Summary of the three Anti-Feminist or Men's Rights cases

The three men's rights cases—or as the media described them "anti-feminist" cases, or as I think of them "anti-Feminazi" cases—were brought in federal court. The cases are called "Ladies Nights," "Immigration Fraud Act, a.k.a. the Violence Against Women's Act, or State Violence Against Men Act," and "Women's Studies I and II, or in my view "Witches' Studies."

Not once, not even close to once, did the federal courts reach the fundamental question in each case: Is it fair under the U.S. Constitution to give females preferential treatment at the expense of the rights of men? The cases were not about enforcing more rights for men, but defending the rights they allegedly had in the face of an onslaught by the totalitarian belief system—Feminism.

As Howard Zinn said, "To exalt as an absolute is the mark of totalitarianism, and it is possible to have an atmosphere of totalitarianism in a society that has many of the attributes of democracy." Believing that certain political and personal beliefs are the only "correct" ones sounds absolute to me.

Every court used one of the many tactics that bureaucrats endowed with governmental power use, or more accurately abuse, in order to further their personal beliefs or demonstrate sequacious allegiance to those they fear. Every case was thrown out of court at the very first instance with complete disregard for what the blindfolded lady in the courthouse is supposed to represent.

Ladies Nights

The Ladies Nights' case challenged the charging of males more for admission than females by public accommodation nightclubs. The federal courts said that was okay under the U.S. Constitution because the government was not involved.

When private businesses like nightclubs, which are opened to the public, discriminate, it violates the Constitution only if (1) the state or federal government is involved to a large extent in the business's operations so that it is really the government controlling the business—this is called state action, or (2) the private parties have been delegated some of the government's traditional powers; that is, they carry out a public or state function.

State Action

The federal courts ignored that New York State does not just issue a license to sell alcohol, but extensively controls the people involved and all the activities of a public accommodation nightclub or bar. The State rules over the level of lighting inside, the panorama within, advertising, citizenship of the employees, moral character of the customers, interior floor plan, number and positioning of tables and chairs (ever wonder why every club has those little tables), exterior blueprint, block-lot diagram, landlord, type of building, history of the building's prior use, finances, manager, owners, owners' spouses, the people with whom the owners associate, reputation of the owners, waitress outfits (no dressing like furry little animals with cotton tails), who gets admitted (no falling-down drunks, minors, or terrorists), noise level outside a club, parking and traffic congestion by the club, and all 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 State also controls "the industry's structure … [and] 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.[1]

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[1] The Judge in the federal district court was actually a former lawyer for the Moreland Commission—guess she forgot about her experience on the Commission.

Despite the State's extensive involvement with nightclubs, the Ladies Nights' courts declared the State was only involved when an alcoholic drink was handed over to a customer, not when the customer entered the nightclub to reach the bar to buy that drink.

The federal courts found it necessary to ignore the reality of State control over the entire operation of public nightclubs in order to avoid overruling a 1969-70 case that found state action when a bar discriminated against two females. *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593 (1970)(Mansfield, J. granted plaintiffs' motion for summary judgment); *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).

The Ladies Nights' courts created a factual distinction to preserve the 1969-70 case by claiming the two females were refused alcoholic drinks and that involved state action; whereas, charging men more to enter a club did not. The files of the 1969-70 case, however, do not refer to any refusal to serve alcoholic drinks. The bar may have refused to serve the girls soda, lunch, boiled eggs, or pickles—the Ladies Nights' judges did not know. So they simply assumed the fact to reach the decision required by the judiciary's anti-male ideology because now men were being discriminated against by bars instead of females.

The judges even ignored the U.S. Supreme Court's statement that the *McSorleys'* decisions meant 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 v. Boren*, 429 U.S. 190, 208 (1976). Entering a nightclub is an activity of the club's customers, and for men, it is "restrain[ed]" by having to pay more than females.

Public Function

As for the nightclubs being delegated state power to carry out a public function, the federal courts simply ignored history:

> "A long history of regulation, control, price fixing, place of time and sale setting, and outright extinction lies behind the liquor business in this country since Colonial times, and it is too late today to suggest that the rights of those who choose to engage in it are on a constitutional or legal parity with the rights of people who trade in bicycles, or cosmetics, or furniture."

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, (1989). The states and only the states, except for Prohibition, have always controlled any activity concerning alcohol. "[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 (1948), *overruled on different grounds*, *Craig v. Boren* 429 U.S. 190, 210 n. 23 (1976). Public function exists when there is a history of exclusive government activity. *Flagg Bros. v. Brooks*, 436 U.S. 149, 158-59 (1978).

New York State always had absolute power to prohibit totally the sale of alcohol; broad power to control the times, places and circumstances under which alcohol is sold by 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 (1989).

"[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 (1966). New York State chose to delegate some of its exclusive functions to nightclubs for operating premises where persons

could purchase and consume alcohol. Nightclubs, therefore, exercise a public function for which they are entirely dependent upon State decisions to operate successfully. *See Flagg Bros. v. Brooks*, 436 U.S. 149, 158-59 (1978).

The State could have decided to set up and operate nightclubs and bars itself while forbidding anyone else from doing so. In that situation, the discrimination of charging males more for admission would clearly constitute an action by the State and be unconstitutional. There's no legal or logical reason that because the State chose to delegate its public function to corporations operating under the State's extensive control, that involvement by the State somehow disappears and the same conduct becomes constitutional, unless it discriminates against girls. *See Horvath v. Westport Library Ass'n*, 362 F.3d 147, 151 (2d Cir. 2004).

Under the courts' reasoning, nightclubs and bars can now charge one sex hundreds or thousands of dollars for admission, thereby effectively keeping that sex out of a nightclub, while allowing the other sex in for free, and it would be constitutional.[2]

Immigration Fraud Act, a.k.a. the Violence Against Women's Act or State Violence Against Men Act

This case challenged the constitutionality of a secrecy law created by the Violence Against Women's Act that allows the Department of Homeland Security's immigration division to use proceedings kept secret from Americans to make findings of fact that those same Americans committed "battery," "extreme cruelty," or an "overall pattern of violence" against their alien spouses or lovers.

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[2] It would, however, violate the laws of around 28 states, but not the U.S. Constitution.

This secret, “Star Chamber” like proceeding violates the procedural due process required by the Fifth and Fourteenth Amendments of the U.S. Constitution. Also, because the secret proceedings are used against a disproportionate number of American men—around 85%, it violates equal protection in the application of the law. Laws might not have specifically discriminatory classifications written in words, but they may be applied in a way so as to create such classifications and that’s unconstitutional. *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886).

The federal courts quickly dismissed the action for lack of injury based on the following Kafkian logic: Since the fact-findings about what an American did to his alien spouse or lover and the result of the release of those fact-findings to the alien, certain private Feminist organizations and various law enforcement agencies are kept secret from the American, any allegation of harm by him is “speculative” because he doesn’t know what actually occurred or how it impacted his life, such as the denial of a job or an investigation by the police. The plaintiffs, including me, could not find out what the federal government did behind closed doors concerning us because we were locked out; therefore, we could not say what we were found to have done or how those fact-findings were used against us by releasing the findings to various third parties. The courts ruled our allegations speculative even though it was the federal government’s secrecy law that we were challenging, which allowed the courts to rule our allegations speculative. It’s called Catch 22.

Once again, the federal courts’ subservience to society’s preoccupation with punishing males for any perceived or imagined slight to females—whether the females are citizens, aliens, prostitutes, or terrorists—caused the courts to ignore the wisdom of one of the better Supreme Court Justices: “‘[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." *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951)(Frankfurter J., concurring)(internal quote *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 551 (1950)(Jackson, Black, Frankfurter, dissenting)).

Women's Studies I and II, a.k.a. Witches' Studies

The first round of this case, *Women's Studies I*, or *Witches' Studies I*, largely relied on Equal Protection and Title IX to claim that federal and state support for Women's Studies programs were unconstitutional because there were no Men's Studies programs for the minority of students—men. In 2008, there were over forty Women's Studies programs in New York State's higher education system. Females made up 58% of all college students, received over 55% of the Bachelor degrees, over 63% of the Master's degrees, and over a majority of the Doctoral degrees, and yet there were no Men's Studies programs. N.Y. State Department of Education, *ORIS.*[3]

The federal courts again dismissed, at their first chance, by ruling that any harm caused the minority—males—by the lack of a college's Men's Studies program was "speculative." The federal courts, however, do not say the same about the lack of a female sports team when a college only has a male team, but that's because males, even as a minority, don't count in the federal courts.

Women's Studies I also claimed that Feminism was a religion and that New York State and the Federal Government's use of taxpayer dollars to feminize New York's higher

[3] By 2016, across America, females will receive 64% of the Associate degrees, over 60% of the Bachelor degrees, 53% of the Professional degrees, and 66% of the Doctoral degrees. National Center for Educational Statistics, *Digest of Educational Statistics*, Table 258.

educational system violated the first clause of the First Amendment: "Congress [or state] shall make no law respecting an establishment of religion . . . ." To bounce this issue out of court, District Judge Kaplan simply made a finding of fact without any evidence that "Feminism is no more a religion than physics . . . ." Now that may be so, although I doubt it, but in this day and age we are beyond accepting proclamations of what is true by the powerful just because they are powerful.

The Second Circuit Court of Appeals took a different tack on the religion issue by resorting to the hyper-technical pleading standards of the early 19th century. Because I did not write in the complaint that "I am a taxpayer," the Second Circuit ruled I did not have standing to bring the Establishment Clause challenge. Based on the absence of those four words in a 36-page complaint, the Second Circuit threw the case into the street.[4]

The Court did not bother to consider the obvious fact that I was a taxpayer. After all, I was admitted to practice before the Court of Appeals and the complaint stated I was a resident of New York. What adult living and working in this country does not have taxpayer status? The Second Circuit also did not bother using its power of "judicial notice" to determine whether I was a taxpayer even though the Federal Defendants conceded that I was. And, the Second Circuit did not bother remanding the case to the district court for a hearing on whether I was a taxpayer, which the Second Circuit had the power to do and I requested.

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[4] In oral argument, the Second Circuit also complained that the complaint did not include the relevant State and Federal Statutes. That is false. "*Equity for Women in the 1990s*" is a Regents' policy statement carrying the effect of law on higher educational institutions, Educ. Law § 207 (although § 207 was not cited, a summary of the text was at ¶ 28 of the Amended Complaint), and the Bundy aid statute was specifically cited at ¶¶ 49 and 157 in the Amended Complaint in the original action. The substance of other statutes were also pleaded, but not cited. "Affirmative pleading of the precise statutory basis for subject matter jurisdiction [standing] is not required if the complaint alleges facts to establish jurisdiction." *Moore's Fed. Prac.*, § 8.03[3], 3 ed. (based on cases from the 2d, 5th, 7th, and 9th Circuits).

So why were the courts so determined to prevent even the appearance of rendering justice on the issue of whether Feminism is a religion aided by government? Because to do so, would mean a modern-day excommunication from the Feminist Establishment—a barrage of personal invectives from Feminist ideologues, criticism from the mainstream media, and ostracism from the politically correct elite. The courts of the Second Circuit once again confirmed that when it comes to the rights of men, a case will never make it to trial, unless it is to eliminate those rights.

In round two, *Women's Studies II,* the complaint specifically stated—four times—that I was a taxpayer and specifically cited all the relevant statutes. Naturally, the federal district court threw the case out, anyway.

To do so, the court phonied the facts about what happened in *Women's Studies I*, so it could get rid of the case based on *collateral estoppel*. Under *collateral estoppel*, if issues were fully litigated, actually decided, and necessary or essential to the decision in a prior case, then those issues cannot be raised again between the same parties (remember this for later) in a subsequent case. The district court in *Women's Studies II* ruled that *collateral estoppel* prevented me from alleging that I had standing under the Establishment Clause to bring the case because that standing had been previously decided against me in *Women's Studies I*.

There are two different ways for a plaintiff to satisfy standing under the Establishment Clause: (1) having taxpayer status and (2) incurring a non-economic injury. Non-economic injury meant I found "offensive"—an understatement—the defendants' inculcation of Feminism in higher education. In my case, at Columbia University and its Institute for Research on Women and Gender that runs Columbia's Women's Studies program which propagates Feminism throughout the University and the Columbia community.

Whether I was a taxpayer and non-economic standing were never touched upon in the district court in *Women's Studies I*, but the Court of Appeals did find fault during oral argument for my not including the four magic words, "I am a taxpayer," in the complaint and said as much in its decision. The Court of Appeals, however, never mentioned non-economic standing during oral argument or in its decision. So the most favorable politically correct or Feminist spin that could be put on the court proceedings in *Women's Studies I* concerning non-economic standing was uncertainty, and that is not good enough for collateral estoppel.

Had the law, instead of ideology, been followed in *Women's Studies II*, it would have resulted in a victory for men. To prevent that, the lady judge in the district court simply ignored the facts and ruled that "[b]oth the District Court and the Second Circuit necessarily decided the issue of Plaintiffs [Establishment Clause] standing in [*Women's Studies I*] …. The issue of Plaintiff's standing to litigate his Establishment Clause and related claims regarding the University's Women's Studies program was decided against him in [*Women's Studies I*]." Judge Swain's *Order* at 5. "Plaintiff's . . . objections, that collateral estoppel does not apply because . . . non-economic standing [was] not previously litigated [are] without merit." Judge Swain's *Order* at 4. The district court knew the answer it wanted, so it simply falsified the facts to reach that conclusion.

All was not yet lost in *Women's Studies II*, or so I thought. A key requirement of *collateral estoppel* is that it can only apply when the parties are the same, so I made a post-judgment motion to amend the complaint by adding two new male plaintiffs who came forward after the district court's decision and had the guts to fight for their rights. The district court could not possibly apply *collateral estoppel* against them because they were not involved in *Women's Studies I*. Naturally, the court found another way to enforce its Feminist ideology.

The lady judge ruled that her court lacked the authority to allow the post-judgment amendment of the complaint to cure standing. Strange, that in the earlier case, *Women's Studies I*, Court of Appeals Judge Chester J. Straub, during oral argument, admonished me for not trying to amend the complaint post-judgment in that case, which had also been dismissed for my lack of standing:

> Judge Straub: Did you ask [for] a further amendment after the court said there was no standing?
> Den Hollander: No at that point, the moment that I learned about the standing was the decision of the court. . . .
> Judge Straub: But did you ask?
> Den Hollander: No, I did not your honor.
> Judge Straub: [B]ut you first had the Magistrate judge's report.
> Den Hollander: That's correct your honor.
> Judge Straub: You objected to that but you didn't ask therein [for] leave to amend should the district court hold against you.
> Den Hollander: No I did not . . . objected to. . . .
> Judge Straub: The second time after he [District Judge Kaplan] did hold against, you didn't come back and say give me a chance to amend.
> Den Hollander: That's correct . . . .
> Judge Straub: Are you a lawyer . . . ?

(Transcript of oral argument before the Second Circuit Court of Appeals on April 8, 2010).

So which is it? Does a district court have the authority to allow a post-judgment amendment of a complaint that was dismissed for lack of standing? It all depends on whether it will aid that court in ridding itself of bothersome men fighting for their rights violated by the government's preferential treatment of females.

Useless as the effort was, I appealed *Women's Studies II* to the Second Circuit Court of Appeals. The three judge panel simply parroted the district court by saying that the issues of non-economic and taxpayer standing had been "fully litigated and decided" in *Women's Studies I*, when they hadn't, and that the complaint could not be amended because the two "new

plaintiffs are not new evidence," even though the two would testify as to new facts, which sounded like evidence to me, and, of course, legally it was.

But the kicker to the judges' decision was their blatant abuse of power by threatening me with Rule 11 sanctions that forever banned me from representing the two new plaintiffs, or anyone else for that matter, in any case raising the issue of whether Feminism is a religion. That's no different than a Jim Crow court in the 1800s threatening the attorney for the New Orleans Comité des Citoyens with fines, license suspension or disbarment for bringing another *Plessy v. Ferguson*, 163 U.S. 537 (1896), suit with a different plaintiff on the same issue—separate but equal. And no different than at the end of every year sanctioning the American Civil Liberties Union for bringing another action with new plaintiffs against Christmas displays.

So I asked the U.S. Supreme Court to not only reverse the Second Circuit's decision (Petition for Writ of Certiorari), but to tell it to rescind its threat of sanctions and to stop acting like King John of England by relying on their divine right of life long tenure to rule in accordance with their personal beliefs: "In the men's rights cases, the Second Circuit has acted beyond its authority by deciding in accordance with the current popular ideology Feminism, even though it is the imperative duty of the courts to support the Constitution. '[The] constitution is, in fact, and must be regarded by the judges as a fundamental law.' Alexander Hamilton, *Federalist Paper No. 78*. Supplanting it with the tenets of Feminism is an act beyond a court's authority and its duty to obey the rule of law—not the rule of the 'politically correct.'"

The Supreme Court, rarely a profile in courage, said beat it. The lower court decisions will stand because Justice Black was wrong when he once wrote, "Our Constitution was not written in the sands to be washed away by each wave of new judges blown in by each successive

political wind. Rather, our Constitution was fashioned to perpetuate liberty and justice. . . ." *Turner v. United States*, 396 U.S. 398, 426 (1970)(Black, J., dissenting).

Through all these cases, the judges have been consistent in abusing their power to further their personal interests by using any means, such as phony facts, non-existent laws and Orwellian logic, to do the opposite of what they are supposed to do. They have forgotten that "in times of repression, when interests with powerful spokes[persons] generate symbolic pogroms against nonconformists, the federal judiciary . . . has special responsibilities to prevent an erosion of the individual's constitutional rights." *Younger v. Harris*, 401 U.S. 37, 58 (1971)(Douglas, J., dissenting). "In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 172 n. 19 (1951)(Frankfurter, J., concurring)(quoting 5 The Writings and Speeches of Daniel Webster, 163).

The federal judges in the Men's Rights cases failed to realize that efforts to enforce unanimity of belief in any dogma claiming itself the sole possessor of the truth are doomed to fail. As U.S. Supreme Court Justice Jackson so aptly wrote in 1943, during another time of intolerance and hatred directed by the majority at those in the minority:

> Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishments must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. . . . Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to efforts of totalitarian [regimes]. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard."

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 640-41 (1943).

Today in America, it is Feminism and political correctionalism that are succeeding in stamping their brand of thought, speech, and action on the nation at the expense of liberty.