has three options: to continue working, to continue working and to continue working.

Finally, the burdens foisted on husbands and all men by this wo - man's nation cause men to commit suicide five times more often than females. For example, the Vietnam War killed around 58,000 young men; since that war's end, over 58,000 men who served in Vietnam have committed suicide.

When the Feminazis ask, â€œMy God, who would want to be a wife?â€ Given the alternativeâ€"many.
posted by admin with 1 Comments
Saturday, August 12, 2006 12:25 PM
An Invisible Weapon
Â© Roy Den Hollander, 2006

Physical violence mainly injures the body while emotional distress scars the mind. Contemporary feminazi groups and the political-correctionalist media and politicians incessantly depict husbands and boyfriends as brutal batters of their innocent, defenseless wives and concubines. Trendy beliefs claim that a large percentage of America's 50% divorce rate results from the genetically programmed physical violence of men against females. The media, populace and politicians, however, ignore the incapacitating genetically programmed violence of emotional distress that wives and girls batter their beaus with day after day, year after year, which ends in a divorce, early grave for the husband or lawsuit against the man. Females intentionally or recklessly inflict emotional pain on a man with words, intonation of voice, facial demeanor and acts or patterns of behavior, often over a long period of time. For example, every time a guy leaves the refrigerator door open for more than some arbitrarily time limit set by his girl, the domineering paragon of everything correct barks "shut the door!" Over time, opening the refrigerator can become an unpleasant taskâ€"not unlike touching a live wire. Or the reckless, maybe intentional keeping of letters from the wifeâ€™s lover in a place for the husband to find them in order to shatter the world of a faithful husband, especially if her sexual escapades occurred in the year prior to the birth of a child. As

the genetically evil female well knows, a nauseating doubt will plague the husband until the day he dies that his child may not be his. What redress for the pain she caused would the husband have in feminarchy Americaâ€"none! In Russia, he could find some justice by slapping her around a bit, and if she called the cops, theyâ€™d help him out.

Girls have the advantage in America because physical violence is easy to prove: it leaves physical marks that a camera can record. Emotional violence, however, stalks the invisible world of the mind, which makes it a near perfect weapon. Husbands and boyfriends canâ€™t take pictures of the pain broads intentionally and recklessly cause them. Big Sister America is using that fact to tie menâ€™s hands, so they can no longer defend themselves against their girlfriends or wives twisting the blade of emotional pain through their hearts.

When will we see advertisements paid for by taxpayer dollars giving men a number to call to get some ragging, nagging, malicious broad to shut her yap? Not until science invents a technique for measuring emotional distress. Until then, a man has no choice but to follow Mother Nature, regardless of the cost, and slap the broad across the chops to stop the barrage of emotional bullets spewing from her tongue, which, of course, has always been a girlâ€™s gun.

posted by admin with 0 Comments
Wednesday, July 05, 2006 4:43 PM

A Different Time

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 weekâ€™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 Vietnamâ€"all of them men, of course, and all of them guys I knew.

posted by admin with 0 Comments
Friday, May 12, 2006 3:21 PM

Do Men Cause the Wars?

By Roy Den Hollander

During a trip to the evil empireâ€"formerly the Soviet Union but still as evil as everâ€"a budding middle-aged Feminazi translator sternly ended her exposition about a battle depicted in a World War II museum outside Moscow with â€œMen cause the wars!â€ The American academicians and others along on the tour, including the males who were no longer men, nodded approvingly. Not me, my juvenile delinquent attitude, which Iâ€™ve never been able or wanted to outgrow, made me speak upâ€"â€œTell that to the guys pushing up daises in the Falklands!â€ That shut the broadâ€™s duplicitous mouth.

The Falklands, however, was just one war in which a female, Margaret Thatcher, helped kill 252 British and 655 Argentine soldiers, sailors, and airmen while doing in only three British females. What about all the other wars? Men certainly die in them in greater numbers than girls: the first Iraq war totaled about 22,000 men on both sides to 11 American female combat deaths and in Vietnam 58,185 American men to 8â€"thatâ€™s rightâ€"8 American females. But are guys the sole cause of that which destroys so many more men than broads? The National Organization of Witches (N.O.W.) and other

modern-day matriarchic tyrants would have us believe so because it infers that if men cause the wars, than they get what they deserve in war.

Letâ€™s look at the first Iraq war and April Glassby, the American ambassador to Iraq in 1990. She met Saddam Hussein just before he invaded Kuwait. At that time, there was rising tension between Iraq and Kuwait, Iraq was mobilizing and there were reports that Saddam might move across the border. So what did April tell Saddam at their meeting: the United States had no obligation to defend Kuwait. How dumb can you get! For dames it has no limits, especially in situations suited for men. Maybe April didnâ€™t want to offend Saddamâ€™s sensitivities by popping his illusion as the modern day Saladin. Whatever the reason for her stupidity, after April tells Saddam â€œgreen light,â€ he naturally invadesâ€"as would any guy when a girl gives him the go-aheadâ€"even though April probably meant â€œred light.â€ What was Saddam suppose to doâ€"read the bimboâ€™s mind? So he invades, figuring the U.S. wonâ€™t intervene because thatâ€™s what its ambassador said, and if the U.S. wonâ€™t than no one will.

As for Viet Nam, lots of contributing factors went into bringing us that war, including the 1.8 million more votes Lyndon Johnson received from females than men in 1964. Of course, those bimbos didnâ€™t swing the election and Barry Goldwater might have dragged us into the same quagmire, but just looking at history as it played-out shows that more girls than guys were responsible for re-electing LBJ who turned Viet Nam into a male meat grinder.

How about the big killer of menâ€"World War II? The war that prompted the bimbat Russian translator to blame only men. This requires a little historyâ€"something the Feminazis are excellent at ignoring or re-writing.

The treaty ending the First World War set up the League of Nations. In order for the League, like the United Nations today, to have any power required America as a member. The League ended up including most of Europe, including Germany, as well as Japan and Chinaâ€"but no U.S. Hereâ€™s why: President Woodrow Wilson and the leader of the Senate, Henry Cabot Lodge, had some disagreements over the League. Since the Senate would have to approve the treaty that called for U.S. membership, a compromise was crucial and likely because both men were politicians. But when Wilson suffered a stroke, his wife, in effect, took over as Presidentâ€"that doomed any chance of an agreement. When was the last time you tried to reach a compromise with a female? Itâ€™s not possible! To broads â€œcompromiseâ€ means only one thing: Do it their way! Without the U.S., the League ultimately proved incapable of preventing aggression by the Axis Powers in the 1930s, which culminated in World War II.

Another Mistress of War includes Queen Victoria with her campaigns of imperialism in Africa: the Anglo-Zulu War and the two Boer Wars. The Queen used 250,000 troops to conduct a scorched earth policy against the Boers and throw Africans and Boers into concentration camps: 27,927 Boers (of whom 22,074 were children under 16) and about 20,000 Africans died of starvation, disease and exposure. In all, about 25% of the Boer inmates and 17% of the African ones died. Concentration camps werenâ€™t new in 1900, but under the British matriarch Victoria, they wreaked an unprecedented toll of human misery. The Second Boer War alone cost around 75,000 lives â€" 22,000 British soldiers, 6,000-7,000 Boer soldiers, 20,000-28,000 Boer civilians and perhaps 25,000 Africans. The population of the world back then was 26% of what it is now, so multiply these figures by four to understand the scope of feminine barbarity.

Then thereâ€™s one of the all time Hoing champs: Catherine the Great of Russia. Ho Catherine started or instigated a number of wars in order to expand her domain to the South and East into the Ottoman Empire and bite off pieces of Poland in the West. Her eminence killed plenty men in order to add some 200,000 square miles to Russian territory, and when finished, she had bankrupted the county. The current German chancellor Angela Merkel has a picture of Catherine the Great in her office because, as Angela says, â€œCatherine was a strong woman,â€ which in Feminaziese means an unabashed Ho and destroyer of men.

There are plenty of other female tyrants throughout history who have unleashed the irrational fury of their twisted emotions when slighted, given vent to their insatiable greed and blown mindlessly passed

the chance of a compromise to kill plenty of men and others. The Feminazis conveniently ignored history hoping us guys will do the same and buy into their con of the empathetic female leader. Donâ€™t be fooled; broads are only empathetic so long as theyâ€™re looking in the mirror. The fighting and dying in wars will always fall on the shoulders of men, so it seems wise that to avoid unnecessary wars, men should keep bimbos out of the political decision making process.
posted by admin with 2 Comments
Friday, March 24, 2006 11:54 PM
Some Differences: Men v. Girls

Â© Roy Den Hollander, 2006
Feminazi propaganda claims that except for a few mounds of flesh and "gender" organs, there's basically no difference between men and girls. They say broads can do virtually anything men canâ€"perhaps, but can they do the tasks evolutionarily suited for men as well as men? Not in the real world they can't.
Would you waste time and money watching a bunch of broads trying to play basketball when you can catch a higher quality of ball played by men in college or the NBA? I don't think so. Of course, if the girls play in their tongs and halter tops, that's different. If you need someone to do your taxes, you'd be a fool to use a bimbo. Studies at Vanderbilt University show that thirteen times more boys than girls score above 700 on the math part of the SAT. Why risk going to jail because some feminazi ditz can't add? Or what about investing the money for which you had to put up with so much grief to earn in an economy where over 50% of the jobs are held by dames? Are you going to hand it over to some vain Feminazi such as the former CEO of Hewlett Packard who spent lots of company resources and time aggrandizing herself while the stock dropped 55%? On the other hand, when it comes to prostitution ringsâ€"invest with the sluts. Los Angeles recently busted the largest call girl operation in its history that had raked in five to eight million in just 22 months. It was run by broads: a 42 year-old Russian whore and her 22 year-old harlot daughter who is still on the lam. Money for sex-any broads natural calling.
But when it comes to the work Mother Nature made men for, girls don't cut it. So the next time some Feminazi gives you that stern, serious lookâ€"like the one your mother did when trying to tell you something that made no senseâ€"and says, "I'm a strong and independent woman," meaning she's as good and tough as a guy, ask her to step outside. "Excuse me!" She'll indignantly respond in a tone meant to intimidate. Reply with "I'm challenging you to a duel. Let's see how strong, independent and tough you really are. You can even choose the weapons, so long as they're not T and As or duplicity." That'll shut her yap.
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Some examples: Has a girl ever summarily pushed you out of the way in a crowded night club or in a stampede to squeeze her fat ass into a bus or subway spot that could fit only one of her cheeks? What

about cutting in line or mouthing off in such a vitriolic manner that if it came from a man he'd end up with a knuckle sandwich? Then there's murdering her children without getting fried, killing her husband and not even going to jail or butchering incipient human beings on demand because she wants the choice to act irresponsibly in satisfying her sexual whim of the moment?

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So what's to be done with a Feminazi? Strap her to a missile and drop her it on the Middle East . They'll know how to deal with her.

posted by admin with 0 Comments

SA 60

Plaintiff-Appellant's Complaint filed in Hollander v. Institute for Research on Women & Gender at Columbia University, U.S. Department of Education, New York State Board of Regents, et al., No. 08 Civ. 7286 (S.D.N.Y. August 18, 2008) [SA60-SA77]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Roy Den Hollander,

Docket No. 08 Civ 7286

Plaintiff on behalf of himself
and all others similarly situated,

CIVIL RIGHTS CLASS ACTION COMPLAINT

-against-

Institute for Research on Women & Gender at Columbia University;
School of Continuing Education at Columbia University;
Trustees of Columbia University in the City of New York;
U.S. Department of Education;
Margaret Spellings, U.S. Secretary of Education in her official capacity;
Board of Regents of the University of the State of New York, in his or her official and individual capacity;
Chancellor of the Board of Regents, Robert M. Bennett, in his official and individual capacity;
New York State Commissioner of the Department of Education, Richard P. Mills, in his official and individual capacity; and
President of the New York State Higher Education Services Corp., James C. Ross, in his official and individual capacity;

Defendants.

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I. Introduction

1. This class action seeks declaratory and injunctive relief and nominal damages against the defendants for the following:

   a. The New York State and Federal defendants violate the 1st Amendment to the U.S. Constitution by aiding the establishment of the religion **Feminism** at Columbia University through the University's Women's Studies program.
   b. The U.S. Department of Education ("USDOE") and its Secretary violate equal protection under the 5th Amendment to the U.S. Constitution by aiding the intentional discriminatory impact against men by Columbia University's Women's Studies program;
   c. The New York State defendants violate the equal protection clause of the 14th Amendment to the U.S. Constitution (enforced by 42 U.S.C. § 1983), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), and N.Y. Civil Rights Law § 40-c by fostering, supporting and assisting the intentional discriminatory impact against men by Columbia University's Women's Studies program;
   d. Columbia University, the Institute for Research on Women and Gender, and the School of Continuing Education carry out the intentional discriminatory impact against men of

the Women's Studies program in violation of the equal protection clause of the 14th Amendment to the U.S. Constitution (enforced by 42 U.S.C. § 1983), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq*.), and N.Y. Civil Rights Law § 40-c.

II. Violation of the Establishment Clause of the First Amendment

2. The N.Y. State and Federal defendants violate the establishment clause of the First Amendment to the U.S. Constitution by aiding and advancing the modern-day religion of Feminism proselytized through the Women's Studies program by Columbia University's Institute for Research on Women and Gender ("IRWG"), which also propagates Feminism in the School of Continuing Education ("Continuing Education").

3. The establishment clause forbids government action that benefits a religion. A belief system need not be theistic in nature to be a religion but rather can stem from moral, ethical or even malevolent tenets that are held with the strength of traditional religious convictions.

4. IRWG adopts and propagates the modern-day religion of Feminism through its lectures, seminars, consciousness indoctrination sessions, publications, career preparations, counseling, historical revisionism, propagandizing, unanimity of thought labeled "politically correct," a pantheon of idols such as Mary Wollstonecraft, *de facto* disciples and apostles, and three public lecture series.

5. The IRWG website states that the Institute "is the locus of interdisciplinary feminist scholarship and teaching at Columbia University" and "[t]he [Women's Studies] program is intended to introduce students to the long arc of feminist discourse about the cultural and historical representation of nature, power, and the social construction of difference. It encourages them to engage the debates regarding the ethical and political issues of equality and justice that emerge in such discussions. And it links the questions of gender and sexuality to those of racial, ethnic, and other kinds of hierarchical difference."

6. Columbia's Continuing Education furthers the spreading of the religion Feminism by providing post-baccalaureate and alumni Women's Studies courses established by IRWG.

7. The Board of Regents of the University of the State of New York, in his or her official and individual capacity ("Regents"), and the Chancellor of the Board of Regents, in his official and individual capacity ("Chancellor"), have provided approval and support and continue to provide approval and support for the modern-day religion of Feminism as practiced at Columbia.

8. The Regents exercise legislative functions concerning the higher educational system in New York State, determine higher education policies, and establish the rules for carrying those policies into effect throughout the higher educational institutions of the State, which includes Columbia University.

9. The Regents established a policy by which Women's Studies programs would advocate and spread Feminism in New York colleges and universities, such as Columbia.

10. There is no Regent policy to establish Men's Studies programs.

11. Through the Regents power to suspend the charters of higher educational institutions in New York and its duty to approve or disapprove educational programs and curricula, the Regents control what is taught in colleges and universities in the State, including Columbia.

12. The Regents preside over the N.Y. State Department of Education, which functions as the Regents' administrative arm in carrying out the Regents' mandates and policies. The N.Y. State Department of Education's regulations for effecting the mandates and policies of the Regents must be approved or authorized by the Regents.

13. The N.Y. State Department of Education, headed by the Commissioner, formulates plans, provides funds, monitors, and coordinates higher educational programs, such as Women's Studies programs, in New York colleges and universities, including Columbia.

14. The New York State Commissioner for the Department of Education, in his official and individual capacity ("Commissioner"), under a grant of authority from the Regents, approved the initial registration and subsequent re-registrations of the Women's Studies program carried out by IRWG and provided to Continuing Education.

15. Registration and re-registration of the Women's Studies program required the program to be consistent with the Regents' Statewide Plan for Higher Education, the Regents' rules, and the N.Y. State Department of Education's regulations. Without conforming to such, the Commissioner could not approve the program, and without approval the IRWG Women's Studies program would not be credited toward a degree or a graduate certification.

16. In order to approve the Women's Studies program, the Commissioner reviewed for compliance with the Regents' standards the program's curriculum, faculty, library, academic advising, administrative oversight, financial resources, and physical facilities as provided by IRWG and Continuing Education.

17. The Commissioner, acting under authority from the Regents, administers Federal and State grants and scholarships to promote higher educational programs, such as, on information and belief, the Women's Studies program at Columbia University.

18. On information and belief, the Commissioner provides direct financial aid to Columbia University, IRWG and Continuing Education that go into promoting Feminism of the Women's Studies program.

19. The President of the New York State Higher Education Services Corporation, in his official and individual capacity ("President of HESC"), approves and provides financial assistance to Columbia University that benefits the Women's Studies program.

20. HESC provides loan guarantees, grants, and scholarships that enable students to fund their education at Columbia in the Women's Studies program provided by IRWG.

21. The U.S. Department of Education, with the approval of its Secretary, in her official capacity, provides financial assistance to Columbia University that benefits the Women's Studies program provided by IRWG.

22. USDOE, with the approval of its Secretary, provides grants, direct loans of federal funds, guarantees for loans from private lenders, and work-study programs that enable students to fund their education at Columbia and in the Women's Studies program at IRWG.

23. USDOE, with the approval of its Secretary, makes Federal Stafford Loans available to post-baccalaureate students in Continuing Education who can prepare for graduate school or academic advancement in Feminism through Women's Studies provided by IRWG.

24. In fiscal year 2007, USDOE provided $14.9 million in Perkins' Loans to students at Columbia of which, on information and belief, a proportion went to students in the Women's Studies program provided by IRWG.

25. In fiscal year 2007, USDOE made available to Columbia students $192.2 million from the Stafford Loan and Federal Plus Loan programs of which, on information and belief, a proportion went to students in the Women's Studies program at IRWG and post-baccalaureate students in Continuing Education taking IRWG courses.

26. Federal tuition aid grants, federal supplemental educational opportunity grants, and Pell grants were awarded to Columbia Students in the amount of $9.3 million in 2007 of which, on information and belief, a proportion went to students training in Feminism in the Women's Studies program at IRWG.

27. Total Federal awards to Columbia, as opposed to Columbia students, in 2007 were $601,300,000. Columbia's total operating budget was $2.83 billion. Of the total federal awards to Columbia, $15.9 million originated with USDOE.

28. Neither Federal nor State government may favor any sect; they may not adopt programs or practices which aid any religion, but both have done that in providing support and approval, directly and indirectly, for the propagating of the modern-day religion of Feminism through Women's Studies at Columbia University.

III. Violation of Equal Protection under the 5th and 14th Amendments

29. Columbia University, IRWG and Continuing Education discriminate on the basis of sex against men by advocating, teaching and providing training in Feminist doctrine and the application of that doctrine in order to impose a unitary belief system of Feminist orthodoxy that dictates the speech and conduct of members of the University and society at large.

30. The Feminist agenda, curriculum and practices at Columbia, IRWG and Continuing Education are motivated by prejudice toward men that leads to sex-based stereotyping of males by depicting them as the primary cause for most, if not all, the world's ills throughout history. Females, on the other hand are credited with inherent goodness who were oppressed and colonized by men.

31. Columbia, IRWG and Continuing Education advocate that the civil rights of today's males be minimized or eliminated not just as punishment for the alleged past wrongs of their forefathers but to assure the preferential treatment of modern-day females in determining the occupants of the prestigious and influential positions in current American society and into the indefinite future.

32. As a bastion of bigotry toward men, IRWG teaches, trains and advocates strategy and tactics for abridging the rights of men—rights that are guaranteed by the U.S. Constitution and advocated by the Declaration of Independence and the Universal Declaration of Human Rights.

33. Simply put: the IRWG Women's Studies program demonizes men and exalts women in order to justify discrimination against men based on collective guilt.

34. Columbia University, IRWG and Continuing Education do not balance the Feminist doctrine and dogma with a masculine curriculum or program.

35. The IRWG Women's Studies program benefits Columbia female students, female alumni and females in general without any equivalent Columbia program for providing similar benefits to male students, male alumni or males in general.

36. According to the IRWG course guide, "[p]rimary courses focus on women, gender, and/or feminist or [lesbian] perspectives." IRWG has 71 members on its faculty but only four are males.

37. Since one of the greatest powers over human beings is the power of belief, Columbia, IRWG and Continuing Education's propagation of the one-sided and fundamentally false belief system of Feminism has a disproportionately adverse impact on men and the plaintiffs.

38. The negative stereotyping of men and lack of balance at Columbia, IRWG and Continuing Education reveal a discriminatory intent motivated by bigotry and fail to serve the acquisition of knowledge for men that tends to develop and train the individual both mentally and morally.

39. Columbia, IRWG and Continuing Education's ill-will discrimination has the effect of predominantly depriving male students and male alumni of an equal educational opportunity as compared with females.

40. Men, the ones most likely to take courses providing contrary perspectives to the Feminist Women's Studies program, have no opportunity to do so whether current students, alumni or post-baccalaureate students, who take courses through Continuing Education.

41. The class represented by Roy Den Hollander consists of Columbia University's alumni men, post-baccalaureate men, and male students who would take advantage of a Men's Studies program and all the attendant benefits if offered.

42. The class members, because of their sex, are being denied an opportunity for education, knowledge, career opportunities, and acquiring skills for defending against fraudulent Feminist attacks as a result of Columbia, IRWG and Continuing Education's failure to offer a Men's Studies program.

43. Female alumni and female students, the ones most likely to take Women's Studies courses, are treated preferentially based on sex, since IRWG offers numerous Feminist courses that may lead to an undergraduate degree or a graduate certification and Continuing Education provides a post-baccalaureate Feminist program and auditing of Feminist courses.

44. Since the policies and practices of the Regents, Chancellor, Commissioner, Columbia, IRWG and Continuing Education created or approved the anti-male Feminist Women's Studies at Columbia but no countervailing Men's Studies, these defendants have shutout a substantial number of men from educational opportunities needed to counter the dissembling Feminist dogma prevalent in the governmental, social, business, political, media, and domestic spheres of modern-day life in America.

45. Columbia, IRWG and Continuing Education teach females to compete unfairly with men without providing any programs for men on how to individually defeat such unfair and discriminatory practices against them whether in college, the work force or before governmental bodies.

46. Female students and alumni of Columbia receive a public benefit without any comparable benefit provided to male students and alumni.

47. The Regents, Chancellor, Commissioner, Columbia, IRWG and Continuing Education's polices and practices effectively ban Men's Studies from Columbia with the effect of institutionalizing anti-male prejudice at the University and propagating such in the society as a whole.

48. Knowing that their actions created and perpetuate the institutionalization of prejudice toward men and the attendant harm that follows, the Regents, Chancellor, Commissioner, Columbia, IRWG and Continuing Education intentionally continue their polices and practices of ensconcing anti-male bigotry and denying males the same educational opportunity as provided females.

49. The Regents, Chancellor, Commissioner, Columbia, IRWG and Continuing Education's actions are arbitrary and completely unrelated to the goal of providing higher education.

50. The purposes of education to enlighten, elucidate, provide the practical means for furthering oneself in society, and to defend oneself against unjust attacks are thwarted when doctrines favorable to one group, even that of the majority, advocate discrimination against the minority and administrators fail to provide programs helpful to the minority in countering such discrimination.

51. While the Regents, Chancellor, Commissioner, Columbia, IRWG and Continuing Education will claim that their policies and practices are to remove obstacles to women's access to educational and career opportunities, there exists behind the public relations an invidiously discriminatory purpose as a motivating factor.

52. The following are just a few of the anti-male practices driven by prejudice that have been taken by directors of IRWG:

    a. Carolyn Heilbrun, who committed suicide in 2003, used "theory and scholarship at the expense of the lives of [men]."
    b. Jean Howard developed a $15 million hiring program at Columbia that discriminates against male teachers and stifles the freedom of thought of men. Any male applicant for a teaching position must demonstrate a rigid conformity of thought and speech to Feminism.
    c. Marianne Hirsch and Elizabeth Povinelli, the current heads of IRWG, maintain IRWG as a center for the National Council for Research on Women, which uses IRWG work and that of other higher educational tax-exempt institutions to influence legislation through Congressional briefings that result in the discrimination of men, such as with the passage of the Violence Against Women Act.

53. Even minimizing Columbia, IRWG and Continuing Education's negative stereotyping of men, the existence of a permissible purpose cannot sustain conduct that has an impermissible effect when ill will is present.

54. The Federal and State defendants provide assistance and tangible financial aid that facilitates, reinforces, and supports discrimination motivated by malice against men at Columbia, IRWG and Continuing Education.

55. Federal and State governmental benefits also directly result in disparate treatment of men at Columbia, IRWG and Continuing Education because no comparable public assistance is provided to further the interests of male students and male alumni and no equivalent governmental largess is provided to counter anti-male discrimination.

56. The U.S. Department of Education, its Secretary, and the President of HESC knowingly assist the discrimination against men by providing financial funds to Columbia, IRWG and Continuing Education either directly or indirectly.

57. The U.S. Department of Education and its Secretary's aiding of discriminatory practices at Columbia, IRWG and Continuing Education violates the equal protection clause of the 5th Amendment to the U.S. Constitution.

58. The Regents, Chancellor, Commissioner, President of HESC, Columbia, IRWG and Continuing Education's aiding, furthering or conducting of discriminatory practices at Columbia University violates the equal protection clause of the 14th Amendment to the U.S. Constitution.

59. The Regents, Chancellor, Commissioner and President of HESC have a duty to conform educational assistance and programs to 14th Amendment standards to assure against the deprivation of rights to equal protection. They have not done so with respect to the IRWG Women's Studies program at Columbia.

IV. 42 U.S.C. 1983

60. A suit to enforce individual rights protected by the 14th Amendment requires an action pursuant to 42 U.S.C. 1983: "Every person who, under color of [state law] … subjects [another] … to the deprivation of any rights … secured by the Constitution and [federal] laws, shall be liable to the party injured …."

61. Columbia University, IRWG and Continuing Education are "persons" under 42 U.S.C. 1983 and operate under the color of state law.

62. Columbia University is classified as an independent private institution, but unlike most others in New York, Columbia received its charter directly from the Legislature of the State of New York.

63. The Regents, Chancellor and Commissioner are arms of the State of New York.

64. Through the Regents, Chancellor and Commissioner, New York State has undertaken a policy to actively control not only the curricula of private universities, such as Columbia, but also the faculty, library, academic advising, administrative oversight, financial resources, and physical facilities.

65. Registration of higher educational institutions and programs is the basis for determining educational program eligibility for State student aid programs and for professional licensure or teacher certification.

66. The Commissioner visits and inspects Columbia, IRWG and Continuing Education for compliance with the Regents' rules and the Commissioner's regulations.

67. Through the registration and re-registration of programs by the Regents, Chancellor and Commissioner, the three authorized and continue to authorize the Women's Studies program provided by IRWG at Columbia University. If the Regents, Chancellor and Commissioner wanted the program changed or eliminated, a mere order from them would suffice.

68. Without State authorization, the Women's Studies program and IRWG would not exist at Columbia because no credit toward an undergraduate degree, graduate certification or a post-baccalaureate course could be offered.

69. Without State authorization, Columbia, IRWG and Continuing Education and students would not receive Federal and State aid that contributes to supporting the Women's Studies program.

70. The Regents, Chancellor and Commissioner are therefore involved not simply with some activity at Columbia, IRWG and Continuing Education but with the very activity that violates the equal protection rights of the plaintiffs: the Women's Studies program.

71. The Regents and the Chancellor are a quasi-legislative body that rules over Columbia, IRWG and Continuing Education in order to implement State education law and policy through the Commissioner.

72. The Regents, Chancellor and Commissioner's involvement is therefore not ministerial but substantive.

73. The President of HESC is also an arm of the State of New York.

74. HESC provides tuition funding for Columbia students and, on information and belief, students at IRWG, through various loan, scholarship and grant programs, including the nations' largest grant program: Tuition Assistance Program.

75. The operating revenue of Columbia University relies on tuition much more heavily than endowment on which Columbia's peers largely rely.

76. The tuition funding provided by the President of HESC to Columbia, on information and belief, provides crucial financing for the anti-male discriminatory Women's Studies program.

77. The President of HESC is therefore involved in the very practice that discriminates against male students and male alumni: the plaintiff class.

78. Additional involvement of the State in the discriminatory Women's Studies program include:

    a. On information and belief, the Commissioner grants Columbia a monetary sum for every degree awarded under N.Y. Education Law § 6401, which includes degrees in Women's Studies that are the product of discrimination against men.
    b. A variety of State programs are administered by Columbia that provide financial aid to students in the form of direct grants and loans that are paid over to Columbia and, on information and belief, contribute to Continuing Education and IRWG's operations.
    c. Columbia received direct State aid in the amount of $3,447,000 for its fiscal year 2007. On information and belief, an amount of the State aid was provided to Continuing Education and IRWG.

d. New York State helps finance the construction of facilities at Columbia, which, on information and belief, frees up financing for Continuing Education and IRWG.

79. In its early years, Columbia received real estate from the State that subsequently proved lucrative, which may be sufficient to establish state action.

V. Discrimination under Title IX of the Education Amendments of 1972

80. "No person in the United States shall, on the basis of sex, be … denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681.

81. 45 C.F.R. 86.31 states that "education program or activity" includes any academic, … research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

82. Columbia University receives federal financial assistance; therefore, Title IX requirements apply to all of the University's operations, which include the Women's Studies program provided by IRWG.

83. Even if no federal funds are earmarked for Columbia's Women's Studies program or IRWG or Continuing Education, Title IX still prohibits their discriminatory treatment of men.

84. Columbia, IRWG, and Continuing Education knowingly made decisions to provide preferential treatment for females by offering Women's Studies and not to provide equal educational opportunities to males by offering Men's Studies.

85. Columbia, IRWG, and Continuing Education based their decisions on stereotypical assumptions of males as oppressors and females as innocent victims, of males as reaping the rewards of society and females the burdens, of America as a patriarchy as opposed to what it is—a *de facto* matriarchy.

86. Columbia, IRWG, and Continuing Education provide different benefits, based on sex, to its students and alumni by offering a Women's Studies program but not a Men's Studies program.

87. Columbia, IRWG, and Continuing Education deny its male students and male alumni similar benefits that female students and female alumni receive from their Women's Studies program.

88. Columbia, IRWG, and Continuing Education not only limit but actively work against providing male students and male alumni the same advantages and opportunities that the Women's Studies program gives to female students and female alumni.

89. At Columbia University the deleterious impact of its policies and practices in favoring Women's Studies falls disproportionately on men:

a. Male students have no opportunity to earn an undergraduate degree or a graduate certification in Men's Studies, which would "testif[y] to mastery of a body of cross-disciplinary literature and enhance employability, especially in" academia.[1]
b. Male alumni have no opportunity to gain knowledge in a field of Men's Studies by taking continuing education courses or post-baccalaureate studies to prepare for graduate school.
c. Male students and alumni have no opportunity to participate in or inter-react with "a vibrant interdisciplinary community of scholars, researchers and students" in the field of Men's Studies.
d. Male students and alumni do not have the advantage of a "thoroughly interdisciplinary framework, methodological training and substantive guidance in specialized areas of research" into men's issues.
e. The lack of a Men's Studies program denies male students and alumni the opportunity for "an education that is both comprehensive and tailored to individual needs."
f. Male students and alumni are denied the opportunity to "undertake original research and produce advanced scholarship" in Men's Studies.
g. Male students and alumni cannot prepare "for future scholarly work" in Men's Studies or "for careers and future training in law, public policy, social work, community organizing, journalism, medicine, and all those professions in which there is a need for critical and creative interdisciplinary thought" from the male perspective.
h. Male students and alumni who enroll in doctoral programs and professional schools cannot take graduate courses in contra "feminist theory, inquiry, and method."

90. Columbia, IRWG, and Continuing Education fail to effectively accommodate the educational interests and abilities of male students and male alumni by offering only a curriculum in Feminism (Women's Studies) without any countervailing view.

91. Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience, so any argument that Columbia's male students and male alumni are not interested in or lack the educational ability for Men's Studies wrongly justifies sex-based discrimination with archaic and overbroad generalizations about men.

92. Columbia, IRWG, and Continuing Education have so extensively propagated the doctrine of Feminism from the Women's Studies program throughout the University's activities that any opposing voice is quickly and summarily silenced.

93. Women's Studies programs are today the varsity sport of choice for females at Columbia in their never-ending war against men.

94. If Title IX can require universities receiving federal financial assistance to provide a female athletics program, then it surely can require Columbia to provide a Men's Studies program.

95. Male athletic programs are geared primarily toward benefiting men while Women's Studies programs are geared primarily toward benefiting females with Feminist ideology, strategy, tactics and training for exploiting the modern-day social bias against men.

[1] All the quotations in this paragraph are taken from the website of Columbia's IRWG.

96. The Women's Studies program at Columbia gives female students and female alumni an exclusive opportunity over their male competitors in the University and society by using federal resources to provide females with a golf-like handicap that applies to life in modern-day America.

97. Without a Men's Studies program, Columbia male students and male alumni are disadvantaged in competing with females on America's current uneven playing field of life.

98. There is no substantial proportionality between the ratios of the number of females in the Women's Studies program and the ratio of males in a Men's Studies program because Columbia has no such team of teachers, courses, activities and benefits for male students and male alumni.

99. On information and belief, the disproportionately high number of females in the Women's Studies program evinces the discriminatory impact on men, which Columbia has failed to address.

100. Once Columbia, IRWG, and Continuing Education chose to provide educational opportunities inuring to the benefit of its female students and female alumni, they were then required to provide equal educational opportunities for male students and male alumni so as to balance the dissimilar impact of Women's Studies on males and females.

101. Columbia, IRWG, and Continuing Education's provision of Women's Studies results in disparities of a substantial and unjustified nature in the benefits, treatment, services and opportunities granted females and males with the males receiving disproportionately less. For example, Columbia provides disproportionately more financial assistance for the propagation of Feminism, which disadvantages men, than for contrary pedagogies.

102. On information and belief, IRWG provides disproportionately more assistance in making employment opportunities available to female students than males in violation of 34 C.F.R. 106.38.

103. The discriminatory impact of the Women's Studies program is not counter-balanced by an exceedingly persuasive justification. The assertion that American females are disadvantaged is nothing more than a "big lie" strategy. For example:

a. Females earn more per unit of time worked than males. The average man spends 44% more time working or doing work related activities than the average woman, U.S. Department of Labor, Bureau of Labor Statistics, Time Use Survey 2007, Table A-1, and the average woman makes 77% that of the average man. If the two were paid equally for their time actually worked, then the pay for the average woman should be 69.5% that of the average man—not 77%.
b. Females working part-time earn 115% of what part-time male workers. Denise Venable, The Wage Gap Myth, National Center for Policy Analysis, April 12, 2002.

c. Females control over a majority of the assets in America. *See* Lucie Schmidt and Purvi Sevak, Gender, Marriage and Asset Accumulation in the United States, University of Michigan, 2005.
d. Females make 80% of the purchases in America. Marc Rudov, Why Women Don't Negotiate, 2007.
e. The 25 most dangerous occupations in America are 90% occupied by men.
f. Males are 20 times more likely to be killed or injured on the job.
g. Over all occupations, men suffer 92% of the job related deaths while making up 54% of the work force. US Department of Labor, Bureau of Labor Statistics, Current Population Survey, Employment and fatalities, by gender of worker, 2006.
h. Since 1973, abortion has allowed females to murder over 40 million incipient human beings, Center for Disease Control, Abortion Surveillance—U.S. 2004, Table 2, often as a means of birth control.
i. Females, but not men, have various excuses that permit them to significantly lessen their punishment for murdering their newborns (Postpartum Depression), their husbands or boyfriends (Battered Spouse Syndrome or Paroxysmal Insanity), and even their children for which society often blames the husband.
j. Females are generally not punished for perjury in family actions, sexual harassment, rape cases or paternity suits.
k. In some jurisdictions, the husband of the mother of a child born during the marriage will be responsible for child support even though the wife cheated on the husband and conceived with another man and DNA evidence can prove such.
l. Wives receive child custody ten times more often than men, Geoffrey P. Miller, Being There, N.Y.U. School Law, Public Law and Legal Theory Research Paper Series, No. 22, July 2000, p. 11, n. 17, while initiating 70% of the divorces, Marc Rudov, Why Women Don't Negotiate, 2007.
m. Debtor prisons for nonpayment of child support incarcerate mainly men.
n. Males generally receive more prison time than females for any crime.
o. The life expectancy for females in America is five years longer than males.
p. Breast cancer kills around 41,000 females a year and prostate cancer 27,000 males, yet there is twice as much Federal money dedicated to breast cancer than prostate cancer, and there are seven breast cancer drugs for every one prostate cancer drug. Catherine Arnst, A Gender Gap in Cancer, Business Week, June 13, 2007.
q. The United States has an office dedicated to women's health while there is not one for men.
r. Nearly every boy born in America has one of the most sensitive parts of his genitalia removed at an age when he cannot object and without anesthesia.
s. Social Security, Medicare, Medicaid, and welfare programs are paid for mostly by male taxpayers, and all have a majority of female beneficiaries.
t. Over 52,000 American service men died in Vietnam but only eight women.
u. Females still do not have to register for the draft.
v. Females make up 57% of the nation's college students but just over 51% of the population.
w. Nightclubs often allow ladies in for free or a fraction of what they charge men, which over time adds up to a significant transfer of wealth from males to females.

104. The actual aim of Women's Studies is not affirmative action but to create and perpetuate a legal, social and economic substratum occupied by men toiling in a Fritz Lang "Metropolis" like underworld.

105. By offering only Women's Studies, Columbia, IRWG and Continuing Education denigrate and disadvantage men, effect artificial restraints on the individual opportunities for men, and fail to advance the full development of the talents and capacities of this nation's men.

VI. Discrimination under N.Y. Civil Rights Law § 40-c

106. N.Y. Civil Rights Law § 40-c states that "[n]o person shall, because of … sex … be subjected to any discrimination in his … civil rights … by any … corporation or institution, or by the state or any agency … of the state. § 40-c bars discrimination by direct or indirect means.

107. The legislative intent behind § 40-c was to fulfill the State's responsibility of assuring that every individual in New York is afforded equal opportunity to enjoy a full and productive life and that failure to provide such equal opportunity whether because of discrimination, prejudice, intolerance or inadequate education or training not only threatens the rights of New York inhabitants but menaces the institutions and foundations of a free democratic state. N.Y. Civil Rights Law § 40-c, Historical and Statutory Notes.

108. Columbia University is a private educational institution of higher learning organized and existing under the laws of the State of New York.

109. By discriminating against male students and male alumni with its Women's Studies program, Columbia, IRWG and Continuing Education violate N.Y. Civil Rights Law § 40-c.

110. The Regents, Chancellor, Commissioner and President of HESC in their official capacities constitute agencies of the State of New York.

111. By discriminating against male students and male alumni in approving, assisting and aiding Women's Studies at Columbia, the Regents, Chancellor, Commissioner and President of HESC violate N.Y. Civil Rights Law § 40-c.

VII. Injury

112. By singling out for special benefits the religion of Feminism propagated by the Women's Studies program at Columbia University, the Federal and State defendants create a governmental sectarian preference that infringes an unalienable right of the plaintiff class members.

113. "The Religion … of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right." Memorial and Remonstrance Against Religious Assessments,

as reproduced in the Appendix to the dissenting opinion of Rutledge, J., in Everson v. Board of Education, 330 U.S. 1, 63 (2 The Writings of James Madison 183-191 (G. Hunt ed. 1901)).

114. "The Rulers [Federal and State defendants] who are guilty of … encroachment [on that right] exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves." Id.

115. The conduct of all the defendants in promoting only Women's Studies effectively denies the members of the plaintiff class the opportunity to take Men's Studies courses that will prepare and assist them for dealing with, defending against, and fighting the anti-male climate that is pervasive in America today.

116. Because of the defendants' policies and practices in advocating and furthering Feminism and training Feminist "storm-troopers" through the Women's Studies program at Columbia, the plaintiffs face obstacles to educational access and career opportunities solely as the result of an accident of nature that made them men.

117. The defendants' contribution to the establishment and continuation of Feminism as the primary belief system in this society impairs the plaintiffs' rights to fair treatment in employment, business, politics, the courts, the media, by the police, and before executive government agencies.

118. The defendants' advocacy and furthering of Feminism and training of Feminists derogates males while propagandizing the superiority of females with a harm similar, although not yet as egregious, as the Nazification of universities in Germany during the 1930s when education demonized the Jews while demanding genuflection to an Aryan throne.

VIII. Plaintiffs' Class

119. There are questions of law and fact presented in this action that are common to the entire class and that affect the rights of the class.

120. This class action is maintainable under Fed. R. Civ. P. § 23(b)(2) because the defendants have acted on grounds generally applicable to the class, thereby making declaratory and injunctive relief and nominal damages appropriate to the class as a whole.

121. The putative class in this action consists of all males who were students, full or part time, or alumni of Columbia University at some point in time during the three years prior to the filing of this action or all males who currently maintain the status of student or alumni, or all males who will in the future acquire the status of student or alumni.

122. The exact number of members of the class is not known, but it is estimated to be too large for joinder of all members to be practical.

123. The Federal and State defendants are responsible for aiding the establishment of a religion—Feminism—at Columbia University and giving that religion their official imprimatur in violation of the class members' liberty interests by *de facto* forcing them to conform to the establishment of Feminism or keep silent.

124. All the defendants violate the equal protection rights of the plaintiff class members secured under the 5th and 14th Amendments to the U.S. Constitution.

125. Defendants Columbia, IRWG and Continuing Education violate Title IX to the Education Amendments of 1972 by denying benefits and unjustifiably discriminating against the plaintiff class members.

126. Defendants Regents, Chancellor, Commissioner, President of HESC, Columbia, IRWG and Continuing Education discriminate against the class members in violation of N.Y. Civil Rights Law § 40-c.

127. Roy Den Hollander, the named plaintiff and resident of New York County, is an alumnus of Columbia University's Graduate School of Business.

128. As an alumnus, Mr. Den Hollander may take courses in Continuing Education's auditing program, prepare for further graduate work through its Post Baccalaureate Studies or pursue undergraduate studies through the School of General Studies, which offers the same courses with the same teachers as other Columbia undergraduate programs.

129. Mr. Den Hollander explored these avenues for studying and benefiting from Men's Studies in the Fall of 2007 but found there were no such opportunities because Columbia's discriminatory practices only allow for a Women's Studies program.

130. Mr. Den Hollander was denied a public benefit comparable to the public benefit offered female alumni and female students of Columbia.

131. The lack of a Men's Studies program also prevents Mr. Den Hollander and other male alumni and male students from securing the same educational, career, and networking advantages that female alumni and female students can from the Women's Studies program.

IX. Relief Sought

132. This Court declare that the aid and assistance provided by the Federal and State defendants for promoting and advocating Feminism and for training Feminists in the Women's Studies program at Columbia violate the establishment clause of the 1st Amendment.

133. Enjoin the Federal and State defendants from providing any further aid and assistance for promoting and advocating Feminism and for training Feminists in the Women's Studies

program at Columbia because such practices violate the establishment clause of the 1st Amendment.

134. Declare that the furnishing of aid and assistance by the Federal and State defendants to the Women's Studies program at Columbia invidiously discriminates against the plaintiffs based on sex.

135. Enjoin the Federal and State defendants from providing any further aid and assistance for the Women's Studies program at Columbia because it violates the equal protection rights of the plaintiffs.

136. Declare that the Women's Studies program at Columbia discriminates against the plaintiffs based on sex.

137. Enjoin Columbia, IRWG and Continuing Education from offering to students and alumni any of the Women's Studies program curriculum, activities or benefits unless an equivalent Men's Studies program focusing on concerns important to men is established by Columbia.

138. Level the playing field by either instituting Men's Studies or eliminating Women's Studies at Columbia University, which will assure that male students and male alumni are no longer at a disadvantage when competing with female students and female alumni for the benefits of society nor at a disadvantage of ending up with the worst of society's burdens.

139. Award nominal damages in the amount of one dollar to the class of plaintiffs and any other relief the Court deems proper.

Subject Matter Jurisdiction

140. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1331 because this action raises federal questions under the 5th and 14th Amendments to the U.S. Constitution and Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 et seq.

141. This Court has supplemental jurisdiction under 28 U.S.C. 1367(a) over the State cause of action, N.Y. Civil Rights § 40-c, for civil rights violations by defendants Columbia University, IRWG, Continuing Education, Regents, Chancellor, Commissioner and President of HESC.

Personal Jurisdiction

142. This Court has personal jurisdiction over the defendants in accordance with Fed. R. Civ. P. 4(e)(2)(C), 4(h)(1)(B), 4(i)(2), 4(j)(2)(B) and N.Y. C.P.L.R. § 307(1) & (2)(1).

Venue

143. This Court has venue under 28 U.S.C. 1391(b)(3) & (e)(3) and under N.Y. Civil Rights Law § 40-d.

Conclusion

144. There are numerous problems of national importance that lie under the surface of this litigation in which the plaintiffs have made an initial move to compel colleges and universities to change policies having extensive implications for society at large.

145. University and college Women's Studies programs are busy across the land spreading prejudice and fostering animosity and distrust toward men with the result of the wholesale violation of men's rights due to ignorance, falsehoods and malice.

Dated: August 18, 2008
New York, N.Y.

/S/
_____
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08-5547-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Roy Den Hollander,

Plaintiff-Appellant,

--against--

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

Defendants-Appellees.

Guest House and A.E.R. Nightclub,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFF-APPELLANT

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SUBJECT MATTER JURISDISCTION

This putative class action was brought under 42 U.S.C. § 1983 for the deprivation, under the color of state law, of the Plaintiffs-Appellants rights guaranteed by the equal protection clause of the 14th Amendment to the U.S. Constitution. The Southern District Court had jurisdiction pursuant to 28 U.S.C. § 1343(3) & (4). The Second Circuit has jurisdiction under 28 U.S.C. §1291.

The lower court's final order ("Opinion"), App. 62-74, which dismissed the First Amended Complaint ("Amended Complaint"), App. 15-58, with prejudice under Fed. R. Civ. P. 12(b)(6), was entered on September 29, 2008, App. 75, the Notice of Appeal was filed on October 10, 2008, App. 76, and the Pre-Argument Statement filed on October 14, 2008.

Plaintiff-Appellant and putative class counsel, Roy Den Hollander ("Den Hollander"), **requests oral argument**.

ISSUE FOR REVIEW

1. While state action under the 14th Amendment is involved in the serving of alcohol to persons in public-accommodation nightclubs controlled by the New York State Liquor Authority, is state action involved in admitting those same persons to the nightclubs?

CASE STATEMENT

Plaintiff-appellant Den Hollander, individually and on behalf of a putative class of similarly situated men, appeals the Rule 12(b)(6) dismissal of an action brought against five New York City nightclubs ("Nightclubs") for discriminating against men on "Ladies' Nights." During Ladies' Nights, the Nightclubs charge males more for admission than females or give males less time than females to enter the Nightclubs for a reduced price or for free. All the Nightclubs serve alcohol on their premises for consumption, are extensively controlled by the New York State Liquor Authority ("SLA"), and are part of the New York State ("State") regime responsible "for the protection, health, welfare and safety of the people" as it pertains to the provision of alcohol, Report of the N.Y. State Liquor Authority: The Modern Liquor Control System of New York State, pp. 8-9, April 12, 1933 to December 31, 1934.

The Southern District Court Opinion is reported at 580 F. Supp. 2d 335 (S.D.N.Y. 2008)(Cedarbaum, J.). The Opinion mistakenly states this is a *pro se* case when it is a putative class action. "[A] suit brought as a class action should be treated as such for purposes of dismissal or compromise, until there is a full determination the class is not proper." *See e.g.* Kahan v. Rosentiel, 424 F.2d 161, 169 (3rd Cir. 1970); Gaddis v. Wyman, 304 F. Supp. 713, 715 (S.D.N.Y. 1969).

The District Court never ruled the putative class was not proper, so this case remains a putative class action with class counsel and not a *pro se* proceeding.

FACTS

The Nightclubs regularly hold Ladies' Nights in which they charge males more for admission than they charge females or give males less time than females to enter the clubs for free or at a reduced price. For example, a gentleman arrives at 11:55 p.m. to enter one of the Nightclubs, but he only has $15—he doesn't get in because the charge to him is $20. A lady standing right behind him also has only $15, but she breezes right in because the admission is free for her, and inside she can spend her $15 on alcoholic drinks of her choice. In this instance, the gentleman could not overcome the obstacle of entry, which put him in the same position as though the bar denied him an alcoholic drink. Where the gentleman has $20, he hands it over for admission while the lady, if she has $20, keeps it in her pocketbook. Here, both have engaged in the same activity, entering a nightclub, but one is poorer for it.[1]

The SLA regulates not just the sale and consumption of alcohol in the Nightclubs but also the attendant conditions or circumstances within and without these public accommodations. The Nightclubs are <u>not</u> "private clubs" over which

[1] The District Court in an Orwellian twist characterized the deprivation to males as females paying reduced cover. (Opinion p. 7, App. 68). The deprivation is males paying more than females or investing more of their time to gain admission.

the SLA exercises less pervasive control. N.Y. Alcoholic and Beverage Control Law ("ABC") § 3(9). The Amended Complaint, App. 15-58, alleges facts that demonstrate the involvement of the State with the Nightclubs.

ARGUMENT SUMMARY

The District Court's Opinion, App. 62-74, decided that state action did not reach the Nightclubs' treating males differently for admission than females because admission does not involve the serving of alcohol. By that reasoning, the Nightclubs could constitutionally have separate restrooms for blacks and whites because the Nightclubs do not serve alcohol in their restrooms.

State action exists in the Nightclubs' discriminatory admission policies because (1) the Nightclubs exercise a public function, (2) the State is responsible for and controls the Nightclubs, or (3) the State and the Nightclubs are entwined, involved in a joint activity, or the State encourages the discrimination.

ARGUMENTS

While state action under the 14th Amendment is involved in the serving of alcohol to persons in public-accommodation nightclubs regulated by the New York State Liquor Authority, is state action involved in admitting those same persons to the nightclubs?

The standard of review on a Rule 12(b)(6) motion to dismiss is *de novo*.

The 14th Amendment is enforced through actions pursuant to 42 U.S.C. 1983.[2] The purpose of civil rights actions under 42 U.S.C. 1983 is to further the public good and to prevent injury and wrong, Will v. Mich. Dep't of State Police, 491 U.S. 58, 73, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989)(Brennan, J. dissenting), by constraining governmental action "by whatever instruments or in whatever modes that action may be taken." Lebron v. Nat'l R.R. Passenger Corp., 513 U.S. 374, 392, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995)(quoting Ex parte Virginia, 100 U.S. 339, 346-47, 25 L.Ed. 676 (1880)). Section 1983 was enacted because state or local causes of action were no substitute for enforcing constitutional rights. *See* Cong. Globe, 42d Cong. 1st Sess. 244 (1871).

The Second Circuit has recognized a less strict state action standard where discrimination is based on color, Taylor v. Con. Ed., 552 F.2d 39, 42 (2d Cir. 1977), since in the area of such discrimination, state inaction or neutrality is often found as affirmative support, Lefcourt v. Legal Aid Society, 445 F.2d 1150, 1155 n. 6 (2d Cir. 1971). Because of similar harms, the constitutional scrutiny for sex discrimination approaches that for color discrimination. Sex based action requires an "exceedingly persuasive justification." U.S. v. Virginia, 518 U.S. 515, 524, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996)(citation omitted). Since Virginia found sex discrimination nearly as harmful as color discrimination, id. at 531, it follows that

[2] The state action requirement of the 14th Amendment also constitutes action under color of state law for § 1983. Brentwood Acad. v. Tenn. Sec. Sch. Ath. Ass'n, 531 U.S. 288, 295 n. 2 (2001).

the state action determination in sex cases should also require a lesser degree of government involvement, *Cf.* Coleman v. Wagner College, 429 F.2d 1120, 1127 (2d Cir. 1970)(Friendly, J. concurring). In Seidenberg v. McSorleys' Old Ale House, Inc., 317 F. Supp. 593, 598 n. 7 (1970), the Court found there was no logical reason for applying different state action principles to a case involving sex discrimination than one involving color.

For the purposes of 42 U.S.C. § 1983, the actions of a nominally private entity are attributable to the state when:

(1) the private entity has been delegated a public function by the state;

(2) the state is responsible for and controls the private entity; or

(3) the state's involvement with the entity (a) entwines the entity with state policies or entwines the state with the management and control of the entity, (b) the entity is a willful participant in joint activity with the state, or (c) the state provides significant encouragement, and in all these situations, (a)-(c), the private entity's action is fairly attributable to the state, which can mean the entity obtained significant aid from the state.[3]

Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n, 531 U.S. 288, 296, 121 S. Ct. 924, 148 L.Ed.2d 807 (2001); Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); Sybalski v. Ind. Group Home Living

[3] The Opinion at 5, App. 66, failed to state that a private entity's actions are fairly attributable to the State when it obtains significant aid from state officials.

Prog., Inc., 546 F.3d 255, 257 (2d Cir. 2008); Flagg v. Yonkers Sav. & Loan Ass'n, 396 F.3d 178, 187 (2d Cir. 2005).

Two different judges in the Southern District Court of N.Y. found state action in a situation similar to the one here. Seidenberg v. McSorleys' Old Ale House, Inc., 317 F. Supp. 593 (1970)(Mansfield, J. granted plaintiffs' motion for summary judgment)("McSorleys II"); Seidenberg v. McSorleys' Old Ale House, Inc., 308 F. Supp. 1253 (1969)(Tenney, J. denied defendant's motion for a Rule 12(b)(6) dismissal)("McSorleys I").[4] The McSorleys' decisions have been approved in other cases[5] and favorably cited by the U.S. Supreme Court in Craig v. Boren for the proposition that "federal and state courts uniformly have declared the unconstitutionality of gender lines that restrain the activities of customers of state-regulated liquor establishments…." Craig, 429 U.S. 190, 208, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976). The Craig decision came four years after Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972), which dealt not with a New York regulatory scheme nor a public accommodation as does this case.

The lower court's Opinion relies on a distinction without a difference between McSorleys I & II and the action before this Court by stating the two females in McSorleys' "were refused alcohol" and the "discrimination alleged

[4] The only significant difference between the McSorleys' cases and the one before this Court is that ladies benefit from the discrimination here.

[5] Male v. Crossroads Associates, 337 F. Supp. 1190 (S.D.N.Y. 1971), Bennett v. Dyer's Chop House, Inc., 350 F. Supp. 153 (N.D. Ohio 1972), *see* Bright v. Isenbarger, 445 F.2d 412 (7th Cir. 1971).

refusal to serve [them] alcohol." (Opinion pp. 10, 11, App. 71-72). The Opinion argued that since the discriminatory practice in McSorleys I & II involved alcohol, state action existed. But nowhere in McSorleys I & II does it state the ladies were refused alcoholic drinks. They may have been refused lunch, cokes, boiled eggs or pickles; the McSorleys decisions do not specify, which means the finding of no state action in the Opinion rests on mere speculation.

Further, the McSorleys holdings of state action were not dependent on whether alcoholic drinks were given the ladies, but as Judge Tenny said, "[t]he question presented … is whether by virtue of this pervasive regulatory scheme the licensee may properly be considered an instrumentality of the State whose acts may, for the purposes of the 14th Amendment, be considered the acts of the State itself." McSorleys I, 308 F. Supp. 1253, 1257. Both McSorleys I & II held it did.

Under the reasoning of the lower court in this case, McSorleys' bar could have avoided serving females by simply charging them hundreds of dollars to enter. That would have kept most of them out.

1. Public Function

"[W]hen private individuals or groups are endowed by the state with powers or functions governmental in nature, they become agencies or instrumentalities of the state and subject to its constitutional limitations." Evans v. Newton, 382 U.S. 296, 299, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966). State action may be found in

situations where an activity that traditionally has been the exclusive, or near exclusive, function of the state has been contracted out to a private entity. Jackson v. Metro. Ed. Co., 419 U.S. 345, 352, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974); Horvath v. Westport Library Ass'n, 362 F.3d 147, 151 (2d Cir. 2004).

Since Prohibition, N.Y. State has exercised responsibility for and exclusive control over alcohol, except where State action might conflict with certain provisions of the U.S. Constitution, 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 515, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996). "[T]he State, in accepting Prohibition, had rejected the old, excise method of liquor control; and then in ratifying the Twenty-First Amendment, had also rejected Prohibition." Report of the N.Y. SLA, p. 6, April 12, 1933 to December 31, 1934. The State established a system of broad control to prevent a recurrence of the conditions on which Prohibition was based. Id. at pp. 6-8. The State can at any time change the arrangement and take unto itself the functions of all its private entity surrogates. McSorleys II, 317 F. Supp. 593, 599-600 (1970); *see* N.Y. State Moreland Commission on the ABC Law, Study Paper No. 4, pp. 33, 39, October 27, 1963. The State could even go dry if it wished as it did on January 16, 1920 with passage of the Mullen-Gage Law to enforce prohibition. Report of the N.Y. SLA, p. 5, April 12, 1933 – December 31, 1934.

The power of the State to control not just the sale and consumption of alcohol but the circumstances in which such occurs is an exercise of the ultimate sovereignty of a state. *See* Crane v. Campbell, 245 U.S. 304, 308, 38 S.Ct. 98, 62 L.Ed. 304 (1917). "[T]he regulation of the liquor traffic is one of the oldest and most untrammeled of [state] legislative powers." Goesaert v. Cleary, 335 U.S. 464, 465, 69 S.Ct. 198, 93 L.Ed. 163 (1948), *overruled on different grounds*, Craig, 429 U.S. 190, 210 n. 23. N.Y. State has absolute power to prohibit totally the sale of alcohol, broad power to control the times, places and circumstances under which alcohol is sold by the Nightclubs; and even to arrogate to the State the entire business of distributing and selling alcohol to its citizens. Seagram & Sons, Inc. v. Hostetter, 16 N.Y.2d 47, 61, 262 N.Y.S.2d. 75, 201 N.E.2d 701 (1965), *overruled in part on different grounds*, Healy v. Beer Inst., 491 U.S. 324, 342, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989).

The State has chosen to delegate some of its exclusive functions to the Nightclubs for operating premises where persons can purchase and consume alcohol. The Nightclubs, therefore, exercise a public function by which they are entirely dependent upon State decisions to operate successfully. *See* Flagg Bros., 436 U.S. at 158-59 (public function exists when there exists a history of exclusive government activity).

The State could have decided after prohibition to set up and operate on-

premise retailers itself. In that situation, the different treatment of customers for admission would clearly constitute state action. There's no logical reason that because the State chose to delegate its public function to corporations operating under the State's control that state action somehow disappears, except when a nightclub refuses to serve certain customers alcoholic drinks. *See* Horvath, 362 F.3d at 151.

In Evans v. Newton, 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966), a city transferred a park's operations to private persons—the city delegated its public function. While New York hasn't delegated all its public function, since it still maintains comprehensive control over nightclubs, the State can at any time take back its granted privileges and set up a state run monopoly. McSorleys II, 317 F. Supp. 593, 599-600; *see* N.Y. State Moreland Commission on the Alcoholic Beverage Control Law, Study Paper No. 4, pp. 33, 39, October 27, 1963.

The discrimination in Evans was the park's admission policies under the operation of private individuals. The private operators became city agents, and just as the city could not discriminate in admission or in sweeping, manicuring, watering, patrolling, and maintaining the park, neither could the city's agents. Evans, 382 U.S. at 301. "[W]hen private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or

instrumentalities of the State and subject to its constitutional limitations." Evans, 382 U.S. at 299.

When the State endowed the Nightclubs with the governmental sovereignty of providing alcohol for on-premise consumption, they were granted a public function, and the Nightclubs, just as the State if it provided alcohol for on-premise consumption, cannot discriminate in admission or employee hiring or in supplier contracting or in charging different prices to different customers or in many other activities. When a private party carries out the functions of government, it steps into the shoes of the government and becomes a state actor for all discriminatory activities. *See* Marsh v. Alabama, 326 U.S. 501, 507-08, 66 S.Ct. 276, 90 L.Ed. 265 (1946).

2. State Control and Responsibility

While licensing and regulation by a state does not mean state action, neither does it mean no state action. "[G]overnmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government and, as a result, be subject to constitutional constraints." Edmonson v. Leesville Concrete Co., 500 U.S. 614, 620, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991). State action also exists where the deprivation of rights are caused by a person for whom the State is responsible. Lugar v. Edmondson Oil Co., 457 U.S. 922, 937.

Alcohol regulation controls more than the substance itself. Joseph R. Gusfeld, Symbolic Crusade: Status Politics and the American Temperance Movement, 37 (1986). State supervision of alcohol is a form of state control—political, economic and moral—over the activity, lifestyle or expression that alcohol tends to accompany. With the passage of the 21st Amendment, New York acquired the responsibility for handling its liquor problems and the responsibility to "meet the diverse need of the cosmopolitan population of the State," Report of the N.Y. SLA, p. 5, 6, April 12, 1933 to December 31, 1934. In order to fulfill its duty, New York enacted the Alcohol Beverage Control Act and created the SLA to meet its responsibility of forestalling "the return of the evils which flourished in the pre-Prohibition period" and for the purpose of "fostering and promoting temperance" and "respect for and obedience to the law." Id. at 8. New York's "[r]egulatory intervention in the liquor business is designed to promote public rather than private interests." Moreland Commission on ABC Law, No. 4, p. 30.

Whether activities surrounding alcohol consumption are permitted is strictly a matter of state concern, Fenton v. Tedino, 78 Misc. 2d 319, 320, 356 N.Y.S.2d 397 (Sup. Ct. 1974), because the states exercise control over the circumstances under which alcohol is sold, *see* 44 Liquormart, 517 U.S. at 515. N.Y. State's power to control alcohol and its attendant conditions falls under its police power, which the State uses to fulfill its duty to protect the social order, lives, safety and

health of its citizens. ABC Law § 2; Report of the N.Y. SLA, pp. 8, 9; *see* Calvary Presbyterian Church v. SLA, 245 A.D. 176, 178, 281 N.Y.S. 81 (4th Dept. 1935), *aff'd*, 270 N.Y. 297 (1963).

N.Y. State's control and responsibility reach well beyond the serving of an alcoholic drink to the level of a club's lighting, the view within, advertising, reputation of the owners, citizenship of the employees, moral character of the customers, the interior floor plan, the exterior blueprint, block-plot diagram, the landlord, type of building, history of the building's prior use, number and positioning of tables and chairs, manager, principals, principals' spouses, the people with whom the owners associate, finances, waitress outfits, noise levels outside a club, parking and traffic congestion, and any other circumstances relevant to the "public interest" that "may adversely affect the health, safety and repose" of citizens. ABC Law § 64(6-a); SLA Rules, 9 N.Y.C.R.R. Pt 48; SLA Handbook Retail Licensees, p. 5. The SLA even has "the power to alter … the industry's structure … the industry's behavior, by prescribing and proscribing specific dimensions of business conduct." Moreland Commission on the ABC Law, No. 4, p. 6, which logically includes admission policies.

Clearly the SLA doesn't just grant licenses or subject to regulation the serving of alcohol in the Nightclubs, rather it prescribes and proscribes the limits and conditions for what takes place within and without the Nightclubs and the

circumstances surrounding their business operations. Without State approval, the Nightclubs could not sell alcohol, and, as the Amended Complaint at ¶¶ 15, 50, App. 16, 21, alleges, without alcohol the Nightclubs would fail economically.[6] So in order to survive and make their owners money, the Nightclubs voluntarily join New York's pervasive regulatory scheme that dominates the on-premise consumption of alcohol. "Liquor licensing laws are only incidentally revenue measures; they are primarily pervasive regulatory schemes under which the State dictates and continually supervises virtually every detail of the operation of the licensee's business. Very few, if any, other licensed businesses experience such complete state involvement." Moose Lodge, 407 U.S. 163, 184-85 (Brennan, J. dissenting).

The Opinion at pp. 8, 10, App. 69, 71, relies, in part, on the majority opinion in Moose Lodge to find that the SLA's control over the Nightclubs is insufficient to impact the discrimination against men during admission. Moose Lodge, however, was not about a public accommodation as the Nightclubs are in this case. It is no surprise, therefore, that Moose Lodge did not find state action, and that its majority opinion is not applicable to this case, since the very purpose of a private club liquor license is to allow individuals to associate with whom they wish as

[6] The Opinion at p. 6, App. 67, made a finding of fact that this allegation was speculative, but on a Rule 12(b)(6) motion, the allegations are assumed true. Beside, if the provision of alcohol was not crucial to the economic success of the Nightclubs, then they would not pay the hefty fees to the State and put up with bureaucrats telling them how to run their businesses.

though they were in their own home. The proverbial right of a homeowner to discriminate in choosing whom he shall invite to dinner has nothing to do with the Nightclubs' discrimination. McSorleys II, 317 F. Supp. at 604, *see* Shelley v. Kraemer, 334 U.S. 1, 13, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). Public accommodations for which a state is responsible and over which it exercises pervasive control are not permitted to treat different groups differently—they are required to treat all their customers similarly.

3. Entwinement, Joint Activity and Encouragement

The Nightclubs discriminatory admission policies are fairly attributable to the State because the SLA exercises pervasive control over the Nightclubs, which reaches from the handing over of an alcoholic drink, through the premises to the door, and outside onto the sidewalks and streets by the Nightclubs. The SLA also provides the Nightclubs significant aid.

The SLA's exercise of power reaches the Nightclubs' admission policies. SLA Rule § 48.3 requires the Nightclubs to abide by state regulations, such as N.Y. Civ. Rights Law § 40-c(2): "No person shall, because of … sex … be subject to any discrimination …," and N.Y. Exec. Law § 296(2)(a) that makes it unlawful for public accommodations to deny advantages or privileges based on sex. Both of these statutes would likely prohibit discriminatory admission policies. ABC § 65(4) forbids discrimination on the basis of color, religion, or creed. ABC Law § 2

requires the SLA to promote the "public convenience and advantage"—"a broad administrative standard that confers considerable latitude on the" SLA, Moreland Commission on the ABC Law, Study Paper No. 4, p. 5. Discrimination against either sex is not a public convenience or advantage and falls within the pervasive power of the SLA. McSorleys II, 317 F. Supp. 593, 601. Since different treatment amounts to discrimination, Reed v. Reed, 404 U.S. 71, 75-77, 92 S.Ct. 251, 30 L. Ed.2d 225 (1971), admission practices treating males and females differently are discriminatory, and all such practices by the defendants are within the SLA's power to stop.

Other controls over admission policies are ABC Law § 65-b(1)(c) and (2)(b), which require each Nightclub to examine a customer's identification as a precondition for admission to where the sale of alcohol is restricted to persons 21 or older, as with the Nightclubs. SLA Rule § 48.2 holds the Nightclubs responsible for conduct on their premises, including the admission of minors. And the SLA has the power to impose further restrictions, including on admissions, as would in its judgment best serve the public interest. SLA Rule § 48.5.

(a) Entwinement

The entwinement analysis focuses on the number and types of contacts between the government and the ostensibly private wrongdoer or the practices that allegedly violate the U.S. Constitution. The more the contacts, the less they need

to directly connect with the deprivation of rights; the fewer the contacts, the closer in proximity they need to be to the abridgement of rights.[7]

A nominally private entity may be a state actor when it is entwined with government policies or when the government is entwined in its management, workings, or control. Brentwood Acad., 531 U.S. 288, 296. The line between private and state action is drawn, in part, to avoid the imposition of responsibility on a state for conduct it could not control. Id. at 295 (citing Nat. Col. Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191,109 S.Ct. 454, 102 L.Ed.2d 469 (1988)). The SLA, as shown *supra*, has plenty of control over the Nightclubs.

When the deprivation of constitutional rights occur in the pervasive control settings of alcohol retailing for on-premise consumption, and the Nightclubs engage in discriminatory practices in order to maximize their State franchise value[8], the State has a role, and is obligated to prevent discrimination in violation

[7] The Opinion at p. 8 relied in part on Hadges v. Yonkers Racing Corp., 918 F.2d 1079, 1083 (2d Cir. 1990), to find no close nexus or entwinement of the Nightclubs with the State. Hadges deals with a jockey denied permission to race. It does not involve the higher level of scrutiny given sex discrimination cases. When the level of scrutiny is high, the requirement of state action may be mitigated. *See* Coleman v. Wagner College, 429 F.2d 1120, 1127 (2d Cir. 1970)(Friendly, J concur). Yet the Opinion found Hadges more on point than McSorleys I & II that deal with on-premise retailers of alcohol and sex discrimination. Racetracks are not controlled by the SLA. Further, horse racing is not a State franchise, Madden v. Queens County Jockey Club, Inc., 296 N.Y. 249, 254-55, 72 N.E.2d 697 (1947), as is the on-premise sale and consumption of alcohol.

[8] In New York, a franchise is a special privilege, conferred by the State on an individual, which does not belong to the individual as a matter of common right. Madden v. Queens County Jockey Club, Inc., 296 N.Y. 249, 255, 72 N.E.2d 697 (1947). A franchise creates a privilege where none existed before primarily to promote the public welfare. Id. There was no inherent right in New York State under the common law to engage in the sale of intoxicating beverages, McSorleys II, 317 F. Supp. 593, 599.

of N.Y. Civ. Rights § 40-c and N.Y. Exec. § 296(2)(a). The SLA's broad authority to revoke or deny renewal of a franchise for reasons deemed by it to serve the "public convenience and advantage" includes the prevention of unjustified discrimination in the exercise of the privilege granted the Nightclubs.

The scope of New York's regime is comprehensive because the State, if it so chose, could expropriate the Nightclubs activities unto itself. None of the governmental authority over nursing homes in Blum v. Yaretsky, 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982), or over utilities in Jackson v. Metro. Ed., 419 U.S. 345, could prevent the discriminatory practices in those cases, but that's not the situation here. New York State so completely controls the Nightclubs as to convert their discrimination into state action. Where a private entity operates its service under the pervasive supervision of the government, its "authority derives in part from the Government's thumb on the scales, and the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." Public Utilities Commission of D.C. v. Pollak, 343 U.S. 451, 462 n. 8, 72 S.Ct. 813, 96 L.Ed. 1068 (1952)(private entity remained subject to the Fifth Amendment because of the surveillance which federal agencies had over its affairs)(citation omitted).

"The state license enables the [Nightclubs] to engage in discriminatory conduct in the exercise of [their] franchise rights. To put it another way, without

the state license to serve [alcohol], defendant[s] here could never have discriminated …. The license … becomes a license to discriminate." McSorleys II, 317 F. Supp. at 598. The Nightclubs' abilities to economically survive and prosper depends on New York State's police power permitting them to retail alcoholic beverages for consumption on their premises. (Amended Complaint ¶ 15, App. 16). Without the privilege to retail alcohol, the Nightclubs would not be in a position to discriminate against men because without alcohol, virtually no one would frequent their establishments. The defendants would soon be out of business. (Amended Complaint ¶ 50, App. 21).

Constitutional standards are invoked "when it can be said that the State is **responsible** for the specific conduct of which the plaintiff complains," Blum , 457 U.S. 991, 1004 (emphasis added). The Second Circuit has cautioned that according to Brentwood the concept of responsibility is not to be read narrowly in the context of the state action inquiry. Horvath, 362 F.3d 147, 154. Since the 21st Amendment gave New York the "responsibility of handling its liquor problems," Report of the N.Y. SLA, p. 5, by not exercising that responsibility through its comprehensive authority to put an end to the defendants' discriminatory practices, the SLA is responsible for the continuing rights violations. *See* McSorleys II, 317 F. Supp. 593, 599 ("the state has continued annually to renew defendant's license over the years despite its open discrimination against women, without making any

effort in the exercise of the broad authority granted it, to remedy the discrimination or revoke the license which defendant must have in order to practice it."). Here, the State "by its inaction … has not only made itself a party" to the discrimination, but has "elected to place its power, property and prestige behind the admitted discrimination." Burton v. Wilmington Parking Authority, 365 U.S. 715, 725, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961).

In reality, the Nightclubs would not be recognizable entities without the State, *see* Brentwood Acad. at 300, and are acting as the instrumentality of the State. Since the State could not constitutionally discriminate on admission, neither can the defendants.

(b) Joint Activity

When the State has so far insinuated itself into a position of interdependence with a private entity, it must be recognized as a joint participant in the challenged activity.[9] Burton, 365 U.S. 715, 725 (restaurant in public building discriminated on basis of color). Interdependence is found when the state provides benefits to private entities as with the lease to government property in Burton and the lending

[9] The Opinion at pp. 9-10 states joint participation must be in a service that the State would provide if the private Nightclubs did not. "Should all options consistent with a private system [of alcohol vendors] be rejected, a full-fledged state monopoly would remain as a final solution." Moreland Commission on the ABC Law, Study Paper No. 4, p. 39.

of textbooks to private schools in Norwood v. Harrison, 413 U.S. 455, 93 S.Ct. 2804, 37 L.Ed.2d 723 (1973)(private schools discriminated based on color).[10]

The Nightclubs, as the restaurant in Burton and the schools in Norwood, do not receive any direct financial aid from the State. The Nightclubs do not lease their premises from the government, as the restaurant in Burton did, but the State approves or disapproves their locations, the buildings, the buildings' history and the landlords. Further, the Nightclubs do, in effect, lease property from the SLA in the form of a franchise for alcohol sales and consumption. The SLA also provides an economic benefit as real as textbooks by restricting competition through limiting the number of nightclubs and controlling their locations. ABC Law §§ 2, 17(2); Moreland Commission on the ABC Law, Study Paper No. 4, pp. 4, 5.

Restrictions on entry into the market confers on the Nightclubs a significant state-derived benefit that also approximates the state support provided by the lease involved in Burton. Burton, 365 U.S. at 724; McSorleys II, 317 F. Supp. at 602. The State's control over entry give the Nightclubs an extremely valuable franchise. The alcohol industry in New York has the highest degree of economic protection,

[10] In both these cases, the government knew or should have known the private entities engaged in intentional discrimination, so the motives of the private parties were attributed to the government. So too the SLA knows or should know of the Nightclubs intentional discrimination. "[T]hose who engage in the sale of intoxicants do so with the knowledge that their business conduct will be subject to **constant scrutiny**…." 17 Cameron St. Restaurant Corp. v. New York State Liquor Authority, 48 N.Y.2d 509, 512, 423 N.Y.S.2d 876 (1979)(emphasis added). When government deliberately fails to eliminate discrimination, then judicial protection should be extended more broadly.

which provides its participants with substantial windfalls on their "franchise values." Moreland Commission on the ABC Law, Report and Recommendations, p. 27, January 3, 1964. The stringent government supervision and protection of New York's alcohol industry arbitrarily creates and maintains high franchise values. Moreland Commission on the ABC Law, Study Paper No. 4, p. 14.

"Franchise value equals the present discounted value of future income expected to be earned by licensees and which is attributable to possession of a license." Id. at p. 16. The fewer number of licensees in the market, the greater will be the expected earnings. Id. In unregulated industries with low entry barriers, the increase in income, population, or demand will cause new firms to enter, but not so with the alcohol industry, id. at p. 21, because State power protects the franchise value of licensees, such as the Nightclubs. Without their franchises from the SLA, next to no one would attend the Nightclubs on Ladies Nights or any other nights. (Amended Complaint ¶¶ 15, 50, App. 16, 21).

There is a tendency by the SLA to protect the economic interests of already licensed premises, such as the Nightclubs, by renewing their licenses while denying applications of new entrants in the general area when establishments have made large investments and local population and usage has not increased. *Cf. e.g.* William H. Van Vleck, Inc. v. Klein, 50 Misc. 2d 622, 271 N.Y.S.2d 64, 67, 69

(Sup. Ct. 1966). In effect, the State is providing the Nightclubs an indirect subsidy of immense economic value.[11]

In Burton, the government could have affirmatively required the restaurant to abide by the 14th Amendment as a consequence of the restaurant's involvement with a government facility. Burton, 365 U.S. 715 at 725. The SLA also has the power under State law and its Rules to put a stop to the defendants' practices. In fact, no state may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. Burton, 365 U.S. 715 at 725. "It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith." Id.

The State also benefits from Ladies' Nights discrimination through its interest of a proprietary nature in the Nightclubs. One definition of "proprietary" is possessing dominion over a thing. Black's Law Dictionary, 5th ed. The State can revoke, cancel or suspend the Nightclubs' privilege to sell alcohol, which is the very lifeblood of their business.[12] (Amended Complaint ¶ 15, App. 16). But as long as the State assents to the Nightclubs' operations and their discriminations,

[11] The Nightclubs sell mix drinks at around $12 each, but the actual cost of such drinks are around $1. Thanks to the SLA, the defendants have a privilege to mint julep money. Regardless of whether the Nightclubs have a right to act free of constitutional restraints, it is clear that the State, through the SLA, has no authority to provide valuable privileges to those who infringe the exercise of constitutional rights. *See,* Norwood v. Harrison, 413 U.S. 455, 466.

[12] The State must approve any transfers of ownership, change in principals, and financing. ABC Law §§ 99-d(2)(3).

the State benefits from Ladies' Nights discrimination, which does not substantially serve an important State interest.

Ladies' Nights make the Nightclubs money by increasing the number of customers; otherwise, the clubs would not hold them. By attracting more customers on Ladies' Nights, the Nightclubs sell more alcohol, which means they have to buy more. The State levies excise taxes on those purchases, so the Nightclubs end up paying more alcohol taxes because of Ladies' Nights.[13] The taxes are commingled with SLA license fees and fines into a common fund held by the State Comptroller. ABC § 125. The fund from alcohol taxes and license fees are distributed to municipalities. 1936 Op. Atty. Gen. 188. Where a private party's profits would suffer without discrimination and so too would a state's financial position, it supports the conclusion that a state should be charge with the discriminatory actions. Rendell-Baker v. Kohn, 457 U.S. 830, 843, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982).

In the present case "as in [Burton], 'the State has so far insinuated itself into a position of interdependence … that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so purely private as to fall without the scope of the Fourteenth Amendment.'"

[13] The Opinion at p. 9 relies on Hadges v. Yonkers Racing Corp., 918 F.2d 1079, 1082 (2d Cir. 1990) for finding the Nightclubs' license fees do not benefit the State and so no state action. The Opinion, however, did not address the alcohol tax benefits. In Hadges the racetrack's tax credit had no connection whatsoever with not hiring a jockey—the discrimination charged. Here, Ladies' Nights discrimination actually directly increases tax revenues to the State.

Coleman v. Wagner College, 429 F.2d 1120, 1127 (Friendly, J. concurring)(quoting Burton, 365 U.S. at 725). The Nightclubs operate as willful participants with the SLA in controlling not just the sale and consumption of alcohol but the attendant circumstances in order to fulfill the State's responsibility to promote temperance in consumption and respect for and obedience to the law. ABC Law § 2. The Nightclubs are doing the State's work under the State's control and supervision.

(c) Encouragement

Where the state engages in conduct having the effect of encouraging, tolerating or acquiescing in the discrimination, the 14th Amendment may be invoked. *See* Reitman v. Mulkey, 387 U.S. 369, 375, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967). The state does not have to expressly or specifically authorize, command or support the discriminatory conduct. McSorleys II, 317 F. Supp. at 596. "Where the state has become sufficiently involved, its inaction, acquiescence or continuation of its involvement under circumstances where it could withdraw, may be sufficient." Id. (citing Burton, 365 U.S. at 725). The State does not have to coerce or even encourage the discriminatory practice if "the relevant facts show pervasive entwinement to the point of largely overlapping identity" between the State and the entity alleged to be a state actor. Horvath, 362 F.3d at 154 (quoting Brentwood, 531 U.S. at 303). As argued *supra* in (a), the State and the Nightclubs

are pervasively entwined.

The Opinion at p. 8 finds no State encouragement by ignoring the requirement in Burton, 365 U.S. at 722, "to sift through and weigh the facts" for any state action determination because the issue does not "lend itself to formulaic applications." The Opinion relies on two factually inapposite cases in which the government only performed "routine oversight functions" of the private entities; therefore, the government was not pervasively entwined, so state action required the government to actually order the discriminatory practices, which the states did not. In Tancredi v. Metropolitan Life Ins. Co., 316 F.3d 308, 313 (2d Cir. 2003), the state permitted an insurance company to change its legal entity from a mutual membership to a domestic stock corporation. The deprivation alleged was that the change resulted in the taking of the members' property. The Second Circuit found no state action because the state was not "entwined in MetLife's management" and had not ordered the change. Id. at 313. In Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40,119 S.Ct. 977, 143 L.Ed.2d 130 (1999), Pennsylvania's workers compensation program allowed private insurers to withhold medical payments pending a review by a private agency of whether the medical care was necessary. The plaintiffs alleged that the insurers' withholding constituted a taking. The Supreme Court found there was no close nexus between the state and private insurers and the state had not ordered the withholding. Id. at 52. The government

involvement in these two cases does not come near the SLA's involvement with the Nightclubs.

The government did not order the private restaurant in Burton to discriminate against blacks, but it had placed the restaurant in a position in which citizens could reasonably view the restaurant's acts as authorized by the government. The SLA's extensive involvement with the Nightclubs, continuing oversight of their operations, and repeated renewal of their licenses, puts its mark of imprimatur on discrimination during Ladies Nights and thereby actually encourages it and, in effect, authorizes it. *See* McSorleys II, 317 F. Supp. 593, 599, 603.

Also in Burton, the government failed to exercise its responsibilities to prevent discrimination and thereby acquiesced in it. "[N]o State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be." Burton, 365 U.S. at 725. The SLA, by standing on the sidelines and doing nothing to prevent the Nightclubs from violating the N.Y. State Civil Rights and Human Rights Laws, is acting in a non-neutral fashion that encourages discrimination just as some policemen in the deep-south stood by and watched the Ku Klux Khan beat civil rights workers. The SLA most assuredly knows of the preferential treatment females receive on Ladies' Nights, but has made no effort through the exercise of the broad authority granted

it to remedy the discrimination, levy fines, or suspend, revoke, or deny renewal of the licenses that the defendants must have in order to practice their discrimination. The State has not only abdicated its responsibility, but in repeatedly renewing licenses, affirmatively approves the discriminatory practices of the defendants. This directly contravenes the SLA's duty to assure the defendants conform to all applicable government regulations, 9 N.Y.C.R.R. § 48.3, which the SLA has the power to enforce.

In effect, the SLA established a *de facto* standard, Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 52,[14] that for practical purposes obviates New York's laws against sex discrimination by the Nightclubs when such discrimination in admissions violate the civil rights of men. As a result, the SLA provides not just its stamp of approval for the discrimination, but an impetus for continuation of the practice, which financially benefits both the State and the Nightclubs.

Official encouragement can also result from a practice followed as a matter of course to an extent that it has the force of law. For example, the accepted custom of government officials in the Deep South during the 1950s and 60s to discriminate against blacks encouraged similar activities by private actors. *Cf.* Lombard v. Louisiana, 373 U.S. 267, 83 S.Ct. 1122, 10 L.Ed.2d 338 (1963).

[14] The Supreme Court in American ruled that the alleged discriminatory practices, like the ones in Blum, "turn[ed] on . . . judgments made by private parties" without "standards . . . established by the State," Blum v. Yaretsky, 457 U.S. 991, 1008, and without state standards, there was no state action.

Today, after 40 years of lobbying and intimidation, the special interest group called "Feminism" has succeeded in creating a customary practice in governmental institutions at the federal, state and local levels in which the invidious discrimination of men is the accepted and preferred mode of behavior. That customary practice has resulted in the Nightclubs charging males more for admission than females while the SLA stands idly by. If there is any question as to the reality of this customary practice, just switch the sexes. Would the SLA and the courts permit Nightclubs to charge females more for admission than males?

The vast majority of customers to the Nightclubs are 20 to 30 years old. Females in their twenties and working in New York City make 117% that of their male counterparts. Sam Roberts, Women Earning More, N.Y. Times, Aug. 3, 2007. It seems fairer to charge more of those who make more than of those who make less, but that is not what is happening.

CONCLUSION

The lower court's Opinion in effect brings back the political versus social rights theory of the 18th century. In the Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883) and Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), the U.S. Supreme Court justified discrimination against people of darker skin complexion on the theory that the Constitution only guarantees political or civic equality, which is the purview of government, but not equality in

social rights, the area of private action and choices. The lower court's Opinion parallels this bankrupt theory in the realm of sexual distinctions rather than color. Today, males can be charged any price to enter the social mingling of a nightclub while females walk in for free because nightclubs, even though they are pervasively regulated by a state liquor authority, can constitutionally choose to charge males more than females. Nightclubs would not dare charge females more because of the social climate in modern day America. So nightclubs, and any other public accommodation, can now constitutionally ban males by charging them a steep enough price so that none other than what's left of the Wall Street Moguls could afford to attend.

The Civil Rights and Plessy decisions provided the legal basis for 70 years of ignorance and prejudice that institutionalized itself in every area of society where people interacted with each other. The lower court's Opinion has laid the same foundation for discriminating against males in every area of society that is not directly under the control of government or in which state law does not explicitly prohibit discrimination. [15]

Ironically, it was the failure of state laws to provide equal protection to their citizens following the Civil War that resulted in the passage of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1983. The lower court's narrow reading of the 1871 Act

[15] Only 28 states have some constitutional or statutory provisions against sex discrimination. 90 A.L.R.3d 158, §1; 14 C.J.S. Civil Rights, § 41.

once again effectively leaves to the states the responsibility of protecting their citizens from discrimination. The lower court has opened the door for states, if they so choose, to stand idly by while nominally private persons deprive the rights and privileges of others—this time men.

Plaintiff-Appellant Den Hollander requests the dismissal be vacated.

Dated: March 13, 2009

_____
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) by containing 7,938 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) by using Microsoft Word Times New Roman in font size 14.

ADDENDUM OF CONSTITUIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS

14th Amendment to the U.S. Constitution, Section 1

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

42 U.S.C. § 1983. Civil action for the deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

N.Y. Civ. Rights Law § 40-c(2)

No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability, as such term is defined in § 292 of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in § 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

N.Y. Exec. Law § 296(2)(a)

It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status, or that the patronage or custom thereat of any person of or purporting to be of any particular race, creed, color, national origin, sexual orientation, military status, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

ABC Law § 2

It is hereby declared as the policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. It is hereby declared that such policy will best be carried out by empowering the liquor authority of the state to determine whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby, subject only to the right of judicial review hereinafter provided for. It is the purpose of this chapter to carry out that policy in the public interest. The restrictions, regulations and provisions contained in this chapter are enacted by the legislature for the

protection, health, welfare and safety of the people of the state.

ABC Law § 3(9)

"Club" shall mean an organization of persons incorporated pursuant to the provisions of the not-for-profit corporation law or the benevolent orders law, which is the owner, lessee or occupant of a building used exclusively for club purposes, and which does not traffic in alcoholic beverages for profit and is operated solely for a recreational, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain; except that where such club is located in an office or business building, or state armory, it may be licensed as such provided it otherwise qualifies as a "club" within the meaning of this subdivision.

ABC Law § 17(2)

To limit in its discretion the number of licenses of each class to be issued within the state or any political subdivision thereof, and in connection therewith to prohibit the acceptance of applications for such class or classes of licenses which have been so limited.

ABC Law § 64(6-a)

6-a. The authority may consider any or all of the following in determining whether public convenience and advantage and the public interest will be promoted by the granting of licenses and permits for the sale of alcoholic beverages at a particular unlicensed location:

(a) The number, classes and character of licenses in proximity to the location and in the particular municipality or subdivision thereof.

(b) Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.

(c) Effect of the grant of the license on vehicular traffic and parking in proximity to the location.

(d) The existing noise level at the location and any increase in noise level that would be generated by the proposed premises.

(e) The history of liquor violations and reported criminal activity at the proposed

(f) Any other factors specified by law or regulation that are relevant to determine the public convenience and advantage and public interest of the community.

ABC Law § 65(4)

[S]ale or delivery shall not be refused, withheld from or denied to any person on account of race, creed, color or national origin.

ABC Law § 65-b(1)(c)

“Transaction scan” means the process involving a device capable of deciphering any electronically readable format by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of an alcoholic beverage as required by subdivision two of this section or as a precondition for admission to an establishment licensed for the on-premises sale of alcoholic beverages where admission is restricted to persons twenty-one years or older.

ABC Law § 65-b(2)(b)

No licensee, or agent or employee of such licensee shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: (i) a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (ii) a valid passport issued by the United States government or any other country, or (iii) an identification card issued by the armed forces of the United States. Upon the presentation of such driver's license or non-driver identification card issued by a governmental entity, such licensee or agent or employee thereof may perform a **transaction scan as a precondition to the sale of any alcoholic beverage**. Nothing in this section shall prohibit a licensee or agent or employee from performing such a transaction scan on any of the other documents listed in this subdivision if such documents include a bar code or magnetic strip that that may be scanned by a device capable of deciphering any electronically readable format. (Emphasis added).

ABC Law § 99-d(2)(3)

2. Before any change in the members of a limited liability company or the transfer or assignment of a membership interest in a limited liability company or any corporate change in stockholders, stockholdings, alcoholic beverage officers, officers or directors, except officers and directors of a premises licensed as a club or a luncheon club under this chapter can be effectuated for the purposes of this chapter, there shall be filed with the liquor authority an application for permission to make such change and there shall be paid to the liquor authority in advance upon filing of the application a fee of one hundred twenty-eight dollars where the license fee is five hundred dollars or more and thirteen dollars in all other instances including changes relating solely to officers and directors of corporations and the alcoholic beverage officer of a club or luncheon club.

The foregoing provisions of this section shall not be applicable where there are ten or more stockholders and such change involves less than ten per centum of the stock of the corporation and the stock holdings of any stockholder are not increased thereby to ten per centum or more of the stock.

Where the same corporation operates two or more premises separately licensed under this chapter a separate corporate change shall be filed for each such licensed premises, except as otherwise provided for by rule of the liquor authority. The corporate change fee provided for herein shall not be applicable to more than one license held by the same corporation.

3. Before any removal of a license to any premises other than the licensed premises or to any other part of the building containing the licensed premises, the licensee shall make an application to the liquor authority for permission to effect such removal and shall pay to the liquor authority in advance upon filing of the application a fee of one hundred ninety-two dollars where the base license fee is five hundred dollars or more and thirty-two dollars in all other instances.

ABC Law § 125

The moneys received for license fees provided for in this chapter shall be turned over by the liquor authority to the state comptroller. It shall be placed by the state comptroller in the fund derived from the proceeds of the taxes on liquor, wine and beer provided for in article eighteen of the tax law and become a part thereof and be subject to all of the provisions of law relating to such fund.

SLA Rules, 9 N.Y.C.R.R. Pt 48

Section 48.2. Conduct of licensed premises

The proper conduct of on-premises licensed establishments is essential to the public interest. Failure of a licensee to exercise adequate supervision over the conduct of such an establishment poses a substantial risk not only to the objectives of alcoholic beverage control but imperils the health, welfare and safety of the people of this State. It shall be the obligation of each person licensed pursuant to this Part to insure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times in order to safeguard against abuses of the license privilege and violations of law. Each such licensee will be held strictly accountable for all violations that occur in the licensed premises and are committed by or suffered and permitted by any manager, agent or employee of such licensee. Persons licensed hereunder shall also have a particular responsibility to conform with those provisions of section 260.20 of the Penal Law and sections 398-c and399-d of the General Business Law which relate to the admission of minors to premises wherein alcoholic beverages are sold.

Section 48.3. Conformance with local and other regulations

The Authority expects all on-premises licensees, regardless of type of premises, to conform with all applicable building codes, fire, health, safety and governmental regulations.

Section 48.4. Physical standards

(a) No on-premises licenses shall be issued except where the premises comply with all statutory requirements. In addition, each such premises, when situated on or about the street level, shall have one or more windows which shall be so constructed as to afford clear visibility from the exterior and throughout the interior of said premises.

(b) No on-premises licenses shall be issued to premises described in subdivisions (b), (d), (e) and (f) of section 48.1 of this Part unless a particular location or locations shall be designated for the sale and service of alcoholic beverages which, if approved by the Authority, shall be deemed the licensed premises.

(1) Each such premises shall be under the exclusive dominion and control of the licensee and the sale and service of alcoholic beverages and the consumption of liquor and wine shall be confined thereto.

(2) In premises described in subdivisions (d), (e) and (f) of section 48.1 of this Part, the licensed premises shall be enclosed by a permanent wall or partition at least eight feet high.

(c) On-premises licenses may be issued to premises described in subdivision (c) of section 48.1 of this Part with due regard for the functional and traditional layouts of such premises. Any stand-up bar shall be in an area where seating at tables is provided for patrons and where such premises is in a bowling establishment, such area shall be enclosed by permanent walls or partitions at least eight feet high.

(d) *General physical standards.* The following standards shall be applicable to all on-premises licenses:

(1) Each premises licensed hereunder shall have seating for patrons at tables, except that the Authority, in its discretion, may permit a bar in any premises described in subdivision (b) of section 48.1 of this Part without requiring seating at tables.

(2) Each premises licensed hereunder shall provide separate sanitary facilities for both sexes. The provision of such facilities may be waived by the Authority provided there is a satisfactory showing that such facilities are in an area adjacent or proximate to the licensed premises and available to the patrons thereof.

(3) Each premises licensed hereunder shall, at all times during the hours such premises is open for business, be illuminated by sufficient lighting such as will permit a person therein to read nine-point print of the kind generally used in the average newspaper. Nothing herein contained shall, however, be construed as prohibiting temporary dimming of lights during a period of regular entertainment or other special occasions and during any performance in any premises described in subdivision (b) of section 48.1 of this Part.

Section 48.5. Special restrictions

The Authority may impose such further restrictions in particular instances as would in its judgment best serve the public interest.

Section 48.6. Hours of sale

(a) The hours of sale in on-premises licensed establishments shall be governed by the provisions of subdivision 5 of § 106 of the Alcoholic Beverage Control Law, except in those counties where pursuant to section 43, the local ABC board further restricts the hours of sale. In addition, the hours of sale in premises described in subdivisions (b), (c), (e) and (f) of section 48.1 of this Part shall be further restricted in that the sale of alcoholic beverages may not commence more than one hour before nor continue more than one hour after the commencement and ending, respectively, of the performance, sailing, event or other recreation or entertainment which is the principal business of said facility, except that in the instance of night clubs the sale of alcoholic beverages may commence at 4 p.m. and continue until the closing hour prescribed by law, unless further restricted by a local ABC board pursuant to subdivision 3 of § 43 of the Alcoholic Beverage Control Law..

(b) The further restrictions on hours of sale set forth in this section with respect to premises described in subdivisions (b), (c), (e) and (f) of section 48.1 of this Part, shall not, however, prohibit the sale of alcoholic beverages during the holding of any special function or event therein which is scheduled and advertised in advance provided such sale is not in violation of subdivision 5 of § 106 or the hours of sale prescribed by the local ABC board having jurisdiction.

Section 48.7. Personal qualifications

In acting upon applications for on-premises licenses, the Authority shall, in addition to inquiring into all other requirements, carefully evaluate the character, fitness, experience, maturity and financial responsibility of each applicant in determining whether public convenience and advantage would be served by approval of the application.

Section 48.8. Miscellaneous provisions

(a) Each license issued hereunder shall be subject to the licensee continuing to

conform with all representations set forth in the application for license and the provisions of this Part and any amendment thereto applicable to the type of premises under which such license was applied for and issued. Such representations shall constitute continuing representations for the life of the license and all renewals thereof. Any change or deviation therefrom in any material respect, without the permission of the Authority, shall be cause for the institution of proceedings to revoke, cancel or suspend such license or refusal to renew the same.

(b) Summer or winter on-premises licenses may, in the exercise of the Authority's discretion, be issued for each of the types of premises specified in section 48.1 of this Part.

(c) Nothing contained in this Part shall be construed as authorizing any alterations to any on-premises establishments except an alteration made pursuant to Part 47 of this Subtitle.

(d) A special on-premises licensee may grant to another person a written concession to prepare, serve and sell food in such licensed premises provided that the written approval of the State Liquor Authority is first obtained. The granting of such food concession without the approval of the Authority, or the failure to comply with the terms, representations and conditions upon which any such approval is granted, constitute cause for the suspension, cancellation, revocation, non-renewal or recall of the special on-premises license.

SLA Handbook Retail Licensees, p. 5

[A] liquor license is a privilege and under the ABC law licensees are obligated to properly supervise their premises. This responsibility extends to the licensee's patrons concerning noise, fights, disorders, and/or other unlawful behavior both inside and outside the premises which may adversely affect the health, safety and repose of the inhabitants in the area of the licensed premises …. Disciplinary charges may be instituted against a licensee for suffering or permitting disorders on or about the licensed premises relating to the operation of the premises and its patrons.

08-6183-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Roy Den Hollander, Sean Moffett, Bruce Cardozo, and David Brannon,

Plaintiffs-Appellants,

--against--

United States of America, Director of the U.S. Citizenship and Immigration Services, Director of the Department of Homeland Security, Director of the Executive Office for Immigration,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

The Southern District Court's Order by Judge William H. Pauley III is reported at 2008 U.S. Dist. LEXIS 99809 and 2008 WL 5191103.

SUBJECT MATTER JURISDICTION

This putative class action was brought for nominal damages and injunctive and declaratory relief for the violation of plaintiffs-appellants' ("Class Representatives") rights to freedom of speech, privacy, freedom of choice in marital relationships, procedural due process, and equal protection under the First and Fifth Amendments to the United States Constitution. The defendants-appellees ("Government") violated and continue to violate the Class Representatives' rights by enforcing certain unconstitutional provisions of the Violence Against Women Act, the Illegal Immigration Reform and Immigrant Responsibility Act, and the Immigration and Nationality Act (collectively the "VAWA provisions"). The challenged provisions, regulations and Federal Registry sections are in **bold.**

The Southern District Court had jurisdiction under 28 U.S.C. § 1331, and the Second Circuit has jurisdiction under 28 U.S.C. § 1291.

The lower court's final Memorandum and Order ("Order"), App. 34, which dismissed the First Amended Complaint ("Amended Complaint"), App. 6, for lack of standing under Fed. R. Civ. P. 12(b)(1), was entered on December 4, 2008, App.

42, the Notice of Appeal was filed on December 19, 2008, App. 43, and the Pre-Argument Statement filed on December 19, 2008.

The Class Representatives **request oral argument**.

ISSUES FOR REVIEW

1. Do the VAWA provisions and their enforcement injure U.S. citizen husbands, such as the Class Representatives, by invading their legally protected interests?

2. Did the lower court violate motion to dismiss standards by finding a false fact, ignoring allegations in the Amended Complaint, and even adopting a false Government allegation so as to dismiss the Amended Complaint for failure to allege standing injury?

3. Do the VAWA provisions exceed Congressional authority by intruding into family relations that are traditionally the area of state concern?

CASE STATEMENT

The Class Representatives, individually referred to by their last names, are all U.S. citizens who married alien females. The marriages did not work out mainly because they were fraudulently entered into by the alien wives. The Federal Government enforced or is enforcing the VAWA provisions against the Class Representatives by making fact-findings that the husbands committed domestic violence against their wives. The fact-findings were or are being made in

proceedings kept secret from the husbands and based on fraudulent evidence from the alien wives and their immigration advocates. The husbands have no opportunity to rebut the fraudulent evidence, to determine what the findings are, to refute the findings, or limit their disclosure to third parties.

> "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy those men may be; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter J., concurring).

The lower court dismissed the action for lack of standing without ruling on class certification.

STATEMENT OF FACTS

A U.S. citizen male marries an alien female and they set up house in America.[1] The Government allows the wife to live and work here temporarily for two years because she is married to a citizen. After the two years, she can become a permanent resident and then a citizen, if the two are still married. 8 U.S.C. § 1186a(c). Before the two years are up, however, the marriage starts to go sour, either because of incompatibility, or, more likely, the alien wife married just to gain admission to the U.S. and the husband finally realizes he has been deceived. The husband starts considering divorce or annulment and tells his wife. Ending the

[1] This case does not involve marriages between permanent resident aliens and other aliens.

marriage before two years are up means the wife will be placed in deportation proceedings—but she's not worried.

There are three other ways for her to become a permanent resident—a prize cherished another the world. One is very difficult and rarely granted: the hardship waiver. 8 U.S.C. § 1186a(c)(4)(A); 8 C.F.R. § 216.5(e)(1). The second requires an already terminated marriage that is closely scrutinized by immigration authorities to see whether a spouse married just to live in America and whether she was at fault in the breakdown of the marriage. 8 U.S.C. § 1186a(c)(4)(B); 8 C.F.R. § 216.5(e)(2). The third, the easiest and most certain of success, grants the wife permanent residency if she simply accuses her husband of domestic abuse, which includes loud arguing, criticism, kissing her when she does not wanted to be kissed, or felonious assault. No proof is needed, just accusations, and it is best when the accusations are included in an arrest complaint, temporary restraining order ("TRO"), or a complaint about violations of a TRO. **8 C.F.R. § 204.2(c)(2)(iv).** Such documents are easy to come by since they result from statements made solely by the wife to local or state authorities. Other documents, such as a state court judgment, showing that the wife's accusations were false are ignored. This third way is the VAWA path to permanent residency and ultimately citizenship (the "VAWA process or proceeding"). Amend. Compl. ¶¶ 32-39 and

45, App. 10-11.[2] The VAWA process excuses alien wives who were here illegally before marriage; worked as prostitutes; engaged in marriage fraud; and admit to crimes of moral turpitude, such as tax evasion, and violating drug laws. 8 U.S.C. §§ 1182(a)(6)(C)(i) & (iii), **1182(h)(1)(C) & (i)** and **1227(a)(1)(H)(ii)**.[3]

The citizen husband decides to end the marriage and not sponsor his alien wife for permanent residency because it would require perjury by him before the immigration authorities that the marriage is still viable. The danger is that his wife will resort to the VAWA process for permanent residency by using false accusations of domestic violence against him. The husband's right to end his marriage now carries with it the threat of fraudulent police complaints, TROs, arrest, jail, and violation of basic constitutional rights just because he married an alien, the marriage failed, and the Government created a rubber-stamp process for his wife to gain permanent residency. Some husbands will avoid the danger by continuing in a bad marriage and lying to the Government. Others, like the Class Representatives, will end their marriages. (Amend. Compl. ¶¶ 53-125, App. 12-19).

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[2] The VAWA process consists of (1) self-petitioning for immediate relative classification, 8 U.S.C. § 1154(a)(1)(A)(iii); (2) applying for cancellation of any pending deportation proceeding, 8 U.S.C. §1229b(b)(2), which is easiest under VAWA, Sanchez, 505 F.3d 641, 642 (7th Cir. 2007); and (3) applying for adjustment of status to permanent residency, 8 U.S.C. § 1255(a).

[3] Ironically, the VAWA provisions have pretty much negated the Government's policy of preventing marriage fraud under the Immigration Marriage Fraud Amendments of 1986, 8 U.S.C. 1186a, by allowing criminally prone foreign females a no-fault route to citizenship.

With divorce or annulment proceedings imminent, the alien wife makes a false report with the local police of domestic violence. The police report will be used as primary evidence in a VAWA proceeding. The husband, as with Moffett and Cardozo, is arrested and jailed. (Amend. Compl. ¶¶ 89, 104, 108, App. 17-18). The arrest results in no conviction, but remains on national databases accessible to government and employers. The arrest also harms the husband's occupation, as is currently happening to Moffett. (Id. ¶ 89, App. 17). The state court's ruling that the husband is innocent of domestic violence is irrelevant to the VAWA process—only the arrest records are used by immigration authorities.

The alien wife also obtains an *ex parte* TRO in a state proceeding to which the citizen husband has no notice. The TRO is granted based solely on the wife's accusations of domestic abuse, as happened to all the Class Representatives. (Amend. Compl. ¶¶ 69, 89, 105, 121, App. 14, 17-19). The TRO requires the husband to keep a certain distance from his wife, so he is evicted from the house he bought with his own money, as happened to Moffett and Brannon. (Id. ¶¶ 89, 120, App. 17, 19). The TRO eventually requires a hearing in which the husband has a chance to present his side. If the TRO is dismissed, as happened to Den Hollander and Brannon, id. ¶¶ 69, 121, App. 14, 19, the dismissal is irrelevant to the VAWA process. Only the *ex parte* TRO is used by immigration authorities, again as primary evidence, to prove the husband abused his wife, unless the state court

okays a permanent restraining order against the husband, then the VAWA process uses that document.

The *ex parte* TRO allows the alien wife to make any allegations she wishes that her husband violated the order. He will face arrest with another entry in national databases, and those allegations will also become primary evidence of abuse in the VAWA proceeding regardless of whether he is exonerated.

Since the immigration authorities only take evidence from the wife's side, she and her immigration advocates do not notify the Government of any findings of the husband's innocence by state courts. The husband is prohibited from providing evidence of his innocence, and the immigration authorities do not bother to look for such. So by simply making false allegations about her citizen husband to the police and state courts, the alien wife assures herself permanent residency and U.S. citizenship. Perjury is rarely punished in such matters.

In a state divorce or annulment proceeding and any criminal action, the wife's credibility is an important issue. The wife's use of the VAWA process infers a motivation to make false accusations in state proceedings because those accusations require no proof by the immigration authorities, only state documents containing her assertions. The secrecy of the VAWA process prevents the husband from acquiring evidence that his wife is using VAWA, so he is unable to use that

to impeach her credibility in state proceedings, as happened to Moffett, Cardozo, and Brannon. (Amend. Compl. ¶¶ 91, 104, 105, 107, 109, 121, App. 17-19).

The Federal Bureau of Investigation ("FBI") keeps track of *ex parte* TROs in its National Crime Information Center that will result in the husband being detained by U.S. Customs when he re-enters the country from overseas, as happened to Den Hollander. The listing also provides a reason for the FBI to deny a security clearance to a Federal employee or applicant for a Federal position, but the husband, as with Den Hollander, will never know why or be able to challenge the denial because VAWA keeps it records sealed from him. Also the husband's application for a job with a private corporation will be denied as a result of a background check, as happened to Cardozo. (Amend. Compl. ¶ 108, App. 18).

The VAWA process, regardless of what a state court does, fines the citizen husband responsible for felonies, misdemeanors, or acts arbitrarily decided wrong by immigration authorities under the overbroad and vague terms of "battery," "extreme cruelty" or an "overall pattern of violence." Although the Government's conclusions are kept secret from the husband, the wife, her immigration lawyer and her social services advocate from a non-governmental organization ("NGO") know about them.[4] Federal, state and local agencies and private NGOs that may or are providing the wife benefits must confirm whether she is applying or received

[4] Often both lawyer and feminist advocates are funded by the Government, which raises a conflict of interest issue.

VAWA status and was abused, so they also learn about the findings. Moffett and Brannon's alien wives receive benefits from NGOs. (Amend. Compl. ¶¶ 93, 122, App. 17, 19). Federal, state and local law enforcement officials also have access to the findings. The husband, however, is unable to determine whether the Government's findings against him have been communicated to any of the above third parties because all such communications are kept secret from him, as are those concerning the Class Representatives.

The husband is also unable through any administrative or judicial proceeding or under the Privacy Act, 5 U.S.C. 552a, to examine the Government's findings of abuse, correct any mistakes, or limit access, which is presently true for the Class Representatives.

The availability to so many people that the Government decided the husband committed domestic violence against his alien wife means it is almost certain the findings are going to leak to the general public. When they do, there is nothing the husband, or Class Representatives, can do. There are no legal proceedings to recover damages or keep the findings from being published further. Of course, the husband, as with the Class Representatives, may not learn about any leaks for years because of VAWA's secrecy. The false information, however, will continue working relentlessly to clandestinely undermine his reputation, career, and inter-

reaction with others until his life collapses—just as the invisible hand of the McCarthy lists in the 1950s destroyed many innocent persons.

In fiscal year 2005, nearly 9,500 alien females used the VAWA process by alleging their citizen husbands abused them. Eduardo Porter, Law on Overseas Brides is Keeping Couples Apart, N.Y. Times, October 17, 2006. Generally over 80% of alien wives applying receive permanent residency under VAWA.

Provisions challenged as unconstitutional.

Secrecy

8 U.S.C. § 1367(a)(2) & (c) make secret Government proceedings that determine whether a citizen husband committed acts of "battery," "extreme cruelty," or an "overall pattern of violence" against his alien wife. Under **8 U.S.C. § 1367(b)(2)(4)(5) & (7)**, the proceedings are kept secret from the U.S. husband but not his alien wife, her immigration attorney, private feminist advisors or Federal, State, and local public or private agencies that provide benefits to the alien wife or any law enforcement agency.

"Democracies die behind closed doors." Detroit Free Press v. Ashcroft, 303 F.3d 681, 683 (6th Cir. 2002).

Turning a blind eye

8 U.S.C. § 1367(a)(1)(A) requires discarding any exculpatory evidence the husband might submit to the Government solely because it passed through his hands. INS Memorandum, 74 Interpreter Releases 795, 797 (1997).

"Facts do not cease to exist because they are ignored."—Aldous Huxley.

Relying on untrustworthy evidence

8 U.S.C. § 1154(a)(1)(J), 8 C.F.R. § 204.2(c)(2)(iv), and **61 Fed. Reg. 13,061, 13,065-13,066** permit the Government to arbitrarily decide the credibility and weight of information provided by the alien wife in finding her husband guilty of "battery," "extreme cruelty," or an "overall pattern of violence."[5] The evidence the Government relies on is often irrelevant, untrustworthy, unauthenticated, and plagued by multiple hearsay and character trait information. Since evidence submitted by the husband is discarded, there is no adversarial process at work, but there is an incentive to suborn perjury.[6] Many centuries have shown the adversarial process to be more effective at reaching the truth than Star Chamber type proceedings.

[5] "Guilty" means responsibility for a crime or civil wrong, Black's Law Dictionary, 8th ed. 1999, and is used interchangeably with "responsible" in this Brief.

[6] Imagine this case went to trial but the Government never showed, did not submit any evidence, and rather than entering a default judgment, the trial court had to make a decision. There would be only one way for the court to decide because there is nothing to support the other side—that is what the VAWA provisions do.

The framers of the Constitution "did not trust any government to separate the true from the false for us." Thomas v. Collins, 323 U.S. 516, 545, 65 S.Ct. 315, 89 L.Ed. 430 (1945)(Jackson, J. concurring).

"Battery," "extreme cruelty," and "overall pattern of violence"

"Self-petitioning" under **8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb) & (II)(aa)(CC)(ccc)**, cancellation of deportation under **8 U.S.C. § 1229b(b)(2)(A)(i) & (C)**, waiver of inadmissibility under **8 U.S.C. § 1182(h)(1)(C) & (i)**, waiver of deportation under **8 U.S.C. § 1227(a)(1)(H)(ii)**, non-disclosure of information under **8 U.S.C. § 1367(a)(2)**, prohibition on evidence from U.S. citizens under **8 U.S.C. § 1367(a)(1)(A)**, and definitions under **8 U.S.C. § 1641(c)(1)(A)**, **8 C.F.R. § 204.2(c)(1)(vi)** and **61 Fed. Reg. 13,061, 13,065-066** all require the husband to be adjudged responsible for "battering" or "extreme cruelty" or an "overall pattern of violence," but nowhere are those terms specifically defined.

Persons cannot know what not to do if there is no way of knowing what not to do.

ARGUMENT SUMMARY

Protecting victims and punishing violators are laudable goals and may actually be the founding principal of civilization—but it cannot be done unless the truth is known. In this case, the truth about whether the citizen husband did what his alien wife accuses him of doing. The truth is hard to find, but in this

democracy, it is done in open proceedings, by an impartial tribunal, listening to both sides—not in secret where the accused has no opportunity to be heard and the adjudicator remains anonymous. Secrecy "'provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.' Appearances in the dark are apt to look different in the light of day." McGrath, 341 U.S. 123, 172, (Frankfurter J., concurring).

This action charges that the fundamental rights of citizen husbands, such as the Class Representatives, were and are being violated by the way the Government provides alien wives permanent residency through the VAWA process. The VAWA provisions ignore the traditional adversarial system for determining the truth when finding facts that a husband committed domestic violence against his alien wife. The secret determinations ignore evidence from the citizen husband and consider as wholly trustworthy and persuasive information from the alien wife that has been manipulated or created by her immigration advocates. The VAWA provisions necessarily assume the husband guilty without allowing him any opportunity to prove otherwise. VAWA simply takes the "he said" out of the "he said, she said."[7]

[7] An alien wife's accusations in state proceedings are likely the same as in the VAWA process because she will file documents containing the state accusations with immigration authorities. Such often leads to the anomalous result of a husband found not to have committed certain acts in state adjudications but to have committed the same acts in Federal VAWA adjudications.

The fundamental rights at stake are fairness in procedure, freedom of choice in marital relations, freedom of speech, privacy, reputation as it relates to a state right, and freedom from invidious discrimination.

The VAWA provisions also act as a bill of attainder. They were enacted knowing that they would punish without trial mostly citizen husbands. "The vice of attainder is that the legislature has decided for itself that certain persons possess certain characteristics and are therefore deserving of sanction…." U.S. V. Brown, 381 U.S. 437, 449 n. 23, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965). It must be remembered that these husbands are not accused of terrorism, they're not planning to blow-up innocent civilians, all they did was fall for alien females.

The VAWA provisions created by the Feminist lobby allow alien wives prone to criminal pursuits to become permanent residents and eventually citizens by simply saying their husbands abused them, and it will not matter that these alien wives are lying, committed crimes of moral turpitude, violated drug laws, worked as prostitutes and procurers, used fraud and perjury to gain entry into the U.S., or are moles for Al Qaeda.

The Government uses VAWA to reshape social relations by coercing private conduct in accordance with the Feminist Establishment's ideology.[8] The conduct

[8] Feminist Establishment refers to the unitary belief system held by a sufficient number of influential persons in this society so that the ideology of post-modern Feminism dominates over other beliefs in the political, governmental, academic, media, and social spheres.

regulated need not amount to criminal or civil wrongs, but even if it does, its prevention and punishment more appropriately falls under family law—an area traditionally reserved for the states, *see* U.S. v.Morrison, 529 U.S. 598, 615-16, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000), and better served by the states' police forces, family courts, legal aid societies, and numerous non-profit and tax-exempt organizations created to assist alien wives. *See* Zablocki v. Redhail, 434 U.S. 374, 389, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978).

ARGUMENTS

1. Do the VAWA provisions and their enforcement injure U.S. citizen husbands, such as the Class Representatives, by invading their legally protected interests?

2. Did the lower court violate motion to dismiss standards by finding a false fact, ignoring allegations in the Amended Complaint, and even adopting a false Government allegation so as to dismiss the Amended Complaint for failure to allege standing injury?

3. Do the VAWA provisions exceed Congressional authority by intruding into family relations that are traditionally the area of state concern?

The standard of review on a Rule 12(b)(1) motion to dismiss is *de novo*.

1. Standing

A party seeking to invoke a federal court's jurisdiction must demonstrate:

(1) Injury-in-fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, but not conjectural or hypothetical. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). A "particularized" injury is one that affects the plaintiff in a personal and individual way. Lafleur v. Whitman, 300 F.3d 256, 269 (2d Cir. 2002). "Imminent" is determined on a case specific basis where the greater the harm the lower the probability that is necessary. Baur v. Veneman, 352 F.3d 625, 637 (2d Cir. 2003). Probability of the harm occurring can depend on a single event or a chain of third party responses. *See* Wilderness Soc. v. Griles, 824 F.2d 4, 12, 18 (D.C. Cir. 1987).

Lujan denied standing on a summary judgment motion, not at the pleading stage. The Supreme Court stated that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Lujan at 561 (quoting Lujan v. National Wildlife Federation, 497 U.S. 871, 889, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)).

The Class Representatives face a unique obstacle in alleging harm at the pleading stage. The VAWA provisions keep the mechanisms of injury closed to them, but open to others. As a result, all the injuries are not immediately

manifested to the Class Representatives and may remain unknown to them for years, such as employment denied, reputation sullied, privacy invaded, and law enforcement investigations begun as a result of the Government finding a husband committed domestic violence. The unseen, silent hand of government can destroy just as readily as the firearm.

If complaints can be dismissed for failure to adequately allege injury because the Government chooses to keep its conduct and resulting harm secret from those injured, then this country might as well forget about a democracy and go straight to a dictatorship where the Government can do whatever the powerful want, regardless of rights. This case is not about a war on terrorism, but about one group trying to rule over another in domestic affairs by secretly using the power of the Government. In such a situation, standing should at least be determined following discovery of what the Government is hiding.

Furthermore, the Class Representatives should be considered to have standing based on the unidentified but identifiable other citizen husbands harmed by VAWA, since VAWA secrecy makes it difficult if not impossible for any husband to present his grievances before any court. Barrows v. Jackson, 346 U.S. 249, 257, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953).[9]

[9] Secrecy made finding class representatives for this putative class action extremely difficult because most husbands don't even know whether they are the subjects of VAWA proceedings.

(2) Causation, which means the injury is fairly traceable to the challenged action of the defendant, Lujan v. Defenders of Wildlife, 504 U.S. at 560.

(3) Remedial relief, which means "obtaining relief from the injury as a result of a favorable ruling" is not "too speculative." Allen v. Wright, 468 U.S. 737, 752, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)(standing denied because relief would not cure discrimination).

When a "third party's conduct is sufficiently dependent on the incentives provided by the defendant's action, then the resultant injury will be fairly traceable to that action, and a court order binding the defendant will likely cure the plaintiff's harm." Wilderness Soc. 824 F.2d at 17.

The lower court used Raines v. Byrd, 521 U.S. 811, 819-20, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997), to apply an "especially rigorous" standard to this action that concerns individual civil rights. Order p. 5, App. 38. Raines, a summary judgment decision, involved a confrontation of institutional power between the Congress and the Executive branch in which a number of individual Congressmen, opposed to a line-item veto act, filed suit that the act unconstitutionally reduced Congress's power. The Congressmen alleged injury to the institution of Congress as a whole—not to themselves individually. They claimed "loss of political power, not loss of any private right." Raines, 521 U.S. at 821. The Supreme Court denied

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Therefore, standing should also rest on the class as a whole rather than just the four class representatives.

standing because the case concerned the balance of power between the two branches of Government and declined to take on the role of re-distributing that power. The Court stated the role for Article III courts was "well expressed by Justice Powell in his concurring opinion in United States v. Richardson, 418 U.S. 166, 192, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974):

> "The irreplaceable value of the power articulated by Mr. Chief Justice Marshall [Marbury v. Madison, 5 U.S. 137] lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role, not some amorphous general supervision of the operations of government, that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests."

Raines at 828.

The action before this Court concerns individual rights of a minority, men—not a political power dispute among the branches of the Government. So the lower court's "especially rigorous" standard does not apply.

Furthermore, when federally protected, individual rights are invaded, the courts may use "any available remedy to make good the wrong done," Bell v. Hood, 327 U.S. 678, 684, 66 S.Ct. 773, 90 L.Ed. 939 (1946)(citations omitted), and protect individual interests from the excesses of the democratic processes, Wright & Miller, Fed. Prac. & Proc., § 3531.4, p. 952 (Supp. 2008). The importance and protection of individual constitutional rights is a central part of the

role under separation of powers assigned to the judiciary where "[t]he touchstone to justiciability is injury to a legally protected right," McGrath, 341 U.S. 123, 140-41(citations omitted), and "traditionally thought to be capable of resolution through the judicial process," Flast v. Cohn, 392 U.S. 83, 97, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). The alleged injuries in this case include past, ongoing, and the threat of future harm to the legally protected interests of individuals, as alleged in the Amended Complaint, which the lower court apparently ignored. (Amend. Compl. ¶¶ 7-13, 15, 20-31, 67, 69-70, 80, 82, 89-90, 93, 103-05, 108, 120, 122, 142-61, 164-176, 179-87, 196-98, 201-04, 212-14, 217, 219(b), (e), (h), App. 7-10, 13-14, 16-19, 21-31).

The lower court also mistakenly assumed that standing injury can only occur to persons who are the defendants in civil or criminal proceedings brought by the Government.[10] Order p. 6, App. 39. If that were true, then all those people who sued over environmental, equal protection, and other harm would have been thrown out of court because those cases did not involve civil or criminal proceedings brought by the Government against them. *E.g.* Bryant v. Yellen, 447 U.S. 352, 100 S.Ct. 2232, 65 L.Ed.2d 184 (1980)(non-landowners had standing to

[10] The lower court relies on Linda R. S. v. Richard D., 410 U.S. 614, 619, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973), to find the Class Representatives have no standing because they were "neither prosecuted not threatened with prosecution." Order p. 6, App. 39 (quoting Linda R. S.). Actually, VAWA often results in prosecution in state courts while the VAWA process acts as a *de facto* prosecution finding that a citizen husband committed felonies, misdemeanors, or other wrongs. Prosecution, however, is not a requirement for standing. It can help, but without it, the courts still find standing.

sue for the upholding of a regulation that barred irrigation water to land ownership of over 160 acres); Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978)(people near proposed nuclear power plants had standing to challenge Government rule limiting nuclear accident liability); Evers v. Dwyer, 358 U.S. 202, 79 S.Ct. 178, 3 L.Ed.2d 222 (1958)(standing for man who was not arrested to sue city for requiring people of darker skin color to sit in the back of buses); Baur v. Veneman, 352 F.3d 625 (2d Cir. 2003)(standing to sue over Food and Drug Administration procedures).

Further, the Class Representatives' standing is unaffected by the VAWA provisions not specifying jail time or fines against them. Columbia Broadcasting System v. U.S., 316 U.S. 407, 422, 62 S.Ct. 1194, 86 L.Ed. 1563 (1942). It is enough that the provisions adversely affect their legal rights. Id. The Supreme Court has "long … granted relief to parties whose legal rights have been violated by unlawful public action, although such action made no direct demands upon them." McGarth, 341 U.S. 123, 141 (citations omitted). In McGarth the Government made determinations in secret that organizations were Communistic, just as here the Government makes determinations in secret that citizen husbands committed domestic violence.

Contrary to the Order at p. 6, App. 39, the VAWA process is not just a mechanism for granting permanent residency to an alien, but an adjudication that

her husband committed abuse. Without a finding of domestic abuse, there is no permanent residency under VAWA. If standing can be found in situations where the terms of Government regulations are not addressed to those whose rights are affected, Columbia, 316 U.S. 407, 420, then here, where the provisions actually aim at those whose rights are violated, standing must logically, although not politically correctly, exist.

The lower court also misinterpreted Laird v. Tatum, 408 U.S. 1, 13-14, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972), by holding that allegations of "subjective chill" are insufficient for an injury. Order p. 5, App. 38. Laird actually stated, "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." Laird at 11. Here the VAWA provisions were not "chilling" but censoring Den Hollander, Moffet, and Brannon from speaking on their own behalf in proceedings adjudging whether they committed domestic violence. (Amend. Compl. ¶¶ 84, 95, 125, 143, 144, App. 16-17, 19, 21). The lower court also wrongly analogized the alleged facts of this action to Laird. In Laird the plaintiffs challenged an Army intelligence gathering system that never gathered nor was gathering any information on them. Here the Government was

receiving and shifting information for making factual decisions about the Class Representatives' conduct.[11]

A certainty of continuing and future injuries persist against the Class Representatives because the Government is not about to halt enforcement of the VAWA provisions as they pertain to them. *See* Evers, 358 U.S. at 204. The Class Representatives already have had some of their rights violated and are facing the threat of more harm. (Amend. Compl. ¶¶ 21-25, App. 8-9). "Past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury," O'Shea v. Littleton, 414 U.S. 488, 496, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974).

The lower court criticized the Amended Complaint for not being a "model of … a 'short and plain statement' as envisioned by Rule 8," Order p. 2, App. 35. The lower court, however, failed to take into account the "[c]onsiderable uncertainty concerning the standard for assessing the adequacy of pleadings … created by the Supreme Court's decision in Bell Atlantic v. Twombly, 550 U.S. 544 (2007) …." Iqbal v. Hasty, 490 F.3d 143, 155 (2d Cir. 2007). Iqbal itself is a case that does not offer much guidance to plaintiffs regarding when factual

[11] The Order at p. 7, App. 40, relied on another factually dissimilar case to find no direct injury. In Ex parte Levitt, 302 U.S. 633, 58 S.Ct. 1, 82 L.Ed. 493 (1937), a lawyer challenged the appointment of Justice Black to the Supreme Court. The only interest the lawyer had in the appointment was that he was a citizen and member of the Supreme Court bar. Here the appellants interests include freedom of speech, privacy, marital and divorce decisions, procedural due process, equal protection, reputation, and financial.

"amplification [is] needed to render [a] claim plausible." Boykin v. KeyCorp, 521 F.3d 202, 213 (2d Cir. 2008). After Twombly, a cautious pleader will include more pertinent factual allegations, which is what the Amended Complaint does. The lower court's criticism probably stems from its failure to realize that Twombly, 550 U.S. at 563, changed the motion to dismiss standard by eliminating the very sentence from the law that the lower court used: "[d]ismissal is inappropriate unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him or her to relief." Order p. 5, App. 38.

Injury-in-Fact

"[A]" person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation," Barrows v. Jackson, 346 U.S. 249, 255, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953); that is, when a finding of constitutionality or unconstitutionality will directly affect the party raising the challenge. Antieau & Rich, Modern Constitutional Law, § 48.37, 2d ed. 1997. The purpose of this requirement is that "a personal stake in the outcome of the controversy … assure[s] that concrete adverseness … sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. This is the gist of the question of standing." Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962).

The Class Representatives have been arrested, jailed, subjected to TROs and false police complaints. They have lost houses, jobs, bank accounts, and were or are having their rights to freedom of speech, freedom of choice in marital relationships, procedural due process, and equal protection trampled by VAWA's Star Chamber provisions. They face ongoing non-compensable harm from defamations and invasions of privacy. Barriers prevent them from correcting false Government fact-findings about them or limiting dissemination of such. Few, if any, would argue a more sincere concern for zealous advocacy in finding the challenged sections of VAWA unconstitutional.

In Singelton v. Wulff, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976), the Court held that if physicians prevailed to remove the Medicaid limit on abortions, they would benefit financially while the state and federal government would be out of pocket the amount of additional payments. "The relationship between the parties is classically adverse, and there clearly exists between them a case or controversy in the constitutional sense." Id. at 113 (citations omitted). Finding the VAWA provisions unconstitutional will allow the Class Representatives to not only correct the miscarriages of justice against them but also the continuing harm that being branded a perpetrator of domestic violence causes. The Government will incur the time and cost of providing not only procedures for correcting its decisions but procedures engineered to find the truth rather than

rubber stamping allegations as facts just because of the status—alien and female—of the person who makes them. The parties here are "classically adverse."

Injury from State Criminal and Civil Proceedings

Real and immediate injuries can result from a Federal statute that encourages third parties to act in a way that harms others. For example, a statute limiting the liability for potential accidents at nuclear power plants encourages the construction of plants that when finally completed would create an apprehension in those near the plants of increased radioactivity, reduced property values, and increased water temperature. Duke Power, 438 U.S. 59, 73. Or, where the Government makes a decision to raise transportation rates. U.S. v. SCRAP, 412 U.S. 669, 688, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). The decision leads one group of third parties, the recycling industry, to reduce the availability of recyclable goods because the higher rates have made them less profitable. The public buys less recyclable goods but more of the cheaper non-recyclable goods, which are discarded as refuse in national parks. Another group, manufacturers, then uses more natural resources to meet the demand for the non-recyclable goods. All of which taken together will harm the use and enjoyment of nature by the plaintiffs. Id. at 686-88.

Here third parties, alien wives, in order to acquire permanent residency through VAWA, make fraudulent assertions causing arrests, police complaints, and TROs. (Amend. Compl. ¶¶ 9-12, 179, Den Hollander ¶¶ 67, 69, 70, Moffett ¶¶

89-90, Cardozo ¶¶ 104-05, 109, Brannon ¶¶ 120-21, App. 7-8, 13-14, 17-18, 26). The injuries from such to the Class Representatives have not ended. "It is common knowledge that a man with an arrest record is much more apt to be subject to police scrutiny—the first to be questioned and the last eliminated as a suspect." Utz v. Cullinane, 520 F.2d 467, 481 n. 35 (D.C. Cir. 1975)(quoted citation omitted). An arrest may impair a person's reputation, as with Moffett and Cardozo, Amend. Compl. ¶¶ 89, 104, App. 17-18, and "even to be acquitted may damage one's good name if the community receives the verdict with a wink and chooses to remember defendant as one who ought to be convicted." Michelson v. United States, 335 U.S. 469, 482, 69 S.Ct. 213, 93 L.Ed.168 (1948). Just like the modern-day opprobrium caused by mere accusations of domestic violence.

Arrest records also interpose considerable barriers to employment, education, and professional licensing opportunities, Utz, 520 F.2d 467, 480, as with Moffett and Cardozo, Amend. Compl. ¶¶ 89, 108, App. 17-18. The regrettable fact is that "'so long as there exists an employable pool of persons who have not been arrested, employers will find it cheaper to make an arrest an automatic disqualification for employment'" and "'will not distinguish between arrests resulting in conviction and arrests which do not.'" Utz at 480 (quoted citations omitted).

The lower court dismissed the injury allegations from arrests, police complaints, and TROs by stating, "that prospective harm can be addressed in state court proceedings." Order p. 6, App. 39. That is inaccurate.

The Identification Division of the FBI collects and maintains fingerprint information that lists an individual's arrest and issuance or violation of a TRO. [12] 28 U.S.C. § 534; 28 C.F.R. 0.85(b). The information is gathered from Federal, state and local agencies, and the FBI disseminates it to law enforcement agencies, officials of state and local governments for employment and licensing purposes, and to private contractors. 28 C.F.R. §§ 20.21(b)(2)-(3); 20.33(a); 50.12(a). TROs are also entered into the FBI's National Information Crime Center. All of the information concerning arrests and TROs are available for FBI security clearance checks.

The only way to expunge these records requires the equity power of a Federal, not state, court, but that power "is a narrow one, and should not be routinely used whenever a criminal prosecution ends in an acquittal, but should be reserved for the unusual or extreme case." U.S. v. Schnitzer, 567 F.2d 536, 539 (2d Cir. 1977)(quoted citation omitted). Extreme cases have been found in situations of mass arrests, arrests based on an unconstitutional statute, harassment of civil

[12] A female viewer of David Letterman actually obtained a TRO against him in New Mexico by claiming Letterman, who never met the lady, abused her by sending secret signals "in code words" over the TV. G. A. Hession, Esq. Restraining Orders Out of Control, The New American, Aug. 4, 2008.

rights workers, and misuse of police records, id. at 540: none of which apply to the Class Representatives.

Even if the Class Representatives did succeed at expunging their Federal records, private investigatory firms still maintain the information. Corporations check with those firms to determine whether employment applicants were arrested or the subject of a police complaint or TRO. If so, the companies usually deny the applicant a job, which happened to Cardozo and continues to happen to Moffett, Amend. Compl. ¶¶ 89, 108, App. 17-18.

The Sixth Amendment's Confrontation Clause requires that a criminal defendant be afforded a full and fair opportunity to cross-examine adverse witnesses in order to show bias or improper motive for their testimony. Brinson v. Walker, 547 F.3d 387, 392-93 (2d Cir. 2008)(citing *see* Pa. v. Ritchie, 480 U.S. 39, 51, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987)). The reason is that "this type of evidence can make the difference between conviction and acquittal." Pa. v. Ritchie, 480 U.S. at 52 (1987)(citation omitted). In a state criminal proceeding, VAWA secrecy prevents the citizen husband, as happened to Moffet, from impeaching his wife's criminal accusations by showing she has a motive to lie in order to win permanent residency through VAWA. (*See* Amend. Compl. ¶ 89, App. 17 (Moffett prevented in assault hearing from pursuing issue that wife's complaint was motivated by VAWA)).

State prosecutors have the obligation to turn over evidence in their possession that is both favorable to the accused and material to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The obligation includes the disclosure of impeachment evidence. Youngblood v. W. Va., 547 U.S. 867, 869, 126 S.Ct. 2188, 165 L.Ed.2d 269 (2006)(citation omitted). In state criminal proceedings against the citizen husband, the prosecution's key witness is his alien wife. Since she knows whether she is using the VAWA process, the prosecution is in possession of that impeachment information and should disclose it to the husband. The VAWA secrecy provision, however, prevents disclosure and thereby violates the husband's due process. The prosecutor in Moffett's assault proceeding failed to disclose that Moffett's wife was using VAWA for permanent residency.

Procedural Due Process Injuries

> "VAWA cases are pretty much a joke, most of them are approved because there is only one side. There's a ring of groups that know what to tell the officials at the Vermont Service Center. There's an extremely high approval for VAWA cases." Dean Hove, former U.S. Citizenship & Immigration Services, Upper Midwest Deputy District Director.

When the power of government is used against a person, there is a right to fair procedure to determine the factual basis and legality of the government's decision. "[I]n the development of our liberty, insistence upon procedural regularity has been a large factor." Burdeau v. McDowell, 256 U.S. 465, 477, 41

S.Ct. 574, 65 L.Ed. 1048 (1921)(Brandeis, J. dissenting). Due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner" before government burdens life, liberty or property. Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

In determining what process is due, it need be remembered that due process is unlike some other legal rules. Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (citations omitted). It is not a technical conception with a fixed content unrelated to time, place, and circumstances, but rather it is flexible and calls for such procedural protections as the particular situation demands. Id. The dictates of due process generally require looking at three factors: (1) whether existing procedures create an unreasonable risk of an erroneous deprivation, (2) the private interest affected by official action, and (3) the Government's interest in the existing procedures. Mathews at 335. When procedures limit fundamental constitutional rights, the laws creating them must serve compelling governmental interests. Rotunda & Nowak, Treatise on Constitutional Law, § 15.7, 4th ed. 2007.

Three VAWA procedures violate procedural due process: Secrecy, **8 U.S.C. § 1367(a)(2) & (c)**, provides no notice and no opportunity for citizen husbands to be heard at proceedings that find them responsible for "battery," "extreme cruelty" or an "overall pattern of violence"; and two evidentiary provisions referred to as Turning a blind eye, **8 U.S.C. § 1367(a)(1)(A)**, and Relying on untrustworthy

evidence, **8 U.S.C. § 1154(a)(1)(J), 8 C.F.R. § 204.2(c)(2)(iv), and 61 Fed. Reg. 13,065-66**, ignore evidence from citizen husbands but rely on incompetent evidence from alien wives. All three corrupt the truth finding function and violate fundamental constitutional rights in determining whether the citizen husband abused his alien wife.

Den Hollander, Moffett and Brannon, on information and belief, were or are being found responsible for felonies, misdemeanors, or wrongful acts in what the Justice Department ("DOJ") considers law enforcement proceedings, Addendum 92. They have no notice, no access, no impartial adjudicator, and no chance to rebut evidentiary presumptions. (Amend. Compl. ¶¶ 20, 26, 49, 50, 51, 52, 84, 95, 125, 142, 148, 164, 179-183, App. 8-9, 11-12, 16-17, 19, 21-22, 24, 26). The lack of notice and opportunity to be heard is an injury. Carey v. Piphus, 435 U.S. 247, 266, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978).

The Amended Complaint requested nominal damages for violations of procedural due process but the lower court completely ignored that request and the following holding by the Supreme Court:

> "Because the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, see Boddie v. Connecticut, 401 U.S. 371, 375 (1971); Anti-Fascist Committee v. McGarth, 341 U.S. 123, 171-72 (1951)(Frankfurter, J., concurring), we believe that the denial of procedural due process should be actionable for nominal

> damages without proof of actual injury." Carey v. Piphus, 435 U.S. 247, 266.

Standing should have been granted based on the allegation of nominal damages alone.

Speech

The secrecy and evidentiary provisions prevented the Class Representatives from speaking or hiring attorneys to speak for them and from presenting evidence on their behalf. These bars to procedural due process infringed the Class Representatives' speech by preventing speech before it occurs—censorship. The lower court's finding that "[t]he Amended Complaint is bereft…." of injury allegations as to "First Amendment … claims," Order p. 7, App. 40, ignores the allegations of censorship, Amend. Compl. ¶¶ 143-145, 165, 195-198, 200-01, App. 21, 24, 28-29, which occurred to Cardozo, and, on information and belief, were or are occurring to Den Hollander, Moffett and Brannon, Amend. Compl. ¶¶ 84, 95, 125, App. 16-17, 19.

The lower court also ignored that in the First Amendment context, "[l]itigants . . . are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." Va. v. American Booksellers Ass'n, 484 U.S. 383, 392-93, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988)(quoted citation

omitted). This exception applies here, since the Class Representatives also allege infringement of speech of other husbands. (Amend. Compl. ¶ 3, App. 6).

Marriage

"The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967)(Warren, C. J.). "Choices about marriage, family life, … are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society.'" M.L.B. v. S.L.J., 519 U.S. 102, 116, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996)(citation omitted).

Since the Class Representatives did not have the freedom of choice to challenge the VAWA findings of marital abuse, they were boxed-in between two equally harmful alternatives: the Government finding they committed domestic violence or committing perjury that their marriages were viable in sponsoring their wives for residency. A dilemma that effectively chilled their rights to choose to seek an annulment or divorce. (Amend. Compl. ¶¶ 146, 166, App. 22, 24). "In assessing the possible hardship to the parties resulting from withholding judicial resolution, [the Second Circuit] ask[s] whether the challenged action creates a direct and immediate dilemma for the parties." Marchi v. Board of Coop. Educ. Servs., 173 F.3d 469, 478 (2d Cir. 1998).

The dilemma is further exacerbated in that by choosing to end their marriages, the Class Representatives could not submit their alien wives' use of the VAWA process as evidence of a motivation for fraud in obtaining TROs or filing false police complaints. Nor can they presently use VAWA records to reopen prior state criminal or civil cases all because of VAWA secrecy.

Since the Class Representatives were and still are subject to special disabilities created by VAWA, they have a substantial, immediate, and real interest in whether the provisions are valid. Evers, 358 U.S. at 204. The VAWA provisions not only chilled their freedom of choice on whether to terminate their marriages but continue to deter them from again marrying a foreigner in order to avoid a repeat of the VAWA hell they went through. (Amend. Compl. ¶¶ 30, 137, 204, 214, App. 9, 21, 29-30). In Evers, the black class representative, who boarded a bus once and then got off when told he could not sit in the front, was not about to board a bus again and sit in the front unless the segregation statute was nullified. Id. The Supreme Court found that such a government imposed disability was a sufficient injury to give the man standing to challenge the segregation statute, id., as does the ongoing deterrence of future marriages to aliens constitute injury to the Class Representatives.

When the Class Representative sponsored their alien wives for the two-year conditional marriage residency, they were required to enter into contracts with the

Government under 8 U.S.C. § 1183a. The enforceable agreement obligates them to support their alien wives to the amount of 125% of the poverty level or reimburse public benefits the wives receive. These obligations may last for 10 years and divorce does not end them. However, a finding that an alien wife is inadmissible or deportable would end a husband's obligation, since the wife would no longer be in the U.S. legally. But VAWA prevents this by providing waivers for conduct that would normally result in inadmissibility or deportability, 8 U.S.C. §§ 1182(h), 1227(a)(1)(H), 1229b(b)(2), thereby assuring an alien wife legally remains in the U.S. and her husband saddled with a vested contingent obligation to support her. (Amend. Compl. ¶ 25, App. 9).

Brannon brought his wife to America on a K-1 fiancée visa. (Amend. Compl. ¶ 116, App. 19). Under VAWA, he is limited to sponsoring just one more wife for a K-1 visa because all citizens are limited to two such visas unless a waiver is obtained. 8 U.S.C. § 1184(d); USCIS Memorandum, International Marriage Broker Regulation Act Implementation Guidance, Michael Aytes, HQOPS Docket # USCIS-2008-0070, 07/21/2006, www.uscis.gov.

One factor in considering a waiver is whether a prior spouse was adjudged inadmissible or deportable, but the VAWA provisions effectively prevent that, so waivers are unlikely for any citizen with a former alien spouse who accused him of abuse, as did Brannon's. This VAWA section counters the very reason for the

fiancée visa: to allow citizens to spend time with their fiancées in America, rather than making numerous, expensive trips overseas to determine whether the relationship will work. In effect, American citizens, usually men with limited resources, are hamstrung to two bites of the apple before resigning themselves to forming families with the domestic pool of females.

The VAWA process casts a continuing and brooding presence of risk and fear that threatens any American man's right to marry an alien female when considering the high failure rate of marriages, the intense desire of aliens to gain admission to the U.S., and that marriage is fundamental to the very existence and survival of mankind, Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942). Such risks are sufficient for standing.

Privacy & Reputation

All the Class Representatives presently face an insurmountable wall to determining whether the Government's findings of abuse invade their privacy or defame them. VAWA secrecy prevents citizens from accessing such records, correcting them, limiting their disclosure, or obtaining damages as a result of dissemination.

The right to privacy protects one's private life from government intrusion, Olmstead v. United States, 277 U.S. 438, 478-79, 48 S.Ct. 564, 72 L.Ed. 944 (1928)(Brandeis, J. dissenting), and the right to privacy regarding family matters is

inherent in the concept of liberty, Rotunda, Constitutional Law, § 18.26. The VAWA provisions result in the wholesale intrusion by the Government into private matters. Intimate matters of the Class Representatives lives are revealed to third parties without their consent and without any procedures for objecting. (Amend. Compl. ¶¶ 147, 149, 151, 152, 154, 157, App. 22-23).

Because the Justice Department considers the fact-findings in the VAWA process as compiled for law enforcement purposes, they cannot be released to a citizen husband because it would constitute an "unwarranted invasion of the personal privacy of third parties [his wife]" under 5 U.S.C. § 552(b)(7)(C). Den Hollander tried to use the Privacy Act, 5 U.S.C. 552a, to access records about him but was denied. Addendum at 92. VAWA, however, permits the release of its findings to Federal, state and local law enforcement officials and Federal, State, local and private organizations providing benefits and victims services. **8 U.S.C. § 1367(b)(2)(5) & (7)**.

The government and private organizations providing benefits learn of private and defamatory matters concerning a husband because they must determine whether his alien wife was abused and whether there is a connection between the abuse and the need for a benefit. **8 U.S.C. § 1641(c)(1)(A)**; Qualified Alien Status and Eligibility Under Title IV, 62 Fed. Reg. 61344, 61366-67, 61371.

Once privacy information is disclosed to these third parties, the husband will have no legal recourse for damages because "false light" requires the information be used for commercial purposes while a "*prima facie*" tort requires the primary purpose of disclosure is to harm the husband.

As for defamation, Government harm to reputation in connection with the denial of a right recognized by state law infringes a liberty interest that triggers due process. Neu v. Corcoran, 869 F.2d 662, 669-670, & n. 2 (2d Cir. 1989). VAWA secrecy prevents the Class Representatives from correcting or preventing the disclosure of defamatory findings by the Government. The Government's conclusions of domestic violence are *per se* defamatory because they impute criminal activity. Angio-Medical Corp. v. Eli Lilly & Co., 720 F.Supp. 269, 272 (1989). Those conclusions are available to third parties: Federal, state and local law enforcement officials and Federal, State, local and private organizations providing benefits and victims services.[13] **8 U.S.C. § 1367(b)(2)(5) & (7)**.

Since the Government defamations result from official proceedings, the defamations are privileged under state law in defamation actions. *E.g.*, Andrews v. Gardiner, 224 N.Y. 440, 446, 121 N.E. 341, 343 (1918); N.Y. Civil Rights Law § 74. The result is that the one-sided, secret VAWA proceedings eliminate the right

[13] Any findings, even false ones, may be used in any criminal proceeding against the husband. 8 C.F.R. 216.5(e)(3)(viii).

to a state cause of action for *per se* defamation brought by a citizen husband in which damages are presumed—that is an injury. (Amend. Compl. ¶¶ 151-55, App. 22-23).

The lower court found privacy and reputation injuries speculative by mistakenly claiming the Class Representatives did not allege injury from the disclosure or threatened disclosure of privacy information and defamations to third parties as a result of VAWA. Order p. 6, App. 39. The Amended Complaint at ¶¶ 93, 122, App. 17, 19, does allege, to the extent possible, that Moffett and Brannon's wives are receiving benefits from private NGOs. The providing of those benefits requires the Government to communicate with third parties in those organizations whether the wives made out a *prima facie* case of abuse or were found to have been abused and that there was a "substantial" connection between the nature of the abuse and each wife's need for benefits. Logically, the defamations concerning Moffett and Brannon were or are being communicated to these third parties.

The Class Representatives, however, face a Catch-22 on this issue. VAWA secrecy prevents them from determining what the Government and agencies are doing with privacy and defamatory information while the lower court demands allegations of actual or threatened disclosure that are impossible to make because of Government secrecy. The law in the Second Circuit, however, provides for a

solution: "in resolving claims that [courts] lack jurisdiction, … [the courts] have required that the party asserting jurisdiction be permitted discovery of facts demonstrating jurisdiction, at least where the facts are peculiarly within the knowledge of the opposing party." [14] Kamen v. American Tel. & Tel. Co., 791 F.2d 1006, 1011 (2d Cir. 1986).

Unless VAWA's Catch-22 is eliminated, the Class Representatives will never be able to confirm or adequately allege for the lower court whether any failure to obtain a government job, denial of security clearance, harmful publicity, invasion of privacy, or institution of subsequent government proceedings against them resulted from the communication of VAWA information to third parties.

A heightened risk of prospective harm can be sufficient for standing, La Raza v. Gonzales, 468 F.Supp.2d 429, 439 (E.D.N.Y. 2007).[15] The likelihood of prospective harm in this case, Amend. Compl. ¶¶ 21-24, 148-49, 151-55, App. 8-9, 22-23, is greater than other cases. Farm workers had standing to uphold regulation that limited water to large land parcels because without water the landowners would likely sell some land, and it did not matter that the farm workers couldn't presently afford the land. Bryant, 447 U.S. 352, 366-68. Low-income residents had standing to challenge a city's use of Federal block grants as collateral for a

[14] The extent of the threat of disclosure of records by the Government is unknown because the one source that knows how often that happens, the Government, has denied a Freedom of Information Request for statistics on disclosures.

[15] The Raza Court denied standing, in part, because any prospective harm depended on the plaintiffs' own acts. Here the prospective harm is dependent on the acts of others.

hotel because it might put block grant funds at risk. De Rosa v. United States Dep't of Housing & Urban Dev., 787 F.2d 840, 842 n. 2 (2d Cir. 1986). Aliens had standing when they alleged a reduction in employment opportunities because the Government seized green cards in deportation proceedings even though the aliens failed to identify anyone who suffered such as injury. Loa-Herrera v. Trominski, 231 F.3d 984, 987-88 (5th Cir. 2000). Oregon residents had standing to challenge state statute allowing use of pesticides even though state officials did not intend to use pesticides. Oregon Environmental Council v. Kunzman, 817 F.2d 484, 491-92 (9th Cir. 1987).

The lower court found "a present fear that the ultimate harm might occur" is insufficient for injury. Order p. 7, App. 40, (quoting La Raza, 468 F.Supp.2d at 441). However, the lower court ignored the Second Circuit case N.Y.P.I.R.G. v. Whitman, 321 F.3d 316 (2d Cir. 2003), which held that "uncertainty" over future harm is sufficient for an injury-in-fact:

> "NYPIRG alleges personal and economic injury caused by uncertainty. We think … [any] distinction [from actual exposure] is a superficial one that does not change the injury-in-fact analysis. In other words, the distinction between an alleged exposure to excess air pollution and uncertainty about exposure is one largely without a difference since both cause personal and economic harm.... [and] the injury-in-fact necessary for standing 'need not be large, an identifiable trifle will suffice.'" Id. at 325-26 (citing LaFleur, 300 F.3d 256, 270-71).

The Amended Complaint alleges such uncertainty at ¶¶ 22-24, App. 9.

No American would trust that the dissemination of destructive fact-findings will not occur when they are available to (1) his alien wife, (2) Federal agencies that provide her benefits, (3) state agencies that provide her benefits, (4) local agencies that provide her benefits, (5) private agencies that provide her benefits, (6) Federal law enforcement officials, (7) state law enforcement officials, (8) local law enforcement officials, (9) Interpol, and (10) nonprofit, nongovernmental groups that provide other services to her. And no American would feel secure that the leaking of such injurious information by third parties to the general public never happens.

Impartiality

Due process requires an impartial decision maker to help guarantee that liberty interests will not be impaired on the basis of an erroneous or distorted conception of the facts. Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). Impartial adjudicators also preserve both the appearance and the reality of fairness by engendering the belief, "so important to a popular government, that justice has been done." McGrath, 341 U.S. 123, 172 (Frankfurter, J., concurring). Impartial means treating both sides alike, Webster's Third New International Dictionary, 1993, which the Government's findings of domestic violence do not do because they only consider information from one side.

Evidentiary Proof

Where the reasonableness of the Government's decisions depend on findings of fact, the evidence used to prove those findings must be disclosed to the adverse party so that he can show the evidence untrue. Greene v. McElroy, 360 U.S. 474, 496-97, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959). This is especially important when the evidence consists of testimony by those who "might be perjurers or … motivated by malice, vindictiveness, intolerance, prejudice or jealousy." Id. When one person accuses another of crimes and wrongful acts, the adversity exists between the accuser and the accused—not between the accuser and the adjudicator. And when domestic conflicts are involved, often the worst in human nature comes forth.

Under VAWA, "credible evidence" means whatever the defendants decide it to mean. **8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(iv); 61 Fed. Reg. 13,065-66**; INS Memorandum, 76 Interpreter Releases 162, 168-169 (1999). The Government has no clear-cut standards for determining credible evidence, and the only discernible rule for allocating weight is that documents filed in court or with the police, medical reports, and other documents in government files receive more weight. Id. at 168. VAWA has confused authentication of official documents with the truth of the matters asserted in them. All too often falsehoods are inserted into court documents submitted by parties, lies told to medical personnel, and

misrepresentations made to the police. Giving additional weight to the contents of such documents is bootstrapping, since the source of information mainly comes from the accuser—the alien wife.

The evidentiary benefits of such documents are not lost on immigration lawyers, Feminist advocacy groups (some of which advise withholding information from the police and courts), and alien wives. They intentionally create a trail of official documents filled with false charges against husbands so that those documents can be used as "primary evidence" in the VAWA process. Id. Of course, another foreseeable result is that the false charges will result in jail, TROs, harm to occupation, lost of employment, and pink-listing—reminiscent of the McCarthy era. As back then, lives are destroyed based on unsubstantiated accusations.

The VAWA evidentiary provisions mock the due process policy for standards of proof. "[A] standard of proof represents an attempt to instruct the fact-finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." In re Winship, 397 U.S. 358, 370, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)(Harlan, J.)(concurring). Under VAWA, however, the only proof proffered comes from the alien, so whatever standard the adjudicators choose in finding mistreatment will be met—whether clear and convincing, preponderance or other.

As to the persuasiveness of proof, the evidentiary provisions treat an alien's affidavit as *prima facie* evidence of the ultimate fact of abuse. Normally, such a presumption requires the party against whom the evidence applies to present evidence disproving the ultimate fact. But evidence submitted by a citizen is discarded, so he has no opportunity to repel the presumption—and that violates due process. In effect, the provisions insist on presuming rather than proving abuse by the husband solely because it is more convenient to presume than to prove. *See* Stanley v. Ill., 405 U.S. 645, 658, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

The Alice in Wonderland nature of the VAWA evidentiary determination of abuse is best illustrated by **8 U.S.C. § 1367(a)(1)(A)**. The Government cannot make any decision to find an alien wife inadmissible or deportable solely from information provided by her citizen husband if he abused her. So the threshold question is whether the husband abused her. The Government, however, cannot accept any evidence from the husband as to his innocence because such evidence may result in finding no abuse. That means the wife would be ineligible under VAWA. Ineligibility means the wife would be inadmissible or deportable because VAWA's waivers would not apply. So evidence of innocence from the husband results in inadmissibility or deportation, which the law forbids. Therefore, such evidence from the husband is rejected. That is no way to find the truth, but it is in

the tradition of every kangaroo trial, witch-hunt or "French Reign of Terror" that ever occurred.

VAWA's evidentiary standards were or are being used against Den Hollander, Moffett, and Brannon. (Amend. Compl. ¶¶ 84, 95, 125, App. 16-17, 19).

Equal Protection

The Government may not "bolt the door to equal justice." Griffin v. Illinois, 351 U.S. 12, 17, 76 S.Ct. 585, 100 L.Ed. 891 (1956). The VAWA provisions classify persons so as to prevent the exercise of fundamental rights on equal terms: (1) Americans v. different nationalities, (2) U.S. citizens v. non-permanent aliens, (3) citizens married to non-permanent aliens v. citizens married to citizens, and (4) males v. females.[16] Under VAWA, the Government affords others more fundamental rights than the Class Representatives who are American citizens, married an alien, and are men. (Amend. Compl. ¶¶ 5, 127, 129, 130, 137, 139, 158 –161, 169-176, 185-187, 196-98, 201, 207, 211-14, 216-17, App. 7, 19-21, 23-25, 27-30). "[W]here fundamental rights and liberties are asserted under … Equal Protection … classifications which might invade or restrain them must be closely scrutinized and carefully confined. Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 670, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

[16] VAWA's classifications in (1), (2), and (4) also burden suspect groups in addition to invading their fundamental rights.

Discrimination

Nationality & Alienage: Nationality arises from a person belonging to a nation. Alienage means a foreign born person who has not yet qualified for citizenship. The aliens concerned with in this action are not permanent residents but conditional residents. Nationality and alienage are two different classifications but both are suspect. Frontiero v. Richardson, 411 U.S. 677, 682, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973)(citations omitted).

The VAWA provisions aim to keep American citizens who abuse their non-American, alien spouses from opposing the alien's application for permanent residency. Hernandez v. Ashcroft, 345 F.3d 824, 827, 840-41 (9th Cir. 2003). The Government, therefore, must find that a citizen abused his or her alien spouse. It is in reaching such a finding that the Government treats an American citizen differently than a non-American alien. The alien knows that a proceeding to determine abuse is occurring and can submit evidence—the citizen is kept in the dark, and, even if he knows, his evidence is discarded.

VAWA's classifications do not remotely serve the interest of truthfully determining abuse because participation and evidence from citizens are lacking due to their American nationality and citizenship. The denial of fundamental rights to American citizens but allowed to aliens is so disconnected with finding the truth that the provisions are inexplicable by any motive other than animus toward

American citizens, mainly men, who marry foreigners. *See* Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

Long ago the Supreme Court found that rights to equal protection "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences …." Yick Wo v. Hopkins, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). The Constitution "neither knows nor tolerates classes among citizens," Plessey v. Ferguson, 163 U.S. 537, 559, 16 S.Ct. 1138, 41 L.Ed. 256 (1896)(Harlan, J. dissenting). Those words are now understood to state a commitment to the law's neutrality where the rights of persons are at stake, whether citizens, legal or illegal aliens. Romer v. Evans, 517 U.S. 620, 623, 116 S.Ct. 1620, 134 L. Ed.2d 855 (1996). How ironic that today, America, which has consistently granted aliens within its borders rights similar to citizens, now deprives those citizens of rights granted aliens. The Constitution does not allow for such; if anything, citizens still have more rights. *See* Bernal v. Fainter, 467 U.S. 216, 221, 104 S.Ct. 2312, 81 L.Ed.2d 175 (1984).

Citizen & Citizen: VAWA's determinations of a citizen committing abuse against the citizen's spouse only applies to citizens who marry aliens—not citizens who marry other U.S. citizens. The Act treats two groups of citizens differently when it comes to the fundamental right of choice in marriage, which indicates animus for those who marry foreigners.

Sex: The Congressional history of VAWA is not sex-neutral but shows a motivation to burden men. Further, the challenged provisions are presently applied disproportionately against men.

A discriminatory purpose exists when one of the motivating factors behind a law was to treat similarly situated persons differently. Arlington Heights, 429 U.S. 252, 266. The purpose of an act is found in its operation and effect and can be plainly shown in its provisions and frankly revealed in its title. Truax v. Raich, 239 U.S. 33, 40, 36 S.Ct. 7, 60 L.Ed.131 (1915)(citations omitted). The purpose of VAWA is not only plainly shown by its history, but frankly revealed in its title: The Violence Against Women Act—not the Violence Against "Persons" Act.

Congress's purpose in passing VAWA was to protect "immigrant women," from their citizen husbands, Hernandez, 345 F.3d at 827:

> "With the passage of VAWA, Congress provided a mechanism for **women** who have been battered or subjected to extreme cruelty to achieve lawful immigration status independent of an abusive spouse.... Congress's goal of protecting battered **immigrant women** and recognition of past governmental insensitivity regarding domestic violence.... Congress's goal in enacting VAWA was to eliminate barriers to **women** leaving abusive relationships.... The INS conceded at oral argument that [VAWA] was a generous enactment, intended to ameliorate the impact of harsh provisions of immigration law on **abused women**.... By defining extreme cruelty to encompass 'abusive actions' that 'may not initially appear violent but that are part of an overall pattern of violence, 8 C.F.R. § 204.2(c)(1)(vi) protects **women** against manipulative tactics aimed at ensuring the **batterer's** dominance and control." (Emphasis added).

The legislative history at U.S. Code Cong. Admin. News. P.L. 103-322, pp. 381-87 (1994), exclusively uses the term "women" to denote the victims the Act intends to protect. Such an archaic, stereotype distinction of females as innocent victims and males as batterers is the classic illustration of discriminatory purpose. *See* Craig v. Boren, 429 U.S. 190, 198-99, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976). While in 2005 the statute, enacted in 1994 and repeatedly amended, specifically included men as beneficiaries, VAWA continues to this day with a discriminatory motive. *See* Hunter v. Underwood, 471 U.S. 222, 233, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985)(original enactment was motivated by a desire to discriminate against blacks and the section continued to have that effect). VAWA continues to enforce the outmoded generalization of men as batterers when the reality is that over 200 studies have shown that females are as physically aggressive, or more so, in their relationships. Prof. Martin S. Fiebert, Department of Psychology, California State University, Long Beach, www.csulb.edu/~mfiebert/assault.htm.

Even if VAWA's sex classification was not written in its title and the legislative history, laws may be applied in such a way as to create classifications that are used to allocate burdens and benefits unequally, *see* Yick Wo v. Hopkins, 118 U.S. at 373-74.

The Amended Complaint alleges at ¶¶ 126-39, App. 19-21, the discriminatory application of the law by the VAWA Unit at the Government's

Vermont Service Center.[17] Gordon's treatise on Immigration Law and Procedure, § 41.05(1), and feminist advocates, such as Gail Pendleton of the National Immigration Project, admit that VAWA is primarily used by alien wives for whom the process was intended.

In addition, DOJ's Office on Violence Against Women, which administers VAWA funds, has instructed the Delaware Domestic Violence Coordinating Council that "states must fund only programs that focus on violence against women." The victims served under VAWA programs are 90% female. DOJ's National Institute of Justice specifically prohibits "proposals for research on intimate partner violence against … males of any age." These are just some of the many examples of the discriminatory application of VAWA against men as detailed by R.A.D.A.R. in VAWA Programs Discriminate Against Male Victims, Dec. 2007, www.mediaradar.org.

The VAWA process is a device motivated and applied to impose burdens on males and benefits on females.

Equal Protection Injuries

The Supreme Court found a real and immediate equal protection injury to contractors from a city set-aside program for female and minority owned

[17] Adjudicators at the VAWA Unit are trained by feminist advocates who push their one-side, anti-male agenda that furthers their domestic-abuse industry, which has become a multi-billion dollar business with large influxes of Federal money. *Cf.* 74 Interpreter Releases 971, 977 (1997).

businesses without the plaintiff showing it would have received a contract absent the program. Northeastern Fla. Assoc. Gen. Contractors Am. v. Jacksonville, 508 U.S. 656, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993). It did not matter that success in winning a contract remained hypothetical because the city had erected barriers to the plaintiffs' ability to "compete on an equal footing in the bidding process." Id. at 666. A plaintiff need only allege that a discriminatory policy, whether based on sex or ethnicity, erected a barrier making it more difficult to obtain a benefit than the more favorably treated group. Id. "The 'injury-in-fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of [a] barrier...." Id.

The Class Representatives allege the Government erected and enforces unconstitutional barriers—secrecy, evidentiary, and arbitrary definitions—that make it impossible for them to obtain the same benefits of procedures in defending against accusations as their alien wives have in prosecuting those accusations. (Amend. Compl. ¶¶ 140-41, 162-63, 177-78, App. 21, 23-25). The husbands not only face obstacles in defending against a finding of abuse but ongoing obstacles afterward. They cannot access records, correct inaccuracies, prevent or challenge unfair or arbitrary disclosure to third parties, and when disclosed, they have no legal remedy for the harm caused. (Amend. Compl. ¶¶ 12, 21-24, 148-49, 151-57, App. 8-9, 22-23). The only player not allowed in the stadium is the one being

scored against—the citizen husband. In fact, he is not even told where the stadium is or the scheduled time for his defeat, which is non-appealable.

The harm is the Class Representatives were or are not being considered equally without the discriminatory obstacles. *See* Northeastern at 666. The VAWA provisions have already prevented Cardozo from defending against findings of domestic violence, Amend. Compl. ¶ 110, App. 18, and were or are, on information and belief, preventing Den Hollander, Moffett, and Brannon from defending against similar findings, Amend. Compl. ¶¶ 84, 95, 125, App. 16-17, 19. The VAWA provisions are currently stopping all the Class Representatives from accessing, correcting, challenging disclosure, or reopening fact-findings of abuse. Standing exists because the Class Representatives are able and ready to do such, but the VAWA provisions prevent them. Northeastern at 666. The remedy is restoring equality, such as extending to the excluded husbands the same procedures available to the wives. Heckler v. Mathews, 465 U.S. 728, 740, 104 S.Ct. 1387, 79 L.Ed.2d 646 (1984)(citation omitted).

The VAWA provisions are also under-inclusive in that they provide on their face procedural due process for aliens but not U.S. citizens and, as applied, for alien females but not citizen males. When a law is challenged for violating equal protection by being under-inclusive, the Supreme Court allows either the included or excluded parties standing, otherwise, underinclusive statutes could never be

challenged. Rotunda, Constitutional Law, § 2.13, pp. 373-74, *see* Orr v. Orr, 440 U.S. 268, 272, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979). "A [standing] rule that would prohibit members of a disfavored group from attacking classifications benefiting others because the plaintiff would never be included in the class would insulate unequal treatment from constitutional attack under the equal protection clause and perpetuate the stigmatizing of members of an unconstitutionally disfavored group." Rotunda at § 2.13, p. 374.

Overbroad and Vague Injuries

Enactments are facially overbroad when their reach is so sweeping that they could deter persons from engaging in protected speech, and standing even exists when a statute "may cause others not before the court to refrain from constitutionally protected speech or expression." Broadrick v. Okla., 413 U.S. 601, 611-12, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

Statutes regulating fundamental rights are void for vagueness when "men of common intelligence must necessarily guess at [their] meaning[s] and differ as to [their] applications," Connolly v. General Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926)(citation omitted). Uncertain meanings inevitably "delegate basic policy matters to [government employees] for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory

application." Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)(citations omitted).

The VAWA process requires that the citizen husband engaged in "battering," "extreme cruelty," or an "overall pattern of violence." (Amend. Compl. ¶ 188, App. 27). These terms regulating speech and choices in marital conduct, fundamental rights, are open-ended and nebulous. (Amend. Compl. ¶¶ 27, 36, App. 9-10). Battery includes anything from verbal threats to attempted murder. *See* **61 Fed. Reg. 13,065-66**. Extreme cruelty includes the verbal infliction of emotional distress without any physical manifestations, verbal and other acts against third parties, and behaviors, including speech, intended to control and exercise power over an alien wife. Pendleton, Immigration and Nationality Law Handbook, p. 2 n. 5, p. 6, ed. 2001-02, www.asistahelp.org/vawa.htm. Overall pattern of violence, which is a catch-all provision, includes "name calling," "criticizing, insulting, belittling," "false accusations," "blaming," "ridiculing," "lying," "comments about women's bodies," "accusing [wife] of having a lover," "reminding [wife] of her duties," "threatening to leave [wife]," "calling [wife] to make sure she is okay," etc. DOJ funded studies: 1999 National Victim Assistance Academy, chap. 8, www.ovc.gov/assist/nvaa99/chap8.htm; Family Violence Prevention Fund, Breaking the Silence - Training Manual, pp 55-58 (2006), http://endabuse.org/section/programs/immigrant_women.

The words that rise to the level of abuse under VAWA are so overbroad as to include protected and unprotected speech, thereby prospectively deterring any citizen husband not before this Court from engaging in protected speech with his alien wife. That is sufficient for the Class Representatives to have standing. Broadrick at 612.

The vagueness of VAWA terminology trap the innocent by not providing fair warning, allow for arbitrary and discriminatory enforcement, and inhibit the exercise of speech and marital choices. Grayned, 408 U.S. at 108-09. Any marital quarrel or effort to make-up in which the citizen husband dares open his mouth or touch his wife can and will be used against him by the Government, as it was against the Class Representatives.

Bill of Attainder Injuries

U.S. Const. I. § 9 cl. 3 prohibits acts of Congress "that apply to … easily ascertainable members of a group in such a way as to inflict punishment…" without the safeguards of a trial. U.S. v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 90 L.Ed. 1252 (1946). The severity of the punishment is irrelevant. Brown, 381 U.S. 437, 447. It "may affect the life of an individual, or may confiscate his property, or may do both," Fletcher v. Peck, 10 U.S. 87, 138 (1810), and "[t]he deprivation of any rights, civil or political previously enjoyed, may be punishment…," Cummings v. Missouri, 71 U.S. 277, 320 (1867).

As the legislative history shows, the VAWA provisions are aimed primarily at citizen husbands, such as the Class Representatives, because Congress determined husbands to be the ones responsible for domestic violence in marriages involving aliens. The VAWA provisions injured or are injuring the Class Representatives' rights to due process, freedom of speech, freedom of choice in marital decisions, privacy, and protect their reputations, *see* Foretich v. United States, 351 F.3d 1198, 1213 (Cir. D.C. 2003)(Congressional Act harmed person's reputation by depicting him as a child abuser).

The fact that the punishments are inflicted through the instrumentality of immigration proceedings make them no less effective or invalid. *Cf.* Lovett, 328 U.S. at 316. Power over the conduct of aliens does not translate into power over citizens just because Congress fears the Feminist Establishment or believes men who marry foreign wives should be subject to sanctions. "Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty or property of particular … persons, because the legislature thinks them guilty of conduct which deserves punishment." Lovett, 328 U.S. at 317.

The lower court, Order p. 7, App. 40, simply ignored most of the allegations of bill of attainder injuries. (Amend. Compl. ¶¶ 206-07, 212, 215-217, App. 29-30).

Causation and Remedies

Standing causation requires that the asserted injuries are the consequences of or fairly traceable to the Government's conduct. Duke Power, 438 U.S. 59, 72 (citations omitted). The VAWA provisions are the instruments of harm for without them there would be no secrecy, incompetent and ignored evidence, arbitrary definitions of abuse, disclosure of private matters and falsehoods, and the violation of rights.

The Class Representatives were or are subject to ongoing VAWA determinations of abuse. Further, without the VAWA provisions, there would likely not have been the fraudulent complaints to police, arrests, and TROs that continue to invade privacy, harm reputations, and threaten employment prospects of the Class Representatives—a more direct causation than in Bryant, 447 U.S. 352, 366-68 or SCRAP, 412 U.S. 669, 688.

Causation is also satisfied by showing there is a substantial likelihood that the requested relief will redress the injuries. Duke Power, 438 U.S. at 75 n. 20. The remedies requested in the Amended Complaint at ¶ 219(a)-(j), App. 31-32, will prevent or at least alleviated the injuries caused and threatened by the VAWA provisions. Any remedy may constitute no more than a small and incremental step toward limiting future damages. Massachusetts v. EPA, 549 U.S. 497, 524, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007).

2. Lower court's non-adherence to (12)(b)(1) standards.

The lower court's Order at pp. 4-5, App. 37-38, states that "[i]n considering a Rule 12(b)(1) motion, all facts alleged in the complaint are taken as true and all reasonable inferences are drawn in the Plaintiffs' favor." Bldg. & Const. Trades Council Buffalo N.Y. & Vicinity v. Downtown Dev., Inc., 448 F.3d 138, 144 (2d Cir. 2006)(citations omitted). But the Order found key allegations in the Amended Complaint as false, ignored others, and adopted an allegation by the Government as true.

The Order found that in the VAWA process "[n]o determination is made regarding Plaintiffs' alleged conduct and, contrary to the Amended Complaint, they are not 'adjudged responsible.'" Order p. 6, App. 39. That's plain false as Government memoranda show: "a finding that the spouse ... has been 'battered or subjected to extreme cruelty' is one of the threshold elements of the VAWA claim," 76 Interpreter Releases 162, 163 (1999); the self-petitioner is required to "establish that 'abuse' exists," id.; and the process involves "adjudication," "adjudicated-cases," "cases" with one task of the Vermont Service Center as "adjudicating ... self petitions," 74 Interpreter Releases 971, 972, 976 (1997). Determining abuse is the key part of the Government's adjudications; otherwise, there would be no need for the VAWA provisions to require that the alien be "battered," or subjected to "extreme cruelty," or an "overall pattern of abuse."

Moreover, the Class Representatives alleged such determinations. (Amend. Compl. ¶¶ 13, 14, 18, 47, 49, 51, 132, 142, 145, 153, 164, 179, 187, 219(f), App. 8, 11-12, 20-22, 24, 26-27, 31).

The lower court also relied on an allegation created by the Government: "[t]hat each of the plaintiffs may desire to see his former spouse deported is not a cognizable interest sufficient to confer standing." Order p. 6, App. 39. The Class Representatives never alleged and never argued that. For the lower court to raise such an archaic, stereotypical insinuation about America husbands evinces a prejudicial view of all those innocent men who have had their lives destroyed by alien wives fraudulently exploiting VAWA.

The Order at p. 6, App. 39, also states "[p]laintiffs point to no element of the VAWA statutory scheme that results in any actual detriment to them." The lower court apparently ignored the allegations in the Amended Complaint at ¶¶ 9-12, 15-31, 49-52, 129, 137, 142-149, 151-157, 158-161, 164-176, 179-187, 194-199, 201-204, 206-207, 212, App. 7-10, 11-12, 20-30.

In effect, the Order re-writes the Amended Complaint to fit a finding of no injury so as not to violate the rule that determining standing based on the pleadings requires construing the complaint in favor of the complaining party.

3. Matter of State Power

Long ago the Supreme Court observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." In re Burrus, 136 U.S. 586, 593-94, 10 S.Ct. 850, 34 L.Ed. 500 (1890); *see also* Morrison, 529 U.S. 598, 615-16 (section of VAWA unconstitutional for exceeding Congressional authority).

The VAWA provisions interfere with the states traditional jurisdiction over domestic relations without serving Federal interests. Just because an alien wife is mistreated doesn't mean America has to give her permanent residency. What if she's an associate of the Russian and Chechen mafias or Al Qaeda? There is no necessary connection between domestic discord and granting residency.

Even assuming that protecting against domestic abuse falls under Federal and not state authority, allowing citizen husbands to rebut accusations against them would make such determinations fair. Violating the constitutional rights of citizens through secret proceedings with nonexistent evidentiary standards does not serve the truth, but gratuitously punishes those this culture of late depicts as either buffoons or incarnates of evil—husbands.

CONCLUSION

The medieval, British Star Chamber acted as a court that imposed punishment for actions it deemed to be morally reprehensible. The Chamber's

decisions were arbitrary and subjective which allowed it to become an instrument of oppression. Hearings were held in secret, no juries, and no appeals. With each embarrassment to arbitrary power, the Star Chamber became emboldened to undertake further usurpation. It spread terror among those who did constitutional acts.

The lower court's decision upheld VAWA's modern day Star Chamber. That left the Class Representatives with no other legal option but to appeal to a court that subsequently threatened them with "summary affirmance" of the lower court's decision, "imposition of costs," and, their attorney, with punishment from "some other disadvantageous action." Stanley A. Bass, Staff Counsel, Second Circuit Court of Appeals, February 13, 2009 email to Den Hollander, Addendum p. 91. The only cause for such intimidation was that the four citizen husbands chose to play by the rules of this democracy and appeal through the judicial system "to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society." McIntyre v. Ohio Elections Com'n, 514 U.S. 334, 357, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995).

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/S/

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) by containing 13,980 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) by using Microsoft Word Times New Roman in font size 14.

ADDENDUM

ADDENDUM OF CONSTITUIONAL PROVISIONS, STATUTES, REGULATIONS, AND FEDERAL REGISTRY

U.S. Constitution

Article I, Section 9, Clause 3

No Bill of Attainder or ex post facto Law shall be passed.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be … deprived of life, liberty, or property, without due process of law….

Statutes

5 U.S.C. § 552

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(b) This section does not apply to matters that are—

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy ….

5 U.S.C. § 552a

§ 552a. Records maintained on individuals

(b) Conditions of disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or

to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains....

8 U.S.C. § 1154

§ 1154. Procedure for granting immigrant status

(a) Petitioning procedure.

(1) (A) (i) [A]ny citizen of the United States claiming that an alien is entitled to classification by reason of a relationship … or to an immediate relative status … may file a petition with the Attorney General for such classification….

(iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien … if the alien demonstrates to the Attorney General that--

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien … has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa) (AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and--

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section … or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse….

(C) [A]n act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility … or deportability …] shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), … if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty….

(J) In acting on petitions filed under clause (iii) … of subparagraph (A) … or in making determinations under subparagraph (C) …, the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

8 U.S.C. § 1182

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission. Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States: …

(2) Criminal and related grounds.
(A) Conviction of certain crimes.
(i) In general. Except as provided in clause (ii), any alien convicted of, or who admits having committed or who admits committing acts which constitute the essential elements of--
(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance …), is inadmissible.
(ii) Exception. Clause (i)(I) shall not apply to an alien who committed only one crime if--
(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions. Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers. Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical …), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(D) Prostitution and commercialized vice. Any alien who--

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. Any alien--

(i) who has committed in the United States at any time a serious criminal offense ….

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

(F) Waiver authorized. For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h)….

(6) Illegal entrants and immigration violators.

(A) Aliens present without admission or parole.

(i) In general. An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women …. Clause (i) shall not apply to an alien who demonstrates that--

(I) the alien is a VAWA self-petitioner;

(II) (a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, … and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States….

(C) Misrepresentation.

(i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible….

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (i)….

(h) Waiver of subsec. (a)(2)(A)(i)(I), (II), (B), (D), and (E). The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if--

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than

15 years before the date of the alien's application for a visa, admission, or adjustment of status, and

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States,

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse … of a citizen of the United States … if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen … spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i) Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact.

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse … of a United States citizen … if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen … spouse … or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, …, or qualified … child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

8 U.S.C. § 1183a

§ 1183a. Requirements for sponsor's affidavit of support

(a) Enforceability.

(1) Terms of affidavit. No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge … unless such affidavit is executed by a sponsor of the alien as a contract--

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit (as defined in subsection (e)), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2).

(2) Period of enforceability. An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

(3) Termination of period of enforceability upon completion of required period of employment, etc.

(A) In general. An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage … or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit … during any such period.

(B) Qualifying quarters. For purposes of this section, in determining the number of qualifying quarters of coverage … an alien shall be credited with--

(i) all of the qualifying quarters of coverage … worked by a parent of such alien while the alien was under age 18, and

(ii) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable … for any period beginning after December 31, 1996, may be credited to an alien under clause (i) or (ii) if the ... spouse ... of such alien received any Federal means-tested public

benefit … during the period for which such qualifying quarter of coverage is so credited.

(C) Provision of information to save system. The Attorney General shall ensure that appropriate information regarding the application of this paragraph is provided to the system for alien verification of eligibility (SAVE) ….

(b) Reimbursement of Government expenses.

(1) Request for reimbursement.

(A) Requirement. Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefit.

(2) Actions to compel reimbursement.

(A) In case of nonresponse. If within 45 days after a request for reimbursement under paragraph (1)(A), the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment an action may be brought against the sponsor pursuant to the affidavit of support.

(B) In case of failure to pay. If the sponsor fails to abide by the repayment terms established by the appropriate entity, the entity may bring an action against the sponsor pursuant to the affidavit of support.

(C) Limitation on actions. No cause of action may be brought under this paragraph later than 10 years after the date on which the sponsored alien last received any means-tested public benefit to which the affidavit of support applies.

(3) Use of collection agencies. If the appropriate entity under paragraph (1)(A) requests reimbursement from the sponsor or brings an action against the sponsor pursuant to the affidavit of support, the appropriate entity may appoint or hire an individual or other person to act on behalf of such entity acting under the authority of law for purposes of collecting any amounts owed.

(c) Remedies. Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section …..

8 U.S.C. § 1184

§ 1184 (d). Issuance of visa to fiancee or fiance of citizen.

(1) A visa shall not be issued … until the consular officer has received a petition filed in the United States by the fiancee or fiance of the applying alien and

approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed ….

(2) [A] consular officer may not approve a petition under paragraph (1) unless the officer has verified that--

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C) (i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that--

(I) the petitioner was acting in self-defense;

(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that

evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms "domestic violence", "sexual assault", "child abuse and neglect", "dating violence", "elder abuse", and "stalking" have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term "specified crime" means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

8 U.S.C. § 1186a

§ 1186a. Conditional permanent resident status for certain alien spouses …

(a) In general.

(1) Conditional basis for status. Notwithstanding any other provision of this Act, an alien spouse … shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section….

(c) Requirements of timely petition and interview for removal of condition.

(1) In general. In order for the conditional basis established under subsection (a) for an alien spouse … to be removed--

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General … a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) … the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) Termination of permanent resident status for failure to file petition or have personal interview.

(A) In general. In the case of an alien with permanent resident status on a conditional basis under subsection (a), if--

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent

residence.

(B) Hearing in removal proceeding. In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B)….

(4) Hardship waiver. The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that --

(A) extreme hardship would result if such alien is removed,

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1); or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse … was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen … and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse … including information regarding the whereabouts of such spouse ….

(d) Details of petition and interview.

(1) Contents of petition. Each petition under subsection (c)(1)(A) shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process. The facts are that--

(i) the qualifying marriage--

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for

the filing of a petition …with respect to the alien spouse ….

8 U.S.C. § 1227

§ 1227. Deportable aliens

(a) Classes of deportable aliens. Any alien … in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:
(1) Inadmissible at time of entry or of adjustment of status or violates status….

(H) Waiver authorized for certain misrepresentations. The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission … whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien … who--…
(ii) is a VAWA self-petitioner.
A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

8 U.S.C. § 1229b

§ 1229b. Cancellation of removal; adjustment of status….

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents.
(1) In general. The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien--
(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;
(B) has been a person of good moral character during such period;
(C) has not been convicted of an offense ….; and
(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, … or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.
(2) Special rule for battered spouse ….
(A) Authority. The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is

inadmissible or deportable from the United States if the alien demonstrates that--

(i) (I) the alien has been battered or subjected to extreme cruelty by a spouse … who is or was a United States citizen …; or…

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen … whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's … bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of 8 U.S.C. § 1182a, is not deportable under paragraphs (1)(G) or (2) through (4) of 8 U.S.C. § 1227(a), subject to paragraph (5), and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, ….

(B) Physical presence. [A]n alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2). If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in this subparagraph ….

(C) Good moral character. [A] act or conviction that does not bar the Attorney General from granting relief under this paragraph … shall not bar the Attorney General from finding the alien to be of good moral character … if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) Credible evidence considered. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to

be given that evidence shall be within the sole discretion of the Attorney General.

8 U.S.C. § 1255

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa. The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

8 U.S.C. § 1367

§ 1367. Penalties for disclosure of information

(a) In general. Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)--

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by--

(A) a spouse … who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's … family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse … consented to or acquiesced in such battery or cruelty, …; or

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief ….

The limitation under paragraph (2) ends when the application for relief is denied

and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions.
(1) The Attorney General may provide, in the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce ….
(2) The Attorney General may provide in the discretion of the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.
(3) Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.
(4) Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.
(5) The Attorney General is authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. § 1641(c).
(6) Subsection (a) may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).
(7) Government entities adjudicating applications for relief under subsection (a)(2) … may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

(c) Penalties for violations. Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section … shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $ 5,000 for each such violation.

(d) Guidance. The Attorney General and the Secretary of Homeland Security

shall provide guidance to officers and employees of the Department of Justice or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

8 U.S.C. § 1641

§ 1641. Definitions

(a) In general. Except as otherwise provided in this title, the terms used in this title have the same meaning given such terms in section 8 U.S.C. § 1101(a).
(b) Qualified alien. For purposes of this title, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--
(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,
(2) an alien who is granted asylum…,
(3) a refugee who is admitted to the United States …,
(4) an alien who is paroled into the United States … for a period of at least 1 year,
(5) an alien whose deportation is being withheld …,
(6) an alien who is granted conditional entry …, or
(7) an alien who is a Cuban and Haitian entrant …. .
(c) Treatment of certain battered aliens as qualified aliens. For purposes of this title, the term "qualified alien" includes--
(1) an alien who--
(A) has been battered or subjected to extreme cruelty in the United States by a spouse …, or by a member of the spouse's … family residing in the same household as the alien and the spouse … consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and
(B) has been approved or has a petition pending which sets forth a prima facie case for--
(i) status as a spouse … of a United States citizen pursuant 8 U.S.C. 1154 (a)(1)(A)(iii) …,
(v) cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(2)….

This subsection shall not apply to an alien during any period in which the

individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

28 U.S.C. § 534

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall--
(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; …

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, cities, and penal and other institutions.
(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies….

(e) For purposes of this section, the term "other institutions" includes--
(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and
(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.
(f) (1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.
(2) Federal and State criminal justice agencies authorized to enter information into criminal information databases may include--
(A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

(B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection--

(A) the term "national crime information databases" means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(B) the term "protection order" includes--

(i) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(ii) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

8 C.F.R. § 204.2

§ 204.2
(c) Self-petition by spouse of abusive citizen or lawful permanent resident –

(1) Eligibility….

(vi) Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen … spouse, must have been perpetrated against the self-petitioner … and must have taken place during the self-petitioner's

marriage to the abuser….

(2) Evidence for a spousal self-petition –….

(iv) Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

8 CFR § 216.5

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse….

(e) Adjudication of waiver application.
(1) Application based on claim of hardship. In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's removal from the United States, the director shall take into account only those factors that arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any removal from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.
(2) Application for waiver based upon the alien's claim that the marriage was entered into in good faith. In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include --
(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;
(ii) Documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) Birth certificates of children born to the marriage; and
(iv) Other evidence deemed pertinent by the director.
(3) Application for waiver based on alien's claim of having been battered or subjected to extreme mental cruelty. A conditional resident who entered into the qualifying marriage in good faith, and who was battered or was the subject of extreme cruelty … by or was the subject of extreme cruelty perpetrated by the United States citizen … spouse during the marriage, may request a waiver of the joint filing requirement….

(viii) As directed by the statute, the information contained in the application and supporting documents shall not be released without a court order or the written consent of the applicant; …. Information may be released only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for the purposes of enforcement of the Act or in any criminal proceeding.

28 CFR § 0.85

§ 0.85 General functions.

The Director of the Federal Bureau of Investigation shall:…

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprints and identification records from criminal justice and other governmental agencies ….

28 CFR § 20.21

§ 20.21 Preparation and submission of a Criminal History Record Information Plan….

(b) Limitations on dissemination. Insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:
(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;
(3) Individuals and agencies pursuant to a specific agreement with a criminal

justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof….

28 CFR § 20.33

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2) To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment pursuant to [28 U.S.C. § 534] … or other federal legislation, and for other uses for which dissemination is authorized by federal law …;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

28 CFR § 50.12

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing ….

61 Fed. Reg. 13,061, 13,065-66

Battery or Extreme Cruelty

[13,065] Section 40701 of the Crime Bill requires a self-petitioning spouse to have been battered by, or been the subject of extreme cruelty perpetrated by, the citizen … spouse … or who was the subject of extreme cruelty perpetrated by, the citizen … during the marriage…. This rule reflects the statutory requirements by specifying that only certain types of abuse will qualify a spouse … to self-petition. "Qualifying abuse" under this rule is abuse that meets the criteria of section 40701 of the Crime Bill concerning when, by whom, to whom, and to what degree the domestic abuse occurred.

The qualifying abuse must have taken place during the statutorily specified time. A spousal self-petitioner must show that the abuse took place during the marriage to the abuser.… Battery or extreme cruelty that happened at other times is not qualifying abuse. There is no limit on the time that may have elapsed since the last incident of qualifying abuse occurred.

The qualifying abuse also must have been committed by the abusive citizen … spouse …. Battery or extreme cruelty by any other person is not qualifying abuse, unless it can be shown that the citizen … willfully condoned or participated in the abusive act(s).

Only abuse perpetrated against the self-petitioning spouse … will be considered qualifying. Acts ostensibly aimed at some other person or thing may be considered qualifying only if it can be established that these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner …. Battery or extreme cruelty committed solely against a third party and in no way directed at or used against the

spouse … is not qualifying abuse.

The qualifying abuse also must have been sufficiently aggravated to have reached the level of battery or extreme cruelty. Service regulations at 8 C.F.R. 216.5(e)(3)(i) currently define the phrase "was battered by or was the subject of extreme cruelty." This definition was initially developed to facilitate the filing and adjudication of requests to waive certain requirements for removal of conditions on residency. These waivers are based on the applicant's claim of battery or extreme cruelty perpetrated by the citizen … spouse …. Since the regulatory definition has proven to be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty, this rule adopts an identical definition for evaluating claims of battering or extreme cruelty under section 40701 of the Crime Bill. The definition reads as follows:

For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. [13,066]

The acts mentioned in this definition-rape, molestation, incest if the victim is a minor, and forced prostitution-will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty."

This rule requires a self-petitioner to provide evidence of qualifying abuse…. Available relevant evidence will vary, and self-petitioners are encouraged to provide the best available evidence of qualifying abuse. A self-petitioner is not precluded from submitting documentary proof of non-qualifying abuse with the self-petition; however, that evidence can only be used to establish a pattern of abuse and violence and to bolster claims that qualifying abuse also occurred.

The rule provides that evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. This rule also provides that other forms of credible evidence will be accepted, although the Service will determine whether documents appear credible and the weight to be given to them.

Self-petitioners who can provide only affidavits are encouraged to submit the affidavits of more than one person. The Service is not precluded from deciding, however, that the self-petitioner's unsupported affidavit is credible and that it provides relevant evidence of sufficient weight to meet the self-petitioner's burden of proof.

62 Fed. Reg. 61344, 61366-67, 61371

Interim Guidance on Verficiation of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

[61366] ....

I. PROCEDURES FOR DETERMINING QUALIFIED ALIEN STATUS

An alien is a "qualified alien" eligible for public benefits ... if he or she meets the following four requirements:
(1) the INS or the EOIR has granted a petition or application filed by or on behalf of the alien ... or has found that a pending petition sets forth a prima facie case;
(2) the alien ... has been abused in the United States as detailed below:
(a) in the case of the abused alien: the alien has been battered or subjected to extreme cruelty in the United States by a spouse ... or by a member of the spouse or parent's family residing in the same household as the alien, if the spouse ... consents to or acquiesces in such battery or cruelty; ...
(3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought; and
(4) the battered alien ... no longer resides in the same household as the abuser….

[61,367] .... A benefit provider must determine that an applicant satisfies all four requirements. If an applicant presents documentation indicating ... that the applicant has filed an INS I-360 petition [VAWA self-petition] ... the benefit provider should determine whether the applicant meets the other three requirements for qualified alien status (including battery or extreme cruelty) before verifying his or her immigration status with the INS. If an applicant presents documentation indicating that he or she has filed an INS I-360 petition [based on abuse by U.S. citizen spouse] ... INS ... will make the determination as to battery or extreme cruelty. In such cases, the benefit provider may contact the INS ... as applicable to initiate the verification process prior to determining if the applicant meets the other two requirements for qualified alien status. After contacting the INS ... the benefit provider should continue reviewing the applicant's eligibility for qualified alien status ... and should not delay this evaluation while awaiting a response from the INS ....

II. EXEMPTION FROM DEEMING REQUIREMENTS

A. *Battered Aliens*….

[61,371] [U]pon the effective date of the newly required affidavit of support and subject to the exceptions described below, when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien applicant is entitled, agencies must include as income and resources of the alien, the income and resources of the spouse of the alien and any other person executing an affidavit of support on behalf of the alien. An alien is exempt from these "deeming" requirements for a period of one year, however, if

(1) in the case of an abused alien,
(a) the alien has been battered or subjected to extreme cruelty in the United States by a spouse ... or by a member of the spouse ... family residing in the same household as the alien if the spouse ... consents to or acquiesces in such battery or cruelty;
(b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and
(c) the battered alien no longer resides in the same household as the abuser ….

Stanley A. Bass Email

Roy Den Hollander <roy17den@gmail.com>

Hollander v. U.S.A., 08-6183-cv

Stanley_Bass@ca2.uscourts.gov <Stanley_Bass@ca2.uscourts.gov> **Fri, Feb 13, 2009 at 5:56 PM**
To: rdhhh@yahoo.com
Cc: natalia.oeltjen@usdoj.gov

To: Den Hollander, Esq.

In thinking further about this pro se appeal, I can see no point in your further wasting the resources of yourself, the Department of Justice, and the judges of this Honorable Court. The idea that a non-party has a legal right to be a spoiler witness in a claimant's administrative hearing seeking immigration benefits seems not only absurd, but also offensive and mean-spirited. It's one thing for you to offer relevant testimony to the agency if they want it. It's quite another to assert a constitutional right to inject yourself into a proceeding where neither the claimant nor the agency welcomes you.

There is no precedent supporting your position. Common sense and fairness warrant its rejection. Apart from a summary affirmance, you may be subject to imposition of costs or some other disadvantageous action. And, importantly, by persisting in arguing a meritless case, you risk losing credibility when dealing with an truly arguable subject, such as the meaning of "state action".

I recommend that you promptly submit to me a stipulation withdrawing this groundless appeal.

SA 231

The lower court's January 8, 2016, Decision and Order denying Plaintiff-Appellant's Motion to Strike [SA231]

FILED: NEW YORK COUNTY CLERK 01/11/2016 10:03 INDEX NO. 152656/2014
NYSCEF DOC. NO. 120 RECEIVED NYSCEF: 01/11/2016

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JENNIFER G. SCHECTER J.S.C. Justice PART 57

Index Number : 152656/2014
DEN HOLLANDER, ESQ, ROY
vs
SHEPHERD, TORY
Sequence Number : 004
OTHER

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for strike from record

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1
Answering Affidavits — Exhibits _____ No(s). 2
Replying Affidavits _____ No(s). 3

Upon the foregoing papers, it is ordered that this motion is

DENIED. There is no basis for granting the relief sought.

This constitutes the Decision and Order of the Court.

Dated: 1/8/16

HON. JENNIFER G. SCHECTER, J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: ..... [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: [ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
3. CHECK IF APPROPRIATE: ..... [ ] SETTLE ORDER [ ] SUBMIT ORDER
[ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

SA 232

Judicial Subpoena Duces Tecum to Clerk for transferring the record on appeal

[SA232-SA240]

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

----------X

Roy Den Hollander,

Plaintiff-Appellant,

Index No. 152656/2014

-against-

Judicial Subpoena Duces Tecum

Tory Shepherd, Political Editor of The Advertiser-Sunday Mail Messenger;
Advertiser Newspapers Pty Ltd., d/b/a The Advertiser-Sunday Mail Messenger;
Amy McNeilage, Education Reporter for The Sydney Morning Herald; and
Fairfax Media Publications Pty Ltd., d/b/a The Sydney Morning Herald;

STUB No.	DATE SERV	DATE APP	AMT.	SIGNATURE OF SERVER
	3/11	3/21	25 00	

Defendants-Respondents.

----------X

The People of the State of New York

To the Clerk of the Supreme Court, New York County.

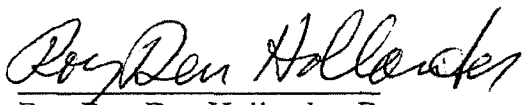
GREETINGS:

YOU ARE HEREBY COMMANDED to appear before the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, located at 27 Madison Avenue, New York, New York 10010 on or before the 21st day of March, 2016, and bring with you and produce at that time and place the papers constituting the record on appeal in accord with CPLR 5526 from an order and judgment of the Supreme Court, New York County, dated January 8, 2016, made in the above-entitled matter, bearing Index No. 152656/2014.

In lieu of a personal appearance, the requirements of this subpoena may be met by delivery of the material by mail or overnight delivery service, provided that it is received on or before the return date set forth herein.

Failure to comply with this subpoena is punishable as a contempt of court and shall make you liable to the person on whose behalf this subpoena is issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

Dated: March 11, 2014
New York, N.Y.



By: Roy Den Hollander, Esq.
Attorney, plaintiff-appellant
545 East 14 St., 10D
New York, NY 10009
(917) 687-0652
roy17den@gmail.com

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

Index No. 152656/2014

Roy Den Hollander,
Plaintiffs,

- against -

Tory Shepherd et al.,
Defendants.

COUNTY CLERK
CERTIFICATE

I, Milton A. Tingling, County Clerk and Clerk of the Supreme Court of New York County, do hereby certify that the following papers constitute the record on appeal from the order of Justice Schecter dated 1/8/2016, filed with the County Clerk on 1/11/2016 in the above titled action.

No.	DATE FILED BY COUNTY CLERK	TITLE OF DOCUMENT
1.		**Notice of Appeal** filed February 2, 2016
2.		**Order** of Justice Schecter dated Jan. 11, 2016
3.		SEE ATTACHED
4.		
5.		

All the foregoing papers are transmitted herewith.

Dated: 3/11/16
New York, N.Y.

Milton A. Tingling

County Clerk and Clerk of the
Supreme Court, New York County

NYSCEF
New York County Supreme Court

Document List
Index # 152656/2014

Created on:03/11/2016 11:16 AM

Case Caption: **Roy Den Hollander Esq - v. - Tory Shepherd et al**
Judge Name: **Jennifer Schecter**

Doc#	Document Type/Information	Status	Date Received	Filed By
1	SUMMONS + COMPLAINT	Processed	03/24/2014	Den hollander, R.
2	EXHIBIT(S) Jan. 12, 2014 Tory Article	Processed	03/24/2014	Den hollander, R.
3	EXHIBIT(S) Jan. 14, 2014 Amy Article	Processed	03/24/2014	Den hollander, R.
4	EXHIBIT(S) Jan. 14, 2014 Tory Article	Processed	03/24/2014	Den hollander, R.
5	STIPULATION - OTHER Stipulation Extending Time and Amending Caption	Processed	07/09/2014	Bolger, K.
6	STIPULATION - OTHER Stipulation Extending Time to Respond to Complaint and Setting Other Deadlines	Processed	08/06/2014	Bolger, K.
7	NOTICE OF MOTION Defendants' Notice of Motion to Dismiss	Processed	08/29/2014	Bolger, K.
8	MEMORANDUM OF LAW IN SUPPORT Memorandum of Law in Support of Defendants' Motion to Dismiss	Processed	08/29/2014	Bolger, K.
9	AFFIRMATION Affirmation of Katherine M. Bolger in Support of Motion to Dismiss	Processed	08/29/2014	Bolger, K.
10	RJI -RE: NOTICE OF MOTION	Processed	08/29/2014	Bolger, K.
11	COMPLAINT (AMENDED)	Processed	10/07/2014	Den hollander, R.
12	EXHIBIT(S) Females v. Feminism	Processed	10/07/2014	Den hollander, R.
13	EXHIBIT(S) MREs	Processed	10/07/2014	Den hollander, R.
14	EXHIBIT(S) Lecturers Article 1.12.14	Processed	10/07/2014	Den hollander, R.
15	EXHIBIT(S) Amy Article 1.14.14	Processed	10/07/2014	Den hollander, R.
16	EXHIBIT(S) Tory Snip Article 1.14.14	Processed	10/07/2014	Den hollander, R.
17	EXHIBIT(S) Tory Bizarre Article 6.18.14	Processed	10/07/2014	Den hollander, R.
18	EXHIBIT(S) Tory Carnivorous Article 7.17.12	Processed	10/07/2014	Den hollander, R.
19	EXHIBIT(S) Tory Pathetic Article 1.14.14	Processed	10/07/2014	Den hollander, R.
20	EXHIBIT(S) Mammoth Article 1.13.14	Processed	10/07/2014	Den hollander, R.
21	EXHIBIT(S) Tory Tweet 6.17.14	Processed	10/07/2014	Den hollander, R.
22	EXHIBIT(S) Australian Press Counsel Principles	Processed	10/07/2014	Den hollander, R.

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Doc#	Document Type/Information	Status	Date Received	Filed By
23	EXHIBIT(S) Advertiser Rules Conduct	Processed	10/07/2014	Den hollander, R.
24	EXHIBIT(S) NewsCorp Identity	Processed	10/07/2014	Den hollander, R.
25	EXHIBIT(S) Australian Community NY	Processed	10/07/2014	Den hollander, R.
26	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION	Processed	10/07/2014	Den hollander, R.
27	EXHIBIT(S) Bloomberg on Advertiser	Processed	10/07/2014	Den hollander, R.
28	EXHIBIT(S) Advertiser Chairman Corporate Address	Processed	10/07/2014	Den hollander, R.
29	EXHIBIT(S) Digital First	Processed	10/07/2014	Den hollander, R.
30	EXHIBIT(S) Shepherd emails to Groth	Processed	10/07/2014	Den hollander, R.
31	EXHIBIT(S) Roxon SMH NY	Processed	10/07/2014	Den hollander, R.
32	EXHIBIT(S) Overington SMH NY	Processed	10/07/2014	Den hollander, R.
33	EXHIBIT(S) SMH GST Tax	Processed	10/07/2014	Den hollander, R.
34	EXHIBIT(S) SMH Press Reader Article	Processed	10/07/2014	Den hollander, R.
35	EXHIBIT(S) PressReader and SMH	Processed	10/07/2014	Den hollander, R.
36	EXHIBIT(S) Outline of Course Section	Processed	10/07/2014	Den hollander, R.
37	EXHIBIT(S) Shepherd Email to Roy 1.9.14	Processed	10/07/2014	Den hollander, R.
38	EXHIBIT(S) Fairfax NY Advertising Representative	Processed	10/07/2014	Den hollander, R.
39	EXHIBIT(S) Fairfax NY Alert Joint Venture	Processed	10/07/2014	Den hollander, R.
40	LETTER / CORRESPONDENCE TO JUDGE Letter Withdrawing Motion to Dismiss	Processed	10/16/2014	Bolger, K.
41	LETTER / CORRESPONDENCE TO JUDGE Corrected (Signed) Letter Withdrawing Motion to Dismiss	Processed	10/16/2014	Bolger, K.
42	DECISION + ORDER ON MOTION DECISION + ORDER ON MOTION entered in the office of the County Clerk on October 23, 2014	Processed	10/23/2014	Court User
43	NOTICE OF MOTION to Dismiss First Amended Complaint	Processed	10/27/2014	Bolger, K.
44	MEMORANDUM OF LAW IN SUPPORT of Motion to Dismiss	Processed	10/27/2014	Bolger, K.
45	AFFIDAVIT OR AFFIRMATION IN SUPPORT of Katherine M. Bolger	Processed	10/27/2014	Bolger, K.

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Doc#	Document Type/Information	Status	Date Received	Filed By
46	EXHIBIT(S) 1-24 to the Affirmation of Katherine M. Bolger	Processed	10/27/2014	Bolger, K.
47	NOTICE OF CROSS-MOTION Request Disclosure on Personal Jurisdiction	Processed	11/07/2014	Den hollander, R.
48	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION Opposition Affidavit to Dismissal Motion 2	Processed	11/07/2014	Den hollander, R.
49	EXHIBIT(S) Bloomberg Advertiser	Processed	11/07/2014	Den hollander, R.
50	EXHIBIT(S) Advertiser Chairman Address	Processed	11/07/2014	Den hollander, R.
51	EXHIBIT(S) Digital First	Processed	11/07/2014	Den hollander, R.
52	EXHIBIT(S) Shepherd Emails to Groth	Processed	11/07/2014	Den hollander, R.
53	EXHIBIT(S) Roxon Reporter for SMH	Processed	11/07/2014	Den hollander, R.
54	EXHIBIT(S) Overington Reporter for SMH	Processed	11/07/2014	Den hollander, R.
55	EXHIBIT(S) SMH Question on GST	Processed	11/07/2014	Den hollander, R.
56	EXHIBIT(S) SMH and Press Reader	Processed	11/07/2014	Den hollander, R.
57	EXHIBIT(S) Press Reader Article and Overseas	Processed	11/07/2014	Den hollander, R.
58	EXHIBIT(S) Outline of Section	Processed	11/07/2014	Den hollander, R.
59	EXHIBIT(S) Shepherd Email to Hollander	Processed	11/07/2014	Den hollander, R.
60	EXHIBIT(S) Fairfax Ad Representative NY	Processed	11/07/2014	Den hollander, R.
61	EXHIBIT(S) Fairfax and NYC Alert	Processed	11/07/2014	Den hollander, R.
62	EXHIBIT(S) Cameron First Affidavit	Processed	11/07/2014	Den hollander, R.
63	EXHIBIT(S) Shepherd First Affidavit	Processed	11/07/2014	Den hollander, R.
64	EXHIBIT(S) Coleman First Affidavit	Processed	11/07/2014	Den hollander, R.
65	EXHIBIT(S) Copyright Decision	Processed	11/07/2014	Den hollander, R.
66	STIPULATION - ADJOURNMENT OF CONFERENCE	Processed	11/07/2014	Bolger, K.
67	MEMORANDUM OF LAW IN REPLY to Plaintiff's Opposition to Defendants' Motion to Dismiss and in Opposition to Plaintiff's Cross-Mo(,,)	Processed	11/13/2014	Bolger, K.
68	AFFIRMATION of Katherine M. Bolger in support of Reply Memorandum and Opposition to Cross-Motion	Processed	11/13/2014	Bolger, K.

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Doc#	Document Type/Information	Status	Date Received	Filed By
69	MEMORANDUM Memorandum of Law in Opposition to Plaintiff's Motion for an Immediate Trial	Processed	01/12/2015	Bolger, K.
70	AFFIRMATION Affirmation of Katherine M. Bolger in Opposition to Plaintiff's Motion for an Immediate Trial	Processed	01/12/2015	Bolger, K.
71	EXHIBIT(S) Exhibits 1-10 to Afffirmation of Katherine M. Bolger in Opposition to Plaintiff's Motion for an Imme(..)	Processed	01/12/2015	Bolger, K.
72	ORDER TO SHOW CAUSE (PROPOSED) Proposed Order to Show Cause	Processed	01/13/2015	Den hollander, R.
73	AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP Affidavit	Processed	01/13/2015	Den hollander, R.
74	LETTER / CORRESPONDENCE TO JUDGE regarding Motion to Dismiss and Proposed Order to Show Cause	Processed	01/15/2015	Bolger, K.
75	AFFIDAVIT OR AFFIRMATION IN REPLY Reply Affidavit of Plaintiff	Processed	01/20/2015	Den hollander, R.
76	EXHIBIT(S) Cameron 1st Aff.	Processed	01/20/2015	Den hollander, R.
77	EXHIBIT(S) Shepherd 1st Aff.	Processed	01/20/2015	Den hollander, R.
78	EXHIBIT(S) Coleman 1st Aff.	Processed	01/20/2015	Den hollander, R.
79	EXHIBIT(S) McNeilage 1st Aff.	Processed	01/20/2015	Den hollander, R.
80	EXHIBIT(S) Cameron 2d Aff.	Processed	01/20/2015	Den hollander, R.
81	EXHIBIT(S) Shepherd 2d Aff.	Processed	01/20/2015	Den hollander, R.
82	EXHIBIT(S) Coleman 2d Aff.	Processed	01/20/2015	Den hollander, R.
83	EXHIBIT(S) McNeilage 2d Aff.	Processed	01/20/2015	Den hollander, R.
84	EXHIBIT(S) Who We Are	Processed	01/20/2015	Den hollander, R.
85	EXHIBIT(S) Digital First	Processed	01/20/2015	Den hollander, R.
86	EXHIBIT(S) Press Reader Partners	Processed	01/20/2015	Den hollander, R.
87	EXHIBIT(S) News Alert LLC	Processed	01/20/2015	Den hollander, R.
88	EXHIBIT(S) World Media	Processed	01/20/2015	Den hollander, R.
89	EXHIBIT(S) Chairman Address NYC	Processed	01/20/2015	Den hollander, R.
90	EXHIBIT(S) Roxon Reporter for SMH	Processed	01/20/2015	Den hollander, R.

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New York County Supreme Court

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Index # 152656/2014

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Doc#	Document Type/Information	Status	Date Received	Filed By
91	EXHIBIT(S) Overington Reporter for SMH	Processed	01/20/2015	Den hollander, R.
92	EXHIBIT(S) Australian Community NY	Processed	01/20/2015	Den hollander, R.
93	EXHIBIT(S) McNeilage Article	Processed	01/20/2015	Den hollander, R.
94	EXHIBIT(S) Shepherd Pathetic Article	Processed	01/20/2015	Den hollander, R.
95	EXHIBIT(S) Groth Emails	Processed	01/20/2015	Den hollander, R.
96	EXHIBIT(S) Shepherd Email to Hollander	Processed	01/20/2015	Den hollander, R.
97	EXHIBIT(S) Shepherd Four Articles	Processed	01/20/2015	Den hollander, R.
98	EXHIBIT(S) SMH and Press Reader	Processed	01/20/2015	Den hollander, R.
99	ORDER TO SHOW CAUSE - DECLINED/WITHDRAWN DECLINED TO SIGN ORDER TO SHOW CAUSE entered in the office of the County Clerk on January 23, 2015	Processed	01/23/2015	Court User
100	NOTICE OF MOTION Notice Motion-Hacking	Processed	01/23/2015	Den hollander, R.
101	AFFIDAVIT OR AFFIRMATION IN SUPPORT Affidavit Support-Hacking	Processed	01/23/2015	Den hollander, R.
102	EXHIBIT(S) Ex A Bolger Affrm and Ex 1	Processed	01/23/2015	Den hollander, R.
103	DECISION + ORDER ON MOTION DECISION + ORDER ON MOTION entered in the office of the County Clerk on January 28, 2015	Processed	01/28/2015	Court User
104	MEMORANDUM OF LAW IN OPPOSITION	Processed	02/03/2015	Bolger, K.
105	AFFIDAVIT Affidavit of Katherine M. Bolger in Opposition to Motion to Withdraw	Processed	02/03/2015	Bolger, K.
106	EXHIBIT(S) Exhibits 1-3 to Affidavit of Katherine M. Bolger in Opposition to Motion to Withdraw	Processed	02/03/2015	Bolger, K.
107	AFFIDAVIT Affidavit of Matthew L. Schafer in Opposition to Motion to Withdraw	Processed	02/03/2015	Bolger, K.
108	EXHIBIT(S) Exhibits 1-2 to Affidavit of Matthew L. Schafer in Opposition to Motion to Withdraw	Processed	02/03/2015	Bolger, K.
109	AFFIDAVIT OR AFFIRMATION IN REPLY Reply Affidavit to Opposition to Withdraw Illegally Obtained Document	Processed	02/07/2015	Den hollander, R.
110	EXHIBIT(S) Exhibit A Email from Bolger 1.13.15	Processed	02/07/2015	Den hollander, R.
111	AFFIDAVIT OR AFFIRMATION IN REPLY Reply with Exhibits to Opp. to Oral Motion for Trial on Personal Jurisdiction	Processed	05/27/2015	Den hollander, R.

NYSCEF
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112	MEMORANDUM OF LAW IN OPPOSITION Memorandum in Opposition to Plaintiff's Motion for an Immediate Trial	Processed	05/27/2015	Bolger, K.
113	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION Affirmation of Katherine M. Bolger in Opposition	Processed	05/27/2015	Bolger, K.
114	EXHIBIT(S) Exhibits 1-10 to Affirmation of Katherine M. Bolger in Opposition	Processed	05/27/2015	Bolger, K.
115	EXHIBIT(S) Ex Q to Reply to Opp Trial on Personal Jurisdiction	Processed	05/28/2015	Den hollander, R.
116	EXHIBIT(S) Ex R to Reply to Opp Trial on Personal Jurisdiction	Processed	05/28/2015	Den hollander, R.
117	EXHIBIT(S) Ex S to Reply to Opp Trial for Personal Jurisdiction	Processed	05/28/2015	Den hollander, R.
118	EXHIBIT(S) Ex T to Reply to Opp Trial for Personal Jurisdiction	Processed	05/28/2015	Den hollander, R.
119	DECISION + ORDER ON MOTION	Processed	01/11/2016	Court User
120	DECISION + ORDER ON MOTION	Processed	01/11/2016	Court User
121	NOTICE OF ENTRY Notice of Entry of Decision and Order Granting Motion to Dismiss	Processed	01/12/2016	Bolger, K.
122	NOTICE OF ENTRY Notice of Entry of Decision and Order Denying Motion to Strike	Processed	01/12/2016	Bolger, K.
123	JUDGMENT -TO COUNTY CLERK (PROPOSED)	Pending	01/14/2016	Bolger, K.
124	BILL OF COSTS (PROPOSED) Verified Bill of Costs	Processed	01/14/2016	Bolger, K.
125	AFFIRMATION Affirmation of Katherine M. Bolger in Support of Defendants' Verified Bill of Costs and Disbursement(..)	Processed	01/14/2016	Bolger, K.
126	NOTICE OF APPEAL Notice Appeal Pre-Argument Ct. Decision Order	Pending	02/02/2016	Den hollander, R.
127	LETTER / CORRESPONDENCE TO JUDGE Plaintiff's proposed statement in lieu of transcript	Pending	03/09/2016	Den hollander, R.
128	LETTER / CORRESPONDENCE TO JUDGE Defendants' objections and proposed statement in lieu of transcript	Pending	03/09/2016	Den hollander, R.
129	LETTER / CORRESPONDENCE TO JUDGE Plaintiff's proposed statement in lieu of transcript	Pending	03/09/2016	Den hollander, R.
130	LETTER / CORRESPONDENCE TO JUDGE Defendants' objections and proposed statement in lieu of transcript	Pending	03/09/2016	Den hollander, R.

the papers. So the misandrists from down under and Bolger have nothing to complain about—they are still ahead.

Addendum: List of Perjuries and Omissions by Defendants

Defendant Advertiser relies on Michael Cameron, either National Editorial Counsel at News Corp Australia (doing business as News Limited)(Ex. A ¶ 2) or National Editorial Counsel at News Limited (doing business as News Corp Australia)(Ex. E ¶ 2). Cameron's confusion over who is "doing business as" and for whom simply makes the relationship among News Corp Australia, News Limited and Advertiser even murkier. Further, such uncertainty in his role and whom he actually works for raises concern as to his knowledge of jurisdictional facts.

Lie 1st Aff.:	Advertiser "does not sell any products in New York." (Ex. A ¶ 7).
Exposed:	Advertiser sells The Advertiser-Sunday Mail Messenger paper ("The Advertiser") to members of the Australian Community in New York City. (Ex. R).
Revision 2d Aff.:	Advertiser "does not directly sell any products in New York." (Ex. E ¶ 7, emphasis added).
Questions:	Aren't subscriptions over the Internet to the Australian Community in New York City direct sales? Does Advertiser sell products in New York through agents?

Lie 1st Aff.:	Advertiser "does not publish in New York." (Ex. A ¶ 7).
Exposed:	Advertiser publishes The Advertiser in New York via its website because the site of downloading is considered the site of publication, *see Penguin Group (USA), Inc. v. American Buddha*, 16 N.Y. 3d 295, 301 (2011).
Revision 2d Aff.:	None, Advertiser continues with the falsehood. (Ex. E ¶ 7).
Questions:	How many New Yorkers are subscribers and what types of goods or services are provided them? What do News Corp Australia's partnerships with Digital First Media, located in N.Y.C., and Press Reader, a Canadian company, do for Advertiser in New York? Do they act as agents?

Lie 1st Aff.:	Advertiser "does not target any New York audience." (Ex. A ¶ 8).
Exposed:	Published 12 articles concerning New York in 2014 and many of the members of the Australian Community in New York City subscribe to The Advertiser. (Ex. R).
Revision 2d Aff.:	The Advertiser "does not target subscribers in New York." (Ex. E ¶ 8).
Questions:	What criteria does The Advertiser use in determining to publish a story concerning New York and what sources in New York does it use? How many subscribers in New York?

Lie1st Aff.:	Advertiser does not have employees in New York. (Ex. A ¶ 10).
Exposed:	Bloomberg lists the Chairman for Advertiser as Brian Leonard Sallis with a corporate address of 1211 Avenue of the Americas, N.Y., N.Y. (Ex. O).

Revision 2d Aff.:	None, Advertiser continues with the falsehood. (Ex. E ¶ 11).
Questions:	Why is the business address of the Chairman for Advertiser in New York? Who else at Advertiser has a business address at News Corp or in New York?

Lie 1st Aff.:	Advertiser "does not have any business ventures in New York." (Ex. A ¶ 9).
Exposed:	On January 27, 2014, News Corp Australia, sole owner of Advertiser, entered into a partnership agreement with Digital First Media, headquartered in New York City, to provide advertising and marketing solutions for all its websites, which include The Advertiser website on which four of the five articles at issue here were published. (Ex. J).
Revision 2d Aff.:	None, Advertiser continues with the falsehood. (Ex. E ¶ 10).
Question:	What exactly does the partnership with Digital First Media entail?

Lie 1st Aff.:	Omitted relationship between Rupert Murdock's News Corp headquartered in New York and News Corp Australia which controls Advertiser (Ex. A ¶ 3).
Exposed:	News Corp Australia is considered part of News Corp's identity. (Ex. I).
Revision 2d Aff.:	News Corp Australia is a wholly-owned subsidiary of News Corp in N.Y., which "make[s] broad policy decisions" for Advertiser. (Ex. E ¶¶ 4, 5).
Question:	Exactly what decisions does News Corp in N.Y.C. make for Advertiser?

Defendant Tory Shepherd is the Political Editor for The Advertiser-Sunday Mail Messenger ("The Advertiser") owned and operated by Advertiser.

Lie 1st Aff.:	In researching her articles, Shepherd's only contact with New York was an email and telephone conversation with Plaintiff. (Ex. B ¶¶ 9, 11).
Exposed:	Shepherd had also contacted Miles Groth, Ph.D., a professor and resident in New York City, with six emails over a period of two months. (Ex. U).
Revision 2d Aff.:	She "forgot." [3] (Ex. F ¶ 14).
Question:	What other research contacts and sources did she have that involved New York?

Lie 1st Aff.:	Shepherd emailed Plaintiff "requesting comment on the controversy . . . ." (Ex. B ¶ 9).
Exposed:	The email did not request comment on any controversy. It stated, "I'm trying to get in touch for a story I'm doing on the UniSA course you're involved with, but can't find a phone number for you-could you please get in touch?" Also, at that time, there was no controversy. (Ex. V).
Revision 2d Aff.:	No revision, she still claims her email was "requesting comment on the controversy . . . ." (Ex. F ¶ 11).
Question:	Didn't the controversy begin with her contacting Dr. Gary Misan at the University and accusing Plaintiff of being a "member of extreme right wing groups in the USA"?

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[3] When Plaintiff worked for Eyewitness TV News and Metromedia TV News in N.Y.C. he kept a list of everyone interviewed for stories he produced, which is common in the media.

Lie 1st Aff.:	Shepherd wrote only "two" articles regarding the Male Studies courses. (Ex. B ¶ 4).
Exposed:	She wrote four articles. (Ex. W).
Revision 2d Aff.:	She wrote "articles" and lists the four. (Ex. F ¶¶ 4-8).
Questions:	How could she have forgotten about an article she wrote after being served with the complaint, which was just two months prior to her first affidavit, or the second of two articles that she wrote on January 14, 2014? What other writings has she written and published on the Male Studies courses?

Lie 1st Aff.:	Shepherd implies that the two articles were only published in print in Australia by failing to mention they were published on The Advertiser website. (Ex. B ¶¶ 7, 8).
Exposed:	All four known articles appeared on the The Advertiser website. (Ex. W).
Revision 2d Aff.:	The four articles appeared on The Advertiser website. (Ex. F ¶¶ 5-8).
Questions:	Does her contract with Advertiser address the publication of her articles on The Advertiser website? Is she paid extra for such? Where else have the articles appeared?

Lie 1st Aff.:	The two articles "were intended for publication in Australia and were directed at an Australian audience." (Ex. B ¶ 7).
Exposed:	All four known articles were published in New York via The Advertiser website.
Revision 2d Aff.:	All of the four articles "were intended for publication in Australia and were directed at an Australian audience." (Ex. F ¶ 9).
Questions:	Why publish on the Internet if the articles were only intended for Australians? Were print copies of the four articles published or circulated in New York? Did she expect the publication of her articles to have consequences in New York?

Defendant Fairfax Media Publications Pty. Ltd. ("Fairfax") relies on Richard Coleman who in his first affidavit lists himself as solicitor for Fairfax Media Limited (Ex. C ¶ 1), the parent of Fairfax. In his second affidavit, he is the solicitor for Fairfax (Ex. F ¶ 1). Perhaps he's the lawyer for both, but in both affidavits he states he is responsible for pre-publication advice. This role raises the question that he may not have firsthand knowledge of jurisdictional facts.

Lie 1st Aff.:	Fairfax and the Sydney Morning Herald do not have any business ventures or bank accounts in New York. (Ex. C ¶¶ 9, 10).
Exposed:	Fairfax does have a "representative" in New York City, World Media, Inc., for selling advertisements in its Sunday newspaper edition. (Ex. M).
Revision 2d Aff.:	None. (Ex. G ¶¶ 7, 8).
Questions:	What exactly does World Media, Inc. do for Fairfax and the Sydney Morning Herald? Is World Media, Inc. an agent or part of a joint venture or partnership with Fairfax?

How does Fairfax pay for World Media, Inc.'s services?

Lie 1st Aff.: Fairfax and The Sydney Morning Herald do not have office facilities, locations, employees, telephone listings and/or bank accounts in New York, which infers they never had such in New York because the market is unimportant to them. (Ex. C ¶ 10).

Exposed: Fairfax had at least two correspondents and a New York office. (Exs. P, Q).

Revision 2d Aff.: Fairfax did have correspondents in New York City until 2012. (Ex. G ¶ 8).

Questions: Why did it have correspondents and an office in New York?
Who or what does it rely on now for news from New York or office facilities?
How long did it have a New York office?

Lie 1st Aff.: Fairfax and The Sydney Morning Herald do not target "any New York audience." (Ex. C ¶ 8).

Exposed: Fairfax published 13 articles in 2014 concerning New York and many of the members of the Australian Community in New York City subscribe to The Sydney Morning Herald. (Ex. R).

Revision 2d Aff.: None. (Ex. G ¶ 6).

Question: What criteria does The Sydney Morning Herald use in determining to publish a story concerning New York and what sources in New York does it use?
How many subscribers in New York?

Lie 1st Aff.: Fairfax and The Sydney Morning Herald "do not directly publish in New York" but The Sydney Morning Herald is available online at its website. (Ex. C ¶¶ 6, 8).

Exposed: By making The Sydney Morning Herald available on its website, Fairfax is publishing in New York, *Penguin Group (USA), Inc. v. American Buddha*, 16 N.Y. 3d 295, 301 (2011).

Revision 2d Aff.: None. (Ex. G ¶¶ 4, 6).

Questions: How many New Yorkers subscribe?
Does Fairfax's joint venture with the New York company News Alert LLC involve publication of The Sydney Morning Herald in New York? (Ex. L).
Fairfax has a "representative," World Media Inc., in New York City for selling advertisements in its Sunday newspaper edition. (Ex. M). Why sell advertising space in New York if the advertisements are not going to appear in the New York market?
Does Fairfax's partnership with the Canadian company Press Reader include publishing The Sydney Morning Herald in New York? (Ex. K).

Lie 1st Aff.: Fairfax and The Sydney Morning Herald "do not directly sell any products in New York." (Ex. C ¶ 6).

Exposed: Fairfax sells The Sydney Morning Herald to the Australian Community in New York City. (Ex. R). The Sydney Morning Herald's website provides "access to exclusive discounts, events and competitions, unlimited access to our award-winning tablet apps, interactive quizzes, crosswords, Sudoku free in the iPad app." (First Am. Cmplnt. ¶ 30). The website offers an interactive

	photographer section called "Clique" where readers can publish their photographs, win prizes and receive advice; an online Sydney Morning Herald Shop where readers can purchase art and other gifts; it offered a cruise trip for two from Spain to Italy; accounts for readers to receive "tweets," and the "goodfood" section provides recipes; investment research; and investment advice. (www.smh.com.au/).
Revision 2d Aff.:	"[D]o not sell any products in New York." (Ex. G ¶ 4).
Questions:	Aren't subscriptions to The Sydney Morning Herald sales? To what extent are The Sydney Morning Herald website offers taken up by persons in New York?

Lie 1st Aff.:	Fairfax disturbs a print edition of The Sydney Morning Herald in the U.S. via Press Reader but has no "control" as to whether its U.S. edition is distributed in New York. Omitted to say whether it was or was not circulated in New York. (Ex. C ¶ 7).
Exposed:	Press Reader allows its 30 million users to digitally download The Sydney Morning Herald and The Sydney Morning Herald even advertises an "app" for doing that. (Exs. K, X). Downloading in New York means publishing here. *Penguin Group (USA), Inc. v. American Buddha*, 16 N.Y. 3d 295, 301 (2011). "Press Reader has developed major partnerships . . . [with] Fairfax Media [and] News Corp [Australia] . . . [that gives] publishers the ability to target audiences . . . [and] allow publishers to use [its] technology and adapt it to their market." Fairfax is using Press Reader to "grow global circulation and revenues, and increase brand awareness and exposure of their publications in new international markets." (Ex. K).
Revision 2d Aff.:	None. (Ex. G ¶ 5).
Questions:	Does Press Reader have an exclusive distributorship with Fairfax? Is Press Reader an agent of Fairfax and where are the printed editions printed? How many customers does Press Reader have in New York? How many of them download The Sydney Morning Herald? What markets is Fairfax targeting?

Lie 1st Aff.:	"Fairfax Media and The Sydney Morning Herald do not have any business ventures in New York." (Ex. C ¶ 9).
Exposed:	In 2000, Fairfax entered into a joint venture with the New York company News Alert LLC. The joint venture agreement with News Alert is apparently to create News Alert Asia-Pacific, a subsidiary company that would create a number of web sites aimed at providing financial and business information on the Asia-Pacific region and for investors and business people in the United States interested in researching opportunities in the Pacific. (Ex. L).
Revision 2d Aff.:	None. (Ex. G ¶ 7).
Questions:	What websites has the joint venture created? Are persons or entities in New York customers of the joint venture? Does the joint venture publish articles from The Sydney Morning Herald?

Defendant McNeilage is the education reporter for The Sydney Morning Herald.

Lie 1st Aff.:	McNeilage "did not intend to target" New York readers. (Ex. D ¶ 6).
Exposed:	The Sydney Morning Herald published the article on The Sydney Morning Herald's interactive website that reaches into New York where Plaintiff conducts his business.
Revision 2d Aff.:	None. (Ex. H ¶ 6)
Questions:	If she did not intend to target New York readers, then why was the article placed on The Sydney Morning Herald's website? Does her contract with Fairfax provide for placing her articles online? Were print copies of her article published or circulated in New York? Did she expect the publication of her article to have consequences in New York?

Lie 1st Aff.:	McNeilage "made no contact with anyone" in New York in the process of reporting on the Male Studies courses. (Ex. D ¶ 7). Such infers she also did not access information from non-human sources in New York.
Exposed:	McNeilage's article includes a photograph of Plaintiff that was taken by a New York photographer in New York (for which her newspaper failed to pay the photographer for its use). McNeilage cites the New York Times concerning one of Plaintiff's cases and quotes from a website posting by a New York professor both of which infer she accessed websites located in or connected with New Yorkers—meaning New York sources.
Revision 2d Aff.:	None. (Ex. H ¶ 7).
Questions:	Where did she obtain the photograph? Were her sources for information about one of Plaintiff's cases and the posting of the New York professor from New York sources?

WHEREFORE Plaintiff requests that the motion for a trial on the issue of personal jurisdiction be granted.

Roy Den Hollander
Plaintiff and attorney
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(917) 687 0652
roy17den@gmail.com

Sworn to before me on
20 day of January 2015

Notary Public

NORINE W BROWN
Notary Public - State of New York
NO. 01BR6169867
Qualified in Kings County
My Commission Expires 10.12.15

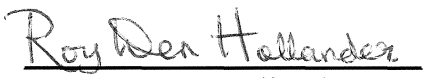
SA 247

Certification Pursuant to CPLR 2105 [SA247]

Certification of Record on Appeal to the Appellate Division First Department

I, Roy Den Hollander, the plaintiff-appellant and attorney in this action, certify, pursuant to CPLR § 2105, that the foregoing printed papers on appeal have been personally compared by me with the originals on file in the office of the Clerk of the County of New York and found to be true copies of those originals of the record on appeal, consisting of the notice of appeal, relevant portions of the pleadings and their relevant exhibits, and the reviewable orders in the case now on file in the office of the Clerk of the County of New York.

Dated: June 17, 2016
New York, N.Y.



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