

WOMEN AND CHILDREN FIRST . . . WHY NOT BUILD ENOUGH LIFEBOATS?

**NEWS FROM THE FRONT: A REPORT ON THE
HONOLULU CONFERENCE “TWO SYSTEMS—ONE
FAMILY, BRINGING THE CHILD ABUSE AND
DOMESTIC VIOLENCE COMMUNITIES TOGETHER”
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INTRODUCTION

For nearly a year, a multi-disciplinary team of professionals designed and sponsored a conference intended to develop a stronger and more effective working relationship between women's rights advocates in the domestic violence context and child protective advocates.

Conference presenters included Victor La Cerva, M.D., Medical Director for the New Mexico Department of Health's Family Health Bureau, and Linda Spears, Director of Child Protective Services for the Child Welfare League of America.

I was asked to design case scenarios (See Appendix, p. 47) which were reviewed and discussed by a panel of professionals, including representatives of law enforcement, the courts, child protective services, women's shelters, and individuals playing the roles of mom, dad, and child. The conference closed with individual community groups working on designing a plan for their community whereby women's rights and child protection advocates could work together.

When I was seven or eight years old, I sat with my family one Saturday night and watched the movie “Titanic,” the version starring Clifton Webb and Barbara Stanwyck. As the boat was going down, the unwritten and pervasive law that women and children went first into the lifeboats raised a conundrum for me. I was glad I was still a child so that I could get a space on

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the boat, but I was still male and thought perhaps I should give up my space. Worse yet, as that perilous thought came into my mind, I realized that my father would be left behind to drown. Should all the parents and kids get to go first, I wondered. My resolution was that they really needed to build enough lifeboats for everybody.

Interestingly, if one reviews the passenger and survivor lists, one learns that, in reality, the survivors included a good number of men, many of whom seem to have been in First Class. A conflict thus exists between my perception and the reality.

The conference and this article are an attempt to reconcile at least a piece of the conflict that exists between what is perceived about child protection services and the nature of domestic violence, and what is real. I still think, however, that we should build enough lifeboats for everyone to be free from the sinking ship of family violence.

I. EFFECTS OF WITNESSING DOMESTIC VIOLENCE ON CHILDREN

A growing body of clinical evidence is emerging with respect to the harm experienced by children who observe incidents of domestic violence or live in a home where violence is occurring. It is problematic that no clear definition of abuse exists and that the clinical assessment tools utilized to determine whether “abuse” has occurred in the child-protective context are imperfect at best and often defective. One certainty is that the harm caused to children living in an environment of domestic violence, even if they are not the target of the abuse, must not be ignored. Children exposed to domestic violence experience higher levels of aggression and lower socio-emotional and academic competence than children who are not exposed to domestic violence. As many as fifty-one percent show symptomology consistent with Post-Traumatic Stress Disorder (PTSD).¹

A portion of Dr. La Cerva’s presentation addressed the significant number of children diagnosed with Attention Deficit Hyperactive Disorder (ADHD), Oppositional Disorder, or some other behavioral diagnosis which overlooks the presence of PTSD. In reflection, the significance of this misdiagnosis is two-fold. First, the method of treatment for a child with PTSD is entirely different than the treatment modality for other disorders, and, second, the etiology of PTSD invariably implies exposure of the child to a trauma rather than an organic dysfunction.

¹ Kimberly L. Shipman et al., Co-Occurrence of Spousal Violence and Child Abuse: Conceptual Implications, 4 *Child Maltreatment* 93, 93-102 (1999).

The symptomology of PTSD includes numbing response to the outside world, constriction of emotions, reduced involvement with play, dissociative states, foreshortened view of the future, flashbacks or intrusive recollections of the traumatic event, reenactment through play, avoidance of traumatic cues, difficulties with concentration, autonomic disturbances, hyperalertness, hyperarousal, sleep disturbances, and distractibility.²

The nature and degree of these symptomologies is affected by factors such as age, gender, familiarity, frequency and proximity to the event. For instance, younger children are more vulnerable to negative effects than older children, boys often exhibit more overt behavioral problems after exposure than do girls, children are more affected by perpetrators and victims known to them, chronic exposure is more detrimental than a single episode, being closer to the event is more harmful than being further away, and the graver the harm to the victim, the greater the trauma to the observer.³

These factors are important to consider in determining whether a particular child exposed to domestic violence is harmed to such a degree as to require Child Protective Services intervention. An additional factor which must be considered is the willingness, capacity and ability of the child's primary caretakers to address these issues if the nature and degree of harm requires such intervention. Further, the type of intervention (in other words, the Child Protective Services response) ought to be commensurate with an accurate assessment. Legislatures and courts must provide the legal and practical means to appropriately respond to family violence.

In addition, consideration must be given to the risk that children will be physically harmed. Children living in partner-abusive homes are at a fifty percent greater risk of at some point being physically abused themselves than children living in nonviolent homes.⁴ A significant portion (twenty-eight percent) are being abused by their mothers who are themselves victims⁵ and often these children's fundamental needs are being ignored.⁶

² See Marilyn Augustyn et al., Silent Victims: Children Who Witness Violence 49 (1994).

³ *Id.* at 50.

⁴ Victor La Cerva, Pathways to Peace: Forty Steps to a Less Violent America 27 (1996).

⁵ National Clearinghouse on Child Abuse and Neglect Information, In Harm's Way: Domestic Violence and Child Maltreatment, 3 (visited Jan. 24, 2000) <<http://www.calib.com/nccanch/pubs/otherpubs/harmsway.htm>>.

⁶ *Id.*

Finally, there is a greater likelihood that parents who are victims of domestic abuse may neglect their children. One reason for this is that the battered parent may need to give full attention to the abusive partner in an effort to control the levels of violence. A battered parent may also be unresponsive to the children's needs due to their own fears.⁷

Children who are neglected may show physical signs including failure to thrive, developmental delay, and listlessness. Behavioral problems caused by neglect may include stealing, begging, eating inappropriate objects, erratic school attendance, vandalism, drug use and drinking.⁸ In children under the age of three, neglect may result in organic brain dysfunction.⁹ It is worth noting that the long-term effects for children living with domestic violence is somewhat gender-specific. Boys who witness their parents physically attack each other are three times more likely to hit their own spouse than boys growing up in nonviolent homes. Girls who witness their mothers being abused are more likely to assume the role of victim in future relationships.¹⁰

It is these children who are equally victimized. These are the children who grow up to become abusers and victims of abuse. This is where we must concentrate as much focus, energy and resources as are necessary to break this terrifying cycle of abuse. As a society, we have failed these children. We have failed them as adults. All too often, knee-jerk responses further polarize and isolate families, causing further harm to both men and women while ignoring the fundamental emphasis which must be placed on protecting children.¹¹

⁷ See generally *In Harm's Way*, *supra* note 5.

⁸ *Id.*

⁹ Bruce Perry, M.D., Ph.D., Presentation: The Developing Brain, 12th National Conference on Child Abuse and Neglect, Cincinnati, Ohio (November 1998).

¹⁰ Audrey E. Stone & Rebecca J. Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 Harv. Women's L.J. 205 (1997).

¹¹ See generally La Cerva, *supra* note 4.

II. UNDERSTANDING THE BATTERED MOTHERS DILEMMA

In the course of social, psychological and judicial practice within the child protection and criminal contexts, it is essential to accept and understand the dilemmas and psycho-dynamic complexes which affect battered mothers. This is not to say that we should ignore the mother's responsibility to protect her children, but an understanding of the effects of battering helps professionals of all the disciplines working with a particular family to utilize more appropriate and effective means of protecting children living in violent homes without creating more problems for them by re-victimizing their mothers.

We must also accept and understand, as noted in Section I regarding the effects of domestic violence on children, that not all circumstances of domestic violence are the same. Therefore, several factors must be adeptly assessed in order to determine what is truly motivating a mother's action or inaction so that we can employ a proper set of responses.

The two scenarios presented at the conference for the panel's discussion indicate different patterns of behavior.¹² With respect to Scenario I, the Panel addressed the mother's (Carol's) incapacity to act due to fear, a belief that the violence would escalate if she tried to leave or intervene, her economic situation, lack of support from family or friends, and feeling like she had to choose between her husband and her children. In Scenario II, the mother (Alice) is a victim of abuse at the hands of her ex-husband (Ted), but she is not exhibiting behavior consistent with paralytic fear. Further, it was revealed as the discussion progressed that the red marks on "Junior's" neck and shoulders were caused by Alice, who is also suffering from heroin addiction and the long-term effects of chronic sexual abuse as a child. While some of the issues Carol and Alice face are similar, their circumstances and behaviors differ significantly enough to require different responses.

Scenario I is problematic because Carol is not seeking any help and is mistrustful of the "system," finding it to be intrusive and causing the breakup of her family. The civil and criminal justice system as well as child protective agencies must come to terms with the reality that many battered mothers reasonably believe that the level of violence in their home will escalate if they take steps to leave the relationship or intervene in any way in disciplining the children.¹³ Even when a mother justifiably believes her action will cause

¹² Indeed, in my practice as a *guardian ad litem* in child protection cases, I find that Scenario II is far more typical, with the exception that the father is more likely than not also abusing the children.

¹³ See generally Mary E. Becker, *Child Abuse and the Law: Double Binds Facing*

further harm and/or is simply psychologically incapacitated by fear, some form of intervention is necessary to protect the children. Determining which entities need to intervene and the nature and degree of that intervention requires meaningful collaboration from a multi-disciplinary team of professionals. The situation clearly cannot be ignored. As discussed in the prior section, even when children are not the targets of the abuse, they are at risk of physical abuse and are being psychologically harmed by living in a violent home.

There are other reasons why mothers do not leave abusive situations which may accompany the paralytic fear/escalation belief dynamic or which may exist independently of the extreme incapacity to act (the most extreme incapacity being the case where the abusive partner has severely brutalized or actually killed the mother).¹⁴ For example, in Scenario I, though Carol truly is experiencing the fear/belief complex, there are other reasons why she does not leave. As it turns out, her mother is telling her she should stay because it's the "right thing," she has no financial resources, she loves Bob and believes he will change, and she is afraid of involving the "system."

These types of additional reasons why mothers do not leave their abusers¹⁵ may exist without the belief that the violence will escalate or that personal injury will result. In these circumstances, the nature and degree of intervention necessary is different from a belief/fear paradigm.

In Scenario II, the panel addressed a different set of circumstances. In this Scenario, Alice is addicted to heroin and is physically abusing her son, Junior, but is seeking help from the local Women's Shelter. This generates discussion about factors which people are uncomfortable talking about. Forty-three percent of women who are abused by their partners abuse alcohol and/or other drugs.¹⁶ Battered women are at least twice as likely to abuse their children physically than are women who are not abused,¹⁷ and twenty-eight

Mothers in Abusive Families: Social Support Systems, Custody Outcomes, and Liability for Acts of Others, 2 U. Chi. L. Sch. Roundtable 13 (1995).

¹⁴ This comment is inserted into the discussion because so many women are killed by their abusive partners. The fear in most cases is very real—what they are afraid of is real. Leaving is the most dangerous period and the time when a woman is most likely to be injured or killed. See La Cerva, *supra* note 4, at 27.

¹⁵ See generally Becker, *supra* note 13.

¹⁶ Judge Peggy Hora, Presiding Judge, Haywood County, Drug Court Division, Symposium: Protecting Children of Drug Abusing Parents, Wailea, Hawaii (February 11, 2000).

¹⁷ See In Harm's Way, *supra* note 5, at 3 (citing M.A. Strauss & R. J. Gelles,

percent abuse their children while living with violence.¹⁸ Abused mothers are eight times more likely than non-abused mothers to discipline by way of corporal punishment.

Moreover, the correlation of drug use as a material contributing factor to the harm caused to children in Child Protection Act petitions filed in the State of Hawaii is approximately eighty-five percent.¹⁹ Alcohol and other drug use as well as unemployment appear as some of the most substantial risk factors accompanying domestic violence.²⁰

While this entry into the darker side of family violence is unappealing at best, we must face the reality that many abused women abuse alcohol and/or other drugs and “actually neglect”²¹ and/or physically abuse their children. Again, the nature and degree of intervention needs to address specific factors which contribute to children being harmed.

III. THE BATTERING MAN

A significant portion of the panelists’ discussion, particularly Dr. La Cerva’s position, was that men need to be held accountable for the harm they cause. However, the focus of the general discussion was primarily upon the needs of the children and the condition and responsibilities of the mothers, Carol and Alice, with little attention, positive or negative, being paid to the fathers, Bob and Ted.

In order to arrive at an effective determination of appropriate intervention for the abusive male partner, it is important to determine why men abuse women.²² Why do men abuse the women they supposedly love?

Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families (1990)).

¹⁸ See In Harm’s Way, *supra* note 5, at 3 (citing L. E. Walker, The Battered Woman Syndrome (1984)).

¹⁹ Hawaii Department of Human Services, Report on Parental Drug Use in Child Welfare Cases (January 2000).

²⁰ See Demetrios N. Kyriacou, M.D. Ph.D. et al, Risk Factors for Injury to Women From Domestic Violence, New England Journal of Medicine, December 16, 1999.

²¹ I use the term “actually neglected” to refer to cases where children’s physical and emotional needs are not being met as opposed to “findings of neglect” or “failure to protect” in cases where the mother suffers from the belief/fear dilemma.

²² What ought to be obvious by now is the blatant “genderization” of this discussion due to the fact that domestic violence as partner/spousal physical abuse almost inevitably involves a male perpetrator and a female victim. The nature of the beast is gender-specific. This

Because they are power and control freaks? Because they subscribe to a system of beliefs and values that relegates women to roles less worthy of attention than their lawnmowers? Because it is the only way they know how to deal with guilt and fear? Because they grew up in violent homes or because they are drunk and out of work?

If we truly want to stop the violence in our homes then it is important to understand that not all batterers are motivated by the same set of factors and that not all batterers need to remain locked into that pattern of abuse for the rest of their lives. Most men batter because they have internalized a belief system which allows them to batter. While historical and societal cues may foster an acceptance of battering, it is the direct personal experience with violence as a child which most pervasively affects the tendency to wield ruthless power and inflict pain. If we then add alcohol and other drugs to the mix, and the stresses that accompany poverty, we have a potent formula for unfettered rage.

Because of their inexperience in recognizing, allowing for, and expressing a wide range of human emotions, many young men channel all their uncomfortable feelings into anger, the approved emotion for males. This scenario begins in childhood, when the expansive keyboard of feelings—including guilt, shame, rejection, anxiety, loneliness, hurt, fear, depression, and even joy, wonder, and enthusiasm—are ignored, denied, suppressed, or medicated away with drugs. By adolescence, the accumulation of unexpressed feelings, augmented by body sensations of frustration and tension, translates into anger. In some individuals, this anger seeks release in rage or violent actions. In others, the hostility is directed inward.²³

creates particularly disturbing attitudes in children and the resulting gender role identifications persist through adolescence and into adulthood. In a truly just society, adults, be they men or women, ought to be held appropriately accountable for actions that harm others, taking into consideration exculpatory, mitigating and aggravating circumstances. Additionally, these men and women deserve to be provided with the most appropriate means necessary to heal their families. We can have the greatest impact on children keeping them peaceful and safe, and enabling them to provide a peaceful and safe home for their own children.

²³ La Cerva, *Pathways to Peace*, *supra* note 4, at 21.

IV. RESPONSES TO FAMILY VIOLENCE

In a society that espouses access to justice and freedom from unwanted governmental interference with citizens' lives, the occurrence of domestic violence in homes where children reside presents challenges for legal, medical, mental health, and shelter professionals and practitioners, as well as the community at large.

In Scenario I, if the child, Jenny, had not been physically harmed, Child Welfare Services in Hawaii would not have filed a petition for Temporary Foster Custody or Family Supervision (where the children remain in the home under a service plan, but the Family Court retains jurisdiction over the children). Based upon the definition of harm contained in Hawaii's Child Protection Act²⁴ and the Risk Matrix Assessment Tool used by Child Welfare Services, this case would be referred for "diversion."²⁵ The effectiveness of the diversion program remains to be determined as it was implemented less than a year ago. Prior to diversion, this case would have been closed because the harm or risk of harm to the children would not be severe enough to warrant filing a petition with the Family Court for Foster Custody or Family Supervision. Given what we now know about the trauma experienced by children living in violent homes, the lack of a legal apparatus to address this situation effectively is remarkable. Further, the lack of an assessment tool that considers the parents' and children's global needs is of questionable wisdom.²⁶ Hawaii should be applauded for instituting the diversion program.²⁷ It is a very positive step. The problem with diversion in this case is that Carol is in overt and possibly internal denial about the seriousness of the abuse she is experiencing and the effect it is having on her

²⁴ Haw. Rev. Stat. § 587 (1999).

²⁵ Diversion refers to low-level, home-based counseling services.

²⁶ This is particularly so when assessment tools exist that more accurately reflect the nature and degree of harm experienced by children in a particular home. The Assessment Tool designed by CIVITAS in Houston is one example. It needs to be noted, however, that no assessment model is perfect. And, of course, there is another consideration: the cost of implementing and administering a very sophisticated assessment model. Are our children worth it?

²⁷ Hawaii also has instituted Ohana Conferencing, and, on a smaller scale, the Navigator program, which was initiated with the assistance of the Legal Aid Society of Hawaii. "Ohana" means (among other things) "family" in Hawaiian. The Navigator program utilizes "hooponopono" which is a traditional Hawaiian practice of conflict resolution. Both programs are showing successes and ought to be expanded.

children. Given her denial and unwillingness to separate from Bob, it is unlikely that diversion will succeed. Therefore, even if the diversion services are unsuccessful at breaking through the denial and restoring family peace, no petition would be filed and the case would be closed.

While this issue must be addressed, a major concern for most conference participants is what statutory response Hawaii will make. The concern is that certain legislation could place an undue burden upon mothers who are legitimately paralyzed by fear and reasonably believe that the violence will worsen if they leave. The challenge for legislators is to adequately address the concerns for safety of the children without holding a mother in this circumstance criminally liable, or finding an “unsafe home due to [her] negligence” and/or “failure to protect” her children.²⁸ Concurrently, in making their decisions, legislators cannot ignore the harm to children who witness violence and the risk that these same children will be physically harmed.

Child protection act statutes must include specific provisions identifying the witnessing of domestic violence as a harm in itself. This harm is directly caused by the abusive household member. The victim of the abuse should not be held neglectful or responsible for failing to protect the children in this situation. Statutory allowances must also be provided where the victim reasonably believes that the violence would escalate in response to action contrary to the abuser’s wishes, and where no reasonable alternative exists. Child Protective Services must act to protect the children, but must also consider the incapacitated victim.

On the criminal side, there does not appear to be any movement in Hawaii toward holding a woman in Carol’s dilemma criminally responsible for the harm to her children that was caused by an abusive partner. Further, the Maui County Office of the Prosecutor and the Maui Police Department are working to achieve “victimless prosecutions,” whereby the State pursues the case on its own accord with a thorough initial investigation, the gathering of evidence, and use of forensics and collateral witnesses, negating the need to make a woman like Carol the State’s star witness.

²⁸ See generally V. Pualani Enos, Prosecuting Battered Mothers: State Laws’ Failure to Protect Battered Women and Abused Children, 19 Harv. Women’s L. J. 229 (1996); Amy R. Melner, Rights of Abused Mothers vs. Best Interest of Abused Children: Courts’ Termination of Battered Women’s Parental Rights Due to Failure to Protect Their Children From Abuse, 7 S. Cal. R. L. & Women’s Stud. 299 (1998); Stone and Fialk, *supra* note 8; Karen D. McDonald, Michigan’s Efforts to Hold Women Criminally and Civilly Liable for Failure to Protect: Implications for Battered Women, 44 Wayne L. Rev. 289 (1998); G. Kristian Miccio, A Reasonable Battered Mother? Redefining, Reconstructing, and Recreating the Battered Mother in Child Protective Proceedings, 22 Harv. Women’s L.J. 89 (1999).

Other problems persist, however. An abuser, such as Bob, if charged, will most likely be out on bail, without any intervention or monitoring. On the other hand, if a child, such as Jenny, is physically harmed, a petition would be filed and, upon the evidence, the Family Court would most likely find that the child was harmed and that the home is safe only with the assistance of services.²⁹

A problem arises when the parents are actively and effectively responding to services and suddenly face a prosecution that may carry mandatory incarceration³⁰ and is contrary to the entire family's well-being. For example, in Scenario II, the Office of the Prosecutor now becomes the abused woman's (Alice's) enemy, prosecuting an array of charges against Alice.

Outside of the legal context, one barrier to overcome is the polarized roles of child protection workers and women's advocates. Neither can be effective without the other. In order for child protection workers to protect victimized children from harm they must truly understand the dynamics of domestic violence. Further, if you can end the abuse, rather than punish the mother, you help the children as well. Advocates for women's rights also must understand the rights of the children to be free from harm, and must accept the fact that in a significant number of domestic violence cases, the mother's behavior also directly causes harm to her children. It is surely insufficient to empower or liberate a woman from an abuser while ignoring her own abusiveness.

We must also accept that many women in abusive relationships choose not to leave these relationships for reasons other than fear, such as lack of financial independence. An example of a truly empowering and liberating opportunity for women in abusive relationships exists daily at Cleveland Works, Inc. Cleveland Works is a first-rate welfare-to-work agency in Cleveland, Ohio, which helps about 500 people a year get off of public assistance and into full-time, well-paying jobs with health benefits.

Cleveland Works began its operation in 1986 and has maintained a retention level of over eighty percent³¹ since that time. Cleveland Works' approach is comprehensive and coordinated. It houses a legal department, a

²⁹ Haw. Rev. Stat. § 587 (1999).

³⁰ This is a general plea to return sentencing decisions to the judge. If the problem is with the judges, then get better judges; do not take authority away from the judges who have the capacity to make reasoned and just decisions in a particular case.

³¹ Retention refers to the number of people who have been placed into employment situations and have not returned to public assistance.

health clinic, a family development center and substance abuse counseling. Along with job readiness training, general math and English skills are taught, and specialized job training is provided in areas such as medical terminology and asbestos removal subject to market demands. It serves men and women from an array of referral sources. All are poor when they get there and most have issues with drugs and violence.

As Director of the Legal Services Department for eight years, I had the opportunity to work with hundreds of women who were in violent relationships. We began experiencing a perplexing problem: once a client began to look better, feel better about herself, and had developed skills and courage sufficient to interview for a job, she would receive a beating prior to the job interview. Our response was to alert all of our clients to this reality.³² We helped to develop safety plans and offered to provide services to partners if both so desired.

In most cases, for those whose partners were not interested in getting help, our client was able to leave the situation safely. For the men who did come into the program, remarkable changes occurred when they realized the dignity of contribution and experienced the rewards of their labor. Economic independence is crucial to a family's well-being. The point I would like to make here is that the Department of Labor and the welfare-to-work division of Human Services Departments need to be at the same table with the child protection and women's rights advocates because we serve the same people.

Additional effective collaborations need to be formed with the Departments of Health and Education, with substance abuse treatment providers, the courts, legislatures, businesses and faith-based organizations. These collaborations are especially important in light of the shortened time frame in which parents must successfully complete services and demonstrate that they can provide a safe home at least with the assistance of services.

In Hawaii, the Family Court must set an Order to Show Cause Hearing no later than twelve months from the date a child is first removed from the home.³³ The parents bear the burden at this hearing to demonstrate by a preponderance of evidence why the case should not be set for a

³² We refer to this as the "Cleveland Works Syndrome."

³³ Haw. Rev. Stat. § 587-72 (1999).

Permanent Plan Hearing. Even if the parents are successful at the Order to Show Cause Hearing, the Permanent Plan Hearing must be set if the child has been out of the home for fifteen of the last twenty-two months. The State then bears the burden by clear and convincing evidence to demonstrate that the parents are not willing and able to provide a safe family home even with the assistance of a service plan or will not be willing and able to provide a safe family home even with the assistance of a service plan within a reasonable time, with the time not to exceed two years.³⁴

The rationale for this time frame is the reluctance of the state to leave children in foster care for long periods of time without a stable or permanent environment. This time frame presents problems, however, for parents with the complex set of human behaviors examined throughout this article. This is particularly true for parents with substance abuse issues, especially when there exists a co-occurring mental disorder.

Thus, it is essential that we minimize systemic entropy and chaos and maximize the accuracy of our assessments, the quality of the services we provide, and the expeditious delivery of those services. The women's shelters cannot do it all, and Child Welfare Services cannot do it all (at least not with current budget appropriations). Other resources, be they financial or in-kind, must be brought to bear to provide meaningful opportunities to heal families.

One notion which has received multi-disciplinary interest is the application of the "Drug Court" model in the child protection context. There are presently about 400 "drug courts" across the nation in the criminal justice system. Drug Courts are far less expensive than incarceration, and recidivism rates vary between two percent and twenty percent, far below the recidivism rate for incarceration.³⁵

Batterers who also have substance abuse problems must complete a fifty-two week concurrent and complimentary modality of services treating both the battering behavior and the substance abuse. Failure to comply results in incrementally harsher consequences. These programs have proven to be less expensive and more effective than incarceration in altering human behavior. There are only about twenty drug court models utilized in child protective proceedings, and I recommend them.

³⁴ Haw. Rev. Stat. § 587-73 (1999).

³⁵ Hora, *supra* note 16. Drug Court is an intensive court experience for probationers. Initially, they appear weekly before the judge with a quantity of drug screens.

V. CONCLUSION AND RECOMMENDATIONS

In closing, myriad recommendations flowed from both the various focus/working groups, and Linda Spears. In short, Spears emphasized the importance of looking at our differences in a systemic way rather than personalizing them. We must gain a complete understanding of each other's values, resources and limitations. Indeed, when we do so we find that we share the most important values: safety, empowerment, and the prevention and cessation of family violence.

Specifically, we must minimize "failure to protect" allegations against victims, hold batterers accountable, and help victimized mothers keep their children safe. We must talk and listen to each other and to our clients. We must understand what we mean when we speak and make sure our clients understand. If there is a misunderstanding or miscommunication, let's find out why and reveal the basis for it, before we make faulty assumptions. We should learn from each other and from our clients.

A community, a society, a nation, has no greater resource than its children. The way we teach and treat our children has a greater impact upon the rise, the fall, and the evolution of civilizations than any other single element. We were them, and they will be us. Their voices will be heard. If not now, then we will hear them later, yelling and crying in the night. Let us listen to their voices now rather than later. They have something important to tell us.

APPENDIX: PANEL DISCUSSION—SCENARIO I

Bob and Carol live in a well-kept two-bedroom home in Wailuku, Maui with their three children: Jenny (9), Bobby (5) and Max (six months). Bob is an assistant print designer at the Maui News. The couple married right after high school. Carol became pregnant soon thereafter and has stayed at home and served as primary caretaker of the children. Bob controls all of the family's assets and handles all of the finances. While both Bob and Carol are loving parents, Bob often goes out with his friends, leaving Carol to care for the house and children. Other than Bob, the people closest to Carol are her mother and sister who live in the same neighborhood and visit regularly.

At times Bob can be very loving and caring towards Carol, and at other times he becomes viciously angry with her. The worst incident was two months ago when Bob returned home from a Saturday out with his friends and began yelling at Carol because he was hungry and there was no food in the house. He started taking the food that was in the refrigerator and throwing it around the kitchen calling it "slop," "not fit for pigs," and demanded that Carol clean it up. Carol picked up Max from the crib and gathered Jenny and Bobby together. "I'm going to my mom's," Carol said as she walked out the door. As she was about to get into the car, Bob grabbed her by her shoulder, turned her around and smacked her across her face with the back of his hand.

"You're not going anywhere unless I tell you to go. That's my car. I paid for that car. Now get back in there and clean up that mess." When Bob hit Carol, she was holding Max in her arms but managed to keep from falling. Max began to cry and Carol brought him back to his crib. Jenny and Bobby witnessed the entire scene. They had seen it before, but it had never been this bad. Carol refused to clean up the mess Bob had made and said she could go to her mom's if she wanted. Bob proceeded to beat her. Her cheekbone was fractured, and she had lacerations around her eye. In response to yelling and crying, concerned neighbors called the police. When they arrived, Bob told Carol that if she said anything, he would kill her. "Thank God you're here, my wife fell down the stairs. She needs to get to the hospital."

Carol, terrified, confirmed what Bob had told the police. While the police and the emergency room physician suspected abuse, Carol held to her statements and explained that everyone was frantic when she fell and that's why there was so much noise. She kept saying she didn't want to go to the hospital, but her husband was mad and told her she had to go.

The night before last, the police again were called to Bob and Carol's house. This time she had bruising under her eye on the other side of her face. She told the police she walked into the door as Jenny was coming through the other way. Jenny also had swelling and bruising on one side of her face. Jenny told the police she was hit by the door when it swung back from hitting

her mom. The police took Carol and Jenny to the emergency room. Carol complained about how stupid she was for walking into the door and causing so much trouble for everyone.

The police officer and the same emergency room physician who treated Carol before called Child Welfare Services and notified the domestic violence unit. A CWS investigator went to the house the next day and spoke with Carol and Jenny. Both held fast to their stories. The worker also spoke to Bobby separately. That's when Bobby told the worker, "Daddy hit Mommy really hard. And Jenny got in his way and got hit by accident."

The CWS investigator took the children into protective custody.

PANEL DISCUSSION - SCENARIO II

Alice arrived at the Island Women's Shelter last night with three of her five children:

Junior, age eight; Maile, age six; and Rose who is six months and is exhibiting signs of developmental delay.

Alice's two other children Crystal, age sixteen, and Brent, age fourteen, have been on the run for about two weeks. This is the third time in twelve months that they have been on the run. Crystal and Brent's father, Daniel, is in prison in California on drug and assault convictions.

When Alice arrived at the shelter, she explained that her ex-husband Ted had been drunk and had punched her several times in the face. She also explained that this happens about once a month, but the beatings are becoming more frequent and more severe.

Her eye is beginning to exhibit the colors of the deep bruising she had suffered the night before, and the shelter has arranged for her to see a doctor.

The shelter is also going to help her file for a Temporary Restraining Order against Ted, and the hearing is set for tomorrow.

Ted was abused as a child and was raised in foster care since he was thirteen. He drinks more than a six-pack of beer a day during the week, and much more during the weekend. He had been in and out of trouble as a child, mostly for shoplifting and drinking. He has two children by a prior relationship. He and the mother of his children were never married and they separated because he was abusive within the relationship, but no charges were ever brought against him for violence. Ted works intermittently in construction. He is presently out of work.

Three years ago Ted and Alice were divorced. Ted was awarded legal and physical custody of Junior and Maile since Alice was incarcerated at the time on a felony drug possession conviction. Ted and Alice reunited after she was released from prison, and Rose was born one and a half years later. Alice is presently on probation.

When they were children, Alice and her sister were chronically abused sexually by their father. While Alice has struggled with alcohol abuse since she was fifteen years old, her drugs of choice are cocaine and heroin, often using them together. Alice claims that she is not presently using alcohol or other drugs. Several years ago, Alice sporadically engaged in therapy for what she states was depression. Alice is currently under investigation for distribution of narcotics.

Two days ago, Child Welfare Services received a report by a neighbor who described having seen red streaks on Junior's upper arms and shoulders. The neighbor reported to a Child Welfare Services worker that when she asked Junior about the marks he replied, "I fell off a chair." The same neighbor also reported that Alice frequently swears at Crystal and recently slapped her in the face. The school reports that neither Junior nor Maile have been in school all week and are often absent.

The CWS worker assigned to investigate the case visited the home twice, but no one was present for either visit. On the third visit, Ted informed the worker, "That bitch is on drugs, and she took my kids." The worker also discovered that a hearing was set the next morning on the TRO. The CWS worker is on the way to the shelter to see if Alice and the children are there. The worker has alerted the police for backup in the event a determination is made to remove the children.

