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## FALUDI FIGHTS BACK: A REVIEW OF *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN*

MERLE H. WEINER\*

Perhaps it is too much to say that Susan Faludi's *Backlash: The Undeclared War Against American Women*<sup>1</sup> is to the 1990s what Betty Friedan's *The Feminine Mystique*<sup>2</sup> was to the 1960s. Faludi's book probably will not revolutionize women to embark on a feminist journey; yet it does capture, as Friedan did, an unspoken truth about the interrelationship of society and its women. It is this naming the unnamed, as Friedan originally did, that makes Faludi's book well worth reading.<sup>3</sup>

The simplicity of Faludi's premise, that a backlash against women's rights and feminism is occurring, is both one of the book's strengths and one of its weaknesses. While Faludi amply demonstrates the existence of a "backlash," she never tells the reader how to reverse it. Instead, Faludi uses her four hundred-plus pages of text to provide a plethora of examples, merely establishing that an attack on women's equality exists. Faludi focuses primarily on popular culture for her support, finding material in the media, movies, television, fashion industry and cosmetic industry. She also documents her thesis by entering the domains of the new right community, politics and scholarly and popular writers. By the end of Faludi's book, one either is convinced of her premise by the sheer number of examples provided or feels exhausted enough to agree.<sup>4</sup>

Reading this Pulitzer prize-winning journalist's tome awakens one to the truth of its underlying message. One starts to see examples of the backlash everywhere. For example, a recent article by Sally Quinn states that feminism, like communism in the former Soviet Union, is dead: Feminism is "anti-male, anti-child, anti-family, anti-feminine," and

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1. SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (1991).

2. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963).

3. Faludi might wince at the comparison with Friedan. In discussing Friedan's *THE SECOND STAGE*, Faludi shows quite a bit of disdain for the author, calling her a "fallen leader," angered by her loss of power. FALUDI, *supra* note 1, at 322 (citing BETTY FRIEDAN, *THE SECOND STAGE* (1981)). Faludi accuses Friedan of "yanking out the stitches in her own handiwork," and Faludi calls *THE SECOND STAGE* a "thinly documented book that often reads as if it were dictated into a tape machine," muddled in both language and logic. *Id.* at 319, 321, 324.

4. While Faludi was awarded the National Book Critics Circle award for general non-fiction, some board members understandably felt, "(t)he writing was clunky and had too much filler." David Streitfeld, *Smiley, Roth Win Book Awards*, WASH. POST, Feb. 17, 1992, at D1.

therefore, has nothing to do with most women.<sup>5</sup> Feminism, Quinn asserts, outlasted its usefulness. Quinn accuses movement leaders of being hypocritical, of overlooking the “deepest, most fundamental needs of their constituency,” such as women’s need for men, children and creating a happy home atmosphere. She faults feminists’ insensitivity to these needs as “creating a backlash” against abortion rights, earning power and job promotion in the workplace, and cites Faludi’s book for support.

After reading *Backlash*, one recognizes that Quinn’s message is twisted. It is an illustrative exercise to imagine how Faludi might address Quinn’s argument. A technique that reappears throughout Faludi’s book is her bombardment of the enemy (i.e., the reactionary forces) on all fronts. Faludi’s tactics include revealing counter-examples, exposing methodological flaws, identifying personal short-comings and magnifying irony. This approach makes her book effective and characterizes her probable response to Quinn.

Apart from criticizing Quinn for citing her book out of context, Faludi would directly dispute the content of Quinn’s message that feminism is no longer relevant to most women. Faludi, in fact, did challenge a similar claim when she discussed Sylvia Ann Hewlett’s book, *A Lesser Life: The Myth of Women’s Liberation in America*,<sup>6</sup> and its contention that the feminists failed women by ignoring motherhood. Faludi points out that most women do not share this belief: “When the Yankelovich pollsters in 1989 specifically asked, ‘Is the women’s movement antifamily?’, the vast majority of women, in every age group, said ‘no.’”<sup>7</sup> Faludi also would indicate that Quinn gives no statistics or other evidence to support her claims regarding women’s feelings about feminism.

Faludi then would detail how the women’s movement, in fact, works to help women manage their often dual roles as mother and labor force participant. Faludi wrote, for example,

In the early ‘70s, feminists campaigned for *five* day care bills in Congress. Three of the eight points of NOW’s original 1967 “Bill of Rights for Women” dealt specifically with child care, maternity leave, and other benefits. In the following years, NOW and other women’s groups repeatedly lobbied Congress, staged national protests, and filed class-action suits to combat discrimination against pregnant women and mothers. . . . [W]hen feminists pushed for women’s rights in other areas — employment opportunities, pay equity, credit rights, women’s health — mothers and their children benefitted, too.<sup>8</sup>

Next, Faludi would provide support for the antithesis—that it is the new right and conservatives who are really anti-family:

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5. Sally Quinn, *Who Killed Feminism? Hypocritical Movement Leaders Betrayed Their Own Cause*, WASH. POST, Jan. 19, 1992, at C1.

6. SYLVIA ANN HEWLETT, *A LESSER LIFE: THE MYTH OF WOMEN’S LIBERATION IN AMERICA* (1986).

7. FALUDI, *supra* note 1, at 316-17 (citing *Yankelovich Clancy Shulman poll* (Time/CNN television broadcast, Oct. 23-25, 1989)).

8. *Id.* at 316 (*emphasis in original*).

[T]he real 'antimotherhood' crusaders weren't feminists, either; they were New Right leaders, conservative politicians, and corporate executives, who not only ignored mothers' rights but attacked them. It was, after all, Phyllis Schlafly, not Gloria Steinem, who led the opposition to congressional child care and maternity leave bills for two decades.<sup>9</sup>

Finally, she would use her justifiably irreverent style to show the hypocrisy in Quinn's argument, given Quinn's own personal life choices. Quinn's life does not reflect that home, family, or traditionally feminine ideals define women's "deepest, most fundamental needs." Nor does Quinn's privileged background permit her to speak about what is important for most women. For example, after her graduation from Smith College in 1963, Quinn embarked on a variety of professions: actress, public relations consultant, political campaigner, newscaster and journalist.<sup>10</sup> She became a reporter for the Washington Post in 1969<sup>11</sup> and published two books, *Regrets Only* and *Happy Endings*. One reviewer called this last book a reflection of Quinn's own "mired truths of marriage and motherhood: . . . Superwoman conflicts of career and home."<sup>12</sup> Quinn's home life, like her career path, has not been "traditional" either. Without benefit of marriage, Quinn lived with Benjamin Bradlee, then Executive Editor at the Washington Post, from 1973 until they eventually married in 1978.<sup>13</sup> Even after marrying Bradlee, Quinn kept her own name. As far as being pro-family and pro-child, Quinn admitted, "The idea of having a baby was just horrifying. . . . There were other things I wanted to do with my life."<sup>14</sup>

Quinn's emphasis on family has always been qualified. When she finally became pregnant at age forty, she confessed, "If there had been any problems [after amniocentesis], I would have had an abortion . . . . Absolutely. No question. It would have been a tough thing to go through, but I would have done it. I see no reason to bring a retarded child into the world when you don't have to."<sup>15</sup> When Quinn gave birth, she immediately hired a baby nurse and an Irish nanny.<sup>16</sup> So much for traditional mothering, at least for Quinn. Unfortunately, her young son suffered heart failure at three months, and now has a congenital heart defect.<sup>17</sup> Quinn admits, "I've hated every minute . . . ."<sup>18</sup>

But to a feminist lawyer, Faludi's book signals an area ripe for feminist legal scholarship; although Faludi does not develop her premise in

9. *Id.* at 317.

10. Margie Bonnett Sellinger, *Sally Quinn, The Shark of Washington Society Reporters Makes a Splash with a First Novel*, PEOPLE MAG., Aug. 18, 1986, at 80.

11. ALMANAC OF FAMOUS PEOPLE (1989).

12. Pat Morrison, *Hanky Panky on the Potomac*, L.A. TIMES, Dec. 8, 1991, at 9 (book review).

13. Thomas B. Rosenstiel, *End of a Paper Trail*, L.A. TIMES, June 24, 1991, at E1.

14. Dolly Langdon, *Sally Quinn Misses A Deadline but Delivers her Best Story Yet: A Baby Boy*, PEOPLE MAG., May 17, 1982, at 57.

15. *Id.*

16. *Id.*

17. Sellinger, *supra* note 10.

18. Ralph Novak, *Starring Mothers*, PEOPLE MAG., May 25, 1987, at 16.

the legal arena. Another author should document the backlash's existence in this area and expose its impact on women's lives, focusing both on the setbacks encountered by female legal actors and the harm to women's equality generally. This sequel to *Backlash* should discuss harmful court opinions and reactionary new laws and detail the politics behind these restrictive measures. The sequel also should expose the clients, lawyers, judge and politicians contributing to the backlash. And, unlike Faludi's book, it should attempt to answer how to stop the backlash from continuing.

While indicating at the beginning of her book that she might be exploring the backlash in the world of law,<sup>19</sup> Faludi focuses primarily on popular culture. She asserts that the media and mass marketing, ushered in with the Victorian era, are "two institutions that have since proved more effective devices for constraining women's aspirations than coercive laws and punishments."<sup>20</sup>

Faludi does acknowledge the law's historical importance in reflecting the backlash.<sup>21</sup> Moreover, she claims that the present backlash affects women's current legal status:

[O]nce again, as the backlash crests and breaks, it crashes hardest on these two shores [employment and fertility] — dismantling the federal apparatus for enforcing equal opportunity, gutting crucial legal rulings for working women, undermining abortion rights, halting birth control research, and promulgating 'fetal protection' and 'fetal rights' policies that have shut women out of lucrative jobs, caused them to undergo invasive obstetric surgeries against their will, and thrown 'bad' mothers in jail.<sup>22</sup>

Yet, Faludi merely dabbles in the law, leaving the legal reader wanting more detail. The legal reader wants Faludi to invoke her distinctive style and discuss fully decisions like *Wards Cove Packing Co., Inc. v. Atonio*,<sup>23</sup> *Grove City College v. Bell*,<sup>24</sup> *Rust v. Sullivan*,<sup>25</sup> *Webster v. Reproduc-*

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19. For example, in her introduction, Faludi tempts the reader with facts about legal scholarship ("[l]egal scholars have railed against 'the equality trap'" as well as lawyers ("less than 8 percent of all federal and state judges, less than 6 percent of all law partners" are women). FALUDI, *supra* note 1, at xii-xiii. She also teases the reader with statements about women's legal status. She states (1) opponents of women's rights claim women are so equal an Equal Rights Amendment is unnecessary, *id.* at ix, and (2) the current equality laws are inadequate or ineffective. *Id.* at xiv-xvii.

20. *Id.* at 48.

21. Faludi cites, for instance, "the rise of restrictive property laws and penalties for unwed and childless women of ancient Rome, the heresy judgments against female disciples of the early Christian Church, or the mass witch burnings of medieval Europe." *Id.* at 47. She also discusses the reaction to the 1848 Seneca Falls women's rights convention, which triggered the passage of restrictive divorce laws, the prohibition by Congress of the distribution of contraceptives and the criminalization of abortion in many states. *Id.* at 48-49.

22. *Id.* at 55. Among other things, she contends (1) our reproductive freedom is in greater jeopardy today than a decade earlier, *id.* at xiv; (2) Title IX is not being implemented, *id.* at xiv; (3) marital rape and domestic violence laws are inadequate, *id.* at xiv; (4) sexual discrimination in the work force is rampant, *id.* at xvi; and (5) average child support payments have fallen. *Id.* at xvii.

23. 490 U.S. 642 (1989) (In Title VII actions, specific discriminatory employment

*tive Health Services*,<sup>26</sup> just as she discusses *EEOC v. Sears*,<sup>27</sup> *Johnson v. Transportation Agency, Santa Clara County*,<sup>28</sup> *Lorance v. AT&T Technologies*<sup>29</sup> and *Christman v. American Cyanamid Co.*<sup>30</sup>

For example, Faludi's discussion of *EEOC v. Sears* reveals the type of marvelous information she can employ to make a case come alive.<sup>31</sup> In *Sears*, the EEOC claimed that Sears discriminated against women because men held over 90% of commission sales jobs, although at least 40% of the qualified job applicants were women. The average commissioned salesman made twice as much during his first year on the job as the average non-commissioned female salesclerk, regardless of seniority. Sears defended itself by claiming that women's interests differed from men's and that women did not want such "demanding" jobs.

Faludi discredits Sears's defense. She discloses, for example, that once the EEOC started investigating Sears, Sears's management doubled the proportion of women working in commission sales in one year. She also quotes several former female Sears employees who wanted commission work. One woman, Alice Howland, wanted to sell appliances because it paid more and she was bored in women's clothing sales, but Sears never allowed her the opportunity. Faludi even conducted her own experiment at a Sears store, interviewing women that desired, but were refused, commission sales positions.

Faludi provides illuminating information about some of the players involved in the *Sears* case. For example, Faludi focuses on Sears's witness Rosalind Rosenberg, a women's history professor at Barnard College, and a friend of Sears's chief defense lawyer. Faludi discusses Rosenberg's research errors, including her unsupported assumption that most saleswomen did not contribute significantly to their household's income. She reveals that Alice Kessler-Harris, a feminist labor historian at Hofstra University, accused Rosenberg of twisting the meaning of Kessler-Harris' work through the creative use of ellipses. Faludi undermines Rosenberg further by rhetorically asking the reader how

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practices must be shown to have a significantly disparate impact on employment opportunities and once a prima facie disparate impact case is established, employers have only the burden of production to establish a legitimate business justification for the practice.).

24. 465 U.S. 555 (1984) (federal funds only trigger coverage under Title IX for the specific program or activity receiving federal money, not the entire institution).

25. 111 S. Ct. 1759 (1991) (Under Title X of the Public Health Service Act, regulations prohibiting recipients from engaging in abortion counseling, referral, or mentioning abortion as a birth control option do not violate the First Amendment free speech clause or a woman's due process right to choose whether to terminate her pregnancy). See FALUDI, *supra* note 1, at 412 (brief mention of this case).

26. 492 U.S. 490 (1989) (state, inter alia, can prohibit governmental aid for abortion related purposes). This "famous" decision is mentioned by Faludi only in passing. See FALUDI, *supra* note 1 at 277, 412.

27. 628 F. Supp. 1264 (N.D. Ill. 1986). See FALUDI, *supra* note 1, at 378-87.

28. 480 U.S. 616 (1987). See FALUDI, *supra* note 1, at 388-92.

29. 409 U.S. 900 (1989). See FALUDI, *supra* note 1, at 394.

30. 578 F. Supp. 63 (N.D. W. Va. 1983). See FALUDI, *supra* note 1, at 440-53.

31. See FALUDI, *supra* note 1, at 378-88 (discussing *EEOC v. Sears*, 628 F. Supp. 1264 (N.D. Ill. 1986)).

Rosenberg's claim that women "are less likely to make the same educational investments as men" relates to selling sofas.

Faludi reveals that the government shifted its position in the case once Reagan became President. Clarence Thomas, then chair of the EEOC, publicly enunciated such an anti-prosecution stance that Sears's lawyers considered calling him as a witness. She makes Judge John Nordberg look ridiculous by explaining how Nordberg demanded that EEOC attorneys demonstrate that American women ever faced any employment discrimination. Nordberg, ultimately ruling for Sears, found that the women at Sears preferred lower-paying jobs.

Contrast this in-depth discussion of *EEOC v. Sears* with her discussion of *Webster v. Reproductive Health Services*. Faludi explains, and this is it, that *Webster* is a "famous. . . decision restricting women's right to an abortion. . . ." <sup>32</sup> which "ironically, [was handed down] on the eve of Independence Day." <sup>33</sup> The statement's brevity masks *Webster*'s significance to the backlash analysis.

*Webster* is not important or "famous" for its substantive outcome. The plurality opinion, as even Justice Blackmun admits, did little that was new: "For today, at least, the law of abortion stands undisturbed." <sup>34</sup> Rather, it is the surrounding politics that provides insight into the backlash. First, most women did not support the restrictions Missouri imposed on abortion availability. Even Justice Scalia acknowledged the "carts full of mail from the public, and streets full of demonstrators, urging us . . . to follow the popular will." <sup>35</sup> Over twenty million women exercised their abortion right since 1973 and millions of women spent their entire childbearing years under the umbrella of *Roe v. Wade*. <sup>36</sup> *Backlash*'s sequel should contrast this popular sentiment with the interests comprising the amicus curiae filed on behalf of the State of Missouri. Such an exercise would provide excellent ammunition for a Faludi-style attack on the Court's decision. <sup>37</sup>

Also, backlash analysts want the media's role in the *Webster* decision explored. The popular media often criticized the *Roe* <sup>38</sup> framework as being "unsound in principle" or "unworkable in practice," although some scholars claim that these criticisms do not withstand serious scrutiny. <sup>39</sup> Certainly, Justice O'Connor's role in *Webster* needs explaining. While upholding Missouri's abortion restrictions, Justice O'Connor re-

32. FALUDI, *supra* note 1, at 277.

33. *Id.* at 412.

34. *Webster*, 492 U.S. at 560 (1989) (Blackmun, J., concurring in part and dissenting in part).

35. *Id.* at 3065-66 (1989) (Scalia, J., concurring in part and concurring in judgment).

36. Brief for Appellees at n.18, *Webster v. Reproductive Health Serv.*, 492 U.S. 490 (1989) (No. 88-605).

37. See Robert F. Nagel, *Political Pressure and Judging in Constitutional Cases*, 61 U. COLO. L. REV. 685 (1990) (arguing that judges should be influenced by political pressures).

38. 410 U.S. 113 (1973).

39. Walter Dellinger and Gene B. Sperling, *Abortion and The Supreme Court: The Retreat from Roe v. Wade*, 138 U. PA. L. REV. 83 (1989).

fused to look beyond the statute before her.<sup>40</sup> For this, Justice Scalia chastised her,<sup>41</sup> scholars called her the "lowest common denominator of the majority"<sup>42</sup> and others felt she was critical to influence in the future.<sup>43</sup> The addition of Justices Souter and Thomas to the Court may render her position, as well as most women's opinions on abortion, irrelevant. The irony is there to expose.

The lawyer craves a chapter analyzing the credibility that men like Clarence Thomas and Charles Stewart<sup>44</sup> have in the legal system, in comparison to women like Elizabeth Morgan<sup>45</sup> or Nancy Cruzan.<sup>46</sup> Additionally, who are the players in the legal arena contributing to the backlash? The legal reader desires a chapter exploring institutional legal opponents to women's equality that emerged in the 1980s,<sup>47</sup> e.g., the Solicitor General's office,<sup>48</sup> business interests<sup>49</sup> and conservative legal foundations.<sup>50</sup>

40. *Webster*, 492 U.S. at 526 (O'Connor, J., concurring in part and concurring in judgment).

41. *Id.* at 532-33 (Scalia, J., concurring in part and concurring in judgment).

42. James Bopp, Jr. & Richard E. Coleson, *What Does Webster Mean?*, 138 U. PA. L. REV. 157, 159-60 (1989).

43. Susan R. Estrich & Kathleen M. Sullivan, *Abortion Politics: Writing for an Audience of One*, 138 U. PA. L. REV. 119 (1989).

44. After Charles Stewart's pregnant wife was murdered in Boston as they left a child-birth class, Stewart called police from his car phone and said he and his wife had been robbery victims. Stewart was not a suspect in the death until two and one-half months after the incident. When he learned of the investigation, he committed suicide by jumping off a bridge. *The MacNeil/Lehrer New Hour*, (broadcast, Jan. 4, 1990) (transcript #3639 on file).

45. Dr. Jean Elizabeth Morgan was incarcerated over 23 months for civil contempt when she refused to follow a court order that directed her to return her daughter to either her former husband (Dr. Eric Foretich) or the court's social service agency. Dr. Morgan alleged Dr. Foretich had sexually abused the child. Although the court heard twice (16 months and 22 months after Morgan's incarceration) that Morgan would never turn over her daughter and that she felt jail was the only route to protect her daughter, the court refused to find its contempt power no longer useful. Finally, the appellate court found "unsupported by the record most of the reasons the trial court gave . . . for disbelieving Morgan's testimony that she would not comply with the court's August 1987 order." *Morgan v. Foretich*, 564 A.2d 1, 9 (D.C. App. 1989).

46. *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990) (adult woman's wish that she forego continued medical care if she were ever to become a "vegetable" not honored by Supreme Court for lack of "clear and convincing proof" of the patient's desire once she entered persistent vegetative state).

47. See Tracey E. George & Lee Epstein, *Women's Rights Litigation in the 1980s: More of the Same?* 74 JUDICATURE 314, 321 (1991) (a wide range of groups opposed women's rights groups in the 1980s, unlike in the 1970s).

48. The Solicitor General took an active role in the attempt to limit women's rights during the 1980s. See *id.* at 320 (the Solicitor General filed *against* women's rights in 82% of the cases as amicus curiae under the Reagan and Bush administrations). See also Segal, *Executives and Legislatures*, THE AMERICAN COURTS: A CRITICAL ASSESSMENT (Charles Johnson and John Gates eds. 1990); LINCOLN CAPLAN, THE TENTH JUSTICE (1987).

49. Faludi mentions one such interest:

It was the Chamber of Commerce, not the National Organization for Women, that was the single most effective force behind the defeat of the 1988 Family and Medical Leave Act. (The Chamber triumphed largely by claiming that the legislation would cost businesses at least \$24 billion a year; the General Accounting Office later put the cost at about \$500 million.)

FALUDI, *supra* note 1, at 317.

50. These would include, inter alia, the Pacific Legal Foundation, the Landmark Legal Foundation and the Northeast Legal Foundation.

The lawyer also desires an exploration of the judiciary's role in the backlash, a topic that could fill a book on its own. Faludi does mention how some judges try to dissuade young women, who must use state judicial "bypass" procedures with parental notification requirements for minors, from having abortions.<sup>51</sup> Yet this only leaves the legal reader wanting more. Perhaps she should probe into the personal life of Chief Justice Rehnquist, who between 1969 and 1981 opposed gender claims 84% of the time for cases in which he participated.<sup>52</sup> What personal background prompts this animus toward women? The legal reader wants Faludi to expose Massachusetts's Somerville District Court Judge Paul Heffernan, who mishandled battered-woman Pamela Nigro Dunn's case. Speaking to Ms. Dunn's batterer regarding the court's denial of police protection for Ms. Dunn, the judge declared: "You want to gnaw on her and she on you, fine, but let's not do it at the taxpayers' expense."<sup>53</sup> Pamela Nigro Dunn ended up dead in the town dump.<sup>54</sup>

While the above examples could be used to support Faludi's thesis, it would be more challenging for her to explain a number of judicial inconsistencies. During the backlash period, the Supreme Court decided many cases that advanced women's equality. For example, in discussing fetal-protection policies, Faludi mentions *United Automobile Workers v. Johnson Controls*.<sup>55</sup> In *Johnson Controls*, the Supreme Court found that the company's fetal-protection plan did violate the 1978 Pregnancy Discrimination Act. How does this decision, as well as the decisions in *Johnson v. Transportation Agency, Santa Clara County*,<sup>56</sup> *California Federal Savings & Loan Ass'n v. Guerra*,<sup>57</sup> *Meritor Savings Bank v. Vinson*,<sup>58</sup> *Price Waterhouse v. Hopkins*,<sup>59</sup> *United States Jaycees v. Roberts*,<sup>60</sup> or

51. FALUDI, *supra* note 1, at 420.

52. Karen O'Connor & Lee Epstein, *Sex and the Supreme Court: An Analysis of Judicial Support for Gender Based Claims*, 64 Soc. Sci. Q. 327, 328 (1983). After his ascendancy to Chief Justice, the Court adopted the women's rights position in 69% of the cases, whereas before 1986, it had adopted the women's rights position in 77% of the cases. See George & Epstein, *supra* note 47, at 321.

53. Eileen McNamara, 'No Quick Fix' in Abuse Case, *Judge Rules*, BOSTON GLOBE, Nov. 13, 1986, at 1.

54. Eileen McNamara, *Judge Criticized After Woman's Death*, BOSTON GLOBE, Sept. 21, 1986, at 1.

55. 111 S. Ct. 1196 (1991).

56. 480 U.S. 616 (1987) (affirmative action plan upheld under Title VII where employer looked to a conspicuous imbalance in traditionally segregated job categories, and not to its own prior discriminatory practices, to justify its affirmative action plan and consideration of female employee's gender in its decision to promote her to road dispatcher). See FALUDI, *supra* note 1 at 388-93.

57. 479 U.S. 272 (1987) (California law requiring employers to provide leave and reinstatement to employees disabled by pregnancy was not pre-empted by or inconsistent with Title VII, as amended by the Pregnancy Disability Act, in that it met Title VII's purpose of removing barriers, which favored an identifiable group of employees over other employees and helped achieve equal employment opportunity). Not all feminists see this as a pro-women's rights position. See, e.g., Wendy Williams, *Equality's Riddle: Pregnancy & the Equal Treatment/Special Treatment Debate*, 13 N.Y.U. REV. L. & SOC. CHANGE 325, 351-70 (1984-85).

58. 477 U.S. 57 (1986) ("hostile environment" sexual harassment is a form of sex discrimination actionable under Title VII).

59. 490 U.S. 228 (1989) (Title VII covers employment decisions about partnership; employer may escape liability under Title VII for sex stereotyping only by establishing that

*Northeast Women's Center, Inc. v. McMonagle*<sup>61</sup> fit into Faludi's statement that "the courts may have undermined twenty-five years of antidiscrimination law"?<sup>62</sup> In fact, one study found that the Supreme Court in the 1980s proved more hospitable to women's rights claims than during the 1970s.<sup>63</sup> Faludi does not address these inconsistencies.

Faludi needs to account for other contrary evidence as well. The Reagan Administration undeniably disengaged from many programs that helped women and it did so "on the sly."<sup>64</sup> Simultaneously, an explosion of government funding for battered women's shelters occurred,<sup>65</sup> and a proliferation of state laws were enacted to combat domestic violence.<sup>66</sup> Moreover, how does one reconcile the result in the William Kennedy Smith trial with that in the Mike Tyson trial, or the positions of feminists arguing for and against pornography?<sup>67</sup> How can one square the increase in the "fathers' rights" lawsuits brought to stop abortions,<sup>68</sup> and the Supreme Court's rejection of such a veto power?<sup>69</sup> Another book is needed, focusing on the legal arena, to add depth and texture to Faludi's thesis that "a powerful counter-assault on women's rights exists, a backlash, an attempt to retract the handful of small and hard-won victories that the feminist movement did manage to win for women."<sup>70</sup>

The question remains—who should write the legal sequel? Preferably, the next book should be written by a feminist legal scholar, one who can evaluate the state of the law and its impact on women's equality from an informed perspective. Faludi does not appear up to the task because she sometimes states facts erroneously or in a misleading way.

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legitimate factors alone would have motivated it to make the same decision at the time the employment decision was made).

60. 468 U.S. 609 (1984) (Minnesota Human Rights Act prohibiting sex discrimination did not abridge Jaycee members' freedom of speech or expression, nor was it unconstitutionally vague or overbroad).

61. 868 F.2d 1342 (3d Cir. 1989), *cert. denied*, 493 U.S. 901 (1989) (RICO action permitted against persons who trespassed on abortion clinic property, destroyed property and threatened employees and patients).

62. FALUDI, *supra* note 1, at 454.

63. George & Epstein, *supra* note 47, at 314-15 (Supreme Court adopted the pro-rights position in 72% of the 42 cases it decided with full opinion between 1981 and 1990; whereas between 1969 and 1980, the Supreme Court supported the women's rights position in 58% of the 63 disputes resolved).

64. FALUDI, *supra* note 1, at 363, 369. See also Merle H. Weiner, *Disengagement as a Political Behavior: President Reagan and Title IX* (1985) (unpublished Senior Honors' Thesis, Dartmouth College) (on file with author).

65. Merle H. Weiner, *From Dollars to Sense: A Critique of Government Funding for the Battered Women's Shelter Movement*, 9 LAW & INEQ. J. 185 (1991).

66. Lisa G. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. ON LEGIS. 61 (1984).

67. For feminists who take a pro-pornography stand, see e.g., Brief for Amici Curiae, Feminist Anti-Censorship Taskforce, American Booksellers Association v. Hudnut, 771 F.2d 323 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986); Book Note, 9 HARV. WOMEN'S L. J. 215 (1986) (reviewing WOMEN AGAINST CENSORSHIP (Varda Burstyn ed., 1985)).

68. FALUDI, *supra* note 1, at 403.

69. Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 70 (1976).

70. FALUDI, *supra* note 1, at xviii.

For example, when she discusses in passing *Stallman v. Youngquist*,<sup>71</sup> Faludi states, "In Illinois, a woman was summoned to court after her husband accused her of damaging their daughter's intestine in an auto accident during her pregnancy. She wasn't even the driver."<sup>72</sup> In fact, the mother was driving.<sup>73</sup> More importantly, Faludi omits telling the reader that the Illinois Supreme Court, in a very strong opinion, supported the women's rights position. Affirming summary judgment in the mother's favor on her child's claim, the court held a woman could not be liable for unintentionally injuring her fetus. The Court would not subordinate a woman's right to control her life to that of the fetus.<sup>74</sup> In fact, it recognized the impossibility of developing a judicial standard to adjudicate acts and omissions by the mother. It also recognized the existing prejudicial and stereotypical beliefs about women's reproductive abilities that might improperly influence a jury.<sup>75</sup> Faludi's style makes her a persuasive polemicist, but it is too imprecise for legal analysis.

Finally, this criticism indicates Faludi's method of documenting her research, like her selective use of facts, makes the reader doubt her intellectual honesty. Part of the problem is that Faludi does not use footnotes in the classic sense. Rather, a reader is confronted with the arduous chore of flipping to the back of the book any time he or she wants to see Faludi's source for a statement. As Faludi employs a system of notes that relies on the page number and the first few words of a sentence for identification, she can interweave documented statements with undocumented statements and no one, other than a diligent editor, ever knows what is "fact" and what is "fiction." This technique undercuts her credibility somewhat, especially when one recognizes some important statements are not documented<sup>76</sup> and that Faludi's criticism of others often relies on their faulty methodology.<sup>77</sup>

Nonetheless, the shortcomings of *Backlash* should not detract from its value as a book that synthesizes and describes the current reactions against women's attempts to achieve equality. Moreover, Faludi estab-

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71. *Stallman v. Youngquist*, 531 N.E.2d 355 (Ill. 1988).

72. FALUDI, *supra* note 1, at 425.

73. See *Stallman v. Youngquist*, 504 N.E.2d 920 (Ill. App. Ct. 1987).

74. *Stallman*, 531 N.E.2d at 359.

75. *Id.* at 360.

76. For example, Faludi claims that "in the popular imagination, the history of women's rights is more commonly charted as a flat dead line that, only twenty years ago, began a sharp and unprecedented incline." FALUDI, *supra* note 1, at 46. No citation is given for her characterization of popular belief. As she often criticizes others for undocumented representations of popular belief, her failure to offer some support for the statement appears hypocritical. Faludi also makes some references to legal reform efforts, which are undocumented. See, e.g., FALUDI, *supra* note 1, at 236.

77. See, e.g., FALUDI, *supra* note 1, at 9-18 (discussing the Yale/Harvard Study, which asserts that a marriage crunch for baby-boom college-educated women exists because of a man shortage); see also LENORE WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* (1985) (author's undocumented conclusions regarding women and divorce). Faludi often accepts certain studies' conclusions without exploring, or at least sharing with the reader, the study's methodology. See, e.g., FALUDI, *supra* note 1, at 16.

lishes, albeit indirectly, the need for a feminist legal scholar to document the backlash thesis in the legal arena, research that could help women move forward in the 1990s.

