Fleeing for Safety: Representing Battered Respondents in International Child Abduction Cases Under the Hague Convention


Commission on Domestic & Sexual Violence

IN COLLABORATION WITH
THE HAGUE DOMESTIC VIOLENCE PROJECT,
GOLDMAN SCHOOL OF PUBLIC POLICY, UC BERKELEY

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OFFICE ON VIOLENCE AGAINST WOMEN

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WEBINAR # 1

MARCH 25, 2015
1:00-3:00 P.M. (EST)

The Effects of Domestic Violence on Children and Parents
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University of Washington
Learning Objectives

As a result of participating in this workshop, you will be better able to:

- Identify tactics of power and control used by abusers in intimate partner relationships;
- Understand the effect of DV on children, parenting and family dynamics; and
- Describe the effect of parental abduction on children and family.
What is Domestic Violence?
Domestic Violence Is...

The misuse of power in a relationship in order to coerce, control, intimidate or dominate another person. It can be understood as a pattern of behaviors used to control or exert power over another person in the context of an intimate relationship, regardless of the length or depth of the relationship.
Identifying Tactics of Power and Control
Tactics of coercive control can be seen as the cage that traps survivors in violent relationships and reduces survivors’ sense of agency and self-control.

Tactics of Coercive Control

- Sexual Coercion/Abuse
- Emotional Abuse
- Physical Abuse/Threats
- Immigration-Related Abuse
- Economic Abuse
- Isolation
Building the Cage

- Frequency of incidents
- Personal nature of incidents
- Experimental nature of incidents
- Access to the victim
- Encroaching on all aspects of life
Cycle of Intimate Partner Abuse

- Incident (any form of abuse)
- Tension-Building Phase
- Reconciliation/Apology
- Period of Calm
Importance of the Cage

- Without an understanding of these tactics, the incidents appear unrelated, random, or even innocuous
- Importance of full case history for the client, attorney and court
### Health Effects of Domestic Violence

#### Physical Effects:
- Bruises, cuts, broken bones, injuries to eyes and ears, etc.
- Headaches or chronic headaches/pain
- Reproductive health and pregnancy complications
- Increased risk of contracting HIV/AIDS or other STIs

#### Psychological Effects:
- Depression, anxiety, PTSD symptoms, suicidal ideation, etc.
- Recurring nightmares
- “Hypervigilence”
- Substance abuse (self-medicating)
- Low self-esteem
Subsequent Consequences

- Chronic disability: may affect ones ability to work or perform job duties (may be caused by physical and/or mental disability)
- Drug and alcohol abuse might interfere with ones ability to care for children (and thereby affect custody determinations)
- Mental and physical health consequences can have lasting financial impact on individual survivor, family and his/her community
The Effect of DV on Parenting
What are the stereotypes about a DV batterer as a parent?
Stereotypes of the DV Perpetrator as Parent

- Rigid, authoritarian, bullying
- Engendering fear
- Lack of empathy – child’s needs not recognized
- Sense of entitlement
- Lack of respect (boundaries)
- Control over child, parent & family relationships even after separation
- Child as pawn or vehicle to control, punish, or communicate with victim
Realities of the DV Perpetrator as Parent

• May meet the stereotypes and present as such
• May meet the stereotypes but present as a great parent and/or partner
• May be a good parent despite the DV, presuming the child and victim can be “buffered” from the risk of future exposure/perpetration of DV
How can DV affect the victim’s ability to parent?
Possible Impacts of DV on Victims’ Parenting

- Physical & emotional pain or suffering may limit the victim’s responsiveness to children
- Credibility & authority as parent may be compromised by abuser or children seeing abuse
- Compensating parenting style (attempting to correct imbalance created by abuser)
Possible Impacts of DV on Victims’ Parenting

- Economic factors may limit victim’s ability to care for children, both during cohabitation and after separation.

- Victim may have committed crimes that stem from the abuse, such as writing bad checks, outstanding debts, substance abuse, or crimes as an accessory to the abuser.
Family Dynamics

- Siblings may be protective or abusive
- Role of extended family may be helpful or harmful
- Child may have limited access to support
- Child may have constrained sense of community due to secrecy about the DV
- Child may have a rigid belief or confusion of traditional gender roles
Family Dynamics

Loyalty conflicts:

● Children may align with batterer due to manipulation and/or need for the relationship

● May be a survival technique for the child to align with the parent who is most powerful

● Children may align with the victim due to need to care for victimized parent

● Alignment with victim may cause abuser to allege “alienation”
Why is DV Relevant to Child Abduction?

- Abuse might be factor in abduction
- Forced return might increase likelihood of violence or danger for parent or child
- Abuse may not end with separation
- Overlap between domestic violence & child abuse
- Children’s exposure to unhealthy relationships
- Perpetual litigation as a form of ongoing control
- Extreme cases – homicides
The Experiences of Battered Mothers and Their Children in Hague Cases

Taryn Lindhorst and Jeffrey L. Edleson
With Sudha Shetty, William Vesneski, Gita Mehrotra, and Luz Lopez

Funded by the National Institute of Justice
2006-WG-BX-0006
What is the Hague Convention?

- Multi-lateral treaty between 93 countries joined - 80 party w US
- Civil procedures, not criminal
- Protect children from harmful effects of abduction
- Procedure for “prompt return”
Hague Convention Application & Goal

Wrongful Removal \(\Rightarrow\) Unlawful retention

Return to “Habitual Residence”
Key Defenses

12: Settled in a new place
13: Child is mature and objects
13a: Parent acquiesces
13b: Grave risk of physical or psychological harm or places child in an intolerable situation
20: Violation of a child’s human rights
DV & Parental Child Abduction

- **Agopian (1981):** result of pre-existing conflict, entire chapter on FV
- **Grief & Hegar (1993):** 3 of 5 types=violence
- **Sagatun-Edwards et al. (2000):** mother abductors more likely abused, fathers abusers, mother abductors given custody
- **Chiancone, Girdner, and Hoff (2001):** 90% left-behind parents’/others’ lives threatened
- **Lowe et al. (2006):** 68% of “takers” worldwide were mothers
Tension in Hague Cases

Hague’s Narrow View of Grave Risk

Research on Child Exposure to DV
Importance of Hague Cases

- More Transnational Families
- Effect of DV on Children
- Narrow Judicial Decisions

Importance of Hague Cases
From Hague Convention Authorities

69% of “Taking Parents” Worldwide were Mothers

> 50% of Children are Returned to Left Behind Parent

Source: Lowe, 2011
Most Taking Parents are Mothers → Many Children Return to Fathers → Domestic Violence ?
Child Exposure

27.0% 14-17 yr olds since birth
16.3% all children since birth
6.6% all children past year

(N=4,549; Finkelhor et al., 2009)
Children Are Involved (2)

Source: Edleson et al. (2003)

- Child threatened: > 50%
- Child accidentally injured: > 33%
- Child intentionally injured: > 25%
- Mother abused stopping child abuse: 50%
“Effects” of Exposure

Evans et al. (2008) meta-analysis of 60 studies

- Strongly associated with boys’ use of externalizing behaviors
- Strongly associated with trauma symptoms
Longitudinal Studies

- Yates et al. (2003): 155 children over 25 years
  - Preschool exposure linked to externalized problems for boys and internalized problems for girls in adolescence and teen years
- Ehrensaft et al. (2003): 543 children, prospective over 20 years
  - Exposure to DV in childhood was a key predictor of both perpetrating and receiving as adult.
- Whitehead et al. (2003) ACE study: 8,629 adults, retrospective
  - Exposure doubled likelihood of perpetration and victimization as adult
- Paradis et al. (2009): 346 children, prospective over 25 years
  - Family arguments and violence exposure during childhood correlated to poorer health, mental health and occupational achievement at age 30
Overlap of CAN & DV

- Most studies found 30% to 60% overlap, 41% was median \((\text{Edleson, 1999; Appel & Holden, 1998})\)

- High rates of overlap found in:
  - Child fatality reviews (41% - 43%)
  - Abused child studies
  - Battered mother studies

- First national survey: \((\text{Hamby et al., 2010})\)
  - More than \(1/3\) (33.9%) of exposed had also been maltreated in the past year vs. 8.6% of non-exposed

- For lifetime data, more than half (56.8%) of CEDV youth had also been maltreated
Exposures vary
Impacts vary
Need to establish impact on children
Multiple Perspectives

Hague cases involving domestic violence

- Mothers
- Judicial Opinions
- Lawyers
- Others
Experiences of Mother-Respondents to Hague Petitions
Focus of Our Study

Transnational Family Custody/Child Abduction Cases

Outgoing/Non-Hague Convention Cases

Incoming U.S. Hague Convention Cases

No Domestic Violence

Domestic Violence Alleged

Father Respondent

Mother Respondent

No Domestic Violence

Focus of Our Study

17 U.S. citizens; 5 immigrant women
# Hague Outcomes & Violence

<table>
<thead>
<tr>
<th>Case Outcome</th>
<th>Battered Mother AND Child</th>
<th>Battered Mother ONLY</th>
<th>Emotional Terrorizing</th>
<th>Unclear Abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child remained in US with Mother</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Child returned to other country with Father</td>
<td>2</td>
<td>8</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>10</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>
Barriers Facing Women & Children

- Linguistic & Cultural Isolation
- Citizenship
- Lack of DV Assistance in Other Country
- Attorneys & Judges Lack Experience with Hague
- High Cost & Fast Timeline of Cases
Post-Hague Experience: Mothers & Children who Remained in U.S.

- 3 mothers retained children with No Contact with Father.
- 4 mothers retained children with Visitation Worked Out.
- 3 mothers retained children with Continued Legal Conflict with Father.

10 mothers retained children.
Post-Hague Experience: Children Returned to Other Country

- 6 Mother Has No/Limited Contact with Children
- 3 Court Returned Mother & Children to U.S.
- 2 Mother in Other Country with Children

12 mothers with returned children; missing data on 1
Post-Hague Experience: Ongoing Exposure to Domestic Violence

- Physical Abuse to Child and Mother (2 cases)
- Physical Violence against Mother only (1 case)
- Threats of Harm to Mother (2 cases)

12 mothers with returned children; missing data on 1
Two Latina mothers pursued asylum due to domestic violence.

Judges ruled in favor of allotting time for the resolution of the asylum question and rejected the Hague petition.

This asylum option was not available to the mothers who are US citizens as their immigration status was never in question.
Mothers and their children experience significant & severe DV

Women have access to few resources in other country or U.S. to support their safety

More children returned to abusive father (regardless of DV presence or severity)

When women experience battering, but not their children, their children are more likely to be returned

Key Take-Aways
Part 2:
Judicial Reasoning
Sample Development

Goal: To identify all published judicial opinions that addressed domestic violence and the Hague Convention.

306 Opinions

<table>
<thead>
<tr>
<th>No Domestic Violence</th>
<th>Domestic Violence Alleged</th>
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</thead>
</table>

Opinions > Disputes

Total Disputes = 47
# Hague Defense Statistics

<table>
<thead>
<tr>
<th>Defense</th>
<th>Asserted</th>
<th></th>
<th>Successful</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percent</td>
<td>Number</td>
<td>Percent</td>
<td>Number</td>
</tr>
<tr>
<td>Grave Risk to Child</td>
<td>81%</td>
<td>38</td>
<td>26%</td>
<td>12</td>
</tr>
<tr>
<td>Parent Acquiesced</td>
<td>30%</td>
<td>14</td>
<td>2%</td>
<td>1</td>
</tr>
<tr>
<td>Settled in New Place</td>
<td>26%</td>
<td>12</td>
<td>6%</td>
<td>3</td>
</tr>
<tr>
<td>Child Opinion</td>
<td>19%</td>
<td>9</td>
<td>4%</td>
<td>2</td>
</tr>
<tr>
<td>Human Rights</td>
<td>15%</td>
<td>7</td>
<td>0%</td>
<td>0</td>
</tr>
</tbody>
</table>

Total n = 46
Factors in Successful Grave Risk Defense (N=12)

- Child Maltreatment (11 of 12 cases)
- Child Exposure to DV (10 of 12 cases)
- Expert Testimony (10 of 12 cases)
- PTSD Diagnosis (8 of 12 cases)
- Threats to Kill (7 of 12 cases)
Key Take-Aways

- Courts infrequently accept defenses, including grave risk.
- Courts rarely see a link between DV and child maltreatment.
- Five factors contribute to the courts narrow interpretation of the grave risk defense.

Limited Legal Success for Battered Women
Battered mother respondents need access to legal resources.

Evidence & expert testimony regarding DV as a risk to the child, even when the child is not abused.

Importance of lawyering aimed at recognizing DV as a factor in Hague cases.

Lawyers, judges & experts need training & resources to address Hague cases.
Policy & Practice Implications

- Recognize DV as a Risk to Children and Mothers
- Revise ICARA to Acknowledge DV
- Educate U.S. Diplomatic Officials about DV & Transnational Issues
- Ensure Mother and Children’s Safety if Returned
- Provide Support & Resources to Mothers
- Educate Lawyers & Judges
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The Hague Domestic Violence Project

The History of The Hague Domestic Violence Project

Assistant Dean Sudha Shetty and Social Welfare Dean Jeffrey Edleson, two key participants in this Project, worked together years ago on a Hague Convention case where domestic violence was an issue. The myriad issues that arose out of that experience inspired Sudha to create The Hague Domestic Violence Project. First started at Seattle University School of Law's Access to Justice Institute, the project moved to the University of Minnesota in collaboration with colleagues at the University of Washington and now resides at Berkeley's Goldman School of Public Policy. Since 2003, the goal of this project has been to clearly establish child exposure to domestic violence as an exception to the otherwise required return of a child to his or her country of origin or settlement under the Hague Convention.
Questions?
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Webinar # 1

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