

ASCRIBE NEWSWIRE

May 27, 2004

Researchers Say Massachusetts Family Courts Fail to Protect Battered Women and Their Children; Study Applies Human Rights Analysis to Child Custody Cases Involving Domestic Violence

[Boston] – Taking a novel approach to the analysis of child custody awards in cases where domestic violence is involved, researchers at Harvard School of Public Health [HSPH] have documented what they argue is a recurring pattern of potential human rights violations by the state and a failure to protect battered women and their children.

Examining litigation in Massachusetts family courts involving a sample of battered women, the researchers found that the courts consistently dismissed or minimized the relevance of the male partners' abuse in awarding custody of children to such men.

The researchers cited numerous human rights treaties and conventions meant to protect women and children from violence including the UN Convention on the Rights of the Child and the UN Declaration on the Elimination of Violence Against Women. They argue that a human rights framework is an important tool for pressing the need for legal, social and political reform to address domestic violence and to protect women and children, the most common victims of such violence.

The analysis was performed by Jay Silverman, PhD, assistant professor of Society, Human Development and Health at HSPH, and colleagues and appears in the June issue of the *American Journal of Public Health* [<http://www.ajph.org/>]. Silverman is co-author of the book, "The Batterer as Parent" [Sage Publications, 2002].

Intimate partner violence and child abuse are increasingly recognized as major public health concerns in both the United States and around the world. According to the U.S. Department of Justice, one fourth of women in the United States are reported to be affected by intimate partner violence. In U.S. studies, male partners have been found responsible for one third of all homicides of women and half of all homicides of children.

Although there is increasing recognition of the great threat to children posed by men who perpetrate domestic violence, many family courts view such concerns as either irrelevant or a tactic to be ignored in cases of divorce, said Silverman. This failure directly leads to courts placing children in harm's way.

The researchers interviewed 39 women representing 10 of the 12 Massachusetts family court districts. The women were participants in the Battered Mothers' Testimony Project which drew women through social service agencies and legal providers serving battered

Researchers Say Massachusetts Family Courts Fail to Protect Battered Women and Their Children; Study Applies Human Rights Analysis to Child Custody Cases Involving Domestic Violence

women. The women all had experienced violence from an intimate male partner with whom they'd had children and had engaged in child custody litigation with the abusive ex-partner. As this study was an attempt to document human rights violations based on historic concerns regarding these processes from battered women and family violence experts throughout the country, women were also selected based on expressed dissatisfaction with the family court process. All possessed some kind of documentation of domestic violence [eg. police reports, witness affidavits, restraining orders, child protective service reports]. None of the cases involved women's abuse of male partners nor were there cases involving substantiated child abuse by the mothers.

Several themes emerged that corresponded to a consistent pattern of potential human rights violations by the Massachusetts family courts. According to the researchers, these included:

1. granting physical custody of children to men who had used violence against the mothers or both the mothers and their children
2. granting unsupervised visitation of children to men who had used such violence
3. failing to accept or consider documentation of domestic violence as relevant evidence in child custody determinations
4. failure to investigate allegations or consider documentation of child abuse

In light of international human rights declarations and treaties, wrote the researchers, the state family courts likely failed to sufficiently consider the "right to due diligence" as described in the UN Declaration on the Elimination of Violence Against Women; the "best interests of the child" as described in the Convention on the Rights of the Child; the right to "bodily integrity," a fundamental human right enshrined in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and the "right to equal protection" under the law described in the Universal Declaration of Human Rights.

"Battered mothers face a perilous irony," said Silverman. "Authorities push these women to leave abusive men in order to protect their children. But women who can make this break then face family courts, another authority that often ignores this history of abuse as a threat to children's safety and, perversely, concludes that women's attempts to protect their children from these men actually demonstrate their own lack of fitness as mothers."

"Although our laws increasingly urge courts to make domestic violence a primary consideration in deciding child custody, implementation of these laws is inconsistent at best, and will likely remain so, without strong oversight," said Silverman. "Placing a human rights framework on child custody decisions involving domestic violence clarifies the critical need to reform the system in order to protect the rights and lives of battered women and their children."

“This is an issue everywhere in the country,” he added, “and this same project is being conducted in several other states. This report is but one of many continuing attempts by organizations nationwide to make the voices of these women and their children heard.”

Major support for this study was provided by The Ford Foundation.

For more information, contact Robin Herman, Harvard School of Public Health Media Relations, 617-432-4752.

About Harvard School of Public Health

Harvard School of Public Health is dedicated to advancing the public’s health through learning, discovery, and communication. More than 300 faculty members are engaged in teaching and training the 900-plus student body in a broad spectrum of disciplines crucial to the health and well being of individuals and populations around the world. Programs and projects range from the molecular biology of AIDS vaccines to the epidemiology of cancer; from risk analysis to violence prevention; from maternal and children’s health to quality of care measurement; from health care management to international health and human rights.

CONTACT: Robin Herman, 617-432-4752.

Copyright 2004 AScribe Inc.