

### **QUESTION NUMBER ONE**

Conflict escalated between the United States and China. A proxy war broke out between North Korea and Japan. The Chinese navy seized control of the Spratly Islands, as well as Okinawa and portions of the Philippines. A blockade of Taiwan commenced. For the past decade, the United States had steadily reduced the size of its military. A sluggish economy and high debt (owed mostly to China) rendered a military build-up virtually impossible. Additionally, the President had quietly dismantled most of the nation's nuclear arsenal, thus the ability to deter Chinese militarism by threats of a nuclear attack was significantly constrained. War seemed imminent. Uncertain about the outcome, the President negotiated a resolution. A formal treaty was presented to the Senate and ratified. Necessary enabling legislation soon followed, which the President signed.

The treaty called for the following. China was to withdraw from Okinawa and the Philippines and end the blockade of Taiwan. In return, the United States would annually transport 100 unmarried Americans, aged 18 to 22, to China, for purposes of "cultural exchange." Rumor had it that the young Americans were actually intended by the Chinese to become involuntary sex workers, serving the government elite. Evidence of this intention came in the form of documents leaked by anonymous American whistle-blowing diplomats.

In accordance with the treaty enabling legislation, selection for service in the "cultural exchange program" was pursuant to a draft of eligible persons, who were to register before-hand in a manner similar to the military draft. In accordance with the treaty and the enabling law, eighty percent of the draftees were to be women, with no preference as to race. Twenty percent of the draftees were to be men.

When the first draft was held, seventy-five percent of the draftees were *blond* women. *None* were Asian. Three percent were female African American and two percent were Latina. The remaining 20 percent of the draftees were men.

Officials claimed the outcome with respect to the female draftees was completely random.

Ariadne was a 20 year old blond woman, who was also a citizen of the United States. She received notice of her selection. She had no desire to go to China, in part because she was engaged to be married. She brought an action for injunctive relief in a Federal Court.

Theseus was a 20 year old male. He was *not* selected. Unlike Ariadne, he wished to go to China (his *secret* patriotic purpose was to gain the trust of Chinese leaders and then assassinate them). He sought a writ of mandamus in a Federal Court. He hoped for issuance of an order requiring inclusion of an equal number of men and woman in the cultural exchange program, or at least an injunction until Congress or the President corrected the disparity.

#### Discuss the following:

1. The constitutional rights violated by Ariadne's selection for inclusion in the "cultural exchange program."
2. The merits of Theseus' claim that the government's action violates the principle of equal protection.

QUESTION NUMBER TWO

Omar is the head of a religious organization. His organization sells books, newsletters, cds and dvds covering various religious issues, with relevant commentary touching upon public policy and politics. Among the statements found in this material was the following: *“God made man, but Satan corrupted him by luring him into evil practices, including homosexuality. God calls on us to combat this evil, even to the point of raising a sword to those who encourage it.”*

Roger was very interested in religion. He was what is known as a “seeker.” He stopped into Omar’s worship center. Looking over some of the printed materials, he ran across the above quoted passage. He turned to Omar and said, “isn’t this a little harsh? Even if its true that homosexuality is wrong, does God really want us to kill gay people?” Before Omar could respond, a congregation member named Abe Baker yelled “Infidel sodomite, you shall pay!” Abe Baker had enthusiastically read many of Omar’s books and attentively listened to the cds. Abe Baker knocked Roger to the ground, dragged him out of the building, and spit on him. Omar ran out, provided first aid to Roger and called an ambulance. While waiting for medics to arrive, he said to Roger, “I’m sorry this happened, but we’d never let anyone like you join our organization.”

State law includes a Public Accommodation Law, which provides: *“all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all establishments of every kind whatsoever.”* The statute also permits civil suits when the law is violated.

State law also includes a Hate Crime Law, which provides: *“everyone who, by communicating statements in a public place, incites hatred against any identifiable group where such incitement could to lead to a breach of the peace is guilty of a crime.”* The statute also permits civil suits by victims of “hatred.”

In accordance with the State’s Public Accommodation Law, Roger sued Omar’s organization. He alleged he had been denied membership in the organization because of the organization’s perception of “the kind of person he was.”

In accordance with the State’s Hate Crime Law, Roger sued Omar. He alleged that hatred incited by Omar caused Abe Baker to assault him.

The incident involving Roger and Abe Baker gained nationwide attention. In time, a Federal IRS audit was commenced. The non-profit status of Omar’s organization was suspended pending the audit. In a letter to Omar, an IRS agent stated that “the spreading of hate is not entitled to taxpayer support.” The letter made reference to the group’s “denial of membership to homosexuals.”

*Continued on next page.*

A group of civil rights protestors appeared outside of Omar’s headquarters in support of Roger. They chanted “hey ho, hey ho, violent haters have got to go!” while burning a stack of Omar’s books. Susie, the leader of the protest, was cited for violation of a local ordinance prohibiting fires without a burn permit. The ordinance had been enacted in 1896 following a city-wide fire. In the past 35 years, sixty-five percent of the citations for violations of this ordinance were issued to persons who conducted political protests that involved the burning of objects.

Discuss the following:

1. The merits of any First Amendment-related defenses to Roger’s claim for violation of the State’s Public Accommodation Law.
2. The merits of any First Amendment-related defenses to Roger’s claim for violation of the State’s Hate Crime Law.
3. The merits of any First Amendment-based arguments which Omar’s organization could raise in response to the suspension its non-profit status.
4. Whether Susie’s citation is consistent with principles set forth in *United States v. O’Brien*.