Laughing At Restraining Orders

by Phyllis Schlafly September 13, 2006

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Borrowing the title of a famous George Gershwin ditty, "they all laughed" when a Santa Fe, New Mexico family court judge granted a temporary restraining order (TRO) against TV talk show host David Letterman to protect a woman he had never met, never heard of, and lived 2,000 miles away from. Colleen Nestler claimed that Letterman had caused her "mental cruelty" and "sleep deprivation" for over a decade by using code words and gestures during his network TV broadcasts.

That ridiculous TRO was dismissed last December, but according to a new report released this week by RADAR (Respecting Accuracy in Domestic Abuse Reporting), the case was not a judicial anomaly but "the logical culmination of years of ever-expanding definitions of domestic violence." RADAR is a Maryland-based think tank that specializes in exposing the excesses of the domestic violence bureaucracy.

The New Mexico statute defines domestic violence as causing "severe emotional distress." That definition was met when Ms. Nestler claimed she suffered from exhaustion and had gone bankrupt because of Letterman's actions.

The New Mexico statute appears to limit domestic violence to "any incident by a household member," and Letterman, who lives in Connecticut and works in New York, had never been in Ms. Nestler's household. But New Mexico law defines household member to include "a person with whom the petitioner has had a continuing personal relationship," and Ms. Nestler's charge that Letterman's broadcast of television messages for eleven years qualified as a "continuing" relationship and thereby turned him into a "household member."

The family court judge who issued the TRO, Daniel Sanchez, may have been predisposed to believe any allegation presented to him by a complaining woman even though she had no evidence. His own biography lists him as chairman of the Northern New Mexico Domestic Violence Task Force.

RADAR reports that only five states define domestic violence in terms of overt actions that can be objectively proven or refuted in a court of law. The rest of the states have broadened their definition to include fear, emotional distress, and psychological feelings.

The use of the word "harassment" in domestic violence definitions is borrowed from the Equal Employment Opportunity Commission's definition, which is based on the "effect" of an action rather than the action itself. In Oklahoma, a man can be charged with harassment if he seriously "annoys" a woman.

The 1999 book by University of Massachusetts Professor Daphne Patai, "Heterophobia: Sexual Harassment and the Future of Feminism," powerfully indicts what she labels the "Sexual Harassment Industry." The feminists have created a judicial world in which accusation equals guilt, and the distinction between severe offenses and trivial annoyances is erased.

RADAR's report explains that the definition of domestic has also been expanded. Originally, domestic meant a household member, but now it means a person with whom the woman "has been involved in an intimate relationship" (Colorado),

persons who are in a "dating or engagement relationship" (Rhode Island), or "any other person . . . as determined by the court" (North Dakota).

How did it happen that state laws against domestic violence are written so broadly as to produce such absurdities? Family court judges issue two million TROs every year, half are routinely extended, 85 percent are against men, and half do not include any allegation of violence but rely on vague complaints made without evidence.

Follow the money, both at the supply and the demand ends of the economic trail. The supply of 1,500 new domestic violence laws enacted by states from 1997 to 2005 is largely the handiwork of targeted lobbying by feminists funded by the multi-million-dollar federal boondoggle called the Violence Against Women Act (VAWA).

VAWA is blatantly gender discriminatory; as its title proclaims, it is designed to address only complaints by women. VAWA provides taxpayer funding to feminists to teach legislators, judges and prosecutors the stereotypes that men are batterers and women are victims.

The demand end of the economic chain is the fact that women know (and their lawyers advise them) that making allegations of domestic violence (even without proof or evidence) is the fastest and cheapest way to win child custody plus generous financial support. The financial incentives to lie or exaggerate are powerful.

Due process violations in the issuing of TROs include lack of notice, no presumption of innocence, denial of poor defendants to free counsel while women are given taxpayer-funded support, denial of the right to take depositions, lack of evidentiary hearings, improper standard of proof, no need to be found guilty beyond a reasonable doubt, denial of the right to confront accusers, and denial of trial by jury.

Assault and battery are already crimes in every state without any need of VAWA. TROs empower activist family court judges to criminalize a vast range of otherwise legal behavior (usually a father's contact with his own children and entry into his own home) which are crimes only for the recipient of the order, who can then be arrested and jailed without trial for doing what no statute prohibits and what anyone else may lawfully do.