**The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:**

**Document Title:** **Multiple Perspectives on Battered Mothers and their Children Fleeing to the United States for Safety: A Study of Hague Convention Cases**

**Author:** **Jeffrey L. Edleson, Ph.D., Taryn Lindhorst, Ph.D., Gita Mehrotra, M.S.W., William Vesneski, M.S.W., Esq., Luz Lopez, Ph.D., and Sudha Shetty, Esq.**

**Document No.:** **232624**

**Date Received:** **December 2010**

**Award Number:** **2006-WG-BX-0006**

**This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this Federally-funded grant final report available electronically in addition to traditional paper copies.**

**Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.**

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Multiple perspectives on battered mothers and their children fleeing to the United States for safety

## *A study of Hague Convention cases*

## Final Report, NIJ #2006-WG-BX-0006

**Jeffrey L. Edleson, Ph.D.**
University of Minnesota

**Taryn Lindhorst, Ph.D.**
University of Washington

With
**Gita Mehrotra, M.S.W.**
**William Vesneski, M.S.W., Esq.**
University of Washington

**Luz Lopez, Ph.D.**
Boston University

**Sudha Shetty, Esq.**
University of Minnesota

**November 2010**

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## TABLE OF CONTENTS

Acknowledgments iii

List of Figures v

List of Tables v

Executive Summary vii

Chapter 1: Introduction and Background 1

Chapter 2: Methods for the Interview Study 35

Chapter 3: Results: Pre-Departure – Abuse Typologies 60

Chapter 4: Pre-Departure: Domestic Violence and its Relation to Habitual Residence 110

Chapter 5: Departure: Reasons for Relocation to the United States 121

Chapter 6: Hague Decision: Relation of Abuse to Hague Outcome 156

Chapter 7: Post-Hague: Mother and Children Experiences after Return 177

Chapter 8: Experiences of Latin American Mothers 198

Chapter 9: The Attorneys in Hague Convention Cases 225

Chapter 10: Judicial Opinion Study 265

Chapter 11: Discussion and Implications 303

References and Cited Legal Cases 320

Appendices

- **A.** Key Study Implications (also Table 11.1)
- **B.** Recruitment Letters and Emails, Information Statements and Staff Confidentiality Agreement
- **C.** Participant Recruitment Website Homepage
- **D.** Phone Scripts
- **E.** Interview Guides
- **F.** Project Dissemination Website Homepage

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## Acknowledgements

This research started because one woman's story mobilized us to explore further the intersection between international law and domestic violence. We thank each of the women who shared deeply personal, difficult stories with the research interviewers with the wish that their experiences could help other families. We acknowledge their strength throughout the experiences they had and their courage in sharing their stories with us.

In a research undertaking such as this, the final product is the result of the collaborative support of many individuals and institutions. In particular, we would like to acknowledge the support given to us to conduct this research by our home institutions, the University of Minnesota and the University of Washington Schools of Social Work and the staff of the National Institute of Justice (NIJ) who shepherded this project, Leora Rosen, Karen Bachar, Bernie Auchter and Christine Crossland. We were assisted by members of our National Advisory Board in the recruitment, analysis and dissemination of the research: Hon. Barbara Madsen, Chief Justice, Washington State Supreme Court; Hon. Ann Schindler, Judge, Washington State Court of Appeals; Prof. Merle H. Weiner, Philip H. Knight Professor, University of Oregon School of Law; Chad Allred, J.D., Attorney-at-Law, Ellis, Li & McKinstry, Seattle, Washington; Barbara Hart, J.D., Battered Women's Justice Project & University of Southern Maine; Paula Lucas, Founder/Executive Director, The Americans Overseas Domestic Violence Crisis Center, Portland, Oregon; Sarah Ainsworth, J.D., Senior Legal & Legislative Counsel, Legal Voice, Seattle, Washington; and Roberta Valente, J.D., General Counsel, National Network to End Domestic Violence, Washington D.C. We also want to acknowledge the many volunteer lawyers and web designers from Thomson Reuters' West

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



and FindLaw divisions and the law students who worked with us on this project through the sponsorship of the Minnesota Justice Foundation. They all helped us tremendously in developing our project websites and in identifying published Hague Convention cases.

Finally, we especially want to thank the attorneys and advocates who helped recruit women to our NIJ study and, some of whom also participated in interviews themselves. In addition, we have had many colleagues who have given of their time to read drafts of this work, including Merle Weiner, University of Oregon School of Law; Jane Gilgun, University of Minnesota School of Social Work; and Justice Shireen Avis Fisher, Justice of Appeals, Special Court for Sierra Leone and a retired trial judge for the State of Vermont; Helene Starks, Clarissa Hsu, Tatiana Masters and Mark Wicks of the University of Washington Qualitative Research Group; and the three anonymous reviewers obtained by the National Institute of Justice..

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## List of Figures


| Figure | Page |
|---|---|
| **2.1** Initial Conceptual Model | 36 |
| **2.2** Target Sample | 41 |
| **3.1** Global Distribution of Interviewed Mothers | 63 |
| **3.2** Summary of Types of Abuse and Number of Respondents Who Reported the Type | 70 |


## List of Tables


| Table | Page |
|---|---|
| **1.1** Outgoing and Incoming Cases of Interparental Abduction Reported to the U.S. Department of State, October 1, 2007 – September 30, 2008 | 12 |
| **2.1** Data Sources | 50 |
| **3.1** Description of Mothers and Fathers in the Study | 61 |
| **3.2** Most Salient Issues Regarding Domestic Violence Reported by Women | 88 |
| **3.3** Typology of Women's Domestic Violence Experiences | 90 |
| **3.4** Typology of Children's Exposure to Violence in Hague Cases | 94 |
| **3.5** Typology of Mother and Children's Exposure to Domestic Violence | 105 |
| **4.1** Reasons for U.S. Women's Relocation to the Other Country | 112 |
| **5.1** Resources Accessed by the Women in Coping with Domestic Violence | 125 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.




| | |
|---|---|
| **5.2** Typology of Ways in Which Women Left the Other Country | 143 |
| **6.1** U.S. Judges' Decisions on Hague Petitions | 156 |
| **6.2** Legal Processes Involved in the Hague Petition | 163 |
| **6.3** Hague Decisions Compared to Abuse Types | 172 |
| **7.1** Status of Women and Children in Other Country | 178 |
| **7.2** Recommendations from Mothers | 192 |
| **10.1** States and Courts where Hague Petitions in Published Cases were Filed | 269 |
| **10.2** Citizenship of Fathers and Mothers in Published Cases | 275 |
| **10.3** Outcomes of Petitions in Published Cases | 277 |
| **10.4** Success Rates for Defenses in Published Cases involving Domestic Abuse | 281 |
| **10. 5** Grave Risk Determination and Presence of Factors in Published Cases | 282 |
| **10.6** Bivariate Analysis of Case Factors by Decision in Published Cases | 291 |
| **10.7** Latent Class Analysis of Published Cases | 293 |
| **11.1** Implications of Research Findings for Policy and Practice | 312 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## EXECUTIVE SUMMARY

Mothers who flee with their children because of domestic violence may have few other options to ensure their safety and that of their children in the face of their partner's violence. Yet when their flight takes them across international boundaries, they become vulnerable to being legally treated as an "abducting" parent by the courts. This report focuses on the situations of women who experienced abuse in another country and came to the United States in an effort to protect themselves and their children, but who then faced civil actions in U.S. state or federal courts for child abduction under international legal agreements. We interviewed battered mothers around the world, their attorneys, their husbands' attorneys and examined published judicial decisions in cases involving the Hague Convention on the Civil Aspects of International Child Abduction where there were also allegations of domestic violence by one parent against the other. The research team interviewed 22 mothers who responded to Hague petitions in U.S. courts, 23 attorneys representing both mothers and fathers in these cases and five specialists, such as expert witnesses. The research team also analyzed 47 published U.S. Hague Convention court decisions involving allegations of domestic violence.

Battered mothers who fled across borders to the U.S. to receive help from their families were often victims of life threatening violence, and their children were frequently directly or indirectly exposed to the father's violence. The women sought but received little help from foreign authorities or social service agencies and received little help from U.S. authorities once they came to the U.S. In fact, these mothers – most of whom were U.S. citizens – often faced U.S. courts that were unsympathetic to their safety concerns and subsequently sent their children

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



back to the custody of the abusive fathers in the other country, creating potential serious risks for the children and mothers.

**Summary of Key Findings**

Below we summarize our key findings in seven areas. Chapter 11 includes a table that discusses the policy and practice implications for each of these findings.

***1. Mothers and children often experienced severe violence from the left-behind fathers who filed Hague Convention petitions to have their children returned.***

- Most of the mothers in this study faced serious physical and sexual assaults, coupled with life threatening behaviors by their husbands that led these mothers to believe that their and/or their children's lives were in danger.
- The children in these homes were often also physically assaulted or exposed to extensive violence against their mothers resulting in reported profound effects on the children, consistent with a growing social science literature on child exposure to violence.
- The majority of mothers in this study voluntarily resided in the other country but a significant number of mothers (40%) reported their choice of residence was coerced, forced or the result of deception by their husbands, leading to questions about the intentions of parents when establishing a child's habitual residence.
- A number of women followed through on expected steps such as leaving their violent husbands and receiving custody of their children from the other country's courts, only to face continued violence and threats from their husbands when they remained in the other country.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



- The seriousness of the domestic violence the mothers faced was further reinforced by the fact even those who succeeded in retaining their children in the U.S. faced continued threats and extensive fear from their former husbands, consistent with the social science literature on post-separation violence.

2. ***Mothers were unable to access helpful resources in the other country, so they left with their children to seek safety and support of family members in the United States.***
   - Most mothers reported multiple attempts to seek informal and formal help in the other country, prior to leaving the country, with little success and sometimes resulting in further reinforcement of their violent husbands' positions by the authorities.
   - The process of leaving to the U.S. was a difficult one for most women, some of whom planned their move and some of whom made the decision on short notice.
   - In almost all cases, both for U.S. citizens abroad and for immigrant women, leaving the other country for the U.S. was a way to obtain the emotional and financial support of family members residing in this country.
3. ***U.S. authorities and courts were not receptive to mothers' safety concerns.***
   - The majority of women in this study had their children returned to the other country by U.S. courts, and most of the time this meant their children's return to a life with the mothers' violent husbands.
   - The overwhelming social science evidence, developed over the last three decades since the Convention was established, indicates that children exposed to domestic violence are at risk of physical and psychological harm by living with a violent father. In only one of

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the mother's cases did a U.S. court explicitly recognize a child's exposure to domestic violence as potentially harmful to the child.

4. ***Mothers and children faced great hardships after a Hague Convention decision.***

- Fathers used U.S. court Hague decisions to leverage their positions in custody cases upon return of their children to their habitual residence.
- Women and children faced high levels of hardship when they returned, with many women unable to work in the other country because of their immigration status.
- Almost half of the women and/or children who returned to the other country were victims of renewed violence or threats by the fathers on their return to the other country.
- Mothers reported that *none* of the court ordered or voluntary undertaking aimed at protecting them and/or their children upon return to the other country were implemented.

5. ***Legal fees and representation were major barriers for women responding to Hague Convention petitions.***

- The cost of litigating a Hague Convention case was a major barrier to legal representation for mothers and one that greatly concerned attorneys in these cases. Mothers did not have access to the same sources of legal representation as did left-behind fathers.
- Fathers were more often were represented by attorneys in the U.S. Department of State's Attorney Network who were more likely to have access to larger firm resources. Fathers could receive additional U.S. government assistance in locating their child, travelling to the U.S. for court appearances and in preparation of their attorneys.
- Mothers were more often likely to locate an attorney on their own in a legal assistance agency or a small family law practice.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***6. Hague Convention decisions have not considered two decades of research on child exposure to domestic violence when deciding on grave risk.***

- Analyses of published judicial decisions reinforce both mothers' and attorneys' views that children exposed to extensive domestic violence by fathers against their mothers are seldom seen by U.S. courts as at grave risk of physical or psychological harm. The findings from mother interviews in this study and the extensive social science research on children's exposure to domestic violence are contrary to most of these published court rulings.
- Evidence of harm to children presented by attorneys through their briefs and through expert witness testimony, was a key factor in cases where grave risk was found.

***7. Safety for battered mothers and their children facing Hague petitions requires training for attorneys and judges on both domestic violence and the law surrounding Hague Convention cases.***

- Interviews with mothers and attorneys as well as an analysis of judicial rulings in published cases clearly indicates the need for greater awareness among and training of attorneys and judges in three primary areas:

  1) the meaning of all Articles in the Convention, including exceptions;

  2) the social science literature on domestic violence and the effects of child exposure to abuse in the family; and

  3) the experiences of mothers and children both before they leave to the U.S. and then after Hague case decisions are made whether they remain in the U.S. or return to the other country.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



In the 30 years since the Hague Convention was completed a large body of research has shown the potential for grave harm to children if they are exposed to domestic violence. In fact, U.S. Attorney General Eric Holder has launched a major national initiative to reduce child exposure to violence, including domestic violence. In the last decade, legislation in states and training of judges has focused on the importance of considering evidence of child exposure to violence in domestic custody cases. Yet judges who are returning children to abusive fathers when deciding Hague Convention cases seem to be unaware that domestic violence exposure may create a grave risk to children and can be a reason to allow children to remain with their mothers in the U.S. after fleeing from violent husbands or partners.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 1: INTRODUCTION AND BACKGROUND

> "Basically there's three choices in these situations…1. You stay there in those conditions and you survive as long as you can. 2. You walk away from your child and you walk *away*. 3. You run, with your child. So there's three. That's it." *Mother involved in a Hague Convention case.*

> "I mean if you go to the Justice Department and you put the numbers in front of people, the lawyers and the judges, they're just going to look at this and say, oh, that's a little problem. And maybe possibly some day that might run across my desk, but I doubt it – because it never has before. It's just a little problem. But put the whole damn world together and you see how big this problem is." *Mother involved in a Hague Convention case.*

Transnational relationships have become more common in the past thirty years, and negotiating the dissolution of these relationships is increasingly complicated. Women whose partners are abusive often turn to family members for assistance in coping with the abuse and repairing their lives (Goodkind, Gillum, Bybee, & Sullivan, 2003; Rose, Campbell, & Kub, 2000). When returning to family means leaving one nation for another, a web of international treaties may be invoked that can result in a woman who has fled from abuse being held responsible for unlawfully removing her children, and potentially being subjected to legal proceedings related to child abduction. Mothers who flee with their children may have few other

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



options to ensure their safety and that of their children in the face of their partner's violence; yet they remain vulnerable to being legally treated as an "abducting" parent by the courts. This report focuses on the situations of women who experienced abuse in another country and came to the United States in an effort to protect themselves and their children, but who then faced civil actions in U.S. state and federal courts under international legal agreements.

In 1980, the Convention on the Civil Aspects of International Child Abduction (hereafter referred to as the "Hague Convention") was finalized at the Hague and has now been adopted by 82 countries around the world (Hague Conference on Private International Law [HCPIL], 2010a). Child abduction, under the auspices of the Hague Convention, was defined as the wrongful removal of a child in violation of the custody rights of another parent or retention of a child in a country other than that deemed to be the child's "habitual residence" (HCPIL, 2010b). The Convention requires that adopting nations respect the rights of custody and visitation between parents, and therefore, requires the "prompt return" (Hague Convention, Article 1) of any child who was taken to another country without permission of both custodial parents. Children's habitual residence is understood to be the country in which they are usually resident, although this term has not been defined within the parameters of the Convention and court rulings on what constitutes habitual residence vary. Parents who take their children out of the country without the permission of the other custodial parent can be taken to civil court to have the children removed and returned to the habitual residence and often to the "left-behind" parent. Criminal kidnapping charges may also be made against the taking parent through each country's criminal justice system.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The Hague Convention acknowledges that there may be some situations when children should not be returned to the habitual residence, so exceptions or "defenses" may be argued to prevent the return of a child to a country deemed to be the child's habitual residence. The Convention outlines five specific exceptions (discussed in greater depth below in the Background section) that can be used by a responding parent to prevent their child's return. These exceptions include whether the child will face a grave risk of physical or psychological harm or an intolerable situation when returning to the other country; whether the left-behind parent gave consent for the child to leave the country; whether the child is now resettled in the new country; if the child is mature enough to voice an opinion and objects to return; and if returning the child to the other country would violate the child's basic human rights. When one of these defenses is successfully argued, the petition may be either dismissed or denied by the court, and the child is allowed to remain in the new country with the taking parent.

Conceived of as a treaty that focuses exclusively on the child, the Hague Convention does not expressly recognize domestic violence against a spouse as a reason to deny the return of the child to the habitual residence, and in the case of battered mothers, often into the custody of the child's abusive father. Domestic violence is not mentioned in the Convention, and none of the exceptions explicitly mention domestic violence as a reason to consider when making a decision about whether the child should be returned to the country of habitual residence. With little legal scaffolding, courts around the world have been left to wrestle with the role adult-to-adult domestic violence should play in making decisions about child residence. Although the Hague Convention, ostensibly, does not adjudicate child custody arrangements in families, a

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



decision to return a child to the other country often becomes a *de facto* custody decision, as mother's stories in this report of the Hague process will demonstrate.

Missing in the current literature are the experiences of women who have fled from abuse with their children and then faced a Hague petition here in U.S. courts. The Hague Convention was drafted 30 years ago, before most of the social science research on domestic violence and its effects on children was conducted. Those who crafted the Convention likely had little empirical knowledge of the effects of domestic violence on children and the parent who is the victim of the violence. Our understanding of the factors that may be associated with decisions to uphold a Hague petition and return a child to the habitual residence of the left behind father is also limited. To date, no evaluation has been made of the life situations and overall patterns of outcomes in Hague Convention cases in the U.S. where the mother respondent has alleged domestic violence.

Only a few non-governmental organizations have undertaken small studies or investigations of parents involved in Hague Convention cases. The most active organization has been Reunite International, located in the United Kingdom. Reunite has completed three separate studies that in varying degrees focus on international abduction cases. In the first study (Reunite International, 2003) international abductions involving 33 returned children in 22 families were examined. Of the 22 abducting parents, 14 were mothers and 13 had returned to the child's country of habitual residence either with their child or at the same time as the child. Six abducting mothers (42%) raised concerns about domestic violence against them on return and two others (14%) raised concerns about child abuse on return. In a subsequent Reunite study (Freeman, 2006) focused on the impact of abductions, there is mention of abducting mothers alleging domestic violence by left-behind fathers and a belief by at least one mother that the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Hague Convention was used as a method by the left-behind father to maintain contact not with his children but with her. Reunite's third study (Freeman, 2009) focused on relocation issues and makes little mention of the role of domestic violence in international relocations. Two other investigations, one by International Social Service ([ISS], 2007) in Australia and another by the Ombudsman Foundation (2002) in the Netherlands, provide additional information. ISS investigated the link between domestic violence and international child abduction, with a focus on recommendations for service delivery. Unfortunately only four of 12 parent interviews conducted were with taking mothers, so limited information on mothers who may have fled domestic violence was available. The ISS report concluded that "the overwhelming consensus from all the interviews where domestic violence or alleged domestic violence was present is that the primary motivator for mothers who abducted was the violence they experienced" (ISS, 2007, p. 9). The Dutch investigation (Ombudsman Foundation, 2002) was more of a journalistic review of seven cases that involved child abductions between the Netherlands and other countries. While domestic violence was seldom mentioned in the case summaries, the authors concluded that the return of a child was not necessarily in their best interests and that children were often victims and not beneficiaries of the Hague Convention's enforcement.

A review of these few prior investigations highlights the recognition that domestic violence may play a key role in abductions and points to a significant gap in our knowledge about abducting mothers who have experienced domestic, their motivations and how the Hague Convention aids or hampers their efforts to gain safety for themselves and their children. The goal of this study is to understand the processes involved when women who are experiencing

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



domestic violence are subject to petitions under the Hague Convention in the U.S., in order to recognize the complex safety issues at play in these families' lives.

The total number of battered mothers subject to legal proceedings under the Hague Convention is difficult to ascertain because there is no central repository where all Hague cases or where international divorce and custody disputes that include allegations of the presence of domestic violence are recorded. The absolute number of Hague Convention cases is likely small compared to the total number of domestic custody cases and Hague cases involving domestic violence are also relatively small compared to estimated levels of domestic violence in the U.S. Despite their low frequency, understanding the experiences of battered women facing Hague petitions is critically important for four reasons. First, children are at the heart of these cases, and there is currently considerable legal dispute as to what constitutes "harm" to children whose mother is a victim of domestic violence. Second, these experiences provide insights into how U.S. courts regard domestic violence and consider it when making decisions that affect transnational family relationships. Third, as the world becomes smaller, we can anticipate a growing number of transnational families. For example, the number of American children with at least one foreign born parent increased from 15% in 1994 to 22% in 2008 (Federal Interagency Forum on Child and Family Statistics, 2009). We can expect an associated rise in the number of battered mothers who flee across national borders seeking help from family and friends to ensure their safety and that of their children. Finally, each year additional countries become signatories of the Hague Convention or sign bilateral agreements with the U.S. with terms similar to the Hague Convention, thus expanding the possible number of cases entering our courts. In addition, the recent *Abbott v. Abbott* (2010) decision by the U.S. Supreme Court ruled that non-custodial

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



parents with a *ne exeat* right to provide or withhold consent for their children's departure from their country have standing to file a Hague Convention petition in U.S. courts. For each of these reasons, understanding the circumstances surrounding how U.S. courts treat Hague Convention cases involving domestic violence reveals important dimensions of treaty interpretation, domestic law, consideration of children's best interests, and the legal rationales required to ensure safety for battered women and their children.

## Background

### Brief History of the Hague Convention and Its Implementation Internationally

The Convention on the Civil Aspects of International Child Abduction was completed at the Hague in October 1980. The treaty was designed to protect children from the harmful effects of having one parent unilaterally decide to leave a country in which the child had lived without the permission of another parent, in violation of the custody rights of that parent. Parents were thought to take this action when they were dissatisfied with their current access or custodial rights to the child, or when they thought they might receive a more favorable hearing in the court of another (usually their home) country, a tactic referred to as "jurisdiction shopping." Discussions held at the time of the treaty's crafting centered on the grave negative implications for a child's development and well-being caused by parental abduction, leading to the Convention's conclusion that a prompt return of children to their country of habitual residence will facilitate a better outcome for the child (Perez-Vera, 1981).

Nations party to the Convention are expected to help quickly return abducted children to their habitual residence where other issues, such as custody, can be resolved by local jurisdictions in the other country (Beaumont & McEleavy, 1999; Garbolino, 2000; Hilton, 1997).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The focus of the treaty is on the speedy resolution of questions related to the return of a child to his or her habitual residence, assuming that the legal system of the country that is the child's usual home would be best equipped to ensure the child's best interests. This assumption rests on principles of cooperation between nation states and respect for diverse cultural and legal systems. Interestingly, the citizenship of the parents and children is not considered when reviewing a Hague petition. As a result, families can be citizens of one country and habitually reside in another, and it is the court of the habitual residence - not the court that represents the citizenship of the family - that is charged with making decisions about the custody and visitation rights. For example, the recent *Abbott v. Abbott* case in the U.S. Supreme Court involved two American citizens living in Chile. The mother returned with her child to the U.S. and the father filed a Hague petition requesting the prompt return of the child to Chile.

The Hague Convention was framed with the understanding that the most frequent and typical parental abductor was a non-custodial father who took children from their primary caregiver (their mother). This belief was reinforced in the public's mind by the subsequent publication of the story of Betty Mahmoody in a book and movie *Not without My Daughter* (Mahmoody & Hoffer, 1987). Mahmoody went to Iran with her husband and young daughter for what she thought was a visit, but her husband intended that they remain in his country and forcibly retained them in Iran. Mahmoody eventually smuggled herself and her daughter out of the country and back to the United States. This story reinforced the beliefs policymakers held about the likely targets (non-custodial fathers) and beneficiaries (mothers and children) of the Hague Convention (Weiner, 2000). As a result, the public perception exists that taking parents

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



have committed wrongful acts that have both civil and potentially criminal consequences and that left-behind parents have been unfairly harmed by abductions.

A recent global analysis of the characteristics of taking parents demonstrates the flawed nature of these assumptions. In 2003, the Cardiff University School of Law in cooperation with the Permanent Bureau of the Hague Conference undertook a survey of signatories to the Convention (Lowe, 2007). Hague petitions had increased 25% across surveyed countries since the first survey in 1999. Internationally, 68% of the taking parents who were respondents to Hague petitions were mothers; 85% of these respondent mothers were the primary caregivers of their children and 54% had gone home to a country in which they held citizenship. Unfortunately, the international community has been slow to recognize that some abducting parents may be battered mothers fleeing from their habitual residence and going home in order to seek safety for themselves and their children (Weiner, 2000).

**Hague Convention Implementation in the U.S.**

The Hague Convention was implemented in the United States through the International Child Abduction Remedies Act ([ICARA] 42 U.S.C.A. § 11603) passed by Congress in July 1988. The Convention, which is international law by which the U.S. has agreed to be bound, establishes substantive and procedural mandates for handling cases in which children are removed from or retained in a county other than their habitual residence in violation of custody rights. The U.S. Department of State (2010) reports that the U.S. government has accepted 68 countries as partners to the Hague Convention, although more have signed the treaty but have yet to become partners. Most of the U.S. treaty partners are located in Europe and North and South America. However, each year new countries are signing onto the Convention, thus expanding

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the populations covered by the Convention and the number of potential U.S. partners. Currently, China, India, Russia, and most of Asia, Africa and the Middle East are not signatories to the Convention, so alternative legal remedies for return of children in those nations must be pursued. Globally, the United States accounts for the highest number of incoming Hague applications, nearly one-quarter (23%) of all petitions filed in the most recent survey available (Lowe, 2007).

U.S. law distinguishes between incoming and outgoing cases under the Hague Convention. Incoming cases are those in which the parent and child have come into the U.S., leaving behind the other parent in a different country. In these cases, a Hague Convention petition is initiated by the left-behind parent's legal representative in a U.S. court. Parents who have left another country and taken their children without permission of the other custodial parent are referred to in U.S. courts and in this study as "respondents" to a Hague petition or as "taking" parents. These are civil and not criminal cases. Custodial left-behind parents in the other country who initiate a Hague petition are referred to in the U.S. courts and in this study as "petitioners" or "left-behind" parents and their attorneys as "petitioners' attorneys."[1]

In outgoing cases, a child has been taken by a parent to another country from the U.S. In this case, the U.S. Department of State, acting as the U.S. Central Authority, assists the left-behind parent to receive help from the other country's Central Authority in filing a Hague Convention petition in the courts of the country where the child is believed to now reside. The most recent highly publicized example of this kind of case is that of David and Bruna Goldman (Semple, 2009). In 2004, Bruna took the couple's four year old son to Brazil, and filed for a

[1] This study does not address petitioners who are left behind parents in the U.S. who experienced domestic violence and whose partners are perpetuating the violence by abducting the child.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



divorce in that country; she subsequently died giving birth to a daughter with her second husband. The father initiated a Hague petition in Brazilian courts and was reunited with his son almost five years later.

The rate of international child abduction remains unknown. The most recent National Incidence Study of Missing, Abducted, Runaway and Thrownaway Children (NISMART-2, Hammer , Finkelhor & Sedlak, 2002) estimated that 203,900 American children were abducted by family members in 1999. Unfortunately, this survey did not separately identify international abductions. Of the estimated total U.S. abductions, only a quarter (56,500) was reported to authorities. Likewise, the actual number of international abduction cases is likely higher than those reported to the U.S. Central Authority. Left-behind parents may choose not to engage in legal or governmental action, or they may pursue cases directly in state or federal courts and not report their activity to the U.S. Department of State which acts as the U.S. Central Authority.

Table 1.1 lists the figures on international parental abduction cases reported to the U.S. Department of State in the most recent year for which data are available (FY 2009). The U.S. Department of State's Office of Children's Issues (2010) reported that there were 2,075 children allegedly abducted by parents during FY2009, of which 829 were abducted to Hague partner countries and 454 were children removed from other Hague partner countries and brought into the U.S. The remaining children were abducted from the U.S. to non-Hague countries. Fleeing mothers who are the focus of this study would be included among the incoming cases if the petitioner requested the involvement of the U.S. Central Authority, i.e., the Office of Children Services at the U.S. Department of State. Some mother respondents may face Hague petitions that were filed directly with a state or federal court that did not involve the U.S. Central

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Authority. Currently, no system exists in the U.S. for tracking cases that are not voluntarily reported to the Office of Children's Services.

**Table 1.1**

Countries with Largest Number of Outgoing and Incoming Cases of International Parental Abduction Reported to U.S. Department of State, October 1, 2008 – September 30, 2009 (U.S. Department of State, 2010)

| **Origin** | **Outgoing (Child taken from the U.S. to other country)** | | **Incoming (Child taken from other country to U.S.)** | | **Total** | |
|---|---|---|---|---|---|---|
| | **Cases** | **Children** | **Cases** | **Children** | **Cases** | **Children** |
| Mexico | 309 | 474 | 75 | 120 | 384 | 594 |
| United Kingdom | 48 | 71 | 31 | 44 | 79 | 115 |
| Canada | 74 | 104 | 29 | 39 | 103 | 143 |
| Germany | 50 | 71 | 18 | 20 | 68 | 91 |

The United States assigned coordination of incoming cases to the National Center for Missing and Exploited Children (NCMEC) until April 2008 when coordination was returned to the Office of Children's Issues at the U.S. Department of State. This same office has provided assistance to left-behind parents in outgoing cases since ratification of the treaty. Now the Office of Children's Issues has taken over the responsibilities once served by NCMEC and facilitates the provision of *pro bono* or reduced fee legal assistance for the left-behind parent in incoming

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



cases (in this study, the fathers), may fund travel for left-behind parents to attend legal hearings or to be reunified with a child in the U.S. if the parent cannot afford this, and provides information and tracking of cases (U.S. Department of State, n.d.). Currently, the Department of State offers no formal assistance to taking parents who in this study were overwhelmingly mothers who were U.S. citizens, but will provide them with a list of attorneys experienced in Hague legal proceedings and other information on request.

**Exceptions to Return of a Child under the Hague Convention**

A judge must first make a preliminary decision that: (1) the habitual residence of the child was in a country other than the U.S.; (2) the country of habitual residence is ascertained; (3) the child is under the age of 16; (4) the amount of time elapsed between the filing of the court action and the date of the alleged wrongful removal or retention was less than a year; and (5) the retention in or removal to the U.S. was indeed wrongful, that is, the removal or retention breached the custody rights of a person, institution or legal body under the laws of the habitual residence and those rights were actually being exercised or would have been exercised but for the removal or retention. Once this decision is made, five exceptions or defenses may be available to a respondent to a Hague petition to prevent return of his or her children to the country of habitual residence. Although these exceptions, once established, allow the court to refrain from returning the child, they do not mandate that the child should stay in the country of the taking parent. The exception that is most applicable for battered women is premised on Article 13(b) of the Convention. This provision provides a defense exception if there is a "grave risk" that a child who is returned to the habitual residence will suffer "physical or psychological harm." This argument also applies if return would place the child in an "intolerable situation."

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The Hague Convention was drafted well before the social science literature on domestic violence and its risks for children emerged and nowhere in the language of Article 13(b) is exposure of a child to adult domestic violence cited as a rationale for finding grave risk. However, Switzerland recently expanded the definition of an intolerable situation in its implementing legislation to take account of a child's best interests and has been a strong advocate for international change on this issue (Weiner, 2008).

Another exception provided by the Convention is the issue of consent. If the parent filing a Hague petition initially consented to a child's removal then the taking parent can offer the other parent's consent as a defense against a Hague claim under Article 13(a). U.S. courts have stated that consent for the child's removal needed to be a formal "act or statement," such as "testimony in a judicial proceeding; a convincing renunciation of rights; or a consistent attitude of acquiescence over a significant period of time" (*Friedrich,* 1996, p. 1070).

Third, the Convention allows a child to remain with the taking parent if the filing of the action in the U.S. court has not occurred within one year of the removal or retention. This exception is provided for by Article 12 of the Convention. It is important to note that judicial opinions make clear that if a taking parent has hidden a child from the other parent, thus preventing the left-behind parent from contesting the removal, then the start of the one-year period may be delayed until the time the left-behind parent knew the location of his or her child. The one-year time limit was designed to prevent a left-behind parent who was aware of a child's location from delaying initiation of Court action for the child's return to the habitual residence.

Fourth, Article 13 of the Convention states that if a child objects to return, and has attained an age and degree of maturity at which it is appropriate to take the child's views into

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



account, the child's objection may constitutes an exception. The Convention allows each country to set its own standards as to when and whether a child's testimony may be solicited as part of the proceedings in determining the child's residence.

Finally, a court may refrain from ordering a child's return when return would contravene "the protection of human rights and fundamental freedoms" (Article 20). Weiner (2004) has argued that separating a child from his primary caregiver (the mother) and returning him or her to a home where domestic violence exists could be construed as a human rights violation under Article 20. Similar judgments about separating children from their mothers in cases involving domestic violence have been found to be a violation of both the mother's and child's constitutional rights in U.S. courts in the *Nicholson* decisions (see Lasner, 2008).

**Defining Domestic Violence**

We recognize that domestic violence is an experience in which men can be the victims of female perpetrators, or men and women may be abused by same sex partners. An extensive literature discussing perpetration of domestic violence reveals that men disproportionately perpetrate violence against women in intimate relationships (see Hamby, 2009). In addition, the global survey of Hague cases cited earlier (Lowe, 2007) found that the majority of taking parents were mothers who were primary caregivers for their children; unfortunately as information on domestic violence is not tracked, it is impossible to know how many of these women in Hague cases were victims of violence. Thus, this study focuses on men's violence against women in marriage or co-habiting relationships with children in common and where mothers were the taking parent.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Throughout this report we use the term "domestic violence," which has been defined by the American Psychological Association's Taskforce on Male Violence Against Women as, "Physical, visual, verbal, or sexual acts that are experienced by a woman or a girl as threat, invasion, or assault and have the effect of hurting her or degrading her and/or taking away her ability to control contact (intimate or otherwise) with another individual" (Koss, Goodman, Browne, Fitzgerald, Keita & Russo, 1994, p.xvi) and which is "committed by one partner against the other in a relationship" (APA Intimate Partner Abuse and Relationship Violence Working Group, 2002).

More recently, Dutton, Stark and their colleagues have expanded this definition of domestic violence to include patterns of coercive control (Dutton & Goodman, 2005; Stark, 2007). Coercive control is a pattern of behavior that utilizes intimidation and terror-inducing threats aimed at the goal of controlling a woman's (and sometimes her children's) behavior, relationships with other people, and independent action in the world. This pattern of coercive control is often produced through inflicting physical harm. Once physical violence has happened, it is possible to control a person with the threat of its reoccurrence, so physical violence may diminish as an overt behavior since emotional intimidation may produce the desired outcome. The dynamics of coercion differ from the kind of conflict found in other couples in which there is occasional violence, but whose violence is not clearly associated with an ongoing effort to control the other person's behavior. Some examples of coercive behavior include: isolating the woman from other people; threats to harm the woman, children or other people she loves; denigrating, degrading or demeaning statements to the woman; and enforced economic dependence.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



This study defines domestic violence as an ongoing pattern of intimidating behavior in which the threat of serious physical violence is present and may be carried out with the overall goal of controlling the partner. This definition recognizes that domestic violence is more than an isolated experience of physical violence, and that any act of violence has to be evaluated within the overall context of reported relationship dynamics. For example, a single hit in the midst of an intense disagreement, while violent, would not constitute domestic violence in this study, unless it was coupled with behaviors intended to control the other person.

**Definition and Impact of Parental Child Abduction**

The definitions of parental abductions vary and some are so broad as to include keeping a child for one night longer than permitted on a visit. For the purposes of this study, however, we adopted Finkelhor, Hotaling and Sedlak's (1991) policy-focused and narrower definition. Using this definition, parental abductions occur when one of three conditions are met: "(a) an attempt was made to conceal the taking or the whereabouts of the child and to prevent contact with the child; or (b) the child was transported out of state; or (c) there was evidence that the abductor had intended to keep the child indefinitely or permanently affect custodial privileges" (p. 808). Abductions are sometimes labeled "family abductions" because extended family members, such as grandparents, often help in the process of removing or retaining children. In Hague Convention cases, because international borders are crossed the separation from a left-behind parent may be permanent with only periodic visits possible.

The literature on the impact of parental abductions on children and left-behind family members is limited to a series of case studies and surveys of parents, most of whom were left-behind and not taking parents. These studies are fraught with methodological problems, many

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



are now two decades old but they do shed some light on how abducted children and left-behind parents are affected by abductions, as briefly summarized below.

***Effects on children.*** The effects of parental abduction on children can vary based on the nature and length of the abduction, age of the child, whether or not siblings were also abducted and children's awareness of the abduction (Cole & Bradford, 1992; Greif, 2009). For example, a study of 20 Canadian families with 37 children abducted by mostly male, non-custodial parents (Cole & Bradford, 1992) found few differences between abducted and non-abducted, control children. However, the abductions in this study were often very brief (65% less than a week), siblings often were abducted together, and a third of the children did not know that what happened to them was an abduction. Other research included longer abductions of often only one child. For example, Forehand, Long, Zogg and Parrish (1989) studied 23 abducted children in 17 families by asking left-behind parents to complete several questionnaires after the return of their children. Of 48 parents to whom questionnaires were mailed, only 17 returned completed surveys (a low 35% response rate). These left-behind parents retrospectively rated their children on a 48-item Parent Rating Scale with subscales focused on conduct and learning problems, psychosomatic complaints, impulsive hyperactivity and anxiety. Parents rated their children as showing significantly more problems at post-abduction when compared to pre-abduction on all four subscales and improving to somewhere in between pre and post-abduction levels at the time of the survey (between 3 and 26 months after the abduction, mean was 10.8 months post-abduction ). The authors point out, however, that even at the worst point (post-abduction) parents' ratings indicated their children showed "just a little" in each problem areas as opposed to "not at all." In other research from the same period, Sagatun and Barrett's (1990) study of 43

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



abductions in northern California is one of few in which mothers were the majority of abductors studied (25 mothers versus 18 fathers). Professionals who had worked with the children reported varied impacts of the abductions:

> "Some [children] longed to remain with the abducting parent, while others were happy to return to the victim parent. Some children had been severely traumatized by the abduction or concealment, and many will be unable to recover from the loss of a long separation from one parent. Some were terrorized or tortured through the lies they were told and by the manipulation of their identities in the process of concealment. In some cases their childhood had been stolen from them by parents who severely over-identified with them. A few children weathered the abduction experience relatively unscathed, these were usually children whose separation from their other parent was short and whose removal was nonviolent" (p. 440).

Greif and Hegar's (1993) study found similar varied effects of abduction on children. They mailed surveys to 2,666 left-behind parents, of which 371 parents of 519 children completed and returned the survey (a return rate of 15% to 27% depending on estimates how many duplicates were included in the original mailing). The researchers concluded that "not all children are irreparably damaged" (p. 140) by the abduction and the impacts appeared to vary based on the protective or buffering factors in each child's experience. Left-behind parents reported that 54% of the children had experienced a decline in functioning between pre- and post-abduction, 21% remained the same and 24% of the children improved. Functioning focused on behavior at home, overall health, grades and behavior at school. The great majority of left-

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



behind parents believed the time spent with the abductor was very upsetting (48%) or somewhat upsetting (45%).

Perhaps the most systematic and well-designed study of parental abductions was Finkelhor et al.'s (1991) analysis of the first National Incidence Study of Missing, Abducted, Runaway and Thrownaway Children (NISMART-1) survey. The NISMART-1 was conducted in 1988, achieved an 89.2% response rate and surveyed 10,544 randomly selected households in which caregivers were asked about the experiences of their 20,505 children aged 17 or younger. A total of 59 children were confirmed to have been abducted in the prior 12 months using the narrower, policy-focused definition provided earlier in this chapter. Of the 59 children, none of the children were reported to have been sexually abused, 5% were physically abused, 8% were reported to be injured or harmed, 17% were said to have suffered serious mental harm and another 35% were reported to have suffered mild to moderate mental harm. The authors state, "most of the children, it would appear, did not suffer serious harm as a result of the episode" (Finkelhor, et al., 1991, p. 814), but it is clear that some did suffer from injury and serious to moderate mental harm.

***Effects on left-behind parents.*** The taken children are not the only perceived victims in parental abductions in the published literature. In a very limited way the literature on abductions also discusses the impact of abductions on both left-behind parents and siblings. Spilman (2006), in a study of 146 families that had experienced abductions, including 42 that had experienced abduction by a family member, found that parents whose child was abducted by a family member showed similar levels of anxiety, interpersonal sensitivity and depression compared to parents whose child was abducted by a nonfamily member. Similarly, Janvier, McCormick and

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Donaldson (1990) surveyed 65 left-behind parents (a 23% return rate), 26 of which had children taken to other countries. Left-behind parents reported negative personal effects such as sleep disorders, anxiety and depression. Janvier et al. (1990) found that mothers whose children were abducted internationally reported the highest number of negative effects (20) when compared to fathers with children taken internationally (8) and mothers (17) or fathers (14) who had children abducted domestically. Chiancone, Girdner and Hoff (2001) conducted one of the first studies focused solely on international parental abduction, interviewing 97 left-behind parents. One out of five left-behind parents reported using prescription drugs to cope with stress during the abduction period, 85% relied on family and friends for support and just less than half reported using professionals for counseling related to emotional difficulties.

Overall, the small body of research on both domestic and international abductions points to varied outcomes for both children and the left-behind parents. Some children are profoundly affected by the abduction experience while others show few negative impacts depending on specific characteristics of their abductions. The view that taking parents have committed a wrongful act has resulted in little research attention to the consequences of abduction on taking parents. As noted in the global survey of Hague cases (Lowe, 2007), the majority of taking parents are mothers who are the primary caregivers of their children. Our study reported here sought to help fill this gap in information about the effects of abduction on the lives of taking parents.

**Overlap between Domestic Violence and Child Abduction**

Domestic violence is a serious problem for women internationally. In 2005, the World Health Organization conducted surveys on the prevalence of physical and sexual violence against

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



women in 10 countries. Rates of violence ranged from 15 to 71 percent across these countries, with most countries falling between 29 and 62 percent (Garcia-Moreno, Jansen, Ellsberg, Heise & Watts, 2005). Although cross-national studies have focused on measuring serious physical and sexual violence, domestic violence is more broadly understood (as stated earlier in this chapter) to consist of a pattern of coercion and intimidation in which violence is used as a means to the end of controlling a partner or other family members (Dutton & Goodman, 2005; Stark, 2007). Domestic violence can be inflicted primarily on the partner, but research on child abuse has found that in approximately half of families where a partner is physically violent to their spouse (typically the father to the mother), the children in the household are also physically or sexually abused (Holden, 2003; Lee, Kotch & Cox, 2004; McGuigan & Pratt, 2001). Many children physically intervene to protect an abused parent, further endangering the child (Edleson, Mbilinyi, Beeman & Hagemeister, 2003). In these families, fear and intimidation is used to control all family members, not just the spouse.

Domestic violence frequently plays a role in parental abduction cases. For instance, Greif and Hegar's (1993) book on parental kidnapping provides important insight about the frequency of family violence in cases of parental abduction. Their survey of 368 parents and three grandparents in 45 states and six countries is one of the largest and most frequently cited in the literature. The authors constructed five types of parental child abductions, three of which include taking or left-behind parents who were violent towards their partners. Overall, the majority (54%) of all the marriages in which abductions occurred involved parent-to-parent domestic violence and 30% of the left-behind parents either admitted to being violent toward other family members or had been accused of it.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Similarly, Johnston, Sagatun-Edwards and their colleagues (2001) studied 634 abduction cases in two California counties. While these were primarily domestic abductions (only 7.5% were abducted out of the U.S.), they found that "mothers who abducted were more likely to take the children when they or the children were victims of abuse, and fathers who abducted were more likely to take the children when they were the abusers" (p. 2-3). Regardless of the mother's role in the abduction, children in this study were more likely to be placed with their mothers at the end of the case. In a study of 93 left-behind parents whose children were abducted to other countries, Chiancone et al. (2001) found that 84 of the 97 left-behind parents reported the abductor had threatened their lives or those of other family members before the abduction. Taking parents were equally divided between mothers and fathers. Of those left-behind parents reporting threats, 60% said their lives had been threatened, 21% reported their children's lives were threatened, and 42% reported the abductor also threatened the lives of others. Interestingly, domestic violence was not a focus of this work and was treated briefly in one table and one paragraph in the report. Their results, however, suggest that violence and threatening behavior characterized these families in which international parental abduction occurred.

The results of these three studies appear somewhat unclear when trying to understand who are likely victims and perpetrators of violence among taking and left-behind parents. Chiancone et al. (2001) found that most of the taking parents were reported to have used violent threats against those left-behind but they do not report the gender of those making threats. In their study, mothers and fathers were roughly equally likely to be the taking parent but threats were not reported by gender. Johnston and her colleagues (2001) found differing motives among mothers and fathers who abducted their children, with mothers fleeing for safety from abusive

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



partners and fathers likely using the abduction as part of their coercive control of the left-behind parent. While it is difficult to come to a conclusion as to whether taking or left-behind parents are more likely to use violence in the relationship, it is clear that patterns of domestic violence characterize a significant portion of the families involved in parental abduction cases.

Finally, Reunite International (2003; Freeman, 2006, 2009) has undertaken a series of studies of international child abductions that have taken place within Europe. Their 2003 study of 22 families in which 33 children were returned to another country within Europe revealed that the great majority of children abducted were either living solely with their mothers or with both parents at the time of the abduction, that mothers were the primary abductors and caregivers of their children and that taking parents primarily identified either abuse of themselves or their children as a reason to leave the country where they were residing. In Reunite's study, 12 of the cases involved undertakings (stipulations by the judge that are expected to be followed by the petitioner in the other country) that were to be implemented upon return of the child, half of which involved protection from violence. Yet in two-thirds of these cases, court stipulations were not implemented in the other country. More worrisome is the fact that undertakings focused on child safety on return were not carried out in *any* of the six cases in which they were made. Ten of the 11 taking mothers in this study felt that both she and her children were harmed as a result of their return to the other country. In the end, the majority of taking mothers gained custody of their children despite having abducted them, as was also found by Johnston and her colleagues in California.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Grave Risk to Children as a Result of Exposure to Domestic Violence**

In only a few Hague Convention cases have judges accepted that children's exposure to their mothers' victimization at the hands of an abusive partner represents a grave risk of harm to the children and denied the fathers' petitions for their children's return (see Chapter 10). This is in contrast to a burgeoning social science literature that points to significant risks of harm to exposed children and U.S. domestic child custody legislation and rulings that recognize these harms. In this section we review some of the social science literature on children's exposure to domestic violence and the potential harms it may cause.

***Defining Child Exposure.*** Several different terms have been used to define children's exposure to adult domestic violence. The terms "witnesses" or "observers" of violence have frequently been used (Fantuzzo & Mohr, 1999; Kitzmann et al, 2003), but these terms are being replaced with an expanded terminology referring to child "exposure" to domestic violence. Exposure usually refers to a wide variety of experiences of children in homes where one adult is using violent actions to control another adult (Edleson, 2006; Fantuzzo & Mohr, 1999). For example, Kitzmann et al. (2003) expand the definition of witnessing violence to include hearing the violence and observing the aftermath of abuse, for example, bruises on their mother's body or movement to a shelter. In some instances of exposure, children may respond by becoming involved in the violent incident. Child involvement may vary from becoming actively involved in the conflict to distracting him or herself and the parents (Garcia O'Hearn, Margolin, & John, 1997; Peled, 1998). For example, children in homes in which violence was occurring were nine times more likely to verbally or physically intervene in parental conflicts than comparison children from homes in which no violence occurred (Adamson & Thompson, 1998). Similarly,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



based on the reports of 111 battered mothers, Edleson et al. (2003) found that 36% of the children frequently or very frequently yelled to stop violent conflicts, 11.7% frequently or very frequently called someone for help during a violent event, and 10.8% frequently or very frequently physically intervened to stop the violence.

***Incidence of Child Exposure.*** The degree to which American children are exposed to domestic violence events in their homes has only been recently established through a national random sample survey. A 2008 national survey of 4,549 parents (for children under 14) and children (ages 14 to 17) found that 6.2% of American children were exposed to domestic violence in the past year. The same survey found 16.3% of children of all ages were exposed to domestic violence since birth but when asking older children directly - those 14 to 17 years of age - over a quarter (27%) reported they were exposed to domestic violence in their lifetimes (Finkelhor, Turner, Ormrod & Hamby, 2009).

A study of police responses to domestic violence in five U.S. cities found that younger children are more likely to be present than older children when police arrive at homes where domestic violence has occurred (Fantuzzo, Brouch, Beriama & Atkins, 1997). Children of all ages may be exposed to extreme violence. For example, a study of intimate partner homicides and attempted homicides involving 237 children in 10 U.S. cities found that children were frequently present during these extremely violent events. Of 146 children whose mothers were murdered, 35% witnessed their mother's death and 37% found their murdered mothers. Of 91 children in families with an attempted homicide, 62% witnessed the violent event and 28% found their mothers afterwards (Lewandowski, McFarlane, Campbell, Gary & Barenski, 2004).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Children exposed to domestic violence may also be direct victims of physical and sexual maltreatment. Reviews examining the co-occurrence of documented child maltreatment and adult domestic violence revealed a 41% median co-occurrence of child maltreatment and adult domestic violence (Appel & Holden, 1998) with the majority of studies finding a 30% to 60% overlap (Edleson, 1999; Holden, 2003; Lee, Kotch & Cox 2004; McGuigan & Pratt, 2001).

Similar data are not available on overseas Americans and their children, but there is little reason to think that overseas children's exposure would be substantially different. It does appear that large numbers of children are exposed to domestic violence each year and over their lifetimes which raises serious concerns about the impact of this exposure on their child and adult development.

***Impact of Child Exposure.*** Children can be significantly harmed by exposure to violence even when they are not themselves direct targets of physical or sexual violence (e.g., Carlson, 2000; Rossman, Hughes, & Rosenberg, 2000). Studies of children who are both victims of violence and exposed to parental violence show that each experience uniquely contributes to behavior problems among children (Litrownik, Newton, Hunter, English & Everson, 2003). Children's experiences and expectation of consistent safety and care may be disrupted and replaced by instability among caregivers (Gewirtz & Edleson, 2007). This disruption can lead to serious developmental difficulties, including emotional and behavioral problems and academic difficulties (Skopp, McDonald, Jouriles, & Rosenfield, 2007; Turner, Finkelhor & Omrod, 2006; Bogat, DeJonghe, Levendosky, Davidson, & von Eye, 2006; Carlson, 2000; Scheeringa & Gaensbauer, 2000; Fantuzzo, Brouch, Beriama, & Atkins, 1997).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The specific effects of exposure to domestic violence have been well documented. For example, the frequency of adult domestic violence in a home is highly associated with children's behavioral problems, including externalizing behavior such as aggression and disobedience, and internalizing behavior such as depression, sadness and lack of self-confidence (Jouriles, Norwood, McDonald, Vincent & Mahoney, 1996). In general, children exposed to domestic violence demonstrate lower cognitive functioning (Rossman, 1998) and reduced skills for resilience, including lower capacity in the areas of social competence, problem solving, autonomy and self-efficacy (Appel & Holden, 1998; Graham-Bermann & Edleson, 2001). In a review by Margolin and Gordis (2004), the consequences of being exposed to violence in a child's home included both short- and long-term impacts on the child. Short-term impacts included aggression and delinquency; emotional and mood disorders; posttraumatic stress symptoms such as exaggerated startle, nightmares, and flashbacks; health-related problems and somatic symptoms such as sleep disturbances; and academic and cognitive problems. Long-term impacts included an increased likelihood that a child will become either a victim or perpetrator of aggression later in life.

Overall, meta-analyses by Chan and Yeung (2009), Evans, Davies and DiLillo (2008) , Kitzmann et al. (2003), Rhoades (2008), and Wolfe, Crooks, Lee, McIntyre-Smith, and Jaffe (2003) drawing from studies over more than two decades have shown children exposed to domestic violence to exhibit significantly greater social and behavioral problems than children not so exposed. A key point in this literature is that exposed children were not significantly different than children who were physically abused or who were both physically abused and exposed to violence (Kitzmann et al., 2003). Thus, the research to date allows one to argue that a

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



child's exposure to domestic violence may create similar negative outcomes for a child as does direct child abuse victimization and potentially pose a grave risk of harm to the child.

**American Courts and the Recognition of Domestic Violence Exposure to Children**

Over the past two decades a great deal of change has occurred not only in the social science knowledge base but also in U.S. laws concerning child exposure to domestic violence. These new laws focus most often on criminal prosecution of violent assaults where children are present, custody and visitation decision-making, and the child welfare system's response (Dunford-Jackson, 2004; Lemon, 1999; Mathews, 1999; Weithorn, 2001).We will only focus on legislative changes concerning custody as these are most relevant to determinations of grave risk and intolerable situations the child might face on return to his or her country of habitual residence and probable residence with the violent father.

***U.S. domestic court decisions on custody and access.*** Most U.S. states now include the "presence of domestic violence" as a criterion that judges may use to determine custody and visitation arrangements when disputed. In most jurisdictions here and in other Western countries there has been an assumption that both parents have the right and ability to share custody of and access to their children (Eriksson & Hester, 2001). In approximately two dozen U.S. states, however, this presumption has been reversed in what are commonly referred to as "rebuttable presumption" statutes. Rebuttable presumption statutes generally state that when domestic violence is present it is against the best interests of the child for the documented perpetrator to be awarded custody until the adult perpetrator's safety with the child is assured. California Family Code is an example of a rebuttable presumption statute. Under § 3044 "there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



has perpetrated domestic violence is detrimental to the best interest of the child." California's code outlines six factors to consider in assessing whether a perpetrator of domestic violence has overcome this presumption, including no new violence or violations of existing orders and successful completion of assigned services. In perhaps the strongest rebuttable presumption statute passed to date, the State of Wisconsin's Legislature established that guardians *ad litem* have the responsibility for investigating all accusations of domestic violence and reporting their conclusions to the judge. Wisconsin's law instructs judges to make domestic violence their top priority by stating that "if the courts find…that a parent has engaged in a pattern or serious incident of interspousal battery [as described in statutes], or domestic abuse, the safety and well-being of the child and the safety of the parent who was the victim of the battery or abuse shall be the paramount concerns in determining legal custody and periods of physical placement" (Wisconsin Act 130, §25, 767.24(5)).

***Changes in court practices.*** Many changes have occurred in U.S. courts in regard to how domestic violence is considered when children's well-being is at stake. Perhaps one of the largest federal efforts in this area is known as the *Greenbook Initiative* (see http://www.thegreenbook.info). This *Initiative* evolved from a national discussion over a decade ago. The National Council of Juvenile and Family Court Judges (NCJFCJ), supported by the David & Lucile Packard Foundation, convened a national working group in the late 1990s to focus on the fragmentation of services provided to families with children where adult domestic violence was occurring. These families' children may have been direct victims of child abuse and neglect and/or exposed to the violence by adults against other adults in their homes. The result was a set of best practice guidelines published in 1999 as *Effective Intervention in*

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



*Domestic Violence and Child Maltreatment: Guidelines for Policy and Practice* (NCJFCJ, 1999). This document has become known as the *Greenbook*, deriving its name from the color of its cover. The *Greenbook* was the subject of a multi-pronged effort by eight federal agencies starting in the Fall of 2000.

The *Greenbook* recommended best practices focused on three primary systems: child protection services, domestic violence prevention services and the juvenile and family courts. It identified practice and policy changes necessary both internally and between systems to reduce fragmentation and increase cooperation toward a goal of improving the safety of all victims in a family – whether adult or child – and holding perpetrators of violence accountable.

Hague case decisions are *not* custody decisions but several of the allowable defenses or exceptions, such as Articles 13(b) and 20 do allow judges to consider the possibility of further harm if the child is returned to his or her country of habitual residence. As such, Hague decisions in U.S. courts, be they federal or state, are likely influenced by the vast changes over the past three decades since the Hague Convention was drafted in social science knowledge and domestic laws as well as judicial decision making regarding domestic violence.

A key policy recommendation in the National Council's *Greenbook* was that children should remain in the care of their non-abusive parent or parents, whenever possible. While judges hearing Hague cases are not to decide on the custody arrangements, these new state laws, suggested policies and practices do shed light on factors judges may consider when deciding whether to uphold or deny a petition for a child's return based on grave risk of harm, intolerable situations and violations of a child's human rights.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Purpose of the Study**

The Hague Convention was originally intended to protect children from the harm of abduction as well as custodial parents from having the other parent unlawfully remove or retain a child in another country. In practice, the Convention is now often used against mothers who are the primary custodians of their children. The literature reviewed above on parental abduction indicates that domestic violence is often occurring in families where a parent decides to abduct a child. Seldom are current U.S. laws such as ICARA or treaties such as the Hague Convention interpreted in light of the social science research on children's exposure reviewed above. In cases where women cross international borders with their children to escape abuse, they may be treated as potential criminals, rather than as women fleeing from a seriously dangerous situation in countries where many barriers to help may exist.

Little empirical research examines the perspectives of taking mothers and their experiences with domestic violence. Information on what happens in these families is necessary to guide policy and practice in this area. This study focused in part on gaining an understanding of the experiences of battered mothers who relocate to the U.S. with their children and are subject to a Hague Convention petition to return their children to the habitual residence. Our interest is in describing what is occurring in these situations from multiple points of view to obtain a deeper understanding of how these mothers experience the intersection of domestic violence and our society's responses to them as child abductors. Therefore, we undertook a study with taking mothers who were respondents to Hague petitions in U.S. courts and who indicated that they had experienced domestic violence at the hands of the father petitioner. Since

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



so many Hague cases involve Latin American countries we specifically sought out a subsample of Latina mothers to participate in our study.

Based on our experience in domestic violence services and research, we chose not to interview father petitioners about their views of the circumstances of these cases. This decision was based on concern for the safety of the mothers who contacted the research study, and our knowledge that many women continue to experience harassment and physical violence from an abusive partner even after the woman ends an abusive relationship (Fleury, Sullivan & Bybee, 2000). To gain further information on how these cases are litigated and the role domestic violence plays in the legal decision-making in these situations, we interviewed lawyers who represented both taking mother and left-behind father. Where possible, we attempted to interview the mother, her attorney and the left-behind father's attorney in the same case. We also interviewed additional informants, including expert witnesses, a guardian *ad litem,* a paralegal and an advocate who had all worked on Hague Convention cases. Concurrently with the interview study, we also completed a comprehensive search of all published Hague Convention judicial opinions heard in U.S. courts where domestic violence was alleged.

Ultimately, this study seeks to understand from various viewpoints the experiences of mothers who allege they have been victims of domestic violence, who come to the U.S. with their children and then face Hague petitions in our courts. We specifically address the following research questions in this report:

1. What was the nature of the violence experienced by mothers and children prior to their decision to relocate to the United States?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



2. What resources did mothers have available and turn to in order to cope with the violence in the other country?
3. How were acts of domestic violence related to the establishment of habitual residence in families where Hague Convention petitions have been brought?
4. What relationship existed between the type of abuses mothers reported and the decisions judges made in regards to the Hague Convention petition?
5. What were the experiences of mothers and their children in the aftermath of the court's decision to grant or deny a Hague Convention petition for return of the child?
6. Were the experiences of Latin American mothers who were not American citizens unique in Hague Convention proceedings in U.S. courts and, if so, how?
7. What were attorneys' and others' views on the characteristics of Hague Convention legal processes when domestic violence was alleged by the taking mothers?
8. What factors did judges cite in their decision-making to grant or deny Hague Convention petitions in cases where the taking mother alleged domestic violence?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 2: METHOD FOR THE INTERVIEW STUDY

## Method Overview

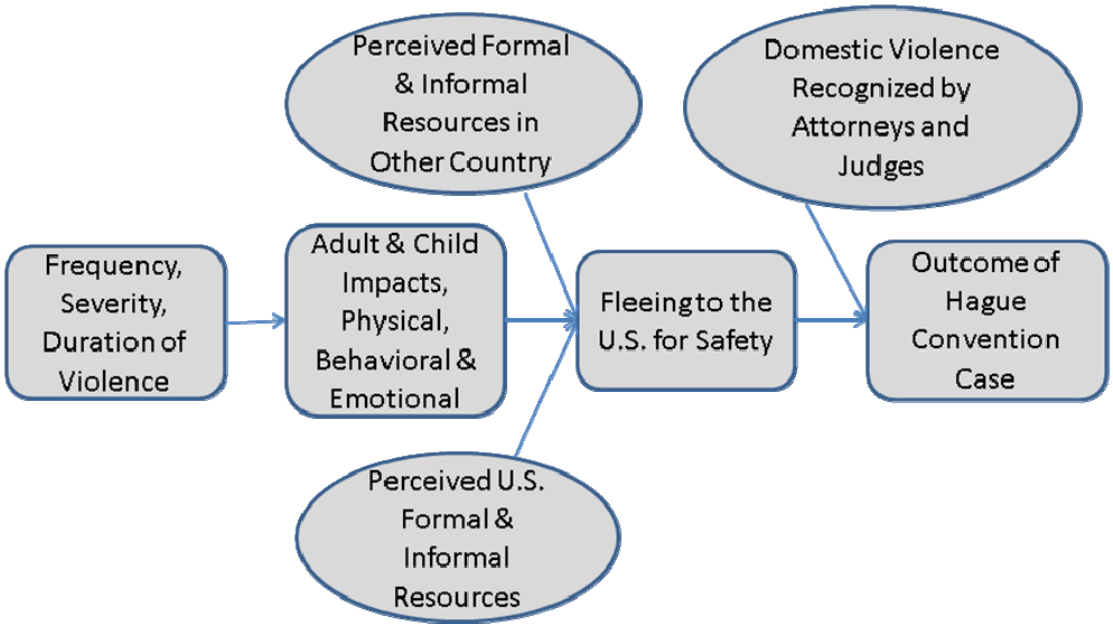
This study was guided by an initial conceptual framework based on previous research related to battered mothers' processes and decisions to end an abusive relationship. We examined this literature to develop a framework for considering what might influence a battered woman in another country to leave that country and come to the U.S. Previous research has identified three core areas that affect women's decisions to leave an abusive partner: the level of violence experienced (DeMaris, 2001; Kingston-Reichers, 2001), her evaluation of the effect the violence has on her and her children (Humphreys, 1995; Short et al., 2000), and her access to resources, particularly those specifically related to domestic violence (Panchanadeswaran & McCloskey, 2007). In the case of women leaving another country, we considered the role that resources in that country might play, as well as resources in the U.S. Once the Hague Convention petition was filed in the U.S., we also considered whether her domestic violence experience was addressed in the Hague Convention petition process, and in particular the role domestic violence played in the judge's decision about returning the children to the other country. Finally, with very little prior research available on what happened after a Hague Convention decision was made, we considered what the outcomes, in regards to safety for children and their mothers, resulted from the court's decision. Figure 2.1 depicts this initial conceptual model that guided us in developing our research questions stated earlier and the methods that follow.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Figure 2.1**

Initial Conceptual Model




Most of our information about battered women who are subject to a petition under the Hague Convention comes from published legal rulings that document only those aspects of the case relevant to the those decisions. As a result, we have only limited knowledge about the experiences, perspectives and actions of the mothers, attorneys and other key players in these situations. Therefore, a primary focus in this study was to solicit the stories of battered mothers who had been a respondent to a Hague Convention petition in U.S. courts.

Research methods that focus on providing in-depth descriptions and interpretations of phenomena (usually referred to as interpretive or qualitative methods) are the preferred method for: (1) developing knowledge about a phenomenon that is poorly understood (Marshall &

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Rossman, 1999); (2) explicating processes involved in interactions between individuals and social institutions around critical events like legal prosecution (Roe, 1994); (3) accessing a "hidden population," such as women who may be in the United States hiding from abusive partners (Faugier & Sargeant, 1997); and (4) understanding how individuals assign meaning to critical events within their particular historical and social context (McHugh, Livingston & Ford, 2005).

In order to understand what has happened to battered women who flee with their children from other countries, we focused on obtaining biographical, chronological and process-oriented data. A goal of interviewing mothers was to identify commonalities and discrepant areas among the women's experiences, and to examine whether patterns of experiences could be related to the outcome of the Hague Convention petitions.

To obtain information about the processes involved in Hague Convention cases, we also interviewed both respondents' and petitioners' attorneys about their views and responses to the women's stories, including whether or not they believed domestic violence had occurred and the role it should play in Hague petition decisions. In addition, we interviewed other key informants such as expert witnesses, a guardian *ad litem*, an advocate and a paralegal, all of whom had worked on Hague Convention cases involving domestic violence. We attempted to interview judges, but met with little success. Judges with whom we spoke suggested that because most judges have heard only one Hague Convention case while on the bench, they may be uncomfortable discussing their views about it as doing so might be viewed as a breach of judicial ethics in terms of giving case-specific information. Instead, we expanded our scope to review all published judicial opinions related to Hague cases in which domestic violence was alleged. We

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



report on the method and results of this published case review in Chapter 10. Finally, we did not interview the father petitioners for safety reasons specified below. Nor did we interview the children since approximately half of the children were in their father's custody and because we were focused primarily on the decisions of their mothers and the strategies and opinions of attorneys, judges and others in these cases.

**Human Subjects Approval**

The study was reviewed and approved by University of Minnesota Institutional Review Board (IRB) (#0610S93508). The University of Washington agreed to have the University of Minnesota IRB be responsible for the human subjects concerns in the study. The researchers also obtained a Privacy Certificate from the National Institute of Justice to prevent being forced by subpoena to provide any of the information in court that was obtained in the course of discussions with the mothers, attorneys and other informants.

Because the interviews occurred over the phone, and because almost half of the women contacted were outside of the U.S., we obtained permission to gain verbal consent rather than written consent from the respondents. An Information Statement (see Appendix B) containing all the same information as a traditional consent form was sent to each participant, usually by email. At the beginning of the interview, the Information Statement was reviewed and participants were encouraged to ask any questions they had. Mothers were offered the option of being anonymous and making up pseudonyms for themselves and other people in their stories, but none chose to do so. All interviews were confidential. Once tape recording began, participants were asked on tape for their verbal consent to participate in the study.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



At the beginning of each mother's interview, during the informed consent process, we asked about potential immediate threats to the mother's safety (e.g., whether the abusive partner was within earshot). During the course of the interview, if the woman became distressed, she was reminded about the voluntary nature of participation and asked if she wanted to continue. Verbal support was offered during the interview for women who became noticeably distressed. Researchers also have an ethical responsibility to respondents that transcends the collection of data. In this research, this responsibility meant ascertaining from the women whether they had safety plans as needed, providing resource and referral information, and ensuring that no harmful effects occurred as a result of the interview. Each mother received a follow up contact within 1 - 3 days of the interview to assess whether she had any concerns following the interview.

Confidentiality of all participants was ensured by keeping all materials relevant to the research project in a locked file in a locked office, or in secure computer locations that were protected by firewalls and passwords. Access to materials was limited to project staff as required for completion of project duties. All staff signed confidentiality agreements (see Appendix B).

One of the issues involved in this study is the relatively small number of women who have had Hague Convention petitions filed against them in U.S. courts, and the threats this poses to the confidentiality of these women and their families. For instance, some of the women fled from small countries where their case may have been the only one heard from that country in U.S. courts. Just by knowing the country from which the Hague petition originated, the woman could potentially be identified. In another circumstance, one of the principal investigators entered the terms "Hague" and a specific detail about a woman's residential setting and continent into a search engine. The woman's published legal case was listed as the first item generated by

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the search. As a result, special care has been taken to protect the confidentiality and safety of the women, attorneys and others who volunteered to be a part of this research. The following steps have been taken to ensure the confidentiality of materials presented in this report:

1. Pseudonyms are used in all cases for all persons involved in the case. Where direct quotes are used, information that could identify the woman's case has been deleted or redacted.
2. Individual countries are not identified; instead regions of the world (i.e., North-Western Europe, the Mediterranean, Latin America and Asia) are used.
3. Information presented in this report has been read by external reviewers who were familiar with the Hague Convention or our research methodology. These reviewers were instructed to look for places in the report where they believed that enough information was given that a woman's identity could be discovered. In these situations, the report was revised to maintain the woman's confidentiality.

**National Advisory Board**

We created a National Advisory Board to help us consider human subject safety, interview and recruitment procedures, understand our results and consider the best methods of disseminating our findings. The National Advisory Board members included:

Hon. Barbara Madsen, Chief Justice, Washington State Supreme Court

Hon. Ann Schindler, Judge, Washington State Court of Appeals

Prof. Merle H. Weiner, Philip H. Knight Professor, University of Oregon School of Law

Chad Allred, J.D., Attorney-at-Law, Ellis, Li & McKinstry, Seattle, Washington

Barbara Hart, J.D., Battered Women's Justice Project & University of Southern Maine

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Paula Lucas, Founder/Executive Director, The American Overseas Domestic Violence Crisis Center, Portland (OR)

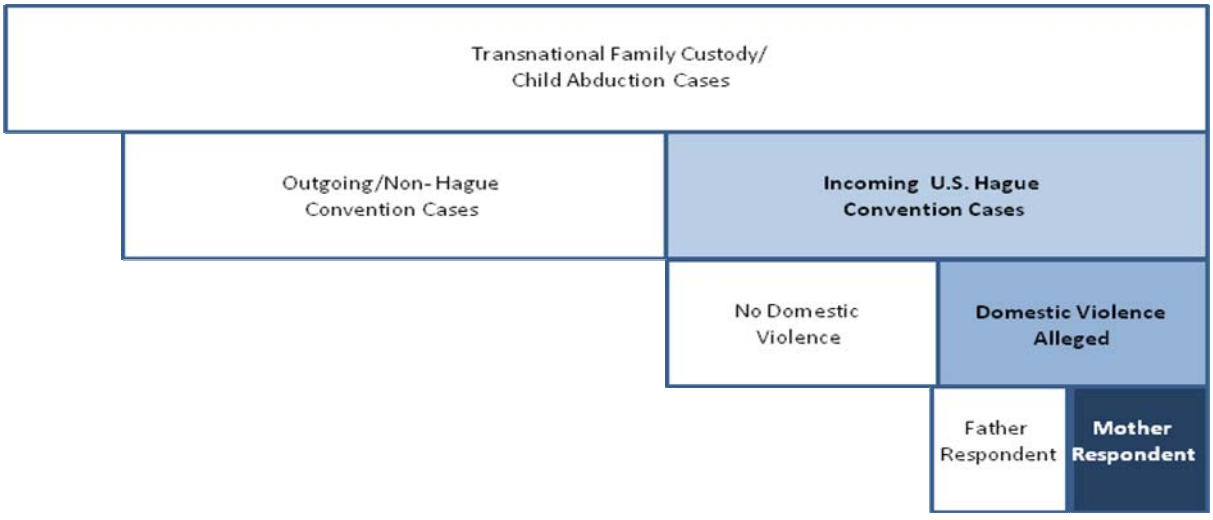
Sarah Ainsworth, J.D., Senior Legal & Legislative Counsel, Legal Voice, Seattle.

Roberta Valente, J.D., General Counsel, National Network to End Domestic Violence, Washington D.C.

**Target Sample**

Figure 2.2 below illustrates the relationship of international parental abduction to the types of Hague Convention cases that are the focus of this study. The boxes in this figure are not sized proportionally to the number of cases, rather they are laid out only to identify the segment of the population of all Hague Convention cases that we studied.

**Figure 2.2** Target Sample



This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Focus of the Hague Domestic Violence Study**

As noted previously, international child abduction cases can be resolved outside of the legal system, or may be heard as custody cases within state court systems without invoking the Hague Convention. In these cases, decisions are made at a local level. Left-behind parents in other countries have the right to initiate Hague proceedings if they feel their children have been wrongfully removed or retained in another country. These cases in the U.S. are split between incoming and outgoing Hague petitions. The focus of this study is on the *incoming* cases, those that are heard in U.S. courts and, therefore, raise issues related to the treatment of battered women within the U.S. legal system. An unknown proportion of incoming Hague cases include allegations of domestic violence in the family, so these cases in particular were sought as part of this study. Finally, either a father or a mother could be identified as the taking parent in an incoming Hague case. The focus in this study, as pointed out in Figure 2.2, is on those mothers who have left another country and relocated to the U.S. with their children, and are identified as the respondents of a Hague petition filed in U.S. courts.

**Recruitment**

***Reaching taking mother in U.S. Hague Convention cases***

We used three methods to reach women who had been respondents to a Hague petition in U.S. state or federal courts. First, we established routes by which women who heard about the project could contact us directly. Second, we identified attorneys who had participated in Hague cases and contacted them about whether they had represented an eligible woman. Third, we

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



worked with an international advocacy organization to provide information about our study to women with whom they were working.

***Research website and toll-free number.*** We anticipated that women who had been involved with legal petitions under the Hague Convention might be reluctant to talk with researchers and could be difficult to find because they may be in hiding from and/or in fear of their abusive partners. Therefore, our first recruitment task was to create a website that described the research project and provided information about each of the researchers, so that prospective participants in the study would be able to evaluate the legitimacy of the research endeavor. Although we did not track how women found about the study, it is possible that some women discovered the study website while searching for information on the Hague Convention.

The website titled "Hague Domestic Violence Research Project" was launched in January, 2007; a revised version of the website that no longer has recruitment information and is being used for dissemination purposes continues to be available at: http://www.haguedv.org/ (see Appendix C for a screen copy of the *original* home page). The recruitment website consisted of six areas: a description of the research study; biographies of each of the research study team members, including links to their university websites where available; information for mothers interested in the study, including a downloadable version of the Information Statement; a section on privacy and confidentiality of data gathered for the study, including links on addressing internet browser safety for battered women; information for respondent and petitioner attorneys, including a downloadable version of the Information Statement; and information for judges, including a downloadable version of the Information Statement.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Based on our knowledge of the demographics of international parental abduction cases in the U.S., we knew that a significant minority of the involved families had left Latin American countries. In order to recruit Spanish-speaking women into the study, all the materials for the mother's portion of the website and interview materials were translated into Spanish. The Spanish translations were then reviewed and corrected by Luz Lopez, Ph.D., an Assistant Professor at Boston University, research consultant to the study and a native Spanish speaker. Spanish information could be accessed through a prominent link on the home page.

A toll-free number (1-866-820-4599) was also established for the research project and rang directly to a voice mailbox. A recorded message in both English and Spanish instructed women to provide either a phone number or an email address for the research team to use to contact them. Women who obtained information about the study via the website could also contact study personnel via an email address (info@haguedv.org).

***Identifying attorneys who had represented battered mothers in Hague cases.*** Another step in sample construction was to identify attorneys who had represented women in published Hague Convention cases involving domestic violence and heard in U.S. courts. The Access to Justice Institute at Seattle University had previously posted 36 publicly available Hague Convention cases on its website. (This site is no longer online, but the case information located there was transferred to the current www.haguedv.org website.) Our initial attorney recruitment list was constructed through review of the cases on this Access to Justice Institute website. WestLaw and Lexis-Nexis searches to identify additional Hague Convention cases involving domestic violence were conducted by volunteer law students from three law schools associated with the Minnesota Justice Foundation during the first year and a half of the study, and through

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



these searches we identified additional attorneys who were approached about recruitment of mothers to the study. We did not distinguish between respondent and petitioner attorneys at this stage in the recruitment process, expecting that some attorneys may have represented both petitioners and respondents.

Attorneys on this list were contacted by email and by telephone seeking their voluntary participation in the study and their cooperation in passing information from the research study team to their former clients who were taking mothers and respondents in a Hague Convention case. The research team, following our approved human subject protocols, only responded to mothers' inquiries and never initiated a first contact with a taking mother. We used snowball sampling, a technique that relies on contacts between similar persons within social networks to identify members of hidden or difficult-to-reach populations (Berg, 1988). Thus we also asked these attorneys to identify other attorneys who they believed had represented parents in Hague Convention hearings. We further attempted to use snowball sampling with the mothers we interviewed, but found that none of the mothers were aware of any other women who had been respondents to Hague petitions.

Through these various methods, we identified 102 attorneys who had represented either a petitioner or a respondent in a Hague case. The project was able to speak with 77 attorneys, the remaining 25 did not respond to three or more calls, emails placed to them or could no longer be located. Of those reached, 51 attorneys reported that they had represented a mother who the attorney believed had experienced domestic violence. Each of these attorneys was given information to mail to their client about the study.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Advocacy outreach to mothers.*** In addition to contact with attorneys, we also provided information to the staff of the American Domestic Violence Crisis Line (now known as the Americans Overseas Domestic Violence Crisis Center). Women who experienced domestic violence while in other countries contact this organization, and some of their clients had been respondents to Hague petitions. We provided information about the study to this organization and asked their staff to provide information about contacting the research team to women they thought would be eligible participants.

***Constructing the Sample of Battered Mothers***

As stated above, informational packets about the study were developed in both English and Spanish for battered mothers. Respondent attorneys and staff of the advocacy organization were asked to mail or email these materials to the mothers they had represented along with information about the study website. These packets explained the purpose of the study, how the woman's safety would be maintained if they choose to participate, and the risks and benefits to the woman. Women who participated received $100.00 for completing the telephone interview.

Inclusion criteria for all battered mother participants were (see Appendix D for a copy of the Phone Script used in the study):

1. At least 18 years of age or older;
2. Had a petition filed against her for wrongful removal of child(ren) under the Hague Convention in a U.S. state or federal court;
3. Her Hague case had concluded and was not actively under appeal;
4. Reported that she was in a situation that could be construed as domestic violence by answering yes to at least one of the following questions:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



a. *Did this partner ever threaten to throw something at you, hit you, or threaten to harm your children?*

b. *Did you or have you ever felt afraid of this partner?*

c. *Have you ever considered yourself to be a victim of abuse from this partner?*

5. Were able to participate in a telephone interview that was up to 4 hours long, and completed on one or more occasions;
6. Were willing to have their interview taped and transcribed (with all identifying information later deleted); and
7. Had no medical or psychiatric conditions that would impair their participation.

In total, 45 women contacted the project to volunteer for an interview. Of these, 14 were not eligible for the project, either because they did not have a Hague case or their case was outgoing (being heard in the courts of another country). Five women contacted the project, but were not subsequently reachable to determine their eligibility. Three women were eligible to be interviewed, but no interview could be scheduled with them, usually because they could not find a time that allowed them to participate. One additional interview was completed, but in the course of the interview, it became clear that this woman's Hague case was being heard in another country's court, although she also had legal proceedings underway in a U.S. court. In one case, the audio recording equipment malfunctioned, so no transcript was available for this case. The final sample consisted of 22 women (74.1% of those eligible) who participated in an interview with the project staff.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Constructing the Sample of Respondent and Petitioner Attorneys***

After conducting interviews with mothers, we then went back to our list of attorneys and recruited respondent and petitioner attorneys to participate in the study. Our first efforts were to interview attorneys directly connected to the cases of the women interviewed in the study. Information from each woman's case was used to identify attorneys for interviews. We asked the women for permission to interview their attorneys at the end of her interview.

We interviewed 15 respondent attorneys (in 11 cases the attorneys represented mothers we had interviewed). Respondent attorneys who were not associated with a case of a mother we interviewed were identified from our initial efforts to recruit mothers for the study. We sought to maximize variation among respondent attorneys interviewed, so we actively solicited additional interviews from attorneys who either (1) had participated as respondent or petitioner attorneys in multiple Hague cases, even if they had not represented a mother we interviewed, since the majority of attorneys we interviewed had only had a single Hague case or (2) had represented a petitioner father's case opposite an already interviewed respondent mother's attorney.

Identifying petitioner attorneys was more challenging as many of the women we interviewed did not know the name of the left-behind father's attorney. Of the mothers we interviewed, seven had their cases published, so legal documents were available that allowed us to identify petitioner attorneys. In cases where we were able to talk with the mother's attorney, we sought information on the petitioner attorney. In total, we identified nine petitioner attorneys who were associated with a respondent case, and completed interviews with six of them. Two additional petitioner attorneys were also interviewed who were either specialists in Hague cases, or had represented large numbers of clients in Hague-related legal proceedings in the U.S.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Attorneys who participated received either $100.00 or were able to direct a contribution for the same amount to a charity of their choice after completing the interview.

***Constructing the Sample of Judges and Other Experts***

Judges were identified in nine of the mother's cases, seven in which the case was published and two additional judges were identified by interviewed attorneys. Multiple attempts were made to contact these judges by mail, phone and email. However, we were unable to have any judges who had heard a Hague case complete an interview for the project. We were able to interview one judge who had not heard a Hague case, but who had studied the Hague convention and been involved in consultation on it. We consulted with members of our Advisory Board who represented judicial organizations, or who were judges themselves, but had not heard Hague cases. The consensus was that since judges heard at most only a few Hague cases, with the modal number of cases being one, that they may see any interview as a breach of judicial ethics, by revealing their decision-making in a specific case. As a result, we shifted our data collection strategy to obtain the judicial rulings on Hague cases involving domestic violence that are discussed in Chapter 10.

Through our initial interviews, we identified that several women had various experts involved in their cases. As a result, we expanded our original scope and conducted interviews with five experts, including two expert witnesses who testified about the effects of the abuse for the children in the court proceedings, an advocate who had assisted a battered woman in a Hague case, an attorney appointed as a guardian *ad litem* in a Hague case, and a paralegal with extensive experience working on Hague cases. Each of these interviewees also received either

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



$100.00 or were able to direct a contribution for the same amount to a charity of their choice after completing the interview.

Table 2.1 describes the final data sources for this study, including the approximate length of texts and transcripts that were used in the analysis.

**Table 2.1**

Data Sources for Multi-Method Hague Convention Study

| Data Type | Data Source | Pages |
|---|---|---|
| Formal Texts | Hague Convention on the Civil Aspects of International Child Abduction | 12 pages |
| | International Child Abduction Remedies Act | 9 pages |
| | Judicial Opinions (47) | ~470 pages |
| Transcripts of Interviews | Mother Respondents | 702 pages |
| | Respondent Attorneys | 316 pages |
| | Petitioner Attorneys | 155 pages |
| | Other Experts | 73 pages |

**Data Collection Procedures**

Our interest in these interviews was to elicit the mothers' stories of their Hague experiences in whatever way they felt comfortable telling us, given that many of the experiences they had to share were traumatic to recall. The interviews focused on obtaining data from participants in a broad, open-ended way, rather than in the close-ended format typical of survey

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



research. We used an interview guide to ensure consistency across interviews and to incorporate ideas from our initial conceptual framework (see Appendix E). The interview guides were reviewed by members of the research team, the Advisory Board, and experts in social and legal research.

The narrative data collection approach used in this study was conceptualized as a process in which respondents were constructing an account of their experiences to respond to what they saw as the priorities of the interview process. As such, these stories have to be understood as partial accounts that are variable across time – the process of telling one's story changes that story, sometimes in subtle and sometimes in significant ways, depending on the revelations contained within the telling (Elliot, 2005). Additionally, the process of telling a story depends on the response of the "audience," in this case, the interviewers. While similar data may be elicited by any skilled interviewer, the final shape of a particular narrative may not be directly reproducible because of how the telling of a story shapes subsequent narratives and the responses of the interviewer (Hyden, 2008; Reissman, 2008).

Qualitative research emphasizes that the data collection process is flexible and should be continually refined based on information gleaned from interviewees. Once the mother had told whatever aspects of the Hague story were important to her, additional questions were asked if she had not covered key areas in her descriptions. Whenever possible, mothers were asked to give specific examples of events and to provide as much information on the chronology of events as possible. For both the mothers' and attorneys' interviews, the research team discussed the content and revised the interview guide to include additional questions based on information gathered in the first interviews (see Appendix E for the final interview guides).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Interview guide for battered mothers' interviews.*** The beginning of the interview with the mothers opened as broadly as possible with the question, "Tell us about the events that led up to the Hague petition being filed against you," and women were allowed to talk until they had provided as much information in response as they wanted. In addition to this opening question, further open-ended questions focused in six general domains: factors in her decision to leave, resources she used in the other country and in the U.S., effects of the situation on her children, barriers she encountered, legal processes around the Hague case, and recommendations she might have to improve the situation for other women. These questions were asked if the woman had not spontaneously provided an answer in her opening discussion. Closed-ended probes were developed for a limited number of questions which were primarily asked at the end of the interview. The interview guide was translated into Spanish and revised by Dr. Lopez.

The mothers' interviews took on average 2.5 hours to complete, ranging from 1.5 to 7 hours in length. More than one interview time was required in three instances because of scheduling and fatigue factors. Appendix E contains a copy of the Mother's Interview Guide.

***Interview guide for attorneys and other experts' interviews.*** Once attorneys and other experts agreed to be interviewed, the research team sent them an email asking for basic information about their experience with Hague cases in order to use the limited interview time on more detailed process questions. The interview guide began with the request, "Please tell me about your history and involvement in working with Hague Convention cases." Other open-ended questions focused on the role of domestic violence in these cases (including their estimation of the truthfulness of domestic violence reports and how they assessed for abuse), key issues in the cases they represented, advice for policymakers or other lawyers, and their thoughts

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



on how to improve the safety of battered mothers and children in these cases. These interviews lasted from 40 to 90 minutes in length. Appendix E also contains copies of guides for these interviews.

**Interviews and Transcription**

Interview data were collected using digitally-recorded telephone interviews. Interviews were conducted by members of the research team: Dr. Taryn Lindhorst, Dr. Jeffrey Edleson, Dr. Luz Lopez, and Ms. Gita Mehrotra. All interviewers were trained social workers with several years of experience in the field of domestic violence, and each had specific expertise in work with trauma or violence survivors. Dr. Luz Lopez conducted all the interviews with Spanish speaking women.

Respondents were required to initiate the first contact with our research team either by contacting the 1-800 number or via email. A project research team member then made a preliminary return phone call or sent a reply email to explain the nature of the study, discuss any safety issues, assess the woman's eligibility for participation and answer questions about the study. Once the woman appeared to meet study inclusion criteria and consented to participate, the full interview either continued, or the respondent and interviewer made an appointment to conduct the interview at a time that was convenient to the interviewee.

All interviews were digitally recorded as WMA files and transcribed by professional research transcriptionists. Since the interviewers resided in three different parts of the United States, we created a secure website where digital and text files could be uploaded. Three transcriptionists, all experienced in research interview transcription, provided transcription assistance to the study. Each transcriptionist signed a confidentiality statement, and pledged to

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



not keep a copy of the recordings they were transcribing. A secure website was created for each transcriptionist so they would have access to only their files. The digital sound files were uploaded to this site, and the transcriptionist downloaded the sound files then uploaded the transcript when it was completed. This method was chosen in order to avoid the possibility that emails with the attached files could be intercepted or misdirected. Spanish language interviews were first transcribed in Spanish and then translated to English by a bilingual/bicultural translator. Each transcript was reviewed for accuracy; Dr. Lopez reviewed both the Spanish-version transcript and resulting English translation for accuracy.

During one interview there was a malfunction in the audio recording equipment, so a transcript of this interview could not be produced. Basic information from this case was written down, so it was maintained in the analyses, but no quotations from the interview are included in the results.

**Data Analysis**

The analyses of the interviews serve two functions: (1) to elucidate the individual and institutional factors that promote or inhibit safe outcomes for battered women and their children; and (2) to support the dissemination of materials for attorneys and judges involved in Hague Convention cases. The first stage of analysis began immediately upon completion of the interview with discussion of each mother's situation within the research team to identify key themes and issues. Once interviews were transcribed and all identifying information deleted, they were read multiple times by members of the research team. We constructed summaries of each interview and event chronologies for each mother to capture important sequences of events. We used content analysis (Hseih & Shannon, 2005; Sandelowski, 2000) and grounded theory

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



analysis (Charmaz, 2006) as analytic strategies to identify an overall theoretical model of decision-making by battered women, and factors associated with U.S. court decisions their Hague Convention cases.

Each interview was entered into ATLAS.ti (Muhr, 2005), a qualitative data management program for coding. Four members of the research team participated in the analysis, which involved an iterative process of reading through the transcripts and coding for substantive themes that were mentioned by the participant in the course of telling their story. For this stage of the analysis, at least two investigators read each transcript for the set of general themes generated by the battered mothers and attorneys. Rather than line-by-line coding, we coded ideas and concepts as they were communicated through passages or whole responses. The emerging set of themes were discussed during research team conference calls and used to develop a formal coding framework. Codes were generated in three ways: inductively from categories that arose from within the data (Saldana, 2009), deductively based on relevant literature (Marshall & Rossman, 1999), and based on the factors identified in the initial conceptual framework. Each transcript was then coded according to this framework. Quotations exemplifying key themes were identified.

Once the documents were coded, we created matrices to allow for both within case and across case comparisons (Meyer & Avery, 2009; Miles & Huberman, 1994). In the mothers' interviews, each transcript was screened for several features such as types of abuse she reported, whether her children were physically abused by their father, the kind of violence witnessed by the children, and the domestic violence resources she used in the other country and the U.S. In the third stage of analysis, we conducted a within-case and across-case interpretive analysis

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



(Ayres, Kavanaugh & Knafl, 2003). Within-case analysis allowed us to fully identify the uniqueness created by the individual contexts of each of the women, while the across-case analysis facilitated grouping similar cases together to identify commonalities. We created case-based listings and summarized these in typologies of abuse and processes related to the Hague petition. We then examined how these typologies and other dynamics in the cases related to the judges' decisions to return the children or allow them to remain in the U.S.

Attorney interview transcripts were subjected to a similar process. They were read multiple times both in their entirety and as reports of subsections of the coded text to identify themes. We also created a matrix of attorney-provided key variables and extracted supporting quotes that exemplified these concepts.

**Limitations**

The goal of this project was to create new knowledge about a small and distinct set of persons defined through their involvement in a particular set of international legal processes. Although we believe our efforts to recruit and gather information from this vulnerable and hard-to-reach population were sound and thorough, several limitations should be kept in mind.

Our recruitment efforts focused on obtaining the greatest possible inclusion of respondents involved in Hague Convention cases where domestic violence allegations had been made. Recruitment of the study sample relied heavily on contacts between attorneys or advocates and their clients, since no direct method exists for identifying and sampling women who have faced petitions under the Hague Convention. Because of this indirect recruitment process, the sample may be biased in certain ways. First, women had to have enough social and economic resources to obtain representation from an attorney. Other women who did not have

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



resources for legal defense, were likely not to be found with through a sampling strategy that relied on contacts with attorneys. Second, women could only be recruited into this study indirectly through self-referral. From information provided by the mothers, we have evidence that women came to label themselves as victims of domestic violence at different times leading up to or during the Hague legal process. Because of the dynamics related to self-identification as a victim of abuse, other women may have experienced what we have defined as domestic violence, but they may not have applied this label to themselves, so they did not contact the research team. The experiences of women who did not self-identify as victims of domestic violence might differ substantially from women who had already adopted this identity, but their stories are not represented here.

We collected data utilizing a narrative approach that allowed women, attorneys and others to tell their stories in their own words, rather than through a more tightly structured survey style. This approach resulted in spontaneous and rich descriptions from the mothers of the ways in which they experienced abuse, and facilitated the discussion of a sensitive and traumatic subject for the mothers in our study (Hyden, 2008). In most of the interviews, mothers experienced moments in the recounting of their experiences that were emotionally distressing and which required sensitivity and support to allow them to continue. While the narrative approach facilitated in-depth descriptions of traumatic events, we did not exhaustively review each kind of abuse a woman could have experienced in what would be more typical of a survey format. For example, when we document that participants reported being raped by their partners, this information was spontaneously provided by the women, not solicited by the research team. As a result, aspects of abusive behavior towards the women and their children may not have been

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



revealed because specific questions were not asked, and women self-selected the information they felt to be most salient to report in the interview process. We did specifically ask mothers if they were physically harmed by their partners when their spontaneously provided reports did not include physical attacks, but in terms of categorizing the other forms of abuse women experienced, these may be under-represented because specific questions were not asked. Although at the time of our interview most of the women reported that the Hague petition had been filed within the past five years, some of the women we interviewed had cases that were significantly older. Impressions of what occurred may change with time, and how attorneys and judges approached these cases has also evolved over the period of these cases.

There were additional limitations with the data obtained from sources other than the mothers' interviews. First, the information from attorneys and others varied considerably depending on whether there was case material in the public domain. In some cases, extensive documentation was available, but in others there was no public record. Attorneys were able to only speak about those aspects of their Hague cases that did not violate the privacy of their clients. Second, obtaining reliable contact information about other professionals involved in these cases was difficult, so only five additional informants were interviewed. Although these five participants had valuable information to contribute, it is not clear how well their experiences reflected issues in Hague legal representation and so their interviews are not reported here. Third, since we were not able to speak with judges who presided over each woman's case directly, we had to rely more generally on published opinions, which often were not available for the specific cases of mothers we interviewed. Finally, as stated earlier, due to safety considerations for both children and their mothers, we did not attempt to interview the fathers or children in this study.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



We offer this final note on generalizability. Generalizability in quantitative research is the likelihood that research findings based on a study sample can be applied to the larger population. Qualitative research is also concerned about the applicability of study findings beyond the research sample, although the generalizability of qualitative data is evaluated conceptually rather than statistically (Sandelowski, 1997). Qualitative generalization is based both on the richness of contextual detail brought to bear in the presentation of data, and evidence for commonalities identified across cases. As Ayres et al. (2003) have noted, ideas which have "explanatory force in both individual accounts and across the sample are most likely to apply beyond the sample" (p. 872.) In keeping with these ideas, we have focused on providing rich details from the interviewees, and identified themes that are relevant across more than one research participant. Qualitative research can help show the variations in reasons that women may leave countries with their children and thus position policy to be more humane in taking into account the differing circumstances of these women and their children. We now turn to describing the themes presented to us by the mothers who participated in this study.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 3

# RESULTS: PRE-DEPARTURE

In the following seven chapters of results, we describe and analyze the stories presented by mothers and attorneys involved in Hague Convention cases in U.S. courts. In this chapter, we start by providing basic information about the sample of mothers, and a composite case study that includes the most typical elements of the stories told to us by the women. From this point, we organize the results from the mothers' interviews to reflect a chronology of these cases that focuses on four critical junctures for the women that were identified through the data analysis. First, in this chapter, we focus on pre-departure experiences by describing aspects of the abuse experienced by women and children. In subsequent chapters we discuss the relationship of domestic violence to habitual residence (Chapter 4), reasons for relocation to the United States (Chapter 5), events surrounding the Hague petition (Chapter 6), and events that occurred after the Hague decision was made (Chapter 7). After presenting this overview of the mother's stories, we focus on the sub-sample of women who were Latina immigrants as their pathways to the U.S. and the issues they faced differed substantially from those of the American-born women (Chapter 8). We follow this with a discussion from the point of view of the attorneys of the most important issues in Hague cases where mothers allege domestic violence (Chapter 9), and end with an analysis of judicial opinions in published Hague cases (Chapter 10).

## Sample Description

Basic demographic information about the parents and children were gathered during each mother's interview. As noted in Table 3.1, the parents in this study were generally in their late 30's, most of the mothers were white, one was African American and six were Hispanic.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Although over half of the women in this study had a college degree, almost all of the men were highly educated. Less than half of the women were working while they lived in the other country, while three-quarters of the men were employed. Women who were employed in the other country generally worked in professional, managerial or business occupations. The inequality of education, and particularly employment became a problematic issue for the women when they attempted to obtain resources to cope with the abuse, as we describe later in Chapter 5.

**Table 3.1**

Description of Mothers and Fathers in the Study.

| **Demographic** | **Mother** | **Father** |
|---|---|---|
| Age | 37.6 yrs. | 38.9 yrs. |
| | (1.17 SD) | (1.01 SD) |
| % White | 68.2% | NA |
| % Completed at least BA | 54.5% | 86.4% |
| % Employed in Other Country | 41.0% | 77.3% |

The relationships between the parents tended to be long in duration, averaging 10.25 years (1.03 SD). All but one (95.5%)[2] of the women was legally married to the father of their children prior to the Hague petition. However, six (27.3%) of the women were legally divorced from the men at the time their ex-husbands filed a Hague petition. Forty-five children were

[2] Because such a high percentage of the couples were married at some point in the Hague process, we usually refer to the men as "husbands" rather than the more generic "partner."

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



involved in the Hague petitions, of which almost two-thirds (63.2%) were boys. On average, 1.81 (.15 SD) children were involved in the Hague petition and the mode was two children; family size ranged from one to five children. The children tended to be young, with an average age of 6.42 years (3.53 SD); children's ages ranged from one to fifteen years old. The women came to the United States with all of their children, except for two cases, one in which the father had taken the youngest child to another location, and another case in which the mother had sent her oldest daughter (not biologically related to the Hague petitioner) to live with her parents prior to taking her younger children to the U.S. For 13 (60%) of the women, the Hague petition was filed within the previous five years, and for 8 of the women, this period was from five to ten years before the interview (information was missing on one woman).

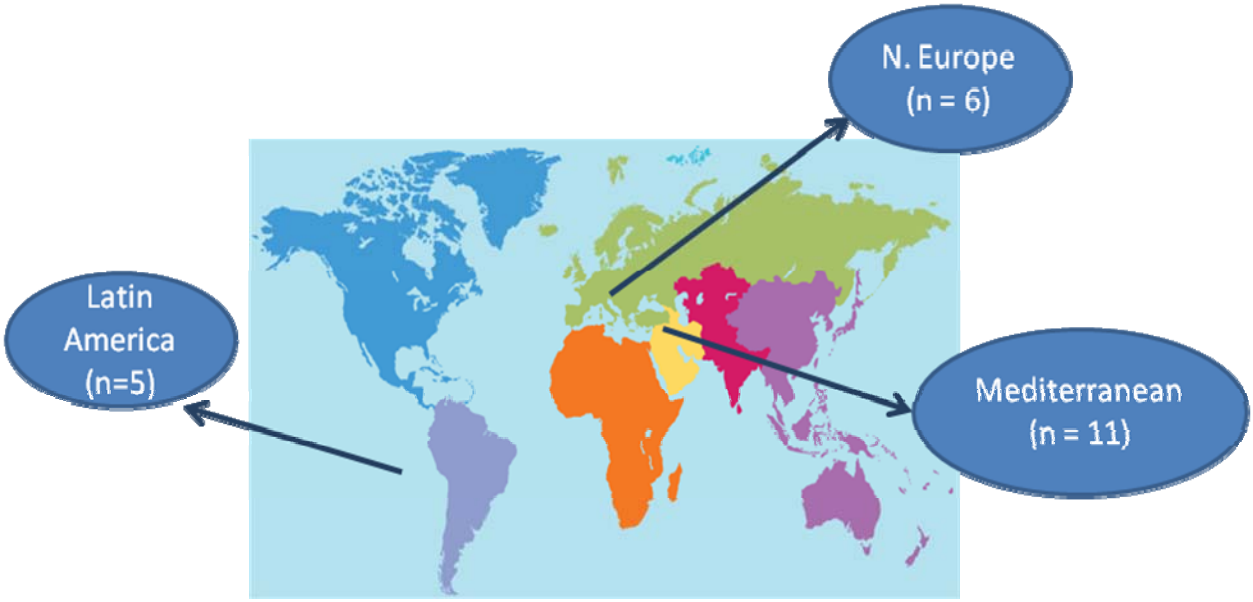
Shown in Figure 3.1 below, mothers in our study came to the U.S. primarily from three areas of the world. Half of the women (n=11; 49.9%) came from countries on the northern and eastern coasts of the Mediterranean, six (27.24%) came from non-Mediterranean European countries and five (22.7%) came from Latin America. Five women (22.7%) were immigrants to the United States, while 17 (77.3%) were U.S. citizens. Of the men, all but one (95%) were citizens of the countries to which they moved their families. One father was a citizen of the U.S., but working in the country from which he petitioned for the return of the children, also American citizens.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Figure 3.1**

Global Distribution of Interviewed Mothers




**Composite Case Study**

Our goal in this research was to understand what aspects of women's experiences might be relevant to understanding the decisions made by judges in response to a Hague petition to return children to another country. In the following sections, we categorize women's experiences along different domains to "pull apart" underlying issues that may be relevant to the Hague decision. However, in order to understand the particularities of women's experiences, it is important to have an overall sense of what occurs in these cases. Below, we present a composite case study from the women's stories, told in their own words (with minor editing and transitions). In this composite case, we have chosen aspects of the women's stories that are most

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



typical (i.e., characterize the largest number of women). None of the information can identify a particular woman, and all names used throughout the report are pseudonyms.

> I was born and raised here in the United States, and I met my husband here. We were married for four years before we went to his country after my son was born. I have a daughter who is five and my son was almost three when we went to Europe. We had our fair share of fights here in the U.S., but he changed in Europe. Once we got there, he didn't want to come back to the U.S. He said we would have a better life in his country. When we left the U.S., I didn't realize that he intended for us to stay permanently in Europe.
>
> Some events remain clear in my memory, but some are blurry – it's hard to explain how someone gets to feel that this kind of suffering is a way of life. We just became used to it. But there were some events that stuck in my mind. About a year after we were in Europe, things got even worse than the usual hitting and ways he would use to make me feel bad. One night, he put a weapon to my head. I saw it on my right temple. I saw from the corner of my eye, how he was pulling the trigger. When he put it to my head, I asked him to not to play around like that, please. I tried not to move an inch because I thought that if I moved, he would shoot me. I closed my eyes and heard the "click." Then he took the weapon away from my temple and laughed. He said, "You're so dumb. You're an ass. It's not even loaded." I went up to my room crying, and for days after that I kept thinking what if the weapon would have had only one bullet? I remember that I decided that as of that point, I was not going to disobey an order; I was not

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



going to object to anything. It seemed that when I wanted to show him I was an independent person, he would become enraged and would hit me. When we didn't do things the way he wanted us to, he would get pissed-off. At that moment, I decided that it was better to learn to be quiet. It was better to obey him; it was better not to object to anything. I really learned to live like that the remaining time I lived with him.

One time the neighbors heard the fighting, and they called the police. Even though I didn't speak the language, I could definitely understand it. So, I clearly understood when the European male officer told my husband that he had to guard our son's legal papers because I was an American, and couldn't be trusted. And after that, I knew, *knew* my situation. It was sealed. My husband was reassured, so, he became even more violent. He boasted about being in control. He was very happy and was very secure. I, on the other hand, was very insecure, an emotional wreck. The police did not allow me, or even give me a chance to go seek medical attention, when it was clear that I needed medical attention for the injuries that I sustained.

During this, there was one moment I remember that was the breaking point -- when he attacked me in front of both kids. He physically shoved me down in the bathtub, and he had his hands around my neck, and was hitting my head against the bathtub screaming, "I'm going to kill you." Along with all the usual curse words that people use for women, and both kids were watching. They were crying, and my daughter was yelling at him to stop.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



That was the turning point for me. I just said "Oh, man, what am I going to do?" The problem was that I didn't have any money and he had taken our passports and hidden them. Of course, he had control of *all* the finances in the marriage, but I started hiding a few dollars here and there. We lived in a small village outside of a larger town. He would give me money for grocery shopping, and I would keep a few dollars each time.

A couple of months after he attacked me in front of the kids, my brother came to see us. I hadn't really told anyone in my family what was happening. It is so hard to admit you made such a big mistake. But my brother came and he could see how tense things were. He convinced my husband that we should go on a vacation to the United States to see my parents for Thanksgiving. My husband allowed me to come home to visit with my parents for thirty days. We got on the plane and he allowed us to come because he knew that he had control over me. I knew he wasn't going to change, and that I was stuck there by his control, not by my will, and that if God was giving me a chance to get out of there and get out of that situation, this was my last chance to take it. We left everything behind. What we had is what we could fit into three suitcases.

As soon as we were in the U.S., my parents helped me find a divorce attorney and I started divorce proceedings. Three months after we came home, there was a knock at the front door. It was the police and they gave me a legal document about 200 pages long, perhaps longer that was the Hague petition. Then, they told me they had to take the kids. Without further notice, the police

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



went into the house and asked my parents where the kids' room was, and they packed some of their clothes and shoes in some boxes. The kids were still small. They clung on to my legs and the police yanked them away. The kids were crying when they left. My attorney managed to get the judge to agree to return them to me after a couple of days when I put up a bond to show I wasn't a flight risk.

I showed up in court with my attorney and my husband was there with his attorney. My lawyer had never heard of the Hague Convention being used in a divorce case, but he did his best to research it. The judge told both attorneys before I even entered the room, that the kids were going back, that she didn't want an international incident. She said "I'm not sending those kids to a war zone. I'm not sending them to Bosnia. They're going back to Europe. Let their court handle this." When I heard her decision, I mean I literally collapsed on the floor. It made no legal sense, and it certainly made no humane or common sense for this to be happening. I mean, I literally was on the edge of a nervous break-down. She made her ruling and said the kids had to be on a plane back to Europe. We appealed the ruling twice, but our appeal was denied. So about seven months after he filed the Hague petition, the kids were with him on a plane back to Europe.

So, that's where we are now. I came back to Europe when the kids came back and I started fighting in the courts here. For the first year, my parents supported me since I didn't have the legal citizenship papers to get a job. I finally

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> managed to get those after a year, and I found a part-time job working in an English language newspaper. It's been three years since we came back. I'm not divorced. He doesn't want to get divorced. So, I'm still trying to get divorced. I see my kids four days and four hours a month. My son is having a lot of problems and he tells me that his dad hits him – we're trying to get that admitted to court. The European government says I can't have custody because I left to America without asking for his permission. Regardless of what we showed them or told them, or that the kids' social worker testified in court that both the kids were terrified to go back and that we were afraid of what will happen to them physically and emotionally and psychologically and… it didn't matter. They just kept saying, "This isn't our problem." You go back to Europe and you deal with the courts over there. The scary thing is when you come back to your own country, you're still liable to the laws of another country. The fact that the American government sent us back, shipped us out of our home country, no other citizen can have that done to them. That's called deportation.

As the composite case study illustrates, a number of dynamics are at play in the time period leading up to a woman's decision to leave the other country. In this section, we focus on the types of abuse experienced both by the mother and the children in these families. We classify the exposure of women and children separately and then create a combined typology of abuse experiences for the entire sample. We pay special attention here to describing the effects of these experiences on the children. Our purpose is to demonstrate the serious nature of the abusive behavior occurring from the father in these families.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Throughout Chapters 3 to 8, when we describe aspects of the women's cases, we note those women whose children were returned to the other country with a "*" each time we describe their cases so the reader can get a sense of the patterns or lack thereof among the experiences of women who had their children returned versus those whose children remained with them.***

**Women's Domestic Violence Experiences**

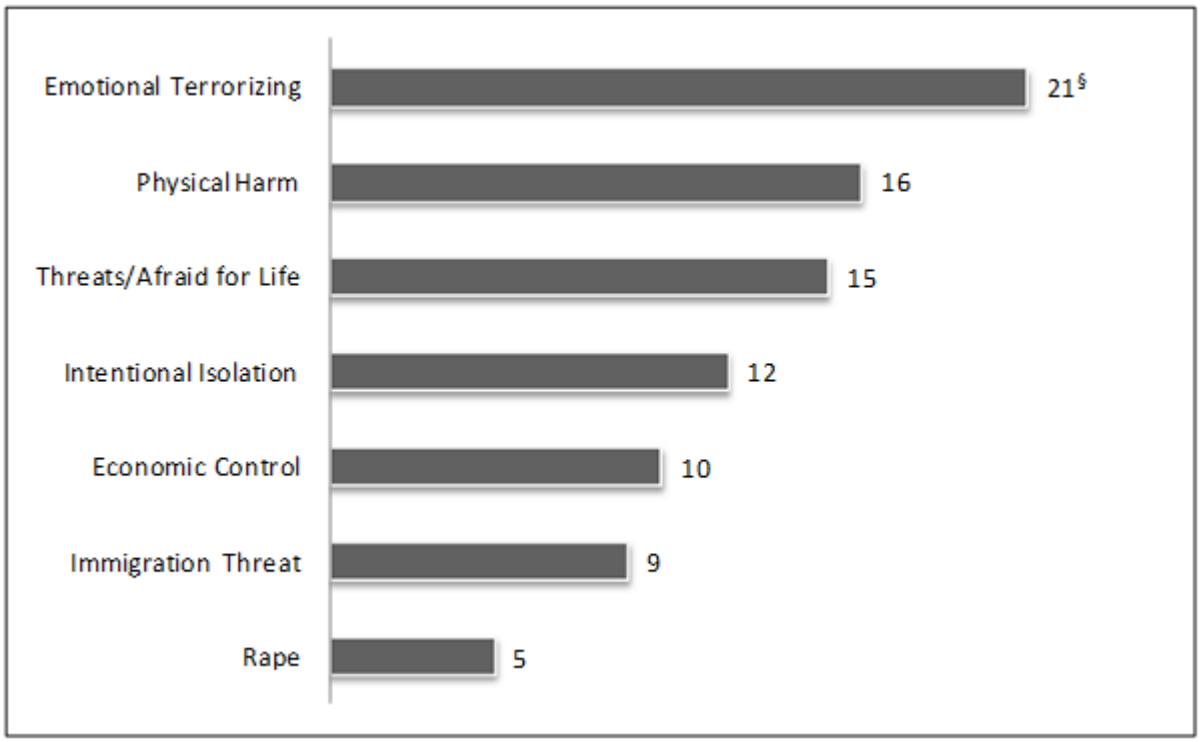
The types of abusive experiences reported by the women were derived directly from the stories they told. We categorized these incidents into seven broad areas; the overall frequency of each type of abuse across the cases is reported in Figure 3.2. These areas are well-documented in literature related to domestic violence as typifying the kinds of behaviors used by abusive spouses to maintain control of their partners. Below, we provide brief illustrative reports by the women of specific events that occurred that typify each category from most frequent to less frequent behaviors.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Figure 3.2**

Summary of Types of Abuse and Number of Respondents Who Reported the Type (n = 22)†.




†Information on non-physical events unavailable in one case.

§n for each type reported at the end of each bar.

***Emotional Terrorizing.*** By far the most common story told by the women was one in which their husbands behaved in a manner designed to induce fear and terror in the woman, and to make her more controllable, i.e., willing to submit to his demands. We label this behavior of the husbands "emotional terrorizing" because of the way in which the women focused on the fear they felt in their relationships. Although domestic violence literature has typically called this behavior emotional or psychological abuse, these terms did not adequately represent the depth of fear the men's behavior created in the mothers interviewed in this study.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



This form of abuse revolved around verbal threats or behaviors designed to intimidate and control without the use of physical force. For example, Tamara* described what it was like the last year that she was living with her mentally ill husband. He had been diagnosed by a psychiatrist in his country with a serious mental disorder and was prescribed medications for this condition. When he took the medicines, he was easier to live with, but he decided to stop taking the medications in the months leading up to Tamara's* decision to leave. Although his behavior had been difficult during most of their marriage, his threats and intimidation increased in the last year before she left, although he never hit her during this time. Here she describes the kind of behavior he exhibited:

> I lived in my son's room for the last year. I slept in my son's room because [my husband] was being so horrible. The first couple of months I lived in my son's room, [my husband] would come in at three or four o'clock in the morning, turn on all the lights, screaming and yelling "I'm going to kill you." […] Blah, blah, blah… scaring the crap out of all of us. And so, that's when the kids and I started locking our doors at night…. The girls shared a room next door to my son's room, so I would tell the girls to lock their room at night and I locked ours, just because you never knew what he would do at night. And then, there were days I would come out of that room in the morning and he would be sleeping on the floor in front of the door.[...] It's the "eggshell thing" where you just never know what mood he'll be in and you never know what you do or what you say, how it's

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> going to make him react; if he's going to lay in bed for two days, not eat, and cry and say he wants to die … or if he's going to kill you.[3]

This example evokes the feeling of emotional intimidation and fear experienced not just by Tamara*, but by the children in her family. Her husband was using sleep deprivation, threats and "screaming" at unpredictable times to express his rage. Tamara* reported that her husband had multiple firearms in the house. At other times during this year, he threatened to shoot her when he was angry, providing substantial reason for her to feel afraid that his behavior might culminate in a serious attack.

In Sandra's case, her husband used intense emotional intimidation to express his anger against her. They were fighting frequently about care of their children; he expressed resentment about having to watch them and wanted to hire a helper so that Sandra could devote more of her attention to him. She describes a typical incident that occurred multiple times in their household:

> So he just got more and more angry over time and then probably the year before I ended up leaving [the other country], he just got more threatening and started to really scare me that he might hurt the kids or... So I just was always sort of trying to get him into rooms that would be far away from the kids... He just yelled a lot...said I shouldn't be afraid of him because he hadn't hit me but he'd have me backed into a corner with his fists over my head.

Although we do not have a physical description of either of these people, it appears from Sandra's description that her husband was larger than she was and capable of using his physical

[3] Transcription notation: pauses in the respondent's speech are noted by "..." to denote longer than usual times of silence. In excerpts where […] is used, this denotes words in the transcript that have been dropped to limit unnecessary repetition, remarks from the interviewer, or because they are not directly relevant to the overall point of the quote. Explanations of unclear referents in an excerpt are also included in brackets.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



presence to threaten violence with his fists. His yelling was designed to force her to accede to his demands, but the results were an escalating concern for Sandra that her husband would physically harm their children.

Sometimes the husband's behavior was less focused on threatening physical harm, and more designed to discredit the woman in her own eyes, or in the eyes of others in her support network or community. For example, Ellen* had a rocky marriage with her husband for several years, but one in which overt physical violence did not occur. Instead, she found herself in a situation in which he was trying to convince her and others that she was mentally ill. While living in his country, he would take her to psychiatrists and tell them she was mentally ill before she had an opportunity to talk with them, under the guise of explaining her situation since she was not fluent in the language of the country. Ellen* discovered that in his country,

> …if you're married, a spouse can sign a paper with the psychiatrist, and they could put you away. […] I had people in the town where I lived later tell me that he was going around telling people that I need to go into a psychiatric hospital. So, I was in great danger. And I knew once the psychiatrist had contacted me and said that I was ten times sicker than my husband, that my husband obviously had convinced him that I was the unstable one. [My husband] had transferred his illness onto me, I was in serious danger because I was warned by people that all it takes is a signature and a doctor's signature and you're gone.

In this example, Ellen* interpreted her husband's behavior as an attempt to "poison the well" with any person or helping professional she might talk with, in order to maintain his

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



control over her. By assigning all of the problems in the relationship to her, he was able to avoid any scrutiny of his own behavior.

These examples describe specific efforts some of the husbands who pursued Hague petitions used to intimidate, terrorize and discredit their wives. All but one of the women had similar stories of emotional threats and psychological intimidation in their marriages.

***Physical Harm.*** Most of the women in this sample (72.7%) reported some form of physical violence from their partners. These harms were serious in nature. For example, women reported being choked, suffocated, punched hard enough to leave bruises, hit or attacked with dangerous objects, kicked while on the ground, and beaten up on multiple occasions. As one illustration of the kind of violence women were coping with, Marina reports on one of the incidents she endured at the hands of her husband.

> He pulled me out of the bathroom by the hair and started hitting me. I don't know for how long he was hitting me, five, ten, fifteen minutes, hitting me hard. I tried to escape and protect my face…he continued to hit me and my nose was bleeding. All of a sudden, he left. I heard some noises outside and when he came back, he had an ice pick in his hand. When I saw that, I ... I was sitting on the edge of the bed. He put the ice pick to my stomach and held my jaw very tightly with his other hand, and said, "I can hit you all I want and I will never leave a bruise on you." He used to be a police officer before I met him … He left my jaw out of place. To this moment, I still have problems when I open my jaw.

In this example, Marina's husband beat her until she was bleeding. Then he threatened her life; his attack has left her with permanent physical injuries to her jaw. This attack combines

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



emotional terrorizing, direct physical harm and the threat of more injury if she did not comply with his dictates. Each woman who reported physical harm described variations of this kind of serious physical event.

For example, Austin* met her husband and relocated with him to his country in Europe to marry him. Her daughter was born two years later. At that time she reports the following series of events that culminated in her emergency departure from her home with her daughter:

> Shortly after my daughter was born, we started having more severe problems. There was a lot of verbal abuse, shortly after she was born- not so much physical abuse, but verbal abuse. […] About a year [after our daughter was born], things just came to a head. We had a very huge problem. Basically, he kicked me, and threatened my life. I went with my daughter to a [domestic violence] […] shelter.

Austin's* experience was severe enough that she fled the couple's home and sought refuge in a shelter in the other country. This action on her part indicates that she perceived the threat of continued physical violence from her husband.

In six cases, the husband either did not physically harm the woman during the course of the relationship, used violence once, was repeatedly terrorizing the family, or the woman reported that the physical abuse was something she felt was minor. Four of these cases had no report of any physical violence, but did contain multiple reports of emotional terrorizing, such as the verbal abuse and intimidation described in Sandra's story above. In one case, Tamara* reported that she and her husband had a physical altercation after he was served with divorce papers, and she attempted to leave with her young son. She was explicit, however, that no physical violence had occurred previously in their relationship. In Ellen's* case, she reported

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



occasional and what she deemed to be minor pushing and shoving when she would resist a directive from her husband, or when she would ask to go to the United States. We categorized these six stories as having no or minimal physical harm since they differed from the women who reported either multiple experiences of violence or a single experience that was of such magnitude that it could have been life-threatening.

***Threats to Life.*** Although threats were certainly a component of emotional terrorizing, 15 (68.2%) of the women specifically discussed either direct threats their husbands made to kill them or their children, or the husband's abusive behavior was escalating so dramatically that the woman feared for her life and that of her loved ones. For eight of these women, their husbands directly threatened to kill them, their children, a family member or other people trying to help the women. In the seven other cases, the husband did not explicitly tell the woman that he would kill her, but his behavior was erratic, violent or rageful enough that she feared for her life and the life of her children.

Pamela married a European citizen who was a police officer in his country; she later discovered that he had a serious drinking problem. His behavior was bizarre when he was intoxicated. Once he tried to make a bomb that set fire to her parents' home while they were staying there. He wanted to return to his country after his son was born, but because he had already become abusive, she did not want to return with him. He told her:

> "I'm going to put you in a car with [our son] and I'm going to tell your parents that I'm driving us to the airport, and I'll leave the car at the airport and they can come and pick it up." and he said, "I will kill you on the side of the road, throw you in a ditch somewhere where you can't be found for weeks and by the time I

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> get on the plane, and I'm in [my country], even if they do find you, [my country] does not extradite their own citizens to other countries for crimes." So, he said, "I can kill you in the United States and as long as I make it on a plane with my son, I won't serve a day in prison for killing you, because [my country] won't send me back to the United States to serve a sentence." Which is the truth; [his country] does not extradite their citizens. And so I was scared to death.

Pamela's husband told her at another time that he had killed people during his time as a police officer and that it was like "stepping on a mouse." Coupled with the physical violence she was experiencing from him (including an incident in which he stabbed the bed in which she was sleeping multiple times because he was angry at her for buying it), she felt that his threat to kill her was credible. She ended up returning to the other country in accordance with his wishes as a result of her concern about his dangerousness.

In other instances, the threat made by the husband was not only to kill her, but to kill the entire family. Fiona* and her American husband relocated to Europe for him to accept a temporary six month job. After he was laid off from the job, he tried to secure other employment, but was not successful. During this period, Fiona* reported that he became increasingly violent and intimidating towards her. She described a specific event that transpired after her husband was awakened by her infant son crying in the middle of the night.

> And the scariest thing to me … this is really what … this whole thing … I really think how this whole thing started … is he … um, one night the kids woke up and one kid woke the other kid up and they were both crying and [he and I] were both

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> tired. […] And he said, "I can't take this anymore," and he left the house. […] I thought, is he going to get a gun and kill himself? […] He came back and I was sitting on the couch feeding our son and my daughter was sitting next to me, and […] he said, "I feel so weird. I could just take a knife and kill this whole family." […] And this – this is really scary for me (voice breaking). […] I had nowhere to turn to. I had absolutely no one. So – I didn't know what to do. I thought, you know, do I – do I just grab the kids and run out of the house or what?

In the context of his other abusive behaviors, this threat felt credible enough to Fiona* that she immediately contacted her parents in the United States for help. They counseled her not to "set him off" or "rock the boat" and to try and get him to agree to return to the U.S. They set up a safety plan in which she contacted her parents every day by email or phone until she was able to return to the U.S.

While these two examples illustrate instances in which the men used direct threats to kill the woman and/or her children to enforce compliance, in other circumstances, women had to interpret the level of danger they faced from their husbands. In seven cases, based on the totality of their experiences, women came to the conclusion that their husbands were capable of and heading towards an event that could end their or their children's lives. In Rebecca's* case, after a period of intensifying conflict with her husband, she agreed to his wish to return to his country in the Southern Mediterranean in an effort to try and save the marriage. Once there, his behavior escalated to life-threatening violence. He once beat her head against a wall to the point that she was bleeding and needed medical treatment; in another instance, he used an object to beat her

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



that could have caused life-threatening injuries. As a result of these circumstances, Rebecca* came to this conclusion:

> One day, I thought, ok, I'm either going to die, or I'm going to leave. […] And I really believed that. I thought I was going to die one way or the other.
>
> *Interviewer: In the sense that he was either going to kill you, or you were going to die trying to leave?* Yeah.

Kayla described a similar "felt sense" that something terrible was about to occur. She moved with her husband to his country in Europe after her youngest son was born. Soon after their move, her husband's physical violence began to escalate and he became more emotionally volatile and out of control. During the time leading up to her decision to leave him, she reports the following experiences:

> He would give me these strange looks, like "I'm gonna get you" type of look. Or the type of look where the hair on the back of your neck stands up, and you think that he's going to kill you, or get rid of the other kids, somehow. That's just… you know… it wasn't paranoia. It was… something's not right. He really is going to do something.

Women were coping with a combination of abusive behaviors from their husbands. In this context, they had to evaluate subtle behaviors or changes to determine the level of danger they faced. For 15 of these women, they came to the conclusion that they and their children were in serious danger. This realization became a motivating factor in their decision to flee from their husbands.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Intentional Isolation.*** Another common pattern occurring in over half the cases was the effort the husband made to intentionally isolate the woman both from people in the other country and from her family and friends in the United States. This enforced separation differed from the experience of cultural isolation that many of the women experienced as immigrant women to another country. In their new homes, most of the women couldn't speak the language or were unfamiliar with the customs of the people. In contrast, husbands' intentional isolation stemmed directly from their efforts to control the woman's contacts and activities.

Stephanie* relocated to her husband's country in Europe soon after the birth of their son. When her son was two months old, her husband began to hit her; she required medical attention for some of these attacks. She tried on multiple occasions to seek help from the police, but she was not able to speak the language, and could not get them to intervene in her situation. She knew she needed help, but her husband made efforts to prevent her from contacting others and telling them what was happening. As she describes,

> I couldn't go on the Internet. My husband was just keeping track of everybody I spoke to on the telephone, everybody. He would check my websites, whatever websites I visited. He would find a way to just track everything.

Like Stephanie*, Tamara*, as was reported earlier, would protect her children from her husband by sleeping in the same room as them and having them lock the doors at night. When she went to work in the other country to help financially support the family, her husband became jealous and demanded that she not have social relationships at work. Tamara* also reported multiple instances during the marriage when her husband would physically isolate her from the rest of the family or others:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> He would lock me up. He was a big power. You know, taking away the keys to the car or locking me up in a room for hours at a time, even going so far as to shut off the electricity for that room in the fuse box.

Marta* reported similar efforts by her husband to control her behavior and her access to friends and family. She and her husband were citizens of a Latin American country and lived there until Marta* became so afraid of his repeated assaults that she fled with her children to her parents in the United States. She had few freedoms in the relationship, as she states,

> He always had to decide on everything, what clothes I was to wear, whether or not I could have friends. He wouldn't let me fraternize with absolutely anyone; not with my friends, nor with my family. I lived isolated and that depressed me and would cause me many problems.

Marta's* husband prevented her from having contact with her friends and family through threats and physical violence. As a consequence, Marta* felt increasing despair about her circumstances. For each of the 12 women who reported intentional isolation, the husband took specific actions to prevent her from physically or emotionally being able to access help and support from others. For the majority of the respondents who were also immigrants to the country where they were residing, their isolation was intensified since most were unable to speak the language and were unfamiliar with the cultural traditions of their husbands' countries. The consequences of both his intentional isolation and her limited capacity to seek support within his country meant that many women turned to their families in the United States for help as much as they were able to do so. We discuss seeking out family support further in Chapter 5, "Departure: Reason for Relocation to the U.S.".

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Economic Control.*** As we noted earlier in the demographic description of the women and their husbands, most of the women in this sample were not working in the other country prior to their return to the United States. The reasons for their lack of employment were multi-faceted, including her desire to be the primary caregiver for her children, his jealousy and efforts to limit her contact with others, and her citizenship status in the other country and the rights to employment (or lack thereof) that this status conferred upon her. A substantial number of the women were dependent on their husbands for access to any finances because they did not work; several of those who were employed also had to give their earnings to their husband who would decide how the women spent the money. As a result, 45.5 percent of the women had no independent access to money, which became an issue as they attempted to gain safety in the other country, and at the point they decided to leave for the United States.

Stephanie* and several other women described very similar stories about how their husbands had "complete control" of the money in the household. Under these circumstances, regardless of whether she was the one earning the money (as was the case for Stephanie*), she had no ability to make autonomous choices in regards to how the money was spent. Stephanie* noted in discussing the ways that her husband controlled her independent functioning,

> He kept complete control of our finances, our money. I did not have any say whatsoever on how to spend it, where to spend it, when to spend it. I didn't possess any checks, any credit card, any debit card. If I withdrew money, it was with his permission, with his knowledge. If I wrote a check, it was with his permission, and with his knowledge.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Megan* reported a similar story after she relocated with her husband to Europe when their children were two and four years old. Once they arrived in his country, his behavior changed and he became more threatening and angry. He moved out of their small apartment because he was upset with the children and the care they required. She found employment because of her English language skills, but this caused him to become even more jealous and angry and to exert more control. On one occasion, he choked her in front of the children and threatened to kill her. After this incident, Megan* tried to figure out how she could escape his abuse. She noted,

> I didn't have any money. Of course, he had control of ALL the finances in the marriage. So, what I started doing was, I was paid in cash and I started hiding money inside record sleeves, so he couldn't find it.

In this quote, Megan* described her strategy for attempting to gather funds in order to escape from his country and return to her family in the United States. Because he was in control of the money that she made from her job, she had to covertly save money in order to buy plane tickets to return to the U.S. Many of the women discussed the way they clandestinely attempted to gather funds to escape their situation.

Rebecca* reported on a different way in which her husband used their financial situation to control her. Unbeknownst to her, while they lived in America, he accumulated a large amount of debt. As she says,

> This made me feel like the most stupid, stupid woman… he had not paid our bills for close to two years, in the United States, and we owed about a hundred thousand dollars, which I had no idea about. My father called [after she moved to

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> his Eastern Mediterranean country], because he was receiving some of our mail, and he said "I'm opening these letters and you owe this, and you owe that" […] and [my husband] said, well this is fine because we're never going back to the United States.

In this situation, Rebecca's* husband had amassed large amounts of debt without telling her, debt that she feared she would continue to be responsible for as an American citizen and his wife. He told her that she would be responsible for this debt if she returned to the U.S., effectively creating another barrier to her ability to her return to the U.S.

Men in several of these families controlled all access to money and financial decisions. For women who had no independent access to funds, they had fewer options for coping with their husbands' violence. For example, they could not choose to move somewhere else in the country because they had no resources to enact this decision. As a result, many of the women turned to family members in the United States for financial help to flee their situation.

***Passport Control/Immigration Threats.*** In the case of nine (41%) of the women, their husbands took some action to control their movements by either destroying or limiting access to their passports. In the case of women who were immigrants to the U.S., he often threatened to report her or other members of her family to immigration officials here in the U.S. The special concerns of women who are immigrants to the U.S. are reported in Chapter 8, "Experiences of Latin American Mothers".

Women who were citizens of the U.S. in the other country, needed access to their and their children's passports to be able to leave the country. As a result, several of the men controlled the passports in order to control the women. For example, Ellen* relocated to her

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



husband's European country soon after they were married, and had her children in that country. She petitioned for American passports for each of her children, but as she notes, her husband destroyed these:

> He actually got into a big argument and he actually mutilated the passport, right in front of me; two of the passports, and the other two, I think were damaged and then lost or something like that. So, right in front of me, ripped up my passport and my son's passport and said that I would never be returning to my country.

In this situation, Ellen's* husband was able to enforce his control over her and to prevent her from leaving his country by destroying her and her child's passports. In other cases, husbands hid the passports so women would not have access to them.

Men also used women's immigration status in the other country as a means of exerting their control over the situation. For example, Katie* immigrated to a small, rural village in Europe with her husband. There she had two children. Seven years after relocating, she returned to the U.S. with her oldest daughter because her grandmother was terminally ill. Her family talked with her about the fact that her husband was calling more often than seemed necessary to check on her whereabouts. They brought her materials on domestic violence and she came to believe that she was a victim based on his controlling behavior. She decided not to return to his country and was then subject to a Hague petition he filed for the return of their daughter. As a result of the Hague petition, she discovered that he had created immigration problems that made it difficult for her to return to his country when she agreed to return with their daughter.

> He fiddled with my immigration. Apparently, what happened was, I had submitted all the necessary forms, at the appropriate times. However, from what I

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> understand, they actually returned a form with a question, but it had to do with him, and he never replied. So basically, my immigration was defunct. […] So, all I can say, it was very well… orchestrated. I mean, the fact that my immigration was messed up, and he tries to claim this Hague, although, he knew the entire time, where his daughter was. I think it's too coincidental. So, I think what he was hoping to achieve, was to just have her returned to him, then, my not be allowed into the country.

In Katie's* view, her husband consciously chose not to provide information to immigration officials in his country with the intent of preventing her return if she should leave. In this case, his actions in regards to her immigration paperwork led her to believe that he was intentionally using this tactic to separate her from her children.

***Rape.*** Five of the women volunteered information that their husbands raped them. In one situation, Kelsey* moved with her husband to his country and a few years later gave birth to her first son. During a visit to introduce her son to his family, the following event occurred:

> And it was three months after [our son] was born, that we were in [the U.S.], we were invited to his father's house to be there. [My husband] came into the bedroom, I had just finished breastfeeding [my son] and he just raped me. He just… that moment and that's how I got pregnant with [my younger son], and because his father was in the next room, he knew I couldn't say anything. It was just he left, came in, did what he did, and I was completely stunned. […] And I kept saying "stop, stop." But he knew that his father and his stepfather were in

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the next room. And we were in the States, and it was something that, what am I going to do? You know, he's my husband and you feel like I just got violated.

Other women also reported that their children were conceived after their husbands raped them. In this way, sexual assault was a part of the pattern of abuse that some of the women reported in their descriptions of their relationships.

Each woman had some combination of the experiences described in the preceding pages. In Table 3.2 we document each woman's unique pattern of abuse, ordering the cases from those with the most types of abuse present to the least. The narrative information and its summary in this chart lead to the conclusion that all but a handful of women in this study experienced serious, intense and potentially life-threatening abuse. By the time they left the other country, most of the women were afraid for their lives and the lives of their children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 3.2**

Most Salient Issues Regarding Domestic Violence Reported by Women*

| Woman | Emotional Terrorizing | Physical Harm | Threats to Life | Intentional Isolation | Economic Control | Immigration Threats | Rape |
|---|---|---|---|---|---|---|---|
| Belinda | √ | √ | √ | √ | √ | √ | |
| Amanda | √ | √ | √ | √ | √ | √ | |
| Ilana | √ | √ | √ | √ | | √ | √ |
| Fiona* | √ | √ | √ | | √ | √ | |
| Lara | √ | √ | √ | | | √ | √ |
| Ruth* | √ | √ | √ | √ | √ | | |
| Megan* | √ | √ | √ | √ | √ | | |
| Pamela | √ | √ | √ | √ | √ | | |
| Marina | √ | √ | √ | √ | | | √ |
| Ellen* | √ | | √ | √ | √ | √ | |
| Caitlin* | √ | √ | √ | √ | | | |
| Kendra | √ | √ | √ | √ | | | |
| Jennifer | √ | √ | √ | | | | √ |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Kayla | √ | √ | √ | | √ | | |
| Rebecca* | √ | √ | √ | | √ | | |
| Stephanie* | √ | √ | | √ | √ | | |
| Austin* | √ | √ | √ | | | | |
| Marta* | √ | √ | | | | √ | |
| Tamara* | √ | | √ | √ | | | |
| Katie* | | | √ | √ | | √ | |
| Kelsey* | √ | | | | | | √ |
| Sandra | √ | | | | | | |

*NOTE**:** Women were not surveyed on each of these areas of abuse, so they may have had experiences that they did not report during the interview process.

This table facilitates within case and across case comparison, and allows us to place the women into a mutually exclusive typology of domestic violence experiences based on the type of harms they experienced. This typology is found in the next table, Table 3.3. We ordered this typology to differentiate between those women who routinely expressed serious levels of physical violence in the context of emotional terrorism inflicted by their husbands. This ordering reflects the emphasis in U.S. courts on physical harm when determining that domestic violence exists. Sixteen (72.7%) of the women in the sample were frequently physically harmed by their husbands and lived in a state of intimidation and control by him. Four women reported chronic emotional terrorizing, but that their husbands never physically hurt them (Katie*, Sandra), that

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



any physical events were minor in the woman's reckoning (Ellen*) or that physical violence happened only once, rather than as a pattern of harmful attacks (Tamara*).

**Table 3.3.**

Typology of Women's Domestic Violence Experiences

| | **Mother Physically Harmed** | **Emotional Terrorizing with No Physical Abuse** | **Ambiguous Cases** |
|---|---|---|---|
| | Belinda<br>Ilana<br>Fiona*<br>Lara<br>Ruth*<br>Megan*<br>Pamela<br>Marina<br>Kendra<br>Rebecca*<br>Stephanie*<br>Austin*<br>Marta*<br>Caitlin* | Ellen*<br>Tamara*<br>Katie*<br>Sandra | Amanda<br>Kelsey* |
| Total: | 16 | 4 | 2 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



In two cases, the actual categorization of the women's experience was ambiguous. Both these women self-identified as victims of domestic violence, but compared to the other 20 women, their stories had two different elements, one related to the timing of abuse and the other to the content of the woman's story. In Amanda's case, a marriage of over 15 years deteriorated over the course of several months after her husband had an affair and brought his mistress to the country where they were living. Prior to the affair, Amanda said that there were no examples of emotional terrorizing or other abuse. After the mistress reappeared, Amanda and her husband had a fight that resulted in her having her hand seriously cut in an altercation with him and requiring care in the hospital. Amanda reported that she believed this injury was accidental on her husband's part, but after this incident, she began to feel afraid of her husband and what he might do next. She did not report that he had harmed their children, although the children were upset by the frequent fighting. This case was different from the other women who reported chronic abuse that occurred over many years, throughout the course of the relationship.

In the second case, Kelsey*, unlike the other women interviewed, did not spontaneously relate information about a pattern of coercion, intimidation or physical violence in her marriage. She did not describe incidents of emotional terrorizing or other abuse prior to the separation, with one exception: she reported that her second child was the product of her husband raping her, a very serious allegation of violence that may have haunted her throughout their relationship and the separation. She felt intimidated by her husband after the couple separated, especially in his efforts to limit her access to the couple's financial resources and disagreements over custody of the children. Her narrative was characterized by a degree of incoherency and contradiction not seen in the other interviews --this kind of incoherency is characteristic of people who have

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



unresolved traumas which manifest as disorganized thoughts and emotions (Jelinek, Randjbar, Seifert, Kellner & Mortiz, 2009; Porter & Peace, 2007; Uehara, 2007).

As a result, it was unclear whether this respondent did not understand what she was being asked to describe, or if she had not experienced an ongoing pattern of intimidation and coercion. Unlike the other women in the study who easily described multiple instances of various forms of abuse, Kelsey* did not, although she clearly saw herself as abused and was living in a domestic violence shelter. Her main concern was that she believed her children had been exposed to sexually inappropriate situations by her husband, but the U.S. judge who heard her description of these events did not find them to be unusual or of concern.

These cases illustrate the difficulty in creating a definitive definition of domestic violence that is both inclusive of typical abuse experiences and differentiates abuse from other forms of couple conflict. In both cases, these women self-referred to the research study based on their evaluation that they had been abused and they fit the eligibility criteria for the study. It may be that these women did not recognize patterns of emotional terrorizing that were going on earlier in their marriages (i.e., abuse was more chronic than they recognized), or maybe coercive control did not occur earlier in the marriages. Aspects of the two women's stories were consistent with the reports provided by the other women, including physical harm, isolation, a feeling of threat to life, economic control and immigration threats in Amanda's case; and rape early in the marriage and emotional intimidation after separation in Kelsey's* case. For each woman, however, the timeframe or content of her reports were not similar to the other 20 mothers in the study. We have discussed these two cases at this level of detail to illustrate the difficulties people external

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



to the families may face in determining whether the women's accounts would be evaluated as domestic violence.

**Children's Family Violence Experiences**

We turn now to how the women described the types of violence their children experienced. When looking for markers of child abuse, we focused primarily on physical acts against children, again recognizing that these forms of violence are generally accepted markers of abuse in legal and clinical settings. In some cases these acts were intentional efforts to physically harm the child through hitting, excessively harsh "discipline," or through the sexual abuse of the child. In other circumstances, the father's physical harm to the child occurred because he was assaulting the mother and the child was possibly an unintentional part of this encounter, such as incidents that women reported in which they were holding a young child in their arms while their husbands were beating them. Although the fathers' violence was directed at the women, the potential for (and actuality of) harm to the child was often present. In those families where the mothers reported that their children were not intentionally or unintentionally physically harmed, we examine the exposure the child had to the father's violence, familial intimidation and humiliation of the mother. We focus on the effects of the exposure to domestic violence, for the children who witnessed physical attacks on their mothers, or in families were high levels of emotional terrorizing occurred, but where the children were not themselves the direct victims of their fathers' violent behavior.

A typology of exposure to violence was created, and based on each woman's report, the children were identified as belonging to a particular grouping. In Table 3.4 we summarize the patterns of exposure children experienced and follow this with a description of each of these

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



categories. We have ordered this table to flow from acts that caused intentional or unintentional physical injury to the child, to those acts where the child was not the direct victim, but where exposed to the domestic violence and psychological harm occurred. Three cases did not have sufficient information to categorize them in the typology, so are labeled "unclear." For ease of representation, we chart the children's experiences using the woman's name.

**Table 3.4**

Typology of Children's Exposure to Violence in Hague Cases

| | **Intentional Physical Child Abuse** | **Physical Harm to Child During Attack on Mother** | **Child Witnessed Physical Attack on Mother** | **Emotional Terrorizing without Child Witnessing Physical Violence** | **Unclear** |
|---|---|---|---|---|---|
| | Kayla<br>Marta*<br>Marina<br>Ilana | Kendra<br>Pamela<br>Jennifer<br>Stephanie* | Fiona*<br>Megan*<br>Rebecca*<br>Lara<br>Austin*<br>Tamara* | Ellen*<br>Ruth*<br>Sandra<br>Belinda<br>Amanda | Caitlin*<br>Kelsey*<br>Katie* |
| Total: | 4 | 4 | 6 | 5 | 3 |

***Intentional Physical Child Abuse.*** In four of the families, the children were themselves an intentional target for the father's physical violence. These children lived in environments of

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



violence perpetrated by the father against all family members. Kayla's story illustrates the kinds of physical abuse experienced by the children in these families.

> It must have been Christmas day, or just after Christmas. My older son did something to my daughter's doll and it got [my husband] into such a tirade that he went to go beat [my son] with that doll. I got in between him and [my son], and kept trying to push [my husband] away from [my son], and [my husband], then, beat me, beat [my son], made [my son] go get me some ice out of the freezer, and looked at me and told me that I would never, ever get in between him and his son, ever again. He [said he] was going to take [my son], find a job up in [another European city]… because he works in the EEU, and [he would] take [my son] away, and I would never see [my son] again.

In this excerpt, Kayla described the ways in which her husband's abuse of her and the children are intertwined to such an extent that the entire family is affected by these experiences. Here the father intended to physically harm his son, apparently as a punishment for his son's behavior. The mother's efforts to protect her seven year old child resulted in her being attacked as well. The father concluded this episode by threatening to abduct their son to another city, and intimidating the mother in her efforts to protect her child.

For Marta*, the fact that her oldest daughter was not biologically related to her second husband seemed related to the abuse that he inflicted upon her. Similarly to Kayla's experience, Marta's* daughter was the intentional target of her husband's violent behavior. She noted,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> He would call my daughter a dummy, would hit her upside the head, and would chase her. […] Since before we went to the United States, she, too, had many problems in school because he also mistreated her. Sometimes, he beat her. […] He mistreated her. He offended her. He would call her dumb and stupid. When my other two kids were born, his kids, he started to belittle her. He didn't want her to come into our bedroom. He didn't want her to touch the kids. He didn't want her to play with them. Therefore, she began to feel neglected. […] I [ended up sending [her to the United States [to live] with my parents.

As these two examples illustrate, men in these families intentionally targeted young children for physical violence. These children were not hurt accidentally, but by conscious and deliberate attempts on the father's part to punish or control the child.

***Physical Harm to Child during Abuse of Mother.*** The cases described previously demonstrate how men who were abusing their wives also intentionally targeted the children in their households for physical harm, sometimes in the same incidents and sometimes in separate ones. In other families, men targeted their wives for abuse, and were indifferent to the fact that their violent behavior towards their wife might also harm their children. In these families, the children were not intentionally targeted for abuse, but nonetheless became victims of abuse during the husbands' physical attacks on their mothers. The following experiences of Jennifer and Kendra are remarkably similar in their description of how their husbands ignored the danger they were causing to their children in efforts to mete out punishment to their wives. These examples typify the experiences of children in this category.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> You know, he had [physically injured me] and, you know, even then I didn't even really realize how much trouble I was in. I would just curl myself around my three-year-old and lay on the floor, you know, up against the wall, and he would kick the crap out of me. I figured out finally one night, just reading an article . . . that it was domestic violence and I was in horrible trouble. […] My son had physical…you know, he was just sobbing and [saying] "My tummy hurts right here where he kicked me." […] Yeah, [he] did have - and I'm sure still does in some way – have a recollection of what happened to him in being, you know, beat up and kicked by a big man with a beard. He still hates big men with [beards].

In Jennifer's case, this incident was one of several times in which her husband attacked her while she had her toddler or infant son in her arms. Mostly she was able to successfully shelter her sons from her husband's violence, even though that violence inflicted serious injury on her. However, on at least one occasion, her husband's violence injured their son. Several years after this event, her son continues to generalize about other men from the traumatic experience he endured from his father. Jennifer felt that her husband's rage was directed at her, and that he didn't care that her child was also being hurt.

Kendra was also placed in the position of having to protect her son from violence that her husband was intent on inflicting upon her. One memorable example was the following event:

> I had my son in my arms, and I started walking across the room. And he grabbed me – and they have marble floors there. Everything is marble, it's all hard. Hard

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> and cold. And he grabbed me and my son and actually threw us across the room on the marble. And I protected my son with my body, but I got pretty badly hurt. . . And I just – that was – for me, was the breaking point.

As both these cases illustrate, these men were not intentionally targeting their children for violence, but their efforts to harm the mothers exposed their children (and the mothers) to the possibility of life-threatening injuries. In Kendra's case, as was the case for several of the mothers, this threat to her son became a "breaking point," or a moment that finally forced her to begin the arduous task of planning her escape from her husband.

***Child Witnessed Physical Attacks on the Mother.*** In these five families, the children witnessed the father physically attacking the mother, but the children were not themselves either the intentional or unintentional victims of physical abuse. However, the terrifying effects of these violent attacks by the fathers in these families clearly frightened the children and left lasting psychological traumas that the children continue to experience.

For example, after many years of marriage, Lara separated from her abusive husband. Ending the relationship, however, did not end the abuse – her husband broke into her house and continued to physically harm her on more than one occasion. Her very young son was present during one of these encounters. She recounted the following experience and then explained the effect she believed these events had on her two children.

> When I couldn't take it anymore, I went to the authorities, when things got too ugly in front of my son. I felt really bad because my son was so small. He was only about a year and a half. So, [my husband] came in breaking the door down, as it was his custom and he started to hit me in front of my son. My son tried to

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> defend me. He tried to get his dad off me. He was crying and screaming. I said, "This can't be." I ran for the phone to call the police and [my husband] left immediately. […] That's what they felt, fear. My daughter even threw up one time we were with the psychologist [after they left the other country]. She had a few physical reactions when she remembered those things. She was, and still is a bit introverted. […] They were very scared, because of how they saw me. During [the time they were living in the other country], I was constantly crying and they would see how worried and scared I was. I tried not to let it show, but it was impossible because I would get phone calls from [my husband] and they noticed. So, they were very scared.

This story illustrates how even very young children can be aware of the domestic violence happening to their mother and attempt to intervene. In this case, a child less than two years old was attempting to stop his father from hitting his mother. These events took a psychological toll on Lara's children; her daughter continued to experience such strong feelings of fear that when recounting her story to a psychologist, she vomited. Even after fleeing to the United States, Lara reported her children were still coping with their memories of their mother's victimization.

Fiona's* daughter was also very young when she witnessed her mother being assaulted by her father. Like Lara's children, Fiona's* daughter also continued to experience psychological distress as a result of her mother's abuse. Fiona* described an event her daughter witnessed and went on to explain her daughter's current difficulties after their return to her husband's country:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> She [her daughter] witnessed him hitting me and kicking me and at that point, you know, and I turned around and saw her looking there … I don't know … you know, I don't know … she was only 2 ½ years old. I don't know how much a 2 ½ year old can remember of that. I have no idea. […] But my daughter […] she's very clingy. […] When I get up in the morning, and if I'm not there – it's almost like she panics … and she, I can hear her, like, jump out of bed and then rush to see where I am. And even at night she'll call out to me, "Mommy?" It's almost like she, you know, and I've told my mom this before, too – it's almost like she is afraid when I'm not there.

Sometimes the memories surrounding the attacks on their mothers persisted for many years in a child's memory. Tamara's* son remembered vivid details of the night his father attacked Tamara* after he was served with the divorce papers. At the time of this event, he was five years old; five years later, after the children were returned to their father through the Hague proceeding, Tamara* reported:

> He still remembers. I mean, he was there that night that it got really bad, and he was five, but he still can tell me the exact details of where I was hit and where my head hit the wall, and you know, different things like that. He'll still talk about those things. So, I guess they don't forget.

In Megan's* case, both her son and daughter witnessed her husband's attack in which he choked her and beat her head against the bathtub saying he was going to kill her. Her daughter was a young child at the time and Megan* recounts the following conversation with her:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> She had seen these things, you know, this is a six-year old who's asking questions like… before we left [his country], she would ask me questions like, "Why does daddy call you 'fucking bitch' all the time?" You know, and we would go to a wishing well, and she would throw in her penny, or you know, the equivalent in the [other country's currency], and she'd say, "Mommy, my wish is that daddy would be nicer to you."

Consistently, the children in families where they were not the intentional or unintentional victims of their fathers, but where they saw his attacks against their mothers, experienced significant levels of fear, even long after they were physically separated from their fathers. The mothers reported that their children had long-lasting emotional reactions to these events. Even though these children were not directly victimized by their fathers, the mothers noticed ongoing emotional difficulties and fearfulness in the children. The mothers attributed these reactions to their children's witnessing of the violence and of the mother's emotional response to the abuse. In these cases, the children's behavior was similar to that of children who were the direct physical victims of their fathers.

***Emotional Terrorizing without Child Witnessing Physical Violence.*** In some families, physical violence either did not occur between the parents, or mothers believed that their children did not witness the physical attacks that did occur. However, the children in these families were aware of the atmosphere of tension and fearfulness in the household and may have been exposed to violence of which their mothers were not aware. These children's awareness provoked significant distress among them. For example, Sandra's husband never hit her, but he frequently physically threatened her. Sandra recounted below the effects the high level of

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



tension in the household produced for her son. She followed this thought with a discussion of how she became aware that her children knew about their father's threatening behavior.

> I think my son is an anxious kid and I think some of that anxiety happened...well. Again I think it's a result of an abusive situation, but I think that your children are always more aware of it than you think they are...Umm...I thought my kids had no idea because [my husband] tended to come home late at night …He was around so little that I actually didn't think they were as aware of his personality and what was going on between us as they ended up being... My daughter, in the first grade, they asked her to draw a picture of her family and she drew a picture of her father with his fists over me. I was like, "How did she know that?"

Sandra tried to remove the couple's conflicts to rooms away from the children, and she believed that they were not aware of what was happening until her six year old daughter drew a picture of the family. This story revealed both the toll these experiences had on Sandra's children, as well as the level of awareness they had about what was happening between their parents, even when Sandra was trying to protect them from conflict. Similarly, Belinda's daughter was also aware of the tension between her parents, even though she was quite young. Belinda was beaten up on multiple occasions by her husband, but she reported that he never harmed the children and that they didn't see these attacks. After she relocated to the United States, she would ask her daughter if she wanted to return to the other country:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> I used to ask her if she wanted us to move back to [our Latin American country] and she would say, "No. I don't know why my daddy yells at you. I don't know why he yells at you." Imagine that. She was very young. She was five years old.

Belinda's 15 year old son was also aware of the conflicts between his parents and he repeatedly asked his mother to leave his father, saying that he would get a job and help support the family, but Belinda was unwilling to burden him with this responsibility. This example again demonstrates that children are aware of the conflict happening in the household, even when they are as young as Belinda's daughter and even when parents don't think the children have been exposed to the violence.

Amanda ended up in an altercation with her husband in which she was seriously cut by a knife that he held (she was unsure if this was an accident or not). She was in the hospital for several days after this incident. Her husband abruptly moved the family from the urban area in which they were living to a small, isolated village after this incident. Amanda reported the effect this had on her nine year old son while they lived in the other country:

> But, my son, he was like a nervous wreck, 'cause he knew everything that was going on. I didn't really say anything, but kids can feel it. […] He didn't hear exactly everything that was going on, but he was old enough to kind of put everything together…He came back [to the United States] very nervous. I mean, for the first year that we were here, and even the time that we were in [his father's country], he couldn't sleep at night. He had a lot of anxiety; a lot of stomach problems. And all that is part of, like the psychologist told me, we had…what's it called? Post traumatic stress?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



As was the case for the children who witnessed physical violence against their mothers, the children in families where overt physical violence was not occurring, or who did not witness the attacks against their mothers, also had significant emotional distress as a result of the abuse. Even when mothers thought their children were unaware of the problems in the relationship, children were more perceptive than their mothers knew. The tension in these families manifested in the children as anxiety, worry, nervousness and sleep disorders. Clearly, even in families where there was the least direct exposure of the children to the violence, the consequences for them continued to be profound.

In three of the interviews, it was not clear what the children had experienced or the effects on them. In Caitlin's* case, no transcript of the interview could be made, so specific information on what happened to her child was unavailable. In Kelsey's* case, she reported that her sons were exposed to sexually inappropriate activities; however, a U.S. judge who evaluated the evidence she presented to support this claim did not agree. Katie* reported that her husband was manipulative and controlling, particularly after she came to the U.S. to take care of her family member. In this case, it is also not clear what the children were exposed to and the effects this may have had for them psychologically.

**Mother and Children's Combined Exposure to Violence**

The women in the study reported a variety of abusive experiences towards themselves, and sometimes towards their children. There were no cases where the mother reported physical abuse of the child and no abuse to herself. Based on the women's reports of what happened to them and their children, each case was classified into a typology of four groups based on the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



presence or absence of physical violence to the mother and her children. Table 3.5 shows the classification of each woman's case in this typology.

**Table 3.5**

Typology of Mother and Children's Exposure to Domestic Violence

| | **Mother and Child Both Physically Harmed** | **Mother Physically Harmed, Child Witnessed Attack** | **Mother Physically Harmed, Child Did Not Witness Attack** | **Emotional Terrorizing with No/Minimal Physical Violence** | **Unclear** |
|---|---|---|---|---|---|
| | Kendra<br>Jennifer<br>Kayla<br>Pamela<br>Marina<br>Ilana<br>Stephanie*<br>Marta* | Lara<br>Fiona*<br>Caitlin*<br>Megan*<br>Rebecca*<br>Austin*<br>Tamara* | Belinda<br>Ruth*<br>Amanda | Sandra<br>Katie*<br>Ellen* | Kelsey* |
| TOTAL | 8 | 7 | 3 | 3 | 1 |

***Mother and Child Both Physically Harmed.*** In this group, the husband inflicted psychological and physical violence against both mother and child on multiple occasions. Children were both the intentional and unintentional targets of his attacks. This group consisted

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



of eight women and 16 children, of whom 10 were boys and six were girls. Women in this group reported classic experiences with wife battering and child abuse, including long-term patterns of coercive behavior on the part of their husbands coupled with the experience of physical assaults against them and their children.

***Mother Physically Harmed, Child Witnessed Attack.*** Husbands perpetrated the same levels of physically and emotionally abusive behavior against these mothers as was true for the previous group, but he did not target the children for violence. This group had seven women and 13 children, of which eight were boys and five were girls. Although the children may not have been directly exposed to physical violence on the part of their father, they witnessed the abuse their mother was experiencing.

***Mother Physically Harmed, Child Did Not Witness Attack.*** In this grouping, the mother was exposed to similar levels of physical attacks and emotional terrorizing, but the mothers believed their children were not direct eye-witnesses to these assaults. The mothers in this group reported that their children had substantial emotional distress which the mothers believed was related to the level of distress that the mother experienced because of the abuse. Three women were in this group with five children, two girls and three boys.

***Emotional Terrorizing with No or Minimal Physical Violence.*** In these cases, men inflicted high levels of coercive control in their families, but they were not physically violent, or the woman reported low levels of physical events (i.e., pushing and shoving). These relationships were characterized not by physical violence, but by high levels of emotional intimidation and control. Four mothers and 10 children were in this group, with seven boys and three girls.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Unclear.*** In this one case, the woman's abuse story was ambiguous, and she did not provide information about whether the children had witnessed abuse.

**Discussion**

Overall, these results indicate that the women and children in this study often faced severe and sustained exposure to domestic violence prior to the mothers' decision to flee the other country. For the majority of the women, this violence included serious physical assaults against them, coupled with a degree of threatening behavior that led the women to believe that their and/or their children's lives were in danger. They were often isolated from family members and friends, prevented by their husbands from having independent access to financial resources and/or exposed to threats based on their immigrant status. These patterns are consistent with the larger literature on the experience of woman battering and coercive control (Barnish, 2004; Johnson, 2008; Renzetti, 2009; Smith, Smith & Earp, 1999; Stark, 2007; Williams & Mickelson, 2004). In contexts outside of the family, the behaviors reported here – physical assault, threats of harm to the victim or family, isolation, and degradation – are consistent with social science definitions of torture (Dutton, 1992).

In those families where women were being physically assaulted, children were physically harmed by father, whether as his intended or unintended victims, in eight (36.6%) of these cases. In an additional six families (27.3%), mothers reported that their children were firsthand witnesses to violent attacks against them, even if the father had not physically harmed the child. Sometimes, children saw fathers assault mothers in ways that could have resulted in her serious injury or death. Children in five families (22.7%) were aware of domestic violence, but mothers reported their children did not directly witness abusive actions. Based on current

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



definitions of children's exposure to domestic violence (including physical harm to the child, witnessing or awareness of the violence), 86.4% of the children in this sample were exposed to domestic violence. These results are consistent with studies of the overlap between domestic violence and child abuse (Jouriles, McDonald, Slep, Heyman & Garrido, 2008).

These violent events had profound effects on the children. Mothers reported that their children experienced night terrors, intrusive memories, separation anxiety, depression and increased aggression. The literature on child exposure to domestic violence indicates that even without direct physical harm to the child, being an eye witness to their mother's abuse or even experiencing the events before and after abusive incidents in a family can result in profound emotional distress for children (Kitzmann et al., 2003; Wolfe et al., 2003). In these contexts, the father's abuse of the mother is harmful to the child. It is important to be clear that this harm stems from the father's actions, and is not a reflection on the parenting of the mother. It is also important to note that the child's exposure may create psychological harm to the child equivalent to the harm suffered by children who have been physically abused themselves.

Domestic violence played an important role in creating the circumstances that forced these women to leave the country where they were living with their children. Unfortunately, given the challenges inherent in studying the population of women subject to Hague petitions, it is not possible to estimate what proportion of women involved in these legal cases are victims of domestic violence. Previous research on child abduction suggests that over half of families where parental abduction occurs experience domestic violence (Grief & Hegar, 1993). Although we cannot estimate the number of mothers facing Hague petitions who are experiencing domestic violence, it is evident from the data reported here that when women identify as

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



domestic violence victims, the abuse they are experiencing is, in most cases, severe and consequential for them and for their children. As we shall discuss next, deep fear of harm from the left-behind father frames the events that surround life in the other country, and the eventual decision these women made to come to the U.S. in a quest for safety.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 4: PRE-DEPARTURE

## Domestic Violence and Its Relation to Habitual Residence

The purpose of the Hague Convention is to return children to their "habitual residence" as quickly as possible since the priority is to have courts in the country where the child has usually resided make decisions about issues of custody and visitation upon the dissolution of a marriage/ partnership. An underlying assumption of the habitual residence concept is that both parents voluntarily agree to reside in another country with their children. The Hague Convention does not define habitual residence, so courts have been left to determine their approach to this concept. As a result, U.S. courts differ on what standards should be used to determine the habitual residence of the child. Vivatvaraphol (2009) has reviewed jurisprudence in this area and found that courts evaluate the shared intent between parents to reside in a certain place, and that this intent is not dependent on a certain amount of time elapsing, but rather on the "settled purpose" (p. 9) to make the new location the habitual residence in the "ordinary and natural" sense of these words (*C v S (minor: abduction: illegitimate child),* [1990]). Courts can look to certain facts as evidence of settled purpose, including "child's enrollment in school, the primary language spoken by the child, the quality and duration of the child's stay in a particular country, and the relationships formed by the child with friends and relatives. (Vivatvaraphol, 2009, p. 17). Fundamentally, habitual residence must "entail some element of voluntariness and purposeful design" (Clive, 1997). In a narrow framing of habitual residence, what is often overlooked is the ways in which men may entrap women in other countries. In this chapter, we examine how the women in our sample came to be in these other countries and demonstrate the role that domestic violence played in some of these cases in determining the habitual residence of the children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



We focus in this section of the report on the 17 cases in our sample of American women who moved to other countries to be with their husbands. This excludes the cases of five women who were citizens of other countries and who immigrated to the United States to escape their husband's abuse. The special issues of women who are immigrants to the United States are discussed in Chapter 8: Experiences of Latin American Mothers.

In two of the cases (Kelsey* and Stephanie*), no determination could be made as to the reason and circumstances of the move to the other country. In Kelsey's* case, the degree of incoherency in her story prevented an assessment of the reason she moved to the other country. For Stephanie*, her focus in the interview was on her current difficulties, and not enough time was available to cover this aspect of her situation. In the remaining 15 cases, women discussed how they came to be in the other country. We categorized the reasons women gave for moving to the other country into four mutually exclusive areas. Table 4.1 shows these reasons for moving and the woman who experienced each circumstance.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 4.1**

Reasons for U. S. Women's Relocation to the Other Country.

| | **Voluntary Move** | **Voluntary Return under False Pretenses, Woman Chose to Remain** | **Voluntary Move, But Husband Prevented Immediate Return** | **Direct Threat by Husband Forced Move** |
|---|---|---|---|---|
| | Sandra<br>Jennifer<br>Tamara*<br>Fiona*<br>Megan*<br>Austin*<br>Kayla<br>Ruth*<br>Caitlin* | Katie* | Ellen*<br>Rebecca*<br>Amanda<br>Kendra | Pamela |
| Total | 9 | 1 | 4 | 1 |

For the majority of the women (60.0%), the move to the other country was for voluntary reasons that were not influenced by domestic violence. In the language of previous court rulings, the coupled voluntarily shared a "settled purpose" in residing in the other country. In Sandra and Jennifer's cases, they had jobs in the other country that facilitated their moves. Sandra's American husband accompanied her to another country; Jennifer sought professional

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



employment in her husband's country and when she secured this, they moved there. For Fiona*, Austin*, Kayla and Ruth*, the family moved so that the husband could take a job in the other country. Tamara* was a student in her husband's country when she met him, married and decided to settle there with him.

In these seven cases, there was no indication that the women felt the marriage was in trouble prior to the move to the other country. For Megan*, however, the move to his country came after a year in which her husband had separated from her and the children to travel around the U.S. because he was dissatisfied with the relationship. He returned to the family and suggested that they move back to his parents' home country, as he believed they would have better opportunities there. Megan* agreed to do so feeling that this would be an opportunity for her to live abroad, and that their relationship would improve. In each of these eight women's circumstances, domestic violence was not a factor in the decision to move to the other country.

In six cases (40.0%), the women were tricked into relocating, immediately prevented from returning when they arrived in the other country, or forced by potentially life-endangering threats to accompany their husband to the other country. In each of these women's situations there is a clear absence of a voluntary decision to go and remain in the other country. A pattern of coercion and physical threat associated with domestic violence were factors in each of these six cases.

Pamela's situation is the clearest example of coercion within this group of women. She reported on the way her husband threatened her to make her move with him to Europe.

> We lay in my parent's house while my son slept and he said to me, "You're going back to [my country]. I don't want to stay in the United States. Me and my son

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> and you are going back." And I told him I didn't want to go. I wanted to stay here and that is when he said to me, "You will go back or I'll kill you." And he proceeded to tell me that he knew [how to kill]... which he did. That was his job. And he told me that in his career as a […] policeman […] he did secret vigilante work and that his last time, he had killed seven people. […] And so I was scared to death. From that day on, I just cried […] because I knew what I was headed for. That I was going to live my life being tied to this abusive man who was an alcoholic and he never showed not one ounce of attention to my son even from the moment this child took his first breath. He never fed him. He never touched him. He never held him. He didn't change his clothes. He didn't tell him he loved him. Nothing. Nothing. […] Yet, he was willing to kill me because he saw his son as a possession...And he saw me as a possession, and that's all that I was. So, out of fear of death, […] I went back to [his country]. Not because I wanted to, but because I was told that I would die if I didn't. And coming from a man who looks you straight in the face and says "I've killed seven people before, and it won't mean anything to me to kill one more."

Pamela's story clearly describes how her husband used his ability to threaten her with death (a threat that she found credible based on his past employment, his behavior while they lived in the U.S., and the stories he told her), to force her to return with him to his country. Pamela's husband filed a Hague petition against her after she escaped him and returned to the U.S., but the case was never heard in court and no decision was ever made on it because her husband, for reasons not known to Pamela, did not pursue the case after filing it in a U.S. court.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



In the five other cases, some level of subterfuge and coercion was used by the men in these families to either trick their wives into moving to the other country, or to keep them there once they arrived. For example, Katie* felt that her husband lied to her to facilitate the move to the other country. In Katie's* case, she voluntarily agreed to move to his country, but came to believe later that he had manipulated her into the move in order to put himself in a better position should they divorce. After establishing a home in his country, he encouraged her return to the U.S. with her seven year old daughter to help care for a family member. Unbeknownst to her, he had not completed necessary immigration paperwork to allow her to return. As a result, she believes he encouraged her to leave his country and that he planned to use the Hague process to obtain custody of his daughter, while simultaneously preventing her return because of her out-of-compliance immigration status. Her attorney counseled her to agree to a voluntary return to his country as the court had ruled that this was the habitual residence of her daughter.

For four of the women, once they accompanied their husband to the other country, within days to weeks, they realized that he would not allow them to return to the U.S. and that he would force them to stay in his country. Ellen's* husband told her that that they would be going to his country for a visit, but once there, her husband destroyed her and her child's passport (as was described earlier in the section "Passport Control/Immigration Threats") to prevent her from returning to the U.S. Several months later she managed to get new passports issued from the U.S. Embassy and fled with three of her four children (the fourth child had been taken by her husband to another location). Once she and the children were in the U.S., he successfully used the Hague process to force the children's return to his country. Ellen* was unsure if evidence about the coercion involved in their continued presence in the other country was presented to the court.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



In Kendra's case, after the birth of her son, she agreed to a temporary visit to her husband's country only to discover after being there for a few weeks that he intended for all of them to stay.

> The baby was 8-months, […], and we were going to go back for the summer and do the usual, you know […We] had to show the baby off. You know, take the baby and show it around […] and everybody's happy and life is a party. Um…. We went back and it was …really nice for a while and then I sort of discovered quite by accident that his mother had arranged a permanent job for him that – well… and things sort of escalated from there.

Kendra discovered after learning of her husband's new job that he had no intention of leaving his country and returning the family to the U.S. where they had lived for the previous two years since marrying. It is unclear whether this was her husband's plan before they began their visit, or if this decision evolved during the weeks they were initially there. After deciding to stay, he moved them into a family compound where she was isolated from contact with others because it was against the beliefs of his culture to allow women to leave the family compound unescorted. Soon after Kendra's husband revealed that they would be staying in his country, he began to physically and emotionally abuse her. This abuse continued for several years, during which time Kendra made two attempts to escape. Her husband found her after ten months in hiding; the second time she fled to the U.S. and went into hiding with her son. Her husband hired a private investigator, found her location and had her son removed from her custody as a result of the Hague petition. Kendra argued in court that she had never agreed that his country

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



would be their habitual residence. She eventually settled her Hague case, the court returned her son to her custody, and they were allowed to stay in the U.S.

For Rebecca* and Amanda, their husbands clearly planned their efforts to force them to remain in the other country once they arrived. Rebecca* and her husband were having serious conflicts while in the U.S. The couple had previously lived together in his country, so they decided to return, which Rebecca* hoped would help mend their relationship. Rebecca* recounted the situation she experienced immediately upon moving to her husband's country.

> I moved with my husband and my two children to [his country] […] and the day after we arrived there, I realized that I had made a mistake. Our marriage had been falling apart, and literally the day after we arrived, I told him that I had made a mistake and I wanted to go home, and I wanted a divorce. What I didn't know was that before we had moved, he had set it up so that I couldn't go home. He had… in [his country], there's such a thing as a restraining order so that somebody can't leave the country. […] He had set up, with his family, a meeting with an attorney, which he did immediately, got a restraining order against me, and I could not leave the country. I was trapped.

Rebecca's* husband lied about the consequences of the family's move to his country and his intent to force the family to stay there after they had moved. Once Rebecca's* entrapment occurred, the physical violence from her husband escalated to the point that he was inflicting potentially life-threatening violence on her, including attacking her with dangerous objects. After several months, Rebecca* managed to obtain his agreement that she and the children could visit her parents in the U.S. for a few weeks. Once she arrived in the U.S., she immediately filed

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



for a divorce. He submitted a Hague petition and was successful in enlisting the U.S. courts to force the return of the children to his country. Even though she had been attempting to leave his country from almost the moment she arrived, the U.S. court did not acknowledge the role that his coercive and violent behavior played in determining their residence in the months preceding her move back to the U.S.

Amanda also was unaware of her husband's ulterior plan to enforce their move to his country. She too moved to his country in the hopes of repairing a marriage that had been fractured by his adultery. She describes the following:

> I was born and raised, you know, here in the United States, and my husband was here [when] I met [him]. We were married for ten years and he's from [Europe], and we were here, married nine years and he decided to go back to [Europe]. […] He told me we were going to go there for a while, just to see if it worked out. […] So, we pretty much went on a trial basis. But, as soon as I got there, things started changing. […] He didn't say too much at first, and we were there for like about a month, and then, he told me to come back because we had one of our businesses running here […] So, I came back and I paid the rent, and then, I went back to [his country], and then I found out that we weren't going back. He took my passports away, and the kids' passports away. […]. So, he took our passports away and he said that we weren't going anywhere. […] I wasn't even in [his country] more than six weeks when all this chaos started going on.

Amanda's story demonstrates the coercive nature of the decision her husband made once they were in his country to stay there. Soon after his announcement, the encounter happened

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



where she was cut with a knife he was holding during an altercation. Amanda managed an elaborate escape and returned to the U.S. with her children; he served her with a Hague petition soon after. Interestingly, Amanda's was the only case in which the judge decided that his country was not the habitual residence of the children. However, from Amanda's understanding, the judge's rationale for this decision was based on the length of time that they were in the other country and the fact that the couple had maintained a business in the U.S. The judge did not cite the coercive actions on the father's part that kept Amanda and her children in the other country until they escaped as a reason to for his ruling on the children's habitual residence.

**Discussion**

Most of the women in this sample went willingly to the other country with their husbands, or met and married their husbands while resident in the other country. In these nine cases, domestic violence did not play a significant role in determining the habitual residence of the children. The decision to live in the other country was mutual, or one already made by the woman without coercion.

For a significant minority of the women, the decision to be in the other country was either a result of a direct threat from the husband, or was a product of the husband's intimidation and efforts to control the woman and children. In these cases, some level of deception or coercion in the relocation to the other country was involved. In the context of abuse, some children are residing in the other country because their mothers were not free to negotiate their residence because of the father's abuse and intimidation. A mother's decision to remain in another country may be more reflective of a strategy to ensure her own and her children's survival, than a voluntary decision to reside in this location.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The dynamics of the decision of where to live, coupled with the previous description of the abuse that the women reported, indicate that the question of the child's habitual residence is far more complex than a simple calculus of time or a child's attachment to social institutions. Children may have spent several years in another country, and as a result they may have been enrolled in schools, or been a part of a social community. However, these actions may be rooted in the initial efforts of the father to entrap the mother and children in the other country through his abusive behavior. As a result, the issue of habitual residence in these families has to be carefully explored to uncover whether the decision to reside in the other country is a mutual and voluntary one. To determine the child's habitual residence solely on the bases of length of time in the other country, without acknowledgement of the underlying reasons for this residence, is to further perpetuate abuse of the women and potentially further harm the children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 5: DEPARTURE

## Reasons for Her Relocation to the United States

Women in this study lived in situations of intense fear for themselves and their children. Their choices were constrained by their husbands and by their location and experiences in countries where most had limited communication options. Yet even within this context, the women in this study were surprisingly resourceful and persistent in seeking help from outside sources to cope with the violence and to try and attain safety within the other country. In this section, we discuss four dynamics involved in the women's decision to flee the other country and come to the U.S.: (1) the efforts women made to end the relationship and escape abuse in the other country; (2) the resources the women turned to in the other country; (3) barriers women reported to their ability to safely stay there; and (4) how each woman managed to leave the other country.

### Ending the Relationship in the Other Country Did Not End the Abuse

The women in this study generally made multiple attempts to change the actions of their abusive partners, either by directly challenging his behavior or by engaging others on their behalf to confront him about his violence. In general, as we will show below, these efforts were unsuccessful, leaving the woman with the few options other than continued exposure to his violence or figuring out a way to escape. Six of the women had already taken steps to remove themselves from the violent behavior of their spouses before fleeing to the U.S., but leaving the relationship did not end the violence, and in some cases only escalated it further. Of these six women, three had initiated divorce proceedings and three had already divorced their abusive spouses prior to their decision to flee to the United States. In these instances, the legal end of

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



their relationship did not stop these six men from continuing to stalk and physically attack the women. For example, Lara had been married to her husband for more than five years before deciding to obtain a divorce because of his abusive behavior. However, her ex-husband's violence did not end after the divorce, but escalated, as she noted:

> I filed for divorce and separated from him. I lived in another house, but then it was worse because he would go to the house and if I wasn't there he would break everything. On two or three occasions, he went and broke the door, and started throwing things around […] And like I told you, the tone of things was escalating. When I couldn't take it anymore, I went to the authorities, when things got too ugly in front of my son. […] So, he came in breaking the door down, as it was his custom and he started to hit me in front of my son. […] I ran for the phone to call the police and he left immediately. But, since that time, he hit me harder.

Even though Lara had taken every step available to her in the other country to physically, legally and emotionally separate from her abusive husband and to begin the process of rebuilding her life, her husband continued to stalk and attack her in her new home. The effects that the violence and disruption were having on her son became a primary concern to Lara, compelling her to reach out to the authorities in her city. Unfortunately, Lara was stymied in her efforts to get her husband to stop attacking her by the unwillingness of the institutions she contacted to address the domestic violence she faced. Here she describes what happened when she went to the police after the violent incident recounted above:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> First, I went to the police to accuse him. I went to file a report and they told me if I wanted to file a report, I had to go to the Red Cross so they can make a report on the bruises, in order to file a complaint with them. […] I went to the Red Cross and they said, "You know what? You're not bleeding. You have bruises, and you've been hit, but you're not bleeding. We need for the bruises to be visible, in order to give you a paper that states this. Why don't you wait two days, until they're more noticeable so that we can make the report better?" OK. I waited two days. Two days later, I went to the Red Cross. I tell them what happened. They said, "You know what? That was two days ago. Why do you come now?" I said, "Well, because that's what you instructed me to do." Then they said, "No, we can't give you that paper." It was very frustrating. I couldn't make a report. So, I went to the attorney who was helping me with the divorce proceedings, and he told me there was nothing we could do. He said we needed to wait until my husband hit me again and left me bleeding. I really felt desperate.

Lara's experience typifies the problems faced by women in other countries as they tried to seek institutional accountability to stop the batterer from continuing his behavior. Despite evidence that she had been harmed by her ex-husband (the bruises she had), neither the police nor the Red Cross intervened on her behalf to stop the violence. In fact, the process that she encountered in trying to document this physical assault could be characterized as an effort on the part of the authorities to avoid responsibility for any kind of intervention. Neither institution took responsibility for aiding her, and instead, reinforced the idea that she would have to be hurt even more severely before they might intervene. In this encounter, bleeding is equated with

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



severity, with the implication that other physical harm was not a serious event that indicated the need to confront the abusive husband. Lara's visible bruises were not a sufficient indicator that his behavior was problematic.

In Lara's case and that of five other women, taking steps to end the relationship did not end the husband's abuse. In fact, the women's move to separate escalated the men's attempts to try and regain control of them. These women were doing what they could to increase their safety and remove themselves and their children from their husband's abusive behavior while still living in the other country. Unfortunately, they were not successful in stopping his violent conduct.

**Obtaining Help in the Other Country**

Like Lara's story above, women in the study sought a variety of resources to cope with the violence. Most women (85.7%) contacted at least one of three resources in the other country. In Table 5.1, we list these three resources and other factors related to their experience in the other country. We note whether women contacted the police or judicial system in the other country; whether they sought assistance from some other formal institution for the domestic violence, and whether they contacted the U.S. Embassy for help with their situation. We also documented whether the woman was fluent in the language of the country where she was residing, and who she lived with when she moved to the U.S. Next, we provide more detail about the responses women encountered from the formal institutions in the other country.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 5.1**

Resources Accessed by the Women in Coping with the Domestic Violence

| Woman | Contacted Police/Judicial System in Other Country | Sought Help for DV in Other Country | Contacted U.S. Embassy in Other Country | Fluent in Other Country Language | Returned/ Relocated to Family in U.S. |
|---|---|---|---|---|---|
| Belinda | | | | √[a] | √ |
| Amanda | √ | | √ | √ | √ |
| Ilana | √ | √ | | √[a] | |
| Fiona* | | | | | √ |
| Lara | √ | √ | | √[a] | √ |
| Ruth* | √ | √ | √ | | |
| Megan* | | √ | | | √ |
| Pamela | | | | | √ |
| Marina | √ | √ | | √[a] | √ |
| Ellen* | | √ | √ | | √ |
| Kendra | √ | √ | √ | | |
| Jennifer | √ | | | √ | √ |
| Kayla | √ | √ | √ | | √ |
| Rebecca* | √ | √ | | √ | √ |
| Stephanie* | √ | √ | | | √ |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | | | |
|---|---|---|---|---|---|
| Austin* | | √ | | √ | √ |
| Marta* | √ | √ | | √[a] | √ |
| Tamara* | √ | | √ | √ | √ |
| Katie* | | | √ | √ | √ |
| Kelsey* | √ | | √ | | √ |
| Sandra | | | √ | | √ |
| Caitlin§* | | | | | |
| TOTAL | 13 | 12 | 9 | 11 | 18 |

[a] Immigrant woman to the U.S., so she was fluent in the language of her home country.

§Caitlin's interview was not recorded, and notes from it were not sufficient to fill out this table.

***Contacting the Police or Judicial System.*** When women did reach out for formal help, the police and judicial system were the institutions to which they were most likely to turn to for assistance. More than half of the women in the study (59.1%) sought help from the criminal justice system in the other country to cope with the abuse. In addition, three of the women contemplated contacting the police but chose not to because either they felt the system would not be responsive because they were foreigners, or because their husband was a police officer or knew people on the police force, so they didn't feel safe contacting the police. Overall, only six women did not consider approaching the police when they were in the other country.

Strikingly, however, of the 13 women who contacted the police or court system, none of them received assistance with the domestic violence they experienced. The reasons for this lack of help varied, but the most common response of police and court officers was to support the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



husband overtly or covertly in continuing his abusive behavior. In six cases, the police or court openly sided with the husband in his efforts to control the woman. For example, Kendra was brutally attacked by her husband and she did, as she said, what she thought any woman would do in this circumstance, she contacted the police. When they arrived, the following transpired:

> The police did come, they actually came up in record time. They were there in about less than 30 minutes, if I remember correctly. And they looked at me – by then, you know, things are beginning to show. I had hand marks around my neck so that for days I wore a turtleneck to hide. And they informed him that since I was still up talking and able to complain he hadn't done his job properly (stifles a sob).

Kendra interpreted the police comment that her husband had not "done his job properly" to mean that he had not exerted his control over her sufficiently to prevent her from calling the police. The police were overtly supporting the abusive husband's right to use physical force to control his wife, even to the extent of endorsing the possibility that he could do something to prevent her from being "up talking." Marta* encountered a similar dismissive attitude among the court officials she approached for help as the violence escalated:

> At first, I didn't do anything because he always found a way to make me feel like it was my fault he was aggressive with me. "It's your fault I beat you. It's your fault." So, I didn't do anything. But the last time he beat me, I went to court and I told them I wanted to file a violence complaint and they laughed at me and told me to go make my husband happy, because most of the women who went there to file a complaint would bail their partners out a short time later. So, I didn't

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> pursue the complaint. The only thing I had was a medical report, which stated the lesions I had. This was the report I was supposed to use to file the complaint. But, they didn't […] want to take my complaint […] they said that all the women who filed a complaint against their partners for domestic violence, would later turn around and bail them out of jail, and that was a lot of work for them to do and that it didn't make sense for me to file a complaint if I was going to bail him out myself, later. They told me to go make my husband happy so that he wouldn't beat me.

Marta*, after many beatings, felt desperate enough about what was happening to seek out help from the court, but the officials she encountered didn't want to take complaints that caused extra work for them when the women wouldn't pursue legal action. Marta* does not indicate that they assessed her situation, offered her alternatives to the violence complaint, or helped her to plan for her safety in another way. Instead the officials indicated to her that they saw her as responsible for the violence since she was not making her husband happy. Their advice was to do something to modify her behavior so he would stop beating her.

In both Kendra and Marta's* encounters with officers of the criminal justice systems in the other countries, the people who heard their complaints not only didn't treat the situation seriously, they actually aided the violent husbands in evading responsibility for their violent actions. In Kendra's case, they directly communicated to the husband in front of her that there would be no consequence for him. In Marta's* case, the court officials placed the responsibility for his actions on her, so he was not held accountable. These two examples are most accurately

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



interpreted as instances of institutional sexism in which women's safety needs are systematically discounted in favor of bolstering the role of the man in the relationship.

Other women encountered difficulties in accessing law enforcement help that were less overtly discriminatory but which were still inclined towards supporting the men engaged in these behaviors. Stephanie* called the police on multiple occasions to report that her husband had hit her, but she was unable to convince the police to come and investigate her story. She had to enlist other legal help to pressure the police to respond:

> I told [my] attorney [in the other country] what had happened, that my husband had been physically violent, and I told her that I had been trying to call the police; that I had called them and they always respond with "We want to speak with your husband. We want to speak to your husband." My husband would talk to them, calm them down, tell them, "She's crazy. Nothing's happening. I'm not abusing her. She's crazy." So, they wouldn't come... until finally, this attorney called the police and said "I'm demanding that you check on her." They finally did.

Stephanie* was not fluent in the language of her husband's country and was unable on her own to activate the police to intervene with her husband. She had to find another legal authority who pressured the police to make a visit to the home and assess the situation. Unfortunately, when the police came to investigate, they pulled her husband aside and told him to safeguard the children's passports from her as was described earlier in the section on Passport Control. The police did not investigate the father's violence or help her to identify what could be done to increase her safety. This lack of intervention by the authorities led her husband to feel

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



even more empowered to beat her since he believed there would be no consequences to his actions.

Several women encountered bureaucratic barriers to obtaining help from the criminal justice system in the other country, similar to the circular events Lara reported in her encounters with the Red Cross. Rebecca* told of a common barrier the women reported, namely that the police could only intervene if they were present when she was being physically attacked.

> They said they couldn't do anything after the fact. They needed to be called when it was happening. *Interviewer: Can you tell me a little bit about the incident that led you to go to the police?* He had picked me up… the houses and apartments are built out of stone. Everything is built out of stone there. And he had picked me up and was slamming me against the wall and had bashed the back of my head open. All of my hair was bloody and matted, and I went to the police and… you know… they said they needed to be at my house when it was happening. They needed to see, you know, what was happening at the time: who was doing it, how it was done.

The likelihood that a woman would be able to phone the police during a physical assault and have them arrive in time to witness the attack seems remote. This emphasis on first-hand witnessing of violence severely limited Rebecca's* ability to obtain safety for herself through help from the police. This example illustrates a bureaucratic barrier relative to how systems define a legitimate domestic violence report. In Rebecca's* case, only an eye-witness account by a police officer would satisfy the need to determine if domestic violence was occurring. The

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



evidence of the after-effects of the assault (her bloody head) was insufficient to galvanize a response.

Other women also found that they didn't "fit" the bureaucratic protocol that authorities used to determine if domestic violence was happening. In Jennifer's case, she was a professional woman and she and her husband lived in an affluent part of town. The police were disinclined to become involved in her case. She believed they saw abuse as more of a problem of those in poverty, so her professional, affluent status was a barrier to receiving help. For Marina, her husband's abuse was so serious as to knock her unconscious, but since he didn't leave bruises in typical places the police said there was nothing they could do. Tamara* also sought help from the police both the night that she served her husband with divorce papers and he became violent, and in the weeks that followed once he discovered her whereabouts and began stalking her. The police tried to help her find shelter the first night, but there was no shelter space available; subsequently, they told her there was nothing they could do about his stalking as he had the right to be in the street outside of where she was staying since it was public space.

The police and court systems were the most frequent resources the women approached to try and stop the abuse. However, these systems often functioned either overtly or covertly to support the battering husband in his efforts to control the woman, or the bureaucratic response to the abuse was such that these systems did not effectively intervene on behalf of the women. Across 11 different countries, the experiences of the women who chose to leave were remarkably similar – the police system was not able to protect them and their children from his abuse while they were in that country.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Sought Help for Domestic Violence in the Other Country.*** In the context of the social safety system of the police and courts providing no effective intervention, over half of the women turned to another formal resource for assistance with the abuse. In Austin's* case, a physical attack by her husband was so severe that she had to flee the house with her young daughter, and they ended up living in a domestic violence shelter in the other country for a few days. In the other eleven cases, women did not seek out typical domestic violence services, but rather sought help from attorneys, religious authorities, social service providers and medical workers who treated their injuries. These services tended to be more supportive of the woman than the police and courts, particularly the attorneys that practiced in the other countries. Eight of the women reported that the other formal helpers they encountered were empathetic and attempted to help the women cope with the violence.

However, some of the services the women turned to perpetuated the same problems as found with the police, namely, they did not hold the batterer accountable for his actions. As a result, they were ineffective in helping the woman to create a safer situation for herself and her children. Stephanie* notes her experience with a mediation service that the police suggested could help the couple more effectively negotiate the problems they were having.

> We went to see the mediator once. We had appointments to go see this mediator. Again and again my husband blocked these mediations claiming he was ill, claiming that he had to work late. And I have all of those papers. I've always had all of those documents. It's his own handwriting, with his own signature making excuses of why he couldn't attend, or why we couldn't attend these mediation appointments. The mediator when we saw her once, told us that there were a lot

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> of problems, that my husband should go to a psychologist and that we should also try family therapy. He never once set foot anywhere. He said he didn't have time. He said he didn't believe in it, and that he wasn't going to do it and nobody was going to make him. And it's true, nobody did. So, after he blocked the mediation three times, the mediator stopped. They didn't call. They didn't write. They never wrote to me or called me saying, "Madam, we have to talk to you. Are you in agreement with this, that we stop this? Is it true what your husband is saying that he's this, that he's that…" They just dropped the ball. They just didn't do anything.

This example documents a struggle similar to that encountered when the women tried to obtain a police response to the violence. Although the mediator was able to see that the couple was having problems and needed further assistance (particularly for the husband), this assessment did not lead to further action. In fact, when the husband refused to continue to participate, there was no consequence for his decision and the mediation service stopped contacting the couple. Stephanie* sought out help from the police and from this mediation service, but neither helped address the violence. After these efforts on her part, she notes she was in a "desperate and delicate position," since her husband now believed he could enforce his will on her physically and emotionally without suffering any consequences.

For five of the women, their own understanding of the situation didn't facilitate self-identification as victims of abuse and, thus, they didn't access domestic violence specific services. Two of the women specifically noted that they didn't think of themselves as having

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



been abused until they chanced upon a brochure on domestic violence. Since these women didn't identify as victims, they didn't seek out help from battered women's programs.

***Contacted U.S. Embassy in Other Country.*** Nine of the women directly contacted the U.S. Embassy in the country where they lived to ask for help. The embassies had a variety of responses to the women. Kendra was told that the domestic violence was a personal issue and one the embassy couldn't address; similarly Sandra called the embassy during a frightening altercation with her husband, and they told her they couldn't help. Four embassies gave advice to the women that directly related to the question of the Hague Convention. In Tamara's* case, her mother contacted the U.S. ambassador in the other country who said:

> "If it was my daughter, she'd be out of here." So, for my mother and I, after hearing from our lawyer and from the ambassador, we left. But, it wasn't the true story. It isn't… you have to know 100 % what the law is. And I thought that as long as I had custody of my kids, which I was given custody of [by the other country's court after separating from my abusive husband], that I would be able to leave. And it wasn't true.

Tamara's* children were returned to her husband in the other country and Tamara* has been engaged in legal action in the other country for several years to regain custody. Ellen* also received similar advice to flee her abusive husband from the U.S. Embassy in the country where she lived. In both women's cases, the U.S. judges ordered the return of their children to their husbands in the other countries, saying that the women had to have their husbands' permission to leave the country of the children's habitual residence. Both have faced accusations in custody hearings that they were parental kidnappers. In retrospect, both women wished that the U.S.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Embassy officials had known more about the Hague Convention and advised them differently, although they were unsure if different advice would have changed their decision to flee.

In Amanda's case, the U.S. Embassy was a critical resource in helping her and her children to escape back to the U.S. Her husband hid their passports after informing her that they would remain in his country. Through Amanda's tenacity, she was able to contact the U.S. Embassy when her husband was out and start the process of getting replacement passports created for her and her children. After her husband injured her and her subsequent hospitalization, U.S. Embassy officials requested documentation and questioned the doctor as to whether the injury was self-inflicted. Once they were assured that her story was credible, the embassy staff initiated several efforts to help her return to the U.S. As Amanda noted below, one of the embassy officials planned every detail of their trip from her husband's country back to the U.S.

> [The person] from the embassy was there [at the airport]. And […] he had told me, "When you get there, just walk straight to the counter." We already had planned that two nights before. He had tickets for me, and he had [our] passports, […] as soon as he gave us the tickets, he goes to me, "Go through the gate right away. Don't wait out here. And when you get inside the plane, call me." […] As soon as I got in, they put us on board right away. […] When the plane landed, they said [Amanda] "Come to the front." …[I was so scared] we would be arrested. But, no, what it was, was that the embassy, the U.S. Embassy had already arranged for an attendant, an employee to pick us up with a cart, you know those carts that they drive the people around…[…] Then, they […] rushed

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> us through a back elevator that came down and they took us straight to the podium. They gave us our passports, and they put us immediately on that plane. I mean, we were the only ones allowed on that plane before…the plane wasn't even ready. You know? But, they stuck us in there immediately, and as soon as I got on the plane, [the U.S. Embassy official] called me [to reassure me].

This story highlights the strategic role U.S. Embassy personnel played in assisting some of the women trapped in other countries. In Amanda's case, the U.S. Embassy official not only assisted her with obtaining passports, he also arranged transportation to the U.S. for her and the children on short notice, and smoothed the way for the family at each of the transit airports. The U.S. Embassy's actions helped Amanda to successfully escape from her husband.

Across these three sets of resources (criminal justice, domestic violence programs and the U.S. Embassy), a consistent pattern emerges – 19 out of 22 of the women actively sought help to address the domestic violence from at least one formal source in the other country. Thirteen of the women sought help from more than one formal source to help her with the violence she was experiencing. It is clear from these stories that women made multiple efforts to find a solution to their situation while in the other country. In the case of the criminal justice system, these efforts to improve their safety were routinely stymied by overt and covert actions on the part of the police and courts that supported the batterer and not the woman. Outside the criminal justice system, women were more successful in obtaining support, but the assistance was not sufficient to ensure that they could safely stay in the other country. Part of the reason they were unsuccessful in securing safety in the other country had to do with additional barriers the women faced.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Additional Barriers to Safety in the Other Country**

Besides the barriers noted so far in this report (such as the ineffective action of the police), women also consistently noted three other areas of difficulty in creating safety for themselves and their children in the other country: language barriers, problems stemming from the divorce laws of the other country, and citizenship issues.

***Language Barriers.*** Excluding the women who were immigrants to the United States and, therefore fluent in the language of the other country, only five women (29.4%) were conversant in the language of the country where they resided. This lack of fluency contributed to the women's social isolation and, as has been seen in previous stories (particularly with Ellen* and Stephanie*), their inability to converse gave their husbands the opportunity to control the information provided to other formal services to which the women turned for help. Some additional pragmatic language issues also come to light for the women. For example, some of the women lived in countries whose alphabets were not Latin-based; in one woman's case, she was able to speak the language, but she couldn't read it, so she was unable to do simple things like look up resources in a telephone book. Two women reported that they were unable to receive translation of court room proceedings concerning divorce, custody, visitation or criminal charges of kidnapping filed against them by their husbands after they fled the country. Sometimes, her lawyer would have a person trying to whisper in her ear what was happening in the court, but formal interpretation was not provided to these two women. Most of the women in this study were unable to communicate effectively with either formal service providers or informal networks such as neighbors in the other country.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Barriers Created by the Other Country's Laws.*** Several of the countries in which the women lived had laws deeply rooted in traditional patriarchal customs. For example, two of the women reported that they were not allowed to testify in court because women were not permitted to talk, although their husbands could speak freely during court sessions. In some of the countries, legal remedies available in the United States were not accessible, even though these countries were Hague Convention partners with the U.S. For example, two of the women reported that there was no mechanism to obtain a restraining order against a spouse in the country where they lived, or, as in Sandra's case, the requirements to get the restraining order were too high. Sandra reported that she would have to be physically injured by her husband (like being "cut") in order to get a restraining order in the country where she resided. In her situation, her husband was emotionally threatening her and her family members, but he had never hit her or anyone else. Functionally, as she noted, it was impossible for her to get a restraining order against her husband:

> I was trying to find a way to live in [the other country] and do my work...But they don't have restraining orders there, so… I mean I was looking for any legal way to be protected so I could stay and do my job... I didn't want to leave... But that goal wasn't... you know... I had to pick my job or...you know, being safe […] so when I found out there would be no way to get a restraining order, there would be no way to keep him from having a right to be in the marital home, I knew I couldn't live there anymore.

Other women commented on the difficulties they encountered in pursuing a divorce in the other country. Some countries had no provision for a "no fault" divorce, so one member of

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the couple had to be identified as having wronged the other, a position that the men in these countries vigorously resisted taking. For example, Tamara* filed for divorce on the basis of her husband's abuse; he counter-sued her claiming she was a bad mother because she had "abducted" the children and been forced to return as a result of the Hague petition.

Belinda endured many years of abuse at the hands of her husband. She was in a difficult situation, in that she lived with him in a different country in Latin America from where she was married, and this made obtaining divorce legally unavailable to her where she resided. She reported,

> I had consulted with an attorney in [the country of residence] on one occasion when he beat me. I told the attorney I wanted a divorce and asked what I could do. He told me I couldn't get a divorce in [the country of residence], because we got married in [another country], and that's where I had to go to get a divorce. But, he told me, that according to the law in [the other country], in order to get a divorce there, I had to be separated from my husband for two years. So I was caught between the wall and the sword because I couldn't get divorced in [the country of residence] because I was married in [the other country], and how was I going to get a divorce in [the other country] while living with him?
>
> […Previously] I let him know I was not going back [to him] and I would ask him to divorce me. He would tell me he refused to divorce me.

Belinda was unable to get a divorce in her current country of residence, and her husband would not allow her to live separately from him for the two years required by the original country. Eventually, Belinda came to the U.S. with her six year old daughter to visit her family.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



When they heard how difficult things were for her, they offered to let her stay with them so she could pursue getting a divorce in the U.S. In the state where her family resided, she only had to be separated from her husband for six months in order to obtain the divorce.

***Immigration Status.*** A further difficulty that confronted several of the women were the restrictions they faced as a person with limited rights in the other country because of their immigration status. For many of the women, their status depended on their marriage. As long as they were married and residing with their husband, they were able to live (but often not work) in the other country. Once they separated from him, however, the women's status in the other country became more tenuous. For example, in Tamara's* case, she had married in the other country and resided there with her husband for 10 years, but once she separated from him her ability to reside in the country was cast into doubt:

> I'm allowed to live here because I'm married to [my husband]. Then, when we separated, they said they had to decide whether I would be allowed to live here, or not. They did decide I was allowed to live here, partly based on the fact that I had kids here. But, first I had to get a job. […] I found a job, which I still do now. […] So, as soon as I could get a job, then, I was given, kind of, I guess what you would call a green card; a work permit […] Then, it was no problem. As long as I have a work permit, and I have a job in this country, I'll be allowed to stay here now, even if we get divorced.

Tamara* was able to maintain her legal right to be in the other country after her separation and subsequent divorce proceedings because she was able to find a job. Since Tamara* was fluent in the language of the other country, she was able to find work, but if she

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



had not had this linguistic skill, she may not have been able to continue to reside in the country near her children after the separation. For other women, the combination of caring for young children, not being fluent in the other country's language and holding a visa status that prevented employment were all barriers to obtaining jobs and, therefore, having independent access to finances that could be used to change their situations.

Finally, immigration status also created barriers for some women in their ability to utilize resources in the other country. Three women reported that they were told by domestic violence agencies in the other country that the organization did not have the resources to help non-citizens. Program staff explained that funding constraints prevented them from having enough services to meet the needs of women who were citizens of the country, so they were unable to serve non-citizens. In these cases, even when women reached out to domestic violence services, their immigration status in the other country precluded their ability to access these resources.

Women living in other countries faced a number of significant barriers to creating safety for themselves and their children. Most women made multiple efforts to enlist formal resources to stop their husband's battering, but they did so in a context in which they faced linguistic and legal barriers to being able to remain in the other country and ensure their own and their children's safety. Because of the intensity and severity of their husbands' abusive behavior, the lack of accessible resources within the other country that could be mobilized in service of the women and their children's safety, and the barriers that confronted these mothers, the women in this study eventually decided that relocating to the United States had the greatest likelihood of providing them with the safety and support they needed to stop the abuse. In the next section, we describe ways in which women left the other country.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**How Women Left the Other Country**

Given the life-threatening nature of much of the abuse the women experienced, many reported they knew it was a matter of life or death to find a way to escape their husbands. Considering their husbands' behavior, their resources and the negligible amount of institutional support they were able to secure, each woman made a decision to leave with her children to try and find a safer place to live. As reported in Table 5.1 earlier in this chapter, in almost every case (18 of 22, 81.8%) women moved to the United States to stay with a family member, mostly their parents (14 women). If her abuse happened domestically, it would be natural to expect that she would seek help from her family members, and this behavior would be encouraged. But in a transnational context, this decision to join with supportive family members can provoke a Hague petition and a label as a "child abductor." The common question posed to battered women of "why does she stay?" is turned on its head under Hague proceedings when she is asked "why did she leave?" Women had a variety of ways in which they left the other country. One woman's leave-taking story was not available (Caitlin*), and one other woman had a circumstance that was not similar to women's in the study. In Austin's* case, she divorced her husband after he assaulted her and she had to temporarily leave their home to move into a domestic violence shelter with her young daughter. After the divorce, Austin* remained in the other country to comply with a visitation order, but she had a serious health disorder, and so eventually moved with her young daughter to the U.S. for treatment. While she did have full custody of her daughter, she did not have permission from her abusive spouse to leave the other country. Her husband had what is referred to as a *ne exeat* right, the right to permit or deny the movement of his children from the country. Once she and her daughter were in the U.S., he filed a Hague

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



petition and the U.S. courts returned her daughter to the other country stating it was her habitual residence.

Austin's* situation was unique in that her decision to leave was driven by a health concern rather than as a consequence of the abuse she experienced. In the other 20 cases, domestic violence was the reason the women left the other country. Four basic patterns of leave-taking occurred which we classify in Table 5.2 below.

**Table 5.2**

Typology of Ways in Which Women Left the Other Country.

| **Spontaneous Flight** | **Planned Escape** | **Arranged a Visit to U.S. with Intent of Staying** | **Already in U.S. and Decided to Stay** |
|---|---|---|---|
| Jennifer | Kendra | Rebecca* | Fiona* |
| Tamara* | Ruth* | Pamela | Katie* |
| Sandra | Megan* | Lara | Belinda |
| Ellen* | Marta* | Stephanie* | Kelsey* |
| Kayla | Marina | | |
| | Amanda | | |
| | Ilana | | |

***Spontaneous Flight.*** Some of the women reported a critical incident of abuse that forced them to leave suddenly with no or minimal forethought. In these cases, women left the homes they were sharing with their abusive husbands within minutes to hours; within days to a few

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



weeks they left the country. For example, Jennifer recounted the sudden decision she made about what to do next after a particularly serious episode of abuse that involved her newborn baby.

> So, coming home from the hospital the last hurrah was – it was kind of a blessing -- he threw me down the stairs and threw me out of the house when I had my little three-day-old in my arms. And I grabbed my three-year-old and got in the car and we drove away. […] I got [to a city in an adjacent country]. I had the clothes on my back. I had no more kotex, just the one I had. I had no more diapers. […The hotel clerk said there were no rooms] and I literally stood there with my diaper bag and my purse and my two kids and just cried […] Well, the gift shop lady… that… the gift shop was right up by the front desk, came out and took pity on me…talks to the guy […] and sure enough I had a hotel room in about five minutes. […] It was magic. It turns out that woman, she came up about a day later, delivering a pram full of diapers and kotex and all this stuff. She […] knew exactly what I needed.

As Jennifer's story illustrates, some of the women had to make sudden decisions about what to do next after a particularly severe episode of abuse. Jennifer had financial resources available to her and she was able to make arrangements to flee the country within a few days. She drove to a nearby country to figure out what to do next, and while there received unanticipated support from a stranger. After a few days in this country, Jennifer was able to arrange to return to her parents in the U.S. Tamara* was faced with a similar dilemma when her husband assaulted her the day she served him with divorce papers. Unlike Jennifer, Tamara*

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



had few financial resources to draw on to cushion the hardships associated with her sudden need for escape.

> The [bank] accounts, anyway, were closed because I filed for divorce. Everything was frozen and there I was, with five people [my children, my mother and myself], and I had the car because I had driven away with the car, but I had nothing else. I had none of our clothes. I had left with the passports, and the kids, and that's it.

Practically, Tamara* had nothing "but the clothes on her back" when she ran away from her husband after his violent outburst. In these circumstances, women had to make rapid decisions in order to ensure their safety, and possibly even their survival in moments of intense physical violence. Jennifer and Tamara's* stories are illustrative of the situations experienced by five of the women in the sample who were forced to flee under these volatile circumstances.

***Planned Escape.*** In contrast to women who were forced to escape as a result of a particularly violent event, seven other women strategically planned over the course of months to years how to get themselves and their children safely back to the United States. Amanda's story illustrates typical aspects of these experiences and is recounted at length to demonstrate the nature and depth of the planning she undertook in order to get away with her children. The events below follow three earlier incidents: her husband's announcement that the family would be staying in his country after they arrived and his destruction of their passports; her physical knife injury and hospitalization after an altercation with him; and his decision a few days after she was released from the hospital to move the entire family to a rural village isolated from the rest of the country. In addition to already finding a way to be in touch with the U.S. Embassy in

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the other country (as recounted previously), Amanda also crafted a careful plan to leave that she augmented once they were underway:

> [I told the U.S. Embassy official that I overheard my husband say that he would be traveling in two days.] And [the U.S. Embassy official] goes, "Are you sure he's going to go?" He goes, "You better make sure," he said, "because we only have one chance. We can't mess up." […So I had to find a way to get us to the airport which was four hours away.] I saw a taxi coming by and I jumped in front of it and I said, "Do you go to [the airport]?" And the guy said, "Yeah. Yeah." 'Cause I could speak pretty fluent [language]. […] I asked him how much it was and he said it was 120 Euros, which I had saved little by little 'cause I didn't have too much [because her husband restricted her access to money]. But, it was whatever I saved, and then, I got into the kids' money. […] I got two little back packs. I got everything ready. I went to the store, and I got one backpack and I put snacks in it. The other one, a couple of their little things. I came back [to the U.S.] with nothing for the kids...'cause I couldn't. I had to make it look like they were going to school. […] And so when I got to the corner [where the taxi was supposed to pick us up], I said oh, my God, I pray to God that this guy shows up, and about two minutes later, the taxi showed up. So, it's like everything was starting to work. Everything the way I planned it. I was afraid that somebody would see us, 'cause everybody knows everybody in that village. So, the taxi came, he picked us up, and I told the kids, "Lay down." I said, "'cause you guys were asleep," but really what I was doing was hiding them, right.? […The taxi

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> driver] took me all the way to the airport, and inside my mind I was thinking I don't know if I want him to know where I'm going. So, what I did was we went almost all the way to the airport, but, across the street, from the airport, there's a hotel. So I told him, "Oh, I'm going to be spending the night at that hotel." I said. "Then, I'll be leaving in a couple of days to [an] island." I said, "Drop me off across the street." So, he did. […My daughter] got really scared. I mean, her eyes got huge and she goes, "Where's Papa? If he finds out, he's going to be mad at us." I said "No, [honey], Papa said that we can go for two days. Your [relative] is sick. So we have to go for two days. He said we can go. That's why we got our tickets. You see?" [The U.S. Embassy official] had tickets for me, and he had passports, and the reason he had the pictures, a month before we were supposed to leave, or six weeks before, I had told my husband that I was going shopping and I saw a passport place and I ran in there real quick and I bought the pictures, and I had them all that time.

Amanda's story illustrates the ongoing efforts she made to arrange everything necessary to allow her and her children to successfully return to the U.S. She planned for several months before her husband's absence presented a moment of opportunity that she seized. In each of the cases of the other six women, they took similar steps to receive new passports, amass money, find a way to get to the airport and manage their children through the stress of making their escape.

***Arranged a Visit to the U.S. with the Intent of Staying.*** In the circumstances of these four women, their husbands were aware and agreed with their plan to return to the U.S. for a

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



short visit, usually to see family members. However, the women knew that they intended on staying in the U.S. as soon as they were able to get here. To escape their husbands' violent behavior, the women did not reveal their underlying intent. Rebecca* explained this process in her description of how she managed to get her husband to agree to her and the children's temporary return to the U.S. This trip took place several months after the couple had relocated to his country and he had immediately obtained a restraining order to force her to stay. During these months, his abusive behavior escalated in severity with several serious physical attacks against her.

> I said I wanted to go home with the kids for the summer, and he agreed under the condition that I return in [a month], and if I didn't return, he would file the Hague, and kidnapping charges. And I said fine, I would return [to the other country], and the minute I got back to America, I filed for legal separation and temporary custody, and he filed the Hague Petition.

Rebecca* strategically agreed to cooperate with her husband's conditions for her return to the U.S. with her children. Once in America, they fought the Hague petition for several years before an appeals court ordered the return of the children to the father's country. The other women in this category reported similar experiences of strategically planning a visit to the U.S. to see family, indicating compliance with their husbands' directives, and encouraging their husbands to believe that they would return after a short period of time, while secretly planning to stay.

***Already in the U.S. and Decided to Stay.*** For four other women, they were already in the U.S. when they decided not to return to the other country. For example, Katie* had come to the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



U.S. with her daughter to care for her relative who was terminally ill. Once here, she decided to stay after gaining insight into the unhealthy and coercive ways her husband treated her. Fiona*, similarly, was in the U.S. because her husband had lost his most recent job and then decided to stay. She recounted the series of events that led up to her decision to remain in the U.S.:

> [My husband was fired and] you know, we just put everything into this move. Here we are in a foreign country. We're all U.S. citizens and I'm pregnant and now you're without a job – that's just great. And he had had almost – I think it was 28 jobs in the last 20 years. […] We had a discussion at that time that things are not looking good. We're four Americans in Europe without possibility of employment after the six-month contract expired and what are we going to do? Maybe it would be better just to go back to the States, establish our residency – […] live with my parents. […] We had started to shop around for tickets to come to the States. […] We flew back to the States […] we had return tickets, but our intention was to establish residency and he would send out resumes and look for a job and if nothing pans out, I would stay behind and then he would go back and see what kind of jobs there were and we would just take it from there. […] He went back to [the other country]. And I told him, I am not coming back until you get settled. And he said, well, we'll see about that. […He returned to the other country.] We'd been in contact and you know, I said how are things going? Are you finding any kind of jobs? Or you know, how are things going with resume searching? And he said there was one job – another temp job that he thought he might get but he wasn't sure yet. And then he asked me what my plans are. And I

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> said, I told you, I'm not coming back until you – first of all, at this time I – because he was far away from me I felt more comfortable. I said – you ensure my safety. We have to go to some kind of counseling. And until you get your job situation straightened out. […After that phone call, he] discontinued all communication. Nothing. There was no more contact at all with him. And he um, the next thing I knew […] the U.S. Marshals went in my parents' house, getting our passports. And that's the first time I heard of the Hague.

After years of moving around the U.S. and Europe following her husband's many jobs, and years of physical and emotional abuse that included threats to kill her, Fiona* decided to remain in the U.S. A large part of the reason for this decision was her husband's refusal to guarantee her safety and to seek counseling to change the dynamics between them. Fiona's* story shares some of the same characteristics as reports by three other women in the study who were in the U.S. and decided not to return to the other country: returning to the U.S. was not done in an effort to escape his abuse. Instead, women in this category returned to the U.S. to cope with other life stressors, and often to assist family members. Once separated from their abusive partners, the women became emboldened to demand changes in the relationship, changes that the men opposed. When they were not able to negotiate their safety if they returned to the other country, they decided to remain in the U.S.

## Discussion

This chapter documents the experiences women had in the other country as they tried to cope with the abuse they were subjected to by their husbands. The key findings from these women's experiences are: they tried several avenues for addressing the domestic violence while

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



living in the other country; they faced multiple barriers to help, including a lack of assistance from the criminal justice system in the other country; few resources were available to help these women in the other country; the women who left their abusive partners and stayed in the other country were unsuccessful in securing their safety after separation; and most of the women left the other country to join family in the United States who could help them.

A rich literature exists on strategies battered women employ to cope with abuse prior to their decision to leave the relationship (Brabeck & Guzman, 2008; Brown, 1997; Goodman, Dutton, Weinfurt & Cook, 2003; Liang, Goodman, Tummala-Narra & Weintraub, 2005; Wuest & Merritt-Gray, 1999). This research indicates that leaving a violent relationship is a process that unfolds as survivors find that their initial coping efforts are ineffective in ending the violence (see for example, Goodkind, Sullivan, & Bybee, 2004). Most women begin by enacting private behaviors such as placating or resisting the abuser (Goodman et al., 2003) before seeking external resources. The women in this study turned to many formal institutions in their efforts to cope with the violence. They sought help from the police, courts, domestic violence shelters, hospitals and social service programs. In addition, they talked with their families about the abuse (when they were able to speak freely), sought help from U.S. Embassy officials, and enlisted the aid of friends in the other country (if available). The women's efforts were multi-faceted and ongoing; they demonstrated courage in the face of their husbands' physical violence and threats.

Despite these efforts, the women were generally unsuccessful in mobilizing resources in the other country that were effective in helping them to secure a safer situation for themselves and their children. They faced overt and covert efforts on the part of the police to protect and

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



reinforce the abusive husbands' position. Some U.S. Embassy staff were remarkable in the assistance they provided, but others refused to aid these mothers and their children. In addition, they faced barriers to accessing other help that included language difficulties, immigration issues and divorce policies that did not address their safety needs. Access to "no fault" divorce may have allowed the women to separate from the abusive partner in a less legally stressful fashion than many of the women faced. Recent research on the effects of divorce policy indicate that access to unilateral divorce has been associated with large declines in domestic violence and intimate homicide (Stevenson & Wolfers, 2006).

The fact that none of the women were able to secure assistance from the legal systems in the countries where they resided may indicate an unanticipated gender bias in the sample. It may be that those women who were successful at garnering assistance from the police or courts in the other country were not as likely to leave the country (and hence would not be in our sample) since they may have been able to find resources to secure their safety in the other country. Assessing the role of legal services to assist American women being battered in other countries would be a fruitful avenue for future research aimed at identifying resources that could help ensure mothers' and children's safety overseas.

For five women in the study (22.7%), they separated from their husbands in the other country and pursued divorce. But leaving their husbands did not end the physical violence, and in some cases, it escalated the men's abusive behavior. The occurrence of post-separation violence and stalking have been identified as serious aspects of domestic violence (Tjaden & Thoennes, 1998; 2000). In a study of battered women who had resided in a shelter, 43 percent were re-victimized by their former partners, even as long as 24 months after leaving the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



relationship (Fleury, Sullivan & Bybee, 2000). These five women did everything in the other country that is typically expected of domestic violence survivors – they sought help for the abuse, they left their abusive husbands and they worked to establish themselves independently from their husbands. Despite these efforts, their safety and that of their children was not secured, and they faced continued abuse in the other country, or a decision to move to a location where they could secure assistance from family; for these women, it was the U.S.

Analysis of lethality risk factors suggests that the period after leaving an abusive relationship is a hazardous one in which women face heightened danger (Campbell et al., 2003; Campbell, Glass, Sharps, Laughon & Bloom, 2007). These 22 women may not have been aware of the research literature linking departure from an abusive partner with a potential increase in their husbands' lethality, but they had an awareness of the danger they faced. Each came to the conclusion that they were in a situation with their abusive husbands that could have serious consequences for them and their children. In this context, they made a decision to flee, and in all but four cases, the women moved to be with family members, usually parents, in the U.S.

For most of the women, the process of leaving was difficult. Half of the women had to plan for a period of time (sometimes reaching into years) in order to create a way to leave safely without further endangering themselves or their children. Unfortunately, because they crossed international boundaries in order to escape their abusers, the women were vulnerable to legal processes under the Hague Convention that their husbands used to attempt, and many times successfully gain, the forced return of their children to the other country. We now turn to the events surrounding the Hague petition itself and the outcomes of this process for the women.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 6: HAGUE DECISION

## Relation of Domestic Violence to Hague Outcomes

In this chapter, we describe the women's views on the U.S. judicial decisions in response to the Hague Convention petitions, provide additional information about the legal issues the women faced during the course of the Hague process, and discuss the relationship of domestic violence to the Hague outcomes.

### U.S. Judicial Decisions in Response to a Hague Convention Petition

After women relocated to the U.S., usually within a few months, their (ex-) husbands filed a petition under the Hague Convention to force the prompt return of their children to the other country. In a few instances, the serving of the Hague petition was a traumatizing event for the entire family, as U.S. Marshals or other law enforcement officials would with little notice remove the children from the mother's care. In a few cases the children would be placed into some sort of out-of-home care and/or they were turned over to their father's custody until the Hague petition could be decided. Marta* (who does not speak English) described what happened when she was served with the Hague petition:

> When I got home, the police were waiting for me. They gave me a legal document about 200 pages long, perhaps longer. Then, they told me they had to take the kids. Without further notice, the police went into the house and asked my family where the kids' room was, and they packed some of their clothes and shoes in some boxes my kids stored their toys in. There were about six policemen; two went into the bedroom for some clothes and shoes. (crying) This part is very hard for me […] So, my kids didn't know what was happening. The police said they

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> had to take my kids. […] The kids were still small. […] They clung on to my legs and the police yanked them away. The kids were crying when they left. […] I couldn't do anything because they told me they had to take them. My kids didn't speak English well, so they didn't understand what was happening.

In this case, Marta's* children were removed from her care and she was not told where they were going. Marta's* court appearance for the Hague petition was scheduled four hours after her children were taken. She had an attorney helping her with her divorce proceedings, and so was able to delay the hearing for a day, but within two weeks her children were returned to her husband in the other country.

Marta's* experience of having her children returned to the other country was the more common outcome for the women in the study. Table 6.1 below shows who had their children returned to the abusive husband and who were able to remain in the U.S. Overall, twelve women (54.5%) had their children returned to the other country. In seven of these cases, the return to the other country meant return to the father. In three remaining cases, the judge ordered the women to return with the children and for the children to remain with their mothers in the other country; in two cases, it was unclear who had physical custody of the child after the return.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 6.1**

U.S. Judges' Decisions on Hague Petitions

| **Hague Petition Denied; Children Remained with Her in U.S.**<br><br>**(Reason for Denial)** | **Hague Petition Granted, Children Returned to Other Country**<br><br>**(Who Children Were Returned to)** |
|---|---|
| Kendra<br><br>(settled) | Fiona*<br><br>(husband) |
| Jennifer<br><br>(acquiescence) | Tamara*<br><br>(husband) |
| Kayla<br><br>(appeal – unclear reason) | Ruth*<br><br>(husband) |
| Pamela<br><br>(no decision made) | Katie*<br><br>(daughter with her; sons with husband) |
| Lara<br><br>(appeal – unclear reason) | Megan*<br><br>(husband) |
| Marina<br><br>(father not credible – grave risk) | Rebecca*<br><br>(unclear) |
| Sandra<br><br>(settled) | Marta*<br><br>(husband) |
| Belinda<br><br>(settled) | Ellen*<br><br>(with her and her mother) |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | |
|---|---|
| Amanda<br><br>(not their habitual residence) | Stephanie*<br><br>(with her because of his abusive behavior) |
| Ilana<br><br>(had custody and valid passports) | Kelsey*<br><br>(husband) |
| | Austin*<br><br>(husband) |
| | Caitlin*<br><br>(unknown) |
| TOTAL: 10 | 12 |

For Ellen* and Stephanie*, the judge found evidence that the father may be a danger to the child, but did not consider this sufficient reason to prevent the return of the child to the other country – in other words, they did not find that a "grave risk of physical or psychological harm" would befall the child if returned. In Stephanie's* case, the judge made the following ruling:

> The female judge that decided on my case called the abuse 'common'. Can any type of domestic abuse be 'common'? I don't know, and I have the transcript. She called it 'common'. She was presented with documentation; medical documentation, and the translations of it, of course. She was presented with other documents. She was presented with testimony, but my testimony. But, unfortunately, she decided to rule in my husband's favor. And even though she

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



said "I find a risk in placing this child under his father's custody, so I am ordering the mother to return with the child."

In this case, the judge clearly acknowledges that there was evidence of domestic violence. In Stephanie's* case, this included physical violence in which the husband would beat her while she was holding her infant son. As she described it, she would hold her child in one arm and try to fend him off with the other. The abuse was severe enough that she was injured and required medical care, the documentation of which was presented to the judge. The judge was concerned enough to order that the child would not be returned to his father in the other country. The judge ordered the mother's return to the other country, a remedy that is not provided for within the Hague Convention.

Finally, in three cases, custody of the children was split, or it was unclear who had custody after the return. For example, Katie's* sons had remained behind in her husband's country when she had come to the U.S. with her daughter to help care for her relative. She agreed to return to his country with her daughter, and because of this negotiated agreement, she was allowed to keep custody of her daughter, but has had no contact with her sons. In Rebecca* and Caitlin's* cases, it was not clear who had custody of the children once they were returned to the other country.

Stephanie's* case was unusual in that the judge acknowledged the domestic violence in the ruling. In the other cases where the Hague petition was granted and the children were returned, the women reported that either their attorney did not present the domestic violence evidence, or the judge did not find the evidence compelling. Judges who returned the children, from the mothers' point of view, appeared to prioritize the nation-to-nation relations over the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



issues that were occurring in the family (as was also stressed by petitioners' attorneys, see Chapter 9). When these judges mentioned the domestic violence, they would note that the other country should be able to address these concerns.

For women who were able to keep their children with them in the United States, a similar pattern emerges – the women reported that domestic violence was not a reason mentioned in these decisions. In only one case did the judge appear to base his ruling on the domestic violence evidence that was presented. Marina's lawyer documented the serious domestic violence perpetrated by her husband, including his multiple threats to kill her, the time he put the unloaded gun to her head and pulled the trigger, her children's witnessing of the violence and the ongoing emotional terror he instilled in the family. The father was asked to testify about this information during the Hague proceedings, and Marina reports that the judge did not find him credible. It appeared that this judge based his ruling on the possibility of harm to the children because of the father's repeated attempts to harm Marina.

The other women in this group did not recall judges commenting on the domestic violence of their husbands, but it was not always clear if evidence about the violence had been presented. For example, three of the 10 cases were settled, usually with some arrangement where the woman gave up any monetary claims from the marriage in exchange for being able to remain in the U.S. with her children. As Sandra notes, "it boiled down to trading money for kids." In these cases, settlements occurred before judges were able to make rulings on the Hague petition, so the judges' evaluation of the situation was not known.

The other reasons that the children were allowed to remain with their mothers varied. When Jennifer's husband threw her out of the house, the judge interpreted this action as

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



acquiescence – that the husband had agreed to let the woman and children leave – which is an available exception under the Hague Convention. In Amanda's case (as discussed previously), the judge did not feel that the other country was the habitual residence of the children, primarily because they had been there for a relatively short time (just a few months), and there was evidence of continued intent to live in the U.S. For Ilana, the judge agreed that she had been given custody and the right to move from the other country in her divorce proceedings. He found that she had valid passports for her and her children, so the removal was not wrongful, and therefore dismissed the husband's petition.

**Other Legal Process Involved in the Hague Petition**

In the unfolding of the Hague petition in U.S. courts, several factors were important in these cases. The experiences women had in the legal process surrounding the Hague Convention are summarized in Table 6.2 below. These areas include: (1) whether the woman faced criminal kidnapping charges in the other country; (2) factors related to her attorney (experience, provision of expert testimony) and (3) aspects related to the overall case (which court heard the petition, whether undertakings were ordered, and the time frame and costs associated with the women's defense).

***Criminal kidnapping charges.*** For seven of the women, they were facing both a civil suit in the U.S. and criminal prosecution for kidnapping in the country they had left. Five of these women had their children returned to the other country, and they faced added legal difficulties in being able to return safely with their children. For instance, Marta* could have been immediately arrested upon her return to the other country because of the kidnapping charge her husband had filed against her.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> Once he brought the kids [back to the other country], I wanted to come back immediately, but my parents talked me against it. […] They told me I'd be put in jail if I came back. Because he had… there were two hearings; the civil hearing for the kids' custody, and the federal hearing, for the kidnapping. So they told me that as soon as I set foot in [the other country], I was going to be detained and I would have to be in prison for ten years. So, I sought help [and I found] an attorney from [the other country] and she offered to file for immunity so that I could enter [the other country] and not be detained by the police there. So she filed for immunity, and I was able to enter [with immunity for three days until she could go to court and present her information to the judge].

For Marta*, her children were returning to a partner who had beaten her on multiple occasions and physically abused his step-daughter, although he had not directly physically abused the children returned to him as a result of the Hague proceedings. Instead of being able to return immediately to initiate legal proceedings related to custody and visitation in the other country, Marta* had to remain behind in the U.S. because she faced criminal prosecution and the threat of a serious prison sentence if found guilty of kidnapping. No provisions for Marta's* return, such as an undertaking or court stipulation requiring the dismissal of the criminal charges in the other country, were made in the U.S. Hague proceedings. Through her own tenacity, while in the U.S., Marta* found an attorney who practiced in the other country and could help her to return safely. Marta's* case highlights the dual civil and criminal issues that faced a third of the women in this study. The issue of undertakings and related mirror orders are discussed more fully in Chapter 9 on the results of the attorney interviews.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Attorney experience.*** Only 22 percent of the attorneys who represented women in Hague petition proceedings had prior experience in litigating Hague cases. In this sample, five women found attorneys who had actually worked with a Hague petitioner or respondent previously. Interestingly, in all but one of those cases, the women's children were sent back to the other country, so it is not clear from these data whether having an experienced attorney led to a safer outcome for the women and children. Only one of the four women who had an experienced Hague attorney felt that the attorney had not represented her interests well. In the other three cases, the women reported that the attorney had presented information about the domestic violence, but the judge had not seen these experiences as sufficient to find grave risk of harm to the children upon their return.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 6.2**

Legal Processes Involved in the Hague Petition*

| **Woman** | **Criminal Charges Filed Against Her in Other Country** | **Attorney had Previous Hague Experience** | **Case Heard in Federal Court** | **Expert Testimony Offered** | **Undertakings Ordered** | **Time Frame in Months** | **Estimated Cost or Legal Assistance Provided *Pro Bono*** |
|---|---|---|---|---|---|---|---|
| Belinda | | | | | n/a | < 1 | *Pro bono* |
| Amanda | | | √ | √ | n/a | 24 | $70,000 |
| Ilana | | | | | n/a | 6 | $10,000 |
| Fiona* | | | | | √ | 2.5 | $80,000 |
| Lara | | | | √ | n/a | 9 | *Pro bono* |
| Ruth* | √ | | √ | √ | √ | 13 | *Pro bono* |
| Megan* | | | √ | | | 1 | $30,000 |
| Pamela | | | | | n/a | No decision | |
| Marina | | √ | | √ | n/a | 9 | $37,500 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Ellen* | | √ | | | | 12 | $7,000 |
| Kendra | √ | | √ | | √ | 2 | |
| Jennifer | | | | √ | n/a | 6 | $100,000 |
| Kayla | | | √ | | n/a | 36 | $250,000 |
| Rebecca* | √ | | √ | | | 48 | $300,000 |
| Stephanie* | √ | | | b | | 4 | *Pro bono* |
| Austin* | √ | | | √ | | < 1 | |
| Marta* | √ | | | | | < 1 | *Pro bono* |
| Tamara* | | √ | | √ | | 13 | |
| Katie* | | √ | | | a | < 1 | |
| Kelsey* | | √ | √ | | √ | 3 | $48,000 |
| Sandra | √[a] | | | √ | n/a | 12 | |
| TOTAL | 7 | 5 | 7 | 11 | 4 | Avg. = 10.13 | Avg = $62,166 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | (SD = 12.61)<br><br>Median = 6 | (SD = $92,808)<br><br>Median = $30,000 |

*Information on Caitlin's* case is unavailable.

[a] Katie* had petitioned for undertakings, but her husband's attorney had them deleted since Katie* was not returning to live with her abusive husband.

[b] Judge refused mother's request for a psychological evaluation of her child saying the child was too young.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Most women found the attorney who represented them through family connections, and they typically sought out these attorneys in order to initiate divorce proceedings, so most had a divorce or family law practice. Five women reported that their attorneys were experienced in working with domestic violence victims, even if they did not know specific issues related to the Hague Convention. However, in a number of cases, women felt that their attorneys both were not knowledgeable about the Hague Convention and did not understand dynamics related to abuse. For instance, Ilana, who had fled her ex-husband in Europe after he repeatedly stalked and threatened her, including breaking into her apartment, reports some of the struggles she had with her attorney:

> She was more of an attorney for divorce. She was thinking really...she was really a believer in counseling. The problem with my kind of case, you can't do counseling. It's not working. […] you really need to be careful about the lawyer, and be sure that you can trust your lawyer. And I saw in the Hague Convention case, there are many lawyers, they take your case for to make money. They really, you are the bad person, anyway. They are not going to tell you that. But, they are going to act like that, and you're not going to win your case. And I think it's terrible to say that. But, you really need to be careful when you choose your lawyer. You need to take somebody who really will believe you, and most of the time, it's not the case.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Ilana's experience points to concerns shared by other women in the study. For Ilana, her attorney was more interested in a mediation approach to the continued conflict Ilana was having with her ex-husband. Ilana had not been able to achieve a successful end to her ex-husband's abusive behavior in her home country, which included both police and informal interventions with the husband. She was understandably skeptical of taking a "counseling" approach to changing her ex-husband's behavior. She further reflected about the stigma she experienced as a taking parent, that she had already been defined as the "bad person" by choosing to relocate to the U.S., even though she was unable to stop her husband's behavior and ensure her own and her children's safety in the other country. These experiences led her to wonder about the integrity of an attorney representing women in Hague petitions, a sentiment shared by other women who felt that they had been poorly represented in their cases.

***Expert testimony.*** Half of the women obtained expert testimony from psychologists or social workers who provided an evaluation of the relationship of the child with both the mother and father, and the current emotional health of the child. In several cases, the mental health professional testified that the child was afraid of the father; in one case, the children had been diagnosed with Post Traumatic Stress Disorder as a result of the violence they had witnessed. In addition, in three cases the court appointed a guardian *ad litem* attorney to independently advocate for the children. In Megan's* case, the judge refused her attorney's request that a guardian *ad litem* be appointed for her children. (This is addressed below in the section on Undertakings.) The provision of expert testimony seemed to have some relationship to the decisions

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



judges made: in 60 percent of the cases where the child remained with the mother in the U.S., expert testimony was given; expert testimony was offered in a smaller percentage of the Hague petitions where judges decided to return the child to the other country (41.7 percent).

***Federal court.*** A substantial number of the women did not know or report which court (state or federal) heard their Hague case. Among the eleven women who did know the court, seven cases were heard in federal court and four cases were heard in state court. From the women's perspective, the venue for their case was not an important consideration. It also appeared that the type of court was not a significant factor in determining the outcome of the Hague petition. In three cases heard in federal court, the Hague petition was denied and the children remained in the U.S.; in four cases the petition was granted. In state court, half of the petitions were denied and half granted.

***Undertakings.*** For each woman who had to go back to the other country and who had a criminal charge of abduction waiting to be heard on her return, undertakings were one option to address this concern. As a voluntary agreement between the parents, an undertaking may provide a framework for how the child and the mother will be able to safely re-enter the other country (see Chapter 9 for more detail). In these cases undertakings were entered into the record of the U.S. court, but were usually left in the hands of the abusive husband to implement in the other country. Undertakings were structured to address several different concerns including lifting criminal charges and travel restrictions in the other country against the mother, giving access to the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



children, and providing psychological support to the children. In all four cases where undertakings were agreed to by the parties in the U.S. courts, none of these agreements were carried out in the other country by the left-behind parent.

Judges also refused to order the left-behind parent to carry out steps that would possibly increase the mother and child's safety on return. Fiona* had asked the judge to order that the father agree to end the violence against her, and that he would provide a separate residence and child support when they returned, but the judge rejected this request. Megan* had decided to return to the U.S. after her husband choked her and beat her head against a bathtub in front of her children, as described in Chapter 3. The judge, in deciding to grant the petition for the children's return to the other country, denied that grave risk existed and rebuffed Megan's* efforts to obtain court orders that could be used to ensure her safety in the other country. Megan* remembers the judge's reasoning in this way:

> And she said "I'm not sending those kids to a war zone. I'm not sending them to Bosnia. They're going back to [European country] and then we asked could we get a guardian *ad litem*? And she said no. And her reasoning, which I mean, there is some legal background to this, is that the Hague Convention is NOT supposed to address issues of custody. But, still, I think it's unconscionable to send a six-year-old girl home, you know, to a man who may be abusing her. You know? And she said, "Well, let the [other country] court handle it." And then, my attorney said, "Well, what about [Megan*]? And she said, "I don't care what

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> [Megan*] does. She can stay or she can go. Whatever she wants." And [the attorney] said, "Well, are there any safeguards for her protection if she goes back to [the other country]?" And the judge said "No, that's none of my business. That's her problem."

This excerpt illustrates a number of ways in which Megan's* safety upon her return was compromised by the judge's reasoning. The judge notes that she is not sending the children to Bosnia, so she rejected any argument about grave risk. The judge dismissed the attorney's request for an undertaking to appoint a special advocate for the child, and she refused Megan's* request for orders that would enhance her safety upon her return. In this case, the judge clearly believed that Megan's* safety concerns for herself were not within the judge's powers to assure and that the other country would be able to address the safety concerns that Megan* had for her child.

***Timeframe and cost.*** Finally, while these cases were usually decided in a relatively short time, they tended to be expensive for the women. In four cases, judges made decisions in less than a month, while five cases went on for more than a year; the majority of cases took between one and twelve months to conclude. Over half of the cases were resolved within six months. In terms of payment, only five women obtained *pro bono* legal representation; three out of four of the women from Latin America were served by legal aid attorneys who specialized in work with the Latin American community. The average cost of a case for those who did not receive legal services was over $60,000, with mothers reporting costs ranging from $7,000 to $300,000. Most of the women reported that they were paying small monthly sums to their attorneys to

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



cover these charges, while a few had access to significant financial resources (usually from their parents) and were able to pay their legal fees. More detail on the costs of these cases appears in Chapter 9.

**Relationship of Domestic Violence to the Hague Outcome**

In order to understand the relationship of domestic violence to the decisions judges made related to the Hague petition, we compared mothers using the typology of mother and children's exposure to violence presented earlier in this report in Tables 3.3 and 3.4. By arranging cases in this way in Table 6.3 below, it is possible to document a distinct pattern – women who reported that their children were the intentional or unintentional victims of the husband's violence were likely to be allowed to remain in the U.S. Judges were most likely to return the children to the other country (usually to the father's custody) when serious domestic violence had occurred and the child was exposed to it, but the physical abuse was only directed towards the mother and not the child. Judges were also less likely to allow the children to remain in the U.S. with their mother when emotional terrorizing in the absence of physical violence occurred, and in cases where the abuse situation was unclear.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 6.3**

Hague Decisions Compared to Abuse Types

| | **Mother and Child Both Physically Harmed** | **Mother Physically Harmed, Child Witnessed Attack** | **Mother Physically Harmed, Child Did Not Witness Attack** | **Emotional Terrorizing with No/Minimal Physical Violence** | **Unclear** |
|---|---|---|---|---|---|
| **Judge Allowed Children to Remain with Her** | Kendra<br>Jennifer<br>Kayla<br>Pamela<br>Marina<br>Ilana | Lara | Belinda<br>Amanda | Sandra | |
| **Judge Returned Children to Other Country (usually to the Father)** | Stephanie*<br>Marta* | Fiona*<br>Caitlin*<br>Megan*<br>Rebecca*<br>Austin*<br>Tamara* | Ruth* | Katie*<br>Ellen* | Kelsey* |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The mothers of children who were returned to the other country did not appear to differ from other women in their categories. For example, the violence experienced by Stephanie* and Marta* appeared similar to that reported by the mothers whose children remained in the U.S. In Stephanie's* case, she perceived her child to be the unintentional victim of the father's abuse, as her husband would beat her while she was holding her son. These circumstances were so stressful for her young son that he began to lose weight, wouldn't eat and was crying frequently. Marta* was beaten on multiple occasions and had documentation of this violence. Her nine year old daughter, who was not the biological child of the father, had to be sent to live with Marta's* parents because the husband was beating her too. While Marta* reported that her husband had not been violent to his two younger biological children, these youth lived in an environment where violence against the mother and a step-sibling were routine.

For the large number of battered women whose children were not the intentional or unintentional targets of their husbands' aggression, but who witnessed their fathers' violence, this direct exposure to violence was not a sufficient reason to prevent their return to the other country, and the father. These children were eye witnesses to their mothers' victimization, and as was reported in Chapter 3, they suffered serious psychological harm from observing these actions. Despite the severity of abuse happening in these families and two decades of accumulating social science literature to support the serious impact of such child exposure to violence, judges in these Hague Convention cases did not acknowledge that these dynamics could constitute a grave risk of possible physical or psychological harm to the children, an exception to their return as

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



provided in Article 13(b) of the Convention. Finally, in those cases where there was a clear pattern of emotional terrorizing, but in which physical violence had not occurred, judges typically returned the children to the other country. In Sandra's case, she came to a financial settlement with her husband in exchange for her custody of the children and ability to live in the U.S. If this agreement had not been reached, it seems likely that her children would also have been returned to the other country.

**Discussion**

The majority of the women in this study had their children returned to the other country, and most of the time this meant return to the abusive husband. Although the Hague Convention is clearly understood to deal with the issue of court selection and not the merits of child custody, the fact that children are usually returned to fathers in the other country means that these decisions act as *de facto* custody rulings. Fathers in the other country often used the fact that the children were returned by a U.S. judge to the other country as proof that the mother acted illegally in fleeing with the children. Courts in the other countries were sympathetic to this interpretation by the fathers as will be discussed in Chapter 7 focused on Post-Hague Experiences.

Children consistently remained in the U.S. only when they were directly exposed to their fathers' physical violence as his intended target, or were unintentionally physically hurt during attacks on their mothers. Despite the evidence in these mothers' stories and in the larger social science literature on the effects of adult domestic violence exposure on children, witnessing or being exposed to the father's physical violence and emotional terrorizing toward their mother were not sufficient justification for retaining

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the child with the mother in the U.S. Studies of the effects of adult domestic violence indicate that children who are exposed to it – even when this exposure consists of hearing or being aware of, but not seeing the violence – have similar levels of emotional distress, depressive disorders, academic problems and acting out as children who are the victims of physical abuse (Bogat et al., 2006; Carlson, 2000; Fantuzzo et al., 1997; Kitzmann et al., 2003; Scheeringa & Gaensbauer, 2000; Skopp et al., 2007; Turner et al., 2006). The drafters of the Hague Convention provided for exceptions to the child's return if that return: (a ) posed a grave risk of physical or psychological harm to the child; or (b) represented an intolerable situation for the child; or (c) violated the child's human rights. Many judges appeared to take a narrow view of these exceptions despite the extensive social science evidence to the contrary.

In the assessment of the women whose children were returned to the other country, judges prioritized "comity" among nations and other countries' courts, or the respect nations have for one another's laws, over the safety needs of the abused women and their children. The issue of the role of international law and domestic violence is one that has been discussed among legal scholars and is discussed as well in Chapter 9 of this report. Jaffe and Crooks' (2004) cross-national comparison of domestic violence and child custody laws in four countries indicates that nations have differing views on how abuse should be addressed when parents separate. In addition to differences among nations, analyses of a similar international treaty, the United Nations Convention on the Rights of the Child, also finds that tensions exist between respect for children rights and the rights of nations (Daiute, 2008). In this example, nations are more likely to agree on

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



preventing harmful treatment of children, but less likely to agree on a child's right to self-determination or to safety within their own family. These issues are relevant to assessing the relative weight given by judicial authorities to the rights of battered women and children to live free of physical threat and intimidation as opposed to the rights of nations to expect the speedy return of resident children in these cases.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 7

# POST-HAGUE EXPERIENCES

In this chapter, we examine what happened for the women and their children after a decision was finalized on Hague petitions. We investigate the outcomes for each of the women and children who returned to the other country. We then describe issues facing the women who remained in the U.S., some of whom continue to experience threats or legal actions by their husbands. This chapter concludes with a discussion of the recommendations the women made in regards to processes surrounding the Hague Convention.

## Women and Children Returned to the Other Country

The children of 12 women were ordered back to the other country as a result of the Hague petition. As noted in the previous chapter, most of the children were returned to their fathers' custody. In Table 7.1 below, we note the residential status for each of the women and their children at the time of our interviews.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 7.1**

Status of Women and Children in Other Country

| **In Other Country without Children** | **In U.S. without Children** | **In Other Country with Children** | **In U.S. with Children** |
|---|---|---|---|
| Tamara* | Megan* | Ellen* | Fiona* |
| Katie* | Kelsey* | Stephanie* | Ruth* |
| Marta* | Austin* | | Rebecca* |
| Caitlin* | | | |

Six women lost custody of their children (50% of the women whose children were returned), and in the case of the three mothers who had returned to the U.S., they also lost contact with their children. Both Austin* and Kelsey* continued to engage in legal efforts to regain access to their children. After many years of trying to maintain contact with her children, only to have their father refuse to comply with visitation orders from courts in the other country, Megan* decided that she could no longer fight for contact with her children because of the emotional and financial costs. Five women either maintained custody after being returned to the other country by the U.S. court, or regained custody of their children through legal action in the other country. Two of the women returned to the U.S. with their children with the permission of the legal system of the other country, one had returned with the children without court permission.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Experiences of Abuse and Economic Hardship upon Return to the Other Country**

In addition to the custody and contact arrangements for these twelve families, women reported on three other areas: (1) whether their children had experienced physical child abuse after the return to the father in the other country; (2) whether the woman herself had been re-victimized after the return; and (3) the level of economic hardship some of the women faced as they returned to live in the other country.

***Child abused after return.*** In the case of Tamara*, Kelsey* and Ruth*, each reported that their children had experienced physical abuse at the hands of the fathers who now had primary custody. As an example of the kind of situation facing the children in these three families, Tamara* reports on the serious levels of physical harm her children faced upon their return. She reports:

> My oldest daughter, [she and her father] had fought a lot. […] and […] the police had been there [because the daughter had called them]. She'd gone to the hospital once with scratches and bruises on her neck. So, he got tired of it; of the police and the hospital visits. So, he kicked her out. Thank goodness for me. And so I got her. So, I did get the order. She's […] been with me for almost exactly two years. She doesn't see her father at all. Well, she sees him only when we're in the car to pick up the other kids on my four days and four hours a month […] It's pretty bad. They… they… they live in constant …especially my son, he lives in constant fear, and he's always calling me because his dad has hit him, or screamed at him and told him he's going to kill him, and told him he's a

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



stupid asshole. […] The kids are both very afraid. […My son…] he keeps saying, "What if dad hits me 'til I'm dead?"

Tamara's* children experienced an escalation of the emotional abuse their father exhibited prior to Tamara's* decision to flee with the children to the U.S. Before they had left the other country, the father had terrorized the entire family to the extent that the mother slept in the same room with one of her children and all of them locked their doors at night because of the father's erratic behavior. Upon the return of the children to Tamara's* husband as a result of the Hague petition, two of the three children reported physical abuse by their father. In addition to this physical harm, the son is afraid enough to wonder whether his father is going to kill him. Tamara* has fought for custody of her children for two years in the other country's courts. She has faced an uphill battle because her husband has been able to cast her as a "child abductor" due to the U.S. court's agreement to return the children because of his Hague petition.

Ruth* and Kelsey* relate a similar story of continued violence once the courts returned the children to their husbands in the other country. For Ruth*, after many years of physical abuse against her, she managed to escape her husband and return to the U.S. Once here, her husband served her with a Hague petition, and the children were eventually returned to him in the other country. Once under their father's custody, they became the targets of their father's abuse.

These cases demonstrate one of the possible consequences of returning children to domestically violent fathers. Tamara* and Ruth* had each been physically harmed by their husbands, but the children had not been the victims of his violence prior to the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



women's decision to flee the other country, although the fathers in both cases had subjected the families to high levels of emotional terrorizing. The violence these fathers inflicted developed to include direct abuse of the children after they were returned to the other country, but now these children do not have day-to-day support, protection and assistance from their mothers.

***Domestic violence against women after return.*** In addition to abuse suffered by the children, four of the women reported new domestic violence committed against them by their abusive husbands once they returned to the other country. For Ellen*, she attempted to reconcile with her husband upon her and the children's return after the Hague petition. The couple reunited for a year and during this time, she gave birth to another child. After her youngest child's birth, her husband's abusive behavior began to escalate again, and she filed for a divorce. When we last spoke with her she was in court attempting to get permission to move the children back to the U.S. where they have supportive family members who can assist in their care.

Fiona's* children were very young when they were sent back to live with their father, an American citizen in another country. Initially, he wouldn't let her see the children, but after a few weeks, the judge ordered the children returned to her custody as she was still breastfeeding her youngest child. Once in the other country, Fiona* and the children's situation rapidly deteriorated as she reports:

> I thought, [the U.S. judge] is sending me back, you know, to a potentially violent situation. I have no protection. I have no lawyer. I have no money. Nothing. Where am I supposed to go? […My husband] also told

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



my friend that he was going to have my passport revoked. […] I was frightened that once I got back to [the other country] if he had my passport revoked that somehow I'd be a person without a passport. But, it's just one of the threats he made. […After having nowhere to live] my friend drove me to the next village over [to] a shelter for domestic violence victims. […] I lived there for eight months. […] And at one point – another thing he did was he accused me of breaking into the basement and stealing some of his documents […] And the police raided my room, looking for these documents, and as a result, my husband […] found out the address of the shelter. Then he … he started stalking me. And, I was so scared.[…My friend] saw my husband's car … in front of the shelter and he dropped [a friend of his] off […] further down the street. […] In the meantime, I had the kids and I was walking back towards the shelter and she intercepted me. She said, "Get in the car right away." […] She said, "Your husband – he knows where you're living." And that just, that scared me. I mean, right through the roof. Because now I was terrified. He had my address and he was playing this game of … I don't know what he was trying to do. […] I told the judge, "Look, you know, he's not paying child support. He's now jobless. […] My future is in America. I'm an American citizen. The children are American. That's where our family is." […] So it was pretty – it was getting costly to the [other country's] taxpayer. [The judge] finally said

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> enough is enough, and he issued deportation orders for me and the kids. […] My husband found out that we had left […and after we returned], I got the papers that he had filed another Hague against me.

As Fiona* reports in this excerpt, she had no viable means of support, as she was caring for her young children, had no ability to work in the other country and her husband was not paying child support. She eventually moved to a domestic violence shelter with the children, but once he found where she was, he began stalking her. Eight months later, the judge in the other country ordered her and the children deported back to the U.S. Once here, her husband tried to use the Hague petition again to force the return of the children, but he was unsuccessful this time because of the deportation order from the other country. Fiona's* case illustrates the complexity of return for the women and children. Katie* reported a similar story of renewed stalking and threatening behavior upon her return to the other country. Austin* also experienced renewed domestic violence when she returned to the other country to petition for custody of her daughter. Her husband was supposed to bring her daughter for a visitation, but he didn't. Austin* confronted him about this outside of his apartment and the following occurred:

> [My daughter] was starting to look uncomfortable, as you can figure, because she thought there was going to be an argument, you know, and... so I looked down to comfort her. The next thing I knew, I was on the ground. He just punched me. Just punched me. So, I got up, […] I tried to hit him back, because I just thought it was outrageous. I mean, you just don't understand. Now that he has this child, he feels that it's just

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> sort of open season, where before, all the abuse was behind closed doors. Now that he has [our daughter], he can do whatever he wants. I went to the police station with a black eye that night. He told me, "Go right ahead. Nothing's going to happen to me." […A psychologist] interviewed my daughter. [My ex-husband] was coaching my daughter to say "Mommy started that fight." And [the psychologist] wrote to the court: "I asked this child and she started to give me all these details. I asked this child how she knew all that. She said, 'Because daddy told me to say that,' and she said, 'I'm really concerned that mommy will be dead if daddy continues to hit her like that.'"

In this situation, Austin's* ex-husband continued to physically assault her with impunity. Austin's* daughter saw this attack and worried that her mother might die as a result of the father's abuse. Unfortunately, this information was not sufficient to change the custody arrangements. Because of her escalating health problems, Austin* ended up returning to the U.S. without her daughter. Her husband was supposed to send the daughter for visitation with the mother, but after Austin* bought the airline tickets for him and her daughter, he refused to bring her. Austin* is still trying to negotiate an alternative custody agreement in the other country, but feels that she has been unsuccessful because her precarious health status is being used against her. At the time of the interview, she had not seen her daughter in more than a year.

These four cases illustrate a similar dynamic faced by some of the women prior to leaving the other country, namely that ending the relationship doesn't end physical

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



violence by the husband. For each woman, having the children returned to the other country meant that she was once again vulnerable to his abusive behavior. As Austin* noted, having the U.S. court decide in favor of returning the child to the other country and most often to the father, was interpreted by her abusive husband as "open season" on her. Because the judicial process did not take into account the safety of the woman, men had no reason to think they would be held accountable for continuing to victimize the women.

***Economic hardship.*** Several of the women who returned to the other country to be near their children after the Hague petition was granted reported great difficulty in being able to live in the other country. Fiona's* experience recounted above demonstrates some of the difficulties women had in caring for their children in the other country while separated from their husbands.

As noted in the section on barriers in Chapter 5, many women also had difficulty finding work because of their immigration status. In Stephanie's* case, she fled to the U.S. after incidents of physical violence from her husband that injured her and in which her child was an unintended victim. The judge ordered the child's return, but stipulated that Stephanie* would remain as the primary caregiver because the judge believed that the child might be at risk for additional harm if returned to the father. Once in the other country, Stephanie* reports the following:

> I was [initially] able to stay with these two ladies, through my former co-worker. […] But, my husband started to threaten, "If I don't know where you are staying, if I don't know the address, I'm going to go to

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



the police and charge you with this and that." And actually, at that time, he could. […] have, and the ladies got so scared and so they were afraid, and so they said, "We don't want any problems. We are sorry for what you're going through. But, we have to have you out of here." So, within four days of that happening, of him threatening, we were out on the street. We landed on the street, with less than fifty Euros in my pocket. […] I landed on the doorsteps of the American church with my bags, and I said, "Please help me." And they did. They took us in. They paid for five days of hotel. […] I was able to contact my parents, then. From then on, my parents started to pay for a little [room]. I don't have legal papers to be here. Right now, I'm here as a tourist, and I can't get a job. [The U.S. judge] was presented with all these things, and yet, she sat there and she said… "As I sit here on this bench, there are many, many wonderful Christian organizations around the world that can help you, especially in Europe, and I would imagine that [the other country] is one of those countries that provide a lot of support for people in your situation." […] I had been doing my own research and […] all I heard was, "You will not get help from anybody; not the government, or any association or organization because you're not a citizen, and you are not a refugee." We presented this to the judge. We presented an email from the American embassy directed to my attorney, where they directly told us that I did not qualify for any help because of this; I was not a

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> refugee, and I'm not a citizen. Still, [the judge] didn't care. […] So, now, we are in [other country city]. […] My husband is not helping me with my papers [or child support…]. We have no health insurance, no health protection at all. I am living on money from my family. They send me whatever little they can for food and to make the rent.

Stephanie's* situation highlights the difficulties faced by many of the women once they returned to the other country. As she reports, she is unable to support herself there because she does not have the legal status to work. Her husband is not paying child support, and she is not eligible for support from the other country's government. As a result, her parents are providing a small amount of money each month to pay for rent and food. Stephanie* supplements this small allowance with food donations from the church that has assisted her. She reports that her attorney said that her husband is trying to force her to return to the U.S. without her son by withholding child support payments. At the time of the interview, she remained in the other country in these circumstances, and was trying to obtain sole custody of her son, and the right to return to the U.S.

Returning the children to the fathers resulted in continuing physical harm for seven of the 12 women and their children who were forced back to the other country as a result of the Hague petition. In addition, many of the women had difficulty in providing for themselves financially when they lived in the other country and tried to pursue a legal resolution to their situation in the other country's courts.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Women and Children Who Remained in the U.S.**

In ten cases, husbands' Hague petitions did not result in the return of the children. Mothers and children who remained in the U.S. had three general outcomes: (1) no contact with the abusive ex-husband (3 families), (2) resolution of custody and visitation such that he had exercised his visitation rights (4 families), and (3) continued legal or domestic violence from the husband (4 families). It is this third group that faced the significant difficulties and that we look at in greater depth here.

In the four cases where the custody and visitation issues had not been settled, husbands either continued attempting to intimidate the woman directly, or made further legal efforts to have the children returned to them. Jennifer described one example of the persistence of some of the men in harassing the women, even months or years later. The incident below happened six months after the divorce was finalized, and about a year after his Hague petition had been rejected:

> He was up in [another country] - I - it was after the divorce - uhh, all I know is it was summertime. And he was… threatening us. He was calling us drunk on the phone. […] I was terrified. Oh God. Oh God, he was calling, he was so drunk. And it was the middle of the night. […] He sent a box that had […] my dirty clothes that must have been left somewhere. (crying) And… the… and I just was so scared. […] I called the police and I said, I don't know what to do. […] And I had some emergency cash in a safe in the house and I said, "Can you guys just stay? (crying) I'd pay you." And I went and I got my money out. And I just put it on the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> table and I'm going, "Can you please stay?" Anyways, the police were wonderful. They said, "Lady, put your money in your pocket. Of course we'll stay." And they stayed. And they stayed in the house all night, (crying) with all the lights on while I was sleeping. […] I called [the other country] - and found out that the magistrate would um, basically authenticate or like recognize the restraining order and protection order. And, and the fact that he was using their country as a foundation for calling and threatening me. They went and they took that authorized protection order and they had the police go and find him. And they did. And they served him with the papers. And he - and the next day he got on a plane and left. So - I don't know if you call it deported. I- I think that that's what that amounts to though.

Jennifer had been seriously physically assaulted by her ex-husband on multiple occasions in the other country, attacks which resulted in physical injuries that required medical attention. She fled to the U.S. after a particularly vicious assault, after which he threw her and her three day old and three year old children out of the house. Yet, even after returning to the U.S., re-establishing herself here, succeeding in asserting her defense against the Hague petition and obtaining a divorce, she continued to have to cope with threatening and intimidating behavior from her ex-husband. Jennifer's case represents the most direct way that the husbands continued to harass the women. For three other women, they reported prolonged legal cases related to custody and visitation rights for their children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The resolution of the Hague petition in the woman's favor did not necessarily produce an equivalent sense of closure for her emotionally. In the two excerpts below, Kendra and Pamela both talked about how they feel their life has been permanently touched with a depth of uncertainty and trepidation about the future.

> I think the bottom line is, there's never an end to this thing. And I think that's something I didn't realize. […] And I still know I made the right decision – but I never understood that it would literally take over my life completely, forever. Um, as I said, I – my son is happy. He's graduating and stuff. But it – it took over my life. It's – it just – there's nothing left of the life that I had envisioned before this whole thing hit. (*Kendra)*

> Because I felt that I couldn't be, because I was like how can you be happy? It's sort of like when someone dies. This is how I explained it to one person. I said "imagine if a doctor comes to you and he says 'we have found a tumor in your stomach. We don't know if it's cancerous. We don't know if it's not. But, we really don't want to go in there and look at it right now. We could, but we're not going to. We're going to let it sit there for a certain amount of time; years even. But, perhaps, one day it will be cancerous, or maybe you'll go on with your life and it won't be. But that tumor is still going to sit there. And that's how The Hague is to me. *(Pamela)*

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



For Kendra, the events that led up to the Hague petition and the continued legal conflict she has experienced since the Hague decision was made (more than four years later at the time of the interview) created a sense of timelessness to her experience. Her old life, the life she had envisioned for herself and her family, had been ended by these events. Pamela also relates the idea that a death has occurred, that someone has died. But for her, the uncertainty created by the lack of resolution of her ex-husband's Hague petition is like a potentially fatal cancer – it could kill the new life she has established if the petition is reactivated in time, or it might lie dormant beyond the one year deadline and he may never cause her any more trouble in other ways. The difficulty is in the uncertainty of which outcome will emerge.

**Recommendations from the Women**

Many of the women in this study had ideas about how to improve the situation of other battered mothers who might face a Hague petition in U.S. courts. We have organized their ideas into seven broad categories in Table 7.2 below. These range from general advice to other women about how to cope with domestic violence, considerations at various points in the process from deciding to go to the other country to deciding to leave, and ways that the legal protections could be strengthened for women with their attorneys, in U.S. courts, and in regards to the Hague Convention.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 7.2**

Recommendations from Mothers

| | |
|---|---|
| **General** | ▪ Understand that domestic violence is not a psychological problem – You are not crazy!<br>▪ Strive for your kids. Be strong and fight for them.<br>▪ You don't have to take his abuse – you can leave.<br>▪ Find other moms who know about domestic violence to talk to so you won't feel alone.<br>▪ Know you will be afraid at many moments in the process.<br>▪ Hold on to your faith.<br>▪ It's not going to be easy, but never give up! |
| **Before Leaving the U.S.** | ▪ Know the signs that your husband may be abusing you.<br>▪ Find out the legal implications of moving to another country with their children.<br>▪ Know that the Hague Convention applies in the other country even if no one in the family is a citizen of that country (e.g., all are American citizens abroad).<br>▪ Realize that just because your children are U.S. citizens, they are still bound by the laws of the country where they live.<br>▪ Don't go to another country with your children if you believe you are in a domestic violence situation. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | |
|---|---|
| | ▪ If you feel your marriage is troubled, don't go to another country, but if you do, make sure you have a return ticket and make plans in U.S. that show you intend to return. |
| **In the Other Country** | ▪ Retain control of your and your children's passports, if possible.<br>▪ Keep any documentation you can of the abuse.<br>▪ Go to the U.S. Embassy and try to get them to help you – at the least ask them to help you find an attorney.<br>▪ Contact the domestic violence system in the other country (if there is one), even if all you can do is get documentation from them that they cannot help you.<br>▪ Find a lawyer/legal representative as soon as you can once you realize you may need to leave.<br>▪ Be wary of calling the police, but if your life is in danger, you may have to go to them.<br>▪ Double-check what your lawyer or the Embassy says, especially if they are telling you to leave without permission.<br>▪ Understand that even if you have custody of your children, this may not give you the legal right to leave the other country. |
| **If You Decide to Leave** | ▪ Try to go through the other country's courts before you leave.<br>▪ If you decide you have to leave, carefully plan your escape, if possible, and get help from others as you can. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | |
|---|---|
| | ▪ If you are going to leave, and especially if you are going somewhere unknown to your husband, don't tell anyone your specific plans.<br>▪ Realize that sometimes it is "fight or flight" – you may have to flee to survive.<br>▪ Use every bit of "independent" time to your advantage for your plan.<br>▪ Be ready to lose everything if you have to leave. |
| **U.S. Attorneys** | ▪ Find a lawyer who believes in your right to leave for your and your children's safety – don't stay with a lawyer who thinks you were wrong to leave.<br>▪ Have your attorney prepare you for the kinds of questions your husband's attorney will ask you.<br>▪ Make sure your lawyer is willing to put in extra time researching the Hague and/or consulting with other attorneys who have helped battered mothers with Hague petitions.<br>▪ Prepare immigrant women for how to work with interpreters in court.<br>▪ Educate lawyers on how to recognize domestic violence and obtain evidence about it (i.e., witness statements). |
| **U.S. Courts** | ▪ Train lawyers and judges on the Hague Convention and the |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | |
|---|---|
| | issues facing battered women living in other countries.<br>▪ Judges should make explicit plans for children's well-being when returned to the other country – don't just assume they will be OK with the father.<br>▪ Undertakings should be created and enforced in both countries. Fathers should have to show they have addressed undertakings before the children are returned to them.<br>▪ Don't charge women for representation and don't place special financial bonds on the women.<br>▪ Have a separate court for Hague cases with trained judges and lawyers.<br>▪ Judges should take domestic violence into account when deciding what happens to the children. |
| **Overall Hague Process** | ▪ Need addition to the Hague Convention recognizing domestic violence as a legitimate reason to leave.<br>▪ Recognize that some women are forced to go to the other country or forced to stay there against their will.<br>▪ Hague Convention should make provisions for women who may be exposed to danger if their children are returned to the other country.<br>▪ Need women's voices in the legal system – as judges, lawyers |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | |
|---|---|
| | and policymakers at national and international levels.<br>▪ Listen to the children. |

Although each woman's recommendations stemmed from her own experiences, in their totality, these ideas reflect on the points of disruption the women experienced in their efforts to secure their own and their children's safety. Ultimately, these experiences have led the women to reflect on the fact that choosing a partner from another country is not just a personal decision, but one bound into a complex web of laws based in two countries linked by international treaty agreements. Women were caught in the dilemma of having to figure out the deeply troubling question of how to cope with their partner's abuse, but to do so in a context of little support, both in the other country and in the U.S. While women in this study primarily turned to family in the U.S. to secure safety for themselves and their children, their husband's were able to mobilize institutional networks in both countries to advocate on his - the left-behind father's - behalf. Considering this reality, women recommend that other mothers approach their situations as strategically as possible, understanding that institutional supports will favor the father if the mother and children flee.

## Discussion

Women and their children faced high levels of hardship when they returned to the other country. For seven of the families whose children were returned (58.3%), the women experienced renewed violence by the fathers, or children who had not previously been the targets of the men's physical violence became direct victims of physical abuse.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



By not recognizing the gravity of domestic violence against the women during the Hague petition process, courts returned children to situations that posed a grave risk of physical harm for the children, and in three of these families that risk became a reality. Although the Hague Convention has no focus on the effects of return for parents, it seems a travesty that the legitimate safety needs of the mothers in these situations were not considered in any part of their legal experience.

It was not just the mothers who followed their children back to the other country who were affected after the judicial decision on the Hague petition. Even mothers who succeeded in retaining their children in the U.S. faced continued threats and extensive fear that their abusive (ex) husbands would hurt them or their children. Separation, either within the other country or across borders, does not end abusive behavior by persistent ex-husbands, a fact well documented by the social science literature (Brownridge, 2006; DeKeseredy, Rogness & Schwartz, 2004).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 8:

## Experience of Latin American Mothers

(This chapter was co-authored by Luz Lopez and Gita Mehrotra)

Currently, Latinos compose 14% of the total U.S. population and are the largest ethnic minority group in the country (U.S. Census Bureau, 2006). According to the National Violence Against Women Survey, women who identified as Hispanic reported physical assault and stalking at the same rate as women of other ethnic backgrounds (Tjaden & Thoennes, 2000). However, a number of authors have noted that it is difficult to assess the prevalence of domestic violence within this population because there have been very few quantitative studies regarding domestic violence in immigrant communities in general (Raj & Silverman, 2002; Sokoloff, 2008). In addition, immigrants are underrepresented in national surveys due to language barriers (Bhuyan, Shim, Velagapudi, 2010), immigrant survivors of violence, especially those immigrants who are undocumented, are less likely to report domestic violence to law enforcement (Wood, 2004; Sokoloff, 2008), and a woman's level of acculturation may be a significant factor in her reporting of domestic violence incidents (Garcia, Hurwitz & Kraus, 2005). Menjivar and Salcido (2002) also assert that the incidence of domestic violence is not higher in immigrant communities but rather that immigrant battered women's experiences are exacerbated by the distinctive constellation of oppressions they are subjected to as immigrant survivors.

Practitioners and researchers alike have identified a number of unique challenges facing Latina battered women as they seek safety, including language barriers, cultural

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



and/or religious values regarding family and gender roles, educational and income disparities that may affect actual or perceived access to resources, and lack of access to legal remedies (e.g. Pendleton, 2003, Klevens, 2005, Raj & Silverman, 2002). Immigrant battered women in the U.S. also often fear that they, their children, and/or their abusive partner could be deported, particularly if the abuse is reported (Klevens, 2005). As a result of these barriers, battered Latina women have been found to be less likely to seek help for domestic violence than other survivors of abuse (West et al., 1998; Bauer, Rodriguez, Quiroga & Flores-Ortiz, 2000). However, like other victims of domestic violence, Latina survivors indicate that one of the main reasons they seek help is the threats they perceive to the well-being of their children (Acevedo, 2000). Some researchers have also found that immigrant Latinas feel safer in the U.S. than in their home country because of the presence of domestic violence laws in this country (Menjivar & Salcido, 2002).

Current research and practice regarding immigrant battered women is focused on women's experiences of violence once they are already living in the U.S. with their abusive partner (Raj & Silverman, 2002). More specifically, this work has aimed to better understand and respond to the ways that a woman's immigration status can be used as a tactic of abuse by a violent partner while also creating barriers to safety and services that can keep immigrant battered women trapped in abusive relationships. Advocacy efforts have centered on creating more options for immigrant battered women by helping them to obtain legal status in the U.S. independent of their abusive husbands (see for example: Orloff & Kaguyutan, 2001; Pendleton, 2003; Wood, 2004). The

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Violence Against Women Act (VAWA), passed in 1994 (and renewed in 2000 and 2005), created a provision for battered immigrant women that allows for them to self-petition for legal permanent status without reliance on their abusive husband for sponsorship. Similarly, the creation of the U-Visa in 2000 may grant legal immigration status to victims of crime (including domestic violence) if the crime occurred in the U.S. and the victim is deemed useful for the prosecution (NWIRP, 2000). While both of these remedies have been critically important in creating a greater range of legal remedies for battered immigrant women, they have limitations based on eligibility criteria (Pendleton, 2003; Wood, 2004). For instance, VAWA self-petitioning requires the applicant to be married to a U.S. citizen or legal resident. In the case of the U-Visa, the domestic violence has to have occurred in the U.S.

Thus, the situation of the Latina mothers in this study was quite different than both immigrant women battered in the U.S. and the American citizen mothers who fled back to their home country. The common remedies outlined above were not likely to help the Latina mothers in our sample who faced Hague petitions U.S. courts and alleged domestic violence committed before fleeing to the U.S.

The methods used to recruit this sample, collect data and analyze the transcripts of interviews are covered earlier in Chapter 2.

## Results

### Experience of Latin American Mothers

In order to explore the unique concerns of immigrant women who relocate to the U.S. to escape the abuse they experienced in their home countries, we present in-depth

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



case studies of the four Latina immigrant mothers in this study: Lara, Marina, Marta* and Belinda (their original names have been changed to preserve confidentiality). Each of these women's cases follows the general chronology of Hague experiences that we found for the entire sample. Here we focus primarily on aspects of these women's stories that are a result of their status as Latina immigrant women. Information from each mother is summarized across seven domains, with illustrative quotations from their stories where appropriate. These domains represent elements of the women's stories that were shared in each case: (1) the domestic violence they reported (including the categories identified previously in the report such as physical harm, or harm to the children.); (2) specific ways the woman's husband used their immigration status to threaten them; (3) events that lead to the decision to leave their country and come to the United States; (4) their experience of family and other support in the U.S.; (5) processes surrounding the Hague petition; (6) economic hardships the women faced in the U.S., and (7) examples of their resiliency in the context of limited resources. The discussion section highlights the unique characteristics of the Latina mothers in contrast with the other non-Latina mothers who participated in this study.

The way in which we review these four cases is different than preceding chapters. We first examine each woman's story, the specific aspects of each story as listed above, and then we draw out common themes after their stories have been presented.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Lara's Story**

***Domestic violence.*** Lara was married to a man with an alcohol problem. She had two children with him, a daughter and son who were both under six years old. Her husband pushed her, threw things at her, hit her, and repeatedly raped her. The children were exposed to the escalation of physical abuse and emotional terrorism towards their mother as Lara described:

> He would come home and push me around and hit me. But, since I already had my daughter I was trying to keep my marriage together. But I became pregnant again. Sometimes it's hard to talk about this but, he would rape me. My ex-husband would arrive drunk and would abuse me, he would rape me, he would insert things inside me and… it was just too ugly… As a result of one of these rapes, I became pregnant with my son. So I had my son. But the situation was more and more unbearable. He hit me in front of my kids. Until I said, you know what? This is it. I can't take it anymore… I filed for divorce and all that. I filed for divorce and separated from him. I lived in another house, but then it was worse because he would go to the house, and if I wasn't there he would break everything.

***Reason to leave for the U.S.*** After Lara separated and was in her own house with the children, the abuse did not stop and this led her to consider moving to the U.S. to live with relatives:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> He would come into the house with the excuse to bring the kids medicine because they were sick. He would start throwing things around in front of the kids, and inspecting my house. He would ask who was there and would push and shove me. I have a sister, who lives in the United States. I was alone in [Latin American country] with my kids and didn't have anyone to stick up for me and I was afraid. So, I decided to leave and relocate to the U.S.

Lara's neighbors heard the violence, and observed her husband pushing and shoving her, and throwing things in the house. These neighbors did not offer assistance, and Lara did not know who to talk to and where to find help, other than from her family members.

***Family and other support.*** Lara's sister lived in the United States and she decided to join her. Lara found a domestic violence agency in the U.S. that helped her petition for asylum on the basis of the family's domestic violence experience; the agency also helped her obtain a restraining order against her husband. She reported that her attorney who worked for this organization was a major source of support and guidance.

***Immigration threats.*** One of the challenges faced by Latina mothers in this study was the immigration threats made by their husbands. For example, Lara describes the following:

> My husband contacted me and threatened me from [the Latin American country] saying that he was going to come get me with the FBI, and he was

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



going to use every means necessary to get the kids back. That is why I was so scared…

***Hague petition.*** Lara's husband found her five months after her arrival in the U.S. He located the children in their new schools and arranged for the police to take them away because he had filed a Hague petition. Lara related the following these events:

I was working. My son was with a provider in Head Start and my daughter was in school. So, I get a phone call and they tell me, "Lara, you know what? Your husband is here. He just took your kids. And we need you to come to court right now." I was very scared and I asked, "What happened?" I had advised the school not to give my kids to anyone, as I had done with the Head Start teacher. The teacher told me that many police cars had arrived and they took my son from her and she didn't know what to do because many people came and took my son; they took both of them. The school could not stop them from taking my daughter either. So, we went to court, then. The judge wasn't very helpful because she said it was a problem for my country, and told us to go fix our problems in [our Latin American country]. She was rude. What helped me was my immigration petition for asylum [on the basis of domestic violence] and my attorneys. I had letters. I… when he would go and hit me and/or destroyed the house, he would leave me written messages insulting me and saying things about me. I saved those

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> messages and presented them in court, and they even showed him. They asked him if he had indeed written them.

At first, the judge ruled in favor of her husband's petition to return the children to the other country, saying this was a problem that should be addressed in the Latin American country's courts. However, Lara explained: "I already had the immigration asylum case petition pending, so they allowed the children to stay with me until the other courts made their decision." The immigration court couldn't make a decision because the Hague petition was still pending.

> During the appeals process, my ex-husband filed, again, asking for custody of the kids. So, it was like if you already filed through Hague, why are you filing for custody of the kids? So, I had all three courts at the same time, and none of the judges could decide. It wasn't until the Hague Convention decided that I could be here and have my kids that immigration made a decision and custody of the kids was decided on.

The first judge ruled against Lara. However, Lara said her lawyers helped her a great deal.

> The Hague case was appealed and the judge found in my favor a month later. She [the appellate judge] had documentation of the threatening messages he had written, letters about witnessing violent incidents from friends and neighbors in our [Latin American country], documents from attorneys explaining the divorce, and the restraining order. After my ex-husband lost the Hague case, he filed for another custody determination.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> He now has visitation rights, including weekend visits when he wants to exercise them and a yearly vacation with the children in the [Latin American country].

***Economic hardship in the U.S.*** Lara also explained that she had to pay for her husband's expenses related to the Hague proceedings on an ongoing basis:

> Ah! Another thing, when my husband came [to the U.S.] he wanted ME to pay for his flights, and all his attorney expenses, and all that. I was earning minimum wage at the time. He let me… the judge decided I had to, so I started paying him what I had to pay, and they started garnishing my wages. Those were very difficult times, and I think his attorney told him that was too much. I couldn't make ends meet. They were taking $50.00 from my check and those were a good $50.00 for me. So, his attorney said to him, "you know what? Don't take anymore from her." I think they garnished my wages for more or less three months. The attorney said not to (make me pay) anymore. He didn't want any more. He didn't want anything from me. That's good. But, my poor kids suffered a lot during those difficult times. They went through a lot; hunger, cold, many, many things.

***Resiliency and resourcefulness.*** Lara was able to obtain a work permit and at the time of our interviews was working and taking English classes. She only stayed with her sister two days before she found an apartment with a roommate. She was able to find a domestic violence shelter to help her with a restraining order:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> When I arrived in the U.S. I was inquiring about a [domestic violence] shelter at the family court and I told them I was in danger because someone was coming to get me and they advised me to get a restriction order and that is what I did.

Lara received assistance from the lawyers in the domestic violence shelter and a private religious charity. The children liked their new school and they were being seen by a child psychologist to help them with their traumatic experiences. Lara was relieved and determined to make their lives better and safer.

**Marina's Story**

Marina had one daughter from a previous marriage, and two children with her new husband, a girl and a boy both under six years old.

***Domestic violence.*** The abuse began two weeks after they got married. Her husband pushed her to the floor during an argument. He was a former policeman and had weapons in the house. Marina describes the following:

> Usually, he would hit me in the face and I would get a nose bleed. If he had me in an assault session, he would slap me, he would pull my hair and he would push me to fall wherever; be it on the bed, or against the wall. Sometimes… I am thin. Sometimes he would slam me against the floor and I would lose consciousness. Another time, he pulled me out of the bathroom by the hair and started hitting me. I don't know for how long he was hitting me; five, ten, fifteen minutes hitting me hard. He continued to hit me and my nose was bleeding.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Marina's home situation was increasingly troubling and her husband became more violent towards her and her children, especially her oldest daughter (who was not his biological child): "It reached a point at which, after he hit me, he also tried to hit my older daughter in front of me." Another time her daughter said: "You know what, Mom? Every time you leave us with him he hits us. He hits my little sister more than he hits me." Marina said of her children:

> If she [daughter] didn't do things the way he wanted her to, then he would hit her. When I arrived at my mom's, I asked them where he had hit them. And she indicated where he hit her with the fly swatter. I saw that they had some marks on the back side of their body, and their legs and back. … My oldest daughter said he would go in the bathroom when she was taking a shower and she would ask who was there and he would rub her over the shower curtain.

The violence also affected Marina's family members.

> My brother experienced it too: he was hitting my brother. So, before he got the ice pick, he got my brother, who was going into the garage, out of the car. He took him out of the car by the hair and kicked him while he was on the floor.

Marina also described the following threats to her own life:

> I heard some noises outside and when he came back, he had an ice pick in his hand. When I saw that, I…. I was sitting on the edge of the bed. He put the ice pick to my stomach and held my jaw very tightly … he left my

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> jaw out of place. To this moment, I still have problems when I open my jaw…One time, he put a weapon on me…he put the weapon to my head. I saw it on my right temple. I saw from the corner of my eye, how he was pulling the trigger. When he stopped pulling, when he put it to my head, I asked him to not to play around like that, please…I just heard how the noise the weapon made, because he did (pull the trigger) slowly…I would tell him to please stop, because he was going to kill me. I wouldn't even try to move a centimeter because I thought that if I moved, he would shoot me. I closed my eyes and heard the "click." Then he took the weapon away from my temple and laughed. He said, "you're so dumb, you're an ass. It's not even loaded." I went up to my room crying, and for days after that I kept thinking what if the weapon would have had only one bullet?

She sought help from her country's family services department, but they did nothing. She went repeatedly to the police, but since her husband was a former police officer, they also did nothing. She asked for a divorce but he refused. After Marina relocated the family to the U.S., her oldest daughter reported that the father had touched both girls sexually. He had also raped Marina.

***Immigration threats.*** It was clear that Marina's husband was threatening to kill her and that part of these threats, as her statement below indicates, included kidnapping the children and her fear that he would report her to the immigration authorities as a way to force her return to him:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> My husband always said to me, "If you leave, I'm going to find you wherever you go. I'm going to take your kids away from you and I'm going to kill you". Nothing compared to this. You know why? I lived day after day and night after night frightened thinking about what would happen next. I was sure if I left he would do something, report me, and my kids were going to go back to [Latin American country]. It could be his way to get me to return.

***Decision to leave to the U.S.*** Her husband's escalating violence and his threats to her life and the safety of her children were the reasons for Marina's decision to leave and relocate to the U.S.

> These events took place which made me fear for my life, and obviously for the security of my three kids. I told him something was bound to happen because he was blocking all of my ways out, and he was putting surveillance in the house. That house turned into a cage and I decided to flee.

***Family and other support.*** Marina had some family in the U.S., but most of her family was in [the Latin American country]. For a long time she did not tell her family about her situation because she feared their reactions would escalate her situation at home. Finally, after an incident where he hit her older daughter, she decided to tell her mother, who lived near them.

> I spoke with my mom. I told her about everything that had happened. My mother was a bit surprised, and told me she never really liked him nor the way he would speak to me and the way he treated the kids. But she never expected

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> things to be the way they were. She told me she didn't know why I had allowed it, and that I should've spoken up from the first time he hit me.

Once Marina disclosed to her family the reality of her situation, she began to rely on them more and would take refuge at her mother's house. She finally fled to the U.S. where she stayed with her sibling. Marina's family's support and validation of her experience were vital to her ability to seek safety, even though her mother scolded her for not speaking up sooner.

***Hague petition.*** Marina spoke of the police serving the Hague petition on her and her thoughts during this event:

> A few months after I left to the United Sates, the police came to my house and took my kids away. I was told that their father was here and that I had kidnapped my kids. I explained to them… I speak English because I used to teach it in [the Latin American country]. I explained to them, sometimes in Spanish, sometimes in English, because my mind was racing to figure out what I could do at a moment like this…I was told about having a hearing the next day, and an attorney from [the domestic violence agency] represented me because I couldn't find anyone else. So that attorney represented me at that hearing; I wasn't allowed to speak at all. I heard they were saying that custody would be granted to the father. I asked my lawyer to please let me speak because I had something to say. She told me I couldn't speak unless the judge allowed me to. I pleaded with her to ask the judge to grant me the opportunity to say a few words because I wanted to tell them my kids were being abused. I asked that the kids be put in a

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> foster home, but they didn't listen. They simply granted the father custody, and I was given visitations of two hours on Sundays and a ten-minute phone call per day. They gave us a court date in three weeks. I can tell you that what I went through those three weeks was like hell. What he did to us in [the Latin American country] was very hard and that was the last straw.

Marina searched for an attorney that would help her keep the kids here in the United States and found one experienced in Hague cases who said this would be expensive.

> They gave us a court date for three weeks later. I found an attorney, which was very expensive. You know something? When you talk to attorneys and you explain the situation; that you are fleeing for a specific reason, they don't want to take the case. They all said the kids would have to go back, and that was not the answer I wanted to hear. Finally, I found an attorney who told me he had some experience with Hague. He told me he handled a Hague case about three years ago, and that he could help me, but that his services are very expensive. I decided to work and borrow money, do anything I could do to pay him.

The oldest daughter testified in the second court hearing about the abuse she endured and also because to what she had witnessed being inflicted on her mother and siblings. The two other children were too young to testify but a psychologist performed an evaluation and the report was also presented during the court hearing. The judge returned the children to Marina's custody after this testimony and denied the father's Hague petition request. She also had an immigration asylum case based on domestic violence pending.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Economic hardship.*** Marina also discussed the financial difficulties she experienced stemming from the multiple legal proceedings in which she would need to engage in order to defend herself and her children.

> From the moment the kids were taken away, my family and I focused on saving up money because we knew we would need it. Someone offered to lend me five hundred dollars, someone else offered to lend me one thousand dollars. All together, we gathered ten thousand dollars. After all is said and done, money is not the important thing. I will work and work until I pay this money back. I just needed a good attorney for the day of the Hague hearing to help me get the kids back.

***Resiliency and resourcefulness.*** Despite her resourcefulness, Marina was tried but was unable to secure the assistance in her home country to assist her in stopping the potentially deadly violence she experienced at the hands of her husband. Marina was adapting to her new life in the U.S. at the time of our interview. While language and limited resources were barriers for the other Latina mothers in this study, this was not so much the case for her. Marina was able to hire an attorney to help her with the Hague case. She also found employment. As she noted, “I’m not afraid of working. I want to improve my children’s lives”. She is happy her children are away from the violence and safe. Her children are receiving therapy. She is also paying the lawyer fees with her work.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Belinda's Story**

Belinda met her husband when she was 15 years old and married him when she was 19. They were married for 19 years, and had three children together. Belinda did not complete her education because her husband refused to allow her to go to the university, despite agreeing to let her study at the beginning of their marriage. Her husband repeatedly beat her and threatened her and her children during their marriage.

***Domestic violence.*** Belinda discussed the violence and abusive behavior by her husband towards her and in the presence of her children during those events:

> When my son was about 15 years old, he saw the constant yelling his father directed towards me for any little thing, and the verbal and psychological abuse I was subjected to by his father [and ] he would say to me, "Mom, leave my father. Let's get out of here. Let's get away from my father. Let's live together with just [younger sister] and me. I can work and take care of you two." But I said, "No, no, no. That's not the right way to do it." During our marriage, [my husband] mistreated me extensively; physically, verbally and psychologically. He controlled me. He also controlled me economically. I put up with many, many, many, many years of infidelity. He was unfaithful the whole life. The physical and psychological abuse was constant until we came for a second vacation to the United States. At that moment I decided maybe it was better to relocate in the United States and not return to [Latin American country].

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Immigration threats.*** When her husband learned that Belinda was not returning from the U.S. and that she wanted a divorce, he said he would not grant it. On the contrary, "He said he would send immigration and the FBI" so she would be arrested and sent to prison for taking the children. He also said she would never be able to find a job. She would be dependent on her sibling, and their son would "turn into a drug addict."

***Decision to leave and relocate in the U.S.*** Belinda's husband had to return from a family vacation in the U.S. earlier than anticipated, and Belinda continued her vacation in the U.S. with her son and her younger daughter. Belinda reported that she had considered contacting the police in her country, but that she had heard that they would only help a domestic violence victim if she paid them. Only her husband had access to their money, so she felt she had no access to help in that country. Belinda's husband's absence, however, provided her with the opportunity to consider what to do next. As she noted,

> When he left, I knew I had to make a decision, but deep down, I was scared because he was such a possessive, arrogant and dominating man that I was very scared of him. I had to return to [the Latin American country] the next day but I decided to stay in the U.S.

***Family support.*** Belinda, her husband, and her two younger children went on a vacation to the U.S., and they visited Belinda's sibling. Belinda' sibling and spouse knew how difficult the situation was at her home, and they offered her place to stay and financial help to leave her husband.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Hague petition.*** Belinda's husband accused her of keeping the children in the U.S. without permission and demanded the return of their youngest child who then was seven years old, to live with him. Belinda received the Hague petition papers and had a hearing scheduled in eight days. She found assistance through a local legal aid office in the community where she was residing. The lawyer assigned to her had never been involved in a Hague Convention case, but did research and represented her (pro-bono) in the three day Hague hearing. The judge ordered the couple to negotiate a solution to the situation. Both parents asked for the same: to have the child during the school year and for the child to go on vacation with the other parent during the summer. Belinda told the judge, "Please understand that my daughter is very young, and young kids need their mother. My husband could also be violent." She explained the history of domestic violence but the judge said that was not part of his jurisdiction in this case. However, due to the age of the daughter, he did grant custody during the year to Belinda and visitation with her husband in his country during the summer.

***Resiliency and resourcefulness.*** Belinda's sibling petitioned for her to remain in the U.S., and the immigration service then extended her visa. At first Belinda found a job with a cleaning company and worked about 14 hours per day. Her children stayed with her sibling for the first month, after which Belinda was able to save enough money to buy a used car and rent an apartment. Now Belinda has a better job and her children are doing well… "And thank God, my kids' father can't say that my son turned into a drug addict, because… you know mothers are the kids' foundation."

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Marta's* Story**

***Domestic violence.*** Marta* lived with her partner in a Latin American country; she had one child from a previous relationship and had two children with her current partner. She reported that her partner treated his non-biological step-daughter much differently than his own two biological children:

> …he was very aggressive and very controlling, and I didn't speak to my family about these problems. He would beat me, and I wouldn't say anything. When the other two kids were born (his biological children), he started to belittle my oldest daughter. He didn't want her to come into the bedroom. He didn't want her to touch the kids. He didn't want her to play with her siblings. My daughter began to feel left out and neglected.

Marta* had documentation consisting of a medical report about "lesions" he inflicted on her that she had presented in a court in her Latin American country, but the court would not pursue the complaint. She also sought help from a government agency providing family services, but he behaved more violently towards her after the agency became involved, and they were ultimately not helpful. Twice before she left him, but returned.

> On two occasions, I left my partner, but he would somehow convince me to go back with him by making me feel guilty saying that it was my fault we didn't live like a family, that it was my fault the kids didn't have a family with a mother and father, the way it should be. When I would go back with him, the problems started all over again because he always had to decide on everything, what

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> clothes I was to wear, whether or not I could have friends. He wouldn't let me fraternize with absolutely anyone; not with my friends, nor with my family. I lived isolated and that depressed me and would cause me many problems. On one of those occasions, he agreed that we should separate, but the week after that separation, he tried to convince me to go back, but by then, I didn't want to anymore. So, he beat me again.

***Decision to leave and relocate in the U.S.*** Marta* spoke of her decision to leave her partner and to go to the U.S.:

> So, after he beat me again that last time, I knew I had to leave. We were not safe and I realized he was not going to change. My parents were in the U.S. I told them what was happening but they told me they couldn't help me while they were in the United States and I was in [Latin American country]. So, I consulted some attorneys in [Latin America], and I asked how I can take my kids out of this country without having to ask for my partner's consent. The attorneys told me that if I took the kids out of the country, he could accuse me of kidnapping, but that that was a very long process and hardly anyone did it. So, I made the decision to leave.

***Family support.*** Marta's* parents had relocated to the U.S. and encouraged her to leave her partner and join them. She had a visa, but her children (all 10 or younger) did not, so she had them taken across the border by friends who passed them off as their children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> I have my visa and passport. Some close friends of my father, who work in the U.S. and live in [Latin America] brought my kids across the border as their own. Once on the other side (U.S. side) all I did was take a plane to (meet them). My parents helped me and once there, I also sought help at a legal aid center.

***Hague petition.*** Once the mother and the children were relocated in the U.S. her partner, the father of the two younger children, petitioned for the children's return and was also granted custody of the children in his country.

> Just as the attorneys in [Latin American country] had advised me, he did all the paperwork to bring me to court for taking the kids out of [the country] in order for him to file for custody of… in order for the Hague law to be effective, he had filed for custody of the kids in [Latin American country]. He asked the INTERPOL and the FBI for their support. He even went to television stations here, in [Latin America]. The case was televised and in the newspapers. He got support from a missing kids' agency there, in [Latin American country], and through all these agencies, he was able to get in contact with some attorneys in the United States who offered their services at no cost, *pro-bono.*

After 10 months in the U.S., Marta* was served with a Hague petition, and her two younger children were taken from her home by six police officers. They gave her a legal document about 200 pages long with information on the Hague petition that had been filed against her.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> They told me they had to take the kids. Without further notice, the police went into the house and asked my family where the kids' room was, and they packed some of their clothes and shoes in some boxes my kids stored their toys in. The kids were still small. They clung on to my legs, and the police yanked them away. The kids were crying when they left. My kids didn't speak English well so, they didn't understand what was happening. Right away, I started reading all the papers they had given me. I had a hearing at 4 o'clock that afternoon and it was 1:00 pm. I asked my brother to take me because I couldn't drive the way I was. I did not know where they were taking the children.

The petition required that Marta* appear in court that day. She was given two hearing continuances, but, the judge ordered the children returned to their father on the basis of the child custody document from the other country. The judge noted that domestic violence was not relevant to the determination. The children returned with the father to [the Latin American country] but, the mother could not return immediately because the father had filed criminal kidnapping charges against her in that country.

> When he returned to [the other country] with the kids, it was televised. He came off the plane hugging the kids, in a triumphant attitude. As if he were the good father, and he was the father who regained his kids. Television portrayed him as the good one and me as the bad one. As if I wanted to separate my kids from their father. When he told the kids he was going to put me in jail, the kids told him they didn't want their

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> mother to be in jail. So, he told me that he didn't pursue putting me in jail, only because the kids asked him not to.

Finally, through a lawyer she negotiated with him and the kidnapping charges were dropped.

> So I asked him to tell me what he wanted. He told me all he wanted was his kids to remain with him. I said, "Perfect. I'll give you custody of them EVEN THOUGH you took the custody without my giving it to you, but I'll give it to you. In exchange, I want you to drop the [kidnapping] charges from the federal court." He agreed, and the charges were dropped since that's a charge that is pursued per petition of the plaintiff. He dropped the charges and kept the kids.

But, for the first one and half years Marta* was back in their country, he did not allow her to see the children. The neighbors told her the children were alone in the afternoons, so she began to sneak to see them, but the kids eventually told the father. At that time, they made an agreement that she could see the children on Saturdays. This was the current state of affairs at the time of our interview.

***Economic hardship.*** Marta* found a job and earns enough to help her afford a small house and car in [Latin America] and to help her children if they need school supplies or other items. She cooks for them on Saturday and tries to be supportive.

***Resiliency and resourcefulness.*** Marta's* oldest daughter, now a teenager, resides in the U.S. with Marta's* parents. Marta* does not have enough money to go and see her, and is uncertain if she would be able to obtain a visa for the travel. They

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



communicate via the Internet. Her younger children are having psychological difficulties, including showing aggressive behavior at school. She has tried different ways to stay more in touch with the children after her husband gained custody, but she continues to worry about the effects her husband's behavior has had on them.

**Discussion**

Most of the literature on domestic violence against immigrant women focuses on the abuse experience *after* they migrated to a new country. In contrast, the Latina women involved with these Hague cases experienced significant domestic abuse while living in their home country and then fled with their children into the U.S. while their abusive partners remained in the home country. The experiences of the Latina mothers in this study is also in contrast to the majority of the women in the study sample who were U.S. citizens living abroad with husbands (who were usually citizens of the other country) when they experienced domestic violence and then returned home to the U.S.

Thus, this subset of Hague cases from Latin America reflects similarities and differences from other Hague cases in our sample. These four cases have some similarities with other Latina immigrant women's domestic violence experiences but their Hague involvement also differentiates them from these other immigrant women.

Interestingly, as with most of the other women in our sample, the Latina women came to the U.S. to seek support and safety of family members already living here. All four women had a high level of concern for their own safety and their children's well-being due to the domestic violence they were experiencing from their husbands or partners. However, unlike the U.S. citizen women in the sample who mainly sought help

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



from parents, the Latina immigrant women turned to a variety of family members, including siblings or extended family in the U.S., to help them transition into the country and provide them with initial (and sometimes ongoing) support. Much like other women in the sample, these four women had difficulty in obtaining resources and support in the other country where they were experiencing abuse. Marina and Marta* went to the police to report the abuse but they did not receive the support they were expecting. The police would not file official reports, even with evidence of physical violence. Marta* sought help from a family service agency but their intervention actually escalated the violence toward her by her husband. Lara did not receive support from neighbors who saw the violence, and did not know of other resources in her country that could help her. Belinda felt isolated as well, not sure who could help her in her country. Also similar to the other mothers we interviewed, the Latina women faced a very quick timeline for Hague legal proceedings and were often expected to appear in court within hours to days of being served with the Hague petition.

The Latina mothers encountered language barriers in the U.S. court system because Spanish was their first language and the legal terminology of the Hague petition documents was often unknown to them. They demonstrated resiliency and resourcefulness in finding shelters, legal aid offices and lawyers who could help them navigate the legal and immigration systems and also could advocate on their behalf. In addition, with very limited resources they all found work quickly. Also notable is that three of the four Latina women were represented by legal services/legal aid attorneys whereas the U.S. citizen women were more likely to have private family law attorneys.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Immigration status is a unique aspect of the Latina women's cases. However, it is important to highlight that because of the specific circumstances of these domestic violence cases involving the Hague Convention, legal remedies that are most often prescribed for immigrant battered women were not viable for the population of Latina women reflected in our sample. For instance, the VAWA self-petition requires the husband be a legal resident or citizen of the U.S., but all of the women in our cases had husbands who were still in the home country and did not have legal status in the U.S. Conversely, the Latina mothers had access to one significant resource: the law permits petitions for asylum in the U.S. in instances where domestic violence has occurred. Two of the women, Lara and Marina, in this study found lawyers who helped them initiate an asylum process in U.S. courts. When they had the Hague petition hearing, these asylum petitions were still open. It may be that these two women's lawyers were knowledgeable in how to prepare an asylum claim based on domestic violence and had already assembled the supporting documentation and evidence for the asylum claim when the Hague petition was filed. It appeared in these cases judges ruled in favor of allotting time for the resolution of the asylum question and, in the end, rejected the Hague petition. The fact that the judges took this asylum immigration process into consideration was a crucial factor that led to the denial of the fathers' Hague petitions.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 9:

## The Attorneys in Hague Domestic Violence Cases

(Catherine Harris assisted in writing this chapter.)

As the title of this study implies, we sought to collect multiple perspectives in this study. Key informants about the experience of litigating a Hague case clearly include both the taking mothers' attorneys and those representing the left-behind fathers. This section focuses on the results of our interviews with attorneys representing both petitioning fathers and respondent mothers.

Our interviews were conducted with little prior information available on the litigation of Hague cases in which adult domestic violence was alleged. The literature reviewed earlier in this report is focused on domestic violence as an issue in abduction cases. There is also a small literature on litigating Hague Convention cases but little in this literature that directly addresses the issue of domestic violence. We examined three major resources focused on the litigation of Hague cases. Two of these were published a decade ago: one is *International child custody cases: The Hague Convention on international child abduction* by Beaumont and McEleavy (1999) and the other is *International child custody: Handling Hague Convention cases in U.S. courts* (3rd ed.) by Garbolino (2000). More recently, a guide for attorneys titled *Litigating international child abduction cases under the Hague Convention* by the law firm of Kilpatrick Stockton, LLP (2007) was published and widely distributed with the support of the National Center for Missing and Exploited Children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Beaumont and McEleavy (1999) review the Convention, examine the global case law to the late 1990s and the various issues that have arisen around the world when Hague cases are filed and litigated. There is little direct mention of adult domestic violence in their scholarly review but in a case involving a left-behind father in Colorado and a taking mother in Wales, U.K., the authors describe a young child who was exposed to "random acts of violence witnessed by and directed to the child, together with intimidation and other inappropriate behavior" (p. 150). The four year old exhibited many trauma symptoms when living with his father but then did not show these symptoms when the mother and child left him to live with her parents in Wales. The judge in Wales denied the father's petition for the child's return based on this evidence of psychological harm to the child.

The two other texts focus on litigating Hague cases solely in U.S. courts. Garbolino's (2000) text, written for and distributed by the U.S. National Judicial College, reviews the basic elements of Hague Convention cases and how these are handled under ICARA and in U.S. courts. There is scant mention of domestic violence in this volume, except the description of a case to illustrate the use of undertakings by the court to insure that children are safe on return to their habitual residence.

Finally, the Kilpatrick Stockton (2007) manual is clearly written for attorneys representing left-behind parents, i.e. the abusive husbands in this study. There is little mention of domestic violence except in suggestions for information gathering from left-behind parents. There is an extensive discussion of grave risk and at least one case in

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



this discussion involves parents where "discord and alleged abuse" between them was a reason for a U.S. judge to deny a petition for the return of a child to Australia.

The Beaumont and McEleavy (1999) and the Garbolino (2000) texts are more descriptive than prescriptive as to the actions attorneys should take in representing clients in Hague convention cases. The Kilpatrick Stockton (2007) manual is much more prescriptive and advises attorneys to keep the Hague case focused on the narrow jurisdictional issue of habitual residence, i.e. which country's court should be hearing and deciding custody and access issues. It argues that attorneys should make every effort not to allow these cases to be turned into a hearing on the merits of custody and access, but rather to stay focused on *where* such evidence should be heard and decided upon.

Not surprisingly, the approach advocated in the Kilpatrick Stockton (2007) manual is not instructive to attorneys for taking mothers who are *responding* to a Hague petition in U.S. courts. This section of the report focuses on the results of the interviews with both mothers' attorneys and those representing the petitioning fathers of their children and highlights how different the litigation approach on behalf of a taking mother is from that for left-behind father.

The International Child Abduction Database (INCADAT, http://www.incadat.com/) , maintained by the Permanent Bureau of the Hague Convention, provides another excellent source of information on judicial opinions but tells us little about how attorneys for parents in these proceedings strategized on behalf of those they represented. Another source of information on Hague litigation is the studies conducted by Reunite International in Europe. These studies, mentioned in

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Chapter 1, shed light on litigation of European Hague cases that may or may not include domestic violence. For example, the parents they interviewed reported that agreements by petitioners to implement changes in the other country, called undertakings, were issued in just over half (57%) of the cases. The study revealed that two-thirds (67%) of the undertakings issued – including all focused on a child's safety upon return - were not implemented in the other country (Reunite International, 2003). Even when judges issued mirror orders (undertakings entered as court orders in both countries) only one in five of those mirror orders were implemented as planned. These findings by Reunite International are directly relevant to the U.S. cases and the experiences of attorneys we interviewed as will be seen below.

**Attorney Sample**

As stated earlier, in-depth telephone interviews were conducted with 23 attorneys. Fifteen attorneys interviewed had represented respondent mothers; 11 of whom represented mothers we interviewed. In addition, eight attorneys interviewed had represented petitioner fathers; six of whom represented fathers in cases where we had also interviewed both the mother and her attorney. Interviewers followed a standard guide that appears in Appendix E. Interviews were approximately one hour in length, were recorded, transcribed and then coded using *Atlas.ti*.

**Results**

Our interviews revealed that the existence of domestic violence allegations raises unique issues for attorneys representing either respondents or left-behind petitioners, but particularly for those representing taking mothers who had to respond to the Hague

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



petition.Six key dimensions in these Hague cases appeared repeatedly throughout the attorney interviews and are reviewed here. These included: (1) extensive resources required to defend against or pursue a Hague petition; (2) aspects of the Hague Convention upon which attorneys placed greatest importance; (3) how attorneys on each side assessed the truthfulness of domestic violence allegations; (4) extent of an attorney's effort to gather and bring evidence regarding domestic violence to bear in court proceedings; (5) evaluation of whether to pursue a case in state or federal court; and (6) ineffectiveness of undertakings, court orders and mirror orders in assuring the safety of the child and mother upon their return to the other country's jurisdiction.

**Resources Required to Defend Against or Pursue a Hague Petition**

Article 26 of the Hague Convention instructs Central Authorities or other agencies of states to provide for representation of petitioning parents. The U.S. invoked a reservation to this article and does not directly cover the costs of representation for petitioning left-behind parents (see Beaumont & McEleavy, 1999; Garbolino, 2000). Most other countries do, however, provide legal representation for left-behind parents. For example, both the U.K. and France appoint legal representatives for petitioning parents. In the U.K. cases are heard by a limited number of High Court judges who often have experience with prior Hague cases (see Beaumont & McEleavy, 1999, for more detail). This disparity between the U.S. and particularly the U.K. were known to the attorneys we interviewed and the U.K. was seen as providing a better model. For example, two attorneys pointed to the U.K. as a model:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> You know the British [system] is the best at that…They appoint counsel and they have competent counsel so they know the Hague Convention, go right to court…they have wonderful compliance. (Petitioner attorney)

> And the high court is the court that hears the treaty cases, and they have specialized judges who are experienced in it. In addition and here's the big deal…U.K. provides legal services to the parties. The cases that are litigated before the high court, for experienced judges…you have the most experienced attorneys, specialized attorneys who get paid if not 100% of their normal billing rate, an awfully close percentage of it by the government to do what they do best. (Respondent and petitioner attorney)

The concerns, among the attorneys we interviewed, regarding the costs of representing a Hague case in U.S. courts focused on three areas: (1) the overall costs for representation and the ability of clients to pay for this; (2) the resources and support provided to petitioning parents (usually fathers) that are not provided to respondents; and (3) the kinds of evidence that are required to effectively argue for exceptions to return of the child. We turn to each one of these below.

In the U.S., the costs of representing Hague cases are met in a number of ways. These cases tend to be more complex than typical family law cases involving domestic violence and they also tend to be expensive. The costs estimated by attorneys for both sides ranged from $35,000 to $200,000. This is somewhat similar to the mothers' estimates as seen in Table 6.2. Mothers' estimates of case costs ranged from $10,000 to

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



$300,000, with a median of $30,000 and an average cost of $62,166. It is also fairly consistent with Chiancone et al.'s (2001) study a decade ago in which left-behind parents estimated U.S. legal costs of up to $200,000 with a median of $12,000 and a mean of $25,724.

Parents from other countries (the fathers in this study) had access to many resources to meet these cost challenges. While the U.S. invoked a reservation to the Hague Convention regarding public representation of left-behind parents, the U.S. State Department did provide funding to the American Bar Association and NCMEC to establish the International Child Abduction Attorney Network (ICAAN). ICAAN has now evolved into the U.S. Department of State's Attorney Network. The Network (and ICAAN before it) consists of a list of attorneys nationwide who are willing to act on a *pro bono* or reduced fee basis for left-behind parents from other countries. The Network is specifically designed to provide "legal assistance to an eligible left-behind parent" (see http://travel.state.gov/pdf/AttorneyNetworkFlyer.pdf). The State Department also provides legal assistance to these attorneys representing left-behind parents in the form of translations, court orders, relevant legal documents, possible location of the child, helpful articles, model legal forms and other assistance. According to Garbolino (2000), only the states of Washington and California have directly provided for representation of petitioners through their states' attorneys general or local prosecutors. U.S. implementing legislation (ICARA) awards attorneys costs to the left-behind parent if the petition is successful. The reverse is not true for taking parents, the mothers in this study.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



These public, *pro bono* or low cost resources were systematically made available to left-behind fathers and their attorneys in our study. As one petitioner's attorney noted, he is an associate at a large firm that helped subsidize the costs for representing a father petitioner:

> I wrote off a ton of time, but, for me…luckily my firm was paying me as an associate. I mean, we got paid, somewhat, but probably for half of what I did. (Petitioner's attorney)

Over two-thirds of the attorneys representing petitioning fathers came from law firms where their primary practice was litigation of corporate matters and where undertaking a Hague case was more likely to be supported by the firm's *pro bono* resources. Only two of the eight petitioner attorneys interviewed were fully reimbursed for their work by the client and/or his family.

The same systematic help from ICAAN or the Attorney Network and the resources of larger firms was mostly not available for the taking mothers or their attorneys. Taking mothers are often perceived as the party committing an offense against their children and the left-behind parent and thus were usually left on their own to find legal representation. Most of the respondent mothers found attorneys who were sole practitioners, part of small firms or legal aid attorneys with few resources. This sometimes resulted in an imbalance that worked against the taking mothers, as the following statement by a mother's attorney indicates:

> Having three hundred lawyers at your disposal, free Westlaw, a network, a database, the whole thing, it was just David and Goliath; a total setup, surprised,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> the element of surprise. Did they really have to have the federal marshals come in and swoop the children? I mean, it just reeked of abuse of power. (Respondent's attorney)

In eight of the 15 cases where we interviewed mother respondents' attorneys, the mothers were able to secure *pro bono*, reduced rate or legal aid representation in their cases. In the seven other cases, the mother and/or her family paid the full costs of litigation. Because many of the mother's attorneys were sole practitioners or worked for small firms or legal aid offices, the costs of providing *pro bono* representation were often seen as more burdensome by these attorneys. For example, an attorney who represented respondents in a number of Hague cases noted the difficulty in receiving payment for Hague defense services and the impact this had on her law practice:

> The most I've ever been paid is maybe $5,000, something like that, for something that I put literally hundreds of hours into and also took off, put my practice on hold, had to pay for hotel rooms, to travel outside of my city, stuff like that…as a small practitioner, for me it was – it's very burdensome and it's definitely not for the money that you do it. It has to be a labor of love or social consciousness. (Respondent's attorney)

Defending mothers in Hague proceedings was difficult for many attorneys. These cases also often move on short timelines. Yet, it takes time to retrieve documentation from foreign institutions that is necessary to support grave risk and other exceptions, locate witnesses and hard-to-find records, translate witness interviews and records into English for the court, and then possibly provide translators during court

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



sessions. The costs involved in Hague cases create hesitancy among attorneys to represent mothers. When asked her advice for other attorneys considering representing a respondent in a Hague Convention case, one attorney half in jest replied:

> Run for the hills! Close your practice, retire now. Go away, open an espresso stand, and move on with your life. What advice would I give them beyond that? I would say be sure that you understand that this is going to consume your law practice, if you do it properly, and so be very sure that you are financially capable to sustaining that, that you are prepared to take on that burden, dumped into your lap over night, because it's all done on an emergency basis. (Respondent's attorney)

This comment is emblematic of the expense that Hague cases represent, and of the ambivalence of some attorneys to accept these cases in the face of the resources required to provide adequate legal support to both mothers and fathers.

**Judicial Comity among Nations vs. Children's Interests**

While the concerns for litigation costs were shared across both petitioners' and respondents' attorneys, a difference emerged based on the weight each side gave to various provisions in the Hague Convention. Specifically, this difference focused how they balanced the requirements of judicial comity among nations, as briefly mentioned in Chapter 6, with sometimes competing interests in the treaty's exceptions to allow for considering the safety and interests of the children involved in these cases. A major theme, primarily among attorneys who represented petitioners, was that mutual respect among nations' judicial systems required upholding the treaty and keeping any

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



exceptions narrow so as to accomplish a prompt return, despite reservations they may have had about the other country's cultural norms or legal and social systems. For example, one attorney who has represented primarily petitioners but also respondents expressed sympathy for the plight of mothers in these cases but nonetheless took a strict line on treaty enforcement:

> …they go to a country where their custody laws are male-centered, dominated, and the father tends to be a naturalized citizen of that country, and they're Americans, and they feel like, and I'm sure legitimately so, that they're not going to get a fair hearing on custody in the country they're in. And so, they leave to avoid that. And while I totally understand that and can only imagine what they're going through, the law, as far as I'm concerned, just doesn't support that.

This same attorney continued:

> But, if we're going to have the treaty, we have to enforce it and I think that we need to keep the exceptions to the narrow circumstances that I think they are originally intended to cover, and maybe there needs to be some re-drafting of things, if that's what it's going to be. But, the ideal outcome is that generally, the people would return to the country where they were living and try their custody cases there. (Attorney who has represented both sides)

An alternate view among attorneys was that while the treaty's intent for prompt remedies is to be respected, the goal of protecting the interests of children should be

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



front and center. This stance was most often adopted by mothers' attorneys, referring to the purposes of the Hague Convention as stated in the first line of the Convention's preamble: "Firmly convinced that the interests of children are of paramount importance in matters relating to their custody" (Hague Convention, 1980, p.1). The intention of the Hague Convention clearly was and is to protect children from harm, albeit with an emphasis on the harm that abduction may cause in children and their families. It was this focus on protecting children where many of the attorneys, particularly those for the mothers, placed their attention in contrast to others who focused on enforcing the return of children. For example, an attorney who had represented a number of mothers who were respondents stated:

> There should be some remedy for the non-offending parent (petitioner), but I just don't see how it's appropriate to allow the children to suffer even more by being taken away summarily from someone (respondent) that has been their sole custodian for years sometimes. (Respondents' attorney)

There has been considerable discussion in the literature about the use of the Hague Convention's exceptions or defenses, especially Article 13(b). Some have viewed attempts by respondents' attorneys to invoke these exceptions as an effort to thwart or undermine the effectiveness of the Hague Convention (see Hilton, 1997). A clear focus of respondents' attorneys was, however, to view exceptions or defenses as valid elements of the Hague Convention and reasons for denying petitions. Respondents' attorneys sought to expand the original formulations of exceptions with arguments based on the growing social science literature on children's exposure to domestic violence. For

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



example, an attorney who had represented several battered mothers as respondents in Hague Convention cases stated her view that even though the treaty expects the prompt return of the children, the grave risk exception should be invoked in cases of adult domestic violence to deny petitions for the children's return:

> Well, in every case, I tried to make the domestic violence against the mother central, and I used the exception for return, which is called grave danger to the child. And I argued that domestic violence against the mother posed a risk of great danger to the child were the child to be returned; both because the mother would have to return with the child to protect the child, and then, she would be subjected to danger, because a parent who subjects another parent to abuse, is you know, by definition not fit to be a good parent to a child. I argued that domestic violence frequently co-occurs with child abuse. (Respondents' attorney)

It is not surprising then, given this tension between international obligations and the protection of children's interests, that the legal strategies of petitioners' and respondents' attorneys subsequently focused on discrediting or accepting allegations of domestic violence and arguing that these allegations be given a lesser or greater weight in the case hearing.

**Assessing Allegations of Domestic Violence**

There were clear differences between the way fathers' and mothers' attorneys viewed the issue of domestic violence in the Hague cases. They particularly disagreed about how to assess whether an allegation of domestic violence was truthful. The major

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



points of divergence in opinions were in the areas of: (1) the frame of mind of the lawyer; (2) the issue of report fabrication, (3) the evidence necessary to substantiate a claim, and (4) the importance of cultural differences.

Attorney views of allegations of domestic violence were very divergent. The mothers' attorneys evaluated them when they first met and performed a typical screening to discover patterns of domestic violence and other corroborating evidence. It was neither assumed there was domestic violence, nor was it assumed the woman was making false allegations.

> They come in and they describe a level of fear that you can just tell what they've been going through… normally they're pretty…I don't know how to describe it except to say that they are really shaken. I mean, many times, there are not 911 calls, you know, and there are not pictures of bruises. (Respondent's attorney)

The fathers' attorneys' views were markedly different from those of the mothers' attorneys. Since they did not interview the woman alleging the abuse except on the witness stand, they were frequently suspicious of her allegations.

> I'm…. you know, I'm suspicious. I want to be able to prove it to a court. So, I would say suspicious in that I doubt it. But, I gotta have something, you know, preferably some corroborating evidence like a medical record, a police report, you know, something. (Petitioners' attorney)

As evidence of abuse is not often readily apparent, especially without the opportunity to talk to the victim, a suspicion of false allegations often existed among the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



fathers' attorneys. The abuse was a fact that could be used by respondents as a defense against the return of the children, and at the very least painted petitioners in a bad light. Therefore, petitioners' attorneys viewed these allegations by mothers as immediately suspect, and as an allegation to be discredited and countered.

The respondents' attorneys largely disputed the idea that women fabricate domestic violence allegations in order to allow the children to stay with them. Some claimed that the petitioners' attorneys are suspicious because they do not ever meet with the women to assess the signs of abuse; others suggested this is a vestige of a sexist society that views claims of domestic violence as frivolous. No matter the reason, however, most mothers' attorneys agreed that women fabricating reports of domestic violence was not a major problem.

> I think that is an argument based in sexist viewpoints to view that women will make things up to gain custody. That argument is just old and tired and repeated all the time. I'm just offended by it. (Respondents' attorney)

The petitioners' attorneys, on the other hand, viewed the issue of fabrication of evidence as a significant problem. For example, one petitioner attorney even suggested that a respondent had self-inflicted severe wounds she attributed to abuse by her husband.

> Obviously, obvious physical injuries can be, obviously, a proof. Although in one case, I'm certain the physical injury was self-inflicted. But, the claim was made that the father had done it." (Petitioners' attorney)

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Another difference between how respondents' and petitioners' attorneys assessed the truthfulness of claims is the evidence they demanded to make a determination of credibility. The respondents' attorneys claimed that evidence of one violent episode was enough to equal abuse, and that even if there was only one event that resulted in physical harm it almost never occurred without other forms of abuse and coercive control being present over a long period of time. The respondents' attorneys argued that evidence of an abusive personality, for example obsessively calling the respondent, could be used to show evidence of abuse to the court and to assess their clients' credibility.

In contrast, the petitioners' attorneys stated that evidence of one episode of physical domestic violence, especially if it had occurred years before, would not be valuable evidence of domestic violence. These attorneys stated that in order to really have a credible claim there needed to be physical evidence, photographs, police reports, hospital or similar records of repetitive action. While both sets of attorneys agreed this evidence was valuable, the petitioners' attorneys suggested it was a prerequisite to having a valid and credible claim. One attorney for a petitioner even stated that he believed the respondent should be forced to take a lie detector test in order to determine if her claims were credible, despite it not being admissible in court.

Despite all these differences, the respondents' and petitioners' attorneys did look at some aspects of domestic violence in the same way. Both agreed that domestic violence was not really considered when drafting the convention, and thus does not fit easily into an exception. They also agreed that substantial evidence is needed to make a successful claim that domestic violence could pose a grave risk to the children. The

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



differences between attorneys, however, were fundamental in how each framed their case, and the legal representation each client received.

**Attorney Effort in Hague Cases**

How clients were represented in these cases varied greatly. Seven of the mothers' attorneys and two of the fathers' attorneys had never before represented a client in a Hague case, three others on both sides had represented clients in two to four cases. Only three attorneys had represented clients in 30 or more cases, and these attorneys overwhelmingly represented petitioners in their practices. Inexperienced practitioners emphasized the intensive preparation Hague cases required; while all attorneys noted the effort needed to retrieve evidence from other countries, to secure witness testimony, and to obtain expert witness evaluations for their cases.

***Preparation needed to present Hague defense.*** Sometimes attorneys with no Hague experience had only hours in which to research the Hague Convention before appearing in court with their respondent clients. Substantial preparation was needed to mount these cases effectively and required effort on the part of the attorneys, their clients and sometimes expert witnesses. Attorneys reflected on their lack of knowledge about the Hague Convention and how much preparation was involved to ensure their clients were well represented.

The concept of *lawyering* was posed by one attorney as a major aspect of her success representing clients. In his essay on good lawyering, Robinson (1994), states that a good lawyer "will be a powerful advocate for his or her clients." Four of Robinson's pillars of good lawyering included enthusiasm, effort, attention and research.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



These themes of good lawyering were evident in the interviews, as shown below in a statement by one attorney who had represented both petitioner and respondent clients:

> …the reality really needs to be brought out, I think in terms of, not necessarily changing the language of our treaty, but in looking at how we lawyer, and looking at how we advise clients, what we do about mirror orders, what we do about international comity, how we address the mutual enforcement of those orders. I mean, that's really where the protection lies. (Attorney who has represented both sides)

The effort attorneys made to collect evidence and witness testimony from the other country despite distance and language barriers and to secure the participation of well-prepared experts witnesses on child well-being and local laws appeared to be major markers of powerful advocacy on the part of both respondents' and petitioners' attorneys. Each of these areas of good lawyering is reflected in the subsequent sections below.

***Retrieving evidence from the other country.*** An important and often both time consuming and expensive element of lawyering on behalf of a client was the collection of documentation to substantiate the mothers' claims of abuse at the hands of her husband. Both respondents' and petitioners' attorneys stressed the importance of backing up mothers' claims of abuse with evidence from the other country. Attorneys took very different views of the feasibility of such an effort as reflected in the following statements. The first attorney clearly sees the effort needed to find supporting testimony to be beyond his ability or resources to perform, and in this case perhaps unnecessary as

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



a petitioners' attorney. The second attorney takes the opposite tact, emphasizing the importance of obtaining evidence from the other country.

> I don't know what else I could do. I mean, to do discovery in [the other country]? Go down to [the other country] and interview witnesses and...you know, forget it. You know what I mean? (Petitioner's attorney)

> I think it was REALLY important in this case that we be able to document with something other than merely the words of my client, and the words of the children, that this had actually occurred, and it wasn't a one-time event, but it was a pattern, and it had occurred on many occasions. (Respondent's attorney)

Attorneys who were more experienced in Hague cases developed strategies to manage the unusual labor these cases required. One strategy of respondents' attorneys was to secure more time in U.S. courts so as to allow them to obtain the evidence needed from the other country to mount an adequate defense. Some attorneys also hired an investigator or attorney in the other country to assist in collecting this evidence. Hiring an expert familiar with the other country was seen as particularly important in interpreting the laws and legal system of that locale. However, these strategies were expensive and not necessarily easy to implement, as suggested by these two attorneys:

> Well, it's lack of access to the evidence…You are kind of fighting with one arm behind your back in that regard …hire some kind of private investigator in the other country. You need someone who is familiar with the legal system, someone who spoke and read the language, of course, someone who is reliable and would

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



be able to do some investigation, so if you had a client who, you know, had some money that would be one thing I would suggest an attorney should do, is hire an investigator. And also, you need additional time to gain access to the records that are pertinent. (Respondent's attorney)

So, you really need someone in the other country that you can contact that can help you find out what actually happened there, or who can advise you on for example, what the law of custody is in those countries, and it's very hard if you're in the U.S. to find somebody willing to do that, again, on sort-of a pro bono basis in those other countries." (Respondent's attorney)

***Securing witness testimony from this and the other country.*** It was not only documents from the other country that required extra effort on the part of the attorneys, it was also identifying and presenting the testimony of witnesses. These witnesses were not only relatives and friends of the parties to the case but also country experts who could shed light on the local culture as well as legal protections and social services available to both the mother and child if they were to return to the other country. As one respondent's attorney stated:

…we did put in evidence about a number of things in [the other country] about general cultural attitudes, about the legal system and how it addressed domestic violence, the resources available in terms of domestic violence counseling, and the facilities and some cultural things. We were able to get a woman who was a human rights worker in [the other country] to put an affidavit on some of these

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



things, and she was extremely convincing. So, in that case, we did put in country-specific evidence. (Respondent's attorney)

A creative way of presenting live witnesses was to present them in court via telephone or videoconference calls connecting the two countries. One petitioner's attorney described a complex but inexpensive mechanism for presenting witness testimony, a mechanism suggested by the judge in the case:

> There's kind of a logistical challenge…'cause you have to do a deposition with somebody overseas, and you have to get a translator. That is a challenge. I was, in both cases, impressed with how easy it was to conduct the depositions over the phone, with the translator…Another challenge is just simple, and this has turned into an issue in my second case. It's when you have witnesses in a foreign country. The man from [the other country] flew up here. But he could not afford to bring in four or five [witnesses from the other country]. And in the [other] case the woman, she was pregnant with the couple's second child at the time of the hearing. So she could not travel. As a result at [the judge's] suggestion…in the first case he said that he wanted the [witnesses in the other country] to testify from someplace that a was official, like an American Consulate, and there was an American Consulate...The consulate was extremely helpful in a facilitating the use of the phone and the facilities at the consulate so it just worked flawlessly having the [witnesses from the other country] go to the Consulate at the particular time they were let in. They were taken to a waiting room. Then they were taken into a room and sworn to testify one by one, and the same thing was

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> done with the American Consulate [in the other case]. And these are the sort of logistical things in a case that can just be a nightmare. But in both of these cases it was the best cooperation that I ever had from any consulate in the United States government. They were just real helpful. (Petitioner's attorney)

***Securing expert witness assessments and testimony.*** The final of the three domains of lawyering that emerged as themes in these interviews was the preparation and use of expert witnesses to testify regarding the well-being of the children involved in these cases. Experts usually focused on the physical and psychological risk that might occur if the children were returned to the other country, an Article 13(b) defense. Some attorneys, however, were skeptical of the use of experts because they felt they were appointed by one side or the other, and thus were more likely to have biased views based on who is paying for their consultation. As this attorney notes,

> I try to avoid expert witnesses because the whole nature of these cases is that they're supposed to be summary…I'm very suspect about experts and the use of experts in America – because each side gets its own experts… And although the federal rules allows for the court to appoint an expert, they tend not to do that…Almost every other civilized country in the world has come to the view that you can't have that… the court must appoint an expert and the expert's oath and duty must be solely to the court. America takes the opposite view that everyone's entitled to their own experts who are paid to say whatever the person wants them to say. I'm – as you can hear – very cynical about experts. (Attorney who has represented both sides)

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Most attorneys on both sides of these cases did not take such a cynical view of using expert witnesses. The importance of expert testimony is evident in the three attorney statements below.

> Getting some really good forensic psychologists to do a psychological evaluation. That's the best thing that we, as human beings, have in a human court of law. (Petitioner's attorney)

> …the court originally started out not at all sympathetic to our position, particularly since there were allegations that the mother and children were not here legally. And we were really able, I think, to convince the court, to educate the court and give the court an understanding of the real picture -- the real negative effects it would have on the psychological make-up of the child if they had to go back and what it would be like for the child to be returned to a place and sort of re-live the domestic violence that had occurred there. So, I think experts can be extremely important if you're able to get one. (Respondent's attorney)

> …try to get those psychological evaluations, and all the things you need to show as much objective evidence. I mean, the problem with D.V. is always the lack of evidence…Especially if they're talking about a foreign country, where, you know, getting a police report or even having the police take a report would be impossible. So, it basically comes down to credibility and if the kids are young,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> and they can't really testify, so you have to do as much as you can to bolster the case. The psychological reports for us, helped. (Respondent's attorney)

Each attorney above discussed the need to obtain an outside evaluation of the psychological issues that could be present for children in these cases. For respondents' attorneys, finding experts who could also report on the effect of domestic violence on the child was an important reason to use expert testimony.

The presentation of expert testimony was not always helpful in cases and seemed to depend on how well the expert was prepared to testify. As one petitioner's attorney pointed out, the expert hired by the respondent's attorney in one case was not well-prepared.

> There was nobody from [the other country who] was called as a witness to corroborate that [the children's exposure to domestic violence]… there was nothing, except for she did go to see a psychiatrist here in town, very well respected, who…ultimately in his deposition said that it would be in the child's best interest to stay here in the States. But he never got to the level which the Hague requires of saying…substantial harm. And since he could not get to that level...And unfortunately, to be honest, I'm sure that her expert hadn't been properly informed about what the level was, because if he was, I'm sure that there may have been some other testimony. (Petitioner's attorney)

It appeared that in one case the expert testimony was discounted by the judge because the father never came to the U.S. and thus the expert had no opportunity to either interview the father or see him interact with his children.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Overall, attorneys for both petitioners and respondents mostly valued the role experts played in these cases and felt, that when possible, they should be used to provide information in support of their cases. These attorneys were in less agreement on the next issue.

**Federal and State Concurrent Jurisdiction in Hague Convention Cases**

The federal system in the U.S. provides two different forums in which a case may be brought: state court or federal court. The petitioner initially decides the forum by choosing where to file the claim. If there is concurrent jurisdiction, as there is in Hague Convention cases, then the respondent may challenge the initial forum selection. Concurrent jurisdiction is provided in ICARA and, therefore, Hague cases may be filed by the petitioner in either federal or state court. If the respondent wants to change the forum, his or her attorney will have to follow the rules of civil procedure to petition for removal to the other court.

***Preference for state or federal court.*** Respondents' attorneys were split on the preference for state or federal court and equally convinced of the appropriateness of their selected forum for the mothers they represented. At times it appeared that the preference for a particular court was based on local contextual factors such as which sitting judge seemed more favorably inclined to allow a full hearing of evidence and/or to consider the physical and psychological harm that the impact of adult domestic violence may have had on both on the mothers and children involved.

Most of the 15 respondent attorneys argued that state courts should be the preferred forum for a number of reasons. First, they argued that federal court judges

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



would either be unfamiliar with family matters, especially the dynamics of domestic violence, or have little desire to explore them. These attorneys viewed the state courts, where family matters were commonly heard and where judges may have been better informed on issues of family violence, to be a friendlier forum for their clients and the children involved. As two respondents' attorneys stated:

> …you don't become a federal judge to do these kinds of cases, and they just don't want to deal with domestic violence. (Respondent's attorney)

> Most judges in federal court either haven't had to deal with them (family matters), or just don't like them. (Respondent's attorney)

Despite these arguments for state court hearings, several respondents' attorneys interviewed were equally clear that they preferred to have Hague petitions heard in federal rather than state court, sometimes for the very same reasons expressed above. First, one attorney suggested that due process may be more available in federal rather than state courts because federal courts do not have expertise in family matters. The experience of this attorney was that the federal judge, who was less knowledgeable of family matters, was actually more willing than the state court judge to seek a full hearing of the evidence in a trial, including hearing the opinions of expert witnesses. Second, a few attorneys also expressed the opinion that since federal courts commonly handle international law cases they might also be more comfortable with Hague Convention cases and more careful to fully examine the treaty's provisions, including allowable exceptions to return such as grave risk. Finally, it was also pointed out that the Hague

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Convention was originally designed with a central authority and central court in mind, as is the practice in the U.K. and elsewhere. One attorney even suggested that ICARA be revised to exclude state courts from hearing cases arising from international treaties such as the Hague Convention.

The views among the eight attorneys who had represented petitioning fathers in these cases were consistently in favor of using the federal courts for petitioning parents and state courts for respondent parents. They believed that federal courts not only had different philosophies regarding these cases, but also had more resources to enforce rulings for the petitioning parent. For example, two petitioning attorneys summed it up this way:

> It was my decision to file it in federal court, and…the reason I did it at the time, I know exactly why,…because I knew I was going to face a best-interest argument, and I was concerned that the state judges would look at it on a best-interest level versus really looking at the significant harm, and that they would decide it as a custody case. And I was going to lose a custody case. I wanted it in front of a federal judge who would really look at the substantial harm argument and was not used to deciding custody cases on a, you know, best interest standard. (Petitioner's attorney)

> The federal court…they're much more powerful. When we were trying to get a child back, we had an emergency order, and the U.S. Marshals grabbed that kid, no questions. It was just done. Getting the Sheriff to do it, it was like, well, we'll

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> pull resources from our child protection cases. You know, which is the priority? It seems like the U.S. Marshals, they just did it. There was not a hesitation. They had a court order. They just did it. So, there's the power of the federal government to pull a kid out of a dangerous situation, versus the lack of resources at the state or county level…I guess the decision making why you go federal or state, is important to me. If I represent a victim of domestic abuse, I'd almost certainly go with the state courts. I mean, frankly, even if they're wrong… I mean, even if the law isn't on your side…Say mom pulled the kids, is alleging abuse, but that should be decided in [other country]. You know, the family courts here are a little more sympathetic to things, where as I think a federal court would just say 'nope, [back to other country].' (Petitioner's attorney)

In summary, the respondents' attorneys were of two minds regarding a preference for one court forum over another. The petitioners' attorneys, however, consistently identified the federal court as the preferred venue for their clients and saw disadvantages to petitioners facing a hearing in state family court. The partiality of attorneys on both sides led to efforts to maneuver their clients' cases into the preferred forum.

***Removal of cases to the other court.*** As one might imagine, securing the venue most advantageous to your client is an important strategy and one that often created tension between the counsel for the petitioners and for the respondents.

While the fathers' attorneys chose the forum in which to file the Hague petition, at least some respondents' attorneys were clear that they could move to have the case heard

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



in a different court if their client so desired. For example, in one case, the two sides fought to move the case back and forth between state and federal court with the federal court finally granting the respondent's request for removal of the case to federal court. Many of these motions are emergencies that play out minute by minute, as this description by a respondent's attorney reveals:

> …when I told [co-counsel] about the Federal Court sending it back, he said that was absolutely wrong and they immediately filed this emergency stay, and motion to reconsider the decision of sending it back to state court. So, the thing is that state court had it docketed for the next morning at 9:00AM, so they got this motion filed the day before at 3 o'clock, the day before the state court hearing at 9:00 am. So, it was just a lot of drama. And we went into state court not knowing, you know, calling the federal court judge every five minutes asking has the judge made a decision? Has the judge made a decision? And finally the last phone call was, yes, she was granted the emergency stay, and the motion to reconsider. (Respondent's attorney)

In summary, respondents' and petitioners' attorneys examined both state and federal courts from a variety of views that sought to find the best forum for their clients. In some cases this was the state court and in others the federal court. Regardless of their preference, there was evidence that many respondents' and petitioners' attorneys developed strategies to place their cases before the court that they viewed as most advantageous to their clients' interests.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**The Use of Undertakings and Mirror Orders in Hague Cases**

Judges' decisions to grant the petitioners' requests for return of their children to the other countries evoked strong views among the attorneys on both sides, particularly on the use of undertakings and mirror orders. Undertakings and mirror orders are mechanisms used in Hague cases in an effort to protect the mother or children upon their return to the country of habitual residence. An *undertaking* is a voluntary commitment made by the petitioner to perform acts that the parties agree will facilitate the child's return or to protect the child or mother upon her return to the other country. For example, the father may agree to an undertaking stating that he will pay for the return transport of the child and mother, or guarantee the mother visitation with the children (Silberman, 2000). The undertaking may also state that he will drop abduction or other charges filed in the other country's courts as part of an effort to retrieve the children. Judges may enter these agreements as orders in the court but they are only viable within the jurisdiction of the issuing court.

Some judges have sought to arrange *mirror orders* to provide enforcement in the other country of a U.S. court's orders. In arranging a mirror order, the U.S. judge seeks the cooperation of a judge in the other country, sometimes with the help of Central Authorities, to develop a court order that is acceptable in both countries' courts. This order is then entered in both countries' courts. These mirror orders may be based on undertakings, or may be the result of a judicial determination of necessary conditions for return (Silberman, 2000). These orders are also referred to as "mirror-image orders"

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



(Garbolino, 2000) and sometimes "safe harbor orders" (Beaumont & McEleavy, 1999). Only one attorney in this study referred to mirror orders as a "safe harbor provision".

These orders' value depended on the likelihood of enforcement in the country of habitual residence. If the government of the other country did not enforce these orders they were likely to be useless.

Most of the attorneys on both sides agreed that undertakings established in U.S. courts were of limited use in other countries and that mirror orders issued by both countries when sending children back to their habitual residence was a practice that was preferable but also seldom enforced. As can be seen in Chapter 7, the mothers in our study reported that undertakings were not enforced once she and the children returned to the other country. This is consistent with the findings in a study of European Hague cases cited earlier (Reunite International, 2003). As one petitioner's attorney noted, there is limited usefulness of court orders from the U.S. being enforced in other countries:

> But there is a problem which is also written about which is that the undertakings in fact are not enforceable according to the other country that takes jurisdiction if it doesn't want to enforce them. (Petitioner's attorney)

These doubts about the usefulness and enforcement of undertakings led most respondents' attorneys to avoid requesting them. Even when courts were willing to stipulate specific actions by the petitioner, there were serious doubts among respondents' attorneys about the degree to which they would provide safety to the children and their mother, if she also returned. Typical of this group of attorneys' statements are the following two:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> There was no specific undertaking. I think the court was concerned that the undertakings would not be enforceable in the other country. (Respondent attorney)

> These undertakings – that are given – are flouted all the time…The U.S. courts do not follow through on the undertakings they've given to the requesting countries' courts. (Respondent's attorney)

As a result, children in this study often returned to the other country to live with their fathers with few protections and mothers sometimes faced criminal kidnapping charges or a lack of access to their children after their return.

When considering the use of undertakings, the respondents' attorneys were clear that the court orders based on these undertakings must be very specific to the actions that the petitioner agrees to take and that completion of these actions should made *before* the child is returned. For example, one respondent's attorney stated:

> I think the court really has to be detailed with regard to the undertaking. I mean, it's very important that the court takes this into account. You can't just assume that everything's going to be fine once the mother…once the respondent returns to the original country. The court should make the largest effort to make sure that for the respondent sent back, that these undertakings have been performed and such, that the petitioner's actually complying with everything they said they were going to do. (Respondent's attorney)

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Even with strong reservations about the usefulness of undertakings and orders by U.S. courts, some respondents' attorneys asked the courts to issue detailed orders out of concern for both the children and their mother. Sometimes these requests were refused by the judge as is evident in the following case:

> We argued that the respondent have temporary physical custody of the children, that they return with her to [other country]. That he [petitioner] would have no contact with my client. That the charges against her for kidnapping be dropped. And we said that in securing the safe harbor the court would have to communicate and collaborate with the [other country's] court. And she [the judge] refused. (Respondent's attorney)

The respondent's attorney in this case believed the judge refused the request for an order because she had made a decision to quickly return these children to the other country and did not want arranging a mirror order with a judge in the other country to slow that process.

Frustration among respondents' attorneys over enforcement led some attorneys to go this one step further and suggest that the judge hearing Hague petitions should, as suggested above, take steps to find a judge in the country of habitual residence and establish an agreement with the foreign court to follow through on the undertakings being consider, as stated by this respondent's attorney:

> If they're deciding that the respondent should return the child, the court should make sure that the custody proceeding in the other country, they should communicate with the other court in that country to make sure that there will be

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> speedy, a very speedy resolution to the custody proceeding. (Respondent's attorney)

The statement above implies the use of mirror orders. An attorney who has represented both petitioners and respondents stated the idea behind mirror orders quite clearly and was also of the opinion that U.S. courts currently underutilize this tool:

> In commercial litigation, we have orders that require foreign corporations and foreign entities to do things all the time. There's nothing unusual about that. There is a mechanism that needs to be employed in order to have an order that's rendered in one country, enforceable in another. And, so, if there's an order in the United States and it includes undertakings, what needs to happen is, and typically, particularly if the habitual residence has been determined, there should be no problem in establishing jurisdiction for the entry of a mirror order. What often happens is that that process is either not done; a mirror order is not generated or drafted, the condition of a mirror order is not included in the original orders, and, you know, no action is taken. (Attorney who has represented both sides)

This same attorney continues regarding the process of obtaining mirror orders:

> You know, to get a mirror order, you can't just walk into the court with a U.S. order and say I'd like you to sign here. I mean, it's another country. You may have to file an application if one has not been filed. I mean, typically, in a lot of our cases, there's already been something filed in the left-behind country. And so there's a docket number, and so, there's an opportunity to be able to use that

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



> docket number as a basis without having to file an additional complaint or whatever. But, in some cases, you have to file something. And you have to file a consent order and that consent order has to specify and, typically, what it should have are the factual stipulations, like if it rose to the exercise of jurisdiction by the court, what it is that you are both agreeing that you're going to do by way of stipulation, 'cause what a mirror order does is it says 'we've been ordered by court X to do this, and we are agreeing that we're going to abide by that in the same place.' …the idea that you can just take an order from the United States, get on an airplane and WALK into some police station, or walk to the court and say 'I'm an American and here's my order.' Well, no! That's never going to happen. And if it does, it's by the grace of some very smart judge on the other side, who's decided to be cooperative. There's a mechanism for things, and for the enforcement of foreign orders, and you gotta figure out what that is. And so, no, undertakings don't work automatically. (Attorney who has represented both sides)

In short, attorneys on both sides of these cases viewed voluntary undertakings by the petitioner with great skepticism. The reports of mothers in this study and the analysis of European cases by Reunite International (2003) indicated that enforcement of undertakings is sorely lacking and a major obstacle yet to be overcome.

**Discussion**

Not surprisingly, petitioners' and respondents' attorneys differed on a number of issues but they also agreed on others. Both sides' attorneys were concerned about the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



costs of representing Hague Convention cases. They advocated for more support from the Central Authority (the U.S. Department of State) for legal representation for their clients. While many respondents and petitioners received *pro bono* or low cost legal representation, the avenue to receiving such help differed. Petitioners were more often referred to legal representation via the Central Authority's Attorney Network or its predecessor and were represented more often by attorneys in large law firms. In contrast, respondents most often found representation through legal aid agencies or small family law practices and less often through referral by the Central Authority.

Both sides also agreed that concepts of good lawyering were key to providing effective representation for their clients. Attorneys who made efforts to secure evidence and the participation of witnesses about events, expert witnesses who assessed the impact of family violence on the children, and other experts on the laws and services available in the other country appeared to live up to Robinson's (1994) concept of good lawyering. Others, either due to fiscal constraints or assumptions about the likely outcome of their cases, did not achieve the same level of advocacy for their clients.

Finally, these attorney interviews also lead one to question the value of voluntary undertakings agreed upon by the petitioner in U.S. courts. Attorneys on both sides questioned the degree to which such undertakings were enforced, mothers in our study reported that they were not enforced and European research suggests skepticism about enforcement is well founded (Reunite International, 2003). This led some to argue that mirror orders, entered in both countries' courts should be standard practice. However, as pointed out by a number of interviewed attorneys, this can be very time consuming,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



possibly expensive to carry out in an effective manner and at least one judge in this study was reported reluctant to engage in the development of a mirror order. Even when mirror orders are in place there are questions about the degree to which they are enforced (Reunite International, 2003).

The views of attorneys for petitioners and respondents diverged on a number of other aspects of the Convention, their cases and representation of their clients. First, there were clearly differences in the importance attorneys placed on various elements of the Hague Convention. Not surprisingly, many petitioners' attorneys placed greatest importance on the prompt return of children and viewed exceptions narrowly and their use as undermining of the Convention's purposes. Respondents' attorneys largely viewed the safety of their clients and their clients' children as their key focus. They viewed the Convention's exceptions as important components, ones that were intended to allow discretion by a country's courts to decide that concerns for child safety to override the goals of prompt return.

It appeared that experts brought in to testify on the grave risk to children were prepared to varying degrees to address the level of evidence required in Hague cases. While establishing habitual residence only requires a *preponderance of evidence*, establishing grave risk of physical or psychological harm requires a higher level of *clear and convincing evidence.* In particular, expert witnesses on behalf of respondents in this study needed information on the criteria for establishing grave physical or psychological harm and how an intolerable situation might be construed under Article 13(b) of the Convention. The term "intolerable situation" was not raised by any attorneys

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



interviewed for this study. When Article 13(b) was invoked, respondents' attorneys focused solely on grave risk terminology. More careful preparation of expert witnesses and clearer assessments of children are called for given the level of proof required in Hague cases.

When the Hague Convention was developed in 1980 there was no literature on the impact of exposure to domestic violence on children's physical and psychological well-being. The social science research in the intervening three decades has clearly established possible risks to children exposed to domestic violence that may be as significant as those to children who have been directly victims of physical or sexual abuse (Kitzmann et al., 2003; Wolfe et al., 2003). The interpretations of what constitutes a grave physical or psychological risk or an intolerable situation for a child need to be revised based on the current social science available. Even if a narrow definition of grave risk is maintained, the evidence strongly argues that exposure to adult domestic violence be part of such a definition of risk to the child. Only a few attorneys in this study understood and applied this body of literature while arguing their cases. The Swiss government, concerned about the well-being of children in Hague cases, has advocated for changes to Hague Convention protocols, revised its implementing legislation to take "the best interests of the child" into account when determining if an intolerable situation exists and now also provides for independent counsel for the child (Weiner, 2008).

The attorneys also split on the degree to which they accepted or were skeptical of mothers' domestic violence allegations. The respondents' attorneys had extensive contact with the mothers, generally believed their allegations and sought to support them

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



in court by gathering documentation and using expert assessments of the impact of violence on their clients' children. The petitioners' attorneys were very skeptical of such allegations, sometimes questioned the value of expert testimony and expected extensive independent evidence to be submitted in court to verify such claims. It is clear that the retrieval of evidence from the other country, the use of expertise on a country's laws and services as well as expert assessments of the risk to children in these cases were all important elements in mounting convincing defenses for respondents. In some cases, attorneys used innovative methods for bringing testimony into the court from the other country, such as cooperating with American consulate staff and using existing video or audio conferencing technology to do so. Of course, collecting, translating and presenting such evidence required substantial amounts of time and resources to bring about, both of which were in short supply for respondents and their attorneys.

Finally, the petitioners' attorneys clearly favored having their clients' cases heard in federal rather than state court. Federal courts were seen by these attorneys as more capable of handling international treaty cases and more likely to base their decisions on a narrow interpretation of the Convention's exceptions or defenses. The views of the respondents' attorneys were less clear. Some viewed the state family court judges as being better trained on issues of violence and abuse and more willing to consider the safety of the child over the goal of prompt return. Others viewed federal courts as being more willing to allow longer periods of due process and more confident in dealing with international treaties, thereby allowing their clients a full hearing.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



One thing that was very clear from all of the attorney interviews was that both attorneys and judges were often unfamiliar with the Hague Convention, its purpose, exceptions and the case law on it.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# CHAPTER 10:

## Judicial Opinion Study

(This chapter was first authored by William Vesneski)

Over the last 30 years it has become more common for a woman to leave her country of origin and follow a spouse or partner to a new home in a new nation (Constable, 2004). These transnational relationships are sometimes characterized by domestic violence.

Previous empirical studies of abducted children have not analyzed U.S. court data involving Hague disputes. Our review of judicial opinions was designed to answer three general questions: (1) who are the parties involved in Hague disputes in which domestic violence is alleged? (2) what are the legal outcomes of Hague litigation? and, (3) how often – and under what circumstances – are the exceptions to return successfully utilized?

## Method

Judicial opinions that apply the Hague Convention to legal disputes involving both child abduction and domestic violence serve as the data for this study. We used judicial opinions because they include detailed information about the parties involved in Hague litigation and because they are the official records of who prevailed in the legal proceedings.

The opinions in our sample were identified through online Lexis and Westlaw searches. Typical search terms included: physical, violence, harm, assault, fight, punch, harass, and abuse. In all, 57 different combinations of terms were used to identify cases

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



where domestic violence might have occurred. All searches included reference to the Hague Convention.

State and federal court opinions – at all court levels – were obtained through our online searches, although no U.S. Supreme Court opinions were located (*Abbott v. Abbott* occurred after our search). The results of the Lexis and Westlaw searches were supplemented by a search of the International Child Abduction Database (INCADAT) for disputes involving domestic violence that were litigated in the United States. INCADAT was established by the Permanent Bureau of the Hague Conference and includes judicial decisions from courts in 34 countries that interpret the 1980 Hague Convention. Search terms mirroring those used in the Lexis and Westlaw searches were used for the INCADAT search.

The online search initially yielded 306 opinions. We then took several steps to construct the final sample. First, we reviewed the opinions to determine whether they actually discussed domestic violence, and, in fact, litigated the Hague Convention. Opinions which did not meet these criteria were removed. For example, opinions discussing child abuse without allegations of domestic violence were removed as were those that simply cited or made reference to the Convention without actually issuing a legal judgment about it. It should also be noted that none of the legal opinions in our sample were primarily focused on determining whether domestic violence existed or not. Domestic violence was regarded by the courts as part of each case's factual background.

Second, we narrowed our sample to include only published opinions , as is typical of empirical legal research (Chew & Kelley, 2005; Perry, Kulik & Bourhis,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



2004; Choi & Gulati, 2008). A case is "published" in a legal context when it is systematically organized and published in case recorders. Unlike federal courts – where both trial and appellate court opinions are published – state trial court opinions are not routinely published. Thus, our sample does not include state trial court opinions.

We focused on published opinions because we were interested in decisions that could serve as precedent in future Hague litigation. Precedent refers to the fact that judges and lawyers in the Anglo-American legal system look to past decisions of higher courts for guidance and insight when deciding new cases. In short, these earlier decisions are predictive of future court rulings and they "shape and constrain" what a court can do in the present (White, 1995). Gibbons summarizes the nature of precedent in the following way:

> …if the judgment has any significance in terms of extending or restricting a rule of law, or establishing a rule of statutory interpretation, then it is reported and becomes part of the huge volume of precedents that constitute case law…it is then a source of law and potentially an originating point for a new trial process with a new set of parties (Gibbons, 1999, p. 15).

Although unpublished opinions are increasingly viewed as precedent, this is a relatively recent development. For example, citations to unpublished opinions are permitted by the Federal Rules of Appellate Procedure only for decisions issued after January 1, 2007 (Rule 32.1). In addition, Lexis reports unpublished opinions only for

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



U.S. District Court cases decided after June 21, 2005, with only selective prior coverage. It is difficult to research and retrieve unpublished opinions issued before 2005.

Third, we consolidated multiple opinions into single "cases" for purposes of analysis. Specifically, in several instances both trial and appellate court opinions were found involving the same pair of litigants. Because we were interested in determining the ultimate outcomes of Hague litigation, these multiple decisions were consolidated into single "cases."[4] Once all of the opinions were consolidated into cases, we utilized Shepard's citations to ensure that we had located all relevant appellate history. The most recent opinion in our sample was issued on March 19, 2009.

Once we removed cases that did not fit our criteria and consolidated multiple opinions, our final sample was 47 cases. The majority of these cases (35 or 74%) were litigated in federal courts; 22 states and Puerto Rico are represented in the sample as seen in Table 10.1.[5] All cases used in this analyses are listed end of the reference section and indicated by an "*" before the case citation.

[4] For example, there are several opinions pertaining to the dispute between Felix Blondin and Marthe Dubois between 1998 and 2000, including decisions made by the U.S. Court of Appeals for the Second Circuit and the U.S. District Court for the Southern District of New York. All of these opinions were consolidated into one case for purposes of our research.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 10.1**

States and Courts where Hague Petitions in Published Cases were Filed

| State | State Court (n) | Federal Court (n) | Total |
|---|---|---|---|
| Massachusetts | 1 | 4 | 5 |
| Maryland | 0 | 5 | 5 |
| New York | 1 | 4 | 5 |
| Illinois | 0 | 3 | 3 |
| Minnesota | 1 | 2 | 3 |
| Ohio | 1 | 2 | 3 |
| California | 1 | 1 | 2 |
| Connecticut | 2 | 0 | 2 |
| Georgia | 0 | 2 | 2 |
| Kentucky | 2 | 0 | 2 |
| Puerto Rico | 0 | 2 | 2 |
| Texas | 2 | 0 | 2 |
| Alabama | 0 | 1 | 1 |
| Florida | 0 | 1 | 1 |
| Iowa | 0 | 1 | 1 |
| Kansas | 1 | 0 | 1 |
| Michigan | 0 | 1 | 1 |
| New Jersey | 0 | 1 | 1 |
| New Hampshire | 0 | 1 | 1 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | |
|---|---|---|---|
| North Carolina | 0 | 1 | 1 |
| Tennessee | 0 | 1 | 1 |
| Utah | 0 | 1 | 1 |
| Washington | 0 | 1 | 1 |
| Total | 12 | 35 | 47 |

**Data Analysis**

We employed three analytic strategies during this research. First, we completed descriptive analyses to answer our questions about the parties and legal outcomes associated with Hague disputes. Second, in order to answer our questions concerning the frequency of and circumstances surrounding use of the grave risk defense, we completed a content analysis of the opinions. Third, to assess which combination of factors were most relevant to case outcomes, we conducted a Latent Class Analysis.

***Descriptive analyses.*** To facilitate the descriptive analyses, we developed a coding form to help extract needed information from the opinions in our sample. This form was used to gather demographic information about the parties'; information about the disputes, including residence and citizenship of parents and children; children's genders and ages; the severity and frequency of domestic violence; and the presence of child maltreatment. Data were also gathered about key legal issues and decisions, such as the judge's decision on the children's habitual residence, the Hague defenses that were litigated during the dispute, and, whether the petition was granted or denied. All

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



gathered data were placed into Microsoft Excel and frequencies were determined. These results are presented in tabular form throughout this article.

***Content analyses.*** Our content analysis focused on evaluating the portions of the opinions that addressed the grave risk defense. Content analysis was selected because it is well suited to the empirical study of legal texts (Hsieh & Shannon, 2005). Indeed, it resembles the process of legal reasoning, including the systematic reading of materials, identifying and coding their consistent features, and drawing inferences about their use and meaning (Hall & Wright 2008; Lens 2008). Content analysis has previously been used to study a variety of legal phenomena addressed in judicial opinions, such as use of the primary caretaker standard in custody disputes (Mercer 1998), the admissibility of expert evidence (Merlino, Murray & Richardson 2008), and criminal sentencing of youth sex offenders (Bouhours & Daly 2007).

The content analysis proceeded in two phases. First, we searched for specific terms and phrases that were associated with concepts in our coding sheet, including child maltreatment, the severity and frequency of domestic violence, and whether children testified during the court proceedings. In addition, the research team's understanding of the lethality of domestic violence sensitized it to the importance of an abuser's threats to kill their partner or children. As a result, we searched the opinions for any threats made by abusers. Second, it became clear that the opinions included several key concepts that were not included in the coding form but which were critical to the courts' decision-making. These emergent concepts were recorded as they appeared and the opinions were subsequently searched for them. An iterative process of identifying

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



and coding key concepts related to the grave risk defense and then returning to the opinions to confirm, refute, or modify them continued until no further concepts were identified (Lens 2008; Graneheim & Lundman 2004). Examples of these emergent concepts include whether a child was diagnosed with Post Traumatic Stress Disorder, whether a child witnessed violence in the home, and whether experts testified during the proceeding.

***Latent class analysis.*** The final step in our analytic strategy was to consider methods to assess outcomes within a multivariate context. Logistic regression was not appropriate for two reasons. First, the dataset for this analysis was small and, as a result, violated some of the more traditional assumptions about the number of cases per independent variable required to create stable beta coefficients (Pedhazur, 1997) Second, many of the variables showed strong intercorrelations, suggesting that some of these factors may cluster together in cases. From a theoretical standpoint, analyzing each factor while controlling for the others would not address the potential interrelatedness of the data, and might obscure meaningful patterns of relationship.

For these reasons, we turned to the statistical technique of Latent Class Analysis (LCA; Hagenaars & McCutcheon, 2002; McCutcheon, 1987) to identify case profiles based on the set of interrelated factors that could be present in these cases, and the case outcomes. LCA is a particularly useful technique for identifying cases that share similarities on a number of factors. LCA is a statistical method that capitalizes on the multivariate associations between the variables entered in the model, allowing researchers to see how they operate together to create case-centered 'profiles.' LCA

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



seeks to empirically identify sub-groups (each with its own unique profile) (Magnusson, 1998). Because sub-group membership is typically unknown by the researcher, a latent categorical variable is assumed to exist that reflects an underlying pattern of experience. This variable is empirically inferred from the data using an approach based on conditional probabilities (Goodman, 2002). The latent variable's categories indicate the subgroup, referred to as a "class", that is most likely for each case. These classes represent subgroups of cases that are similar to each other on the variables entered into the analysis, and different from cases in the other subgroups.

The LCA was implemented using Mplus 4.2. In LCA, the researcher typically determines the number of classes that exist in a sample by performing the analyses iteratively, each time specifying an increasing number of classes. The solutions are compared, and the one best representing the data is chosen. The selection of the number of classes is based on several factors (Muthen & Muthen, 2000): the interpretability of the results given the study purpose, theoretical meaningfulness of the classes, and classification accuracy. The latter is the ability to distinguish membership in the latent classes given the model and the data, and is reflected in 'average class probabilities' (higher reflect superior ability to accurately classify cases into their most likely class). An important other tool for choosing the optimal number of classes is the Bayesian Information Criterion (BIC; Schwartz, 1978). Lower BIC values typically reflect better fit to the data, and reductions of 6 or greater are considered 'strong' (Raftery, 1995).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## Results

Our research led to six sets of results that we present in the following sections. The first two are rooted in our descriptive analysis: we provide information about the people involved in the cases we studied and we present success rates for the petitions in our sample. The next three sets of results are informed by the content analysis. Specifically, we explore the courts' consideration of domestic violence when determining habitual residence, detail how often the defenses to petitions were asserted and accepted, and we identify the factors the courts relied upon when ruling on the grave risk defense. In our final set of results, we present information from the LCA.

### Description of Parties

Judicial opinions in the 47 cases examined provide important data about the parties involved in Hague litigation (see Table 10.2 for citizenship details). For example, of the 40 cases where the father's citizenship is identified, the majority are foreign citizens (n=32, 80%). Foreign fathers were most often citizens of France, Israel, Mexico, Greece, and Italy. In contrast, the mothers in our sample are most often American. Mothers' citizenship was identified in 39 disputes and of these, 25 (64%) are American (or have dual citizenship).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 10.2**

Citizenship of Fathers and Mothers in Published Cases

| Country | Number of Fathers | Number of Mothers |
|---|---|---|
| United States | 8 | 25 |
| France | 5 | 1 |
| Israel | 2 | 2 |
| Mexico | 3 | 2 |
| Sweden | 1 | 1 |
| Argentina | 2 | 1 |
| German | 2 | 1 |
| Greece | 3 | -- |
| Italy | 3 | -- |
| Australia | 2 | -- |
| Hungary | 1 | 1 |
| Pakistan | 1 | 1 |
| Poland | 1 | 1 |
| Ethiopia | 1 | -- |
| Belize | -- | 1 |
| Canada | -- | 1 |
| Finland | -- | 1 |
| Holland | 1 | -- |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | |
|---|---|---|
| Ireland | 1 | -- |
| Norway | 1 | -- |
| Portugal | 1 | -- |
| South Africa | 1 | -- |
| Total | 40 | 39 |

Setting aside the citizenship data, our descriptive analysis also indicates which parents initiated Hague petitions. We found that in our sample fathers – not mothers – most often initiate the petitions in U.S. courts when allegations of domestic violence are present. Fathers initiated petitions in 44 of the 47 (94%) cases in our sample. More specifically, we found that the most frequent pattern involved non-U.S. fathers petitioning for return of their children after an American mother left the father with her children and entered the U.S. This occurred in 25 of the cases (53%).

In terms of children, while the Convention applies to youth under 16 years of age, our analysis also shows that the median age for children in the sample was 6 years old (ages were reported for 75 of the 79 children in our sample). A slight majority of the children are girls (52.5%). This is different than our interview sample where almost two-thirds (63.2%) of the children involved were boys.

**Petition Success Rates**

Of the 47 disputes in this sample of published cases, 22 (46.8%) resulted in the dismissal or denial of a Hague petition (meaning the children remained with the respondent – usually the mother – in the U.S.). On the other hand, 20 disputes (42.6%)

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



resulted in the granting of a petition (meaning that the children were returned to the country of habitual residence). In five instances (10.6%), the outcome could not be determined because the dispute was remanded to a lower court and no subsequent opinion could be located. Table 10.3 summarizes these outcomes. Although fewer than half of the cases were decided in favor of the mother, these cases tended to have larger numbers of children, so overall 58.9% of the children were placed in the mother's care at the end of the legal process.

**Table 10.3**

Outcomes of Petitions

| Petition Outcome | Number | Percent |
|---|---|---|
| Dismissal/Denial | 22 | 46.8 |
| Granted | 20 | 42.6 |
| Remanded to Lower Court | 5 | 10.6 |
| Total | 47 | 100.0 |

**Habitual Residence and Domestic Violence**

One of the first decisions a court must make in a Hague petition case is whether the children have been removed from their habitual residence. Using data drawn from our content analysis, we identified three cases (7%) where the court made links between the coercive and controlling attributes of domestic violence and children's habitual residence. First, in *Tsarbopoulos v. Tsarbopoulous* (2001), the court explicitly considered a battered mother's isolation in a country where she was not familiar with

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



cultural norms and did not speak the local language. In its ruling, the court found that there was no habitual residence in Greece – the country from which the children were taken by their battered mother – because the mother had been coerced into living there. The court found that the violent nature of the father's behavior left the children's mother socially isolated, unable to communicate with others (because she did not speak Greek), with only limited access to financial assets, and living in fear of violence. The court wrote that the husband had "control of all major decisions of the couple" (*Tsarbopoulous* 2001, p. 455).

Second, in *Ponath v. Ponath* (1993), the court ruled that the petitioner (father) prevented his two-year old son and wife from leaving Germany and returning to the United States "by means of verbal, emotional and physical abuse" (*Ponath,* 1993,p. 12). The father was also arrested for physically attacking a family member while he was trying to see the mother and their child. Altogether, the father's abuse history led the court to conclude that the mother and child "were detained in Germany against her desires." The court concluded the child was not habitually resident in Germany under such circumstances (*Ponath,* 1993, p. 12).

In the third case, (*Ostevoll v. Ostevoll,* 2000), the court considered a woman's abuse by her husband in determining habitual residence. The woman argued that at the end of the couple's relationship she was not permitted to leave her home in Norway without being accompanied by her violent husband. The court also noted that the husband hid the mother's and children's passports, thus preventing them from leaving Norway. Under these facts, the court ruled that for much of the woman's time in

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Norway she remained there "voluntarily, albeit reluctantly" (*Ostevoll,* 2000, p. 42) and as a result, Norway was not the children's habitual residence.

**Exceptions to a Hague Petition**

Respondents to Hague petitions may argue that any of five exceptions prevents return of their children to the habitual residence. The first exception is premised on article 13(b) of the Convention. This exception applies when there is a "grave risk" that a child who is returned to the habitual residence will suffer "physical or psychological harm," or an "intolerable situation".

The second exception provided by the Convention is consent. If the parent filing a Hague petition initially consented to a child's removal then the removing parent can offer that consent as a defense against a Hague claim under Article 13(a). In *Friedrich* v. *Friedrich* (1996), the court stated that consent needed to be a formal "act or statement," such as "testimony in a judicial proceeding; a convincing renunciation of rights; or a consistent attitude of acquiescence over a significant period of time" (*Friedrich,* 1996, p. 1070). Subsequent cases have differentiated between consent and acquiescence and indicate that consent can be more informal (*Baxter v. Baxter*, 2005).

Third, the Convention allows a child to remain with the removing parent if the child has been away from the habitual residence and is settled in the new environment, often after one year. This exception is provided for by Article 12 of the Convention. It is important to note that judicial opinions make clear that if a removing parent has hidden a child from the other parent, thus preventing the left-behind parent from contesting the removal, then the one-year exception may not be applicable. The one-year time limit

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



was designed to prevent a left-behind parent who was aware and in contact with a child from returning to court later to petition for the child's return to the original country.

Fourth, Article 13 of the Convention states that if a child objects to return, and has attained an age and degree of maturity at which it is appropriate to take the child's views into account, the child's objection may constitute a exception to return *(Ostevoll v. Ostevoll,* 2000). The Convention purposely avoids setting a particular age at which a child's views should be considered because the drafters felt such a specification was "artificial, even arbitrary" (Perez-Vera, 1981). Instead, the Convention leaves the decision of when to consider children's views up to a court's individual discretion.

Fifth, a child's return is not appropriate when it contravenes "the protection of human rights and fundamental freedoms" (Article 20). This exception has been interpreted to mean that children should not be returned to countries where their fundamental human rights may not be secured.

Overall, the exceptions or defenses available to parents responding to a Hague petition were only occasionally effective in our sample. Altogether, a Hague exception prevented return of a child in only 18 disputes or 38% of the cases in our sample. Table 10.4 summarizes how often exceptions were raised and their success rates. Grave risk was the most frequently asserted exception but successful in only one-quarter of the disputes. The other four exceptions available were raised less frequently and were rarely successful in these cases.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 10.4**

Success Rates for Defenses in Published Cases involving Domestic Abuse

| | Asserted | | Successful | |
|---|---|---|---|---|
| **Defense** | **Number** | **Percent** | **Number** | **Percent** |
| Grave Risk | 38 | 81% | 12 | 26% |
| Consent/Acquiescence | 14 | 30% | 1 | 2% |
| One-year/Settled | 12 | 26% | 3 | 6% |
| Child Opinion | 9 | 19% | 2 | 4% |
| Human Rights | 7 | 15% | -- | -- |

**Judicial Definition of Grave Risk**

Given that the courts in our sample only occasionally accepted the grave risk defense, we turned to understanding the reasoning behind their decision. To accomplish this, we examined passages of court opinions pertaining to grave risk using content analysis. The results of this analysis suggest that the courts respond to five distinct factors when determining grave risk: (1) whether children were maltreated by the petitioning parent, (2) whether the children witnessed domestic violence, (3) whether the children suffer from post-traumatic stress disorder, (4) whether the abuser made threats to kill the children or others, and (5) whether there was expert testimony available. Table 10.5 identifies how often each of these factors were present in the cases where grave risk was asserted, and whether this defense was accepted by the court.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 10.5**

Grave Risk Determination and Presence of Factors in Published Cases

| Dispute | Grave Risk | Total Factors | Witnessed DV | Expert Testimony | Child Abuse | Threats to Kill | PTSD |
|---|---|---|---|---|---|---|---|
| Walsh | Yes | 5 | + | + | + | + | + |
| Elyashiv | Yes | 5 | + | + | + | + | + |
| Blondin | Yes | 5 | + | + | + | + | + |
| Rodriguez | Yes | 5 | + | + | + | + | + |
| Ostevoll | Yes | 4 | + | + | + | | + |
| Simcox | Yes | 4 | + | + | + | | + |
| Tsarpolous | Yes | 4 | + | + | + | | + |
| Danaipour | Yes | 3 | | + | + | + | + |
| DeSande | Yes | 3 | + | | + | + | |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Frowein | Yes | 3 | + | + | + | | | |
| Baran | Yes | 2 | + | | + | | | |
| Panazatou | Yes | 1 | | + | | | | |
| Adan | No | 3 | + | | + | + | | |
| Jankakis | No | 3 | + | + | | | | + |
| Aldinger | No | 2 | + | | | + | | |
| Whallon | No | 2 | + | + | | | | |
| Dalmasso | No | 2 | + | | | + | | |
| Tabachi | No | 2 | + | + | | | | |
| Hasan | No | 1 | + | | | | | |
| In re DD | No | 1 | | | | + | | |
| Silverman | No | 1 | | | | + | | |
| Croll | No | 1 | + | | | | | |
| Wipranik | No | 1 | | | + | | | |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Perez | No | 1 | | | + | | |
| Koc | No | 1 | + | | | | |
| Ciotola | No | 1 | | + | | | |
| Prevot | No | 1 | | + | | | |
| Belay | No | 0 | | | | | |
| Antunez | No | 0 | | | | | |
| Antonio | No | 0 | | | | | |
| Lynch | No | 0 | | | | | |
| Fabri | No | 0 | | | | | |
| Miller | No | 0 | | | | | |
| Currier | No | 0 | | | | | |
| Total | 12 | -- | 19 | 15 | 14 | 11 | 9 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Child Maltreatment.*** Of the 12 disputes where the grave risk defense was successful, courts found evidence of child maltreatment in almost all of them (11 or 92%). Maltreatment nearly always consisted of physical or sexual abuse. For example, the petitioner in *VanDeSande* v. *VanDeSande* (2005) "physically abused" his daughter by spanking her repeatedly, and at "least once" delivered "a sharp blow to the side of [the child's] head" (*VanDeSande,* 2005, p. 569). In *Rodriguez* v. *Rodriguez* (1999), one of the children involved in the case testified that "his father first began to beat him when he was six years old" at which time he was struck "with a one inch belt about the legs, back, and buttocks. The force of the blows, and resulting welts and bruises, were such that the [the child] was caused to miss a week of school" (p. 459). The child was told by his father that if he had bruises as a result of maltreatment "[he] must not tell anyone" (p, 459). Similarly, the court in *Elyashiv* v. *Elyashiv* (2005) accepted the grave risk defense in a case where the children's father, "routinely used his belt, shoes or hand to hit [the children]" (*Elyashiv,* 2005, p. 394), The *Elyashiv* court went on to write that "most frequently, the abuse occurred when the children's playing interfered" with their father's sleep. Once, for example, "(their father] became so enraged that he placed a pillow over [his son's] face to quit his crying" (*Elyashiv,* 2005, p. 399).

Successful grave risk defenses are not limited to instances of physical abuse, however. In *Tsarbopoulos v. Tsarbopoulos* (2001), the court denied a father's Hague petition because he sexually abused his four-year old daughter. In this case, the court not only wrote that the child described sexual abuse to her teacher, but that she exhibited

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



behaviors "which were consistent with sexual abuse: masturbation, nightmares during nap times and bedwetting" while at school *(Tsarbopoulos,* 2001, p. 1060).

***Witnessing Domestic Violence.*** In 10 of the 12 cases (83%) where grave risk was found, the court indicated that children had witnessed violent episodes between their parents. In several of these episodes, children had intervened in the violence. For instance, in *Simcox v. Simcox* (2007)*,* the couple's oldest child, a daughter, testified that her father would grab her mother's jaw and "put his finger on her neck, pulling hair" (*Simcox,* 2007, p. 599). She also described how once while driving, her father "banged her mother's head against the passenger window of the vehicle" and that she "often had to intervene by placing herself between them." In the same case, another child in the family testified that her father had "held her mother by the neck against a wall" and that her older sister had "tried to stop him but he hit her" (*Simcox,* 2007, p. 598).

If a child solely witnessed violence and did not intervene, that too has been enough to justify a grave risk defense. In *Walsh v. Walsh,* 2000, for example, one of the couple's children recounted seeing domestic violence in the home. The court noted that the child had told a social worker that "she had memories about her mother being abused ... that her mother was hit and hurt by her father, and that her father pushed her mother down stairs" (*Walsh,* 2000, p. 211). She also stated "that her father once became enraged at her...over dirty shoes, spitting in her face and calling her stupid ...She said she was terrified of phone calls from her father" (p. 52). And in *Turner v. Frowein* (2000), the court described a violent incident between a child's parents this way: " ... the defendant began choking and kicking the [child's mother], inflicting a beating so severe that she

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



subsequently required a hysterectomy. Like the previous violent incidents, the child witnessed this beating" (*Turner,* 2000, p. 324).

***Expert Testimony.*** Based upon our study, expert testimony that describes the harm children might suffer if they are returned to their habitual residence makes it more likely that a grave risk exception will be deemed meritorious. Expert testimony was offered in 10 of the 12 successful grave risk claims (83%). For example, in *Danaipour v. Danaipour* (2004) there was expert testimony offered by a child psychologist who was treating a child involved in the case that she had been sexually abused by her father. The court wrote that it "credited the observations" made by the expert that returning the child to Sweden, where her father resided, would amount to returning her "to the place of trauma [and the] location of her victimization" and could "have profoundly disturbing effects on the child" (*Danaipour*, 2004, p. 296). In *Panazatou v. Panazatou* (1997), a child psychiatrist testified that the return of a child to her father supported a finding of grave risk. The psychiatrist testified that the "separation of the [three-year old] child from the mother's care would cause grave risk of psychological harm to the child, both short and long term" (*Panazatou,* 1997, p. 4). Similarly, in *Turner v. Frowein* (2000), a court-appointed psychologist who examined both the child and the father stated that the father "had a tendency toward aggressive behavior" (*Turner,* 2000, p. 328). During the trial court proceedings which included allegations of both domestic violence and child sexual abuse, the psychologist testified that the "child was anxious and very afraid of [his father] ...and that the child likely would suffer substantial psychological harm if forced to return to his father's care" (*Turner,* 2000, p. 328).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***Post-Traumatic Stress Disorder (PTSD).*** Post-Traumatic Stress Disorder occurs in people who have been exposed to a traumatic stressor that involves the threat or actuality of death or injury (American Psychiatric Association, 2000). Persons suffering from this disorder typically experience a constellation of symptoms including intrusive re-experiencing of the trauma, avoidance of things associated with the trauma, and higher levels of arousal (such as difficulty sleeping or concentrating). Children were found to have a diagnosis of PTSD in eight of the 12 cases (67%) where a grave risk defense was successful. In these eight disputes, the courts indicated that returning children to their habitual residence posed a risk of causing a recurrence of stress symptoms characteristic of the disorder. PTSD was brought about in these cases either because the children witnessed domestic violence in the home or were, themselves, victims of child maltreatment. The court in *Ostevoll v. Ostevoll* (2000) makes this point exactly in a case where a father physically and emotionally abused his wife and three daughters, ages 8, 11 and 13. In supporting its grave risk finding, the *Ostevoll* court wrote that the children were "suffering from post traumatic stress syndrome, having all experienced the abuse themselves as well as having witnessed their mother's abuse" (*Ostevoll,* 2000, p. 48).

Similarly, in *Simcox v. Simcox* (2007), for example, the court wrote that all but one of the children "were suffering from some level of post-traumatic stress disorder" and that their psychological trauma could be exacerbated if they were to be returned to Mexico (their habitual residence) and come into contact with their father (*Simcox,* 2007, p. 608). The court in *Blondin v. Blondin* (2001) made an analogous finding. Here an

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



appellate court accepted the lower court's finding that the children in the case had suffered from PTSD. The appellate court cited the lower court's opinion which read: "the children face an almost certain recurrence of traumatic stress disorder on returning to France because they associate France with their father's abuse and the trauma they suffered as a result" (*Blondin,* 2001, p. 161).

***Threats to Kill.*** In seven of the 12 cases (58%) where grave risk was found, the batterer threatened to kill the mother, a child, or himself. Oftentimes these threats were explicit as in *Elyashiv v. Elyashiv* (2005). Here the court explained that when the children's mother asked her husband for a divorce he "refused and threatened that, if forced to do so, he would kill [her]" (*Elyashi,* 2005, p. 399). Similarly, the couple's child once reported being physically abused by the father to a teacher. Upon learning of the report, the father "threatened to kill [the child]" (*Elyashiv,* 2005, p. 400). In *Blondin v. Blondin* (2001), a dispute involving more than three years of appeals, the Court of Appeals for the Second Circuit denied the father's Hague petition and cited the child's testimony in the opinion. The court wrote that one of the couple's children "described various instances of abuse and its effects on her, including her father's spitting on and hitting her mother, at least once with a belt buckle; [and] his putting something around [her sister's] neck and threatening to kill her. .." (*Blondin,* 2001, p. 167).

Implicit threats of harm also helped justify a grave risk exception. For example, in *Baran v. Baran* (2007), a mother left her husband in Australia and returned to her parents' home in the U.S. During the course of the relationship, the petitioning father stated his son "should have been aborted, that [the child] would die if he 'became an

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



American' and that [the mother] could not blame him if something happened' to the child" (*Baran,* 2007, p. 1257).

Our content analysis indicates that the courts in our sample addressed five distinct factors when determining whether grave risk could be used as a exception to a Hague petition. It is important to note that the factors frequently overlap in the same case. In fact, as Table 10.5 shows, grave risk was found in all seven cases where five or four factors were present but very infrequently in cases where one or two factors were found. This pattern suggests that the presence of multiple factors has a cumulative effect which increases the likelihood that the court will find the existence of grave risk.

**Bivariate Analyses**

Chi square analyses are presented in Table 10.6 below. Significant associations were found between the case decision and four factors, three additional factors trended towards significance. Children were more likely to remain when expert testimony was offered in the case, if there was at least one male child, if child abuse allegations were made, and if the a child was reported to have a PTSD diagnosis. A trend towards having the children remain in the U.S. was seen if there was a pre-existing order that gave custody, even temporarily, to either parent if more than one child was involved, and if the youngest child was less than five years old.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 10.6**

Bivariate Analysis of Case Factors by Decision in Published Cases

| **Case Factor** | **Case Decision** | | $X^2$ |
|---|---|---|---|
| | **Child Returned** | **Child Remained** | |
| Case Characteristic | | | |
| State Court (vs. Federal) | 19.1 | 30.4 | .76 |
| Expert Testimony Offered | 19.1 | 47.8 | 4.05* |
| Pre-Existing Custody Order | 38.1 | 65.2 | 3.29† |
| Child Characteristic | | | |
| Involved > 1 Child | 38.1 | 65.2 | 3.24† |
| Involved at Least 1 Male Child | 42.9 | 72.7 | 3.94* |
| Youngest < 5 Years Old | 47.6 | 73.9 | 3.20† |
| Abuse/Violence | | | |
| Child Witnessed DV | 38.1 | 56.6 | 1.49 |
| Threats to Kill Mother/Others | 23.8 | 30.4 | .24 |
| Child Abuse (Physical/Sexual) | 23.8 | 56.5 | 4.56* |
| Child with PTSD Diagnosis | 4.8 | 34.8 | --[1]* |

*p<.05; †p<.10; [1]Signficance is based on Fisher's exact test.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Latent Class Analysis**

Each of the case factor variables were entered into the Latent Class Analysis. A two-class model (BIC 704.9, p<.0001) was found to provide the best fit to the data. The one-class model had poorer model fit (BIC 759.3). A three class model also showed poorer fit to the data (BIC 727.3, p=.27) and was not a significant improvement over the two class model, leading us to accept the two class solution. Additionally, the average class probability was high for each class (1.00 for Class 1 and 1.00 for Class 2). In the two-class model, classification of each case into its most likely class resulted in Class 1 and 2 having 8 (17.0%) and 39 (83.0%) members, respectively.

Means for each variable used to determine the latent class are shown in Table 10.7. For example, Table 10.7 shows that Class 1 is composed of a sub-group of cases, and in these cases grave risk was established 100% of the time, and the petition was denied (children remained in the U.S.) in all of the cases in this subgroup. In contrast, the children who were often returned to the other country rarely had the defense of grave risk established, and the majority of these children (58.3%) were returned to the other country. In the sub-group where the child always remains, none of these cases were heard in a state court, all had expert testimony presented and almost two-thirds had evidence of a pre-existing custody order. Each of these factors was markedly different in the other sub-group, where one third of the cases were heard in state court, only 20.5% utilized expert testimony, and just under half had pre-existing custody order.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Table 10.7**

Latent Class Analysis of Published Cases

| **Case Factor** | **LCA Sub-Group** | |
|---|---|---|
| | **Child Always Remains (n=8)** | **Child Often Returned (n=39)** |
| Case Outcome | | |
| Grave Risk Established | 100.0 | 10.3 |
| Child Remains in US (pet. denied) | 100.0 | 41.7 |
| Case Characteristic | | |
| State Court (vs. Federal) | 0 | 33.3 |
| Expert Testimony | 100.0 | 20.5 |
| Pre-Existing Custody Order | 62.5 | 48.7 |
| Child Characteristic | | |
| Involved > 1 Child | 100.0 | 38.5 |
| Involved at Least 1 Male Child | 75.0 | 56.8 |
| Youngest < 5 Years Old | 75.0 | 59.0 |
| Abuse/Violence | | |
| Child Witnessed DV | 87.5 | 38.5 |
| Threats to Kill Mother/Others | 62.5 | 20.5 |
| Child Maltreatment (physical/sexual) | 100.0 | 28.2 |
| Child with PTSD Diagnosis | 100.0 | 2.6 |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



These cases also differed in terms of the characteristics of the children in that the Child Always Remains group all involved more than one child, three-quarters of these cases had at least one male child, and at least one child under the age of five. In the Child Often Returns group, the majority of cases involved one child only, and had lower levels of male children and fewer young children than the first group.

The two groups also varied in the report of domestic violence and its effects. In those cases where the Child Always Remains, 87.5% had a child who witnessed domestic violence between the parents, over half the cases included threats to kill the mother or others in the child's family, and in all these cases, an allegation of child abuse was also made. In the Child Often Returned Group, each of these factors was substantially lower, with only about a third of the children witnessing domestic violence, few threats to kill the mother or others (20.5%) and less than one third reporting child abuse. The most dramatic difference between the groups is seen in the fact that 100% of the children in the Child Always Remains group were reported to have a diagnosis of Post-Traumatic Stress Disorder, but only 2.6% of the children in the Child Often Returned group had this diagnosis.

## Discussion

This study tells us five important things about Hague litigation involving domestic violence. First, early assumptions about who would remove children and seek their return through Hague petitions does not reflect the reality of Hague litigation involving domestic violence; in other words, fathers were not the primary taking parents,

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



mothers were in our sample of published cases. Second, the courts in our sample rarely considered domestic violence in conjunction with habitual residence determinations. It should be noted that this failure may attributed to the fact that the violence may not have been raised, explicitly and in a legally cognizable way, in pleadings or during litigation. It is unclear why this is, though women's fear of an uncertain outcome or threatening contact with the batter may be reasons. Third, on those limited occasions when the courts accepted a grave risk exception, the content analysis suggests that five factors are particularly important as they make their decisions. And, fifth, a small subset of cases was characterized by these factors, plus structural features of the families. Altogether, the findings of this published case analysis have important policy and legal practice implications for women who flee domestic violence with their children and cross international boundaries.

**Parties in Hague Convention Disputes**

Our descriptive analysis indicates that the men in our sample of 47 cases who batter their wives and partners are typically the individuals who bring Hague petitions. These petitions are brought against women who have fled one country with their children and entered the U.S. These women must then defend their actions in legal proceedings designed to return their children to the country from which they fled. This finding contradicts early assumptions that helped to shape the Convention, specifically, that fathers would primarily be the "taking" parent and that left-behind mothers would seek redress using the Convention (Weiner, 2000).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Domestic Violence and Habitual Residence**

One of the first steps in resolving a Hague petition is determining a child's habitual residence. Despite its significance, the Convention does not define habitual residence and as a result, U.S. courts have stated that decisions about it are to "remain fluid and fact based, without becoming rigid" (*Levesque v. Levesque*, 1993, p. 666; *Prevot*, 1994, p. 560). Given this ambiguity, U.S. courts have taken conflicting and "extreme positions in resolving the argument" over the meaning of the term (Weiner, 2000). In our research, we found that the courts rarely considered the presence or severity of domestic violence when determining habitual residence. In fact, in only three of the 47 cases (6%) we examined did the court find that domestic violence had a significant bearing on a habitual residence determination.

We recognize that current law does not require courts to attend to or address domestic violence when determining habitual residence. We believe this gap in law falls far short of accounting for the actual, lived experience of battered women and their children. Inherent in domestic abuse is a pattern of coercion that may prevent a woman from participating in decisions about where she and her children live (Stark, 2007). Similarly, controlling behavior is a common characteristic of abusive partners and this control encompasses family decision-making (Barnish, 2004) and household finances (Alvi & Selbee, 1997). The failure of the Hague Convention and its U.S. implementation to recognize these dynamics creates an additional barrier to safety for women seeking to extricate themselves from a violent partner.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Barnish's (2004) summary of prior research on battered women who immigrate to a new country is helpful when considering the Hague Convention. Barnish has explained how batterers ensure that women remain silent about their abuse by misleading them about their rights in the new country, preventing them from accessing language classes, destroying their passports and visas, threatening them with deportation, and restricting their contact with friends and family in their home country (Barnish, 2004). Under these circumstances – which are analogous to the cases we studied – battered women and their children are, in essence, confined to their homes through violence, coercion, and control. Our research indicates that a more expansive legal process for determining habitual residence is needed. Such a process would specifically ask whether a mother has made a decision about where she and her children live under threat of violence. By including a focus on domestic violence, determining habitual residence would more accurately account for the real-world lives of battered women and help ensure their and their children's safety.

**Grave Risk Factors**

Because of its particular relevance to domestic violence cases, we were especially interested in understanding how the courts in our study put the grave risk exception into action. That the use of grave risk as a defense had a low likelihood of success is unsurprising given that U.S. courts have consistently stated they should be narrowly interpreted. To do otherwise, they hold, would undermine the Convention's policy goal of returning children who are wrongfully removed from their habitual residences (*Simcox v. Simcox,* 2007; *Friedrich v. Friedrich,* 1996).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



In general, the courts in our study were reticent to use the exception. For example, in *Whallon v. Lynn* (2000) the court wrote that the harm necessary to prove the grave risk defense must be "a great deal more than minimal" and it must exceed that which would "normally" be expected to result from a transfer of custody (p. 92). Similarly, the court in *Friedrich v. Friedrich* (1986) stated that the exception applies only when the evidence shows that children would be placed in an "intolerable situation".

Our research indicates that the courts look to certain factors when determining whether grave risk applies to a case. It is important to note that no matter how violently a batterer may treat his wife or partner, absent these factors, this violence is not in and of itself, considered harm to children. Two cases in our sample illustrate this finding about grave risk.

First, in *Antonio v. Bello* (2004) the respondent – a mother defending against a Hague petition brought by her child's father – testified that the father had physically abused her during the marriage. However, the court wrote that "she made no claim and submitted no evidence that petitioner had ever harmed" their son (*Antonio v. Bello*, 2004, p. 3). Because the child had not been directly harmed, the court ruled that the grave risk exceptioin was not applicable. Second, in *Dallemagne v. Dallemagne* the father had previously punched the children's mother to the point that she was unconscious and had tried to run her over with a car. Nevertheless, the court did not find grave risk because "there was no credible evidence that the petitioner has ever physically harmed the children" (*Dallemagne v. Dallemagne*, 2006, p.1299 ).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



The reticence of the majority of courts in our sample to connect domestic violence with a grave risk of harm to children runs counter to the weight of social science research, as discussed in Chapter 2. Research also tells us that as many as 40% of children of abused mothers are, themselves, also abused (Appel & Holden, 1998; Edleson, 1999).

Treating domestic violence as if it were separate and apart from other forms of family violence also runs counter to recommended family law practice. For example, the National Council of Juvenile and Family Court Judges has written that "…judges are now almost universally under a statutory obligation to consider domestic violence as a factor when determining the best interests of children" (Dalton, Druzd, Wong, n.d.). At the same time, the Council's *Model Code on Domestic and Family Violence* presumes that it is in the children's best interests to reside with their non-violent parent in a location of that parent's choice, within or outside the state where the family lives (NCJFCJ, 1994).

Generally, courts in our study avoid linking domestic violence with grave risk, this trend is not universal. For example, in *Ostevoll v. Ostevoll*, the children's father was physically abusive to their mother, he rarely permitted her to leave the family residence, and when she did leave, he accompanied her. She was only permitted to take the children outside of the residence if she went to church. In accepting the grave risk defense, the *Ostevoll* court wrote that while other courts may only focus only on whether children have been physically abused, such a view is "myopic" and that considerations of grave risk must also consider whether children witnessed domestic abuse (p. 52-53).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Unlike other cases we studied, the *Ostevoll* decision relied upon social science literature. We found only two other instances where courts looked to social science literature for support in accepting a grave risk defense (*Walsh v. Walsh,* 2000; *Tsarpolous v. Tsarbopolous,* 2001).

Evidentiary standards further limit use of the grave risk exception. The majority of exceptions in the Convention (consent, child maturity, and whether a child is settled in the new environment) must be proven by a preponderance of evidence – the usual standard in American civil proceedings, including family law disputes. However, the grave risk and human rights defenses must be proven by clear and convincing evidence – a significantly greater burden than the preponderance standard. As a consequence, abused women arguing grave risk face a more difficult path to retaining custody of their children than do women arguing a different exception. It should be noted that the Convention does not dictate the use of different burdens of proof; this requirement is imposed by federal legislation (42 U.S.C.§ 11603(e)(2)(A)).

**Implications for Policy and Practice**

The research reported in the present chapter contributes to our understanding of how U.S. courts have interpreted and implemented the Hague Convention . By showing that this implementation frequently leads to court decisions against the interests of even severely battered women, our research also adds to the body of legal and social welfare scholarship revealing structural biases against battered women in a variety of official settings (Kohn, 2007; Lindhorst & Padgett, 2005; Buel, 2003; Czapanskiy, 1993). Such scholarship includes studies showing that prosecutors' heavy caseloads are associated

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



with lower numbers of guilty verdicts against batterers (Belknap, Graham, Hartman, Lippen, Allen & Sutherland, 2000), that family violence was only relatively recently accepted as a legitimate factor in determining custody (Cahn, 1991), that battered women may be arrested for engaging in defensive tactics following an attack by their intimate partner (Henning & Feder, 2004), and that welfare workers do not properly implement procedures for domestic violence victims (Lindhorst, Meyers &Casey, 2008).

As the weight of social science evidence and U.S. public policy brings about expanded understanding of the welfare interests of children, court rulings in Hague Convention cases may change over time as well. Judicial recognition that exposure to adult domestic violence may pose a grave risk and intolerable situation to many children growing up in homes where violence is present may increase. There is little logic to current legal arguments that exposure to domestic violence in the home does not constitute a potential grave risk to children. A more in-depth understanding of battered mothers' and their children's experiences should provide judges and attorneys with a deeper understanding of these issues in Hague Convention cases and their very real impacts on child development and well-being.

These findings also suggest the need for specialized training focused on international abduction cases involving domestic violence and technical assistance for judicial officers and attorneys. The development of a *National Bench Guide* that incorporates ours and other research findings could address domestic violence and its implications for decisions in Hague Convention cases.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Just as important, our results suggest that continued research on child abduction and its relationship to domestic violence is needed. We have little systematic information on the parents who are found to have abducted their children into the United States from other countries and almost no understanding of their motives, experiences, or the outcomes of their cases apart from official published decisions. The research described in this chapter focused on parents who brought their children into the U.S.; it did not address those parents who flee the U.S. and go to other countries after being victims of domestic violence in the U.S. Further research is needed with both types of "taking" parents to identify key barriers and facilitators to a safe resolution of their disputes.

Finally, although it would be difficult to amend the Hague Convention, this research can contribute to clarifying its proper use in cases where domestic violence is present and may contribute to a new or revised Hague Convention protocol or a revision of ICARA. Judges hearing these cases have an obligation to be knowledgeable of the Convention and the risks that mothers face both in the U.S. and abroad. Most importantly, battered mothers and their children deserve access to attorneys and advocates who can effectively represent them in these complex cases.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


# CHAPTER 11:

## Discussion and Implications

**JUSTICE GINSBURG:** What happens to the woman who, now she has abducted the child to Texas, and she says to the Texas court: If you send me back, I am going to be beaten by this man who has a history of being a batterer? …You are saying that the court…is helpless, that it's automatic that if there is a custody right the court in the State to which the child has been taken must order that the child be returned?

**JUSTICE BREYER:** She has to choose between her life and her child. And -- and is that what this -this convention is aimed at?

**CHIEF JUSTICE ROBERTS:** In other words, in the case that we have been discussing, if the woman would be subject to whatever persecution or domestic violence, but the child -- you know, there is no suggestion of any harm targeted to the child, that would not be a case in which they could grant refuge?... So the woman would be subject to -- if she wanted to remain with the child, there would be no protection. She would have to choose between subjecting herself to violence or being apart from the child?"

These questions were posed by Chief Justice Roberts and Justices Ginsberg and Breyer on January 12, 2010, during oral arguments in *Abbott* v. *Abbott* before the U.S. Supreme Court. This case was the first Hague Convention case heard by the U.S. Supreme Court. It considered

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


questions related to the Hague Convention and the custody rights of a non-custodial parent with a *ne exeat* right under a country's laws (*Ne exeat* rights require a taking parent to receive authorization of the other parent before removing a child from a country.) The court ruled that "a parent has a right of custody under the Convention by reason of that parent's *ne exeat* right" (p. 1). In short, the left-behind father had standing to file a Hague petition in U.S. This ruling will likely expand the number of left-behind non-custodial parents who may now file a Hague petition in U.S. courts.

Although issues of domestic violence were not litigated in *Abbott v. Abbott*, underlying court documents clearly indicate that this was a concern of the mother's when she divorced her husband in Chile and was awarded full custody of their child. The clear concern of some Supreme Court Justices about the dangers involved in Hague Convention cases reflects a growing awareness of domestic violence in general and its role in international parental abduction cases. The case was remanded back the lower court for another hearing and included instructions to consider Article 13(b) exceptions to the return of the child. The majority opinion stated "If, for example, Ms. Abbott could demonstrate that returning to Chile would put her own safety at grave risk, the court could consider whether this is sufficient to show that the child too would suffer 'psychological harm' or be placed 'in an intolerable situation'" (*Abbott v. Abbott*, 2010, p.18).

The Hague Convention was originally conceived of to protect children who were retained unlawfully by a non-custodial father in another country (Weiner, 2000). Its intent was to provide legal recourse to the primary caregiver of the children, usually the mother, to obtain the prompt return of her children if taken from the country without permission. In practice, the intended

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


beneficiaries of the Convention have become its primary targets. In the case of a family harmed by a father's violent and abusive behavior, the intended beneficiaries have been repositioned as wrongdoers, as abducting mothers who are viewed as harming their children when they flee their husbands' violence. It is a situation that evokes the tragic – the policy solution to help the intended victims (custodial mothers) has become a tool in the hands of abusive fathers. Women attempting to protect their children and themselves from their husband's violence are recast as harmful child abductors by the very treaty that was intended to help them overcome a father's hostile behavior.

Their flight across national borders raises two paradoxical issues for battered women. First, women are traditionally castigated for staying with violent husbands. Since the earliest writing on battered women in the 1970s many have asked, "Why does she stay?" (Martin, 1976). For mothers who finally flee the batterer, but end up crossing an international border to do so, the ironic focus becomes the exact opposite, "Why did she leave?" Second, under the current policies and procedures emanating from the Hague Convention, the law indicates that women should stay with their children in the country where they are living, even in the face of serious abuse, under the assumption that services and resources are available to assist her in the other country. Ultimately, the implication of the Hague Convention is, as the Justices implied in their questions in *Abbott v. Abbott*, that women can either choose to save themselves and leave their children behind if they need to escape the violence, or stay in the other country and risk trauma, injury and potentially death at the hands of their abuser in order to comply with the directive that decisions on their children's custody be made in the country of habitual residence.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


The Hague Convention was not conceived of as a remedy to issues of domestic violence. In fact, it was drafted three decades ago at the beginning of the modern movement to end violence against women and the accumulation of research that reveals the potentially damaging effects of domestic violence exposure for children. The Convention is focused on the potential harm to children caused by parental abduction, without consideration for the reasons that "abduction" might be occurring. Although the treaty was not envisioned as a policy response to the issue of serious domestic violence and child abuse within families, those who drafted the Convention were aware that there would be circumstances under which children would face a grave risk of harm, an intolerable situation or a violation of their human rights if they should be returned to the country of habitual residence. These concerns led the drafters to include exceptions to return such as Articles 13(b) (grave risk) and 20 (human rights violations) to allow for judicial discretion when addressing unforeseen dangers that would result from the return of children to their habitual residence. Despite these Articles being an integral part of the Convention, they are often viewed as potentially undermining the treaty's intent.

The original goals of the Hague Convention were worthy ones: to ensure the prompt return of children to their habitual residence; to protect the children and left-behind parents from the harm caused by abduction; and to assist non-abusive parents with valid claims to their children. The way in which the Convention unfolds in the lives of battered mothers who have fled with their children from sometimes horrific violence is a different story of the Hague Convention's impact and one that this study sought to illuminate.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


**Summary of Key Findings**

Below we summarize our key findings in seven areas, followed by a table that discusses policy and practice implications for each of these findings.

***1. Mothers and children often experienced severe violence from the left-behind fathers who filed Hague Convention petitions to have their children returned.***

- Most of the mothers in this study faced serious physical and sexual assaults, coupled with life threatening behaviors by their husbands that led these mothers to believe that their and/or their children's lives were in danger.
- The children in these homes were often also physically assaulted or exposed to extensive violence against their mothers resulting in reported profound effects on the children, consistent with a growing social science literature on child exposure to violence.
- The majority of mothers in this study voluntarily resided in the other country but a significant number of mothers (40%) reported their choice of residence was coerced, forced or the result of deception by their husbands, leading to questions about the intentions of parents when establishing a child's habitual residence.
- A number of women followed through on expected steps such as leaving their violent husbands and receiving custody of their children from the other country's courts, only to face continued violence and threats from their husbands when they remained in the other country.
- The seriousness of the domestic violence the mothers faced was further reinforced by the fact even those who succeeded in retaining their children in the U.S. faced continued

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


threats and extensive fear from their former husbands, consistent with the social science literature on post-separation violence.

2. ***Mothers were unable to access helpful resources in the other country, so they left with their children to seek safety and support of family members in the United States.***

- Most mothers reported multiple attempts to seek informal and formal help in the other country, prior to leaving for the U.S., with little success and sometimes resulting in further reinforcement of their violent husbands' positions by the authorities.
- The process of leaving to the U.S. was a difficult one for most women, some of whom planned their move and some of whom made the decision on short notice.
- In almost all cases, both for U.S. citizens abroad and for immigrant women, leaving the other country for the U.S. was a way to obtain the emotional and financial support of family members residing in this country.

3. ***U.S. authorities and courts were not receptive to mothers' safety concerns.***

- The majority of women in this study had their children returned to the other country by U.S. courts, and most of the time this meant their children's return to a life with the mothers' violent husbands.
- The overwhelming social science evidence, developed over the last three decades since the Convention was established, indicates that children exposed to domestic violence are at risk of physical and psychological harm by living with a violent father. In only one of the mother's cases did a U.S. court explicitly recognize a child's exposure to domestic violence as potentially harmful to the child.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


***4. Mothers and children faced great hardships after a Hague Convention decision***

- Fathers used U.S. court Hague decisions to leverage their positions in custody cases upon return of their children to their habitual residence.
- Women and children faced high levels of hardship when they returned, with many women unable to work in the other country because of their immigration status.
- Almost half of the women and/or children were victims of renewed violence or threats by the fathers on their return to the other country.
- Mothers reported that *none* of the voluntary undertaking aimed at protecting them and/or their children upon return to the other country were implemented.

***5. Legal fees and representation were major barriers for women responding to Hague Convention petitions***

- The cost of litigating a Hague Convention case was a major barrier to legal representation for mothers and one that greatly concerned attorneys in these cases. Mothers did not have access to the same sources of legal representation as did left-behind fathers.
- Fathers were more often were represented by attorneys in the U.S. Department of State's Attorney Network who were more likely to have access to larger firm resources. Fathers could receive additional U.S. government assistance in locating their child, travelling here for court appearances and in preparation of their attorneys.
- Mothers were more often likely to locate an attorney on their own in a legal assistance agency or a small family law practice.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


***6. Hague Convention decisions have not considered two decades of research on child exposure to domestic violence when deciding on grave risk***

- Analyses of published judicial decisions reinforce both mothers' and attorneys' views that children exposed to extensive domestic violence by fathers against their mothers are seldom seen by U.S. courts as at grave risk of physical or psychological harm. The findings of from mother interviews in this study and the extensive social science research on children's exposure to domestic violence are contrary to most of these court rulings.
- Evidence of harm to children presented by attorneys through their briefs and through expert witness testimony, was a key factor in cases where grave risk was found.

***7. Safety for battered mothers and their children facing Hague petitions requires training for attorneys and judges on both domestic violence and the law surrounding Hague Convention cases***

- Interviews with mothers and attorneys as well as an analysis of judicial rulings in published cases clearly indicates the need for greater awareness among and training of attorneys and judges in three primary areas:

  1) the meaning of all Articles in the Convention, including exceptions;

  2) the social science literature on domestic violence and the effects for child exposure to abuse in the family; and

  3) the experiences of mothers and children both before they leave to the U.S. and after Hague case decisions are made.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


There are many implications of these findings for work on Hague Convention cases involving allegations of adult domestic violence. As stated earlier both our interview study and the published case review samples are limited in serious ways. Table 11.1 below (and it is repeated in Appendix A as a standalone document) spells out our initial thinking about what our findings may imply for a variety of stakeholders. Following Table 11.1 we suggest additional research that would enable us to make stronger recommendations based on a broader set of cases.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


**Table 11.1**

Implications of Research Findings for Policy and Practice.

| Study Findings | Implication for Policy and Practice |
|---|---|
| 1. ***Mothers and children often experienced severe violence from the left-behind fathers who filed Hague Convention petitions to have their children returned.*** | A. Children should remain in the custody of a non-abusive parent and not be returned to a petitioning parent if there is evidence of the use of coercive violence against the child or other parent.<br>B. All Hague Convention cases should be assessed for the presence of domestic violence.<br>C. The Hague's Permanent Bureau should issue interpretive guidelines that clarify when a child's exposure to domestic violence should be considered a form of "grave risk" or an "intolerable situation".<br>D. Parents require access to information about the potential effects of the Hague Convention for their family prior to relocation in another country. This information could be incorporated into the online information on international travel provided by the U.S. Department of State. The U.S. Department of State should collaborate with stakeholders to develop online information, particularly to correct misperceptions that U.S. citizen parents have the right to return to the U.S. with their children without the permission of |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| | the child's other parent and that they are not bound by the other country's custody laws.<br>E. Parents should have access to a routinely updated, online resource on the Hague Convention and domestic violence. |
| 2. ***Mothers were unable to access helpful resources in the other country, so they left with their children to seek safety and support of family members in the United States.*** | A. U.S. domestic violence crisis lines and domestic violence organizations and advocates should be provided training on the Hague Convention and its implications for abused parents.<br>B. Further work is needed internationally to strengthen a basic set of legal and social service domestic violence resources for women and men in all countries, but particularly those that are partners with the U.S. to the Hague Convention.<br>C. Every overseas citizen should be able to access basic domestic violence services (including emergency shelter and protection orders) regardless of immigration status in a Hague Convention country.<br>D. U.S. Embassies should provide emergency assistance to battered parents and children attempting to flee from abusive situations. |
| 3. ***U.S. authorities and courts were not receptive to mothers' safety*** | A. U.S. state and federal courts and attorneys should consider greater applicability of "intolerable situation" (Article 13(b)) and "human rights violation" (Article 20) exceptions |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| ***concerns.*** | in the Hague Convention, as these may be relevant to the issue of children's harm from exposure to domestic violence.<br>B. The level of evidence required to prove grave risk, intolerable situation or violation of human rights should be changed from *clear and convincing* to *a preponderance of evidence.*<br>C. U.S. Embassy staff and others require additional training on domestic violence, its impact on children, and on the provisions of the Hague Convention.<br>D. U.S. attorneys representing both respondent and petitioner parents should assess for the presence of domestic violence, particularly paying attention to patterns of coercive control and emotional terrorizing in addition to the presence of physical violence.<br>E. The voluntariness of a parent's relocation to another country should be considered in any decision regarding habitual residence of family, and hence the child. |
| 4. ***Mothers and children faced great hardships after a Hague Convention decision.*** | A. Judges who decide to return a child to a "habitual residence" for resolution of divorce and custody issues, should require the safety and well-being (both physical and economic) of the child and abused parent be secured *prior to* ordering the return of a child.<br>B. The U.S. should ratify, and judges should utilize, the 1996 Hague Convention on |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| | Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children in order to protect children to the extent the other country is a party to it.<br>C. Abused parents and their children need access to mental health resources both in the U.S. and other countries that are knowledgeable about the dynamics and effects of domestic violence.<br>D. U.S. judges should provide written documentation clearly indicating that a decision to return a child to a habitual residence is not an endorsement of custody for the petitioner. |
| ***5. Legal fees and representation were major barriers for women responding to Hague Convention petitions.*** | A. Courts should consider the appointment of guardians *ad litem* whose role is the representation of the child in the Hague legal process.<br>B. Assistance in accessing attorneys and covering the costs of legal representation should be made available for abused respondent parents just as it is for left-behind parents.<br>C. The legal costs incurred by the abused parent to defend against a Hague petition should be paid by the abusive left-behind parent when the his or her petition is denied. |
| ***6. Hague Convention decisions have not considered two decades*** | A. Attorneys need to evaluate in every case the exposure of children to domestic violence, either as direct victims of child maltreatment, unintentional victims hurt in attacks by one |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| ***of research on child exposure to domestic violence when deciding on grave risk.*** | parent against the other, or as indirect witnesses to the violence.<br>B. Ideally, attorneys should have abused parents and their children assessed for the presence of Post-Traumatic Stress Disorder as a result of the domestic violence.<br>C. In Hague Convention cases, courts should request evaluations of each child's exposure to domestic violence when there are allegations of such, even when these evaluations have not been presented by attorneys. |
| ***7. Safety for battered mothers and their children facing Hague petitions requires training for attorneys and judges on both domestic violence and the law surrounding Hague Convention cases.*** | A. Given that potentially tens of thousands of courts may hear Hague Convention cases in the U.S., judicial training systems need to be developed that are easily and quickly accessible, including the creation of both state and federal judge's *Bench Guides* on Hague Convention cases involving allegations of domestic violence.<br>B. Parents responding to Hague petitions should be offered the same technical assistance as are petitioning parents by the U.S. Department of State's Office of Children's Services.<br>C. Hague-related training offered by the U.S. Department of State and others should provide information about how to assess for domestic violence in Hague Convention cases and how to represent *both* petitioning and respondent parents when there are allegations of domestic violence. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| | D. Current judicial and attorney trainings on domestic violence should incorporate information about the Hague Convention.<br>E. A national repository with routinely updated information on the domestic violence laws and resources available in other countries should be created to aid parents, judges and attorneys. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


**Future Research**

This study provides deeply descriptive information on the experiences of women who were subject to Hague Convention petitions after experiencing domestic violence in another country and fleeing to the United States with their children. Our findings suggest that future research should focus in three particular areas.

First, while this research indicates that women who volunteer for research on domestic violence in U.S. Hague cases experience serious abuse, it is unclear how prevalent domestic violence is within international child custody cases. As noted previously, our recruitment techniques required that women already identify as victims of domestic violence in order to see the study as relevant to them. Future research should focus more broadly on the prevalence of domestic violence among U.S. international child custody cases. Studies that attempt to evaluate the frequency of domestic violence should adopt a contextualized assessment approach (Lindhorst & Tajima, 2008) to understanding how violence is experienced and defined within couples' relationships.

Children are at the heart of Hague Convention cases, yet we know relatively little about their experiences from their perspective. Information on children in this study was provided by mothers, not by the children themselves (many of whom were quite young at the time of our interview with their mothers). However, children from the first Hague Convention cases in the U.S. are now adults and could be interviewed to gain further insight into the consequences of decisions in these cases. Although parental abduction has been discussed from the perspective of the negative outcomes for children, little is known about whether these outcomes differ for children when their mothers abduct them to escape domestic violence. Research that allows

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


adult children to tell these stories in their own words would likely provide unexpected insights into their experiences. Comparative research could tease apart the question of whether there are long-term outcomes for abducted children, and whether these outcomes are a result of the parental abduction, exposure to domestic violence or family dissolution more generally.

Finally, this research indicates that a decision on the Hague Convention petition does not necessarily end women and children's exposure to abuse and legal difficulties. More research is needed on what happens after Hague Convention decisions are made when the relationship has been characterized by domestic violence. This research would most effectively look across countries rather than focusing on a single jurisdiction as was done in this study. It may be that some countries have implemented systems that allow for greater safety of battered mothers and children. Cross-national research in this area, led by the Permanent Bureau of the Hague, could illuminate patterns that are both country-specific and those that are shared by battered women regardless of nation of residence.

**Conclusion**

We pursued this research project after hearing from battered mothers who had been respondents in Hague Convention cases tried in U.S. courts. These cases draw our attention to a growing worldwide concern about how adult domestic violence and child exposure to it are understood in the context of parental custody and relocation. Federal initiatives to address child exposure to domestic violence in juvenile and family court proceedings, in child protection agency practices and policies and even within organizations focused on preventing and intervening in domestic violence are over a decade old at this point. The most surprising aspect of this study's findings is how Hague Convention proceedings appear to be lagging so far behind

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


these larger changes underway in domestic court and social service responses to children's exposure to domestic violence. The time has clearly come to bring the Hague Convention, ICARA, U.S. Department of State policies and practices, attorney knowledge and practice and judicial understandings into line with 21st century social science information about the effects of domestic violence on children and mothers. We dearly hope that our labor on this project and the voices of mothers, attorneys and judges contained in this report are part of making this happen.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


# References

Acevedo, M. J. (2000). Battered immigrant Mexican women's perspectives regarding abuse and help-seeking. *Journal of Multicultural Social Work, 8,* 243-282.

Adamson, J.L. & Thompson, R.A. (1998). Coping with interparental verbal conflict by children exposed to spouse abuse and children from nonviolent homes. *Journal of Family Violence, 13,* 213-232.

Alvi, S., & Selbee, K. (1997). Dating status variations and woman abuse: A test of the Dependency, Availability, and Deterrence (DAD) model. *Violence Against Women*, 3, 610–628.

American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental disorders* (4th ed., text rev.). Washington, DC: Author.

American Psychological Association Intimate Partner Abuse and Relationship Violence Working Group (2002). *Intimate partner abuse and relationship violence.* Washington, DC: APA.

Appel, A. & Holden, G. (1998). The co-occurrence of spouse and physical child abuse: a review and appraisal. *Journal of Family Psychology, 12(4),* p. 578-599.

Ayres, L., Kavanaugh, K., & Knafl ,K.A. (2003). Within-case and across-case approaches to qualitative data analysis. *Qualitative Health Research, 13* (6): 871-883.

Bauer, H. M., Rodriguez, M. A., Quiroga, S.S., & Flores-Ortiz,Y. G. (2000). Barriers to health care for abused Latina and Asian immigrant women. *Journal of Health Care for the Poor and Underserved*, *11*, 33-44

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Barnish, M. (2004). Domestic violence: a literature review. Home Office, Inspectorate of Protection. http://www.justice.gov.uk/inspectorates/hmi-probation/docs/thematic-dv-literaturereview-rps.pdf

Beaumont, P.R. & McEleavy, P.E. (1999). *The Hague Convention on international child abduction.* NY: Oxford University Press.

Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G. & J. Sutherland (2000). Factors related to domestic violence court dispositions in a large urban area: the role of victim/witness reluctance and other variables. U.S. Department of Justice grant report. 96-WT-NX-0004

Berg, S. (1988). Snowball sampling. In S. Kotz & N. L. Johnson (Eds.) *Encyclopaedia of Statistical Sciences, Vol. 8.* New York: Wiley.

Bhuyan, R., Shim, W. & Velagapudi, K. (2010). Domestic violence advocacy with immigrants & refugees. In Danis, F. & Lockhart, L. *Domestic violence mosaic: Culturally competent practice with diverse populations*. New York: Columbia University Press.

Bogat, G. A., DeJonghe, E., Levendosky, A. A., Davidson, W. S., & von Eye, A. (2006). Trauma symptoms among infants exposed to intimate partner violence. *Child Abuse & Neglect*, 30, 109-125.

Bouhours, B. & Daly, K. Youth sex offenders in court: an analysis of judicial sentencing remarks. *Punishment & Society*, 9(4), 371-394.

Brabeck, K. M., & Guzman, M. R. (2008). Frequency and perceived effectiveness of strategies to survive abuse employed by battered Mexican-origin women. *Violence Against Women, 14*, 1274-1294.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Brown, J. (1997). Working toward freedom from violence: The process of change in battered women. *Violence against Women, 3,* 5-26.

Brownridge, D.A. (2006). Violence against women post-separation. *Aggression and Violent Behavior 11*(5), 514-530.

Bruch, C. S. (2004). The unmet needs of domestic violence victims and their children in Hague Abduction Convention cases. *Family Law Quarterly, 38,* 529-542.

Buel, S. (2003). Effective assistance of counsel for battered women defendants: a normative construct. *Harvard Women's Law Journal*, 26, 217-350.

Cahn, N. (1991). Civil images of battered women: the impact of domestic violence on child custody decisions. *Vanderbilt Law Review*, 44, p. 1041-1097.

Campbell, J. C., Glass, N., Sharps, P. W., Laughon, K., & Bloom, T. (2007). Intimate partner homicide: Review and implications of research and policy. *Trauma, Violence, & Abuse, 8*(3), 246-269.

Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., et al. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*(7), 1089-1097.

Carlson, B. E. (2000) Children exposed to intimate partner violence: research findings and implications for intervention. *Trauma, Violence & Abuse,* 1(4), 321-342.

Chan, Y.C. & Yeung, J.W.K. (2009). Children living with violence within the family and its sequel: A meta-analysis from 1995-2006. *Aggression and Violent Behavior, 14,* 313-322

Charmaz, K. (2006). *Constructing grounded theory: A practical guide through qualitative analysis.* Thousand Oaks: Sage Publications Ltd.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Chew, P. & Kelley, R. (2005). Unwrapping racial harassment law. *University of Pittsburgh School of Law Working Paper Series*, Paper 22.

Chiancone, J., Girdner, L., & Hoff, P. (2001). Issues in resolving cases of international child abduction by parents. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

Choi, S. & Gulati, G. (2008). Bias in judicial citations: a window into the behavior of judges? *The Journal of Legal Studies*, 37, 87-129

Clive, E.M. (1997). The concept of habitual residence. *Jurid.Rev*. 137, 147. In *Mozes v. Mozes,* 1999.

Cole, W.A. & Bradford, J.M. (1992). Abduction during custody and access disputes. *Canadian Journal of Psychiatry, 37,* 264-266.

Constable, N. (2004). Cross-Border Marriages: Gender and Mobility in Transnational Asia. Philadelphia: University of Pennsylvania Press.

Czapanskiy, K. (1993). Domestic violence, the family, and the lawyering process: lessons from studies on gender bias in the courts. *Family Law Quarterly*, 27, 247-277.

Daiute, C. (2008). The rights of children, the rights of nations: Developmental theory and the politics of children's rights. *Journal of Social Issues, 64*, 701-723.

Dalton, C., Drozd, L. & Wong, F. (N.D.) *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*. Reno, NV: National Council of Juvenile and Family Court Judges.

DeMaris, A. A. (2001). The influence of intimate violence on transitions out of cohabitation. *Journal of Marriage and Family, 63*, 235-246.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


DeKeseredy, W.S., Rogness, M. & Schwartz, M.D. (2004). Separation/divorce sexual assault: The current state of social scientific knowledge. *Aggression and Violent Behavior*, 9(6): 675-691.

Dunford-Jackson, B.L. (2004). The role of family courts in domestic violence: The US experience. In P.G. Jaffe, L.L. Baker, & A. Cunningham, (Eds.), *Ending domestic violence in the lives of children and parents: Promising practices for safety, healing, and prevention* (pp. 188-199). New York, NY: Guilford Press.

Dutton, M. A. (1992). *Empowering and healing the battered woman: A model for assessment and intervention*. New York: Springer Publishing.

Dutton, M.A. & Goodman, L.A. (2005). Coercion in intimate partner violence: Toward a new conceptualization. *Sex Roles, 52,* 743-756.

Edleson, J. (1999). The overlap between child maltreatment and woman battering. *Violence Against Women, 5(2),* 134-154.

Edleson, J.L. (2006). Emerging responses to children exposed to domestic violence. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. (Retrieved from the Internet on May 9, 2010, from http://www.vawnet.org).

Edleson, J.L., Mbilinyi, L.F., Beeman, S.K. & Hagemeister, A.K. (2003). How children are involved in adult domestic violence: Results from a four city telephone survey. *Journal of Interpersonal Violence, 18(1),* 18-32.

Elliott, J. (2005). *Using narrative in social research: Qualitative and quantitative approaches.* London: Sage.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Eriksson, M., & Hester, M. (2001). Violent men as good enough fathers. *Violence Against Women, 7*, 779-798.

Evans, S.E., Davies, C. & DiLillo, D. (2008). Exposure to domestic violence: A meta-analysis of child and adolescent outcomes. *Aggression and Violent Behavior, 13,* 131-140.

Fantuzzo, J.W., Brouch, R., Beriama, A., & Atkins, M. (1997). Domestic Violence and Children: Prevalence and Risk in Five Major U.S. Cities. *Journal of the American Academy of Child and Adolescent Psychiatry, 36*, 116-122.

Fantuzzo, J. W., & Mohr, W. K. (1999). Prevalence and effects of child exposure to domestic violence. *The Future of Children, 9,* 21-32.

Faugier, J. & Sargeant, M. (1997). Sampling hard to reach populations. *Journal of Advanced Nursing, 26*: 790-797.

Federal Interagency Forum on Child and Family Statistics (2009). American's children: Key national indicators of well-being, 2009. Washington, D.C.: U.S. Government Printing Office.

Finkelhor, D.; Hotaling, G. & Sedlak, A. (1991). Children abducted by family members: A national household survey of incidence and episode characteristics. *Journal of Marriage and Family, 53*, 805-817.

Finkelhor, D.; Turner, H.; Ormrod, R. & Hamby, S.L. (2009). Violence, abuse and crime exposure in a national sample of children and youth. *Pediatrics, 124,* 1411-1423.

Forehand, R.; Long, N.; Zogg, C. & Parrish, E. (1989). Child abduction: Parent and child functioning following return. *Clinical Pediatrics, 28,* 311-316.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Freeman, M. (2006). *International child abduction: The effects.* Leicester, UK: Reunite International. (Retrieved from the Internet on May 9, 2010, from http://www.reunite.org/research.asp).

Freeman, M. (2009). *Relocation: The research.* Leicester, UK: Reunite International. (Retrieved from the Internet on May 9, 2010, from http://www.reunite.org/research.asp).

Fleury, R. E. & Sullivan, C. M. & Bybee, D. I. (2000). When ending the relationship does not end the violence: Women's experience of violence by former partners. *Violence against Women, 6, 12,* 1363-1383.

Garbolino, Hon. J.D. (2000). *International child custody cases: Handling Hague Convention case in U.S. courts (3rd edition).* Reno, NV: The National Judicial College.

Garcia, L., Hurwitz, E.L., & Kraus, J.F. (2005). Acculturation and reported intimate partner violence among Latinas in Los Angeles. *Journal of Interpersonal Violence*, 20 (5), 569-590.

Garcia O'Hearn, H. Margolin, G., & John, R. S. (1997). Mothers' and fathers' reports of children's reactions to naturalistic marital conflict. *Journal of the American Academy of Child and Adolescent Psychiatry, 36,* 1366-1373.

Garica-Moreno, C., Jansen, H.A.F.M., Ellsberg, M., Heise, L. & Watts, C. (2005). *WHO multi-country study on women's health and domestic violence against women.* Geneva, Switzerland: World Health Organization.

Gewirtz, A. & Edleson, J.L. (2007). Young children's exposure to adult domestic violence: Towards a risk and resilience framework for research and intervention. *Journal of Family Violence*, *22*, 151-163.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Gibbons, J. (1999). Language and the law. Annual Review of Applied Linguistics, 19, p. 156-173.

Goodkind, J. R., Gillum, T. L., Bybee, D. I., & Sullivan, C. M. (2003). The impact of family and friends' reactions on the well-being of women with abusive partners. *Violence Against Women, 9*(3), 347-373.

Goodkind, J., Sullivan, C.M., & Bybee, D.I. (2004). A contextual analysis of battered women's safety planning. *Violence Against Women, 10*, 5, 514-533.

Goodman, L., Dutton, M.A., Weinfurt, K., & Cook, S. (2003). The Intimate Partner Violence Strategies Index. *Violence against Women, 9,* 163-186.

Goodman, L.A. (2002). Latent class analysis: The empirical study of latent types, latent variables and latent structures. In J.A. Hagenaars & A. L. McCutcheon (Eds.) *Applied latent class analysis* (pp. 3 – 55). New York: Cambridge University Press.

Graham-Bermann, S. A. & Edleson, J. L. (2001.) *Domestic Violence in the Lives of children: The Future of Research, Intervention, and Social Policy.* Washington, D.C.: APA.

Graneheim, U. & Lundman, B. (2004). Qualitative content analysis in nursing research: concepts, procedures and measures to achieve trustworthiness. *Nurse Education Today*, 24(2), p. 105-112.

Greif, G.L. (2009). The long-term aftermath of child abduction: Two case studies and implications for family therapy. *The American Journal of Family Therapy, 37,* 273-286.

Greif, G.L. and R. Hegar (1993). *When parents kidnap: the families behind the headlines*. New York: Free Press.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Hague Conference on Private International Law. (2010). *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. Available online at: http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=24.

Hagenaars, J.A. & McCutcheon, A.L. (Eds). (2002). *Applied latent class analyses*. Cambridge, UK: Cambridge University Press.

Hall, M. &Wright, R. (2008). Systematic content analysis of judicial opinions. *California Law Review*, 96(1), p. 63-122.

Hamby, S.L. (2009). The gender debate on intimate partner violence: Solutions and dead ends. *Pscyhological Trauma, 1(1),* 24-34.

Hammer, H.; Finkelhor, D. & Sedlak, A.J. (2002). *Children abducted by family members: National estimates and characteristics*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

Henning, K., & Feder, L. (2004). A comparison between men and women arrested for domestic violence: Who presents the greater threat? *Journal of Family Violence*, *19*(2), 69-81.

Hilton,W. M. (1997). Limitations on Article 13(b) of the Convention on the Civil Aspects of International Child Abduction. *American Journal of Family Law*, *11*, 139-144.

Hoegger, R. (2003). What if she leaves? Domestic violence cases under the Hague Convention and the insufficiency of the undertakings remedy. *Berkeley Women's Law Journal*, 18, p. 181-210.

Holden, G. W. (2003). Children exposed to domestic violence and child abuse: Terminology and taxonomy. *Clinical Child and Family Psychology Review, 6*(3), 151-160.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Hsieh, H.F. & Shannon, S. E. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research, 15,* 1277-1288

Hughes, H.M. & Barad, S.J. (1983). Psychological functioning of children in a battered women's shelter: A preliminary investigation. American Journal of Orthopsychiatry, 53, 525-531.

Humphreys, J.C. (1995). Dependent-care by battered women: protecting their children. *Health Care for Women International. 16*, 9-20.

Hyden, M. (2008). Narrativing sensitive topics. In M. Andrews, C. Squire & M. Tamboukou (Eds.) *Doing narrative research* (pp. 121-136. Los Angeles, CA: Sage Publications.

International Child Abduction Remedies Act (1988) 42 U.S.C.A. § 11603.

International Social Services (2007). *Learning from the links between domestic violence and international parental child abduction*. Melbourne, Australia: Author.

Jaffe, P.G. & Crooks, C.V. (2004). Partner violence and child custody cases: A cross-national comparison of legal reforsm and issues. *Violence against Women,10*, 917-934.

Janvier, R.F.; McCormick, K. & Donaldson, R. (1990). Parental kidnapping: A survey of left-behind parents. *Juvenile and Family Court Journal, 41,* 1-8.

Jelinek, L., Randjbar, S., Seifert, D.. Kellner, M. & Moritz, S. (2009). The organization of autobiographical and nonautobiographical memory in posttraumatic stress disorder (PTSD). *Journal of Abnormal Psychology 118*, 288-298.

Johnson, M. P. (2008). *A typology of domestic violence: intimate terrorism, violent resistance, and situational couple violence.* Lebanon, NH: Northeastern Press.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Johnston, J., Sagatun-Edwards, I., Blomquist, M. & L. Girdner. (2001). Prevention of family abduction through early identification of risk factors. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

Jouriles, E. N., McDonald, R., Slep, A. M., Heyman, R. E., & Garrido, E. (2008). Child abuse in the context of domestic violence: Prevalence, explanations, and practice implications. *Violence and Victims, 23,* 221-235.

Jouriles, E. N., Norwood, W. D., McDonald, R., Vincent, J. P, & Mahoney, A. (1996). Physical violence and other forms of marital aggression: Links with children's behavior problems. *Journal of Family Psychology, 10,* 223-234.

Kilpatrick Stockton, LLP (2007). *Litigating international child abduction cases under the Hague Convention.* Alexandria, VA: National Center for Missing and Exploited Children.

Kingston-Riechers, J. (2001). The association between the frequency of wife assault and marital dissolution in canada. *Journal of Population Economics, 14*(2), 351-365.

Kitzmann, K.M., Gaylord, N.K., Holt, A.R. & Kenny, E.D. (2003). Child witness to domestic violence: A meta-analytic review. *Journal of Consulting and Clinical Psychology, 71*(2), 339-352.

Klevens, J. (2007). An overview of intimate partner violence among Latinos. *Violence Against Women*, *13*, 111-122.

Kohn, L. (2007). Justice system and domestic violence: engaging the case but divorcing the victim. *New York University Review of Law & Social Change*, 32, p. 191- 252.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Koss, M. P., Goodman, L. A., Browne, A., Fitzgerald, L. F., Keita, G. P., & Russo, N. F. (1994). *Common themes and a call for action*. Washington, DC: American Psychological Association.

Lansner, D. (2008). The Nicholson Decisions: New York's response to 'failure to protect' allegations. *American Bar Association Commission on Domestic Violence e-Newsletter, 12.* Retrieved on 03-03-10 from http://www.abanet.org/domviol/enewsletter/vol12/expert1.html.

Lee, L.C., Kotch, J.B., & Cox, C.E. (2004.) Child maltreatment in families experiencing domestic violence. *Violence & Victims, 19(5),* 573-591.

Lemon, N.K.D. (1999). The legal system's response to children exposed to domestic violence. *The Future of Children, 9,* 67-83.

Lens, V. (2008). Welfare and work sanctions: examining discretion on the front lines. *Social Service Review*, 82(2), p. 197-222.

Lewandowski, L.A., McFarlane, J., Campbell, J.C., Gary, F. & Barenski, C. (2004). "He killed my mommy!" Murder or attempted murder of a child's mother. Journal of Family Violence, 19, 211-220.

Liang, B., Goodman, L., Tummala-Narra, P. & Weintraub, S. (2005). A theoretical framework for understanding help-seeking processes among survivors of intimate partner violence. *American Journal of Community Psychology, 36,* 71-84.

Lindhorst, T., Meyers, M., & Casey, E. (2008). Screening for domestic violence in public welfare offices: An analysis of case manager and client interactions. *Violence against Women, 14,* 5, 5- 28.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Lindhorst, T. & Padgett, J. (2005). Disjunctures for women and frontline workers: implementation of the Family Violence Option. *Social Service Review*, 79, 3 405-29.

Lindhorst, T. & Tajima, E. (2008). Reconceptualizing and operationalizing context in survey research on intimate partner violence. *Journal of Interpersonal Violence, 23,* 3, 362-388.

Litrownik, A.J., Newton, R., Hunter, W.M., English, D. & Everson. M.D. (2003). Exposure to family violence in young at-risk children: A longitudinal look at the effects of victimization and witnessed physical and psychological aggression. *Journal of Family Violence , 18 ,* 59-73.

Lowe, N. (2007). *A statistical analysis of applications made in 2003 under the Hague Convention of 25 October, 1980 on the Civil Aspects of International Child Abduction.* The Hague, The Netherlands: Hague Conference on Private International Law.

Mahmoody, B. & Hoffer, W. (1987). *Not without my daughter*. New York: St. Matin's Press.

Magnusson, D. (1998). The logic and implications of a person-oriented approach. In: R. B. Cairns, L. R. Bergman & J. Kagan (Eds.) *Methods and models for studying the individual* (pp. 33- 64). Thousand Oaks, CA: Sage.

Margolin, G., & Gordis, E. B. (2004). Children's violence exposure in the family and community. *Current Directions in Psychological Science, 13*, 152-155.

Marshall, C. & Rossman, G. B. (1999). *Designing qualitative research, 3rd Ed.* Thousand Oaks, CA: Sage Publications.

Martin, D. (1976). *Battered wives.* NY: Pocket Books.

Mathews, M.A. (1999). The impact of federal and state laws on children exposed to domestic violence. *The Future of Children, 9,* 50-66.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


McCutcheon, A.L. (1987). *Latent class analysis* (Sage University Paper series on Quantitative Applications in the Social Sciences, No. 07-064). Newbury Park, CA: Sage.

McGuigan, W. M., & Pratt, C. C. (2001). The predictive impact of domestic violence on three types of child maltreatment. *Child Abuse & Neglect, 25*(7), 869-883.

McHugh, M.C., Livingston, N.A., & Ford, A. (2005). A postmodern approach to women's use of violence: Developing multiple and complex conceptualizations. *Psychology of Women Quarterly, 29,* 323-336.

Menjivar, C. & Salcido, O. (2002). Immigrant women and domestic violence: Common experiences in different countries. *Gender and Society, 16 (6)*, 898-920.

Mercer, K. (1998). A content analysis of judicial decision-making – how judges use the primary caretaker standard to make a custody determination. *William and Mary Law Review*, 5(1), p. 1 – 149.

Merlino, M., Murray, C., & Richardson, J. (2008). Judicial gatekeeping and the social construction of the admissibility of expert testimony. *Behavioral Sciences and the Law*, 26, 187-206.

Meyer, D. Z. & Avery, L. M. (2009). Excel as a qualitative data analysis tool. *Field Methods, 21,* 91-112.

Miles, M. B. & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook* (Second Edition.). Thousand Oaks, California: Sage Publications.

Muhr, T. (2005). *ATLAS.ti.* Scientific Software Development GmbH, Berlin.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Muthen, B. & Muthen, L.K. (2000). Integrating person-centered and variable-centered analyses: Growth mixture modeling with latent trajectory classes. *Alcoholism: Clinical and Experimental Research , 24* , 882-891.

National Council of Juvenile and Family Court Judges (1999). *Effective intervention in domestic violence and child maltreatment: Guidelines for policy and practice (the Greenbook).* Reno, NV: Author.

Northwest Immigrant Rights Project (NWIRP) (2000). U-Visa for victims of domestic violence crimes. Retrieved on November 16, 2010, from http://www.nwirp.org/Documents/U-VisaforVictimsofDVCrimes.pdf

Ombudsman Foundation (Stichting de Ombudsman). (2002). The Hague convention on child (translated from the origina Dutch). Amsterdam, NL: Author. Retrieved on November 16, 2010, from http://www.lievebeau.nl/WEB-IMAGES/ombudsman%20onderzoek%20HKOV.pdf

Orloff, L. & Kaguyutan, J. (2001). Offering a helping hand: legal protections for battered immigrant women: A history of legislative responses. *American University Journal of Gender, Social Policy & the Law, 10 (1),* 95-183. Retrieved from http://www.legalmomentum.org/assets/pdfs/wwwofferingahelpinghand.pdf.

Panchanadeswaran, S., & McCloskey, L. A. (2007). Predicting the timing of women's departure from abusive relationships. *Journal of Interpersonal Violence, 22*(1), 50-65.

Pedhazur, E. (1997). *Multiple regression in behavioral research: Explanation and prediction. 3rd Ed.* New York, NY: Harcourt Brace College Publishers.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Peled, E. (1998). The experience of living with violence for preadolescent witnesses of woman abuse. *Youth & Society, 29*, 395-430.

Pendleton, G. (2003). Ensuring fairness and justice for noncitizen survivors of domestic violence. *Juvenile and Family Court Journal*, 69-85.

Perez-Vera, E. (1981). Explanatory Report. Hague Conference on Private International Law, Actes et documents de la Quatorzieme session, vol. 111.

Perry, E., Kulik, C., & A. Bourhis. (2004). The reasonable woman standard: effects on sexual harassment court decisions. *Law and Human Behavior*, 28(1), pp. 9-27.

Porter, S., & Peace, K.A. (2007). The scars of memory. *Psychological Science 18*, 435-441.

Raftery, A.E. (1995). Bayesian model selection in social research. *Sociological Methodology, 25*, 111-164.

Raj, A. & Silverman, J. (2002). Violence against immigrant women: The roles of culture, context, and legal immigrant status on intimate partner violence, *Violence Against Women*, *8*, 367-398.

Reissman, C. K. (2008). *Narrative methods for the human sciences.* Thousand Oaks, CA: Sage Publications.

Renzetti, C. M. (2009). *Economic stress and domestic violence*. Available online at: www.vawnet.org.

Reunite International (2003). *The outcomes for children returned following an abduction.* Leicester, UK: Author. (Retrieved from the Internet on May 9, 2010, from http://www.reunite.org/research.asp).

Robinson, S.K. (1994). Ten pillars of good lawyering. *Res Gestae, 38,* 33-38.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Roe, E. (1994). *Narrative policy analysis: Theory and practice.* Durham, NC: Duke University Press.

Rhoades, K.A. (2008). Children's responses to interparental conflict: A meta-analysis of their associations with child adjustment. *Child Development, 79,* 1942-1956

Rose, L. E., Campbell, J., and Kub, J. (2000). The role of social support and family relationships in women's responses to battering. *Health Care for Women International*, *21*(1), 27–39.

Rossman, B.B.R. (1998). Descarte's Error and Posttraumatic Stress Disorder: Cognition and Emotion in Children Who are Exposed to Parental Violence. In G.W. Holden, R. Gefner & E.N. Jouriles (eds.), *Children Exposed to Marital Violence: Theory, Research, and Applied Issues.* Washington DC: American Psychological Association, pp. 223-256.

Rossman, B.B.R., Hughes, H.M. & Rosenberg, M.S. (2000). *Children and inter-parental violence: The impact of exposure*. Philadelphia: Brunner/Mazel.

Sagatun, I.J. & Barrett, L. (1990). Parental child abduction. The law, family dynamics, and legal system responses. *Journal of Criminal Justice, 18,* 443-442.

Saldana, J. (2009). *The coding manual for qualitative researchers.* Thousand Oaks, CA: Sage Publications.

Sandelowski, M. (1997). "To be of use": Enhancing the utility of qualitative research. *Nursing Outlook, 45,* 125-132.

Sandelowski M. (2000). Focus on research methods. Whatever happened to qualitative description? *Research in Nursing & Health; 23*(4): 334-40.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Scheeringha, M.S., & Gaensbauer, T.J. (2000). Postrtraumatic stress disorder. In C.H. Zeanah, Jr. (Ed.), *Handbook of infant mental health* (2nd ed.) (pp.369-381). New York: Guilford Press.

Schwartz, G. (1978). Estimating the dimension of a model. *The Annals of Statistics , 6,* 461-464.

Semple, K. (2009, Feb. 25). Court battle over a child strains ties in 2 nations. *New York Times*, p. A21.

Shetty, S. & Edleson, J.L. (2005). Adult domestic violence in cases of international parental child abduction. *Violence Against Women*, 11(1), p. 115-138.

Short, L.M., McMahon, P.M., Chervin, D.D., Shelley, G.A., Lezin, N., Sloop, K.S. & Dawkins, N. (2000). Survivors' identification of protective factors and early warning signs for intimate partner violence. *Violence Against Women, 6*, 272-285.

Silberman, L. (2000). The Hague Convention Turns Twenty: Gender Politics and Other Issues. *New York Journal of International Law and Politics*, 33, 229-230.

Skopp, N. A., McDonald, R., Jouriles, E. N., & Rosenfield, D. (2007). Partner aggression and children's externalizing problems: Maternal and partner warmth as protective factors. *Journal of Family Psychology, 21*(3), 459-467.

Smith, P. H., Smith, J. B. & Earp, J. A. L. (1999). Beyond the measurement trap: A reconstructed conceptualization and measurement of woman battering. *Psychology of Women Quarterly, 23,* 177-193.

Sokoloff, N. (2008). Expanding the intersectional paradigm to better understand domestic violence in immigrant communities. *Critical Criminology, 16 (4)*, 229-255.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Spillman, S.K. (2006). Child abduction, parents' distress and social support. *Violence and Victims, 21, 149-165.*

Stark, E. (2007). *Coercive control: The entrapment of women in personal life.* New York: Oxford University Press.

Stevens, B. & Wolfers, J. (2006). Bargaining in the shadow of the law: Divorce laws and family distress. *Quarterly Journal of Economics, 121,* 267-288.

Tjaden, P. & Thoennes, N. (1998). *Prevalence, incidence and consequences of violence against women: Findings from the National Violence Against Women Survey, NCJ 172837.* Washington, D.C.: National Institute of Justice and Centers for Disease Control.

Tjaden, P. & Thoennes,N. (2000). *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women* (No. NCJ 183781). Washington, DC. US Department of Justice, Office of Justice Programs. Retrieved from: http://www.ncjrs.gov/pdffiles1/nij/183781.pdf

Turner, H. A., Finkelhor, D., & Ormrod, R. (2006). The effect of lifetime victimization on the mental health of children and adolescents. *Social science & medicine, 62*(1), 13-27.

Uehara, E. S. (2007). ''Disturbing phenomenology'' in the pain and engagement narratives of Cambodian American survivors of the Killing Fields. *Culture, Medicine & Psychiatry, 31*, 329-58.

U.S. Census Bureau (2006). *Facts for features: Hispanic heritage month*. Retrieved from http://www.census.gov/PressRelease/www/releases/archives/facts_for_features_special editions/007173.html, December 14, 2009.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


U.S. Department of State. (n.d.). Incoming cases: Abduction to the United States. Retrieved online on March 24, 2010 from : http://travel.state.gov/family/abduction/incoming/incoming_4173.html.

U.S. Department of State. (2010). *Report on compliance with the Hague Convention on the Civil Aspects of Child Abduction.* Washington, D.C.: Author

U.S. Department of State. (2010). Possible solutions: Using the Hague Abduction Convention. Washington, D.C.: Author. Retrieved from the Internet on November 16, 2010, from http://travel.state.gov/abduction/solutions/hagueconvention/hagueconvention_3854.htm

*Violence Against Women Act of 1994* (Reauthorized in 2000 and 2005) Public Law 103-322.

Vivatvaraphol (2009). Back to basics: Determining a child's habitual residence in international child abduction cases under the Hague Convention. *Fordham Law Review, 77,* 3325 – 3368.

Weiner, M.H. (2000). International child abduction and the escape from domestic violence. *Fordham Law Review*, *69*, 593.

Weiner, M.H. (2001). Navigating the road between uniformity and progress: the need for a purposive analysis of the Hague Convention on the Civil Aspects of International Child Abduction. *Columbia Human Rights Law Review*, 33(2), p. 275-362.

Weiner, M.H. (2003). The potential challenges of transnational litigation for feminists concerned about domestic violence here and abroad. *American University Journal of Gender, Social Policy and the Law, 11,* 749-800.

Weiner, M.H. (2004). Strengthening Article 20. *University of San Francisco Law Review*, *38,* 701-746.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Weiner, M. H. (2008). Intolerable situations and counsel for children: Following Switzerland's example in Hague abduction cases. *American University Law Review, 58,* 335-403.

Weithorn, L.A. (2001). Protecting children from exposure to domestic violence: The use and abuse of child maltreatment. *Hastings Law Review, 53* (1), 1-156.

West, C.M, Kantor, G.K., & Jasinski, J.L. (1998). Sociodemographic predictors and cultural batteres to help-seeking behavior by Latino and non-Latino White American battered women. *Violence & Victims*, *13*, 361-375.

White, J. (1995). What's an opinion for? *University of Chicago Law Review*, 62(4), 1363-1369.

Williams, S.L., & Mickelson, K.D. (2004). The nexus of domestic violence and poverty: Resilience in women's anxiety. *Violence Against Women*, *10*, 283-293.

Wolfe, D.A., Crooks, C.V., Lee, V., McIntyre-Smith, A., & Jaffe, P.G. (2003). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical Child and Family Psychology Review, 6*(3), 171-87.

Wood, S.M. (2004). VAWA's unfinished business: The immigrant women who fall through the cracks. *Duke Journal of Gender Law & Policy, 11*, 141-156.

Wuest, J., & Merritt-Gray, M. (1999). Not going back: Sustaining the separation in the process of leaving abusive relationships. *Violence against Women, 5*, 2, 110-133.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Cited Legal Cases

*(* Denotes cases used in analysis in Chapter 10)*

*Abbott v. Abbott*, __S.Ct. __, 2010 WL 1946730

**In re Adan*, 544 F.3d 542 (3d Cir. 2008)

**Aldinger v. Segler*, 263 F. Supp. 2d 284 (D.P.R. *2003*)

**Robles Antonio v. Barrios Bello*, No. Civ.A.1:04-CV-1555-T, 2004 WL 1895126 (N.D. Ga. 2004)

**Antunez-Fernandes v. Connors-Fernandes*, 259 F. Supp. 2d 800 (N.D. Iowa 2003)

**Baran v. Beaty*, 479 F.Supp. 1257 (S.D. Alabama 2007)

*Baxter v. Baxter*, 423 F.3d 363 (3rd Cir. *2005*)

**Belay v. Getachew*, 272 F. Supp. 2d 553 (D. Md. 2003)

**Blondin v. Dubois*, 238 F.3d 153 (2nd Cir. 2001)

*C v S (minor: abduction: illegitimate child),* [1990]). 2 All E.R. 961, 965 (Eng.H.L.)

**Ciotola v. Fiocca*, 684 N.E.2d 763 (Ohio Com. Pleas 1997)

**Croll v. Croll*, 66 F. Supp. 2d 554 (S.D.N.Y.1999)

**Currier v. Currier*, 845 F. Supp. 916 (D.N.H. 1994)

*Dallemagne* v *Dallemagne*, 440 F. Supp. 2d 1283 (M.D. Fla. *2006*)

**Dalmasso v. Dalmasso*, 269 Kan. 752 (2000)

**Danaipour v. Danaipour*, 386 F.3d 289 (1st Cir. 2004)

**In re D.D.*, 440 F. Supp. 2d 1283 (M.D. Fla. 2006)

**Edwards v. Edwards*, 254 Ga. App. 849 (Ga. Ct. App. 2002)

**Elyasvhiv v. Elyashiv*, 353 F.Supp.2d 394 (E.D. New York 2005)

**Fabri v. Pritikin-Fabri*, 221 F. Supp. 2d 859 (N.D. Ill. 2001)

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


*Friedrich v. Friedrich*, 78 F.3d 1060 (6th Cir. 1996)

**Gil v. Rodriguez*, 184 F. Supp. 2d 1221 (M.D. Fla. 2002)

**Gonzalez* v. *Gutierrez*, 311 F.3d 942, 949 (9th Circuit 2002)

**Harsacky* v. *Harsacky*, 930 S.W.2d 410, 413 (Ky.Ct.App.1996)

**Hasan* v. *Hasan*, *2004 WL 57073* (D. Mass. *2004*)

**Janakakis-Kostun v. Janakakis*, 6 S.W.3d 843 (Ky.Ct.App. 1999)

**Journe v. Journe, 911 F.Supp. 43 (D.P.R. 1995)*

**Koc v. Koc*, 181 F. Supp. 2d 136 (E.D.N.Y 2001)

**In re Leslie*, 377 F. Supp. 2d 1232 (S.D. Fla. 2005)

*Levesque v. Levesque*, 816 F.Supp. 662 (D. Kansas 1993)

**Mendez Lynch v. Mendez Lynch*, 220 F. Supp. 2d 1347 (M.D. Fla. 2002)

**Miller v. Miller*, 240 F.3d 392 (4th Cir. 2001)

**Nunez-Escudero v. Tice-Menley*, 58 F.3d 374 (8th Cir. 1995)

**Ostevoll v. Ostevoll*, 2000 US Dist. LEXIS 16178 (SD Ohio 2000)

**Panazatou v. Panazatou*, 1997 Conn. Super LEXIS 2627 (1997)

**Ponath v. Ponath*, 829 F.Supp. 363 (D.Utah 1993)

**Prevot v. Prevot*, 855 F. Supp. 915 (W.D. Tenn. 1994)

**Rodriguez v. Rodriguez*, 33 F.Supp.2d 456 (Dist. MD 1999)

**People ex rel. Ron v. Levi*, 279 A.D.2d 860 (N.Y.A.D. 2001)

**Salah v. Awes*, 629 N.W.2d 99 (Minn. Ct. App. 2001)

**Silverman v Silverman*, 338 F.3d 886 (8th Cir, 2003)

**Simcox v. Simcox*, 511 F.3d 594 (6th Cir. 2007).

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Tabacchi v. Harrison*, NO. 99-C4130, 2000 WL 190576, 13 (N.D. Ill. 2000)

**Tsarbopoulos v. Tsarbopoulos*, 176 F.Supp.2d 104 (E.D. Wash. 2001)

**Turner v. Frowein*, 253 Conn. 312 (2000)

**Van De Sande v. Van De Sande*, 431 F.3d 567 (7th Cir. *2005*)

**Velez v. Mitsak*, 89 S.W.3d 73 (Tex. Ct. App. 2002)

**In re Vernor*, 94 S.W.3d 201 (Tex. App. 2002)

**Viragh v. Foldes*, 612 N.E.2d 241, 247 (Mass. 1993).

**Walsh v. Walsh*, 221 F.3d 204 (1st Cir. 2000)

**Whallon v. Whallon*, 230 F.3d 450 (1st Cir. 2000)

**Wipranik v. Superior Court*, 63 Cal. App. 4th 315 (1998)

**Wojick v. Wojick*, 959 F. Supp. 413 (E.D. Mich. 1997)

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


# Appendices

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Appendix A
# Key Study Implications for Policy and Practice

**Table 11.1 from Chapter 11**

Implications of Research Findings for Policy and Practice.

| Study Findings | Implication for Policy and Practice |
|---|---|
| 1. ***Mothers and children often experienced severe violence from the left-behind fathers who filed Hague Convention petitions to have their children returned.*** | A. Children should remain in the custody of a non-abusive parent and not be returned to a petitioning parent if there is evidence of the use of coercive violence against the child or other parent.<br>B. All Hague Convention cases should be assessed for the presence of domestic violence.<br>C. The Hague's Permanent Bureau should issue interpretive guidelines that clarify when a child's exposure to domestic violence should be considered a form of "grave risk" or "intolerable situation".<br>D. Parents require access to information about the potential effects of the Hague Convention for their family prior to relocation in another country. This information could be incorporated into the online information on international travel provided by the U.S. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| | Department of State. The U.S. Department of State should collaborate with stakeholders to develop online information, particularly to correct counteracting misperceptions that U.S. citizen parents have the right to return to the U.S. with their children without the permission of the child's other parent and that they are not bound by the other country's custody laws.<br>E. Parents should have access to a routinely updated, online resource on the Hague Convention and domestic violence. |
| 2. ***Mothers were unable to access helpful resources in the other country, so they left with their children to seek safety and support of family members in the United States.*** | A. U.S. domestic violence crisis lines and domestic violence organizations and advocates should be provided training on the Hague Convention and its implications for abused parents.<br>B. Further work is needed internationally to strengthen a basic set of legal and social service domestic violence resources for women and men in all countries, but particularly those that are partners with the U.S. to the Hague Convention.<br>C. Every overseas citizen should be able to access basic domestic violence services (including emergency shelter and protection orders) regardless of immigration status in a Hague Convention country. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| | D. U.S. Embassies should provide emergency assistance to battered parents and children attempting to flee from abusive situations. |
| 3. ***U.S. authorities and courts were not receptive to mothers' safety concerns.*** | A. U.S. state and federal courts and attorneys should consider greater applicability of "intolerable situation" (Article 13(b)) and "human rights violation" (Article 20) exceptions in the Hague Convention, as these may be relevant to the issue of children's harm from exposure to domestic violence.<br>B. The level of evidence required to prove grave risk, intolerable situation or violation of human rights should be changed from *clear and convincing* to *a preponderance of evidence.*<br>C. U.S. Embassy staff and others require additional training on domestic violence, its impact on children, and on the provisions of the Hague Convention.<br>D. U.S. attorneys representing both respondent and petitioner parents should assess for the presence of domestic violence, particularly paying attention to patterns of coercive control and emotional terrorizing in addition to the presence of physical violence.<br>E. The voluntariness of a parent's relocation to another country should be considered in any decision regarding habitual residence of family, and hence the child. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| 4. ***Mothers and children faced great hardships after a Hague Convention decision.*** | A. Judges who decide to return a child to a "habitual residence" for resolution of divorce and custody issues, should require the safety and well-being (both physical and economic) of the child and abused parent be secured *prior to* ordering the return of a child.<br>B. The U.S. should ratify, and judges should utilize, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children in order to protect children to the extent the other country is a party to it.<br>C. Abused parents and their children need access to mental health resources both in the U.S. and other countries that are knowledgeable about the dynamics and effects of domestic violence.<br>D. U.S. judges should provide written documentation clearly indicating that a decision to return a child to a habitual residence is not an endorsement of custody for the petitioner. |
| ***5. Legal fees and representation were major barriers for women responding to Hague Convention petitions.*** | A. Courts should consider the appointment of guardians *ad litem* whose role is the representation of the child in the Hague legal process.<br>B. Assistance in accessing attorneys and covering the costs of legal representation should be made available for abused respondent parents just as it is for left-behind parents. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| | C. The legal costs incurred by the abused parent to defend against a Hague petition should be paid by the abusive left-behind parent when the his or her petition is denied. |
| ***6. Hague Convention decisions have not considered two decades of research on child exposure to domestic violence when deciding on grave risk.*** | A. Attorneys need to evaluate in every case the exposure of children to domestic violence, either as direct victims of child maltreatment, unintentional victims hurt in attacks by one parent against the other, or as indirect witnesses to the violence.<br>B. Ideally, attorneys should have abused parents and their children assessed for the presence of Post-Traumatic Stress Disorder as a result of the domestic violence.<br>C. In Hague Convention cases, courts should request evaluations of each child's exposure to domestic violence when there are allegations of such, even when not presented by attorneys. |
| ***7. Safety for battered mothers and their children facing Hague petitions requires training for attorneys and judges on both domestic violence and the law surrounding Hague Convention*** | A. Given that potentially tens of thousands of courts may hear Hague Convention cases in the U.S., judicial training systems need to be developed that are easily and quickly accessible, including the creation of both state and federal judge's *Bench Guides* on Hague Convention cases involving allegations of domestic violence.<br>B. Parents responding to Hague petitions should be offered the same technical assistance as are petitioning parents by the U.S. Department of State's Office of Children's Services. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


| | |
|---|---|
| ***cases.*** | C. Hague-related training offered by the U.S. Department of State and others should provide information about how to assess for domestic violence in Hague Convention cases and how to represent *both* petitioning and respondent parents when there are allegations of domestic violence.<br>D. Current judicial and attorney trainings on domestic violence should incorporate information about the Hague Convention.<br>E. A national repository with routinely updated information on the domestic violence laws and resources available in other countries should be created to aid parents, judges and attorneys. |

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Appendix B
# Recruitment Letter and Emails, Information Statements and Staff Confidentiality Agreement

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

# The Hague Domestic Violence Project

*Toll free: 1-866-820-4599* *Email: info@haguedv.org*

**RE: Participating in a Study of the Hague Convention on the Civil Aspects of Child Abduction**

We are writing to ask ***you*** to be a part of a research study that is looking at the experiences of women who have been involved with the Hague Convention on the Civil Aspects of Child Abduction (HCCACA). We want to hear your story to better understand your experiences. When the interviews are completed, we will pay you up to $125 for the time you have given us.

We know that some mothers who come into the U.S. from another country have been wrongfully accused of abducting their children under this Convention. The court may end up separating mothers from their children. In some cases, children are returned to an abusive partner overseas. We are interested in hearing from you if you were involved with a Hague case, regardless of what the outcome was in your situation.

Our goal in this research is to help lawyers, judges, and advocates learn how to better ensure the safety of women and children who come before them in these kinds of cases. Sharing your story could help other women in the future who may be involved with a case under the Hague Convention.

## If you are willing to volunteer or would like more information, please:

## Call us toll-free at 1-866-820-4599

## Email us at info@haguedv.org

Please be aware that we cannot assure the confidentiality of email. When you call our toll-free number, please be prepared to leave a message and a staff member will return your call as soon as possible.

The people involved in this study have spent their careers trying to help women and their children who have faced abuse from their partners. This study is being led by Dr. Jeffrey Edleson from the University of Minnesota and Dr. Taryn Lindhorst from the University of Washington. Both have spent years working closely with battered women and their families. The study is funded by the U.S. Department of Justice's National Institute of Justice. Although this study is funded by the U.S. government, please note that the research is being carried out independently

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


by the members of the Hague Domestic Violence Project who are NOT members of the legal system or employed by the U.S. government.
We have asked your attorney or advocate to pass this letter along to you explaining this research. If you choose to be a part of the research, we will ask you to take part in 1 to 3 confidential telephone interviews. Each interview will last about 1 to 2 hours. In these interviews, we will ask you questions about your experiences with domestic violence and the courts. We will tape record the interviews.

We imagine that you might have concerns about your safety or privacy in talking with us. We are also concerned about your safety. To protect you, we have taken the following steps: (1) ***The interview is completely confidential***. Your name will not be reported to anyone else. You may even make up a name for you and your children during the interview if you feel safer doing so. (2) ***Your interviews are protected from the courts.*** We have taken steps to make sure that nothing you say to us can be used in court. Your interview cannot be subpoenaed by anyone. We will tell you more about these protections when we talk with you.

**For more information look on the Web at:**
**http://www.haguedv.org**

Thank you so much for considering volunteering. **Your story is VERY IMPORTANT to us!** We are committed to improving justice and safety for women and children who may be involved with Hague Convention cases in the future. With your help, we can work toward this goal!

We look forward to hearing from you.

Sincerely,

Jeffrey L. Edleson, Ph.D.
University of Minnesota

Taryn Lindhorst, Ph.D.
University of Washington

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Attorney Email Invitations

**ATTORNEY EMAIL #1**

Dear (Attorney Name),

Thank you so much for your willingness to participate in The Hague Domestic Violence Project! Your knowledge and experience is very important to us. ***Please reply to this email indicating your willingness to participate in this study after reviewing the attached Information Statement.***

The Information Statement provides additional information about the study, including the purpose, research procedures, and legal protections associated with this research. When you reply agreeing to participate, you are agreeing with the informed consent information that is at the bottom of the statement. It reads:

*"This study has been explained to me. I volunteer to take part in this research. If I have questions later about the research, I can ask one of the researchers listed. If you have any questions or concerns regarding the study and would like to talk to someone other than the researcher(s), you can call the Fairview Research Helpline at telephone number 612-672-7692 or toll free at 866-508-6961. You may also contact this office in writing or in person. They are located at University of Minnesota Medical Center, Fairview Riverside Campus, 2200 Riverside Avenue, Minneapolis, MN 55454."*

Also, please feel free to let us know if you have any questions or concerns regarding your participation in the project.

Once we receive your consent to participate, we will send you a few brief questions to answer via email before our phone interview.

Again, thank you for your time and willingness to be a part of this research project! It is our hope that the results of this project will help legal professionals, social workers and advocacy groups better understand the experiences of these mothers and how Hague-related cases involving domestic violence are resolved in U.S. courts.

***If you agree to participate, please reply to this email and confirm that you agree to the above statement and are willing to participate in this study.***

We look forward to talking with you!

Sincerely,
Jeff Edleson, Taryn Lindhorst, and Gita Mehrotra
The Hague Domestic Violence Project
www.haguedv.org

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**ATTORNEY EMAIL #2**

Dear _____

Thank you again for your willingness to participate in the Hague Domestic Violence Study! Your knowledge and experience is very important to us!

In order for us to use the time during our phone interview most efficiently, we would like to request that you take a few minutes and email us brief responses to the following questions. *Please reply to this email and provide your responses in the email text below*. These are basic questions about your work with Hague cases that we are asking to all of the attorneys that we are interviewing. It should only take a few minutes to complete.

Thank you again for taking the time to participate in our project.
We look forward to your response!
Sincerely,
Jeff Edleson,Taryn Lindhorst, and Gita Mehrotra
Hague Domestic Violence Project
www.haguedv.org

---

1. What is your primary area(s) of practice?

2. Approximately how many Hague Cases have you worked on in your career?

3. In your estimate, about how many of these cases involved allegations of domestic violence?

4. Of the cases involving domestic violence allegations, in approximately how many have you represented mothers as Petitioners?

5a. Of the cases involving domestic violence allegations, approximately how many have you represented mothers as Respondents?

5b. If you have represented a mother Respondent who alleged domestic violence, in approximately how many cases was the child(ren) returned to the country where the Petitioner-father resides?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


6. How have your time and effort been reimbursed most often in Hague cases involving domestic violence?

7. Where have you most often found information and assistance on the Hague Convention and how to represent your clients?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**UNIVERSITY OF MINNESOTA**
**UNIVERSITY OF WASHINGTON**
Schools of Social Work

## MOTHER'S INFORMATION STATEMENT

**Multiple perspectives on battered mothers and their children fleeing to the US for safety:**
A study of Hague Convention on the Civil Aspects of International Child Abduction
(hereafter, the Hague Convention) cases

Principal Investigator, Jeffrey L. Edleson
University of Minnesota
Professor, Social Work
612-624-8795

Co-Principal Investigator: Taryn Lindhorst, PhD, LCSW
University of Washington
Assistant Professor, Social Work
206-616-2152

**Researchers' statement**

We are asking you to be in a research study. The purpose of this statement is to give you the information you will need to help you decide whether to be in the study or not. Please read the form carefully. You may ask questions about anything related to the research that is not clear to you. When we have answered all your questions, you can decide if you want to be in the study or not. This process is called "informed consent."

### PURPOSE OF THE STUDY

This study is being jointly conducted by researchers at the University of Minnesota and the University of Washington. The purpose of this study is to improve our understanding of the situation of women who have come into the United States with their children after leaving an abusive relationship in another country and who then become involved in a legal dispute under the Hague Convention on the Civil Aspects of Child Abduction. We know that some mothers who flee to the U.S. from another country have been wrongfully accused of abducting their children under the Hague Convention. The court may end up separating mothers from their children. In some cases, children are returned to an abusive partner overseas. Most of what we know about what happens to women in Hague cases comes from published legal rulings. These rulings only note those parts of the case that matter for legal decisions. As a result, we have little knowledge about the full story of the mothers in these situations. Our goal with this research is to help lawyers and judges learn how to better ensure the safety of children and women who come before them in Hague-related cases.

### STUDY PROCEDURES

If you agree to be in this study, we will ask you questions about your experiences in an interview. The interviews will usually happen over the phone. These interviews will be

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


recorded. If you agree to take part, you will be interviewed by one of the trained research interviewers from our research team. The interviewer will ask you to describe your story with the Hague prosecution. We will ask you about the timing of events that led up to your coming to the United States. We will also ask you about what happened with the criminal justice system during the Hague prosecution. Examples of some of the *most* sensitive questions are: "Please tell us about abuse that occurred between you and the partner who filed the Hague petition against you." "Please describe the effect of the abuse on your children." "Please describe your current legal status." And, "Please describe any injuries or critical events that were a result of the domestic violence." You do not have to answer any questions you do not wish to answer. Depending on your answers to the questions, the interview could take between 2 and 4 hours. We will schedule two or more interview times, if that would be more convenient for you.

We will also ask you for permission to interview your attorney. The purpose of talking to your attorney is to learn what might help the situation of other battered women who are involved with these kinds of cases. We will also ask your attorney to tell us about general issues with Hague cases.

After the interview, we will write down what you said during your interview. We will then share this transcript with you. You may receive it in the mail, or as an email. After you have time to look over the writing, we will call to talk to you again. This interview should last 1 – 2 hours. The purpose of the follow up interview is to allow you to correct any errors made in the transcript. We hope you will also tell us more about any concerns that you think may be relevant to the research.

**RISKS, STRESS, OR DISCOMFORT**

The study may involve some temporary uncomfortable feelings. These feelings may come up as you think about difficulties in the past.. We will try to help you feel as comfortable as possible during the interviews. We will call you a few days after the interview if you seem upset during it. We will also call if you ask us to do so. We will give you information on local battered women's programs that may be of help to you if you are still upset.

**BENEFITS OF THE STUDY**

From our past research, many women have told us that they find it helpful to talk about their life with someone who understands them. This research may not benefit you or your child directly. However, we hope you will help us learn ways to assist other battered women facing Hague cases in the future.

**OTHER INFORMATION**

All of your information will be kept confidential which means that we will not tell anyone else what you have told us. People in the criminal justice system will not be able to see the information you provide. If you tell us about child abuse or that you are at risk of harming yourself or someone else, we will have to tell the authorities. This research is being jointly conducted by a research team with members at the University of Minnesota and the University of Washington. Neither your name nor any identifying information about you will be given to any

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


person outside the research team. Only our research team will see the answers that you give us. We will keep the recordings of the interview from this study for two years after the funding ends for the study. After that time, the recordings will be destroyed. During or after this study is over your information will never be reported in a way that would identify you as the source. Government or university staff sometimes review studies such as this one to make sure they are being done safely and legally. If a review of this study takes place, your records may be examined. The reviewers will protect your privacy. The study records will not be used to put you at legal risk of harm.

To help us protect your privacy, a Privacy Certificate has been submitted to and approved by the National Institute of Justice. NIJ and recipients of NIJ funding are subject to the statutory and regulatory confidentiality requirements of 42 USC §3789g and 28 CFR Part 22. Both statutes provide that research and statistical information identifiable to a private person is immune from legal process and may only used or revealed for research purposes. With this Certificate, the researchers cannot be forced to disclose information that may identify you, even by a court subpoena, in any federal, state, or local civil, criminal, administrative, legislative, or other proceedings. The Privacy Certificate does not prevent the researchers from disclosing voluntarily, without your consent, information that would identify you as a participant in the research project if there are risks of child abuse or other immediate harm to yourself or your child(ren).

You do not have to answer any questions you do not wish to answer. You are also free to not participate in the study or to withdraw at any time. We are concerned about your safety. We imagine you might have concerns about your safety in talking with us. We have taken steps to make sure that nothing you say to us can be used in court. We will tell more about these protections when we talk with you.

You will be paid $100 after completing the first interview and $25 after completing the follow up interview. This payment is as a thank you for your time. If you have any questions about the study, please let us know. If you have an adverse event in relation to the study, please let the researchers know.

If you have any questions or concerns regarding the study and would like to talk to someone other than the researcher(s), you can call either the University of Washington Human Subjects Division c at (206) 543-0098, or the University of Minnesota Fairview Research Helpline at telephone number 612-672-7692 or toll free at 866-508-6961. You may also contact the Fairview Research Helpline in writing or in person. They are located at University of Minnesota Medical Center, Fairview Riverside Campus, 2200 Riverside Avenue, Minneapolis, MN 55454.

**Participant's Statement (Read and record on tape)**

This study has been explained to you. You volunteer to take part in this research. You have had a chance to ask questions. If you have questions later about the research, you can ask one of the researchers listed above. If you have questions about your rights as a research subject, you can

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


call the Human Subjects Division at the University of Minnesota at 612-626-5654 or the University of Washington at 206-543-0098.

Copies to: Subject
Researcher's file

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**UNIVERSITY OF MINNESOTA**
**UNIVERSITY OF WASHINGTON**
Schools of Social Work

## ATTORNEY INFORMATION STATEMENT

**Multiple perspectives on battered mothers and their children fleeing to the US for safety: A study of Hague Convention cases**

Principal Investigator, Jeffrey L. Edleson
Professor, Social Work
612-624-8795
Co-Principal Investigator: Taryn Lindhorst, PhD, LCSW
University of Washington
Assistant Professor, Social Work
206-616-2152

**Researchers' statement**

We are asking you to be in a research study. The purpose of this information statement is to give you the information you will need to help you decide whether to be in the study or not. Please read the form carefully. You may ask questions about the purpose of the research, what we would ask you to do, the possible risks and benefits, your rights as a volunteer, and anything else about the research or this form that is not clear. When we have answered all your questions, you can decide if you want to be in the study or not. This process is called "informed consent." We will give you a copy of this form for your records, if you so desire.

## PURPOSE OF THE STUDY

The purpose of this study is to improve our understanding of the life circumstances and legal system responses to battered mothers involved in Hague Convention cases in the US. Mothers who flee with their children to the US from other countries because of domestic violence are sometimes charged as perpetrators of child abduction under the auspices of the Hague Convention on the Civil Aspects of International Child Abductions (hereafter, the Hague Convention). Most of our information about battered women charged under the Hague Convention comes from published legal rulings that document only those aspects of the case that are relevant to the legal decisions. As a result, we have only limited knowledge about the experiences, perspectives and actions of the mothers, attorneys and judges in these situations. We plan to use knowledge gained from this study to improve the legal system responses to battered mothers who are prosecuted for abduction of their children under the Hague Convention.

## STUDY PROCEDURES

The study involves conducting an interview with you that will be digitally recorded. If you agree to participate, you will be interviewed by one of the trained research interviewers from the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Hague Convention research team. The interviewer will ask you to describe your knowledge and experience with Hague Convention cases. In some instances, you may be asked about specific cases on which you worked. Examples of some of the *most* sensitive questions are "Please describe the role domestic violence plays in Hague cases", and "What changes would you recommend to improve the safety of mothers and children in Hague cases?" You are free not to answer any questions you do not wish to answer. Depending on your answers to the questions, the interview could take between 1 and 2 hours.

After completing the interview, we will make a transcript of your interview and share this with you, if you so desire, in whatever format you prefer (as a paper copy in the mail, as an email, or in another format preferred by you). After you have had time to review the transcript, we will call you for a follow up interview that should last less than 1 hour. The purpose of this follow up interview is to allow you to correct any errors made in the transcript, and to elaborate on any concerns that you think may be relevant to the research.

## RISKS, STRESS, OR DISCOMFORT

We do not anticipate that this study will involve any risk, stress or discomfort for you.

## BENEFITS OF THE STUDY

Although this research may not benefit you directly, we hope to learn ways to assist other legal professionals who are involved in Hague cases in the future.

## OTHER INFORMATION

All of the information that you provide will be kept completely confidential. The only exceptions would be incidents of child abuse that you might report and risks of immediate harm to others or to yourself. Neither your name nor any identifying information about you will be disclosed to any person outside the research team. Only our project staff will have access to the answers that you give us. We will keep the digital recordings of the interview from this study in identifiable form for two years after the funding ends for the study; after that time, the recordings will be destroyed. During or after this study is over your individual responses will never be reported in a way that would identify you as the source.

Government or university staff sometime review studies such as this one to make sure they are being conducted safely and legally. If a review of this study takes place, your records may be examined. The reviewers will protect your privacy. The study records will not be used to put you at legal risk of harm.

To help us protect your privacy, a Privacy Certificate has been submitted to and approved by the National Institute of Justice. NIJ and recipients of NIJ funding are subject to the statutory and regulatory confidentiality requirements of 42 USC §3789g and 28 CFR Part 22. Both statutes provide that research and statistical information identifiable to a private person is immune from legal process and may only used or revealed for research purposes. With this Certificate, the researchers cannot be forced to disclose information that may identify you, even by a court subpoena, in any federal, state, or local civil, criminal, administrative, legislative, or other

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


proceedings. The Privacy Certificate does not prevent the researchers from disclosing voluntarily, without your consent, information that would identify you as a participant in the research project if there are risks of child abuse or other immediate harm to yourself or your child(ren).
You are free not to answer any questions you do not wish to answer. In addition, you are free to not participate in the study or to withdraw at any time.
You will be paid $100 after completing the first interview or a $100 donation will be made to the charity of your choice, to compensate you for your time. If you have any questions about the study or in the event you experience an adverse event in relation to the study, please contact the investigators listed above.
If you have any questions or concerns regarding the study and would like to talk to someone other than the researcher(s), you are encouraged to contact the Fairview Research Helpline at telephone number 612-672-7692 or toll free at 866-508-6961. You may also contact this office in writing or in person at University of Minnesota Medical Center, Fairview Riverside Campus, 2200 Riverside Avenue, Minneapolis, MN 55454.

Participant's Statement (Read and record on tape)
This study has been explained to me. I volunteer to take part in this research. I have had a chance to ask questions. If I have questions later about the research, I can ask one of the researchers listed above (Dr. Jeffrey Edleson at 612-624-8795 or Dr. Taryn Lindhorst at 206-616-2152. If I have questions about my rights as a research subject, I can call the Human Subjects Division at the University of Minnesota at 612-626-5654 or the University of Washington at 206-543-0098.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**UNIVERSITY OF MINNESOTA**
**UNIVERSITY OF WASHINGTON**
Schools of Social Work

## OTHER INFORMATION STATEMENT

**Multiple perspectives on battered mothers and their children fleeing to the US for safety: A study of Hague Convention cases**

Principal Investigator, Jeffrey L. Edleson
Professor, Social Work
612-624-8795
Co-Principal Investigator: Taryn Lindhorst, PhD, LCSW
University of Washington
Assistant Professor, Social Work
206-616-2152

**Researchers' statement**

We are asking you to be in a research study. The purpose of this information statement is to give you the information you will need to help you decide whether to be in the study or not. Please read the form carefully. You may ask questions about the purpose of the research, what we would ask you to do, the possible risks and benefits, your rights as a volunteer, and anything else about the research or this form that is not clear. When we have answered all your questions, you can decide if you want to be in the study or not. This process is called "informed consent." We will give you a copy of this form for your records, if you so desire.

## PURPOSE OF THE STUDY

The purpose of this study is to improve our understanding of the life circumstances and legal system responses to battered mothers involved in Hague Convention cases in the US. This study is being jointly conducted by researchers at the University of Minnesota and the University of Washington. Mothers who flee with their children to the US from other countries because of domestic violence are sometimes respondents to petitions under the auspices of the Hague Convention on the Civil Aspects of International Child Abductions (hereafter, the Hague Convention). Most of our information about battered women charged under the Hague Convention comes from published legal rulings that document only those aspects of the case that are relevant to the legal decisions. As a result, we have only limited knowledge about the experiences, perspectives and actions of the mothers, attorneys and judges in these situations. We plan to use knowledge gained from this study to improve the legal system responses to battered mothers who are respondents to child abduction allegations under the Hague Convention.

## STUDY PROCEDURES

The study involves conducting an interview with you that will be digitally recorded. If you agree to participate, you will be interviewed by one of the trained research interviewers from the

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


Hague Convention research team. The interviewer will ask you to describe your knowledge and experience with Hague Convention cases. In some instances, you may be asked about specific cases on which you worked. Examples of some of the *most* sensitive questions are "Please describe the role domestic violence plays in Hague cases", and "What changes would you recommend to improve the safety of mothers and children in Hague cases?" You are free not to answer any questions you do not wish to answer. Depending on your answers to the questions, the interview could take between 1 and 2 hours.

After completing the interview, we will make a transcript of your interview and share this with you, if you so desire, in whatever format you prefer (as a paper copy in the mail, as an email, or in another format preferred by you). We may contact you after this interview to elaborate on any concerns that you think may be relevant to the research.

## RISKS, STRESS, OR DISCOMFORT

We do not anticipate that this study will involve any risk, stress or discomfort for you.

## BENEFITS OF THE STUDY

Although this research may not benefit you directly, we hope to learn ways to assist other legal professionals who are involved in Hague cases in the future.

## OTHER INFORMATION

All of the information that you provide will be kept completely confidential. The only exceptions would be incidents of child abuse that you might report and risks of immediate harm to others or to yourself. This research is being jointly conducted by a research team with members at the University of Minnesota and the University of Washington. Neither your name nor any identifying information about you will be given to any person outside the research team. Only our research team will see the answers that you give us. We will keep the digital recordings of the interview from this study in identifiable form for two years after the funding ends for the study; after that time, the recordings will be destroyed. During or after this study your individual responses will never be reported in a way that would identify you as the source.

Government or university staff sometime review studies such as this one to make sure they are being conducted safely and legally. If a review of this study takes place, your records may be examined. The reviewers will protect your privacy. The study records will not be used to put you at legal risk of harm.

To help us protect your privacy, a Privacy Certificate has been submitted to and approved by the National Institute of Justice. NIJ and recipients of NIJ funding are subject to the statutory and regulatory confidentiality requirements of 42 USC §3789g and 28 CFR Part 22. Both statutes provide that research and statistical information identifiable to a private person is immune from legal process and may only used or revealed for research purposes. With this Certificate, the researchers cannot be forced to disclose information that may identify you, even by a court subpoena, in any federal, state, or local civil, criminal, administrative, legislative, or other proceedings. The Privacy Certificate does not prevent the researchers from disclosing

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


voluntarily, without your consent, information that would identify you as a participant in the research project if there are risks of child abuse or other immediate harm to yourself or your child(ren).
You are free not to answer any questions you do not wish to answer. In addition, you are free to not participate in the study or to withdraw at any time.
You will be paid $100 after completing the first interview or a $100 donation will be made to the charity of your choice, to compensate you for your time. If you have any questions about the study or in the event you experience an adverse event in relation to the study, please contact the investigators listed above.
If you have any questions or concerns regarding the study and would like to talk to someone other than the researcher(s), you can call the University of Minnesota Fairview Research Helpline at telephone number 612-672-7692 or toll free at 866-508-6961. You may also contact the Fairview Research Helpline in writing or in person. They are located at University of Minnesota Medical Center, Fairview Riverside Campus, 2200 Riverside Avenue, Minneapolis, MN 55454.

Participant's Statement (Read and record on tape)
This study has been explained to you. You volunteer to take part in this research. You have had a chance to ask questions. If you have questions later about the research, you can ask one of the researchers listed above. If you have questions about your rights as a research subject, you can call the University of Minnesota Fairview Research Helpline at telephone number 612-672-7692 or toll free at 866-508-6961.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# HAGUE RESEARCH PROJECT

## Employee Confidentiality Statement

Pursuant to Title 28 of the Code of Federal Regulations, Part 22, project staff have an obligation to those we interview to protect their identities and the information they provide to the *Hague Research Project*. The identity of persons interviewed and the related data are to remain confidential. Removal of names or disclosure of identities and related information is strictly forbidden. Contents of interviews are not to be discussed with anyone except project staff, and only as it is necessary to complete the assigned work. Additionally, sensitive interview information should not be discussed anywhere it could be overheard by persons who are not authorized to know this information.

As a member of the site personnel, contractor, or subcontractor staff of the *Hague Research Project*, I, _____, agree that I will protect the confidentiality of all information identifiable to a private person that is collected in the conduct of my work for the *Hague Research Project*.

I agree that I shall not discuss any identifiable information that I may learn of during the course of my employment as part of the site personnel, contractor, or subcontractor staff with anyone other than project staff members who have a need to know this information.

I agree to follow the procedures established by the *Hague Research Project* to prevent unauthorized access to information identifiable to a private person.

I certify that I have been informed that the *Hague Research Project*, which is being funded in whole or in part by the National Institute of Justice, is governed by the Department of Justice Regulations in 28 CFR Part 22 & Part 46, which govern the use and revelation of research and statistical information identifiable to a private person, and that I, as a member of the *Hague Research Project* 's site personnel, contractor, or subcontractor staff am governed by these regulations as well.

I certify that I have been given copies of the regulations at 28 CFR Part 22 & Part 46 and that I understand the obligations imposed by them.

I understand that my signing this agreement is a condition of my employment as part of the *Hague Research Project* 's site personnel, contractor, or subcontractor staff.

By signing this statement, I am acknowledging that I understand the rules surrounding the protection of confidential information and, if I am found to be in violation of these provisions, I can be fined not to exceed $10,000 in addition to any other penalty imposed by law.

Full Legal Name (please print): _____

_____ _____

Employee Signature Date

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Appendix C
# Homepage of Participant Recruitment Website

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Appendix D
# Phone Scripts
## *Hague Domestic Violence Research Project*
*Schools of Social Work, University of Minnesota & Washington*
## *Mother's Initial Interview Script*

**Date: _____ Time Began: _____ Time Ended: _____**

**Interviewer Name: _____**

**Participant Code #: _____**

**Transcript desired? Yes No**
**Location for delivery:_____**

**Incentive desired? Yes No**
**Location for delivery:_____**

NOTES from phone contact:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***INSTRUCTIONS TO INTERVIEWERS***

This interview script is a guide. You do not have to read each word verbatim, and you may need to make slight adjustments in the pacing, tone, wording, and sequencing of the material as you see fits the participant and the situation. However, you must cover all content.

***Greeting for Mother's Interview:***

This will be the first time you will have spoken with this woman. Greet her professionally but with some sense of familiarity. Such as:

*"Hello, I am ___ (your name)___ from the Hague Convention Project at the School of Social Work at the University of _____. Thank you for contacting our project. Is this a good time to talk? Are you in a safe place to talk right now?"*

IF YES, continue to next section.

IF NO: "*Is there another time when we can talk uninterrupted for about an hour to an hour and a half?"*

Then make the appointment and confirm the telephone number to call. Thank her and remind her of the time and date you will call.

*"OK, I will call you at ___(phone number)____ on __(date)__ at __(time)___. Is that correct? Will that work for you?"*

***Consent Procedures for Mother's Interview***

Before asking any questions from the Interview Guide you need to confirm that she is eligible for the interview and go over the consent procedures with the woman. She must voluntarily agree to participate before we can interview her. After ascertaining eligibility, you should read through a copy of the Mother's Information Statement with the participant and cover each section with her verbally. (See the Mother's Information Statement.) Start this part of the interview by saying:

*"Before we get into the interview, I want to review with you the steps we are taking to protect your safety and privacy and the risks and benefits of participating in this study. As our materials indicate, this is strictly a voluntary study. We need to confirm that you are eligible for the study, explain the nature of the study to you, explain to you how your identity and information that you give us will be protected and what are both the benefits and risks of participating in this study. If you agree to participate after we have explained this to you, we will continue with the interview. Is that clear?"*

IF YES, continue with reading through the Eligibility Criteria below.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


IF NOT, ask: *"How can I make this clearer for you?"* Continue only after you have clarified the woman's questions.

***Confirm Eligibility***

In order to participate in the research study, we have to make sure you meet the following criteria.

□ Are you at least 18 years of age or older?
□ Have you had a Hague Convention petition filed against you after you came into the U.S., and was the case heard in a US Court?
□ Were any of the following true for you with the partner who filed the Hague petion?
… □ Did this partner ever threaten to throw something at you, hit you, or threaten to harm your children?
□ Did you or Have you ever felt afraid of this partner?
□ Have you ever considered yourself to be a victim of abuse from this partner?
□ Has a decision been made on the Hague petition filed against you?
□ Are you able to participate in a telephone interview that may be up to 4 hours long, and completed on one or more occasions?

□ Do you have any medical or psychiatric conditions that would make it difficult for you to participate in an interview? *If yes, ask if the woman would describe the condition and how it might make participation difficult.*

IF the person answers YES to the first five questions and NO to the last question, she is eligible for the research study. Please continue with reading through the Mother's Information Statement.
IF the respondent is not eligible, let her know this and thank her for her time. Offer to answer any other questions she might have.

***Review Purpose of the Study***

Read through the Mother's Information Statement, stopping periodically to check with her to see if she has any questions and is understanding what you have read to her.

At the end of reading the Mother's Information Statement remind her that in the form we mentioned that we will be recording the Interview. Ask her:

□ Are you willing to have your interview taped and transcribed (with all identifying information deleted)? You will have an opportunity to review this transript after it is completed.

If it would help you to feel more comfortable in terms of protecting your identity, for the purposes of this interview, you can also make up a name for yourself, your children, and/or your partner.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


*"I am now going to turn on our tape recorder so that I can ask you if you wish to participate in this study and record your answer. Are you in agreement with this?* IF YES, **TURN ON RECORDER.**

*"The tape recorder is now on. I want to remind you that the rest of our conversation will be audiotaped so we can make sure to capture all of your information accurately." Are you in agreement with the audiorecording?*
"I also want to let you know that once this research study is over the recording of this interview will be destroyed."

IF NO, review with her our procedures and answer any questions s/he has about how information on the recording will be handled. If the respondent declines to be tape recorded, thank him/her for his/her time and end the interview.

***Recording Consent***

Be sure to confirm with respondent that she understands all the elements of the consent form and agrees to voluntarily participate by asking:

Q1: *"Now that we have read through this material, do you understand what I have gone over with you?"*

Q1a: IF YES, continue with*: "I would like to now ask you for the record if you understand the procedures I have just covered with you on the Consent Form?* **Read the Participant Consent section at the end of the Mother's Information Statement. Ask her to confirm consent and state today's date for the record.** Move to Q3a.

Q1b: IF NO, ask: "What can I better explain to you?" And then answer any questions she has and return to *"Now that I have explained this to you, do you understand what I have gone over with you?"*

Q2: IF YES, continue with: *I would also like to ask you for the record if you voluntarily agree to participate in this study and the interviews in which we will ask you to be involved?"* **Read the Participant Consent section at the end of the Mother's Information Statement. Ask her to confirm consent and state today's date for the record.**

Q3a: **IF YES, continue to the Interview**

Q3b: **IF NO, end the interview and ask her to call back if she changes her mind in the future.**

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## *Introduction to Mother's Interview*

Let me tell you more about this interview. We hope it will be informal and conversational. It is designed for you to tell your story about the violence you've experienced and what happened after you came to the U.S. You can stop me at any time to ask questions and if there is any question you do not want to answer you can just say "Pass" or something to indicate to me that you don't want to answer the question. You may stop the interview at any time you wish. Also, again, you are welcome to make up names for your children, yourself, or your partner to use during the interview if you prefer.

*Because we will be making a chronology of events related to your situation, it would be helpful if you could share dates of when things happened, as you remember them.*

Continue with interview guide.

## *Conclusion of Mother's Interview(s)*

Do you have any questions for me at this time?

I know it can be difficult to talk about these incidents, and I wonder how you're feeling right now about having done this interview? You may have some resources or people that you can talk to about these issues if you need to, but I would also like to give you this list of resources for counseling and support around issues of violence and abuse.

**IF YOU NEED ANOTHER TELEPHONE APPOINTMENT TO COMPLETE THE INTERVIEW, ASK:** "*We need another time when we can continue this interview and talk uninterrupted for about an hour to an hour and a half. When might be a good time and day for you?"*

Then make the appointment and confirm the telephone number to call. Thank her and remind her of the time and date you will call.

*"OK, I will call you at ___(phone number)____ on __(date)__ at __(time)___. Is that correct? Will that work for you?"*

**ALSO STATE:** In a few weeks, we will have a summary of your interview completed. This is a document in which we note the chronology of what happened to you, and would like to have you review this to make sure it is accurate from your perspective. Would you be willing to review this summary?

If yes, "After you have had a chance to review the summary, we would like to call and talk with you to correct any errors, or to record any other information you would like to provide about the areas covered in the interview".

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



"Where should we sent the copy of the summary? Are there any safety concerns that you have about receiving this document in the mail?"

***Note response (email or address) on cover page.***

Ask, "Are there any other women that you know who have been involved in a Hague petition here in the US? Would you be willing to pass information to them about this study?"

Ask, "Also, as part of this study, we are interviewing attorneys and judges who have been involved with Hague cases. Would it be okay with you if we contacted the attorney that represented you in your Hague case? Is it okay if we identify you when we speak to him/her? Do you have his/her name/contact information?

**WHEN INTERVIEW IS COMPLETE, IDENTIFY REIMBURSEMENT PLAN:** Say, *"As a thank you for the time you have taken to participate in this study, we would like to send you $100. Would you like us to mail a check to you? The check will come in an envelope from the University of Minnesota.* ***Ask for location to mail check. Note on script cover page.***

**IMPORTANT ALERT:** ***Please alert Dr. Edleson or Dr. Lindhorst if there is any information disclosed in the interview that might identify the current location of the mother and her children and subsequently endanger them. We will need to delete this information during transcription.***

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# *Hague Domestic Violence Research Project*

*Schools of Social Work, University of Minnesota & Washington*

## *Attorney Interview Script*

**Date: _____ Time Began: _____ Time Ended: _____**

**Interviewer Name: _____**

**Participant Code #: _____**

**Transcript desired? Yes No**
**Location for delivery:_____**

**Incentive desired? Yes No**
**Donation desired? Yes No**
**Location for delivery:_____**

**NOTES from phone contact:**

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



## *INSTRUCTIONS TO INTERVIEWERS*

This interview script is a guide. You do not have to read each word verbatim, and you may need to make slight adjustments in the pacing, tone, wording, and sequencing of the material as you see fits the participant and the situation. However, you must cover all content.

***Greeting for Attorney's Interview:***

This will be the first time you will have spoken with this attorney. Greet him/her professionally but with some sense of familiarity. Such as:

*"Hello, I am ___ (your name)___ from the Hague Convention Project at the School of Social Work at the University of _____. Thank you for agreeing to speak with us. Is this a good time to talk?"*

IF YES, continue to next section.

IF NO: "*Is there another time when we can talk uninterrupted for about an hour?"*

Then make the appointment and confirm the telephone number to call. Thank her/him and remind her/him of the time and date you will call.

*"OK, I will call you at ___(phone number)____ on __(date)__ at __(time)___. Is that correct? Will that work for you?"*

***Consent Procedures for Attorney's Interview***

Before asking any questions from the Interview Guide you need to confirm that s/he is eligible for the interview and go over the consent procedures with the attorney. She/he must voluntarily agree to participate before we can interview her/him. After ascertaining eligibility, you should read through a copy of the Attorney Information Statement with the participant and cover each section with her/him verbally. (See the information statement.) Start this part of the interview by saying:

*"Before we get into the interview, I want to review with you the steps we are taking to protect your privacy and the risks and benefits of participating in this study. As our materials indicate, this is strictly a voluntary study. We need to confirm that you are eligible for the study, explain the nature of the study to you, explain to you how your identity and information that you give us will be protected and what are both the benefits and risks of participating in this study. If you agree to participate after we have explained this to you, we will continue with the interview. Is that clear?"*

IF YES, continue with reading through the Eligibility Criteria below.

IF NOT, ask: *"How can I make this clearer for you?"* Continue only after you have clarified the woman's questions.

***Confirm Eligibility***

In order to participate in the research study, we have to make sure you meet the following criteria.

- □ Are you at least 18 years of age or older?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



□ Have you been either a defense attorney or a prosecuting attorney for a case of child abduction brought under the Hague Convention?
□ Are you able to participate in a telephone interview that may be up to 1 hour long?
□ Are you willing to have your interview taped and transcribed (with all identifying information deleted)? You will have an opportunity to review this transript after it is completed.

□ Do you have any medical or psychiatric conditions that would make it difficult for you to participate in an interview? *If yes, ask if the attorney would describe the condition and how it might make participation difficult.*

IF the person answers YES to the first four questions and NO to the last question, s/he is eligible for the research study. Please continue with reading through the Attorney's Information Statement.

IF the respondent is not eligible, let her/him know this and thank her/him for their time. Offer to answer any other questions s/he might have.

***Review Purpose of the Study***

Read through the Attorney's Information Statement, stopping periodically to check with her/him to see if she/he has any questions and is understanding what you have read to her/him.

At the end of reading the Attorney's Information Statement, remind her/him that in the form we mentioned that we will be recording the Interview. Ask her/him:

*"I am now going to turn on our tape recorder so that I can ask you if you wish to participate in this study and record your answer. Are you in agreement with this?* IF YES, **TURN ON RECORDER.**

*"The tape recorder is now on. I want to remind you that the rest of our conversation will be audiotaped so we can make sure to capture all of your information accurately. Are you in agreement with the audiorecording?"*

IF NO, review with her our procedures and answer any questions s/he has about how information on the recording will be handled. If the respondent declines to be tape recorded, thank him/her for his/her time and end the interview.

***Recording Consent***

Be sure to confirm with respondent that s/he understands all the elements of the consent form and agrees to voluntarily participate by asking:

Q1: "*Now that we have read through this material, do you understand what I have gone over with you?"*

Q1a: IF YES, continue with*: "I would like to now ask you for the record if you understand the procedures I have just covered with you on the Consent Form?* **Read the Participant Consent section at**

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**the end of the Attorney Information Statement. Ask her/him to confirm consent and state today's date for the record.** Move to Q3a.

Q1b: IF NO, ask: "What can I better explain to you?" And then answer any questions she has and return to *"Now that I have explained this to you, do you understand what I have gone over with you?"*

Q2: IF YES, continue with: *I would also like to ask you for the record if you voluntarily agree to participate in this study and the interviews in which we will ask you to be involved?"* **Read the Participant Consent section at the end of the Attorney Information Statement. Ask her/him to confirm consent and state today's date for the record.**

Q3a: **IF YES, continue to the Interview**

Q3b: **IF NO, end the interview and ask her/him to call back if she/he changes her/his mind in the future.**

## *Introduction to Attorney's Interview*

Let me tell you more about this interview. We hope it will be informal and conversational. It is designed for you to tell your story about Hague cases on which you have worked. We do not want you to disclose any confidential information to us such as the identity of your clients You can stop me at any time to ask questions and if there is any question you do not want to answer you can just say "Pass" or something to indicate to me that you don't want to answer the question. You may stop the interview at any time you wish.

Continue with interview guide.

## *Conclusion of Attorney's Interview(s)*

Do you have any questions for me at this time?

Thank you so much for taking your precious time to talk with us about Hague Convention cases. We really appreciate this.

In a few weeks, we will have a transcript of your interview completed. We would like to have you review this transcript. After you have had a chance to review the transcript, we would like to call and talk with you to correct any errors, or to record any other information you would like to provide about the areas covered in the interview. Would you like to receive a copy of your transcript? ***Note response (email or address) on script cover page.***

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**WHEN INTERVIEW IS COMPLETE, IDENTIFY REIMBURSEMENT PLAN:** Say, *"As a thank you for the time you have taken to participate in this study, we would like to send you $100, or make a $100 contribution to a charity of your choice. Would you like us to mail a check to you? The check will come in an envelope from the University of Minnesota.* ***Ask for location to mail check, or information to process donation***

***"Thank you for participating in this study. Your responses have been very helpful. Do you have any final questions for me?"***

**IMPORTANT ALERT:** ***Please alert Dr. Edleson or Dr. Lindhorst if there is any information disclosed in the interview that might identify the current location of the mother and her children and subsequently endanger them. We will need to delete this information during transcription.***

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# ***Hague Domestic Violence Research Project***

*Schools of Social Work, University of Minnesota & Washington*

## ***Other Interview Script***

**Date: _____ Time Began: _____ Time Ended: _____**

**Interviewer Name: _____**

**Participant Code #: _____**

**Transcript desired? Yes No**
**Location for delivery:_____**

**Incentive desired? Yes No**
**Donation desired? Yes No**
**Location for delivery:_____**

**NOTES from phone contact:**

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***INSTRUCTIONS TO INTERVIEWERS***

This interview script is a guide. You do not have to read each word verbatim, and you may need to make slight adjustments in the pacing, tone, wording, and sequencing of the material as you see fits the participant and the situation. However, you must cover all content.

***Greeting for Other's Interview:***

This will be the first time you will have spoken with this person. Greet him/her professionally but with some sense of familiarity. Such as:

*"Hello, I am ___ (your name)___ from the Hague Convention Project at the School of Social Work at the University of _____. Thank you for agreeing to speak with us. Is this a good time to talk?"*

IF YES, continue to next section.

IF NO: "*Is there another time when we can talk uninterrupted for about an hour?"*

Then make the appointment and confirm the telephone number to call. Thank her/him and remind her/him of the time and date you will call.

*"OK, I will call you at ___(phone number)____ on __(date)__ at __(time)___. Is that correct? Will that work for you?"*

***Consent Procedures for Other's Interview***

Before asking any questions from the Interview Guide you need to confirm that s/he is eligible for the interview and confirm that he or she has read the Information Sheet and confirm his/her willingness to voluntarily participate. Ask if she/he has any questions regarding the information sheet.

IF CONSENT, continue with reading through the script below.

IF NOT, ask: *"How can I make this clearer for you?"* Continue only after you have clarified the judge's questions.

***Recording Consent***

Remind her/him that in the form we mentioned that we will be recording the Interview. Ask her/him:

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



*"I am now going to turn on our tape recorder so that I can ask you if you wish to participate in this study and record your answer. Are you in agreement with this?* IF YES, **TURN ON RECORDER.**

*"The tape recorder is now on. I want to remind you that the rest of our conversation will be audiotaped so we can make sure to capture all of your information accurately. Are you in agreement with the audiorecording?"*

IF NO, review with him/her our procedures and answer any questions s/he has about how information on the recording will be handled. If the respondent declines to be tape recorded, thank him/her for his/her time and end the interview.

***Recording Consent***

Be sure to confirm with respondent that s/he understands all the elements of the information sheet and agrees to voluntarily participate by asking:

*"I would like to now ask you for the record if you understand the procedures I have just covered with you on the Consent Form?* **Read the Participant Consent section at the end of the Other Information Statement. Ask her/him to confirm consent and state today's date for the record.** Move to Q3a.

Q1b: IF NO, ask: "What can I better explain to you?" And then answer any questions she has and return to *"Now that I have explained this to you, do you understand what I have gone over with you?"*

Q2: IF YES, continue with: *I would also like to ask you for the record if you voluntarily agree to participate in this study and the interviews in which we will ask you to be involved?"* **Read the Participant Consent section at the end of the Other Information Statement. Ask her/him to confirm consent and state today's date for the record.**

Q3a: **IF YES, continue to the Interview**

Q3b: **IF NO, end the interview and ask her/him to call back if she/he changes her/his mind in the future.**

## *Introduction to Other's Interview*

Let me tell you more about this interview. We hope it will be informal and conversational. It is designed for you to tell your story about Hague cases on which you have worked. You can stop me at any time to ask questions and if there is any question you do not want to answer you can just say "Pass" or something to indicate to me that you don't want to answer the question. You may stop the interview at any time you wish.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



Continue with interview guide.

## *Conclusion of Other's Interview(s)*

Do you have any questions for me at this time?

Thank you so much for taking your precious time to talk with us about Hague Convention cases. We really appreciate this.

In several weeks, we will have a transcript of your interview completed. We would like to have you review this transcript. After you have had a chance to review the transcript, we would like to call and talk with you to correct any errors, or to record any other information you would like to provide about the areas covered in the interview. Would you like to receive a copy of your transcript? ***Note response (email or address) on script cover page.***

**WHEN INTERVIEW IS COMPLETE, IDENTIFY REIMBURSEMENT PLAN:** Say, *"As a thank you for the time you have taken to participate in this study, we would like to send you $100, or make a $100 contribution to a charitable organization of your choice. Would you like us to mail a check to you? The check will come in an envelope from the University of Minnesota.* ***Ask for location to mail check, or information to process donation***

***"Thank you for participating in this study. Your responses have been very helpful. Do you have any final questions for me?"***

**IMPORTANT ALERT:** ***Please alert Dr. Edleson or Dr. Lindhorst if there is any information disclosed in the interview that might identify the current location of the mother and her children and subsequently endanger them. We will need to delete this information during transcription.***

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Appendix E

# Interview Guides

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Hague Domestic Violence Mother's Interview Guide

BEGINNING OF INTERVIEW: Please tell us about the events that led up to the Hague petition being filed. OR Please tell us your story of the situation related to the Hague petition.
PROBE: What happened next?

DECISION TO LEAVE: For many women in abusive relationships, there are many things to consider when deciding whether to leave the relationship or not. Can you tell me a little about what was most important to you in deciding to leave your partner?

- Probe: Reason to come to the US?
- Probe: Any other country considered?

RESOURCES/SUPPORT IN-COUNTRY AND IN US:
We are interested in both your perception of agency support or services that helped you, and what sources of help you actually used both in (Country) and in the US. Can you tell us more about this?

- Probe: Perception of domestic violence in (Country)?
- Probe: What was the best help received during the process?
- Probe: Other resources available in (Country) that she didn't use?

EFFECTS ON CHILDREN: What effect do you think this entire experience has had for your children?

- Probe: Children directly hurt?
- Probe: How did children experience the violence?
- Probe: In what other ways were they exposed to the violence? (see, hear, otherwise know about?)

STRATEGIZING FOR SAFETY: If you were to talk to another woman who lived in (Country) and was thinking of leaving her abusive partner to come to the US, what would she need to know and do?

- Probe: Any language barriers?
- Probe: How did her citizenship status in the other country affect her leave taking process?
- Probe: Are there any other things she did to advocate for herself or her kids? ie, media contacts

LEGAL PROCESS AROUND THE HAGUE: What was your experience with the legal system (police, attorney, courts) like? What is the current legal status of your child custody arrangements? Where are you now in regards to the legal process?

- Probe: How did she find an attorney? Was her lawyer knowledgeable about the Hague? about DV?
- Probe: What was the length of time and cost of her case?
- Probe: How was issue of DV raised in the case?
- Probe: Was a guardian *ad litem*, CASA or expert witness used in the case?
- Probe: Did her children testify? To what effect?

RECOMMENDATIONS:
1. Is there any advice you would give to mothers who are going through this experience to protect themselves and their children?
2. What changes in the process you've described might have increased you and your children's safety?

ENDING OF INTERVIEW:
1. Is there anything else you think I should know to understand your situation better?
2. Is there anything you would like to ask me?
   THANK YOU!

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Interview Guide for Attorneys**

**Experience with Hague Cases**

***Please tell me about your history and involvement in working with Hague Convention cases.***

**Domestic Violence**

***We know that there are differences in how people define domestic violence. We are interested in understanding how you define domestic violence in your work.***
***What has been your experience working with Hague Convention Cases involving domestic violence?***

- **Ask EITHER:** How do you assess for DV in these cases?
- **OR:** What would you need to see/hear from a client to decide that her/his situation included DV?

- **If the attorney has more than one Hague case,** How do cases with DV differ from non-DV cases?

How would you define a safe outcome for the women and children in these cases?

- What have been the barriers to getting this outcome(s)?

Could you tell us about your experience with the court ordering undertakings or Safe Harbor provisions for clients whose children are returned to other countries?
***We have heard from other attorneys that they are concerned about domestic violence being alleged in these cases when it is not true. What are your thoughts on this?***

- How serious is this concern from your perspective?
- What evidence would you look for to substantiate a claim of DV?
- What evidence would you look for to prove the allegations of DV were false?

Have you noticed if there is any relevance to the country/region where the Petitioner resides?

- If the attorney has multiple cases, ask about any comparison between different countries/regions.

**Experience with a Specific Case**

**(Now I'd like to turn to the case of __(Woman's Name))**
***Please give a summary of the key issues and concerns raised in the case of__(Woman's Name).***

- Describe the basis for your legal arguments in the case--describe your theory of the case and the pivotal legal issues
- What role did domestic violence play in the case?
- What was the hoped for outcome in this case?
- What concerns (if any) did you have for the children involved in the case?
- Was there any use of expert witnesses in the case? Was there a Guardian *ad litem* involved in the case?
- Describe the procedural timeline in the case.

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.


- Were their any barriers in this case that you think we should know about?

**Challenges and Recommendations**

***What has been the most challenging aspect of working on Hague DV cases? How did you meet that challenge?***

***What advice would you give other attorneys who are representing (Petitioners) Respondents in Hague Convention cases involving domestic violence?***

- Are there particular factors unique to domestic violence that should be considered critical?
- Under what circumstances would you use expert witnesses or guardian *ad litems* in these cases?
- What factors (i.e. evidence, legal strategies, etc.) are most important in creating safe outcomes for children and women in Hague cases?

***What changes would you recommend to improve the safety of battered mothers and children?***

- In the Hague Convention and/or ICARA?
- In the processing of Hague Convention cases?

***What supports and resources need to be in place when working on these cases?***

- For attorneys representing (battered mother) respondents?
- For attorneys representing petitioners?
- For domestic violence advocates?
- For judges ruling on these cases?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



**Interview Guide for Expert Witnesses & Others Involved With Hague Cases**

**Experience with Hague Cases**

***Please tell me about your history and involvement in working with Hague Convention cases involving Domestic Violence. (and What has been your primary role(s)?)***

**Domestic Violence**

***We know that there are differences in how people define domestic violence. We are interested in understanding how you define domestic violence in your work.***

**How do you assess for DV in Hague Convention Cases involving Domestic Violence?**

- **OR:** What would you need to see/hear from a client to decide that her/his situation included DV?

**How would you define a safe outcome for the women and children in these cases?**

- What have been the barriers to getting this outcome(s)?

**Could you tell us about your experience with the court ordering undertakings or Safe Harbor provisions for clients whose children are returned to other countries?**

***We have heard from attorneys that they are sometimes concerned about domestic violence being alleged in these cases when it is not true. What are your thoughts on this?***

- How serious is this concern from your perspective?
- What evidence would you look for to substantiate a claim of DV?
- What evidence would you look for to prove the allegations of DV were false?

**Have you noticed if there is any relevance to the country/region where the Petitioner resides?**

- If the person has worked with multiple cases, ask about any comparison between different countries/regions.

**Experience with a Specific Case**

**(Now I'd like to turn to the case of __(Woman's Name))**

***Please give a summary of the key issues and concerns raised in the case of__(Woman's Name).***

- Describe the basis for your arguments in the case--describe your theory of the case and the pivotal issues
- What role did domestic violence play in the case?
- What was the hoped for outcome in this case?
- What concerns (if any) did you have for the children involved in the case?
- Describe the procedural timeline in the case.
- Were their any barriers in this case that you think we should know about?

**Challenges and Recommendations**

***What has been the most challenging aspect of working on Hague DV cases? How did you meet that challenge?***

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



***What advice would you give other professionals (i.e. Expert Witnesses, GALs, etc.) who are involved with Hague Convention cases involving domestic violence?***

- Are there particular factors unique to domestic violence that should be considered critical?
- What factors (i.e. evidence, legal strategies, advocacy, etc.) are most important in creating safe outcomes for children and women in Hague cases?

***What changes would you recommend to improve the safety of battered mothers and children?***

- In the Hague Convention and/or ICARA?
- In the processing of Hague Convention cases?

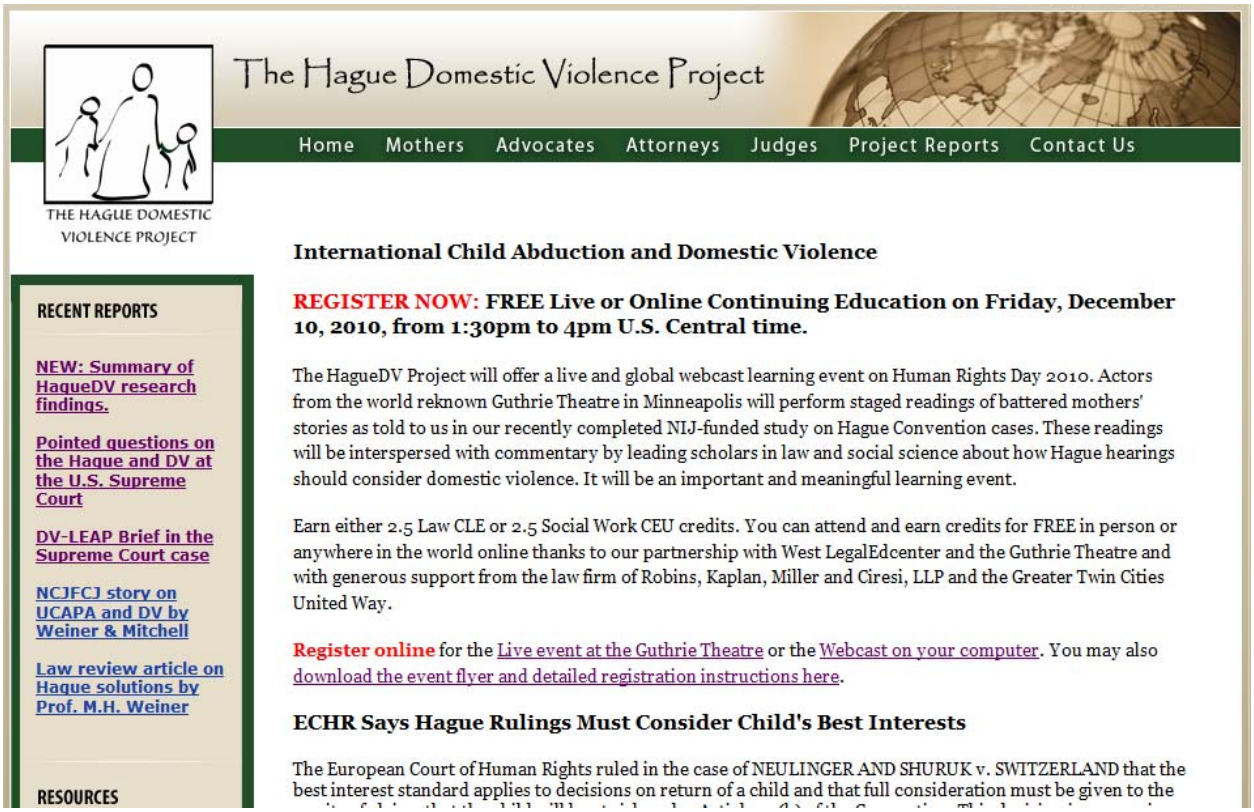
***What supports and resources need to be in place when working on these cases?***

- For attorneys representing (battered mother) respondents?
- For attorneys representing petitioners?
- For domestic violence advocates?
- For judges ruling on these cases?
- For Expert Witnesses and/or Other Professionals involved with these cases?

This document is a research report submitted to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.



# Appendix F

## Project Dissemination Website Homepage

## http://www.haguedv.org/