

DAY 1 – OCTOBER 13, 2022**KEYNOTE PANEL 1: ADDRESSING INEQUITY AND INJUSTICE IN THE FAMILY LAW SYSTEM¹⁰⁵**

HON. JUDY HARRIS KLUGER
EXECUTIVE DIRECTOR, SANCTUARY FOR FAMILIES

HON. BETTY WEINBERG ELLERIN
CHAIR, NEW YORK STATE JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

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WILLIAM C. SILVERMAN:

For those of you who don't know me, my name is Bill Silverman, and I run the pro bono program here at Proskauer. It's a real privilege to be hosting day one of this wonderful conference.

So, before I introduce Jennifer Friedman, in Jeh Johnson's report on race in the court system, he referred to the family court, among other courts, as a second class system of justice. And I really think that that kind of says it all. On a report that I worked on for the City Bar Association and The Fund for Modern Courts, we looked at the impact of COVID on family court, and we talked about the decades of inequities that were laid bare by COVID. During COVID, the court distinguished between "essential" and "non-essential" matters—custody

¹⁰⁵ See Sanctuary for Families, *Day 1: Welcome / Keynote Panel #1: Addressing Inequity and Injustices in the Family Law System*, YOUTUBE (Oct. 24, 2022), <https://www.youtube.com/watch?v=rcnfby6FSQc> [<https://perma.cc/7Y57-XHT5>].

visitation and support were generally non-essential. So, tell that to the woman you're going to hear about later today who didn't see her daughter for four months, because the abuser didn't let her see her daughter—tell her that that was a “non-essential” case. I think it's important that we're not just preaching to the converted, but that we use this conference to actually take action. Not only to learn about the inequities and injustices that are occurring, but that we actually do something following this conference to try to address these issues. Thank you very much for being here, I'd like to turn this over to Jennifer Friedman.

JENNIFER FRIEDMAN:

Thank you, Bill, we are so grateful to you and Proskauer as our generous host today.

It is really exciting to be here, and I would like to welcome everyone to “Justice for Survivors of Intimate Partner Violence: Transforming an Inequitable Family Law System.” What an important mission we have set for ourselves for the two days we have together. Our ambitious agenda is to identify, name, and describe the injustices that we have all experienced in the family law system. And, to develop concrete solutions—as Bill has asked us to do. Our seven panels will include mental health experts, jurists, survivors, advocates, researchers, and practitioners who will come together to identify solutions to what seems to many of us like intractable problems. Then, during the last panel of day two, we will set an advocacy agenda built on the conclusions of each of these panels—an agenda that we, as a community, can act upon together. I hope you will share my enthusiasm as we embark on these two days together.

So, now that you know where we're going, let's take a moment to ask “how did we get here?” To answer that question, I'm going to share my own experience and perspectives by first taking us back to the late 1990s and early 2000s—when I was a recent law graduate. At that time, the domestic violence legal field wasn't even really a field. It was basically a small handful of attorneys, at a few non-profit organizations, litigating in family court. I was at Sanctuary for Families (“Sanctuary”), where we had a legal staff of five. Now, we have a legal staff of ninety. I know that many of my colleagues at our sister agencies from those early days are still in the movement to this day, and joining us at this conference right now—I see you. I see you. Although historically, domestic violence (DV) had been ignored by the authorities and minimized by the courts, by that time our movement was gaining momentum. There was a growing consensus that the system had to protect DV survivors, and the courts began to evolve. In response to the brutal murder of a DV victim and the powerful demand for change, Chief Judge Judith Kaye spearheaded the Integrated Domestic Violence Courts (IDV). There was a significant influx in

state, city, and federal funds that enabled agencies to increase their staff and services. For example, representation in immigration proceedings. Law firms were eager to supplement these services with pro bono efforts, and their contributions rose exponentially. By the time I left Sanctuary in 2008 to join Pace Law School, it seemed that justice for survivors in our courts would only continue to improve.

A decade later, when I returned to practice at Sanctuary, I immediately noticed that something had changed. I regularly heard from staff attorneys that we had to be careful that we *only* file petitions for orders of protection (OP) immediately after a violent incident, because judges didn't want to hear about past domestic violence. Hmm—that's not what the law says. And while it had always been best practice to file OP petitions and custody petitions together, I now heard that we had to be careful that DV not be seen as an opportunity for a leg up in custody proceedings. I heard about cases with serious allegations, where judges failed to issue stay away orders, and cases where the family court judge demanded to know why the victim had not called the police.

And then I had an experience that I found truly shocking. I was appearing on a case in which a mother of two small children was our client. The unemployed father had committed a pattern of domestic violence against her and had attempted suicide in the home while the children were present. Our client had left him and he was now stalking her. I thought for sure the court would recognize the acute danger my client and the children were in, and would reasonably respond to their plight. Supervised visitation had taken place, and the father had tried during the supervision, and in front of the supervisor, to hand the older child a cell phone that he had purchased for him. Our client expressed well-founded concerns that the father might try to track their whereabouts using the phone.

During the court appearance, opposing counsel was outraged, and argued vociferously to the referee that our client was alienating the father from the children—how dare she suggest that he might try to track them? The referee turned to my client, raised her voice, and scolded her, warning that if she heard about *any* more of this alienating behavior, she would transfer custody of the children to the father. With that one phrase, “parental alienation,” the entire narrative of the case had changed. My client was stunned. The authority figure she had turned to for support and protection was, seemingly, aligned with the abuser and was threatening to give him custody. That was when I realized that we were in a backlash.

Following this experience, several colleagues and I began discussing these troubling dynamics—along with the endemic problems we had always known about that were exacerbating them. These include (and I feel like I almost want

to say “join me and sing with feeling,” because all of us are familiar with these endemic family court problems): profound lack of resources in the family courts, the serious shortage of judges resulting in huge case dockets, long delays in case adjudication, insufficient focus on the seriousness of survivors’ cases, the constant cycling of judges in and out of the family courts on two-year rotations (causing massive case turnover and, particularly recently, even mistrials), and the exodus of court-appointed attorneys from the 18B panel (due to their low pay rates.) And finally, in the wake of Jeh Johnson’s groundbreaking report—which we’ve already heard about from Bill, and we’ll be hearing more about today—we discussed inequity in the New York state court system.

We discussed another endemic problem: racism, and other biases against survivors, attorneys, and staff—especially for women of color, immigrants, and others with intersecting identities. That’s a lot of problems. These conversations became even more pressing during the pandemic, when these problems were compounded. As we know, the impacts are still being felt. As a next step, we invited additional colleagues into these conversations. We convened the Family Law Roundtable, and we met for 10 two-hour facilitated sessions where we did a deep dive into these thorny—and seemingly intractable—issues, supported by research by Proskauer. This process crystallized our thinking, and led us to convene this conference. So, now you know why you’re all here. And it looks like we have hit a nerve. We have (and this is shocking to me) over 750 registered attendees here today in person and online. We hope this conference will be the beginning—and a continuation really, for many, many of us here in person and online who have been discussing these issues for a long time—of an overdue conversation about what’s broken. And we will emerge with an advocacy agenda for how to fix it. So, that’s our mission. I hope you in the room and online will dig in with us, and join us in this incredible brain trust that we have convened in these two days.

Now, I would like to take a moment to introduce the members of the roundtable who are in the room. This is a brilliant group of passionate advocates. I really want to acknowledge them all, and I’d like to especially mention Jennifer Barry who has volunteered her time to this incredible effort. I’d also like to acknowledge our co-sponsoring agencies. There are many of them, and it will take me a long time to list them, but you know who you are. A conference like this takes a lot of preparation, and I’d also like to thank all of the subcommittees who put the panels together.

During the next two days, we will be grappling with very intense, personal, and often traumatic topics, and I’m very honored that we have several survivors who will be speaking with us over these two days. While it is crucial that we discuss these issues, we also understand that these conversations can be

triggering. We urge and invite you to practice self-care. If this means turning off your device, leaving the room, checking out, and maybe checking back in—please do so.

It is absolutely my pleasure to introduce the Honorable Judge Judy Kluger who will moderate our keynote panel. While I will not recite all of her many accomplishments, I will provide just a few highlights here. Judge Kluger started her career as a Special Victims Unit prosecutor in Brooklyn, and ultimately became a judge, serving on the bench for twenty-five years. Later, as Chief of Policy and Planning for the New York state court system, she oversaw the state's three-hundred problem-solving courts, and played an integral role in the creation and implementation of the state's Integrated Domestic Violence Courts. She joined Sanctuary for Families in 2014 as our Executive Director. I am honored to introduce Judge Judy Kluger.

JUDY HARRIS KLUGER:

It's a pleasure to be here with all of you in person, as well as our very large virtual audience. Jennifer mentioned over 700 participants from around the country—this speaks to the crucial nature of the issues affecting families in the New York state courts, as well as families across the country. Before I begin our keynote conversation with my esteemed friends and colleagues—Justice Betty Weinberg Ellerin and Justice Troy Webber—I'd like to take a moment to thank the law firm of Proskauer Rose and Proskauer partner Bill Silverman for hosting us today, and to Sanctuary's mighty team for the invaluable assistance they have given in coordinating the many, many moving parts of the conference.

Both Justice Ellerin and Justice Webber have had auspicious careers prior to ascending to the bench, and many groundbreaking accomplishments during their judicial tenures. Their impressive bios are in your materials, and I urge you to read about each of them—pioneers in so many aspects of their work and fierce and fearless advocates for change. It is because of their experience, commitment, and dedication to equity and fairness in our courts that I asked them to join me for this conversation.

Justice Webber currently sits on the New York State Court's Appellate Division First Department, and is co-chair of the Franklin H. Williams Judicial Commission. This commission was formed in 1998 to educate and advise the court system on issues affecting litigants and employees of color. Justice Webber also served as an advisor to Secretary Jeh Johnson, who issued the 2020 report on equal justice in the courts.

Justice Ellerin has had a storied judicial career, which included being appointed the first female presiding justice of the Appellate Division First

Department. She is currently a senior counsel at the firm of Alston & Bird. Among her many, many activities she chairs the New York State Committee on Women in the Courts, which produced the 2020 Gender Survey—a follow-up to a 1988 report on gender bias in the courts.

So, Justices, let's just dive into our conversation. First, I'm going to ask each of you to describe the roles and respective functions of the committees and commissions. Starting with Justice Ellerin, the New York State Commission Committee on Women in the Courts issued a recent report that we'll be discussing today.¹⁰⁶ Can you tell us about the purpose of the committee and your role?

JUSTICE ELLERIN:

And how it arose?

JUDY HARRIS KLUGER:

Yes—its history.

JUSTICE ELLERIN:

Before I do that, I hope I can say a few words about how happy I am to be here, particularly in person. And let me say this—when Judy Kluger invited me—I couldn't say no. I think she was one of the most tremendous judges we ever had in the areas that she served, and particularly when she was at family court. Sanctuary lucked out, but the court system suffered a great loss when she left. Well, I had to say that. I'm exercising some judicial privilege. [*Laughter*]. And it's really a pleasure to be on the panel with Justice Webber. Now, Justice Webber sits on the court where, unfortunately, I had to retire due to age. But I had a unique experience with her. I appeared before her as a practicing lawyer after I retired from the bench, and she was a surrogate of New York County. She was fabulous. That's what I can say, and my only regret is that I'm not sitting on the bench with her because I know she enriches that bench greatly. Now, let me get to the topic I was brought here to answer. And, I'm going to answer the question perhaps a little longer than Judge Kluger had in mind.

[*Laughter*]

In any event, listen—women have had unequal treatment in our society, generally, going back to time immemorial. But it was in the early 1980s that

¹⁰⁶ See N.Y. STATE JUD. COMM. ON WOMEN IN THE COURTS, GENDER SURVEY (2020), <https://www.nycourts.gov/LegacyPDFS/IP/womeninthecourts/Gender-Survey-2020.pdf> [<https://perma.cc/DVG4-V2PT>].

respected academic studies raised the issue of women being treated unfairly in our court systems—our systems of justice. And that, really, was quite a dramatic shock to many of us who loved our court systems, although we recognized that there were great merits to that statement. In any event, there were a group of us in New York—I was then the City Administrative Judge and we had an unusual Chief Judge named Lawrence Cook, a gentleman from Monticello, New York, who was committed to fairness. He promoted women and minorities to positions of authority within the court system, and he truly lived by a code of fairness. So, when we approached him about setting up a committee to study the New York court system—to see if it fell within the description of those academic studies—originally he was a little... But he then recognized it was important to do so, and he set up the New York Task Force on Women in the Courts—a very prestigious group. I, of course, had a list of feminists and advocates who I would have suggested as members. But—no, no, no—he put on Wall Street lawyers, Bar Association leaders, academics, public officials, and what have you. Well, let me tell you, he was right, and I was wrong. Because there's nothing like a convert to spread the message.

That committee acted for two years. They held public and private hearings. They truly did an investigation of how women were being treated in the court system. I will say that they really left no stone unturned. And one of the things they did was a survey to examine the New York state courts to identify gender bias, and if found, to make recommendations for its remediation. Well, after the two years of study, this is what they concluded: that gender bias against women litigants, lawyers, and court personnel is a pervasive problem with great consequences. Women are too often denied equal justice, equal treatment, and equal opportunity. The 300-plus page report (and fortunately there's also a summary) really demonstrated, with specificity, the areas where women were not being treated fairly, including the treatment of women litigants.¹⁰⁷ And that, of course, is of particular relevance to today's discussion, particularly, in the area of domestic violence and violence against women generally. I urge you to read some of that report. You can get it online. And I want to introduce the executive director of our committee, Charlotte Watson, who's here today, and she'll be happy to provide you with the sites.

Now, in that report—and this sort of makes your hair stand up—was the courts' response to violence against women. Throughout that section is an issue that pervades everything in terms of how the courts treat women—the lack of credibility that's given to women. And that was particularly the case in cases of domestic violence—“oh she's making it up”; “she's using it because she's got a divorce action”; “there's no physical injuries, what kind of domestic violence is that?”—all sorts of things like that. I mean, those were the kinds of situations

¹⁰⁷ See Unified Court System of the State of New York, *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URBAN L.J. 11 (1986).

that actually occurred. Now, one of the recommendations of the task force was the creation of a permanent committee to ensure that the recommendations—and there were extensive recommendations in the report for the remediation of these problems, particularly in the area of domestic violence and violence against women—were carried out and fulfilled by the powers that be. And that included court administration. And there were also recommendations directed to bar associations, to legislatures, district attorneys, and other institutions.

By the time the report was issued in April of 1986, Judge Cook's term had come to an end and uh...(aside: you know I never learned to type, because in my day if you want to be a lawyer you didn't learn to type because they used you as a secretary instead and so I couldn't lie—so I said no, I don't know how to type, so I'm reading my own handwriting here, okay [*Laughter*])...In any event, when the report was handed down to a new Chief Judge: Sol Wachtler. He accepted it and indicated that it would be a top priority for him, and he was true to his word. He established a committee to implement the recommendations, and he appointed the late Katherine McDonald, who was then the administrative judge of the New York City Family Court. And let me say, that was an inspired choice. She was wonderful. Not only did she take the recommendations seriously, but she saw something that the committee itself or the Task Force had not seen: one committee, statewide, could not do it all.

So, together with staff, she set up local Gender Fairness Committees throughout the state—one in every Judicial District, and within the city in the various court divisions. And they have been very helpful in terms of doing part of the implementation, and in keeping the committee itself advised of what's going on in the various parts of the state. Judge McDonald served for about fifteen years, and then she retired and became the Chair Emeritus, and I took over after that. And we have been working throughout the years to try to implement the various recommendations.

Among our other activities has been education, education, education—programs for judges, for law systems, for court personnel to sensitize them to various issues of domestic violence, and how all litigants must be treated fairly. And by the way, we take the position that just lecturing people doesn't always work. So, we tried something a little different. We used to give out vignettes, depicting conducts that are obviously biased, at the annual judicial education programs and asked how a judge should address them. One of the biggest complaints was that judges may not have all been bigoted or prejudiced, but they allowed that kind of conduct against women to go un-stopped, and judges have an obligation to control the courtroom. So, we had these vignettes—many of them were very amusing—with various ways that a judge could intercede to stop the adverse conduct. We also recognized a couple of things. We had a whole list of things that we've done over the course of the years. For example,

we pushed for special parts for the DV and IDV courts, we were successful in getting part-time and flex time (long before that became popular) for women court employees, so they could maintain part-time work with the courts when they still had family responsibilities. Unfortunately, as time has gone on, subsequent administrations have not been so sensitive to that particular issue. Although, I think with the current situation it may come into fashion again.

We recognized that poor women were in a particularly precarious position. If they had to go to court—let’s say there was a housing court hearing—a poor woman who had children couldn’t afford a babysitter. What was she going to do with the children? When she’d come to the courtroom, frequently the court officers would say “oh you can’t go in with the children.” So we urged, and were successful in obtaining, children’s waiting rooms in various courts throughout the state. Unfortunately, the minute there was a financial crisis, some of those centers were shut down and in some of them, the hours were curtailed. But that’s something that we have pushed for, and continue to push for because we recognize that litigants require some special attention.

Then we have so many people in our court system who do not speak or understand English—and those are frequently the victims of domestic violence. Well, unfortunately, our interpretive services are not so terrific from way back. And that was an issue that was pushed by our committee. I want to give credit to our vice chair. She undertook that mission, and she got the court system to set up an advisory committee with various success in getting more qualified interpreters. We were always concerned that some of the women who appeared may have come from societies where domestic violence was not necessarily viewed as something you went public on. And some of the interpreters, we felt, were communicating that message to a witness who came in on a case like that, so we have been active and concerned about that issue.

In any event, from 1986 to about 2018 or 2019, we continued with all of our activities. But more recently, the one thing that we pushed was that there aren’t enough women judges. My god. When we started out, there were a handful of women judges. And I must say that was one area where progress really was terrific. We got enormous numbers of women judges, and many women judges in positions of authority. We’ve had two women Chief Judges, the Court of Appeals has had a majority of women, the Appellate Division, where I was the only woman for eleven years, today has a majority of women, and there are women administrative judges. There, we’ve been successful.

But the question what we were getting back from our local committees, was that there was a lot of problems that women in the system—as lawyers, litigants, and employees—were suffering. So, we decided that it’s time for another survey. And that’s what we did. Of course, we did it with technology—we

surveyed all the lawyers in New York who had an email address. We got over 5,000 responses and that was a remarkable number. Equal number of men and women. And it was interesting that many of the responses showed the difference in views of the men and women responders. We've made a lot of progress, but we still have a long way to go.

JUDY HARRIS KLUGER:

And part of the reason that committee has made the progress it has is because of the energy and ferocity of Justice Ellerin. I'm going to turn to Justice Webber now. Justice Webber, you're co-chair of the Franklin H. Williams Commission. Could you tell us about the commission, its history, its role, and also what Jeh Johnson's report has told us about equity in the courts?

JUSTICE WEBBER:

Yes, definitely. Thank you, Judge Kluger. I think Judge Kluger was one of my first supervising judges when I was in criminal court way back when I first became a judge. Justice Ellerin, we all defer to her, and you really have to read her bio. She is a pioneer and she's wonderful. And she is an inspiration to all of us. Her portrait hangs outside my chambers, so I actually see her face every morning. And every time I leave my chambers, I see her face, every time I go back, I see her face—and it is scary at times [*Laughter*]. But she is great.

So yes, the Franklin H. Williams Commission. I don't know if any of you are familiar with the commission—we are an independent, permanent commission dedicated to eradicating systemic racism in the court system. And what we do is we take affirmative steps to eliminate barriers to racial and ethnic fairness in the courts, all courts. So, our mandate is a greater one. We look at all of the courts—the various courts in the New York state court system, including family court. We look at judicial as well as non-judicial personnel. We look to determine whether there is diversity. Whether there are issues in terms of jurors, litigants, individuals (who come to the various courthouses), and stakeholders. We also are involved in providing a pipeline to the bench and to law school. We put on programs and speak to law students. We attempt to increase that pipeline.

Justice Ellerin mentioned the number of female judges. We have fewer female judges now. We also have fewer judges of color—male and female—which is an issue. So, we have to increase those numbers in general. So, we look at the court system as a whole, and many of the issues that Justice Ellerin mentioned (in terms of interpreters, in terms of the diversity of the judiciary, etc.,) these are all things that the Williams Commission looks to.

And so, I just want to be clear: we are independent. People say, “well, you know, you’re funded by the court system.” Yeah, we are funded by the court system, but we’re still independent. And so, we will still make recommendations, and [*if*] there’s an issue, we will present it to the powers that be. And that would be the Chief Judge. And thus far, the Chief Judges—Judge DiFiore, Judge Kaye, Judge Lippman—have all worked with us in terms of trying to deal with these issues. We have issues with some of the supervising judges and administrative judges. Especially Upstate, but we’re being recorded, right?

[*Laughter*]

JUDY HARRIS KLUGER:

Yes, and they’re Upstaters.

JUSTICE WEBBER:

And they’re Upstaters, so we have to be careful. [*Laughter*]. But, you know, for the most part, individuals will work with us.

So, it was mentioned that we came into existence in 1991. At that time, in 1988, Franklin Williams, who was an ambassador and civil rights activist, was charged by Judge Wachtler to render a report. And he rendered a report on minorities. (I’ve got to tell you, I don’t like the word minorities, so I don’t use that term—but anyhow.) It’s interesting because we talk about Jeh Johnson’s report—and I have the ultimate respect for Secretary Johnson, and all that he’s done—however, a lot of the things that he found in his report in 2018-2019, were a mirror image of what Franklin Williams found in his report in 1991. And, you know, I always kid Secretary Johnson. I’m like, “you could have just taken the page from Franklin Williams’ report and put it on your report, and said “hey!” or, “here’s the report!” Because, unfortunately, there were so many of the same issues that he found. So, as I said, what we are tasked with is eradicating systemic racism. The Office of Court Administration has been receptive. So, based upon Secretary Johnson’s report and also based upon our own hearings and conversations with stakeholders, etc., we proposed (and it was accepted) mandatory implicit bias training for all individuals within the court system—judges, as well as other court personnel. And we wanted everything to come from the top, right, so—who took part in the first mandatory implicit bias training? Judge DiFiore, Judge Marx, and the supervising judges and administrative judges. So that was important.

Also, we wanted to make sure that there was access to those individuals who had some type of issue in terms of language. So, language access also, and

I'll get into that. There was an incident in family court, I believe in 2019, where the clerk made a reference to a child and called them the n-word and it was caught on a hot mic. So based upon that, we (the Williams Commission), spoke to the administrators in the family court, we spoke to other stakeholders, we probably spoke to some of the organizations that you're a part of, and we spoke to attorneys concerning what was going on in family court. And so, believe it or not, we wanted a recommendation that there be a certain level of respect from the judges. Now, why would you think you'd have to have a bill of rights or whatever saying that judges and core personnel have to be respectful to the litigants? It was crazy! But it was something that we thought was important in terms of the way in which judges and other core personnel referred to the litigants. And so these are things that we got into in our report—how to refer to people, that you should be respectful. The issue in terms of bias, in Jeh Johnson's report (and I think we all know this one and it is one of the things that the Williams Commission has focused on,) is that those courts—the courts used primarily by individuals of color—those courts are the ones that receive the least resources, right? So, we were actually going to look at criminal court first (because my heart is in criminal court—I kind of grew up in criminal court). We were going to look at criminal court, then we were going to look at housing court—which is a big issue, which is work—and then we were going to look at family court. But because of this incident, we looked at family court first.

And so, one of the things that we found was the total lack of resources given to family court. And I'm talking in terms of the building (and we have photos, I'm sure you guys have seen this). When you enter these courthouses—in terms of the mold, in terms of the leaks. Bronx Family Court—unbelievable, right? In terms of the leaks—it's going to rain this evening, right? So, if you're going to family court tomorrow, there'll probably be puddles and buckets, right? So, these are the types of things that need to be addressed. How do you feel as a litigant, as an individual walking into that courthouse? How does that make you feel? Does it not make you feel that they don't care about you? Obviously they don't take this seriously if there is mold and there are leaks. So these are some of the things that we look to, and some of the things that we are attempting to remedy. So, I'll get into that a little later.

JUDY HARRIS KLUGER:

A little bit about judicial assignments, and we unfortunately have to wrap up very soon. But when you talk about an under-resourced and neglected court—what do you have to say about judicial assignments relevant to the family court?

JUSTICE WEBBER:

So one of the recommendations that we made was to increase the number of family court judges. And I know that they have increased it. I think there are an additional four family court judges. Not enough. We, the Williams Commission, proposed fifteen new family court judges, so we'll see what happens with that. We've spoken to the legislators and also with the mayor's office. In terms of increasing the numbers, they say they're with us. I want to just mention, another thing was 18B compensation—which you all know is a really important issue. We spoke to the governor's office. We spoke to the governor's council. They said they were on board, “no problem.” We spoke to the legislators. They said, “oh, we're on board.” And well, I don't know what happened. But that's something that we're also pushing for. And also increasing the number of judges is something that's important. And also trying to cut down on the cycling in and cycling out.

So we actually had a meeting a couple of weeks ago, and Ms. Friedman was mentioning that some of the judges were declaring that if there was going to be another assignment, that they would declare a mistrial. I could not believe that this was occurring, so of course I called Judge Kaplan, and Judge Marks, and Judge Jolly. I said, “really, you're declaring a mistrial?” Remember, I sit on the Appellate Division, so for me, this is a no-no—right? You can't do this. So, I called them, and I said, “it's come to our attention that judges are declaring mistrials, and you can't do that. Why is this your policy?” They told me that this was not the policy. They told me that, “this should not occur.” They told me that if it does occur, that they want to know about it because they stated that they have specifically told the judges not to declare a mistrial and to either take the case with them where they're being reassigned, or to return to that location to continue the trial. What I'm saying to you is, if this does occur (and if a judge tells you that they are cycling), if the judge tells you that they are going to declare a mistrial in a case, please let me know. You have my email. Email me, and then I will send it on to Judge Kaplan, Judge Jolly, and Judge Marks. Because Judge Kaplan stated that she wanted to know, okay?

So, perhaps this is a positive thing that has come out of this conference.

JENNIFER FRIEDMAN:

I would like to say that it seems that your call had an impact.

JUSTICE WEBBER:

[Laughs] I was shocked! I was shocked. I was like, “really?!” I was screaming it—“you're kidding, right?” And I immediately got on the phone. I was like, “really, this is going on?”

JUSTICE ELLERIN:

Could I make this point—family court judges are appointed by the mayor. And what's important is to make sure that you will have people (that you approve as judges) who are really committed to the family court. Unfortunately, many of the candidates that they send look upon it as a stepping stone elsewhere. And that's important, to put pressure on the mayor's committee to make sure that they get people who are deeply committed to the family court and its litigants.

JUSTICE WEBBER:

And another proposal we have is that when the judges get to family court, that there'll be special training. I mean we do have the Judicial Institute which has training for judges. I've never sat in family court. But I believe that if you're going to sit in family court, there are certain nuances. As a judge, I could sit there and I would learn. However, I think there's additional training for family court judges. And this is something that we have proposed, that there'll be additional training specifically for family court judges and family court personnel. Because, again, we don't want to put it all on the judges—it's personnel as well who have to learn. Because they actually are the first individuals who are going to be meeting with the litigants.

JUDY HARRIS KLUGER:

So, let's talk a little bit about intersectionality. This conference is focusing on bias and reports in general. And, obviously, the experience of survivors of gender-based violence. And they come to our courts with many intersectional identities: women, women of color, immigrants, LGBTQ, gender non-binary—how do the findings of your reports impact litigants? Do you want to start, Justice Webber?

JUSTICE WEBBER:

Well, as I said, ours is a greater mandate— we're looking to teaching. Well, first, anti-bias training. Also, how to refer to litigants. When a litigant says that they want to be referred to as "they," there should not be an issue. That should be the end of the conversation. And believe it or not, we've had some instances where individuals have stated, "I want to be referred to as 'they,'" and the court personnel has refused to do so. Or, the judge has refused to do so. So that's, you know, really basic. But again, we look to the community and the courts as a whole— so we have to make these initiatives and the understanding has to be statewide. And this goes to training. It really and truly goes to training. The individuals in the court system have to be told what is expected of them. We're

actually going to post a Bill of Rights in family court, as well as in the other courts, in terms of you as a litigant, you as a stakeholder—what is expected of you. And also, what you should expect. We also want to increase the use of the virtual system as much as possible. And we also want to try to put in kiosks in the courthouses as well.

JUDY HARRIS KLUGER:

Justice Ellerin, I don't think we got a chance to talk about the findings of the 5,000 person survey, many years after the original report.

JUSTICE ELLERIN:

The worst finding, from my perspective, was the lack of credibility given to women as lawyers, litigants, and witnesses. That's astounding to me. And what was even more astounding was that, while the greater percentage of those who did not give credibility to this group were male judges, female judges in a great number were also guilty of that. That is to me unbelievable. And that of course impacts tremendously in the area of domestic violence. The women in domestic violence, whatever the backgrounds, really come in having to prove—sort of double prove—their case, because they are women. And that is to me intolerable. And that's an area that our committee is now focusing on, and going to try to take some action on. What we have found, in the current committee, is that there have been improvements in terms of how the police respond to requests for orders of protection. While they still push them to the family court, they don't discourage orders of protection. And once a woman does come to criminal court, they are treated okay in that regard, they're not sent back to family court. That's an improvement.

There was another area in that report: judges have improved tremendously. I must give the Commission on Judicial Conduct a little credit. Judges don't want to get in trouble. And so, they understand that they have to behave very well to all litigants. Unfortunately, many of them do not stop lawyers from behaving poorly. And that has been a big problem. Lawyers are the worst offenders in terms of behaving badly to women at every level.

JUDY HARRIS KLUGER:

Okay, well, maybe let's wrap it up with one recommendation from each of you. And I'll actually point it towards court reform restructuring. That's been a topic for, probably, the last fifty years. The court system in New York state is Byzantine in so many ways and has many tiers that litigants have to navigate. So, in addition to court reform (which seems to have been stymied), what else can we, as a group, do in terms of our recommendations to move forward—both

in light of the findings of your committee and commission and, really, your own thoughts and experiences? So, Justice Ellerin.

JUSTICE ELLERIN:

Well, one thing is that the people who come into family court have to have lawyers. And recent legislation, I believe, is going to be helpful in that regard. But many lawyers don't want to take those cases, because they're non-pay cases. So, the 18B scale has to be changed. That was my signature issue when I was the Presiding Justice [New York State Supreme Court Appellate Division, First Department] in the year 1999. And the increase has been minuscule, and that's outrageous.

People who come into family court are entitled to the best representation possible. When they get the institutional lawyers, for the most part they're well represented, but there are not enough of those. And they are entitled to legal representation. And again I go back to you. I want to have judges who want to be in the family court, who want to deal with those issues. And there's got to be some way of psychologically implanting in judges what a wonderful service they are performing to the litigants and to the community by serving in that court.

I think it's the toughest court that you can serve in. But it is also doing God's work. And my opinion—and let me go back to credibility—we've got to find a way to change the minds of people, particularly in the area of domestic violence.

JUDY HARRIS KLUGER:

Thank you. Justice Webber?

JUSTICE WEBBER:

So, in terms of court restructuring, I really have no opinion that I could share with this body. 18B compensation is something that we have to work on. We all have to work on it to increase the amount that the 18B attorneys are receiving.

As you probably know, the system is such that you have a limited number of family court judges by statute. That is why one of the solutions, we believe, is to increase that number. You have civil court judges—so judges are elected to the civil court and then they are assigned to the family court in order for them to move up to Supreme Court (where everybody wants to be, for the most part). They have to return to the district they came from so that they can now

campaign—and be visible—so that they can go to Supreme Court. So, it's built in a way that they cannot stay in family court, even if they wanted to stay in family court. For the purposes of their career, and also for political purposes, because they would create a log jam if they don't move up to Supreme Court, they can't stay in family court, right? They have to return to civil court, so that they can start to move up to Supreme Court. So, that's one of the issues. You have to make it so that you have family court judges—judges who are assigned to the family court. That is their assignment. And then perhaps they can move up in family court in terms of other positions within family court.

And because of this cycling in and cycling out, family court is like a second-class citizen because nobody wants to be there—because they know that it's not going to help them in any way to be there. And also, I don't know if you guys know this, but way back when, it was a punishment to be sent to family court. If you screw up, you go to family for it. If you really screwed up, you're going to family court in the Bronx. That was the ultimate punishment, going to family court in the Bronx. And I'm a Bronx person. I love the Bronx. So, I always took offense when someone said that, "you're going to be punished—you've got family court in the Bronx." So that was the mentality. And that mentality continues. So, you have to change that. And you have to make family court more attractive. I don't know how you do that. You know, we've been speaking about this Commission, we've been speaking to stakeholders about this—I don't know how you make it more attractive.

I do believe that there's a core group of individuals who want to be family court judges and you have to tap into them. Maybe many of you at some point would want to go onto the bench, become family court judges—Ms. Friedman, right? And so, you have to tap into that, because you need those individuals who have a love of family law. So maybe we should do more things like "how to become a judge"—maybe we should do a program. I'm thinking, "How to become a Family Court Judge," so that we can get individuals who want to go be on the family court bench.

But it cannot any longer be seen as either a stepping stone or a two-year commitment and then you go back to civil court. Nor can it be seen as a punishment. It has to be seen as something that you want to do and that you have a commitment to do well.

JUSTICE ELLERIN:

You have to elevate the status of family court judges. Maybe bar associations can give special awards to family court judges. You know, you never see that they're the ones who get the judge of the year, or very rarely.

Now that's wrong. They deserve it perhaps more than anyone. Now, allegedly, family court and Supreme Court are on a par, right?

JUSTICE WEBBER:

Yes, salary-wise.

JUSTICE ELLERIN:

Yeah, but not status-wise. And we live in a world where status counts. But again I say—pick people who want to be family court judges. I bet there are many people in this room who, if given the opportunity, would be very happy to be there, long term. But the court itself also has to be given some stature and status within the administrative structure.

JUSTICE WEBBER:

But then if you have individuals who actually want to be there, they will take pride in the court and then they will want to implement changes. And I must say, you know, Judge Jolly—she loves family court, and she's an excellent administrator. Judge Mendelson, who I believe you'll be hearing from tomorrow, she is a former family court judge—loves family court. So, there are judges in the system, and judges in family court. Let's not deride all family court judges, there are many family court judges who really and truly love their jobs and are doing a great job.

JUSTICE ELLERIN:

But what I'm saying is we need more, right? Give them stature within the profession generally.

JUSTICE WEBBER:

Yes.

JUDY HARRIS KLUGER:

And I will say, that the key is by the legislature—to allocate more family court judges because in New York City it's not elected positions. Justice Ellerin and I served on the mayor's advisory committee on the Judiciary, which I still serve on. And the people who come and want to be family court judges are terrific. They're committed. They've been litigators.

I'm going to end with this: that it is a process that is, I think, fair and based on merit. And those of you who are interested, take a look into the criteria for the mayor's Committee on the Judiciary for Family Court Judges.

I want to thank this great panel—both for participating today, but even more, for being who they are, and spearheading the work that they're doing, which is so critical to a fair and equitable court system. So, thank you. Thank you.