One Brave Judge Resists Feminist Agenda

by Phyllis Schlafly August 8, 2008

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A New Jersey judge recently confronted an issue that courts have been avoiding for years: are restraining orders constitutional? Accused criminals have "due process" and many other constitutional rights, but the feminists have persuaded many judges to issue orders that restrain actions of non-criminals and punish them based on flimsy, unproved accusations.

These restraining orders are issued without the due process required for criminal prosecutions, yet they carry the threat of a prison sentence for anyone who violates them.

Mr. and Mrs. Crespo were divorced and rearing their children in the same household when they had a fight, and Mrs. Crespo asked for a restraining order. Mr. Crespo was not charged with any crime, but the judge issued the restraining order, which banned him from his own house and thereby separated him from his kids.

Mr. Crespo made several good arguments that the New Jersey Prevention of Domestic Violence Act is unconstitutional. Judge Francis B. Schultz rejected most of those arguments, but he cited a long line of cases holding that "clear and convincing evidence" is required in order to take away fundamental rights (such as a parent's right over the care and custody of his children).

The feminists are in an uproar about Judge Schultz's decision and would like the New Jersey Supreme Court to reverse it. The feminists want courts to uphold a woman's right to kick a man out of his home based on a woman's unverified accusations.

Family courts are notorious for issuing restraining orders based on one woman's unsupported request. 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 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 retain 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.

The U.S. Supreme Court recently agreed to hear another case, U.S. v. Hayes, to decide whether an old misdemeanor domestic violence conviction can bar a man from ever owning a gun. Everyone agrees that convicted felons should not have guns, but misdemeanors are minor offenses that usually carry no jail time.

Under feminist pressure, most courts have interpreted federal law broadly to deprive millions of men of their gun rights. However, in the Hayes case, a 2-1 majority on the Fourth Circuit had the courage to stand up to the feminists and rule that Hayes had no fair warning that prosecutors would stretch the definition of domestic violence to include his minor offense.

Randy Edward Hayes had a dispute with his wife in 1994, pled guilty to misdemeanor battery, and served one year of probation. Ten years later, he was prosecuted for having a Winchester rifle in his West Virginia home.

Why are men with clean histories except for one domestic dispute punished like hardened criminals who mug strangers on the street? The answer is that the feminist agenda calls for domestic-violence laws to punish husbands and fathers above and beyond what can be proven in court under due-process procedures.

When Senator Dianne Feinstein voted for the federal law prohibiting a man from owning a gun if he has a domestic violence conviction, she stated, "It is an unfortunate fact that many domestic violence offenders are never convicted of a felony. Outdated or ineffective laws often treat domestic violence as a lesser offense.... Plea bargains often result in misdemeanor convictions for what are really felony crimes."

In other words, Senator Feinstein wants to pretend a man is a felon even if he is not. That's the feminist anti-male agenda.

The U.S. Supreme Court ruled this year in District of Columbia v. Heller that we all have a fundamental constitutional right to own and use a gun. We will soon see how serious the Court is in defending our Second Amendment right.

It's time to restore basic constitutional rights to husbands and fathers by repudiating the feminist agenda that considers men guilty unless proven innocent.