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SPECIAL REPORT

VAWA: Threat to Families, Children, Men, and Women

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Families are the bedrock of civil society. In all countries and cultures, families provide the environment in which children are nurtured and protected. Families constitute the social safety net for its members.¹

Over the last 30 years, American families have grown weaker. From 1970 to 2002, the annual number of marriages dropped by 40%.² When persons do marry, their risk of divorce is almost 50%. And one-third of American children are born to a mother who is single.³

One of the reasons for the decline of families is the expansion of government welfare programs that displace families as the primary social safety net. “The black family, which had survived centuries of slavery and discrimination,” notes economist Thomas Sowell, began to disintegrate due to Great Society programs that “subsidized unwed pregnancy and changed welfare from an emergency rescue to a way of life.”⁴

This Special Report reveals how another well-intentioned government program, one designed to curb domestic violence, likewise undermines the structure of American families. But this program is not targeted just to low-income families; it is directed to the rich, the poor, and the middle class.

The Violence Against Women Act (VAWA), first passed into law by President Bill Clinton in 1994, was extended by President George W. Bush on January 5, 2006 for 5 more years. The VAWA (and companion laws such as the Family Violence Prevention and Services Act) funnel over \$1 billion a year to states. The Violence Against Women Act has also spawned the passage of about 600 state-level laws (and substantial additional state and private-sector funding) that further extend the reach of this law.

This Special Report documents how VAWA escalates partner conflict and promotes the break-up of families. Family break-up, in turn, is harmful to children, men, and women.

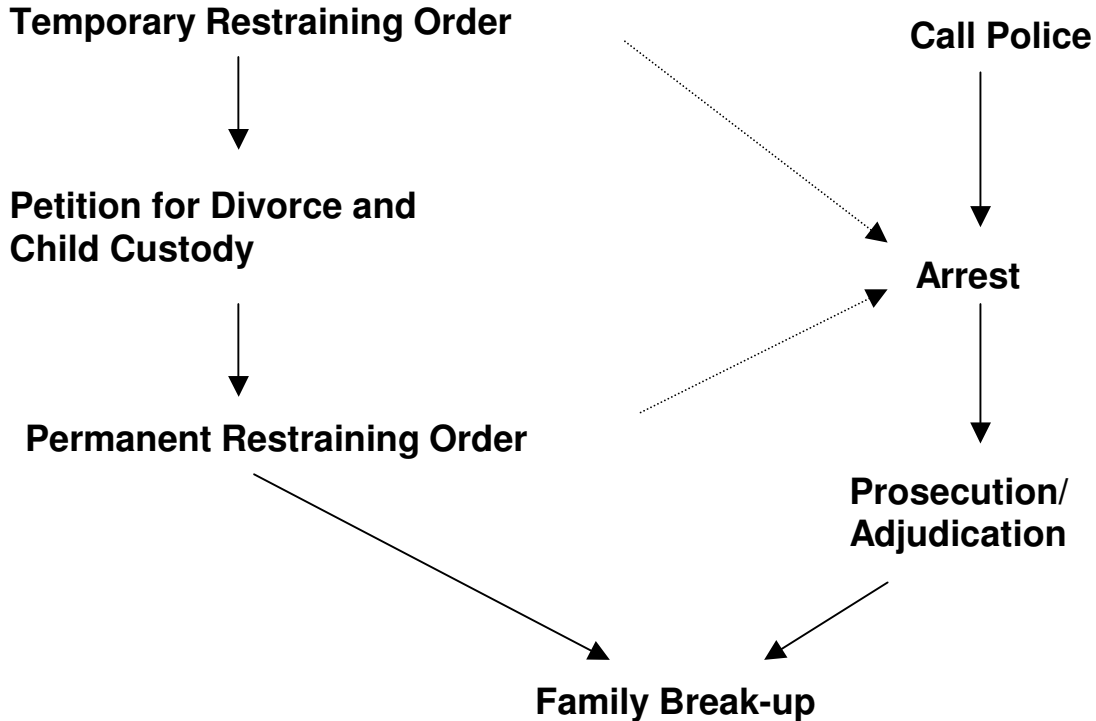
Paths to Family Dissolution

Although many people associate VAWA with providing funds for hotlines and shelters, in reality, the bulk of VAWA money is used to support a series of law enforcement and prosecution measures. This is how the system works:

1. A claimant seeks a temporary restraining order (see diagram below). In many states, it is not necessary to claim that physical violence has occurred or is even imminent. The woman’s request for a restraining order is routinely approved by the judge. The order requires the alleged abuser to immediately vacate the house.
2. If the couple is married, the claimant files a petition for divorce and for the use and possession of the family house. If children are in the picture, she also requests physical custody of the children.

3. Ten to fourteen days after the temporary restraining order is granted, a hearing is held to determine whether to continue the order. Despite the claim that the alleged abuser is accorded full due process protections, in practice these hearings often carry the presumption of guilt. As a result, a permanent restraining order is approved.
4. The claimant pursues the divorce claim, confident that in the end she will be awarded the family home, physical custody of the children, and child support payments.
5. If the police are summoned at any time or if the restraining order is violated, the alleged abuser is subject to arrest (see dotted lines in diagram) and, in many cases, “no-drop” prosecution policies.

Regardless of which path a couple takes, the outcome is predictable: family break-up. This has serious negative consequences for all involved, and eventually for society itself.



The Pyramid of Partner Abuse

Hundreds of studies have analyzed the prevalence and nature of partner aggression. But not all studies use sound methodologies. Research that relies on police reports and surveys of residents of women’s shelters is obviously biased. Surveys by the U.S. Department of Justice are often flawed. For example, the DoJ National Crime Victimization Survey was conducted with both partners present, leaving most incidents

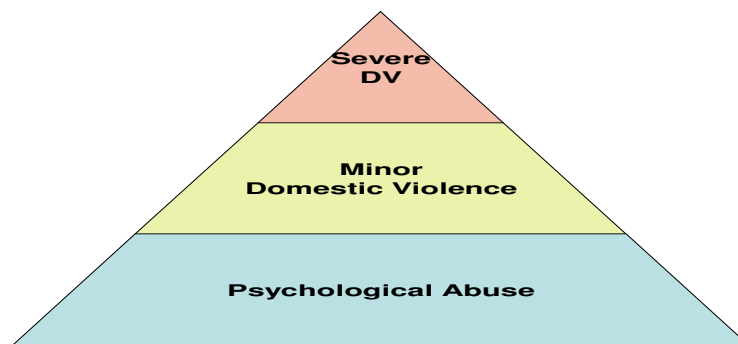
of partner aggression unreported. Other DoJ surveys contain questions worded in a way that skew the responses.⁵

For those reasons, it is essential that community surveys use validated questionnaires. The following studies reveal the dynamics of partner aggression:

- Each year about 16% of couples experience some form of partner aggression.⁶
- About two-thirds of those cases are *minor* (e.g., shoving, throwing a pillow), while the remaining one-third involve *severe* incidents such as being kicked, hit with a fist, threatened or attacked with a gun or knife, or beat up.⁷
- Men and women are equally likely to initiate and engage in partner aggression.⁸
- In about half of all cases, both minor and severe, the aggression is mutual, meaning that there is no clear-cut initiator.⁹
- Due to differences in size and strength, women are more likely to be harmed during an altercation. Nonetheless, 38% of persons who suffer an injury from partner aggression are male.¹⁰
- Men are far less likely to report domestic violence. Male victims are nine times less likely than female victims to call the police, according to one study.¹¹
- Repeated severe assaults (sometimes referred to as “battering”) occur in about 3% of couples.¹² Men and women are equally likely to initiate such assaults.⁶

A note about terminology: In this Report, “domestic violence” (DV) is used synonymously with “partner aggression.” Most cases of domestic violence are categorized by the legal system as misdemeanors, a relatively minor type of crime. The word “abuse” encompasses both physical and psychological actions that harm others. This Report generally does not use the word “battering” because the term is ill-defined and inflammatory in tone.

Psychological abuse occurs far more frequently than minor domestic violence, which in turn happens less often than severe DV. But psychological abuse can sometimes escalate into physical violence. That pattern suggests a pyramid of partner abuse:



The pyramid suggests why VAWA's "one-size-fits-all" policies are often ineffective and end up harming families, children, men, and women. That is the focus of the following four sections of this Report.

1. VAWA Hurts Families

The Violence Against Women Act promotes partner break-up through a variety of means.

Hindering Partner Reconciliation

As noted above, the vast majority of cases of partner aggression are minor and/or mutual. The couple requires counseling, not legal intervention. As one California judge who has handled thousands of domestic violence cases noted, "About 80% of the couples we see in court end up staying together."¹³

But VAWA-directed programs discourage couple counseling and marital reconciliation. For example, the policies of women's shelters generally prohibit any efforts at reconciliation between the woman and her alleged abuser.

One former prosecutor in Hamilton County, Ohio noted, "In the past the officers would intervene or separate the parties to let them cool off. Now these cases end up in criminal courts. It's exacerbating tensions between the parties, and it's turning law-abiding citizens into criminals."¹⁴ As a 1998 study by the National Institute for Justice concluded, "Restrictions on couples therapy and individual psychotherapy for battering are a point of contention between feminist-oriented batterer intervention providers and mental health providers in many communities."¹⁵

In some cases, domestic violence programs openly foster divorce. For example, the website of one DoJ-funded program features an advertisement that asks, "Are you facing a divorce?"¹⁶ Persons are then linked to a divorce lawyer matching service.

Restraining Orders

The most injurious effects of VAWA on family stability are a direct result of the misuse of restraining orders, about 85% of which are filed against men.¹⁷ A temporary restraining order (TRO) has the sudden and dramatic effect of removing the respondent from his home, depriving him of his assets, and separating the father from his children.

Even at the follow-up hearing, the respondent often finds the presumption of innocence is non-existent. As attorney Miriam Altman noted, the deck is often stacked against the defendant when considering a permanent restraining order because cross-examination may be limited, hearsay evidence may be allowed, and, most importantly, "the mere allegation of domestic abuse...may shift the burden of proof to the defendant."¹⁸

Restraining orders are easy to obtain for a simple reason—domestic violence is defined broadly in many states:

- The Illinois Domestic Violence Act includes any type of “emotional distress.”¹⁹
- In Oregon, merely claiming a “fear” of violence is considered grounds for issuance of the order.²⁰
- In New Jersey, a judge may issue a restraining order “when necessary to protect the life, health, or well-being of a victim.”²¹

Obviously, any lover’s quarrel or marital tiff could be interpreted as causing “emotional distress” or somehow affecting a person’s “well-being.”

Domestic Violence Allegations as a Legal Tactic

Over time, domestic violence laws have become intertwined with divorce laws and policies. Now, allegations of domestic abuse have become commonplace in divorce proceedings—reportedly one-third of all cases in one state²²—and restraining orders are sought to gain tactical advantage in legal disputes.

In Oregon, restraining orders are euphemistically referred to as “divorce planning.” In basketball-crazed Kentucky, divorce attorneys call them “slam-dunks” because of their efficiency and effectiveness. In New Hampshire, people in the business commonly refer to domestic orders as “silver bullets.” One Marital Master testified, “Unfortunately, requests for ex-parte relief are based upon many circumstances, some of which are made only for the purpose of obtaining an advantage in litigation.”²³

In Illinois, attorney Thomas Kasper refers to these tactics as “part of the gamesmanship of divorce.”²⁴ Washington state attorney Lisa Scott likewise notes, “Protection orders have become ‘weapons of mass destruction’ in family courts. Whenever a woman claims to be a victim, she is automatically believed. No proof of abuse is required.”²⁵

Restraining Order Abuse is Widespread

How many domestic restraining orders are issued each year in the United States? In Colorado, 29,315 orders were issued in 2004.²⁶ In Massachusetts, the annual number is estimated to be about 30,000.²⁷ Extrapolating from the Colorado and Massachusetts statistics, the national number is likely to be one million or more.

And how many of those orders were issued without any direct evidence of violence or injury? A 1995 study conducted by the Massachusetts Trial Court found that less than half of the orders issued in that state involved even an *allegation* of violence—in other words, the order was issued solely on the basis of fear, or perhaps a desire for retribution.²⁸

Knowledgeable observers have similarly estimated that 40–50% of all restraining orders are requested merely as legal maneuvers.²⁹ Elaine Epstein, former president of the

Massachusetts Bar Association, further confirms, “Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply.”³⁰

Based on those numbers, we can conclude that each year about 500,000 persons are evicted from their homes solely on the basis of alleged psychological harm.³¹ This represents a serious breach of their civil liberties.

2. VAWA Separates Children from Their Parents

About three out of five divorcing couples have families with one or more children.³² That translates into more than one million children who experience the effects of divorce each year.³³

Research shows that the involvement of both biological parents is essential to a child’s well-being.³⁴ In particular, children who do not live with their biological father are two to three times more likely to be poor, use drugs, experience a variety of educational and social problems, to be victims of child abuse, and to engage in criminal behavior.³⁵

Despite these facts, abuse advocates have worked for years to enact laws that require family courts to include findings of domestic violence in child custody decisions, even if allegations of partner abuse were unproven or even if the other partner never engaged in child abuse.

In 1994, the National Council of Juvenile and Family Court Judges (NCJFCJ) released its Model Code on Domestic and Family Violence.³⁶ The NCJFCJ’s definition of family violence—a definition that many believe to be overly broad—includes placing any family member “in fear of” physical harm.

By 1998, 15 states had enacted statutes presuming a parent found to have perpetrated abuse to be unfit for either physical or joint legal custody. For example, the New Jersey statute directs the court to “presume the best interests of the child are served by an award of custody to the non-abusive parent.”³⁷

So when the case reaches its final determination, the judge notes the domestic abuse complaint, cites the “best interest of the child” standard, and, erring on the side of caution, orders the arrangements established under the temporary restraining order to continue.

Grandparents are also harmed by these policies:

Arlene Soucie, grandmother of a 1-year-old grandson, had an Order of Protection taken out against her in October 2003. Her offense was wanting to see her grandchild as allowed under the court-ordered child visitation schedule that was granted to Mrs. Soucie and her son. Their visits apparently caused the mother to feel “distressed,” which under Illinois state law is sufficient cause for

issuance of an order. According to the disillusioned grandmother, “The mother has learned the system and uses it to her advantage.”³⁸

Additionally, it is known that VAWA-funded domestic violence groups have actively lobbied against shared parenting legislation in New Hampshire,³⁹ California,⁴⁰ and elsewhere. This represents an apparent violation of provisions in both the federal Anti-Lobbying Act⁴¹ and the Violence Against Women Act⁴² that prohibit such activities.

3. VAWA Violates the Civil Rights of Men

A growing body of reports and legal commentators reveal widespread civil rights violations by VAWA-funded programs. These concerns are based on the Fifth Amendment to the U.S. Constitution, which states that persons will not “be deprived of life, liberty, or property, without due process of law,” as well as on the Fourteenth Amendment, which states that, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Concerns over the widespread issuance of restraining orders have already been discussed in this Special Report.

Discrimination Against Male Victims of Domestic Violence

In his book *Abused Men*, Philip Cook documents numerous cases of discrimination of male victims dating back to the mid-1990s.⁴³ Based on those concerns, in 2000 Senator Orrin Hatch directed the Department of Justice to “ensure that men who have been victimized by domestic violence and sexual assault will receive benefits and services” under the Violence Against Women Act.⁴⁴

Despite that clarification of Congressional intent, sex-specific discrimination appears to be pervasive at all levels of the domestic violence industry. The Department of Justice forbids the award of VAWA monies to programs that focus on violence against men,⁴⁵ DOJ solicitations for research proposals have explicitly excluded applications that focus on male victims,⁴⁶ a state-level grant application kit explicitly excludes funding of “programs that focus on children and/or men,”⁴⁷ and domestic violence shelters often turn male victims away.⁴⁸

Ruth Woods repeatedly assaulted her husband with punches, kicks, and knives. On one occasion she tried to shoot him with a shotgun. But when Mr. Woods sought protection and services from a domestic violence agency in Sacramento, he was turned away with the simple explanation, “We don’t help men.”⁴⁹

This issue is examined in more depth in RADAR’s companion report, “VAWA Programs Discriminate Against Male Victims.”⁵⁰

Arrest, Prosecution, and Adjudication of Domestic Violence Cases

VAWA funds are awarded to buttress a variety of “get-tough” programs designed to increase the arrests, prosecution, and adjudication of alleged DV perpetrators.

First, VAWA provides funding to jurisdictions to implement pro-arrest or mandatory-arrest laws and policies.⁵¹ As a result, mandatory or presumptive arrest policies with probable cause have been instituted in more than half of all states.⁵²

Second, VAWA provides funds to law enforcement agencies for the implementation of so-called “no-drop” policies that require prosecution. As a result, prosecutors are required to ignore claimant requests to discontinue the case, even when the alleged violence was believed to be minor or mutual.

Third, VAWA encourages the expeditious adjudication of DV cases. As a result, many jurisdictions process DV offenses under civil proceedings, which obviates the possibility of a jury trial and short-circuits other recognized elements of due process.

Consider the program in Warren County, Pennsylvania, where a person arrested on a domestic violence charge is offered two possibilities: Go to jail, or sign a pre-printed admission of guilt that states, “I have physically and emotionally battered my partner...I am responsible for the violence I used. My behavior was not provoked.”⁵³ Program policies do not even hint at the possibility of false arrest or the defendant’s innocence.

This issue is discussed in more depth in RADAR’s companion report, “Bias in the Judiciary: The Case of Domestic Violence.”⁵⁴

Constitutional Concerns

Given these findings, it is not surprising that legal experts have become alarmed that these policies violate the civil rights of the accused. A New Jersey judge admitted that his state’s domestic violence law “blew up...all my concept of constitutional protections.”⁵⁵ One legal commentator recently suggested that VAWA may “ride roughshod over the constitutional rights of men.”⁵⁶

Susan Finkelstein and her boyfriend got into a heated argument as they were driving in the car. The argument escalated, so he pulled over to walk home. She scratched him, he pushed her. The police spotted the incident and began to arrest the man. Finkelstein told the officer that she was at least as much the aggressor in their altercation as her boyfriend. The officer responded that policy required arresting the larger of the two parties.⁵⁷

4. VAWA Shortchanges Women

Persons wonder whether the Violence Against Women Act serves the best interests of women. These doubts revolve around four concerns:

1. Why doesn't VAWA provide treatment services for female abusers?
2. Are law enforcement programs of female perpetrators overly aggressive?
3. Why don't DV prosecution program respect the wishes of female complainants?
4. Are VAWA programs effective?

Services for Female Abusers

Knowing that women commit half of all incidents of partner aggression, clearly anger-management and/or rehabilitation services need to be available to them. When these women request help from VAWA-funded agencies, however, they are surprised to discover that female-specific treatment programs are almost non-existent. Instead, they are often given such advice as, "I'm sure you're under stress, he must have provoked you."

Family violence researcher Susan Steinmetz tells of receiving letters from abusive women who recognized that they needed help, but were "turned away or being offered no help when they called a crisis line or shelter."⁵⁸ As attorney Linda Kelly explains, "Today's treatment denies the possibility that women can be violent."⁵⁹

Sometimes society pays a heavy price for that denial:

*Socorro Caro had repeatedly and violently attacked her husband, on one occasion causing serious eye damage. But her husband was reluctant to report the incidents because he did not think that the authorities would believe him. On November 22, 1999, Mrs. Caro shot and killed their sons Joey, Mikey, and Christopher with a .38-caliber handgun. Two years later she was convicted of first-degree murder.*⁶⁰

Overly Aggressive Law Enforcement Policies

Lacking available treatment programs, abusive women may eventually find themselves ensnared in one-track law enforcement and prosecution procedures.

For example, as a result of mandatory-arrest policies, the number of female offenders in DV arrests rose by 10%–25% in many areas.⁶¹ In California, mandatory arrest policies caused the number of women arrested to soar by 446%.⁶²

In Colorado, implementation of a "Fast Track" system resulted in a system in which accused persons were thrown in jail, charged with third-degree assault, and then offered a plea bargain involving a lesser charge. One female defendant who went through the system stated simply, "It ain't about justice, that's for sure."⁶³

Women Locked into a System that Does Not Respect Their Wishes

As noted at the beginning of this Report, the great majority of abuse cases involve disputes in which the aggression is minor and/or mutual. So, in many cases—almost 40% in one Arizona study⁶⁴—it is not surprising that women who request police assistance later decide to drop the charges.

But VAWA provides funds to law enforcement agencies for the implementation of so-called “no-drop” policies, which require prosecution. As a result, prosecutors ignore claimant requests to discontinue the case. If the woman refuses to testify against her allegedly abusive partner, the prosecutor may threaten her with charges of obstruction of justice or even child abuse.⁶⁵

Sometimes no-drop policies turn out to be embarrassing to both the alleged abuser and victim:

Former NFL quarterback Warren Moon got into an argument with his wife, Felicia, and the police were summoned. Against her wishes, Mr. Moon was arrested. The case eventually went to trial in 1996, despite her request that the trial not go forward. Placed on the witness stand, Mrs. Moon was forced to admit that she, not Mr. Moon, had instigated the altercation by kneeing him in the groin and throwing a candlestick at him. Mr. Moon was acquitted of all charges.⁶⁶

Are VAWA-Supported Programs Effective?

The Violence Against Women Act allocates hundreds of millions of dollars each year to treat abusers and to encourage jurisdictions to implement “get-tough” law enforcement and prosecution policies. But there is considerable doubt about the effectiveness of these policies.

Men who are ordered to undergo treatment usually end up in programs based on the so-called Duluth model. But research shows that these programs have minimal impact in reducing recidivism.⁶⁷ Their lack of effectiveness may be related to the fact that these programs are “driven by ideology and stakeholder interests rather than by plausible theories and scientific evidence of cause,” as the National Research Council recently described it.⁶⁸

Regarding no-drop prosecution policies, only one randomized trial has been conducted to date. That study found that only one factor reduced abuser recidivism rates—whether the victim was allowed to select which strategy the prosecutor would pursue: no prosecution, pretrial diversion, prosecution with rehabilitation, or prosecution with severe sanctions.⁶⁹ But no-drop prosecution policies obviously eliminate the ability of abused women to make that choice.

Evidence supporting the effectiveness of women's shelters is doubtful. Whether the outcome measure is recurrence of the violence, long-term separation of the abuser and victim, or victim satisfaction, the results have been found to be equivocal.⁷⁰

Even restraining orders do not appear to be effective in deterring subsequent physical violence. One early study concluded that restraining orders were flatly "ineffective in stopping physical violence,"⁷¹ while a more recent report concluded that, "Having a permanent order did not appear to deter most types of abuse."⁷²

Reviewing the research on the effectiveness of restraining orders, analyst Cathy Young concluded that such interventions may, in fact, "lull women into a false sense of security."⁷³

VAWA: A System that Operates Under Its Own Rules

The Violence Against Women Act has been useful in calling society's attention to the problem of partner aggression, encouraging law enforcement personnel to respond appropriately to requests for help, and providing treatment services to female victims.

But there has been a considerable downside to VAWA's "one-size-fits-all" approach.

Our country's domestic violence system provides strong incentives—and few legal constraints—for those who are considering an allegation of domestic violence. Often those claims arise from incidents that are minor, involve only psychological harm, and/or are mutual in nature. But the reliance on law enforcement and legal measures, rather than on couples therapy, predictably escalates partner conflict. The end result is family break-up and children being separated from one of their parents, usually the father.

Fatherless children are more likely to be poor, to be victims of abuse, and to lag behind on a broad range of social, psychological, and academic indicators,⁷⁴ all of which have profound implications for the well-being of a society.

Despite the enormous financial investment our society has made in domestic violence programs, industry insiders deplore the absence of treatment services for abusive women and question the ideological bias of many VAWA programs. Researchers acknowledge that VAWA-promoted law enforcement and prosecution policies are often ineffective or even harmful because of the false sense of security they provide. And observers wonder why VAWA-funded educational programs continue to disseminate misleading statistics.

Legal experts worry that each year a taxpayer-funded program violates the civil rights of hundreds of thousands of American citizens and attracts very little public outcry. "Men may become alienated from and hostile to the system in the conviction that it is stacked against them and unjustly favors women," worries a recent report from the Independent Women's Forum.⁷⁵

Single men may decide that the legal and financial risks are too great and choose to forego family life altogether. According to a survey conducted by the Rutgers University National Marriage Project, 22% of single American men in the 25–34 age group now state that they do not plan to ever marry, many of them citing laws they perceive to be unfair.⁷⁶

Despite the concerns outlined in this Report, the domestic violence industry continues not only to hold its own, but to strengthen its grip on American society. President Bush's recent renewal of VAWA authorized a 20% budget increase over the previous law.

Clearly, the domestic violence industry operates by a different set of rules. By crafting a complex web of civil and criminal laws, the DV industry has engineered something that was never intended by our Founding Fathers—an often trivial offense that invites the imposition of severe penalties with profound consequences for family and society.

This conclusion looms large: by encouraging persons to file claims of abuse for even trivial incidents, by failing to respect the due process rights of the accused, by encouraging family dissolution, and by depriving millions of American children of having contact with one of their parents, the Violence Against Women Act is steadily weakening the traditional family as we currently know it.

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#### **Other Reports in this Series:**

1. Without Restraint: The Use and Abuse of Restraining Orders
2. VAWA Programs Discriminate Against Male Victims
3. Justice Denied: Arrest Policies for Domestic Violence Cases
4. Bias in the Judiciary: The Case of Domestic Violence

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