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Senate Legal and Constitutional Committees
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The Richard Hillman Foundation (RHF) have been keen advocates for Family Law changes for a decade and in that time we have not noticed any significant change. Our position remains the same as our original submission, summarised thus:

The RHF solution to fair and appropriate changes to Family Law has THREE PILLARS.

1. 50/50 Equal time/Hands on Equal Parenting - rebuttable and negotiable / default position until final orders made.
2. Zero tolerance of false and misleading statements / False Allegations & False Denials. Courts to act immediately on perjury.
Use of polygraph in early stages of allegations by USA Forces Standards polygraphers.
3. 'Duty of Care' to all those involved in the process..... No exceptions.

If these pillars were policed openly and diligently, WHAT CASE WOULD NOT BE SOLVED.

Our major concern is that past inquiries have been influenced by flawed statistics and hope and trust in ' The Best Interests of Children ' that the committee members view all attached studies carefully, and vigorously examine their scientific authenticity.

The RHF also request that you read with diligence the submissions based on scientific research by:

Greg Andresen, senior Research, One in Three Campaign and also Research & Media Liaison, Men's Health Australia; and

Yuri Joakimidis, Director of The Joint Parenting Association and author of the monograph ' BACK TO THE BEST INTERESTS OF THE CHILD - Towards a Rebuttable Presumption of Joint Parenting.'

Please advise us if any of their forwarded studies are flawed.

Further we believe that after 35 years of the destruction of family and holocaust of children of divorce and separation to high risk groups of abuse and failure, it would be derelict of duty not to demand and base your decisions on scientific research.

Stephen Perkins

Public Officer for the

Richard Hillman Foundation Inc

Despite the mountains of research on male victims of domestic violence the notion that endemic male violence is the symptom of patriarchal power over women is convulsing the legal systems in Australia, America, Canada, and much of Europe.

Research

Martin S. Fiebert of the Department of Psychology at California State University, Long Beach California, provides an annotated bibliography of two hundred and seventy five scholarly works that demonstrate women and men often exhibit comparable levels of interpersonal violence.

Fiebert, Martin S. References Examining Assaults By Women On Their Spouses or Male Partners: An Annotated Bibliography

(<http://www.csulb.edu/~mfiebert/assault.htm>) Last updated July 2010

SUMMARY: This bibliography examines 275 scholarly investigations: 214 empirical studies and 61 reviews and/or analyses, which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships with their spouses or male partners. The aggregate sample size in the reviewed studies exceeds 365,000.

British Crime Survey 1996

The British Crime Survey reported in 1996 that an equal proportion of men and women, 4.2%, had said they had been physically assaulted by a current or former spouse or lover in the past year. Only 41% were injured, and although more women than men were hurt, the difference was not that great: 47% of women injured compared with 31% of men.

The 1996 report found male victims of domestic violence were particularly unhappy about the level of support offered by agencies, especially the police. One police officer conceded how even when the police were called to a domestic fight and saw the man bleeding and the woman unscathed, it was the man who was commonly arrested. (British Crime Survey 1996, Home Office.)

Also see Supplement to 1996 British Crime Survey

Supplement to 1996 British Crime Survey Home Office Research Study 191, January 1999.

<http://homeoffice.gov.uk/science-research/research-statistics/>

(Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire)

This study was carried out in 1995 based on interviews with 10,844 men and women between the ages of 16 and 59. It was the first detailed national study of domestic abuse and violence in the UK.

The study revealed an almost equal culpability between men and women. For the 12-month period preceding the survey, equal proportions (4.2%) of men and women reported being physically assaulted by a partner. In the longer term (over a lifetime), 22.7% of women and 14.9% of men reported physical assault by a partner, a proportion of male victims of about 40%. (Table A.3.1)

The survey estimated that there were about 6.6 million incidents of domestic physical assault in 1995 (3.29 million involving women victims and 3.25 million male victims), with 2.9 million incidents resulting in injury (1.86 million women and 1.0 million men). (Table 3.1). Although women tended to be more harmed or frightened by domestic violence, one third of those injured were

men and one quarter of chronic (repeated) victims were men

See Also *Partner Abuse In England, Wales and Scotland 1995-2008*

<http://www.scribd.com/doc/35510727/PartnerabuseinEnglandWalesScotlandJan10-pdf>

Articles

Also see a must read Los Angeles Times article on male victims of domestic violence *Pitchers Case Throws A Curve At Common Beliefs About Abuse*.

(<http://www.csulb.edu/~mfiebert/latimes.htm>)

Fiebert suggests that "...consensus in the field is that women are as likely as men to strike their partner but that—as expected—women are more likely to be injured than men." However, he noted, men are seriously injured in 38% of the cases in which "extreme aggression" is used. Fiebert additionally noted that his work was not meant to minimise the serious effects of men who abuse women.

Scottish police record record number of male victims of domestic abuse: AMIS (Abused Men In Scotland) is launched to provide support for male victims

AMIS (Abused Men In Scotland) Media Release - October, 15, 2010

A new Scottish charity, AMIS, is formally launched today (Friday 15 October 2010) to raise awareness of the number of men in Scotland on the receiving end of domestic abuse and draw attention to the lack of services designed to help them.

AMIS today publishes statistics from the 8 Scottish police forces that show an increase of around 9.4% in the number of incidents that they recorded as domestic abuse or violence with a man as the victim in 2009-10 compared to 2008-9. The statistics also reveal a reduction of 6.1% in the number of incidents recorded with a woman as victim compared to 2008-9.

Within the acknowledged limitations of police statistics* one in six of recorded victims was male yet the reality remains that after 10 years of the Scottish Parliament there are virtually no support services in Scotland designed to help men and their children affected by domestic abuse or violence.

Co-founder of AMIS, Alison Waugh, says, "Unfortunately there is still a culture of denial among many politicians and providers of services who do not want to acknowledge the evidence in front of their eyes that thousands of men every year in Scotland are victims of domestic abuse. They are abused first by their partner or ex partner and then again by the public narrative that does not want to know about the damage they and their children experience."

The Scottish Government publishes its domestic abuse statistics in November each year.

Through FOI enquiries AMIS has established that for the 10th year in a row the number of male victims recorded by police has risen substantially. Six of the eight forces (Central, Fife, Grampian, Strathclyde, Lothian and Borders and Tayside) recorded an increase in male victims. Dumfries and Galloway and Northern recorded a fall in both male and female victims.

Seven of the eight forces recorded a fall in the number of female victims, the exception being Tayside.

Strathclyde recorded the most dramatic change in the balance of reports with an 8.3% increase in the number of men recorded as victims (4,685 from 4,324 in 2008-9) and a 9.9% drop in the number of females recorded as victims (19,840 from 22,019 in 2008-9). Both figures include heterosexual and same sex relationships. The biggest percentage increase in the number of male victims recorded was in Fife - up 23.1% (580 in 2009-10 from 471 in 2008-9).

Co-founder of AMIS, Jackie Walls says, "The statistics don't lie. Some people will say it's because more men are coming forward to report. Others, that more women are being violent and abusive. Others, that public awareness of the reality out there is running ahead of the politicians. No one really knows. Whatever lies behind the figures we know that many public services look the other way when it comes to men who suffer domestic abuse. We have had enough of that one-sided approach."

AMIS has been funded by the National Lottery Awards for All Scotland fund to establish an office in Dunfermline and a national telephone helpline that will be live in the evenings and weekends for men and their families. The helpline hours have been arranged to cover some of the time when the London-based Men's Advice Line, funded by the Scottish Government since April 2010, is closed. The AMIS helpline will be staffed by volunteers.

AMIS will also offer awareness training to organisations that have contact with victims and will seek to work in collaboration with other agencies that wish to develop support services for men on the receiving end of abuse and their children. AMIS will take an inclusive approach to male victims of domestic abuse - including female partners and ex partners and same sex partners and ex partners.

AMIS evolved from the petition lodged by Alison Waugh and Jackie Walls at the Scottish Parliament Public Petitions Committee in December 2009. The petition was supported by over 400 signatories and is still live at Holyrood. The petition can be found at:

<http://www.scottish.parliament.uk/business/petitions/docs/PE1307.htm>

AMIS co-founder, Jackie Walls says, "It has been a long road already for us to get this far and we are grateful for the Awards For All funding that is allowing us to make a modest start to the enormous task ahead of us. It's a small beginning but it is a beginning."

* The Scottish Crime and Justice Survey: Partner Abuse research published by the Scottish Government in December 2009 indicated that police became aware of 35% of incidents of domestic abuse experienced by women in the preceding 12 months but only 8% of the incidents experienced by men.

<http://www.oneinthree.com.au/news/2010/10/15/scottish-police-record-record-number-of-male-victims-of-dome.html>

Men suffer equally on violence in the home

The Times 22/1/99

By Stewart Tandler Crime Correspondent

MEN are just as likely to be victims of domestic violence as women, according to the results of a Home Office survey issued yesterday. The research showed that 4.2 per cent of men and the same percentage of women said they were assaulted last year.

Male victims were likely to be under 25, working part-time and in households where there were financial difficulties. They may have had a long-term illness or disability. The women victims were also young and more at risk if they were at home with children or separated from their partners.

The research also said, however, that women were twice as likely to have been injured, three times more likely to have faced serious threats and were more likely to have been assaulted at least three times.

The study suggested that the risk of domestic violence was increasing and one reason might be that young people had more relationships, living with different partners.

The survey, based on the British Crime Survey for 1996, concluded there were 6.6 million incidents of domestic violence in 1995.

Apprehended violence industry or disease?

By Trevor Nyman

Law Society Journal (NSW, Australia), December 1999, page 52

cite as T Nyman, "Apprehended Violence: Industry or Disease?" (1999) 37(11) *Law Society Journal* 52

About the author:

Trevor Nyman is an Accredited Specialist in Criminal Law and adjunct professor at University of Technology, Sydney. He is a foundation member of the Criminal Law Committee and supervising editor of the College of Law papers on crime and advocacy.

SINCE 1951 THERE HAVE BEEN provisions in the NSW Crimes Act for Local Courts to make orders for apprehended violence. It was a prophylactic provision intended to restrain misconduct before it happened. The complainant saw the chamber magistrate who was vested with a judicial discretion to initiate a complaint or to refuse to do so. The complainant carried a criminal onus to prove two things; firstly that the apprehension existed at the time of the complaint and also at the time of the hearing; and secondly that the apprehension was objectively reasonable.

In the 1980s and 1990s a rash of legislation was introduced, creating and modifying and expanding the scope for AVOs beyond the belief of those of us who once worked under the old laws of the 1970s. Some of the most significant changes that took place in this recent legislation have been the following:

The chamber magistrate has no discretion to decline to initiate process.

Police are required to initiate process as the informant, instead of sending a complainant to the chamber magistrate to issue his or her own complaint. One of the corollaries of this new law is that the police officer becomes the person in charge of the future of the proceedings, and the aggrieved citizen is known as the PINOP (person in need of protection).

The magistrate presiding in the Local Court need not be satisfied of the truth of the complaint, as long as the defendant consents to an order. Consequently, some of the outrageous allegations made by complainants are never tested (and might never be believed); but they remain on record in the Registry of the Local Court as an allegation which was made and never denied.

The defendant may consent to an order without admitting the truth of the complaint. Police, court officers, prosecutors and indeed some magistrates, emphasise the convenience of this provision, as it frequently gives the anxious defendant who is outraged at the allegations, a sense of reassurance that it is okay to go quietly.

When a defendant declines to consent to an order and insists on testing the truth of the allegations which were made by the complainant, the onus of proof borne by the complainant is a civil onus. It is not hard to prove on the balance of probabilities that the PINOP apprehended some sort of misconduct within the statutory definition of violence (see below).

Interim Orders are the rule, not the exception. In appropriate cases ex parte orders will be made by telephone. Orders will consequently exist, virtually from the day the proceedings are commenced otherwise from the day they first are returnable before court. The threshold for issuance of a warrant for the arrest of the defendant is very low, consequently a significant number of cases commence by arrest and not by summons.

Violence is unnecessary under amendment to the Act. Harassment, intimidation or stalking is sufficient misconduct to come within the enlarged statutory definition of "apprehended violence".

A police prosecutor normally appears for the complainant. This is because the proceedings are initiated by a police officer.

The making of an order automatically cancels any licence the defendant might have to be in possession of a firearm. Consequently the ex parte order or interim order which is the norm rather than the exception and takes place before any allegation by the PINOP has been proved, results in the loss of job to a security officer, a private enquiry agent or even a farm hand, since such callings require routinely that the person be entitled to carry a firearm.

A defendant who successfully defends a case will get costs only if he can prove the proceedings were frivolous or vexatious. Litigation lawyers will recognise the extraordinary circumstances that need to exist for such a finding in a Local Court.

Breach of an AVO is a very serious offence involving : presumptions against bail, where the defendant is engaged in certain violence; and presumption of jail. The Magistrate must take special steps if he or she is not imposing a jail sentence (contrast Justices Act s.80AB in which

there is a presumption against jail for all other offences).

The complainant has a right to have the case reheard in the District Court in those circumstances where the original proceedings in the Local Court were dismissed. (If you regard apprehended violence proceedings as criminal in nature as you might well do, notwithstanding provision in the Crimes Act they are not, you would regard this provision as constituting a type of double jeopardy).

What has been the result of the legislative changes that have created this new industry in the Local Court jurisdiction? Statistically, has violence decreased while the number of complaints for orders has burgeoned? Is the growth of orders evidence that the system is catching the offenders quickly? On the contrary is the growth of orders evidence that the incidence of violence is actually growing? Is the growth of orders a state of affairs from which no inference can be drawn as to the incidence of violence? Is this the only real inference to be drawn that thousands of man hours of police are being consumed processing complaints each week, and hundreds of court hours are being consumed dealing with the lists, the consent orders and the defended hearings? We have seen nothing from the Bureau of Crime Statistics that leads us to believe that violence in the street or violence in the home has been reduced let alone that its reduction has been attributable in any way to the enormous industry that has been going on and vastly growing in the last two decades.

There are other problems which are intrinsic in the nature of Apprehended Violence Orders. An outstanding one is the inflexibility - it is a serious obstacle to its efficacy. The most frequent occurrence of this evil is in the case of the PINOP who, out of loneliness, renewed affection for the defendant, doubt as to whether getting the order was a good thing - or for other reasons, initiates or encourages fresh communication with the defendant. The defendant's motives in responding positively may be praiseworthy (remorse, bona fide desire to reconcile, best interests of children) or his motives may be entirely selfish - but the motives are irrelevant. The defendant's actions in seeing, approaching or being with the PINOP constitute a criminal offence. As such, they are to be prosecuted once police become aware (and notably in the country, police may well become aware without any report from the PINOP). As mentioned above, the defendant will have trouble getting bail; and on conviction, there is a real danger of jail as a penalty.

There are other occurrences of the problem of inflexibility of all AVOs. Whenever there are children involved, emergencies will arise; a child has an accident and goes to hospital - the other parent is entitled to be informed. He should attend, but that may well be a breach of the order (if the PINOP is at the bedside too). Emergencies aside, the range of incidents at handover for access is limitless. And human nature being what it is, spiteful or foolish parties may provoke a situation which constitutes a breach of order.

There is a surreal quality about an injunction not to commit a crime, which is what AVOs are all about. The defendant is restrained from assault and malicious damage, both of them crimes. The maximum penalty for breach of AVO is two years imprisonment. The maximum penalty for assault (heard in Local Court) is two years imprisonment. Malicious damage carries the same penalties. Therefore, the offender who beats his wife is liable to the same penalty whether subject to an AVO or not. And Local Courts deal with offenders according to the proper criteria as to penalty, giving the king-hitting bully with no AVO a more salutary serve than the foolish pusher-and-shover who was on an AVO.

What about the new offence of stalking? Didn't its introduction serve a useful purpose? Well, apart from introducing a ghastly Americanism into our Crimes Act, no. There was a perfectly good offence of "watch and beset" well suited to the mischief which such anti-social behaviour constitutes, with good law going back well into the 19th century.

Another problem thrown up by the AVO industry is the situation of the PINOP wife who has

somewhat exaggerated the incident to the police, or having told the unvarnished truth she now wants to forgive him and give him an unconditional second chance. This unfortunate person (and she is not an isolated case, they can be found in numbers in any busy AVO court list) has the following chicanes to steer through:

She is not in charge of her case. The police prosecutor is. The prosecutor will go ahead with any substantive charge (assault, malicious damage etc).

The Common Law right of a wife, to decline to give evidence against her husband, is specifically removed by the legislation.

If she fails to show up at Court, the case may still survive because the police will be worried that the husband has spirited her away for the day.

If she shows up and says she wants the case dropped because she exaggerated, police frequently threaten her with public mischief prosecution.

If she shows up and says she loves him and wants to give him another go unconditionally, police will advise her to get the AVO anyway because "it will protect her". But that removes the unconditional nature of the new start she wants to give him. Two people trying to live together with one on an AVO as regards the other, is like walking on eggshells. There is a parallel in the instructions for freshmen at US Colleges to ask first "May I kiss you" "May I touch you here" and be sure to get an audible reply.

Police and prosecutor are trained to cross-examine her as to whether she is acting under any duress from the husband. True, there is an incidence of this. But it makes the experience tougher for her.

If she goes into the witness box and says she has "no current fears" of the husband, that will be the end of the AVO proceedings. (It won't be the end of any substantive count; see the first two chicanes above). But if she really does have fears, even little ones, she is committing perjury. Any lawyer who advises her to do so is in breach of professional duties and is possibly an accessory before the fact to her felony. And this is no theoretical risk. The lawyer will be high on her blame list if the reconciliation is a failure.

So, if we pause and take stock of how the community has been served by the new legislation, what is the report card going to say? Top marks as a new industry for lawyers in Local Courts. High marks for keeping general duties police doing paperwork for reports, complaints, applications, telephone orders, warrants, informations, facts, statements and briefs. No doubt there are many women who feel reassured by virtue of having a court order, but we don't know what percentage, nor whether their good feeling is attributable to the court order or because the problem diminished anyway.

The acid test of the efficacy of AVOs must logically be whether they have had the effect of diminishing violence in the street and in the home. There seems to be no empirical data that supports the view that violence has diminished. There is plenty of anecdotal data that it is either continuing at the same level or is perhaps increasing. Meanwhile the Local Courts are working harder than ever with significantly increased jurisdiction in civil work, a juvenile jurisdiction that deals virtually with every crime except murder, and a criminal jurisdiction significantly enlarged since the reduction of the number of matters which the DPP is taking to jury trial. The result has been that the workload of magistrates (quite independently of apprehended violence proceedings) has become greater, more complex and more demanding while their research facilities and support staff remain nonexistent. Add to this the charged atmosphere that goes hand in hand with apprehended violence day in every Local Court and the stress on our Local Court bench is greater than ever before.

The title to this article includes the word "disease" because that can be the end result of excessive stress. There have been times in the last year when up to six magistrates were on indefinite leave as a result of stress. Because of technical difficulties in appointing acting

magistrates, the workload has been passed around the other magistrates thereby imposing additional stress and risking further disease and sick leave. Meanwhile the NSW Attorney General's Criminal Law Review Division is undertaking a review to see if AVOs need to be extended in various ways, and Australian Law Reform Commission has recently published a Model Domestic Violence Code. From the point of view of this commentator the juggernaut that has been created needs to be given a very hard critical review rather than being made bigger and fatter and occupying more space in the court user system.

Violence made to order for lawyers

By High Court correspondent Bernard Lane

The Australian

29 December 1999

COURT orders designed to prevent violence have created a new industry for lawyers and added to the burden of police and magistrates, according to Trevor Nyman, a prominent solicitor. But Mr Nyman said there was no evidence the dramatic growth in apprehended violence orders had reduced the level of violence.

"There is plenty of anecdotal data that it is either continuing at the same level or is perhaps increasing," Mr Nyman said in an article in the latest issue of the NSW Law Society Journal. Courts in 1987 made 1426 orders; in 1997, there were 23,464.

Mr Nyman, a criminal law practitioner and adjunct professor at Sydney's University of Technology, gave the AVO system "top marks as a new industry for lawyers" and "high marks for keeping general duties police doing paperwork".

NSW magistrates already had a heavy workload, he said.

"Add to this the charged atmosphere that goes hand in hand with apprehended violence day in every local court, and the stress on our local court benches is greater than ever before," he said. Supporters of domestic violence orders say the main problem is not abuse, but under-use by women still too fearful to seek protection.

In the same law journal issue, Queensland practitioner Michael McMillan suggested a "cautious increase" in the standard of proof to be satisfied before a court issues an AVO.

"Many practitioners find quite unsettling the ease with which the standard of proof can be discharged," he said.

A person who complains of violence or threats has to satisfy the civil standard - the balance of probabilities.

Mr McMillan said something had to be done about abuse of an AVO, whereby the complainant - the person supposedly in need of protection - "lures or encourages" the defendant into a breach. The defendant might not realise the complainant could not unilaterally waive the order, he said.

"The defendant is easy prey for a vindictive (complainant) who may well delight in inviting the (defendant), despite the order, to return to the shared residence," he said.

"Once the trap is set, it only takes a simple phone call by the (complainant) to the local police in order to trigger it."

Mr McMillan suggested other states follow the example of Western Australia, where those lured into a breach can rely on a defence that the complainant approved the breach.

Breach of an AVO is a serious criminal offence.

In NSW, most concern about abuse of AVOs has focused on so-called "personal" violence orders, involving neighbours or work colleagues.

The NSW Government is considering a reform that would allow magistrates to refuse to issue a non-domestic AVO regarded as frivolous or vexatious.

--- On **Wed, 13/4/11,**

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> wrote:

From:
Subject: Re:
To:
Received: Wednesday, 13 April, 2011, 9:01 PM

I am jumping and off because different people want the computer and it makes hard to collate the data but you can use:

Dutton DG, Nicholls TL (2005). "The gender paradigm in domestic violence research and theory: Part 1—The conflict of theory and data". *Aggression and Violent Behavior* 10 (6): 680-714.

Abstract

Feminist theory of intimate violence is critically reviewed in the light of data from numerous incidence studies reporting levels of violence by female perpetrators higher than those reported for males, particularly in younger age samples. A critical analysis of the methodology of these studies is made with particular reference to the Conflict Tactics Scale developed and utilised by Straus and his colleagues. Results show that the gender disparity in injuries from domestic violence is less than originally portrayed by feminist theory. Studies are also reviewed indicating high levels of unilateral intimate violence by females to both males and females. Males appear to report their own victimization

less than females do and to not view female violence against them as a crime. Hence, they differentially under-report being victimized by partners on crime victim surveys. It is concluded that feminist theory is contradicted by these findings and that the call for qualitative studies by feminists is really a means of avoiding this conclusion. A case is made for a paradigm having developed

amongst family violence activists and researchers that precludes the notion of female violence, trivializes injuries to males and maintains a monolithic view of a complex social problem.

http://www.mediaradar.org/docs/Dutton_GenderParadigmInDV-Pt1.pdf

Archer, J. (2002). Sex differences in physically aggressive acts between heterosexual partners. A meta-analytic review. *Aggression and Violent Behavior*, 7(4), 313-351.

http://www.maennerbuero-trier.de/Archer_2002.pdf

Fiebert, M. S. (2004). References examining assaults by women on their spouses or male partners: An annotated bibliography. Retrieved from <http://www.csulb.edu/~mfiebert/assault.htm>.

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