

# Indiana Shared Parenting Initiative

## **Addressing Domestic Violence and Child Custody Decisions**

Child Support and Custody Advisory Committee

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# Addressing Domestic Violence and Child Custody Decisions

By Stuart Showalter

No time could be more appropriate for this issue than October which is Domestic Violence Awareness month. I hope to bring about awareness of the realities of Domestic Violence. Domestic Violence is a very real issue with very severe consequences for both the victim and perpetrator. Image being barred from ever coming near your house again. Imagine being barred from ever seeing your children again, for life, even as adults and against their wishes. It happens.

You may feel, as many do, that if he hadn't nearly beat her to death he wouldn't be in that situation. Now imagine that all of that happened but the allegation was a lie, that he didn't know it and there was no hearing. That his wife's attorney told her to make the allegation as part of a divorce strategy to gain custody and a high support order and property settlement.

Law is a delicate balancing act that ultimately is going to ensnare a few innocent for the protection of the many. We appreciate the heroics of the soldier who dives on the grenade, sacrificing his life to spare those of his mates in the bunker. As a society we have no appreciation for the many victims of false allegations of domestic violence that get ensnared to protect the few. Children being removed from the custody and care of a loving parent for even short periods of time does psychological damage and should not be condoned as part of a divorce strategy.

Domestic Violence allegations are considered a woman's "silver bullet" by the legal community. This is largely because there are plenty of benefits and no negative repercussions for making a false allegation. The father is jailed or indefinitely ordered away from the house and the children. When it comes time for a custody determination the father is reported by an evaluator to not be interested in the children. He has not visited with them since the mother filed for divorce or even made one single phone call to the house. Both of which he was barred from doing by an order in another court.

Domestic Violence is portrayed as a gender issue with men being the perpetrators and women always the victims. However, this is far from reality. The CDC reports that women actually commit more acts of Domestic Violence while men who reciprocate inflict greater injury. Young females often strike their male partners as a showing of disapproval or anger. This can be seen in schools on a daily basis but in the realm of Domestic Violence it is a non-event and overlooked.

A popular feminist has reported that studies show that about 40% of rape allegations are false. We know that there have been many people put to death for crimes they did not commit. We regularly hear of the latest prisoner being released from prison based on newly discovered DNA evidence. What we don't hear of is the flood of parents being reunited with children after a Protective Order is rescinded that was issued upon a false allegation. Why, because that is not a statutory significant change in one of the eight factors needed to then modify custody. Again, the false accuser wins and children lose a parent and that necessary foundation in life.

The damage to children from witnessing Domestic Violence is significant. The damage to children from being a collateral victim of a false allegation is also significant. While we need to acknowledge Domestic Violence we also need to acknowledge all victims and also the incidents of false allegations.

False reporting is already a misdemeanor crime and in the case of Domestic Violence it goes unpunished except for the children and those falsely accused. Protective Orders issued in Domestic Violence cases should require at least the mid-level standard of proof: by clear and convincing evidence. A false report of Domestic Violence that results in a deprivation of liberty should be a felony and prosecuted.

I do not want to minimize the tragedy of Domestic Violence as I was a victim. I endured the punches, kicks, hits and having items thrown at me. Many nights I feared going to sleep knowing that my child or I may get a bullet in the head. I was held prisoner by my love for my child. I witnessed her pointing a gun at my young son and threatening to kill him if I didn't do as she wished. Yet I stayed, lost contact with my friends and became a prisoner in my own home.

I was also the victim of a false allegation of rape in a Petition for an Order of Protection filed by a stalker who said she was going to make me her husband and get her pregnant. She even moved into the second house up the street from me a year after the Protective Order was issued. With no evidence I was subjected for 2 ½ years to the limitations of a Protective Order. Yet, a police officer had to warn her to leave me alone, a neighbor chased her away from my house one night and she still broke in and took property of mine. That Protective Order was dismissed on the day of the hearing I had demanded. Still, another judge denied my Petition for an Order of Protection from her.

The reality is that a Protective Order can't really protect. Take a shot at one and you will clearly see that it gets pierced by a bullet. Then you decide if it really protects. What Protective Orders can do is keep loving parents separated from their children for indefinite periods of time. Although Domestic Violence does occur in some divorce cases, where it clearly can and should be the reason for the divorce, it is often being abused in many others. I believe greater steps need to be taken to ensure that the abuse of this legal tool, which is a pandemic problem, is eliminated.

Stuart Showalter is Executive Director of Boone County Child Advocates and the Legislative Liaison for Indiana Shared Parenting.

## False Rape Charges Hurt Real Victims

by Wendy McElroy

The media coverage of the felony sexual assault charge leveled at basketball star Kobe Bryant includes an element that has been rarely introduced into public discussion in recent years: Commentators are openly speculating on whether the accusation is false. Could the woman be lying?

And yet, whenever an unwitnessed crime is alleged, such speculation is valid. This is especially true if the allegation of crime is not unambiguously backed up by physical evidence. In a "he said/she said" scenario, the credibility of the accuser is key. This is why Western jurisprudence recognizes the right of the accused to face his or her accuser and ask questions in a court of law.

Our society has long acknowledged the existence of false accusations. In Biblical times, "bearing false witness" was recognized as a practice prevalent enough to be delineated as one of only 10 overriding social rules: the Ninth Commandment reads, "Thou shalt not bear false witness against thy neighbor."

In the Common Law tradition, upon which American jurisprudence draws heavily, the prevalence of false accusations contributed to "the presumption of innocence." The definition of this legal term is: "The indictment or formal charge against any person is not evidence of guilt. Indeed, the person is presumed by the law to be innocent."

Why? Because, in almost any circumstance, a certain percentage of people will lie. They will do so for a variety of motives. Sometimes there is a clear advantage to lying: for example, to gain money or the custody of children.

In his forthcoming biography *Politicians, Partisans and Parasites: My Adventures in Cable News*, *Crossfire* co-host Tucker Carlson discusses another motive that underlies some false accusations. In 2001, a woman he had never met alleged he had raped her in Louisville, a city he had never visited. After \$14,000 in defensive legal bills, Carlson discovered that the woman had a chronic mental disorder. He decided not to sue for redress since it would further link his name with the word "rape."

Carlson even hesitated to speak out in his tell-all book because "the stigma of being accused of that kind of crime is so strong." Fortunately, he thought it taught a valuable lesson: "I always assumed, like every other journalist does, that all sex scandals are rooted in the truth, period. You may not have done precisely what you're accused of, but you did something." From bitter experience, he now knows differently.

Even charges that are later revealed to be false can devastate the accused. Consider journalist John Fund, who was arrested on charges of domestic violence and publicly excoriated for sexual misconduct. The charges were later dropped.

Columnist Eric Alterman recently published an article entitled "Who Framed John Fund?" There, Alterman chronicled the false accusations that haunt Fund. Once a high-profile presence on the *Wall Street Journal's* editorial page and a frequent television commentator, Fund now writes for the *WSJ's* far less prestigious *Opinionjournal.com* and is rarely on TV. On his Web site, Fund posted a notarized affidavit from his accuser, stating, "Mr. Fund has not been abusive to me contrary to what I said in reports to the Jersey City police." He has also posted the transcript of a deposition in which she testifies under oath that she has "borderline personality disorder." Nevertheless, it is not clear whether Fund's career will

recover.

How prevalent is the false reporting of sexual assault? Estimates vary widely. According to much-cited feminist statistics, two percent of all reports are false. Susan Brownmiller's book *Against Our Will* (1975), for example, claims that false accusations in New York City dropped to that level after police departments began using policewomen to interview alleged victims. Elsewhere, the two percent figure appears without citation or with a vague attribution to "FBI" sources.

According to a study conducted by Eugene Kanin of Purdue University, the correct figure may rise to the 40 percent range. Kanin examined 109 rape complaints registered in a Midwestern city from 1978 to 1987. Of these, 45 were ultimately classified by the police as "false." Also based on police records, Kanin determined that 50 percent of the rapes reported at two major universities were "false."

Studies and statistics often vary and for legitimate reasons. For example, they may examine different populations. But such a dramatic variance -- two percent to 50 percent -- raises the question of whether political interests are at work.

It is understandable why some feminists might wish to understate the incidence of false reporting. In the '50s, women who reported sexual assault or domestic violence were dismissed. To acknowledge false reports as a real problem might undercut the gains made toward taking women seriously.

But if the charge against Kobe Bryant is proven false, a backlash against women reporting violence may occur. Bryant is accused of a crime that, under Colorado law, carries a prison term of four years to life or probation for 20 years to life. The highest level of evidence and credible testimony should be required before ruining a man's life in that manner.

Feminists should demand such a high level of proof. Otherwise, it is the man who appears to be the victim no matter how many times the accusation is repeated.

<http://www.wendymcelroy.com/iffeminists/2003/0722.html>

## **Gitmo at Home: DV Courts in America**

**by David Heleniak**

October is Domestic Violence Awareness Month. Domestic violence is a very real and significant problem in America. This month would be a good time to address the attempt of state governments to combat domestic violence through the issuance of temporary and permanent restraining orders.

In the wake of the attack on the World Trade Center and our nation's response to terrorism domestically and abroad, there has been a flurry of negative reaction in the press to the subjecting of suspected terrorists to trial by military tribunal without the constitutional protections afforded other criminals. As John F. Kearney, III, put it in the March 24, 2003 issue of the *New Jersey Lawyer*, "All of us want as much done by government as possible to protect us from more Sept. 11 attacks or worse. None of us wants to be nuked, poisoned or fall victim to a suicide bomber. But none of us should want, either, to give away our hard-won liberties." While the legitimacy of using military tribunals to try accused terrorists is getting well-deserved attention, the media has been largely silent on a related topic, the legitimacy of trying defendants accused of a crime, domestic violence, in brief restraining order hearings in the family court, where defendants are denied virtually all of the due process protections afforded defendants in the criminal court. These systems have been in effect much longer than the anti-terrorism measures, and affect many more people, yet one hears very little about them.

Under New Jersey's Prevention of Domestic Violence Act, for example, ten days or less following the entering of a temporary restraining order (TRO), a final restraining order (FRO) hearing is held. At the hearing, required by the Act to be a summary proceeding, a Chancery Division judge is authorized to make a finding of fact by a preponderance of the evidence that the defendant committed an act of domestic violence, defined as one of fourteen enumerated crimes that include assault, burglary, rape and even murder. Having made such a finding, the judge may bar the defendant from seeing his kids and from ever setting foot in a particular house again, yet can make him pay the mortgage; make him provide monetary support to the plaintiff; force him to see a psychologist or psychiatrist at his own expense, who can in effect interrogate him and then write a report to the judge that can be used against him in a subsequent proceeding, such as a child visitation hearing; temporarily give the plaintiff exclusive possession of the defendant's car, checkbook, and other personal effects (which could include a beloved pet); bar the defendant from ever speaking to any individual that the plaintiff does not want him to speak to (which could include a beloved friend or relative); force him to turn any firearms he has into the hands of the proper authorities and bar him from ever possessing another firearm in his life; and make the defendant pay a "civil penalty" of \$500.00. If the defendant does not comply with any aspect of the judge's order, he can be tried for contempt and imprisoned. Lastly, his name is put on a list of domestic abusers known as the New Jersey Judiciary's Domestic Violence Central Registry.

The potential for abuse of the Prevention of Domestic Violence Act is tremendous. A spouse willing to commit perjury can spend months or even years with his or her lawyer planning to file a domestic violence complaint at an opportune moment in order to gain the upper hand in a divorce proceeding and preparing the presentation of his or her case, while an accused spouse is given ten days or less to prepare a defense. Ten days is not nearly enough time to prepare for an FRO hearing. It is not even enough time for most defendants to fully understand the gravity of the situation they're in. The lack of time is compounded by the stress, alarm, and confusion caused by suddenly and without warning being thrown out of their homes by armed law enforcement officers.

Imagine the following hypothetical scenario. Upon the initial enforcement of a TRO, which was based on an allegation of physical abuse, a husband/defendant is thrown out of his house without so much as a toothbrush. He is allowed to take his wallet with him but is prohibited from taking his checkbook because the police officers fear that he might maliciously exhaust the marital assets. He isn't given a place to shower or sleep, and only has enough money in his wallet for a few meager meals. During this period, when his main concerns are about his physical survival, he is told that there will be an FRO hearing ten days from the filing of the complaint. Having no legal background, he has no inkling of the consequences of this hearing or of the goings on of a courtroom. He has not been advised he has the right to have an attorney represent him, and doesn't realize he needs one. He couldn't afford one if he did, but he has no right, unlike a criminal defendant, to be provided with free counsel. He arrives at court on the hearing day woefully unprepared, tired, unshowered, unkempt, and disheveled.

During the hearing, our hypothetical plaintiff introduces hearsay and alleges prior bad acts. Unfamiliar with the law, the defendant does not object to the judge's consideration of the improper evidence, but simply insists that it's untrue. He is surprised when she brings up events that were not alleged in the complaint, and taken out of context and twisted so as to only be partially true, the introduction of this evidence hurts his defense. He hasn't thought of these events for years and, caught off-guard, cannot articulate to the judge what really happened.

After a few short hours of testimony, the judge declares that the defendant committed the acts charged in the complaint, effectively labeling the defendant a wife beater. He is forbidden from returning to the marital home and from seeing his children, and is ordered to pay large sums of money periodically to his wife. Since he could not afford an attorney for the FRO hearing, he certainly cannot afford one for an appeal, and, not knowing the first thing about the appellate process, does not appeal the ruling. He wants desperately to see his children but he is baffled by the procedural labyrinth facing him and doesn't know what steps to take. At a subsequent proceeding regarding visitation, he is instructed to attend and participate in counseling. The court-appointed psychologist, having pre-judged him to be an abuser, continually advises the court not to grant visitation. He does not know when he will ever see his children again.

In ten days, the hypothetical husband has gone from having a normal life with a wife, children and home to being a social pariah, homeless, poor, and alone, trapped in a Kafkaesque nightmare.

A report put out by RADAR (Respecting Accuracy in Domestic Abuse Reporting) entitled "An Epidemic of Civil Rights Abuses: Ranking of States' Domestic Violence Laws" ranks New Jersey's domestic violence statute as one of the laws "most likely to violate the civil rights of persons accused of domestic violence." Nevertheless, New Jersey's statute is not an anomaly, as a review of the report and another RADAR report, "Perverse Incentives, False Allegations, and Forgotten Children", reveals. Political scientist Stephen Baskerville's online report "Family Violence in America: The Truth about Domestic Violence and Child Abuse" makes it clear that false allegations of domestic violence and the legal system that rewards them is not only a national problem, but an international one as well. His book, *Taken Into Custody: The War Against Fathers, Marriage, and the Family*, confirms this. Just released by Cumberland House, it cites as an example of the national problem a shocking statistic put out by the Department of Justice: "a restraining order is issued every two minutes in Massachusetts."

Big Media probably won't report on the problem anytime soon. It's therefore up to bloggers,

podcasters, and You Tubers to expose the due process fiasco that media silence has allowed to persist.

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David Heleniak is a civil litigation attorney in New Jersey. This article is an adaptation of his Rutgers Law Review article "The New Star Chamber: The New Jersey Family Court and the Prevention of Domestic Violence Act."

[http://www.ifeminists.net/e107\\_plugins/content/content.php?content.237](http://www.ifeminists.net/e107_plugins/content/content.php?content.237)

## **Restraining Orders Gone Wild**

**Gregory A. Hession**

One day in December of 2005, Colleen Nestler came to Santa Fe County District Court in New Mexico with a bizarre seven-page typed statement and requested a domestic-abuse restraining order against late-night TV host David Letterman. She stated, under oath, that Letterman seriously abused her by causing her bankruptcy, mental cruelty, and sleep deprivation since 1994. Nestler also alleged that he sent her secret signals "in code words" through his television program for many years and that he "responded to my thoughts of love" by expressing that he wanted to marry her.

Judge Daniel Sanchez issued a restraining order against Letterman based on those allegations. By doing so, it put Letterman on a national list of domestic abusers, gave him a criminal record, took away several of his constitutionally protected rights, and subjected him to criminal prosecution if he contacted Nestler directly or indirectly, or possessed a firearm.

Letterman had never met Colleen Nestler, and this all happened without his knowledge. Nonetheless, she requested that the order include an injunction requiring him not to "think of me, and release me from his mental harassment and hammering." Asked to explain why he had issued a restraining order on the basis of such an unusual complaint, Judge Sanchez answered that Nestler had filled out the restraining-order request form correctly. After much national ridicule, the judge finally dismissed the order against Letterman. Those who don't have a TV program and deep pockets are rarely so fortunate.

### **Is This American Justice?**

Letterman's experience is replicated in state courts around the country thousands of times daily. Consider what happened to Todd, whose estranged wife went to court secretly and obtained a restraining order against him. She swore that three men dressed in purple Fathers for Justice camouflage uniforms broke into her apartment, pushed her violently onto her couch, choked her severely, and threatened her, telling her that she better not go back to court. She complained that these were agents of the husband, as he belonged to that group. She did not call the police, but decided to go to work. Later she collapsed near the entrance of a hospital emergency room in a dramatic flourish.

As Todd's lawyer, I provided evidence that her story was as phony as the one about David Letterman. The wife lived in a large apartment building on a main road with a busy lobby and a nosy superintendent across the hall from her. However, no one saw or heard the three strangely dressed intruders enter or leave during rush hour. The hospital records showed no bruises or evidence of physical assault. The court vacated the order against Todd.

Courts are easily manipulated by those pretending to seek protection from abuse because the political climate reinforces that men are abusers, and there is no penalty for false claims. Thus, they embolden applicants to use them for ulterior motives, such as to gain an advantage in divorce, to get custody of children easily without a family court hearing, or as a quick eviction process. Sometimes the motive is revenge or worse. For example, an order was issued against Brendan, father of two daughters, because he brought flowers to his child's home for her 10th birthday right after he sought enforcement of a custody order that the mother was routinely violating. Brendan was literally accused of "sneaking" into the yard to deliver flowers, nothing more, yet a restraining order was filed against him. This order was later vacated by a court.

An applicant can get a domestic-abuse restraining order for just about any reason. A report from an organization called Respecting Accuracy in Domestic Abuse Reporting (RADAR) suggests that it is as easy to obtain a restraining order as a hunting or fishing license. You

fill out the forms and tell the judge you are afraid, and you get an order almost automatically. RADAR states: "The law defines almost any interpersonal maladjustment as 'domestic violence,' the courts then establish procedures to expedite the issuance of these orders."

The restraining-order laws of the several states are remarkably similar in their wording, as though an invisible hand were guiding them. They allow a woman to come to court secretly and claim that she feels fearful of "abuse" from a family member or person she lives with. The accused person is not there, and there is no requirement to notify him. There are no traditional rules of evidence, no opportunity for cross examination, no burden of proof beyond a reasonable doubt, no jury, nor even a necessity to have a story that makes sense.

The definition of "abuse" set forth in these state laws is always subjective, rather than requiring an injury or genuine threat. They all include a clause that expands abuse to include "fear of harm," often including even "emotional harm." Courts routinely issue orders on sworn statements like, "I just don't know what he may do," or, "he has a long history of verbal and emotional abuse."

A week after the initial secret hearing, a "return" hearing is held, where the defendant gets to tell his side of the story. He is usually allowed to present evidence and testimony, but it is often difficult to assemble needed documents and witnesses in that short period. Most of the temporary orders are extended for a year, regardless of the evidence, alibi, or witnesses offered.

To some judges, evidence is irrelevant; they just issue orders. Professor Stephen Baskerville, in his book *Taken Into Custody*, quotes Judge Richard Russell of Ocean City, New Jersey, at a restraining-order training seminar:

Throw him out on the street, give him the clothes on his back and tell him, "See ya around."... The woman needs this protection because the statute granted her that protection.... They have declared domestic violence to be an evil in our society. So we don't have to worry about the rights. Grant every order. That is the safest thing to do.

My client Mr. L's experience is a perfect example of this. I filed a motion to vacate the restraining order his ex-wife had against him, and she filed one to extend it, so the judge held a hearing to consider both motions — sort of. Here is the pertinent part of the actual transcript of the hearing to vacate the order:

Mr. Hession: Can you please state your name and your address for the record? [The Court argues with counsel as to whether Mr. L can testify.]

The Court: I don't believe I need to hear any evidence from your client. I'm going to deny your request to vacate the restraining order.

The hearing on whether to extend the order was no better:

The Court: Mrs. L\_\_\_\_\_, do you remain fearful of your husband?

Mrs. L\_\_\_\_\_: Yes. [Weeping]

The Court: Thank you.

The judge then extended the restraining order for a year, without Mr. L uttering his name on the witness stand, and with one generalized question to the wife about "fear." Judges who conduct hearings like this violate their oath to apply the law impartially and encourage the filing a false complaints — which is an enormous problem.

According to professor of accountancy Benjamin P. Foster, Ph.D, CPA, CMA, of the 4,796 emergency protective-order petitions issued in West Virginia in 2006, an estimated 80.6 percent "are false or unnecessary." Foster acknowledges the duplicitous nature of many of the complaints: "In divorce and child custody cases, a party generally obtains favorable treatment when the other party has engaged in domestic violence." In West Virginia, one

incident of domestic violence, "which includes 'reasonable apprehension of physical harm' and 'creating fear of physical harm by harassment, psychological abuse,'... could impact the Parenting plan approved by the Family Court." On the other hand, a "parent must have repeatedly made fraudulent reports of domestic violence or child abuse" to lose favor with a court. (Emphasis added.) Just the "identifiable costs" — the cost for the state, not the victims — for these false reports was in excess of \$18,200,000 in 2006.

### **Drastic Punishment**

Falsely issued restraining orders are of great concern because the punishment that is meted out to defendants is so drastic. After an initial secret restraining order is issued, the clerk faxes it to the local police, who then serve it on the defendant. Since most orders contain a "no contact" provision, the first thing the police do is remove the man from his home, with little more than the shirt on his back, just as Judge Richard Russell urged in his judicial training. Utterly taken by surprise, the man usually has no idea that the hearing took place, that the order was granted, or what he may have done to deserve it. The police are rarely sympathetic.

Most restraining orders require that the defendant may not contact the plaintiff directly or indirectly or get within some distance, usually 100 yards, of the alleged "victim." Often, wives place the children as "co-victims" on these orders, so the defendant cannot contact his children either. "No contact" means no phone calls, cards, letters, or even incidentally running into the person.

No reconciliation is possible once an order is issued because any contact is a crime and subjects the violator to immediate arrest and jail. Even indirect contact is a crime, such as asking a relative to help work things out. Many men have sent flowers to a spouse or a birthday card to a child, only to end up in prison. Once an order is in place, the state becomes the father in the family, pushing out the real one.

Most district attorneys, prompted by feminist political pressure, have a "no-drop" policy on prosecuting all violations of restraining orders, no matter how minor. Joseph found that out the hard way. His wife obtained a restraining order after telling the judge he had kicked a plastic cooler and slammed the door while leaving his house. She omitted the part about telling him she had found another man.

No abuse or threat had occurred, but an order was issued against Joseph anyway. While it was in place, the wife made 14 false criminal complaints about violations of the order, which resulted in some arrests. I had to go to court with Joseph again and again, and we somehow managed to beat every case. Only a dysfunctional system allows a complainant to continue to make such false allegations without any accountability whatsoever.

Restraining orders also interfere with Second Amendment rights. Each state's laws require that a defendant surrender all guns and ammunition, and violation of this provision is not only a state crime, but a federal one, under the Violence Against Women Act of 1994.

"Mike" was an Air Force officer in charge of a military police unit on base. When his ex-wife got a restraining order against him, he lost his right to carry a weapon and had to take a desk job. He had custody of their child, which the mother resented. She came to a child's doctor appointment and attempted to create an incident, but was unsuccessful. However, the mother went to the local police to help her get an order. She told the police that there was no abuse and no history of abuse, so they wouldn't get involved. She then went to the court in the adjoining state where she lived and claimed that there was abuse, and obtained a restraining order. Then, to cover her tracks, she went back to the police in the husband's state and requested that they change her statement about no abuse. Eventually, he was

able to remove the order, after hiring an expensive lawyer in the wife's state.

Many police officers and military personnel who carry firearms are not so lucky, and have had careers permanently ruined by false allegations on restraining orders. In many places, once an order issues, even if it is eventually vacated, it is often impossible to get a gun license back.

Restraining orders especially impact the children. These orders are frequently used as a quick and dirty custody hearing, without the trouble of going to family court. In one minute, the father can lose the right to see his children for a year or longer. Children often get used as pawns in these situations, without any rebuke from a judge. While judges certainly know that falsely obtained orders are pervasive, they care little for the well-being of the children who are harmed by losing their father for long periods. The children often have no understanding of why they are being kept from their father because the father cannot even speak to them.

If dad works from home, as more people are now doing, additional problems arise. Under any order, he will be summarily evicted, and thus lose access to phones, business records, and equipment, without recourse. As a RADAR report puts it: "The man, now homeless and distraught, has only a few days to find a lawyer and prepare a defense." When a home business is involved, he now cannot earn income, although he may be ordered to pay child support, needs alternate living quarters, and may have had his bank account emptied by his wife.

The case of Bob, who worked from home, shows the misuse of orders against self-employed persons. His wife got a restraining order against him, based on "a long history of verbal and emotional abuse," which is not a legal basis for an order. After it was issued, Bob had to leave the home he owned prior to his marriage, in which he had his home-based business. Eventually, he was allowed to do business in one half of the home, while his wife and children lived in the other half. Despite her alleged "fear," the wife came within a few feet of Bob on a regular basis. Meanwhile, the disruption of his business, the stress involved, and support payments destroyed him financially. He could not pay the huge child and spousal support assessments ordered by the court, which totaled triple his net income, and he was jailed twice. His business suffered, and he has still not recovered from the experience.

### **Skewed View of Abuse**

The domestic-abuse industry has become a multi-billion dollar business during the last three decades, fueled by large influxes of government money and bolstered by media hysteria about abuse. Retired Massachusetts Judge Milton Raphaelson has stated, however, that there is not an epidemic of domestic violence, but rather an epidemic of hysteria about domestic violence.

State restraining-order laws suddenly sprang up in every state during the 1970s, at the insistence of radical feminist groups who had gained political ascendancy. Family abuse was indeed a problem. However, the feminists identified the problem wrongly and proposed a solution that made it worse.

Building on the sensationalism of certain well-publicized cases, feminists built an "identity politics" view of abuse. It is true that some men still ascribed to the chauvinist notion that women were chattel and could be maltreated with impunity, but the feminists exploited that fact and got laws that harmed, not just men, but families. They declared that men were abusers and women were victims. Abused women were shown off at legislative hearings to manipulate the mostly male legislators into passing restraining-order laws.

For the first time, we now have laws that penalize people before they are proven to be criminals, for something they only might do. The laws are paradigms of pragmatism over

principle, as they jettison centuries of highly developed legal theory and substitute a subjective and weak new legal framework which allows baseless allegations, while making it very difficult to defend against them. They allow a woman to claim "fear" of abuse, even if none has happened, leading to a classic "he said, she said," where she holds all the cards.

While many persons involved in passing these laws may have been well-meaning, thinking they were going to help stop abuse, the unintended (or perhaps intended) consequences have been to change the very fabric of the legal system, and to decimate millions of families. In my experience, little abuse has been prevented by these laws. Stats back this up. For example, in West Virginia between 1981 and 1992, "domestic violence claims increased 466% from 1,065 to 6,029" and in Puerto Rico after a comprehensive domestic violence law was instituted in 1989, violence claims "did not decline or level off," according to Professor Foster.

### **Answer to Domestic Violence?**

Domestic-abuse restraining orders came about because a certain number of abusers really do assault and batter their partners. Scores of studies have attempted to understand the problem and find practical solutions, but domestic-abuse restraining orders are a flawed solution that has made the problem worse.

First, they have identified the wrong culprit. Women commit abuse more than men do. The U.S. Centers for Disease Control and Prevention reports, "In nonreciprocally violent relationships, women were the perpetrators in more than 70 percent of the cases.

Reciprocity was associated with more frequent violence among women, but not men."

Psychologist John Archer reviewed hundreds of studies and concluded, "Women were slightly more likely than men to use one or more acts of physical aggression and to use such acts more frequently." While men are more often the victims of abuse, women are injured more often and more severely than men. Moreover, about two-thirds of the reported cases are minor, such as throwing a pillow.

Has anyone vilified Hillary Clinton for throwing household objects at Bill, or singer Amy Winehouse for using her husband as a "punch bag"? We are desensitized to violence against men. In domestic arrest situations, it is almost always the man who is arrested, even if he is the only one injured. None of this is to justify abuse by anyone, only to show the fallacy of focusing solely on the abuse of women. Such unequal application of the law has likely led to more trauma and abuse than it purports to prevent, as well as destroyed respect for the system among fair-minded persons.

Whenever lawmakers respond to political pressure, a bad law is the usual result. Law has the properly limited purpose of insuring restitution to victims of those who intrude on the person or property of others. It has never been preventative, as domestic-abuse restraining-order laws seek to be, nor should it be. If true abuse does occur — a relative or non-relative threatens to batter or kill you or actually does physically attack — you are already able to make a criminal complaint for assault (which is defined as a threat to batter) and battery. And a criminal restraining order will likely be set in place. These new restraining-order laws seek to prevent crime by identifying persons who may commit one, and stop it before it happens. However, this is entirely speculative, and cannot identify perpetrators with any reliability.

In our imperfect world, we settle for an imperfect system that uses fear of punishment, rather than preemption, as its primary deterrent, but look at the alternative. With unjust restraining-order laws, we are creating a legal system that victimizes large groups of innocent people. We need to develop a better system, before we completely lose control of the present one. Thomas Reed, Speaker of the House of Representatives in the late 19th century, said, "One of the greatest delusions in the world is the hope that the evils in this

world are to be cured by legislation." Domestic-abuse restraining-order laws are a vain and delusional attempt to do so, and we need to eliminate them.

### **Violence Against Women Act**

Nothing illustrates the political tablet upon which domestic restraining orders are written better than the federal Violence Against Women Act of 1994, passed during the Clinton presidency. It took a bad system and made it worse by providing federal money to certain favored programs that foment more dissension between the sexes.

The act was designed to create a federal effort to address violence against women by providing uniform definitions of abuse and providing funds for victim advocates, women's shelters, and counseling. It also instructs and enlists local police in the effort to combat domestic violence and make more arrests, and it coordinates interstate enforcement efforts of abuse-protection orders.

The act is discriminatory on its face, since it gives a political, legal, and financial advantage to women in family court matters. As the rantings of Judge Richard Russell in his judicial training seminar about restraining orders reveal, judges are certainly affected by the laws and the legal culture. Police almost always arrest men in any domestic altercation, even if the man is the only injured party.

Several new versions of the act have been passed in the intervening years. The website of the Family Violence Prevention Fund contains the following statement about the 2005 version of the act:

The Violence Against Women Act of 2005 contains groundbreaking new initiatives to help children exposed to violence, train health care providers to support victims of abuse, encourage men to teach the next generation that violence is wrong, and provide crisis services for victims of rape and sexual assault.

We used to have a much better program that was far more effective in preventing and treating violence against women. It was called the family.

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