Nobody's perfect"? That's not an excuse for federal judiciary, and the mainstream media!

By Lev Tsitrin

The famous punch line in "*Some Like it Hot*" by which a romantic millionaire Osgood responds to the confession of "Daphne," the object of his passionate love, that she is actually a man is, despite its hilarity, a classic example of what psychologists call "denial" – an inability to acknowledge a problem.

This thought popped into my head as I read an op-ed by David French, a former legal defender of conservative causes who now writes for the *New York Times* – and who is someone I greatly admire for his principled stance, sound logic, and lucid writing. Titled "*What Happened to the Originalism of the Originalists?"* it was

his attempt to prove that in the Trump's immunity case, "the court's originalist majority [hypocritically] neglected its originalism" with a result that "the liberal minority [of Supreme Court justices] was more originalist than the conservative majority."

How so? While trying to demonstrate that the immunity decision is "truly difficult to square with the constitutional text," Mr. French proved the exact opposite – by bringing to the reader's attention "The [Constitution's] impeachment judgments clause [that] limits the reach of an impeachment conviction to removal from office and disqualification from future federal office (in other words, impeachment convictions do not function like criminal convictions), but the clause also states, "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.""

This is a textbook example of a lawyer arguing against himself while trying to prove his point – for if the Constitution did not imply immunity, why would it have specified that, upon successful impeachment, the convicted official becomes subject to lawsuits – i.e. the clearly-implied immunity is gone? Thus, the notion of immunity clearly does "square with the constitutional text;" "originalists" need not worry about being accused of hypocrisy. And of course, Mr. French's lament that the Supreme Court's decision "essentially chang[ed in the above-quoted passage] the word "shall" to "may"" makes no sense – the question of post-impeachment immunity could not be addressed by the Supreme Court simply because in neither of his two impeachments Trump was convicted. Mr. French "doth protest too much" – far too much. "Well, nobody's perfect" – even the usually reliable Mr. French isn't.

Which is not to say that judges don't ignore and perverse the plain dictionary meaning of words. They do – else, they would be mere human agents of "due process of the law" that we the hillbillies are assured that they are, rather than

“legislators from the bench” that the party that put them on the bench wants them to be. Twisting words out of their meaning is the key tool in federal judges’ toolbox – but of that, the mainstream press does not want us to know. Speaking of “hot,” some subjects are just too hot to handle, I guess.

I speak from personal experience. Upon discovering that America’s “liberty for all” is but a pious myth – because government blocks author-published books from being visible in the mainstream marketplace of ideas (nation’s bookstores and libraries) – I sued, relying on “justice for all” to bring back “liberty for all” – and in the process learned plenty about judging, this engine of our “justice for all”.

So here is how judicial procedure “works.” Your lawyer files the case – and the government immediately files to dismiss. Nothing is wrong here; this is perfectly sensible, and perfectly fair. What’s not sensible and not fair – and most importantly, not procedural (and thus, not legal), is how federal judges process this request.

How they *should* do it, is clearly spelled out in courts’ rules: when a defendant files to dismiss, the judge *must* treat plaintiff’s allegations as factually true, and consider them in the most favorable light. This makes perfect sense: if, even at its maximum strength, plaintiff’s argument fails to overcome defendant’s objections, what’s the point in going forward? It will be a waste of valuable time; the case has to be dismissed.

So here is how this rule was put into “practice” in my case.

Overview Books v US was filed in the Court of Federal Claims and Judge Charles Lettow, on seeing that government’s argument cannot possibly overcome my lawyer’s – for a simple reason that there was *no* government argument (since the Department of Justice denied that we challenged the government policy, framing our position instead as stupidly suing the government

for a service for which we knew upfront we were not eligible in the first place), decided to become a lawyer for the government before acting as a judge – and built in his decision a previously non-existent defense of the government program, deciding the case for his own "government's" argument. In other words, Judge Lettow interpreted his obligation to consider my lawyer's argument at its strongest as a mandate to build an even stronger (because unopposed – and un-opposable, it being non-existent in government's pleadings) argument for the government. His workaround for what a judge *must* do was to do first what a judge *must not* do – i.e. become a government's lawyer, thus losing any vestige of impartiality in the process.

And then, an interesting thing happened – in googling my case to check whether the Supreme Court took the appeal (it didn't), a government policy document came up that cited my case – and lo and behold! in it, the government itself debunked every factual argument concocted by Judge Lettow when he valiantly lawyered for the government!

So my lawyer re-filed, this time in the Eastern District Court in New York. And how did Judge Vitaliano deal with his obligation to treat our argument as "factually true, and see it in the most favorable light"? By waiting for two years and two months and dismissing the case – without any further hearings – on the grounds that my lawyer *did not* argue what he argued! Thus, Judge Vitaliano, interpreted his obligation to consider our argument as "factually true" as actually meaning that he should consider it as "factually false!" And when I sued Judge Vitaliano for fraud, Judge Garaufis dismissed my case on the grounds that doing what judges must *not* do is "classic exercise of judicial function!

Federal judges do have a way with words, right?

But all this (plus the interesting factoid I picked up along the way from the DAs when I sued judges for fraud – that in

Pierson v Ray federal judges gave themselves the right to act from the bench "maliciously and corruptly") is of no interest to the *New York Times* (and its much-respected Mr. French). I write to them, time and again – but there is no response! Yes, "Some Like it Hot" – but not the *New York Times* and their ilk! Unless the hot news is about Trump, of course!

We love our country – a land that promises "liberty and justice for all." This is a promise that is as beautiful and as enticing as was the lovely "Daphne" in the eye of infatuated Osgood in "*Some Like it Hot.*" The problem is, that in both instances the object of love is not what it is imagined to be. When push comes to shove, there is no "liberty" and no "justice" (and no "democracy") in America – but an oligarchy that shields its privileges by deploying "corrupt and malicious" federal judges and hiding behind thoroughly dishonest mainstream media that studiously looks the other way. End result: all we have is "liberty for some, and justice for very, very few." And the admittedly cute "nobody's perfect" retort that may do in a gangster comedy does not work here. It offers no justification for our "corrupt and malicious" federal judiciary and the lying media. It isn't funny, it isn't fair, it isn't constitutional, it isn't American. It can't be taken for an answer.

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