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The Awesome Power of Family Courts

The month of June when we observe Father's Day is a good time to review some of the injustices committed against fathers by family courts. Family courts routinely deprive divorced fathers not only of their own children, but even many constitutional rights.

For example, do you think judges should have the power to decide to which religion your children must belong and which churches they may be prohibited from attending? In December 2009 a Chicago judge did exactly that.

Cook County Circuit Judge Edward Jordan issued a restraining order to prohibit Joseph Reyes from taking his three-year-old daughter to any non-Jewish religious activities because his ex-wife argued that would contribute to "the emotional detriment of the child." Mrs. Rebecca Reyes wants to raise her daughter in the Jewish religion, and the judge sided with the mother. Joseph Reyes' divorce attorney, Joel Brodsky, when he saw the judge's restraining order, said, "I almost fell off my chair. I thought maybe we were in Afghanistan and this was the Taliban."

Mr. Reyes took his daughter to church anyway and let the Chicago media know about it. Soon he was back in court to be prosecuted for contempt in violating the family court order. The good news is that Reyes, fortunately, drew another Cook County judge, Renee Goldfarb, who ruled on April 13, 2010 that Reyes can take his daughter to "church services during his visitation time if he so chooses." Judge Goldfarb said her decision to let Reyes take his daughter to church was based on "the best interest of the child," but then criticized Reyes for going public with his case.

This case is a good illustration of the dictatorial power of the family courts. Both judges purported to decide what church a child can attend based on the judge's personal opinion about what is "the best interest of the child." The choice of a church should be none of the government's business, even if the parents are divorced, and "best interest" should be decided by parents, not judges.

Not only did the family court try to take away a father's parental rights and his freedom of religion rights, but also his First Amendment free-speech rights. The second judge severely criticized Reyes for telling the media about his case. But publicity was the reason the family court backtracked from sending Reyes to jail for violating the restraining order. It's important to shine the light of publicity on the outrageous denial of parental rights by the family courts.

In another divorce case last year, a family court in New Hampshire (where the state motto is "Live Free or Die") ordered ten-year-old Amanda Kurowski to quit being homeschooled by her mother and instead to attend fifth grade in the local public school. Judge Lucinda V. Sadler approved the court-appointed expert's view that Amanda "appeared to reflect her mother's rigidity on questions of faith" and that Amanda "would be best served by exposure to multiple points of view."

Where did family court judges get the power to decide what church and what school the children of divorced parents must attend? Family court judges have amassed this extraordinary power by co-opting and changing the definition of a time-honored concept: "**the best interest of the child**."

This rule originally came from English common law as compiled by William Blackstone in 1765, and meant that parents are presumed to act in their own children's best interest. For centuries, English and American courts honored parents' rights by recognizing the legal presumption that the best interest of a child is whatever a fit parent says it is, and should not be second-guessed by a judge.

However, when U.S. state legislatures revised their family-law statutes in the 1970s, the "best interest of the child" became disconnected from parents' decisions. Family courts assumed the discretion to decide the best interest of children of divorced and unmarried parents, and enforce their opinions by using their power to send fathers to jail and to tell them how they must spend their money.

The notion that persons other than parents should decide what is in a child's best interest is illustrated by the slogan "it takes a village to raise a child." Those who use that slogan understand "village" to mean government officials and employees of the courts, the public schools, and the departments

of children and family services.

The "best interest" rule is totally subjective; it's a matter of individual opinion. Parents make thousands of decisions about their children, and should have the right to make their decisions even if they contravene so-called experts. Whether the decision is big (such as where to go to church or school), or small (such as playing baseball or soccer), there is no objective way to say which is "best."

Since judges are supposed to base their decisions on evidence presented in open court, and there is no objective basis for deciding thousands of questions involved in raising a child, judges often call on the testimony of expert witnesses. A big industry has grown up of psychologists, psychiatrists, social workers, custody evaluators, and counselors who are eager to collect fees for giving their opinions. Having opinions produced by persons with academic degrees is a way to make subjective and arbitrary judgments appear objective. With the volume of cases coming through family courts, judges can evade responsibility for controversial decisions by rubber-stamping opinions of these court-appointed experts.

Sometimes these rulings are against women, but most decisions are against men, especially fathers. It's time to call a halt to the practice of letting family court judges make decisions that are rightfully the prerogative of parents.

Putting Men in Debtors' Prisons

Did you know that a family court can order a man to reimburse the government for the welfare money, falsely called "child support," which was paid to the mother of a child to whom he is not related? Did you know that, if he doesn't pay, a judge can sentence him to debtor's prison without ever letting him have a jury trial?

Did you know that debtor's prisons (putting men in prison because they can't pay a debt) were abolished in the United States even before we abolished slavery, but that they exist today to punish men who are too poor to pay what is falsely called "child support"?

Did you know that when corporations can't pay their debts, they can take bankruptcy, which means they pay off their debts for pennies on the dollar, but a man can never get an alleged "child support" debt forgiven or reduced, even if he is out of a job, penniless and homeless, medically incapacitated, incarcerated (justly or unjustly), can't afford a lawyer, serving in our Armed Forces overseas, or never owed the money in the first place?

Did you know that when a woman applying for welfare handouts lies about who is the father of her child, she is never prosecuted for perjury? Did you know that judges can refuse to accept DNA evidence showing that the man she accuses is not the father? Did you know that alleged "child support" has nothing to do with supporting a child because the mother has no obligation to spend even one dollar of it on a child, and in many cases none of the "support" money ever gets to a child because it goes to fatten the payroll of the child-support bureaucracy? These are among the injustices that the feminists, and their docile liberal male allies, have inflicted on men.

Most of these family court injustices are caused by the **Bradley Amendment**, named for its sponsor former Democratic Senator from New Jersey and presidential candidate Bill Bradley. That 1986 federal law prohibits retroactive reduction of alleged "child support" even in the circumstances listed above. The Bradley law denies bankruptcy protections, overrides all statutes of limitation, and forbids judicial consideration of obvious inability to pay. Most Bradley-law victims never come to national attention because, as Bernard Goldberg wrote in his book *Bias*, mainstream media toe the feminist propaganda line, denigrating men, especially fathers, and using the epithet "deadbeat dads."

But one egregious case did make news in 2009. Frank Hatley was in a Georgia jail for more than a year for failure to pay alleged "child support" even though a DNA test nine years earlier, plus a second one in 2009, proved that he is not the father. His ex-girlfriend had lied and claimed he was. The August 21, 2001 court order, signed by Judge Dane Perkins, acknowledged that Hatley is not the father, but nevertheless ordered him to continue paying and never told him he could have a court-appointed lawyer if he could not afford one.

Hatley subsequently paid the government (not the mom or child) thousands of dollars in "child support." Even after he was laid off from his job unloading charcoal grills from shipping containers and reduced to living in his car, he continued making payments out of his unemployment benefits.

But he didn't pay enough to satisfy the avaricious child-support bureaucrats, so Judge Perkins ruled Hatley in contempt of court and sent him to jail without any jury trial. With the help of a Legal Services lawyer, he was released from jail and relieved from future assessments, but (because of the Bradley Amendment) the government demanded that Hatley continue paying at the rate of $250 a month until he paid off the $16,398 debt the government claimed he accumulated earlier (even though the court then knew he was not the father). He paid the debt down to $10,000 but was jailed for six months in 2006 for falling behind on payments during a period of unemployment. When he became unemployed and homeless in 2008, he was jailed again.

Altogether, Hatley paid so-called "child support" for 13 years and spent 13 months in jail because of a woman's lie, the Bradley Amendment, the ruthless "child support" bureaucracy, and the bias of the family court against fathers.

In 2009, the court relieved Hatley of any future child support payments (probably because of press publicity about this case) but did not restore his driver's license. This system is

morally and constitutionally wrong and the Bradley Amendment is particularly evil, yet all authorities say the court orders were lawful.

Another type of feminist indignity is the use in divorce cases of false allegations of child sexual abuse in order to gain child custody and the financial windfall that goes with it. Former Vancouver, Washington, police Officer Ray Spencer spent nearly 20 years in prison after being convicted of molesting his two children who are now adults and say it never happened.

The son, who was 9 years old at the time, was questioned, alone, for months until he said he had been abused in order to get the interrogator to leave him alone. The daughter, who was then age 5, said she talked to the interrogator after he gave her ice cream.

There were many other violations of due process in Spencer's trial, such as prosecutors withholding medical exams that showed no evidence of abuse, and his court-appointed lawyer failing to prepare a defense, but the judge nevertheless sentenced Spencer to two life terms in prison plus 14 years. Spencer was five times denied parole because he refused to admit guilt, a customary parole practice that is maliciously designed to save face for prosecutors who prosecute innocent men.

Depriving Men of Constitutional Rights

Family courts routinely deprive men of their fundamental right to parent their own children, by charging them with a wide variety of trivial offenses. Family courts generally uphold feminists' demands to kick a man out of his own home, and take control of their children and his money, based on a woman's unsubstantiated allegations. The principal tactics in this racket are domestic violence accusations and court-issued restraining orders.

The **Violence Against Women Act** (VAWA) was passed in 1994 as a payoff to the radical feminists for helping to elect Bill Clinton President in 1992. Personal sponsorship of this law was taken over by then-Senator Joe Biden.

VAWA shows the hypocrisy of noisy feminist demands that we kowtow to their ideology of gender neutrality, to their claim that there is no difference between male and female, and to their opposition to stereotyping and gender profiling. There is nothing sex neutral about VAWA. It is based on the proposition that there are, indeed, innate gender differences: men are naturally batterers and women are naturally victims. VAWA is not designed to eliminate or punish violence, but to punish only *alleged* violence against *women*. Most of the shelters financed by VAWA do not accept men as victims.

VAWA has been known from the getgo as "feminist pork" because it puts $1 Billion a year of U.S. taxpayers' money into the hands of the radical feminists. They have set up shop in domestic violence shelters where they promote divorce, marriage breakup, hatred of men, and false accusations, while rejecting marriage counseling, reconciliation, drug-abuse treatment, and evidence of mutual-partner abuse. There is no investigation or accountability for the taxpayers' money spent in these shelters.

VAWA makes taxpayers' money available to the feminists to lobby state legislators to pass feminist laws, to train law enforcement personnel and judges in using the laws, and to fund enforcement.

VAWA provides the woman with free legal counsel to pursue her allegations, but not the man to defend himself. He is on his own to find and pay a lawyer — or struggle without one.

Feminists have changed state laws in order to get family courts to operate on a loosey-goosey definition of family violence. It doesn't have to be violent. It can simply be what a man says or how he looks at a woman. It can even be what a woman thinks he might do or say. Definitions of violence include calling your partner a naughty word, raising your voice, causing "annoyance" or "emotional distress," claiming to be "fearful," or just not doing what your partner wants.

Feminists have persuaded most states to adopt *mandatory arrest* laws. That means, when the police arrive at a disturbance and lack good information on who is to blame, they are nevertheless legally bound to arrest somebody. Three guesses who is usually arrested.

Feminists have lobbied most states into passing *no-drop prosecution* laws. Those laws make the prosecutor legally bound to go forward with prosecution even if the woman recants her charges or wants to drop them. Studies show that women do recant or ask to drop the charges in 60% of criminal allegations, but the law requires prosecution against the man to proceed regardless. Along with the loss of other constitutional rights, the man thus loses his right to confront and cross-examine his accuser.

VAWA has a built-in incentive for the woman to make false charges of domestic violence because she knows she will never be prosecuted for perjury. Charging domestic violence practically guarantees she will get custody of the children and sever forever the father's relationship with his children even though the alleged violence had nothing whatever to do with any abuse of the children. Judges are required to consider allegations of domestic violence in awarding child custody, even though no evidence of abuse was ever presented.

'Gamesmanship' of Restraining Orders

Family court judges issue restraining orders virtually for the asking, without any evidence of actual domestic violence or even threat of violence. The *Illinois Bar Journal* (June 2005) explained how women use court-issued restrain-

ing orders as a tool for the mother to get sole child custody and to bar the father from visitation. In big type, the *Journal* proclaimed: "Orders of protection are designed to prevent domestic violence, but they can also become part of the **gamesmanship** of divorce."

The "game" is that mothers can assert falsehoods or trivial complaints against the father, in order to get a restraining order based on the presumption that men are naturally abusers of women. Restraining orders are in reality a tactical legal maneuver familiar to all family court attorneys as a way to obtain an order of contempt and unfairly increase the leverage of one side (typically the woman) in bargaining with the other (typically the man).

The Fourth Amendment guarantees U.S. citizens the right to be "secure in their persons, house, papers, and effects." But each year, restraining orders are issued against at least two million men without proof or even evidence, forcing innocent men out of their homes. In 33 states, fathers can be thrown in jail for even a technical violation of a restraining order, such as sending a child a birthday card or telephoning a child on an unapproved day.

Family courts have avoided facing up to whether the restraining orders issued against fathers are constitutional. Accused criminals enjoy a long list of constitutional rights, but feminists have persuaded judges to issue orders that restrain actions of non-criminal husbands and fathers, and punish them based on flimsy, unproved accusations. Most states do not require proof by a *clear and convincing* standard of evidence. Even though these restraining orders are issued without the due process required for criminal prosecutions, they carry the threat of a prison sentence for anyone who violates them.

The *New Jersey Law Journal* reported that an instructor taught judges to be merciless to husbands and fathers, saying, "Throw him out on the street, give him the clothes on his back, and tell him 'See ya' around.'" People have a better chance to prove their innocence in traffic court than when subjected to a restraining order.

Too often, the restraining order serves no legitimate purpose, but is just an easy way for one spouse to get revenge or the upper hand in a divorce or child custody dispute. Once a restraining order is issued, it becomes nearly impossible for a father to regain custody or even get to see his own children. That is the result even though the alleged domestic violence (which doesn't have to be physical or proven) did not involve the children at all.

Probably two million restraining orders are issued each year in domestic relationships. These restraining orders almost certainly increase violence and harm, because studies show that the safest place for adults and children is in a home with two parents, rather than one that is broken by a restraining order. In 1999 there were 58,200 abductions of children by non-family members, a crime typically the direct result of inadequate adult supervision. When an adult is ordered out of a home based on some allegation of domestic violence, the children in that home are no longer supervised, and victimization by crime (and accidents) necessarily increases.

There is no evidence that the millions of restraining orders issued annually each year increase the overall safety of the applicants or their children, and most likely the opposite is true.

It is false to claim that because domestic violence often occurs behind closed doors, it is somehow difficult to prove. In fact, real domestic violence is easier to prove than most crimes. Medical record and forensic evidence is clear and convincing for real domestic violence, and the time and place of the crime are easy to determine, and a restraining order may be appropriate.

What is difficult is to **dis**prove false allegations of non-serious domestic violence, so a higher standard of proof is essential to sift fact from fiction.

It seems elementary that husband and fathers who are accused of crimes by their wives or girl friends should have the same constitutional rights accorded to any criminal, but they do not in family courts. They are routinely denied equal treatment under law, the right to a fair trial, the presumption of innocence until proven guilty, the right to confront accusers, and a court-appointed lawyer when they can't afford to hire an attorney.

It's time to restore basic constitutional rights to husbands and fathers and repudiate the feminist agenda that treats men as guilty unless proven innocent.

VAWA will be coming up for reauthorization soon, and it must be reformed. Reforming the Violence Against Women Act (VAWA) is today's basic civil rights issue. Domestic violence must be redefined to mean violence. State laws must be changed to repeal mandatory arrest laws and no-drop prosecution laws. We must eliminate the incentives for false accusations of domestic violence, which include using restraining orders as the "gamesmanship" for divorce, child custody, money, or ownership of the family home.

Persons accused of domestic violence, man or woman, are entitled to have fundamental constitutional rights, including due process and presumption of innocence until proven guilty by clear and convincing evidence in court.

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