

DAY 1 – OCTOBER 13, 2022**KEYNOTE PANEL 2: HOW BIAS MANIFESTS IN
NEW YORK STATE’S FAMILY LAW SYSTEM¹**

HAMRA AHMAD
DIRECTOR OF LAW AND POLICY, HER JUSTICE

JACQUELINE FRANCHETTI
EXECUTIVE DIRECTOR & KYRA’S MOM, KYRA’S CHAMPIONS

LINDA LOPEZ
**DEPUTY DIRECTOR OF THE LEGAL CENTER, SANCTUARY FOR
FAMILIES**

DR. CAROLYN SPRINGER
**ASSOCIATE PROFESSOR, GORDON F. DERNER SCHOOL OF
PSYCHOLOGY, ADELPHI UNIVERSITY**

SHAIN FILCHER
**EXECUTIVE DIRECTOR, LGBT BAR ASSOCIATION &
FOUNDATION OF NEW YORK (“LEGAL”)**

RACHEL BRAUNSTEIN
DIRECTOR OF POLICY, HER JUSTICE

HAMRA AHMAD:

Good morning. My name is Hamra Ahmad, and I am the director of Law and Policy at Her Justice. I will introduce our panelists in just a moment.

Over the past several years we have seen increased attention surrounding the devastating consequences of bias in the criminal justice system, and litigants, survivors, practitioners, and other stakeholders engaging in the civil justice system have also seen real-life implications of bias in our civil courts. Judges Webber, Ellerin, and Kluger shared recent reports and efforts that identified biases in the court system, primarily along the lines of race, gender, and economic status. This conference is an opportunity to raise awareness of the real-life impacts, an opportunity to listen to litigant voices, and to engage in

¹ See Sanctuary for Families, *Keynote Panel #2: How Bias Manifests in New York State’s Family Law System*, YOUTUBE (Oct. 24, 2022), https://www.youtube.com/watch?v=jO_M1UydV0&t=11s [<https://perma.cc/D94Y-C6EE>].

discussion towards increased transparency, collaboration, and accountability so that we can address this pervasive issue. In this panel, we are going to dig deeper into what bias looks like, how it functions, and the impact of bias on individuals and communities.

Our panelists include survivor litigants, researchers, and practitioners who will speak from their unique lived experiences and expertise in this area. Our first panelist, Jacqueline Franchetti, is Kyra's mom and Executive Director of Kyra's Champions. Linda Lopez is Deputy Director of The Legal Center at Sanctuary for Families. Dr. Carolyn Springer is an Associate Professor at the Gordon F. Turner School of Psychology and Director of African, Black, and Caribbean studies at the College of Arts and Sciences at Adelphi University. Shane Filcher is the Executive Director of the LGBT Bar Association and Foundation of New York (LeGal).

So, before we begin, I'd like to share a trigger warning. As Jennifer had mentioned earlier this morning, speakers at this conference will explore many topics related to domestic violence, including first-hand experiences with trauma and bias, which at times may be triggering. We urge you to prioritize your self-care. Take breaks when needed, and don't be afraid to tune out, sign off, or leave the room if you're feeling overwhelmed.

I'd like to start with Jacqueline: would you please share your experience with the New York Family Court?

JACQUELINE FRANCHETTI:

As I start to look at my experience within New York State Family Court and really all courts across the United States, I recognize it from the standpoint of: abusers vs. safe parents, abusers vs. protective parents, abusers vs. non-offenders. My daughter, Kyra, is one of thirty-three children to be murdered by their own mother or father while going through a custody case, or a separation, in New York State in the last six years alone. And that awful number doesn't take into account the number of children who are court ordered into a home where they're being beaten, raped, or emotionally devastated each and every day. This is the epidemic that will outlast the current pandemic, unless changes are made. The very first time that I walked into Nassau County Family Court, I thought I was on safe ground, and I wasn't. No one is. When I walked into Nassau County the first time and told the judge that Kyra's father—her murderer—was suicidal, abusive, and threatening me and Kyra, that he was stalking us, and that I was terrified, the judge yelled at me to “grow up.” We had Child Protective Services (CPS) involved in Kyra's case. They noted that he had extreme anger and rage issues and was unable to care for her at a young age.

And they labeled it “no risk and low domestic violence.” I even had an attorney, the attorney for the child, who knew of the abuse and dismissed it.

Five days before her murder, we had a forensic evaluator involved in Kyra's case who saw documented evidence, heard from eyewitnesses of the abuse, knew that Kyra's father had purchased not one but two guns recently, amongst all the other things. The forensic evaluator advocated for joint custody in his report. And just days before Kyra's murder, when we again went to court, the judge said “this is not a life or death situation.” She was wrong.

Days later, Kyra was found with not one, but two bullets in her back. Kyra's murderer then poured gasoline all over his home, set it on fire, and killed himself in a murder-suicide.

If just one of those people involved in Kyra's case had made her life and safety a priority, Kyra would be here today. But they didn't. And what happened to Kyra can happen to someone you know and love, unless changes are made.

We need to educate and we need to empower our courts. Far too many of these cases are dangerous cases. And the courts just lump them all into “mad.” We need to evaluate if they're dangerous, and if they're not dangerous, put them in the mad category—not the reverse. These are life and death situations, and the way that victims and survivors are treated in our court system absolutely must change.

HAMRA AHMAD:

Thank you, Jacqueline, for sharing your story.

Linda, as an experienced litigator in New York City Family Courts, representing hundreds of survivors, what have you observed and experienced yourself?

LINDA LOPEZ:

First, I want to say, thank you so much for sharing your story with us. We know it must be really, really difficult for you to do so. We read your story all the time, but the impact of hearing it from you and seeing you is just profound, and I'm eternally grateful to you for doing that.

It's interesting that we're using the word bias to describe what really is racism, sexism, and misogyny in the courts. It's more than just unfairness. I recall when I was in law school working with a battered women's clinic, and my first court appearance was before a judge. The judge called a side bar with the

attorneys and allowed all the students to speak. But when I spoke, she stopped me, and told me that, “you use the term ‘between’ when two people are speaking, and the term ‘among’ when three people are speaking.” What was profound to me at the time, was that I was so elated to be in court that I really didn't catch what had just happened. And so, back at law school, I heard three of my white colleagues say that they could not believe that the judge stopped me to correct my grammar. And then it hit me. I remember having that sinking feeling. What we call now a ‘microaggression’ was something that I didn't even recognize at the time.

One of my first cases with Sanctuary was representing a client in family court in a custody case. She was a devoted mother of two children who had experienced severe physical violence by the father. Both were monolingual and Spanish-speaking, but he was employed and she was not. During many appearances, the judge routinely yelled at her. On her first day of trial, she testified about him grabbing her head and banging it repeatedly against the wall, to having severe headaches, and to him denying her medical attention. When there was an objection, and the client answered without the judge ruling, the judge yelled at her. The judge screamed at her repeatedly throughout the trial. When we returned on the adjourn day, the client told me she could no longer endure the judge's abuse and she wanted to relinquish custody. Nothing I said changed her mind. It was devastating and it still haunts me today.

On another case, I appeared with my co-counsel, who is also Latina. We were trying to reunite our client with her child, whose father was refusing to return the child after a visit. New York was not the home state of the child. The judge refused that. When we continued to advocate for our client, she threw a stapler at me. On another appearance, she kept the courtroom locked and the court officer told me that I had to make any objections or applications to him, and he would relay to the court, and then report back to me.

I got another appearance. The judge threatened to hold me in contempt so many times that the court officer approached my co-counsel and asked her to get me to stop because he didn't want to arrest me. We developed a code, DEFCON 3, which meant that if one of us was held in contempt, the other had to pick the kids up at school. On several appearances, the judge would call me by my co-counsel's name, despite us having very different names and me repeatedly putting my name on the record. Our client had to leave Florida without her son, and it was six months before we were able to reunite them.

During my twenty-eight years of practice, I have witnessed male attorneys scream, interrupt the judge, make offensive and outlandish statements, miss appearances, or come unprepared. Never have I seen them treated the way the attorneys of color have been treated. Cultural differences and custody cases can

have devastating consequences. During the direct examination of one of my clients, she testified to waking up in the middle of the night by the children's father strangling her while their three-year-old son was sleeping in the bed. As she sobbed, the judge stopped her and yelled at her that it was inappropriate for her son to sleep with her, and that she had to stop it immediately. The look on her face was heart-wrenching. The judge awarded the father sole, legal custody of both children.

Judges do not realize that when their actions and comments, whether overt or subconscious, have racial, classist, or sexist underpinnings, it endangers the lives of the litigants and their attorneys by empowering abusers.

Shortly before COVID, I was representing a client in Supreme Court on a contempt motion I filed. I had represented this client for over three years in family court and in Supreme Court. I filed a contempt motion. I highlighted the provisions in the court order stipulation that the husband failed to comply with, coupled with the documentation demonstrating non-compliance. The judge stopped me at one point, and said, "Counselor, it sounds like you're taking this personally." I had no idea what he was talking about. It was a simple motion—a court order, a stipulation, documentation of non-compliance. Two plus two equals four. Nothing I said was about me. After we left the court part, the abuser approached me and my client, and began to verbally attack me. He yelled at me inches away from my face. To put it in context, I'm five feet, and he's over six feet and a firefighter. My client was terrified. I asked him repeatedly to step away from me or I would have him arrested. I walked away, and he followed me. No court officers were present. As I walked away with my client, he continued yelling and following me until I again threatened to have him arrested. He then walked away. I knocked repeatedly on the court part door to see if I could find a court officer. Eventually, someone opened the door, told me there was nothing they could do, and closed the door. We waited for over an hour, afraid that he was waiting for us outside. The abuser had never spoken to me or approached me in the three years before that day. There was no doubt in my mind that his behavior that day was the direct result of the judge's commentary during our appearance.

Our clients experience a double standard. As mothers, they need to be perfect, whereas fathers are expected to be imperfect, and are praised even when there is evidence of violence. Mothers are told that they are hysterical, mentally unstable, master-manipulators, and frauds. Practically every single immigrant client is accused of committing immigration fraud by raising allegations of domestic violence to obtain a green card, when all they are really seeking is protection for themselves and their children. Many times our clients reconcile, because they're afraid and refuse to continue being abused by the court system.

We will discuss possible solutions, but the biggest step is to acknowledge that racism, classism, and misogyny exist in our courts.

SHAIN FILCHER:

Certainly, and I too want to echo my thanks for the opportunity to be here at the conference today, and to my co-panelists for everything they've shared so far. Taking a step back from your question, the bias is truly built in before the community members are even setting one foot into the courtroom, right? We've all heard the question: "why didn't your client call the police?" Well, this room more than anyone else knows the usual set of answers to that, but I want to frame it in terms of the context of the LGBTQ+ community, and remind everyone that this is a community that's been historically over policed for decades, has little to no trust for the police, and continues to be over policed. Even the presence of the NYPD at pride parade is still a controversial topic. So, there is that additional consideration in terms of why the client may not have felt safe or comfortable in approaching the police. And whether they approach the police or not, when a transgender or non-binary client wants to reach out to a provider for assistance, the services are clearly built around the needs of cisgender women—in terms of the marketing, the advertisements, and even the names of the organization. So this person is left wondering, "am I going to be misgendered if I reach out for help?" These are low-cost fixes that immediately exclude people from the system. Let's say the person has overcome both of those barriers, the police issue and finding access to services, and now they're actually entering into the court system—the court systems that were not designed for our families, right? Legal recognition of our families is very recent at best.

The court systems were not designed for our families, and everyone is aware of that. And I want to remind this room how recent, truly, recognition of our families is. New York was a leader in marriage equality years before the groundbreaking Supreme Court decision, but New York has not always been at the forefront of family law protections for LGBTQ+ communities, particularly in terms of recognition of the rights of non-biological unmarried parents—that issue remains ongoing, frankly, in terms of litigation. So there are a number of issues, systemically, that are built in. The first panel did such a wonderful job of introducing how in this area of law, perhaps more than any other, credibility is king. And this is a community whose credibility has been attacked for decades. We've all heard the ugly things that have been leveraged against lesbian, gay, and bisexual people in the 80s and 90s, and now, unfortunately, many of those attacks are being rebranded and utilized against our transgender, non-binary, and gender non-conforming siblings. There's still a long way to go in terms of trusting litigants to be the experts on what their families are and trusting that the system will take care of them.

HAMRA AHMAD:

Absolutely, thank you.

Social science research tells us that we form opinions early and then seek to reinforce that belief. Meaning, you undervalue opposing data, and you overvalue confirming data. Dr. Springer, as a researcher, you have examined bias in many systems including the health care system: how can social science help us understand these experiences, and what does social science say about how to combat these issues?

DR. CAROLYN SPRINGER:

I want to thank my panelists for sharing their experiences because it really touches close to the heart. When we try to understand these situations, we have to remember we want to understand it, not to excuse it, but to think about ways we can intervene. And social science helps us understand why some of these things occur. We make mistakes all the time. Think about the fact that we're surrounded by lots of information, we have to process this information, and we have to make judgments. Often we're making these judgments under duress—we have to make them quickly, and so forth. But the problem is that when we do these kinds of things, we incur biases. And so one of the first things we need to understand is some of the biases we make when we process information. For example, the first things that you hear sort of anchor your thoughts so it's hard to combat information that comes after that. Because we have a lot of information to process, we also tend to use simple heuristics. So we try to simplify our world by going along with simplified ways of seeing things. Think about, for example, when you're at a restaurant and you come in with a group of people who are similar to you in appearance, right? The *maître d'* assumes that all of you are together, right? Think about the opposite—if you come in with people who are different from you, and they assume that you're not together. So these kinds of things happen in our everyday lives. We also tend to respond to the familiar. We are drawn to people who seem to be more like us, and we create these in-groups and out-groups because it's easier to categorize people. We also tend to confirm information that we already know. Think about the fact that when it comes to social media, people tend to listen to social media stations that confirm their beliefs that already exist. They don't tend to listen to the wide variety of perspectives. It's much easier to assume that other people agree with me if I'm listening to the same message again and again. Think about the fact that a lot of times when we make an error, we can blame the situation because we understand the situational factors that influence our behavior. With other people, we tend to point to their personality, and we don't show them the same kind of mercy we often give ourselves.

We can think about these kinds of cognitive biases and perceptual biases, but we also need to be clear that our society is also framed in a certain way. Think about the way we frame our society in terms of race. We use white racial norms to judge people of color, and when they don't conform to those standards, we don't see them in the same light. It's the same kind of thing when we think about the way society frames women. For example, male leaders are seen as taking control while women who use more collaborative kinds of ways of leading are seen as weak. These things play out in terms of all the statuses that we value. Society tends to look towards whiteness, tends to look towards heteronormativity, tends to look towards males as the standard. And when people don't conform to these norms or conform to these standards, they're seen as less than, rather than different. We need to be much more aware of how these things process. The other thing that's happened over time is that racism and sexism used to be in our face all the time, so it was easy to identify. These things have become so embedded in our institutions that they're hard to identify. A lot of times, we miss them, we don't recognize them. So we have to be much more cognizant of how these things are embedded in our systems, and how they're affecting our world view. When we're thinking about the court system, we have to think about biases all along the way—when decisions are made by all the participants, whether it's the litigants, whether it's the lawyers, whether it's the judges. We have to be much more cognizant of how decisions are made and get framed in all these situations.

We also have to think carefully about our assessment tools: how we assess and try to understand what's going on. Because, again, our assessment tools have bias because they were made for certain groups and may be misapplied. thing. We need to stop and reflect on how biases play a role. And as our speaker said this morning, ongoing education is key, both in terms of really understanding our own biases, but also understanding how these biases play out throughout our system.

HAMRA AHMAD:

Thank you, and yes, we will pivot our conversation a little later to talk about action steps and solutions. So now, let's turn to talking about identifying bias in the system, both for individuals who come to the court to seek relief and for judges, lawyers, and practitioners. What are the expectations for behavior, as alluded to by Dr. Springer, and, is the manifestation of trauma acceptable? Jacqueline, in your experience, how do you see judges address the issue in court, and how does the system respond to abuse?

JAQUELINE FRANCHETTI:

Our courts overburden both victims and survivors with providing evidence and proof of abuse, and then they make you the guilty party, which is just weird and ridiculous. Beating someone is assault. Raping someone is a crime. But if it is your own father or your mother who does this, within family court they can get unsupervised access. The parent who is desperately trying to protect the child becomes the problematic one, and that has to change. If this was a school bus driver and we had the evidence, that person would never be driving a bus again, they would be charged. But that's not what happens in family court. We're overwhelmed by the messages to leave abusive relationships, to get out. But we're not told what happens once we do leave and we have a child with our abuser. The abuse does not end, it gets worse once you enter our family court system. Our court system is set up to enable the abuser and dismiss the victim or survivor, and that has to change.

I want to share some of the things that were told to me during Kyra's custody case, and told to so many victims and survivors in New York Family Court. The first was, "well, you chose to have a child with him." I never chose to have a child with a monster. I was also told, "well, just because he abused you doesn't mean he will abuse the child." I already see the eyes rolling here, and if your eyes aren't rolling they should be. I was told "you're vindictive and scorned." Every fiber of my DNA was screaming to protect Kyra from her abusive, murderous father, and that's how you get labeled. Another thought process for the court is that if you're not an IDV [Integrated Domestic Violence] Court, there's no domestic violence. Trying to even get to that type of court is so hard for so many victims and survivors. This wasn't said to me, but I hear it from so many other parents, "you're just in it for the money." And that couldn't be farther from the truth. We're trying to protect our children. I have a very active student advocacy community at Kyra's Champions, and they get told, "well, you're being coached." The problem is not that they're coached, the problem is that adults are not listening when they speak up. And you would think that some of these thoughts would end when your child is murdered. After Kyra's murder, I went to many trainings to learn, to understand, and to be an advocate. At one of these trainings, I encountered a family court judge, and her response to me, after hearing Kyra's story was, "you're young you can have another." Meaning, I could have another child. Our court system and the Office of Court Administration needs to learn our children are not replaceable. Period.

HAMRA AHMAD:

Dr. Springer, how does systemic bias influence the individual experience, and how are litigants perceived by the system? And, what is the impact on them in their journey?

DR. CAROLYN SPRINGER:

All right, we see a couple of things go on. One is that we need to understand that people come with multiple identities, and it's the intersectionality that is sometimes even worse for clients. Think about the fact that if someone is low income, a minority, an immigrant, and doesn't speak the language, they're going to be perceived a certain way as opposed to someone who has more advanced statuses, and all these things play a role. I think one of the things that happens a lot is that people aren't aware of how these things are really affecting their perception of others, and we're colored by the society in which we grow up. We're colored also by the media portrayal of different groups, and these stereotypes are in our mind. We need to make them much more apparent so we understand how it's affecting how we see those in front of us. It's important for us to keep in mind that just as individuals are impacted by their environment, we're also impacted by our environment. A lot of times people get very resistant to recognizing bias because they say, "oh, it means I'm biased." But we need to understand that we're all affected because we grew up in this society where certain groups were much more valued than others. What is tricky with systemic bias is that it's hard sometimes to recognize it.

So, what Linda was speaking about was all the invalidations that she and her clients experienced coming before the court, and it was very easy for people to minimize, in some ways, some of the things that she was experiencing. Because people don't necessarily recognize how microaggressions really have a macro impact. They take their toll on the individual and the client. So when her client decided that she gave up, that she didn't want to take this kind of treatment anymore, that was a loss. So we need to understand that these things have real vivid impacts for individuals. And while we can talk about bias from an intellectual point of view, we really need to understand the repercussions in terms of the kind of policies we make and the way we treat people. We need to intervene and offset these things.

HAMRA AHMAD:

Thank you. And now that we better understand how bias presents, Linda, how do you—as a practitioner and as an attorney for your clients—prepare your client for court, considering the systemic bias that they may be facing?

LINDA LOPEZ:

We actually start having conversations with our clients very early on about what it means to engage with family or Supreme Court (and just systems in general), and about the impact that it may have. We start, even, with our helpline callers where we ask very specific questions about what it is that they have experienced, what is it that they need, and what they are looking for. It's

really important that we understand, from the client's perspective, what outcome they believe is best for them and have conversations around whether or not the system they want to engage with is going to result in that outcome. Many times it's not. We represent clients from all over the world, and so we need to ensure that we understand any specific cultural forms of violence that they have experienced because it may not be so evident to the court that what they experienced is violence. We explain to the client that part of the representation may be educating the court about their experiences—why what they experienced is violence, and why it's detrimental to not only our clients but their children as well. It's really hard to have these conversations with clients because basically you're telling them that what they're seeking—which is justice and equality and fairness—is not what they're going to get. But, at the same time, we do want to offer and avail ourselves of the systems that are protective of our clients. Orders of protections are a valuable tool in keeping our clients safe. And so, it's really a balancing act to educate our clients about what they're going to emotionally and psychologically experience while they get the legal remedies that can be life-saving for themselves and their children. It's really about having conversations, honest and open conversations, very early on.

We have conversations about whether or not family court or Supreme Court is where they should be and, ultimately, provide the options and the information that the client needs for them to make a decision that's right for them. We have the hard conversation about access to non-custodial parents, which is one of the most devastating things that our clients hear every time they call because, for them, it's very basic—if this person is abusive to me and my children, or my children have lived in a home where they have been terrorized and they're afraid, how is that parent going to have access to my children without some kind of intervention? It is really the hardest pill for them to swallow. We have to gently and carefully explain the system that currently exists—and the way we're trying to change the system—but still empower them to understand that parts of the system can be helpful and beneficial. We explain that cases can go on for years and that a trial could mean you testify for one hour one day, and then you don't testify again for months. We have honest conversations about the double standards mothers face: you're expected to perform these kinds of services on behalf of your children, but he's not expected to have done much. More importantly, we really try to help them feel empowered.

I really have seen the differences in the dozens of clients (if not hundreds of clients) I've represented from the day they call us, to the day they testify, to the day they walk out with custody, or an order of protection, or an agreement that really takes into consideration their safety and their children's safety. It is really an incredible transformation. So, there is a way that you can empower your clients for that journey, because it is a journey. I often struggle with using the word 'survivor' when we talk about our clients, and I remember having this

conversation with Dorchen [Leidholdt, Director of the Legal Center at Sanctuary for Families]. When someone calls our helpline and they just describe being beaten, they're not a survivor. They're a victim. At some point, they hopefully become a survivor when they feel empowered enough to avail themselves of the remedies or when the systems have empowered them by acknowledging the harm that they've suffered. And our goal is always to help them through that journey, and to help them avail themselves of the systems. The work that we've done from the day I started is to ensure that the systems are more responsive and are more protective.

And then we also explain to them that the fight is not over—we are still fighting for systemic change every single day. And that their story is important—it impacts the court, and will hopefully make it easier for someone else with the same story who comes in before that same judge after them.

HAMRA AHMAD:

Thank you, that is such an important point. Speaking of bias, even with the best of intentions of wanting to empower your client by calling them a survivor, this is maybe silencing how they identify themselves. And allowing that space to pause and reflect is really important. Thank you. And building off of those best practices, Shain, specifically with transgender clients, how do you prepare them for a system that, as you said earlier, is already biased against them?

SHAIN FILCHER

That's a great question. Part of it is the office structure itself, right? What forms of identification are needed to get back into the room to see me, what the space that I'm meeting with a client looks like. Then, in addition to the usual best practices like "sit wherever you'd like to sit," and "...is it okay if I close the door?"—it is important to think about what you can do to minimize difficulties. I always like to say that I was not always in the happiest area of law when I was actively practicing before taking over as Executive Director, and I anticipated that I would have a lot of people crying in my office. I would have transgender women come in wearing beautiful makeup. And then we would get halfway into the conversation and there were mascara tears running down their faces. I thought about what can I do to alleviate that burden of having to use a public restroom, looking upset, and having to go back out into the world. So I started keeping individual makeup wipes and makeup samples in my desk and put a mirror over the file cabinet that had been wallpapered to look like a dresser. I created a home atmosphere where you were able to sit down, have a conversation with me that could be very difficult at times, but were then able to take whatever you needed to put yourself back together before having to go back out there and fight in the real world. So part of it is the interactions that

build up strength and camaraderie before you even set foot into the courthouse. Then the advocacy continues there. We heard from the first panel about how something as simple as pronouns still continues to be an ongoing battle to make sure that litigants feel respected regardless of what the outcome is in their particular case.

HAMRA AHMAD:

Thank you. We are learning such great tips, that we wouldn't have thought of. So now, we want to shift a little bit to talk about the other players in this system, specifically forensic evaluators. And we'll start out by hearing from Dr. Springer about the role or the impact that they can have in family court proceedings. Then I'll invite the panelists to speak to their thoughts and experiences so that we can address that issue. Dr. Springer?

DR. CAROLYN SPRINGER:

Sure, so a lot of times when it comes to deciding custody of children, forensic evaluators are called on to be an expert to assess what's best for the family. Theoretically, they need to talk to all members of the family to really get perspectives. They need to also talk to outside folks. So it could be things like speaking to educators, speaking to doctors, and so forth. What gets tricky, though, when you're doing a forensic evaluation is whether you are using the appropriate tools. The way biases play a role here is that people tend to use tools they're familiar with. Sometimes the tools that might be most appropriate are not available when you're dealing with people who are from a different cultural background or speak a different language. Even people's familiarity with being questioned can be quite different, so you're introducing biases in the way you're trying to assess. The other thing that can unfortunately happen is that sometimes the abuser can be the most charming person personality-wise. People can be fooled by someone who presents such a stance. So it gets tricky when forensic evaluators are trying to assess. The other thing forensic evaluators may face is that there's no standardization currently in terms of the different tools people use. I think that our reports need to be a lot more transparent so that the people really understand what tools were chosen, why decisions were made, who was interviewed, and so forth. We need a more comprehensive kind of evaluation. What gets tricky, also, is that evaluators turn in the reports, but they don't get to speak in court. So, again, you're seeing a written report, but what was assessed and how it was assessed can get lost in the mud.

HAMRA AHMAD:

I'd love to hear about any other individual experiences with the forensic failure, whether as a practitioner or from personal experiences. How did it impact your case and your client's journey?

JACQUELINE FRANCHETTI:

Well, I had three forensic evaluators in Kyra's case, one of which did the final report. And to take a step back here, forensic evaluators are in the Wild Wild West—like Carolyn was just mentioning—there's no standards. There's no requirements. There's no accountability. There's no way to remove bad evaluators from the system. So they just remain there. There was a case on Long Island with a six-year-old boy who was sexually assaulted. The evaluator interviewed him on the bed where the assault took place. There was a case in Manhattan, another sexual abuse case with a child. The evaluator in this case said the mom had poor mental acuity because she was drinking iced coffee during winter. In another sexual abuse case up in the Schenectady-Albany area, the forensic evaluator forced the little girl to sit on her father's lap during the evaluation, and if she answered a question in the way in which the evaluator wanted her to, she got a toy.

There are vast reforms that need to occur within the space of forensic evaluators. Carolyn, myself, Jennifer Friedman, Joan Gerhart all sat on the Blue Ribbon Commission where the governor released a report in early January that had a series of stellar legal recommendations that need to be enacted to revitalize and vastly reform this space, if we're going to continue with it. And, if not, we need to place a moratorium on it or eliminate it completely because they are so horrific. This has resulted in child murders, like my own daughter's, and far too many others. And they're not doing what they're intended to do, and that is a true problem.

HAMRA AHMAD:

Linda or Shain, do you want to talk a little bit about any experiences, or perhaps things that you'd like to see as a reform for some of these issues?

LINDA LOPEZ:

I think that one of the biggest issues with forensics is that judges sometimes rely too heavily on them. They make custody determinations or force settlement based on what is documented in the forensic report, when the forensic report is just supposed to be one of the many factors that the judge should be considering in determining custody of the child, not the determinative factor. And it's almost what happens on the representations of the AFC [Attorney for the Child] as

well, there's an over-reliance on forensic reports. And it's almost as if the forensic report is the determining factor in many cases when it shouldn't be.

Many times, the evaluators are not even testifying in court. I mean, it doesn't even get to the point where there's a trial and where they're testifying. And the validity of the report is examined in a way that it really shouldn't be. So what we find is that forensic evaluators (who themselves are biased and write very biased reports) write reports that end up being detrimental to victims of gender-based violence who are not always going to present well under these forensic evaluations. Forensic reports can have really devastating impacts on the cases of our clients and of gender-based violence survivors who are appearing before the court. And that is definitely something that has to stop. The judges have to be held more accountable when they over-rely on forensic evaluations and make custody determinations.

HAMRA AHMAD:

And on that note, I think we can shift into more of the action-based solutions: what can we do about these problems? This morning, judges spoke to efforts for ongoing and enhanced training. I think there are some of us who question the effectiveness of that, or how that has worked or not worked. What needs to change in the realm of training, and for whom, and how often?

SHAIN FILCHER:

I would be happy to kick off that conversation. Because making sure that all of the parties in the system really understand the difference between sexual orientation, gender identity, and gender expression overlaps with forensic evaluators as well. There is still a misconception that the person in the relationship who presents in a more feminine way is automatically the victim as opposed to the abuser. We know that that's not always the case. So I think that a critical piece of training is making sure that those three concepts are really understood as a baseline.

HAMRA AHMAD:

Absolutely.

DR. CAROLYN SPRINGER:

And I think training really needs to be ongoing, and it needs to be for all parties. We need to make the invisible visible, really understand how implicit bias works, and really understand how people respond to trauma. One of the things that we see is that a lot of times people's affect is not what you would

expect, and they get judged because their affect doesn't fit the norm that we would expect. A lot of times, what happens to people who have been traumatized is that they have flat affect, so they don't respond the way that you would expect. And I think we need those kinds of trainings where we really think about, how someone who has been traumatized for years would present in court. I think it's important for us to understand that. And I think it's important for us to have ongoing training on domestic violence, to really understand how interpersonal violence plays out and how conflict is negotiated in families. As we get more and more research, and more and more evidence, we need to bring people up to speed. So it can't be a one-stop kind of deal. It needs to be ongoing.

LINDA LOPEZ:

It's interesting that we use the word 'culture' a lot to describe what happens in the workplace, but we really don't use it to describe what happens in the court system. And there's a culture: there's a culture of oppression, discrimination, racism, and sexism. And all the training in the world is not going to change that. And that I think is one of the biggest problems that really isn't being addressed—what is the culture in the court system? Usually it's that the litigants and the attorneys are the 'others,' and they're seen in a certain light. The litigants are seen unfavorably, usually. And if you're a woman of color, you're seen even more unfavorably. And I don't know if training is going to change that.

But what I do believe is going to change that is accountability. Because that is what is severely lacking in the court system. We've talked about creating a portal for litigants and survivors where they can go and find out what appropriate redress they have when they've experienced in family court something oppressive, racist, sexist, classist, or even just contrary to the law. Which, surprisingly, we see a lot of lawlessness in family court. And there's no place that you can go to address that, usually. If you're fortunate enough to be connected to someone who's connected to someone, you can sort of find a way around it. But if you're a litigant, or a solo practitioner, and you're having these experiences in family court, there's really not a whole lot you can do.

Also, when the court has the power to take custody away from your client or deny your client an order of protection, you have to tread carefully. Many times, you have to wait until the end of the case where you're given a decision or order that you can hopefully appeal (if you have the resources, or if you can get a pro bono to help you). Oftentimes, what happens is off the record (or is not written in the body of decision), but it's happened nevertheless. Many times I've been called back to chambers and that's where the racist, sexist, or classist comments really come out. Then you go back on the record, and you would never know what happened unless you were in the room. So what we really need is

accountability. What's always been interesting to me, is that when you read about how judges and jurors are supposed to behave—it is a really high standard. It is really high! They're supposed to be ethical and impartial and rule in a certain way. But when you're in court, you wonder, "where is it?" Because it's not happening here. If you're held to that high standard and you're not doing what you're supposed to—what you swore to do—what happens to you? Nothing.

So until there is accountability, we're not going to reach systemic change. And while the training may impact those who are willing and are receptive to change, all the training in the world is not going to change you if you don't think there's anything wrong with the way you think, what you believe, and the way you rule. However, if you may be taken off the bench, or if there's going to be real ramifications to your behavior, then there's going to be a cultural change. That's when real change is going to begin.

JACQUELINE FRANCHETTI:

I want to pick up, Linda, exactly what you're talking about. First, I want to highlight something with training. I personally went to so many different trainings all around New York State, and even in other states after Kyra's murder to learn more. And I can count on one hand the number of good trainings that I attended. With training we need to make sure we're identifying the right actors to do the training. That is so critical and so important. Bad training is worse than no training.

Now what Linda's also talking about here is accountability, and this is something that is so important. Right now in New York State, I have eight bills that are inspired by Kyra's custody case to better protect children, one of which is "Kyra's Law."² Kyra's Law, by the way, is common sense legislation. It does three critical things. The first thing is to make a child's life and safety the top priority in a custody case. This is common sense, but it's not happening in reality. The second thing is judicial training and, again, identifying the right actors to do this training. The third stops common practices that allow abusers to gain custody. But one of the other critical things that we brought into Kyra's Law, just like Linda was talking about, is accountability. Because, Linda, you're right. Until the judge renders a decision, there's no accountability brought into these cases, and that's a huge, huge problem. Kyra's Law will allow us to have an emergency hearing early on in the case to protect the child, which forces the judge to render an appealable decision. For the first time we can get judicial accountability into this system, which is so desperately needed and so critical. And that can have such a huge impact on all of us.

² S. 7425A, 2021-2022 Reg. Sess. (N.Y. 2021); A. 5398A, 2021-2022 Reg. Sess. (N.Y. 2021).

HAMRA AHMAD:

Keeping with the accountability idea, as either a litigant or as a lawyer, at the time that you experience the macro or microaggression, you make that very difficult decision of: do I risk the future of this case by raising the issue now? Do I try to get it on record? Flag that I'm going to raise it on appeal? Do I not say anything? And just from seeing your faces and nodding heads, I think that even the people in this room or the people watching have experienced those instances and chosen not to respond because you were thinking of the interest of the client and the future of the case. How do we balance that? Maybe by getting that decision on record earlier? How do you hold accountability during the case? And how do you balance the interest of the client, and your own need to change the culture?

LINDA LOPEZ:

It's interesting because I have these common accounts that we work with, and it's always a balancing act, you know. It's always about reading the room, and it changes from appearance to appearance at times as well. And you're always thinking about creating a record. You have to see the bigger picture when you're litigating a case. When I first speak with a client, I'm already thinking about trial—that's just the way lawyers are trained to think. So when I'm litigating a case in court, I'm thinking about creating that record. I'm thinking about ensuring that this is documented. It might not be helpful now, it might not be helpful at the next court date, but at some point that record can be helpful. And when I've experienced microaggressions and racism behind the closed doors of chambers off the record, when we go back on the record, I put it on the record.

Now, when you're a litigator in family and Supreme Court, you have to be comfortable with not being liked. Oftentimes judges are not going to like what you're doing because they get it. They get what you're doing. They get that you are going to appeal the case or that you're creating a record for a particular reason. But it's your job to protect your client and to do everything that you can to put them in the best possible light in the event that there's an unfavorable ruling. The record is the only thing that's going to survive the case and go up to the Appellate Division or the Court of Appeals. So you have to make sure that you preserve that record, whether it's going to upset the judge or not.

You also have to think about what impact your decisions are going to have on your client's case, because ultimately your client is the one who's going to bear the brunt of whatever wrath the judge may express through an unfavorable decision. So you have to learn the skill of diplomatically arguing a very zealous

case. My children always say that they cannot believe how calmly I can tell them off. [*Laughter*] It's a skill that you learn, right? "Well, with all due respect to the court, this is contrary to the law, your honor..."

And sometimes you have out of body experiences. I have been in court and have left my body when judges have said things that are so racist, or when an opposing party is screaming at me, berating my client, and the judge is letting it go on and on. Then you come back into your body, you compose yourself, and you go forward. You have to have tough skin to do this. But if not us, then who? Who is going to be there on behalf of the litigants who need representation, and who deserve the representation because they are the most marginalized, the most oppressed, and the most victimized? It's hard. But you have to do it.

So you really need to think carefully, you have to wear so many different hats, you have to be fluid in how you approach the case and how you approach the court. You really have to think strategically and think about the end goal, which is getting your client the relief that they need.

HAMRA AHMAD:

Thank you. I'm aware of you and all of the other experienced litigators in the room for whom it took years to do that—to learn how to come out of your body and then come back. The newer attorneys who are thinking, "How do I become you? How do I do this?" We have to bring back to our organizations and to our firms that we need to talk about it. We're trained to advance in our careers based on a certain set of unwritten rules which is to be liked, not make too many waves, but make enough waves to get noticed. It's contrary to a lot of the bias that Dr. Springer was talking about as well. It is creating a space where you can talk about how hard this is. And not necessarily giving an answer, or having the answer, but really talking about how you've had to do that. And you sharing these experiences is a great step in that direction.

LINDA LOPEZ:

It's also really important that organizations have a process in place for the staff to learn what to do when they've had these experiences. They need to be able to turn to someone in their organization to validate what they've felt. When you're a person of color or a woman, you're so used to this; it's been so ingrained that sometimes you just internalize it. You come back to the office, you get back to work, and you don't realize how it's impacted you. But it has impacted you; you are forever changed after you have these experiences, and it's really important that you take the time and that your organization creates the space for you to come back and say, "I just came back from court, and this judge said this." To say, "I had this experience." and someone will say to you,

“Wow, that's really horrible. That's wrong. That's racist. You shouldn't be having those experiences.” Or, that we can come and say, “this judge just said this to me” and that someone will say, “you know what, I'm going to pick up the phone” or “this is the grievance process that we follow. Let's go through it together.”

We need to support staff for doing this work. Around 1998-1999, I started a divorce project where I trained law school students, and I ended up working with six different law schools in New York City. I would carry the files of my monolingual Spanish-speaking clients from law school to law school to law school because I couldn't place them. Not much has changed. And it is a travesty that we do not have more people of color in the profession. When working with gender-based violence, we're working with a very specific area of law. So, to have an attorney of color willing to do not-for-profit or gender-based violence work, that's already narrowing the playing field. But when you don't even have a pool of law school students to recruit who are part of these communities, it is a tremendous loss not only to the profession, but for the litigants that want to see an attorney that looks like them, speaks their language, and understands what it's like to come from an impoverished background. That's really important, and we're not seeing that. If we don't set up the system from early on to have better education for middle school kids and high schoolers to get into college, to become lawyers, and to be able to come into this field, it just creates a greater injustice for the litigants that need their representation.

So as leaders of organizations, we need to make sure that we support those who are willing to do this work, are in the trenches, and are fighting every day. And that is with pay. We know that getting attorneys to work at not-for-profits salaries is one of the hardest things to do, especially with the enormous student loan debt that they have. We need to find a way of paying not-for-profit attorneys better, we need to do something to help with student loans, and we need to support the attorneys that are already there. Because if they leave, there are not going to be a lot of attorneys to replace them.

HAMRA AHMAD:

Absolutely. Her Justice and probably several other organizations here are looking to hire a bilingual attorney, and it's been very hard. That speaks to what you just explained. We need that to reflect the needs and identities of our clients. What other opportunities or fixes do you see? Is it a legislative fix? What are some other solutions or action steps that we can take and support?

JACQUELINE FRANCHETTI:

In terms of fixing and transforming family court in New York State, it boils down to legislative action or executive action. It is not going to come from the Office of Court Administration (OCA). When I first went to Albany and knocked on the first door to start bringing about legislative changes, it was a much different time from where we are today. When I first walked into Albany, people weren't sure if I was actually speaking the truth of what's happening in family court and about how bad it is. Now that has dramatically changed. I'm wearing sneakers today, and that's going to be the way that I'll be until we actually pass all of these bills. I pounded the pavement to knock on every door so that people would start to understand the dynamics and how badly children are being treated in our family court system. But if we want to have change happen, it is going to have to be on that front. OCA has had decades to make changes here, and they've failed time and time again. So it's going to be on these fronts. Like I said, we have eight incredible bills, and if anyone wants to get involved by the way, the easy way to do it is to go to [kyraslaw.com](https://www.kyraslaw.com).³ In ten seconds you can put in your snail mail address, and you can send a letter to your legislators. Also, this way I get to contact you and invite you to be part of our team. We need you in Albany communicating to legislators to bring about the changes for a better tomorrow.

SHAIN FILCHER:

I think there's certainly an opportunity for bar associations to step up and be more involved in this arena, some of which Linda already alluded to in terms of building out the pipeline that many of the affinity bar associations are already doing a job of. I'm not going to say a 'perfect' job because there's always room for improvement, but they are in that space. It's a starting point. So if the bar associations could put a brighter spotlight on a lot of these issues, I think it would carry a lot of professional weight.

HAMRA AHMAD:

Absolutely. To the point of collaboration, as Linda was saying, it is so important to bring it back to our organizations. The Coalition, such as the roundtable that organized this, hopefully will live on beyond this conference as another space where we can share these stories, strategies, and efforts to identify and move forward some of these action items.

Do we have some questions in the pipeline? Wonderful. Rachel Braunstein, Director of Policy at Her Justice, is our question reader.

RACHEL BRAUNSTEIN:

³ KYRA'S CHAMPIONS, <https://www.kyraschampions.org/kyras-law> [<https://perma.cc/8PP2-BNQL>].

Some of these great questions address the panel, but some are for the Coalition. Dr. Springer can take this one: Are there ways to know if training works? Are there measurements or evaluations to say this has been effective or not?

DR. CAROLYN SPRINGER:

Yes, there are. There are assessments for evaluating some of the trainings, for example, for implicit bias. And again, you also want to vet the people who are doing the training. And I think that collaboration between social scientists, lawyers, and judges would work. Because, partly, it's to understand the research, but also to understand the environment in which you're trying to train for.

RACHEL BRAUNSTEIN:

So the question came up as to a greater publishing of family court opinions or publicization, in the news and media, of family court opinions as a way to increase transparency and therefore, accountability of family court decisions.

LINDA LOPEZ:

I mean, with the backlog in family court, I wonder how feasible that is. A lot of the things that happen in family court, as I said, are really not reflected in the decision. I really have to think about that one.

KIM SUSSER – AUDIENCE MEMBER:

This is actually a really good point, and I think we could do that with the decision. I think one way is to immediately send it to the law journal with a letter accompanying it saying why it's important that this gets published. You can send it to the bar association and see if they can publish it in their newsletters. Also, you could do a press release from your agency. I think there's several ways to advocate. A lot of times the law journal just doesn't pick it up, and a lot of times the judges don't send it to the law journals—you have to.

JACQUELINE FRANCHETTI:

Relatedly, regarding transparency and accountability when it comes to judges, who's actually on the bench? We heard this a little bit from the previous panel, but in Nassau County for example, in the last election and in this election as well, there were eight open seats for Supreme Court. Well, the Democratic and Republican party only nominated eight candidates for their judicial “election.” Those aren't elections; those are appointments. If we're electing our

judges, we should know about them. Was there a homicide in that judge's courtroom? We should know things like this when we're voting for them at the polls. In fourteen counties in New York State in the last judicial election there was no election, there were appointees and that needs to change.

HAMRA AHMAD:

On the point of transparency and information about cases, about the courts and judges sharing data, we've recognized that the courts are under resourced. But there's definitely information that they can and do track that would help us know collectively how many complaints there have been and what happened to them after the complaint was raised. That would also help inform different strategies about where we need to place our efforts.

RACHEL BRAUNSTEIN:

I'm going to lift up that point about the need for other ways to surface this information. This is a room full of folks who are committed to these issues. What are other ways to tell this story in terms of surfacing data, in terms of watching the courts, and in terms of bringing up complaints? A commitment to describing the problems so that solutions can be brainstormed by folks like all of us. And to that end, a question came up about the issue of inconsistency between judges (even those sitting in the same courthouse), and how folks might think to raise up that kind of an issue— that there's a lack of uniformity.

LINDA LOPEZ:

That goes to the accountability issue, right? Who's really watching what's happening in family court? Years ago or even decades ago I think, we had a Court Watch Project where we had law school students sit in the courtrooms, and we created this form where they would 'check off' what was happening in the courtrooms. We had all these (I think I might still even have them) different forms. We got stuck at getting a statistician to analyze the data. But it did have an impact when the judges knew that there was someone watching. So, who's watching and what are they watching for? Because they're not watching for what we're talking about in this room, and that's the problem.

RACHEL BRAUNSTEIN:

I think, Dr. Springer, you said some, I thought, really valuable words about making the invisible visible. Her Justice did a Court Watch Project a couple years ago and it was really impactful for the point that we're saying here—just being in the courtroom knowing you're being watched.

There's a question about—and Linda, I think you spoke to this, and I loved how you talked about support for staff—when agencies are hearing from staff, that there are lawyers or clients experiencing bias in the courts, are there ideas for how agencies could relay that to the court system itself?

LINDA LOPEZ:

Thank you. I mean, I think we do so in committees. The Lawyer's Committee Against Domestic Violence is one committee where many organizations meet and really talk about what's happening in the court system. NYSCADV is another place where there's conversations and there's action around what's happening in the court. But it has to be more than help from these organizations for it to get reported, and what gets reported, and how it gets reported. The court system will not fix itself.

HAMRA AHMAD:

I think the challenge sometimes is also that the judges are given (and to some extent it's understandable) discretion on how they run their courts. But, who holds them accountable? If it is OCA, where does that need to do something come from? And is it putting too much burden on the people who've been marginalized, oppressed, and impacted?

RACHEL BRAUNSTEIN:

This goes to the general point of the court system versus legislators. Shain, if you would be willing to speak about some legislation (anti-discrimination legislation) that I don't think has been introduced, would you tell us about it?

SHAIN FILCHER:

Sure. I'm happy to speak about that. So some of you might be familiar with GENDA, which added gender expression and gender identity, including transgender status, to the New York State Human Rights Law as recently as 2019. Prior to that, sexual orientation was explicitly articulated but those other categories were not. So one potential legislative fix would be thinking about fortunately/unfortunately removing some of the family court's discretion when they are making a determination for the best interests of the child, that the court should not consider the sex, sexual orientation, gender identity, or gender expression of the parties, or prohibit a party from undergoing gender confirmation surgery, medical transition/legal transition/social transition, whatever those components may look like. So there are potential legislative, and I don't want to say 'fixes' because nothing is perfect, improvements, hopefully,

that could be made. Unfortunately, this bill did not get a lot of traction this particular legislative session; hopefully it will in the years to come.

RACHEL BRAUNSTEIN:

Okay, one other sort of ‘drill down’ question is about how to challenge a biased forensic report in a particular case.

LINDA LOPEZ:

You have to get the evaluatee on the stand, and do one hell of a job on the cross examination.

RACHEL BRAUNSTEIN:

Have you had that experience?

LINDA LOPEZ:

I had the wonderful experience of the judge saying that they were not going to be considering the forensic evaluation because of the evaluator not even being trained in domestic violence. And that was a glorious day. [*Laughter*]

RACHEL BRAUNSTEIN:

Sounds like it—congrats [*Laughter*].

JACQUELINE FRANCHETTI:

Yeah, I'd like to jump on that one too. I had a horrible forensic report in Kyra's case, and this just goes to so much of what's wrong with forensic evaluations in New York State. Again, this is the Wild Wild West, and if we're going to keep these evaluations, they need vast reforms. First of all, we should have an immediate moratorium on the use of these evaluations. If we're going to continue using them, we should implement the changes that were put into the Blue Ribbon Commission. If not, then we should eliminate their use completely.

The amount of bias that goes into these evaluations and how detrimental these are to children in custody cases is astounding. The costs associated with these are mind-boggling. In the New-York-City area, it is not unheard of for these evaluations to cost \$50,000 or more. Now, if you have a bad evaluation, you then have to hire someone to peer-review it at an additional cost, and you have to pay both for that first evaluator and the peer-reviewer to go on the stand.

The costs of trying to protect your child from an abuser in a custody case are astronomical, and it should not be this costly to protect a child.

RACHEL BRAUNSTEIN:

And I have a request here, I think it came from Zoom, to plug the Inspector General's Office as a place to make complaints about judicial bias. Does anyone want to speak to this on the panel or otherwise? Experience or tips? Okay, know that the Inspector General's Office will accept complaints.

So, do you want me to ask one more question?

JENNIFER FRIEDMAN:

I think we have just a few announcements.

RACHEL BRAUNSTEIN:

Okay, please—

JENNIFER FRIEDMAN:

We can thank our panel—so much [*Applause*].

So, thank you everyone. I know it's been a long morning, and its going be an even longer afternoon, but I hope people are feeling inspired and excited and energized.