

Keynote Address

MARY BECKER*

Paige Hoyt: I would like to introduce our keynote speaker, Professor Mary Becker from the DePaul University College of Law. She is a nationally recognized scholar of feminism in the law. Among many of her awards and professional service to the community, she was the Arnold I. Shure Professor of Law at the University of Chicago School of Law where she began teaching in 1982. She clerked for the Honorable Abner Mikva in the D.C. Court of Appeals, and the Honorable Louis Powell, Jr. of the United States Supreme Court. As a visiting professor, Professor Becker has taught at Harvard, Northwestern, Georgetown, DePaul and Chicago-Kent. She has written and lectured extensively on numerous topics, and is one the organizers of the Illinois Clemency Project for Battered Women. She has numerous publications to her name. She is a prolific author. The textbook that is relevant to our topic today is *Cases and Materials on Feminist Jurisprudence: Taking Women Seriously*, and *The Passions of Battered Women: Cognitive Links Between Passion Empathy and Power*. Without further ado, I would like to welcome Professor Mary Becker to the podium.

Mary Becker: Thank you very much. It's an honor to be here today and have the opportunity to talk for forty minutes where everybody on the panels only gets to talk for five minutes. What I want to talk about today is an opportunity I think we have right now in Illinois. We have a democratically controlled House and Senate, a Democrat in the Governor's Mansion, and most important for the first time in Illinois history, we have a woman as Attorney General. A woman who is firmly committed to lessening levels of violence against women and children. Right now of course, the Governor and the legislature are totally obsessed with the budgetary crisis. But in a year or two I think there is going to be a window of opportunity where it would be possible to imagine an omnibus domestic violence bill being enacted by the Illinois legislature. And I want to talk about four major areas that this bill could address. One would be increased responsibilities for the Attorney General's office; making the Attorney General's office responsible for a domestic violence report card, and I am going to be talking about what would be in that, on a yearly basis; making the Attorney General's office responsible for a post mortem review

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when a woman is killed by a domestic partner, and also making the Attorney General's office responsible for some electronic databases that I will be talking about that are a problem in the area of domestic violence in Illinois now. Second, I'm going to talk about the need for a battered woman shield statute and a battered woman expert Statute. Third, and Fourth, and very briefly a little bit about the need for changes in custody, and with respect to the Department of Children and Family Services ("DCFS") because of domestic violence problems.

Now some of these ideas are new. No state has domestic violence report card and no state has a battered woman shield statute or a battered woman expert statute. And I'll be talking about why both are needed and what both could look like. Some of these areas are not new, and are areas in which Illinois could learn from other states. For example, when it comes to custody statutes that are better for victims of domestic violence, and DCFS requirements in dealing with domestic violence cases.

Because of the budgetary crisis, in thinking about this bill we should focus on only a limited set of the thinks we would like. Even in a year or two, we are not going to be flush with tons of extra money to spend. And I think we should try to focus on changes that would be revenue neutral, or that would be fiscally wise for one of two reasons; they could be fiscally wise because in five to ten years they will save money by creating a more efficient system, or fiscally wise because they make the current system of response to domestic violence more transparent, more accountable, easier to use, so that we know whether the tons of money we are currently spending is indeed effective, or whether a different allocation of resources would be better. And I'm going to talk about each of these four areas in turn, beginning with the Attorney General's office and some of the changes that could be made there.

Now, as I'm talking about changes in the Attorney General's office, I need to first talk just very briefly about why domestic violence is still a problem, although maybe after this morning's panel it is not really needed. Obviously things are better now than they were in the 1950s, 1960s, 1970s, as a result of efforts by many people, some of whom are in this room. We have orders of protection in Illinois, batter treatment programs, training on domestic violence for police recruits, sometimes for judges, some places have specialized domestic violence courts, public officials, police chiefs, State's Attorneys, judges express great concern over levels of domestic violence and are firmly committed they say to its elimination. Yet if you know anything about any particular domestic violence response system, you know that there are problems, and the more you know about any particular domestic violence response system, the more problems you are aware of. I'm going to focus in my remarks on Chicago and Cook County

because that's the area I know most, but I imagine, I know that many of these problems are true throughout the whole state of Illinois. Of course a pervasive problem is the lack of shelter space. Although shelters are awful places, where most of us would not want to spend one night, nevertheless they're usually booked solid with waiting lists. More basically, what battered women need is not shelter space, it's not really a livable place, but long-term transitional housing with education for people who are not already earning a family living, childcare support, healthcare insurance, and so on. There is very, very little of that throughout the entire country; a pilot program here or there, with long, long, long waiting lists.

But I'm going to talk about less pervasive problems, things that aren't spread across the whole country, but are rather local, beginning with LEADS, and I'll explain what LEADS is, batterer treatment programs, problems with lack of transparency, the bureaucratic jungle, and a problem I suspect with the allocation of resources.

First I want to start with LEADS. LEADS is the Law Enforcement Agencies Data System. It's an electronic database, which is very archaic. It is the database that police use when they are accessing information about an order of protection. If a woman says she has an order of protection and she doesn't have it with her, police look it up on the LEADS system. In some police departments and sheriff's departments, they have to find it on the LEADS system even if she has a copy with her. There's a number of problems with LEADS, and problems with LEADS have been known for some time. Let me give you just a feel for how archaic it is. This is a system that was designed back in the days when you updated things with cards. It hasn't really been overhauled since then. You cannot update a LEADS record. You can only delete it and reenter it. This is true even though orders of protection are routinely updated as they go from temporary to interim to plenary. Each time they have to be deleted and reentered, which increases the chances for error. In addition, generally orders of protection are entered by a clerk who is looking at a carbon copy, like the eighth copy, of something that was handwritten on the top copy, and may well have been illegible on the top copy, let alone the carbon the clerk is entering it off of. In Cook County, only with respect to emergency orders from criminal court, is the order entered initially into an electronic database within the courtroom. Everywhere else in Cook County it is entered by a clerk reading off this handwritten, illegible carbon copy. Even for the electronic orders of protection coming from the criminal side, emergency orders, although you start out with an electronic copy, that electronic record does not go into LEADS. Instead, the clerk in the sheriff's office either looks at a screen with the electronic order or printout of it, and reenters it fresh, thus maximizing of course the chances of error.

The LEADS system is primarily keyed on the date of birth of the respondent, of the abuser in the case of orders of protection. So if the victim does not know the date of birth of the abuser it might not be possible for the police to find the order of protection. If the date of birth was written down wrong or illegible, the police aren't going to be able to find it. These are just a few of the problems with LEADS, just a brief overview of the problems. This is a system that needs to be scrapped and to be replaced by something consistent with the fact that we live in the twenty-first century, and no longer use card systems. In the end, of course, changing LEADS would be cost-effective.

The second problem area I want to talk about very briefly is batterer treatment programs. Although we have batterer treatment programs throughout Illinois now, we don't have any reason to think that they are effective. There are studies of batterer treatment programs in some places, and the studies show that they are not necessarily effective. Successful completion often means that someone showed up for twelve sessions. In Cook County, the people who run the batterer treatment program are not told what the offender's history of domestic violence is; how many arrests he has, how serious the most recent incident was. So if he comes in and says "No big deal. I only hit her once," they have nothing to use to confront him and talk about the reality of the situation. Now the ineffectiveness of batterer treatment programs probably wouldn't matter as much as it does if these were but one of an array of things that were part of the way in which we make batterers accountable for their behavior, but for the most part, to the extent that we know anything, it looks, in Cook County like nothing much happens to an abuser who doesn't want to obey an order of protection in the end. He will be called into court again and again, he will be ordered into treatment again and again, but nothing much will happen if he doesn't follow through on the treatment, if doesn't obey the terms of the order of protection, although as I'm going to discuss in a minute, we don't have much data. So, for most abusers the only penalty is the batterer treatment program and that is something we don't have any reason to think is effective.

Now a third problem is the lack of information, what I'm calling the lack of transparency in the system. We have this humongous domestic violence response system, consuming vast quantities of time of various people from police officers to clerks in the court systems probation officers, batterer treatment program personnel, who really don't have a very good idea of whether the system works at all. We don't have basic information in Cook County for example about how many misdemeanors are prosecuted each year, how many felonies how many in each category

result in plea bargains, how many result in convictions following a trial, and what the penalties are in these various categories.

Now the fourth problem I want to talk about is the bureaucratic tangle, and this is truly a serious problem. A major problem in Cook County, and this will be true in every county in Illinois, although the players will be different individuals, is that many government bureaucracies are involved in domestic violence response systems. You have the States Attorney's office, which obtains orders of p in criminal court; the courts, both criminal and civil, which issue orders of protection and control the forms that are used as well as controlling the electronic order of protection system for the criminal emergency orders; the sheriff's department, which enters the orders of protection into the LEADS system; the Illinois State Police, who administer the LEADS system; the dispatchers, police officers, and sheriff's deputies who enforce orders of protection and use the LEADS system, and of course those are local municipal entities, as well as county sheriffs; and the probation department, which oversees probation and batterer treatment programs, and in Cook County, reports to the Cook County President.

Among all these different bureaucracies in Cook County, you have people reporting to, in the end, the Chief of the Illinois State Police, appointed by the governor; the Chief Judge of Cook County, who is chosen by the elected judges; the Cook County Sheriff, who is elected; the President of the Cook County Board, who is elected; the Chief of Police of Chicago, who is appointed by the mayor; and local police chiefs, appointed according to local municipal law. So you have this humongous set of bureaucracies, and the result of this is that officials in charge of these bureaucracies are uniformly, absolutely committed to looking good on domestic violence. Those who are elected, like the State's Attorney, are particularly committed to looking good on domestic violence. But it is very hard to change this system. It is hard to change one bureaucracy, let alone six or seven awkwardly intersecting bureaucracies. And in truth, many of the people who work for these officials do not want to find problems and solve them, they want to make it look like the system works. They don't want information about how the system works, and whether it works or doesn't work, they want problems swept under the rug so their boss looks good.

Now the fifth problem I'm going to talk about is one I suspect, and that's the allocation of resources. If you step back and look at the entire domestic violence response system, it looks like resources are spent most employing people in government bureaucracies. We do not spend money for transitional housing, education, childcare, support for battered women. We do not spend much money for legal advocacy for battered women who

need help with divorces, child custody, etc. Waiting lists for legal aid on these issues in most areas of Illinois is several years long. We do not spend money on LEADS although that is essential infrastructure for the effectiveness of a domestic violence response system. What we do spend money on is these huge bureaucracies, the prosecutors in the State's Attorney's office in Illinois, the probation department in Illinois, the batterer treatment programs in Illinois, etc., etc., etc. You have to wonder whether or not the money is being spent where it could help battered women the most, or whether it is being spent where it does the most good for elected officials who can build up patronage systems, an especially important goal in Cook County. In talking about requiring the report card, which would disclose more information about the effectiveness of our responses to domestic violence, one thing I would include in that, and I'll talk about that in a minute, is information about relative expenditures of money. How much is spent for these various things; shelters, transitional housing versus probation departments, batterer treatment programs, etc.

So now I turn to changes in the Attorney General's office. First, talking about a LEADS bureau in the Attorney General's Office, and then a domestic violence bureau in the Attorney General's office. When she was in the Senate, Lisa Madigan proposed legislation that would have created a domestic violence division in the Attorney General's office that would have been capable of helping local prosecutors with complex cases. What I want to suggest is that there should be a much broader initiative in the Attorney General's office.

First the LEADS bureau. LEADS would be taken from the State Police, who haven't done much about keeping it technically up to date, and in any event, the State Police is not the right place for it. You want LEADS connected to an electronic order of protection system that starts in the courts, both the criminal courts and the civil courts. You want all orders of protection to start electronically. If they start electronically in the courtroom, and the attorneys and the victim see the printout, you are much more likely to have accurate information than if you have a clerk in some dungeon, by herself or himself, entering data off of a carbon copy. So you want electronic orders of protection in courtrooms, and you want those records automatically fed electronically into a new LEADS system. For this, right now, every single judicial circuit is responsible for its own court records and forms, so you have to take both of these tasks and put them in one place. It has to be a statewide office, so I think the Attorney General's office would be the best place, and make the Attorney General's office responsible for a new LEADS system which would be up to date and which would be tied into an electronic order of protection system that would be used in every court in Illinois, whether civil or criminal, from the very

beginning, and would electronically automatically feed records into LEADS, thus eliminating many, many errors, and of course it would not be keyed on the date of birth of the respondent.

The second big change would be a domestic violence bureau, and I'm going to mention two things an Attorney General's domestic violence bureau could do. One is to conduct post mortems. The Attorney General's office would be responsible for calling together a committee of the concerned and involved agencies and response units whenever a woman has been killed in Illinois as a result of domestic violence. This post mortem would be six months or so after the murder, so that people would have had time to cool down and be a little less defensive. Many other states have this, and it's one good way to try to get people within the system, connected to the system, to step back and look at where things went wrong, and how the system could have worked better for an individual woman who is dead. The other thing is the domestic violence report card. I suggested on a yearly basis that the Attorney General's office be required to submit to the public, a domestic violence report card which would have entries on a county basis which would give all kinds of data about the domestic violence response system. I'm going to include in my talk right now, just a few things that would be included in this, and obviously this legislation would have to require that the county entities give the information to the Attorney General's office so that it could be included in the domestic violence report card. One thing would be money spent; how much money is spent in these various components; how much money is spent in the probation department for batter treatment programs; how much money, public and private, is spent for shelters; how much money, public and private, is spent for transitional housing and short-term education and support; how much money is spent on State's Attorney's working on orders of protection and so on. The second major component would be data on the domestic violence response system. I already mentioned a couple of examples. Every county's State's Attorney would be required to report how many felonies were prosecuted for domestic violence, how many misdemeanors, how many in each category were pled, how many in each category were tried, what were the convictions, what were the sentences, in each category of case. Another big component would be information on batterer treatment programs. For each batterer treatment program used in a county, how many batterers went through the program in the past year, how many batterers went through the program in the last five years, how many committed an offense again this year, and so on, so that we know a little more, even though its not perfect, about how batterer treatment programs work in terms of effectiveness. A third major component, would be data on violence against women in general. Imagine

if the State's Attorney for each county had to report to the Attorney General, who had to publish it every year, how many date rapes were prosecuted in their county this year, how many marital rapes, and the number is generally zero, because State's Attorneys have no incentive to prosecute these cases. They are hard to win, and they are judged by their win rates. No reasonable person would prosecute the way the incentive system is set up now. But if the State's Attorneys had to reveal how many they were prosecuting, it would give them an incentive to start prosecuting at least a few so they didn't have that zero sitting there. Some prosecutions could help over time to change attitudes. On statutory rape, you could imagine a number of kinds of data that would be very, very helpful; how many prosecutions were there in your county for statutory rape; what were the sexes of the defendant and the victim in the statutory rape cases; why was the statutory rape prosecuted? Was the complainant the underage person, a caretaker of the underage person, or some other third party? All this information would be extremely valuable, and would help us judge the effectiveness of the violence against women laws in Illinois.

So I have talked so far about changes in the Attorney General's office in terms of LEADS and electronic orders of protection system, and a violence against women report card which would include as a very important component, information about the domestic violence response system. Now I am going to turn and talk about the second change I mentioned, which is a battered woman shield statute, and a battered woman expert statute. And here I am drawing on my experience working on clemency petitions for battered women in prison in Illinois for various offenses. We would all like to believe that the problems for battered women on trial as defendants are pretty much solved by the fact that most jurisdictions including Illinois will admit expert testimony on either battered woman syndrome or battered woman experience. This is not a solution to the problem women face when they are defendants and they have been victims of domestic violence, for two reasons, and I'm going to talk about each. First is the neutralizing effects of the battle of the experts and the second is the fact that battered women face ubiquitous problems in the criminal justice system, problems with which an expert cannot help.

First the neutralizing effect of the battle of the experts. In every jurisdiction in which there has been a case raising this issue, the prosecution has been allowed to introduce its own expert on battered woman syndrome and battered woman experience when the defendant introduces an expert. Increasingly prosecutors are learning to do this, so when the defendant introduces an expert explaining battered woman experience, why she would have stayed with him even though it was this violent, increasingly the prosecution introduces an expert who explains that

indeed this is not a truly battered woman. And when you have two experts testifying, jurors tend to think of them both as hired guns and it is equivalent to no experts testifying in many, many cases. Let me give you an example. This is a case involving Sylvia Flynn, it's a case out of New Jersey from 2000. I use it because it was on Court TV and widely reported in the newspapers. There was a daily written update on Court TV, so you know much more about who testified, who testified to what, what arguments were made by the prosecution and the defense, than you would with your normal appellate case. In this case, Sylvia Flynn had killed her husband John. He had been abusing her for decades. She had an expert testify, Mary Ann Dutton, who is a nationally recognized expert on domestic violence and battered women. She has published extensively in the area, and is very widely respected. The prosecution had a Dr. Azhariah Eshkenazi testify. He is a psychiatrist from Long Island who regularly testifies in workers compensation cases, and a variety of other cases having nothing to do with domestic violence, although he did testify in the Nussbaum case. Dutton testified that in her opinion, Sylvia was a severely abused woman. She knew how to read John Flynn, and she knew by looking and listening to him on the fatal evening that he meant to hurt her. She had tried to leave and failed. She had tried to summon the police and failed, and she had no other option, she thought. Eshkenazi testified for the State that, "A battered woman all her life has depended on her father, mother, or husband. She had little education, is unable to support herself, and is totally dependent, emotionally, financially on her husband. She cannot walk away from him because she is totally dependent on him for total survival." Sylvia had her own beauty shop and therefore she could not be a battered woman, Eshkenazi said. This is an expert. And of course, anyone who knows anything about battered women knows, battered women come in all sizes and shapes, some are financially dependent, some are financially independent; some support their batterers who are dependent on them economically. The Flynn case illustrates really well the problem of the dueling experts.

The second difficulty with thinking that having an expert on battered woman syndrome is going to solve problems, is that there are ubiquitous problems throughout the criminal justice system, and I am going to mention just two major ones. One is inadequate representation of counsel and the second is the ability of the prosecution to make just about any argument, no matter how outrageous.

First, inadequate representation. In the clemency cases I've worked on for poor women, the major problem was that they were inadequately represented by counsel, they had defense counsel who did not have investigative resources, sometimes they had defense counsel who were not

ethical, or were just plain incompetent, and I will give just one example. In one of our cases, our client who had only one arm, killed her partner when he was attacking her. She said that he had consumed a thousand dollars worth of cocaine that weekend and that he had a crazy look in his eyes. Her public defender told her that the autopsy showed no cocaine, and she had better plead guilty. She did. She got forty years. Our students took the autopsy report to a doctor, and the doctor said "Yeah, there's no cocaine in his system. There's a lot of the substance that cocaine breaks down to when it's in the human body." There is no solution for this, the major problem facing battered women in prison, without providing adequate representation for all defendants in criminal cases. It's one thing to have caseloads for prosecutors that are so heavy that they have to plea bargain most case. It is quite another thing to have that true for defense attorneys who as a result pressure their clients, who have no other options into pleading guilty, when they are not.

The second major problem is that prosecutors are allowed to make incredibly outrageous arguments, with virtually no limits. I am going to mention just a couple examples. One is "This is not a truly battered woman." This is a commonly used argument by a prosecutor when a battered woman is on trial for killing an abuser. The prosecutor believes in battered woman syndrome, is fully committed to doing the right thing in cases involving battered women defendants, this just doesn't happen to be one. For example, in Sylvia Flynn's case, the prosecutor made this argument that Sylvia was not a truly battered woman, despite overwhelming evidence that she had been abused by John Flynn for decades. Let me give you one example besides Eshkenazi's expert testimony of a witness who the prosecution used on this point. Valerie Brown was a psychiatric social worker, and at one point, Sylvia Flynn had an order of protection against John. They reconciled, she dropped the order of protection proceedings, and he was ordered to go to Valerie Brown for evaluation as to what kind of counseling he needed. When the time for him to show up with Valerie Brown, surprise, surprise it was Sylvia Flynn who showed up to explain that really there was no problem. He'd only hit her once in all the years they were together and there was no need for him to go to counseling and Valerie Brown actually testified at Sylvia's trial, that Sylvia was not interested in the information Valerie gave her about a shelter. That Sylvia was so imbedded in the conflict of the marriage that she did not really want to get out and she did not present the typical markers of battered woman syndrome, helplessness, hopelessness, isolation from family and friends and financial dependence. So, again this very, very narrow notion of what a battered woman is and if this woman is not totally economically and in all other ways dependent and passive, she is not

a truly battered woman. Brown's testimony may have been particularly important to the jury because they asked (remember the experts probably canceled each other out) and the jury asked to have three witnesses testimony read to them, one was Valerie Brown and the other two were the crime scene expert and another technical person, but not anybody anything having to do with battered women. So Valerie Brown's testimony likely was very, very important.

The prosecution argued that the fact that Sylvia had denied the violence meant it had not occurred. Now anybody who knows anything about battered women, knows that there is nothing more common than a battered woman denying or minimizing abuse. In fact, it is hard to believe that any prosecutor would not know that given that, that is a major problem with successful prosecution of batterers. Of course Sylvia showing up for John's appointment with Valerie Brown is actually indicative of him being a very serious abuser. Men who do not show up for treatment are likely to be especially dangerous.

Another outrageous argument, these are just a couple examples, feminist fabrications, all these allegations of abuse are just post murder feminist fabrications. In Sylvia Flynn's case the prosecutor tried to undermine Maryann Dutton, Sylvia's expert, who is really an expert, tried to undermine her credibility by calling jurors attention to several papers she had written on feminist topics. The prosecutor also asked Dutton if she was an activist for domestic violence victims. Dutton responded, God bless her, by looking puzzled and saying "I think violence is wrong if that's what you mean."

In one of our cases, one of our clemency cases, our client had kept a diary of the abuse over the years and this diary was much too long to have been written between the time of the murder, the time of the killing, and the time she was arrested. The prosecution nevertheless argued that domestic violence was a total fabrication of a feminist lawyer on the defense team. That is a perfectly legal permissible argument for a prosecutor to make. Other arguments that I do not have time to go into details, but prosecutors have argued that she knew how to say "no," she said "no" once or twice, she knew how to say no she wasn't really a battered woman. She loved him she was not really a battered woman. That is my favorite, because of course that is the problem often. She is a bad mother, bad mothers are bad women, bad women are murderers.

So, the major problem for battered women on trial is that the prosecution is allowed to make outrageous arguments. The answer is not here simply education and training, and I want to make this point as a caveat to what some people were saying this morning, too. We often think that all we need is more education, more education of prosecutors, more

education of judges, but we have to stop and think if the education is going to be effective and what the effect will be. We do not have any empirical studies on the effect of education or on what kinds of education work in domestic violence. We do have some empirical studies on employer sponsored education on diversity and sexual harassment, and those studies indicate that education can hurt rather than help. Education is not necessarily effective and can reinforce stereotypes and actually do harm. Particularly when it is very short-term education, a day or less. Here the question is not did the educators say the right thing. The question is what did the people who were educated remember in a year. Did they remember that battered woman were passive and dependent? If they did it would explain a lot of the attitudes we see in cases were battered woman were defendants.

So we need solutions beyond education, and I am going to talk very briefly about battered woman's shield and expert statutes. We need a battered woman shield statute that is designed to do for battered women, what rape shield statutes did for rape victims. That is designed to keep out outrageous arguments and outrageous testimony of much more prejudicial value than it is probative when a battered woman is on trial. For example the statute should require a pretrial hearing on whether or not there has been significant violence, and if there has been the prosecution should not be allowed to argue that she is not truly a battered woman. That there was not really violence. The fact that she gave inconsistent descriptions over time of the violence or denied it in the past should be inadmissible to show that it did not happen. I have a number of other provisions I would include. Including that the prosecution should not be allowed to use the word feminist. The other statute that is needed here is a domestic violence expert statute, which would require that anyone testifying on battered woman syndrome, battered woman's experiences, domestic violence, actually have some expertise in the area, be familiar with the literature on domestic violence and its effect on victims as well as the literature on abusers and actively engaged in domestic violence issues through teaching, writing or research. There is no such requirement in many states, in states that don't have a *Daubert* type rule. Those are two statute changes, both revenue neutral, could help battered women as defendants. Now, third and fourth and these I am going to just barely touch on are changes to the custody law in Illinois that would help victims of domestic violence and look at trying to improve DCFS's response to problems with domestic violence in households with small children.

First, on custody, abusers routinely use continued contact and threats with children to harass and abuse their former partners and often, successfully use a custody battle itself to do this and are not infrequently,

as Kathy Bettcher mentioned this morning, successful in getting custody. There are a number of problems with Illinois law, one problem is, in Illinois under the best interest statute a judge can consider domestic violence but he or she does not feel like it. It just one of a list of factors that can be considered moreover there is a friendlier parent provision. A provision in the Illinois custody statute saying that there is a presumption that custody is best with the parent who is friendlier to the other parent. In an abusive relationship it is the abuser who will look like the friendlier parent because he does want to stay in touch. He does want continued contact and that provision hurts battered women in custody disputes. There is also a provision saying that judges should not consider any factors that do not affect the relationship between the parent and the children. That can be interpreted as making domestic violence irrelevant if it is not directed towards the children. Despite the fact that we know that domestic violence hurts all in the household and a presumption that continued contact with both parents is in the children's best interest, although that is not true in case with high levels of conflict and violence. The abuser of course has many advantages in a custody dispute, he is likely to earn more money, and be able to pay more money for experts and lawyers, and have a big advantage in litigation in addition he is likely to be calm, he may be charming. She may be frantic and appear a little emotionally overeat. So, we really need to think about changes to custody law that would provide better protection for woman and children from abusers.

I'm going to suggest two changes. One is a presumption that like North Dakota has that custody should not be given to abuser. Let me describe this, in North Dakota the statute provides that once there is credible evidence that domestic violence has occurred and there is one incident in domestic violence which resulted in serious bodily injury or a pattern of domestic violence then the presumption is triggered that the children should not go to the abuser. Once the presumption is triggered, domestic violence is a paramount factor in determining custody. Now the requirement of serious bodily injury or a pattern is designed to try and protect battered women from the very common scenario where he says, "Well she hit me, it was mutual. She was really the abuser. Look I got an order of protection against her." In addition, of course the friendlier parent provision of the Illinois statute should be eliminated, there is good reason for women who are in violent relationships not to be friendly to an abuser when it comes to continued contact between the abuser and the children.

The fourth and final area I am just going to touch on very briefly, because I really do not know much in this area but I know that it is an area that if relevant people got together and talked about it we would come up with a long list of things that could be done. DCFS often responds to

domestic violence even if a woman has left her abuser and has an order of protection by taking the children from their mother. I think we need to sit down and start thinking what kind of rules or requirements would restrain DCFS and improve their response to situations in which there is domestic violence. For example, perhaps it would be good to have a statute say that DCFS cannot remove children from their mother for failure to protect, if she has an order of protection against the abuser and he is no longer living in the household. They do it routinely, but why? I think a statute like that would be good and DCFS should be required to publish a policy on domestic violence. Right now they have no published policy, which means they can do what they want in this case and do what they want in this case they don't have to be consistent. If they had a published policy there would at least be guidelines that could be scrutinized by the public and which would have to be consistently followed rather than DCFS being free to do whatever it wants in whatever case.

I want to close now because I hope we will have time for some questions and I want to reiterate the point that a number of people made this morning and that is that the system does not work. I am afraid that most of the people in this room already know that and if people in the wider community who think that the system that is out there is working and that we have already done something to stop domestic violence and step back and suggest that we need to really think about a legislative push in a year or two years when the budget crisis has calmed down. We would have to get Lisa Madigan on board and get her support, but a legislative push that would try and put in either fiscally neutral changes that would help battered women or fiscally wise changes that would help battered women and which would, at least in the future, provide the basis for pushing for more resources or perhaps a different allocation of resources. I would be glad to take questions.