DAY 1 – OCTOBER 13, 2022

KEYNOTE PANEL 4: FIXING WHAT'S BROKEN: REFORMING THE SYSTEM[1]

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WILLIAM C. SILVERMAN:

Thank you again for being here, and just another reminder: fill out your CLE form and leave it in the middle of the table, don't take it with you. Just leave it in the middle of the table so we can pick it up. Also, there is a reception right afterwards at 4:30.

So we're going to start with what happened during COVID in family court—New York City Family Court—and why. I think the "why" is critically important because COVID didn't happen in a vacuum; COVID laid bare inequities that were in the system for decades, and I think it's an interesting inquiry. We're going to talk about the court structure, the unique, antiquated New York State Court structure that no one would design, and how that impedes access to justice. And then we're going to talk about some specific legislative recommendations focusing, obviously, on domestic violence. If you have any

[1] *See* Sanctuary for Families, *Fixing What's Broken: Reforming the System*, YOUTUBE (Oct. 24, 2022), https://www.youtube.com/watch?v=3ywAq9djIcc [https://perma.cc/NN8W-ZTEK].

questions, obviously, someone should just let me know—happy to include them at any point.

All right, so, no long introductions: Karla George, Deputy Director of Family Law Project, Sanctuary for Families. Christine Perumal, Director of Safe Horizon Domestic Violence Law Project, Safe Horizon. Denise Kronstadt, on the very end, Deputy Director, the Fund for Modern Courts. Full disclosure: I am the Chair of the Board of the Fund for Modern Courts, so Denise will get a disproportionate amount of time to speak. [*Laughter*] And Joan Gerhardt, Director of Public Policy and Advocacy, New York State Coalition Against Domestic Violence.

Christine, let's start with you, if you don't mind. I'd like to explain what happened during COVID in New York City Family Court. Let's focus on Safe Horizon's caseload. The court pretty much shut down for a large percentage of cases for an extended period of time. Talk about your group's experience at the beginning and middle of the worst part of COVID.

CHRISTINE PERUMAL:

Sure. So, good afternoon, everyone. It's great to see you all today. I'll talk a little bit, specifically, about what we saw internally in our program and the effects that the pandemic had on survivors that we serve. What we saw was troubling, right? The pandemic exacerbated many of the issues that survivors face on a daily basis. Karla will go into this a little bit more, but what we struggled with was the ability for survivors to get into court, number one. There were certain matters that were deemed essential and non-essential, and what we saw was clients calling our internal helpline asking for things like child support, which during the height of the pandemic was deemed a non-essential matter.

WILLIAM C. SILVERMAN:

So, let me stop you right there. The court makes this distinction between essential and non-essential. Let's define our terms. What was considered to be essential?

CHRISTINE PERUMAL:

Karla, do you want to get into this? I know that's part of yours, sorry.

KARLA GEORGE:

Sure. Once again, good afternoon everyone. It's very great to be here. In preparation for this panel, I actually went through all of my notes for the various

meetings that I was involved in involving COVID and the new protocols. I have here, in bold and exclamation marks, that what was deemed an emergency was "life-or-death." That was blatantly said and put into a clerk's hand to determine what was life-or-death.

WILLIAM C. SILVERMAN:

Right, so proceedings like orders of protection, child protection, delinquency generally were considered to be essential, and then non-essential was support, visitation, custody, adoption, guardianship. But within that world, there were some so-called emergency cases, and I guess this would be for both Karla and Christine: How did the court determine when custody, visitations, support, or adoption was essential or non-essential?

CHRISTINE PERUMAL:

Well, I think there was a lot of discretion given to these judges, right? We had child support matters that would come through our internal helpline, clients wanting to file for child support in very dire situations, right? During the height of the pandemic, people had lost their jobs. Some survivors had even left the home and inquired about getting financial support, and when we told them that there really isn't an ability to file even for child support right now, some people said to us, "Well, then I guess I should have stayed." "I should have stayed." You've heard the troubling stories today, and we heard some troubling things that survivors experienced at the hands of their abusive partner, and to think that a survivor would go back to that point to say, "I should have stayed," was very troubling to hear.

So, unfortunately, during that time period, there wasn't a mechanism for litigants to be heard. They could send their petitions, and they would eventually—to our knowledge—be calendared at some point in the future. In terms of visitation cases, you know, we had many cases come through our helpline where survivors had left their home and their child was still with the abusive partner, and there was no way for them to really get in, either through a writ—maybe their writ was denied—or through an order to show cause, and their visitation petition still was deemed non-essential, so they would have to just wait until that was calendared. And we had cases where there were months—months! Four, five, six, months of time passed between contact with a client and a child. In a young child's life—or any child's life—that feels like years.

So during the height of the pandemic, there was really no mechanism to get in unless you fit nicely under those categories. If you filed an order to show

cause, and the court deemed that it was a true emergency, and it was life-or-death, or that a child's life was in danger, you could possibly be seen by a judge.

KARLA GEORGE:

Yes, and to add to that, just taking a step back, someone has already deemed that it was an emergency when going into family court. That's why they're there. They're part of a broken family—that's why they're seeking help. When you say this has to be life-or-death, to some of these people, this is!

We also had a hotline, and the numbers went up very high right after the pandemic hit. A woman called, and I screened her, which is like a consultation, and the abuser kept both of her children. There was a boy, who was around nine, and a girl, who was around thirteen. There was a custody order, the mother had custody, and the father had, already, a finding of neglect against him. She called ACS [Administration for Children's Services], and ACS refused to get involved. They would not remove the children, they said it wasn't an emergency. So she called our office, and I said, "This seems like an emergency; let's see what we can do." In between that time and trying to get an attorney to help her further, she called me and she said, "He's returned my son but he won't return my daughter, and my daughter keeps texting me telling me that she doesn't feel safe, that she is having suicidal ideations, that she really wants to come home. I've called ACS and they refused to do anything."

At that point, I filed an order to show cause and I sent it over to family court. Unfortunately, we couldn't take this case because we had already had all of these cases that have been sitting with us pre-COVID that weren't going anywhere, so we were at capacity. So now I'm helping this woman on a pro se basis. We filed an order to show cause. I thought it was an emergency, I'm sure many of you thought it was an emergency. But the clerk didn't deem it an emergency. So this woman could not get access to her daughter that was held with this abuser who had a finding of neglect against him. And unfortunately, I don't know what happened, because part of my job—and the hardest part of my job during COVID—was saying, "No, I can't help you. There's nothing else I can do." And after hearing that, of course there was no follow-up from the client, because what could I do? But that was a prime example of what was life-and-death to somebody, that wasn't life-and-death to a clerk.

WILLIAM C. SILVERMAN:

Just so people are clear, pending cases were frozen. Cases pre-COVID were frozen for about nine months if they weren't considered emergencies. And new cases, cases that were submitted to the extent they were allowed to be submitted

during COVID, weren't calendared until the spring of 2021, a year after COVID started.

Christine, do you have any specific example of a case where there was significant delay in a so-called non-emergency case?

CHRISTINE PERUMAL:

Well, unfortunately, I have many. But I just want to highlight something before I get into that. What I saw as another issue during the pandemic was clients whose primary language was not English or who had limited proficiency. You know, we always are grappling with language barriers, and clients who don't speak English and are trying to access the courts, but not understanding how to navigate the courts. And that was exacerbated during the pandemic. Clients who didn't speak English didn't know. They would show up to the courthouse; we would get calls and they would say, "What do we do? Like, how do we even contact anyone in the courthouse?" Then we'd have clients who would have a friend or a neighbor send paperwork to an email address that was designated in each borough to the court, and then they'd receive correspondence back and couldn't read it. Some clients were missing court dates; some clients didn't know how to sign on or click on a link to use the technology. These are just huge barriers that have existed for decades, and they still exist. And I'll get into that later about recommendations, but, yeah, there were a lot of delays. Specifically, one example: there was a child safety concern where we filed an order to show cause on a pending custody case, and it took the court about four weeks to schedule the order to show cause—four weeks! On what could have been a life-or-death situation for a child. And when we followed up, we were told that there was limited capacity, this judge didn't have a court attorney, and that we should check back in with the petition room. And this, as many of you know as practitioners, this is just not a normal course of how you deal with an order to show cause that you have filed. And so it took us about four weeks to get in on an order to show cause, and then the matter was adjourned for another three or four months.

WILLIAM C. SILVERMAN:

In terms of language, there was a sign on the door in the family court in English—then they added English and Spanish. A sign on the door. And if you go on the website, a limited number of languages. I think that's a point well taken.

So, Christine or Karla, family law pretty much shut down for a significant period of time, but family law matters were litigated in the [New York] Supreme Court at the same time. Is that accurate? What was your experience?

KARLA GEORGE:

That is accurate, and in fact, that was part of our strategic planning when screening or consulting with a client—whether we would want to send them into Supreme Court where they weren't guaranteed an attorney free of charge, or there were filing fees that they couldn't afford, but that was your quickest way to a judge. Otherwise, they would have to wait for family court to even docket their custody visitation or child support petitions. And you only have that relief in Supreme Court if you are married, and maybe some people do not want to move forward to a divorce but they wanted the child support, they wanted custody. So we did have to battle that, and it was very hard to explain that to clients—that one court was open and able to receive orders to show cause issues, and one court was not. And why was that? I just did not have an answer.

WILLIAM C. SILVERMAN:

When Jeh Johnson is talking about a second-class system of justice, this is the best concrete example: when one set of justice for those who are married, have a lawyer, and can afford a fee, those matters go forward. Whereas for people who are predominantly poor people, predominantly people of color, those matters are just put on a shelf and deemed non-essential. Notice how, as a moderator, I stay completely neutral in my questioning. [*Laughter*]

We'll move on, but I also want to know a little bit about why. Why the difference between the outcome in family court versus the other courts in the state? What was it about how family court operated, pre-COVID, that sort of guaranteed this result? And I won't say Christine or Karla, however you'd like to divide it up.

CHRISTINE PERUMAL:

I mean, I think it's a lack of resources, right? The court just was not set up to deal with the pandemic, as we all know. We went in, and we paper-filed our petitions, and that's how we got into court. And then when the pandemic hit, we just didn't know how to operate, right? We couldn't go into the courthouses physically, and there was no e-filing system set up like in Supreme Court. And so that was an access to justice issue, right? There was just no mechanism in place for low-income populations, Black and Brown communities, to get in. That was the reality of it.

KARLA GEORGE:

Family court has always been deemed the poor people's court. So when you are balancing out the funding for a court, are you going to put that funding into Supreme Court where they're litigating civil issues, where there are justices sitting there instead of referees and support magistrates, where you have people that are litigating cases that are worth millions of dollars? Or are you going to put the resources into a court where there's institutional bias that's already built in? As Christine said, the writing was on the wall. Just not having an electronic filing system until COVID. … And the one that was produced, which was entitled EDDS, wasn't even an electronic filing system, it was a place to hold the documents so you would feel good that the documents went somewhere. But, you know, things like that, where the writing was already on the wall, that is why family court shut down. Because they were just incapable of making a quick change into a virtual environment.

WILLIAM C. SILVERMAN:

So if you look at family court when COVID began, it was much like it was in the 1970s or the 1960s—if you wanted a document, you went there in person. You had to file in person. There were staffing shortages. There wasn't the capacity for virtual proceedings. Staff members couldn't work from home.

Now I'd like to segue into, what are the consequences of this happening? Let's start with child support. Generally speaking, so someone doesn't get money. But what are the real consequences for the people in family court who have to go extended periods of time without getting child support?

CHRISTINE PERUMAL:

Well, it's really: "Can I afford to buy groceries? Can I afford to buy diapers? Can I afford to just meet my basic needs?" These are the individuals who are coming and accessing family court. They are from low-income communities. We already know that the docket is disproportionately made up of Black and Brown families, and these are the real consequences: "Can I eat tomorrow? Can I feed my family tomorrow?" And, you know, I circle back to hearing not just one survivor say this, but a few say, "Well, if this is the consequence of me not being able to file, I should have just stayed. I should have just stayed so that I could guarantee that my child could have food tomorrow."

WILLIAM C. SILVERMAN:

And Karla, custody or visitation, when a case sits for nine months without moving, what are the potential consequences?

KARLA GEORGE:

I mean, we've heard it here through all of the powerful speakers. The thing that hits me most is, when Stephanie McGraw spoke—we're looking at femicide, we're looking at child abuse, we're looking at maltreatment of children. These are abusers that have these children, sometimes, in their care. And COVID was a perfect storm for that. "Oh, you work in health care, so I don't think the child should be with you, so I'll keep the child." Or, you know, "you're not home all the time," or "I'm home all the time," whatever the excuse was, it was the perfect storm to keep these children. When you have a custody visitation petition that is pending for months at a time, you are at risk, the worst-case scenario being femicide.

WILLIAM C. SILVERMAN:

At some point, the court was able to introduce virtual proceedings. It was a little bumpy, we won't get into too many details on that. I'd like to bring in Joan, however, to talk about how virtual proceedings relate to domestic violence, and what your views are in terms of how it's worked, and what your recommendations are going forward.

JOAN GERHARDT:

Great. Thank you, Bill, and thank you, Sanctuary, for having me here today. These aren't really my views. At NYSCADV [New York State Coalition Against Domestic Violence], we did a number of conversations with advocates and attorneys around the state to really look at the practices that were put in place during COVID and what was working, and what we might want to consider advocating for long-term implementation, versus, what we really didn't want to go near and didn't want to see continued. I'd say overwhelmingly, not just from advocates and attorneys, but from survivors, too, we heard of the benefits of virtual proceedings, for all of the reasons I think we all know. You don't have to go to the courthouse, which means you don't necessarily have to take a day off of work. You might not have to figure out child care—you know, since you have to sit there all day, that's a lot of money, coming up with child care. It's much easier to just tap on to a computer and get online. I won't go into too many of the benefits, because I think that's pretty much well-known.

But there was a lot of concern about institutionalizing virtual proceedings, what that would really look like statewide. Because we know, from an equity standpoint, from an accessibility standpoint, and from a connectivity standpoint, there is not equality statewide for these things. Not everyone has a laptop or a fancy phone where they can access a virtual proceeding. What I heard overwhelmingly from advocates and attorneys was how they had become, essentially, tech support for their clients. So either clients had to come into their

offices to use their technology, or maybe they had to go where the client was to walk them through getting online. The instability of being, potentially, at a public location in order to get a decent signal to get onto the court proceeding. All of these things, I think, have to really be taken into consideration, particularly when we have two million people in New York State who don't have a solid connection. That's two million people around the state. I think it's probably more. I don't really know how they come up with those estimates, but we really have to think about those things. We have to think about funding to make sure people—advocates, attorneys—if this is where we're heading, that we have the technology and that we have the safe spaces for clients to use that technology. There's a lot of inconsistency statewide on the use of virtual proceedings, so without question, we need consistent approaches to how technology will be used for virtual proceedings. We have to be able to say to parties, "If you're in a proceeding, and we start virtual, we're going to continue as virtual. If we start in person, we're going to continue this in person." I'd like to see a day where the parties are actually electing. I mean, I know in domestic violence cases that might be difficult to get an agreement, but to say, "Okay, we want to have in-person," or, "We want to have a virtual proceeding." It shouldn't be up to the judge's discretion, just a willy-nilly approach so people don't know what to expect when their calendar date is coming up, until maybe a few days before and, "Oh my gosh, I actually am in person this time, now I have to get out of work and arrange child care." So those are really big issues.

I think we also need to provide training for judges on technology because there's inconsistency with what the parties see when they participate in a virtual proceeding. Sometimes they see the judge. Sometimes they see the person who's speaking but not always. I think most often, they don't see the other party, they don't see the abuser, but I'd like to see that in protocol, that they don't see their abuser during virtual proceedings. I think that's very important. And even maybe constructing safe rooms in courtrooms. We heard about the condition of some of our courtrooms, which is horrifying enough. But maybe we have to go back to the days when we had safe spaces in courtrooms where survivors could go and even appear virtually from the courtroom so they don't have to be in the physical presence of their abuser.

And the final point I'd say, Bill, is that I think there has to be a panic button. There has to be either a phone number, where someone is actually sitting at that phone, or an email where someone's immediately responsive if there's a party who can't access a court proceeding when it's ongoing. To Christine's point, I even heard of a story of someone who spoke English as a second language and didn't understand the prompts to get into her virtual proceeding. The case was dismissed because she didn't appear. We can't have that happen because of a problem of technology—cases can't be dismissed. So we have to have a way to

communicate with the court if there's a problem accessing the court proceeding as it's happening.

WILLIAM C. SILVERMAN:

Thank you. Before we move on, I want to hear from both Christine and Karla, just in terms of how you think virtual proceedings are going and whether you advocate for uniform rules, whether it should occur, or how it should proceed.

KARLA GEORGE:

So as far as the virtual proceedings are going, our clients benefit very much from it. And I say that because of some of the things that were just stated: they don't have to take off a day from work, they don't have to find child care providers, they don't have to travel far distances, because some of us work with survivors moved to a safe space and are no longer in the borough where the case is being heard. And the things that are fallbacks are some of the technology issues. We do have clients, and we've had clients throughout the entire pandemic, come into the office for assistance. Some other fallbacks that I have personally seen are: the opposing party reading when they're testifying, which they're not supposed to do, or , somebody being in the room recording something, and then it's publicized, so then we started getting the prompts that it can't be recorded or publicized. So as we went into the virtual proceedings, we found more issues with it. But in my opinion, it is better for our clients—survivors and victims both—to have those virtual proceedings.

CHRISTINE PERUMAL:

I'd have to also agree. I think overwhelmingly, our clients prefer the virtual proceedings. I think that it's just a different space, right? I know our clients get really nervous when they have to appear in person in a very tiny space with their abusive partner, and it could affect their credibility, right? It could affect how they present in court. And a lot of that is taken away, a lot of that stress is removed when they can just appear virtually or put a Post-It note over the abusive partner's picture so that they don't have to see him or her. I think that it has its benefits. I think that we should have unified rules so that we know what to expect. Clients, attorneys, and judges know what to expect. So we're all on the same page. But I think overall, it works. I think where we get into a bit of an issue where it could work—and that's to Joan's point—is to have more training and technologies when we have trials and the different evidentiary issues that come up.

KARLA GEORGE:

And, I'm sorry, I just wanted to comment on the uniform rules; this is one of my pet peeves. New York City courts are a unified court system. So to even ask that question is… [*Laughter*] It's just one of my pet peeves. So yes, we should have unified rules across the board, and I've been advocating for that. Have them posted, have them circulated so that not only I—as an attorney that's been practicing ten-plus years—know how to go into one part and know what is expected of me, but also the pro se litigants.

WILLIAM C. SILVERMAN:

Yeah, and the reason I asked that question, by the way, is that there is enormous resistance to uniform rules within the court system. Some judges take the position that it interferes with their discretion. Of course, we're not interfering with any decision-making or any substance; we're simply giving litigants the ability to know what to expect when they walk into a courtroom and not to expect two different things depending on which judge they get.

So we've established that the family court is treated as a second-class system of justice. We've established, throughout the day, that family court judges are considered less prestigious because judges want to be [New York] Supreme Court justices, because they want to get on the Appellate Division, because there's greater status. Essentially, the system values a contract case over a case that determines the safety and security of families and children, which seems to be completely messed up.

Denise, the Fund for Modern Courts has been advocating for court reforms, restructuring the court system. Why is New York's court system—the structure itself—an impediment to access to justice and one of the reasons why we're talking about the family court the way we are? Sorry for the compound question. [*Laughter*]

DENISE KRONSTADT:

Thank you, Bill, and thank you, everybody on this panel and everybody here. It's very inspiring to be here, with the work that all the organizations in this room do. For many years, the Fund for Modern Courts, and, actually, everybody here, has joined coalitions to try to change the structure of the New York State court system. And if you look on the screen, you can see that it's not normal. In New York we have eleven different trial courts. In California, they changed that, what they had in the late 80s. And in New Jersey also. These are two examples. Why we have that is history, right? These are just things that were created over time and, like so much else, it no longer functions. It actually is dysfunctional, and it actually perpetuates the inequality we have in our

system, the biases we have in our system, the prejudices we have in our system. But we can't seem to change it. And we can't seem to change it because we have to amend the constitution of the state in order to change it. And there is a lot of interest, within the political system, to keep it the way it is. And that's all determined by who appoints or who elects the judges within that system. In order to try to change it, everybody in this space, in the same way you do all the work you do, would have to work together to really make the change. As a practitioner, formerly, myself—not a family law person, but I did tenants' rights—when you're practicing, your focus is always on what you're doing in the day-to-day and working within that system to ensure that your clients are getting what they need. So it's sometimes hard, though I'm not saying this is true of people in this room, to understand that this is just really irregular and it needs to change.

The concept is that we would take the District Court, which is in Long Island, Civil Court of the City of New York, Criminal Court, and make that into one Municipal Court. So that you can go there for those variety of issues. And we would take the Family Court, Surrogate Court, County Court, Court of Claims, and Supreme Court, and make that all one Superior Court, which is like what they have in California. I have two cousins, both judges in Superior Court: they've heard criminal cases, they've heard family cases, they sat in the commercial part, they do it all.

WILLIAM C. SILVERMAN:

Let me let me stop you right there. What would be the advantages of having the family court essentially being the same as the Supreme Court, merging it and calling it, you know, the Superior Court. What are the advantages?

DENISE KRONSTADT:

Well, as we know, the Supreme Court has the jurisdiction to hear family court cases, but they don't, right? The advantages would be numerous. One would be that resources wouldn't necessarily be determined based on what that court was. You'd have to equalize these resources, because the resources are all going to the Superior Court, number one. Number two, which is an issue I'm sure everybody in this room experiences, and we have numerous examples—I just want to give a shout out to Kim Sesser, who helped me draft all these examples, and others in the room—is that people wouldn't have to be going to a variety of courts in order to have their cases heard. And, you know, it's not just that you physically have to go to different rooms or different buildings; it's that you're going before different judges, and you might be represented by different attorneys, as well as that your children might have different attorneys, and none of the cases get integrated and heard as one. I mean, how foolish is that? So the

advantages, for these cases, is you'd be integrating the various issues, and you'd also, hopefully, be able to ensure that resources were more equally distributed.

WILLIAM C. SILVERMAN:

I kind of interrupted you, so you can continue.

DENISE KRONSTADT:

Oh, that's okay. I'm used to that. [*Laughter*]

So, just to explain it a bit: New York has the largest court system in the world, apparently, and yet we're the least streamlined. We have more trial courts than any other state in the country, with eleven. And we have charts in your materials and also online that you could see about that.[2] Having so many different trial courts might sound like a system that specializes. But it really doesn't. And what having so many different trial courts does is create an exhausting, chaotic, confusing judiciary that, despite the best efforts of many here, many within the system, cannot provide the best possible justice. Not "just us," justice.

So who would be impacted? Any unrepresented individual with few, if any, resources who faces a system they simply do not know how to navigate; survivors of domestic violence who must make frequent court appearances in multiple courts for interrelated issues, having to retell the story of the violence they experienced; people in criminal, housing, or family court, where court calendars are overloaded; families burdened by having to appear in multiple court venues and being represented by different lawyers; people losing wages and work; and then there's also these benefits to businesses, potentially, you know, they'll do fine [*Laughter*]; individuals with disabilities who face additional, often insurmountable challenges; and just the state itself would greatly benefit by a judiciary where we're not always working around the edges to make it work. Now, this is very grandiose, what I'm saying. I think that the resolution that's been proposed, that hasn't moved, would have a five-year implementation period if we could get this passed. And it would be my belief, and I believe the belief of the Fund for Modern Courts and members of the Coalition, that all the stakeholders here should be a part of what the redesign would be. But we're having such a hard time getting to that place.

WILLIAM C. SILVERMAN:

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[2] *See, e.g.*, *New York Compared to Other States*, THE FUND FOR MODERN COURTS, https://simplifynycourts.org/new-york-compared-to-other-states/ [https://perma.cc/JP7P-SARC].

So—sorry to interrupt again—during COVID, was there a bailout of the family court by the legislature and the governor? Did they take any measures to improve what was an extreme and critical situation?

DENISE KRONSTADT:

Well, maybe Joan could speak to this, too. I know that there were more family court judges added.

WILLIAM C. SILVERMAN:

How many family court judges were added to New York City, from the beginning of COVID to today, if you know?

JOAN GERHARDT:

Four.

WILLIAM C. SILVERMAN:

Four. How many Supreme Court justices, throughout the state, were added during the same period?

DENISE KRONSTADT:

It was… fourteen?

WILLIAM C. SILVERMAN:

It's over twenty. And these are all leading questions, I guess. [*Laughter*] Did the legislature consult the court system before deciding to spend the money on over twenty Supreme Court justices in places where they weren't really needed?

DENISE KRONSTADT:

The answer to that question is no. [*Laughter*]

WILLIAM C. SILVERMAN:

Right. So we can focus our criticism on the court all we want, and I've got plenty of recommendations, but I don't think we should lose our focus on the other two branches of government, which have completely dropped the ball and have completely been indifferent to the hardship of real people who have not been able to seek justice in court. I think it's important, whether we try to amend

the constitution or try to do anything else—we need to increase the pressure on the legislature and on the governor to actually do something. Our entire legislative agenda failed. And it failed out of indifference. There was very few substantive arguments on the other side of these issues.

We have a question from the audience. And this has to do, I think, consistent with other questions, with how good things can be used by bad people. In terms of technology, is any panelist aware of situations where abusers have used the enhanced technology of family court to their advantage, either by delaying proceedings or taking advantage of the other side, because of technology?

KARLA GEORGE:

Yes, I can speak to that. There have definitely been blatant delays, claiming that they don't have technology when our clients have stated that, not only do they have technology, but they're well-informed and they know how to use it. They just do not appear. And because we have this virtual proceeding, the jurists will give them another time to appear, because they're not sure whether they are not getting into the room—"they had issues with Microsoft Teams earlier in the day, so we'll give them another shot." But the instances that I have seen are, in my, humble opinion, delays that are purposely for the reason of protracting the court appearance or the court case.

CHRISTINE PERUMAL:

And I guess, the same… one thing that I see often is that the opposing party decides to keep his or her camera off, and that also throws off our client when our client is trying to do their best to participate and be fully engaged in the court proceeding and taking it a lot more seriously. And it is a very difficult situation to be in. And you just see the harming party just not turning on their camera or having mic issues or tech issues that probably aren't real issues, and not much, unfortunately, being done about that.

WILLIAM C. SILVERMAN:

Denise, we have a question for you from the audience which has to do with whether, if we were to consolidate the courts, whether one judge would have the expertise to handle divergent practice areas, or whether it would be structured in a way so that judges would still have some specialty?

DENISE KRONSTADT:

The idea behind the resolution to amend the constitution so that you restructure the court system would be to have this five-year implementation period, which I mentioned. And there is often fear that judges in the system—which I think was even addressed, within the family court, before—may not have the expertise or care or knowledge to know what the issues are. This is actually a real concern. It would really be up to all of us to address that during this implementation period. Some people say, "Well if you're going to have parts, what's the difference?" Well, there is a difference, because it'll all be part of Superior Court or "Supreme Court," whatever they end up calling it. You would have parts—you would have a family law part, you would have a commercial part. So in initial stages there would be expertise. But what other states have found, and I'll use California as an example, is that with time, you change the culture. And we hope that people coming into the system would know that they're going to have to sit in family court cases, and will potentially have more of an interest in doing that. It won't be just, "I'm going to Supreme; I'm just going to have torts and commercial cases." Rather, "I know that I'm coming up through this, and I'm going to have to have that specialty."

In New York State, and knowing how the structure works is sometimes very difficult to believe, but in New York State, the only judges that can get appointed to the Appellate Division are judges from the Supreme Court. So family court judges, or county court judges outside of the City of New York Surrogate, and others, cannot go to the Appellate Division. If you were to have this more unified court system, where hopefully they'd have unified rules and unified forms, then all those judges who are coming with different expertise would then be eligible to be appointed to the Appellate Division. So these are cultural shifts that would take a really long time to happen. I understand the concern and I agree with it, but I think we can't get bogged down by that because we're looking towards the future of making certain changes.

WILLIAM C. SILVERMAN:

So, Denise, I want you to address court monitoring. Before we get to that, there's one other issue that I think is driving injustice in family court, and that is, putting aside the constitutional amendment, the lack of judges and having to borrow judges on a short-term basis from other courts. There's this revolving door of judges and inherent delays. I know this from more of an academic standpoint, but I'd like both Karla and Christine to address how this sort of revolving door impact real people?

KARLA GEORGE:

First, I would like to say that, when thinking about the training for judges and the cycling in and out, what I thought about was how attorneys are trained

in a specific area, and we are trained for many, many years. And if we dare take a case that's outside of our expertise, we are held responsible for that. If we mess up a case or if we don't know the law, if we come in and we don't know what we're doing, we are held to a certain standard. So to me, it seems unjust to have judges cycling in and out and going to these different court parts with having, what I feel is, minimal training in what they're doing. Not only does it cause delays, because you have one judge and then, two months later—because they've moved back into the Civil Part—then you have another judge, so that judge has to be caught up to speed. I mean, we've had cases where we've been in front of three to four judges. And every time, that judge has to be brought up to speed. So we'll have a case on for trial with a new judge. I know it's not going forward, but is the judge going to tell me that? No. I have to wait until that day, I have to prepare my client, and I have to say, "Well, we're on for trial" for the judge to tell me, "Well, I've just gotten this case, I don't know what's going on, I need the court minutes…" And so it just protracts the case. It's not justice for anyone.

CHRISTINE PERUMAL:

I'm going to just echo what Karla has said. You know, we've had cases, especially over the pandemic, where we've had three, four judges on a matter. And yes, they have to get up to speed. And some of these cases are a trial posture. And we have had our preliminary conferences, our settlement conferences, and then we get in front of a judge and we're ready for trial and they say, "No, let's try to settle this. Let's have another settlement conference and let's adjourn it four more months." And it's not justice for families, it's huge delay, it's re-traumatizing the children and the parties in court.

KARLA GEORGE:

And I just wanted to add to that. When we're spending years in court, the posture changes. And so the abusers have an opportunity, while they're under scrutiny, to change the way they act. And our clients get these bad decisions saying that, "Well, you've had an order of protection this whole time, so nothing's happened, so why do we need to go forward? Let's settle that; can we just, you know, withdraw those petitions?" And that's because it's been three or four years going through different judges that didn't hear the initial testimony, that didn't see that litigant testifying and being distraught. And so they don't understand how important it is to come out of that and have that final order of protection or have a custody visitation order that actually is helpful for the clients and will not result in them coming back to court. But the posture changes so much over those years, and sometimes it becomes an imbalance.

WILLIAM C. SILVERMAN:

And when you have a case where you might have, you said three or four judges on the same case, I know this is sort of an unfair question, but typically how long would a case like that take to get through, from beginning to end?

KARLA GEORGE:

So I have a very specific case we started off with ACS, and then we went into the order of protection case, and then we went into custody and visitation. And in that case, I'd like to highlight that my client was on the stand for approximately six months because of the adjournments. And one thing that laypeople may not know is that you cannot talk to your client while they are on the stand. So six months of my client being on the stand, and I can't have a conversation with her about what is pending, about what is really going on. And so for that case to resolve itself, it took about four years. My client started off in a domestic violence shelter, and by time we were finished with the case, she was a physician's assistant, she had went to school, she had moved to a whole different borough. Thankfully, the posture changed in our favor in that case, but that's just how long it took.

WILLIAM C. SILVERMAN:

And over the course of those four years, do the children stay the same age, or do they get older? [*Laughter*]

So, let's move on to some recommendations, one of which would be court monitoring. And Denise, if you could just briefly describe a project that I know you are working on, that if other people are interested, we may want them to be involved in as well.

DENISE KRONSTADT:

Thank you. So I believe that court monitoring historically started with domestic violence cases. That's where it kind of began, so that people would go into courts to see what was happening. So that seems to be the origins. And of late, there haven't been that many court watch programs in New York, except there is one in criminal court. I worked on one in Rhode Island with Everytown for Gun Safety on relinquishments of guns and domestic violence cases. We worked on a court watch up in Warren and Washington counties in New York and also out on Long Island in family court. And I thought, as complicated as it is, as hard as it is to make a court watch program actually provide accountability, as well as people that come in to see what happens, I thought it might be a time to do it. I would be happy, with the permission of my board chair and others on the organization to help facilitate a court watch program in

family courts. And Her Justice has done an excellent job on support proceedings. Modern Courts had a little role in the initial stages of that. So, if organizations are interested, I thought it could be a collaboration. The other thing with court watch is that it's often perceived as bringing neutral people in. I don't really know why you have to do that. I believe you bring in, like, Stephanie McGraw's group, or people that really are invested and understand the system and understand the problems, because so much of it is about procedural justice—it's hard to see what the results of cases are unless you're following a case. So court monitoring traditionally engages the public, it educates people about it, it builds relationships between the courts and the public and the stakeholders, and it could potentially provide information for advocates. So it's just a germ of an idea, but I just think it might be something we could all consider doing, with Modern Courts helping to facilitate.

WILLIAM C. SILVERMAN:

Let's not use germ analogies… [*Laughter*]

DENISE KRONSTADT:

Well, that was a virus. So that's what it is, and it has value, but it's a difficult process to do, and it's a difficult process to establish the value on the other side of it. Am I correct, Rachel? It's very hard to do, but also very, very important.

WILLIAM C. SILVERMAN:

Great. Joan, I want to end this with you. So you're the only thing keeping us from some wine. [*Laughter*]

JOAN GERHARDT:

What, do I have an hour? [*Laughter*]

WILLIAM C. SILVERMAN:

Let's talk about your legislative agenda. There's about twenty pages worth; let's just focus on the key measures in terms of domestic violence—what we want to get accomplished in the next legislative session. Maybe talk a little bit about the use of forensic studies or using domestic violence as a factor, whatever your group thinks are the top priorities.

JOAN GERHARDT:

Yeah. Well, we're still framing our priorities for 2023, but top of the list will be Kyra's Law, which Jacqueline Franchetti talked about this morning. NYSCADV has been advocating for Kyra's Law really before its infancy, before it was a developed bill. And we feel very, very strongly that this comprehensive legislation will move family court forward because of that expedited, emergency-style hearing that would happen, in the first instance, to take a look at the safety and well-being of children. So not a full "best interest factors" evaluation, which takes many, many months, but just looking at the child's safety. And the court could then order an emergency temporary order, which it already has the ability to do, but rarely does, to ensure, or at least enhance, the safety of that child. And then the court can do what it does—over many months, unfortunately—but look at that full "best interest factors" evaluation. And the other important thing that the legislation does, other than the judicial training Jacqueline talked about, is it talks specifically about parental alienation and the "friendly parent."

It says to the court, "You cannot consider whether one parent is a friendly parent to the other. You can't consider whether one parent is alienating." Because we know courts get that wrong, right? They get it wrong all the time. So we're just saying, "Take it out; you can't do it." And there's a rebuttable presumption that if one of the parties has perpetrated domestic violence, then the court cannot order sole or joint custody to that abuser. So it's very, very clear. If you haven't seen it, take a look at it. I can give you a copy of the bill, it's really great.

With respect to forensic evaluators—we talked about this a little bit earlier, too—we were honored to participate in the Blue-Ribbon Commission on Forensic Evaluations, which had eleven specific recommendations for the use of forensic evaluators in family court. There have been several bills that have been introduced in the Assembly and Senate as a result. There's a bill to completely eliminate forensic evaluators, which, you know, I've heard judges say, "How could we possibly do that?" Well, we never used to have forensic evaluators, right? They weren't always part of the court process. In the 90s, we didn't have forensic evaluators. Now, certain judges feel like they can't do their job without them. I challenge that, because judges make decisions every single day, every hour that they're sitting on that bench. They don't need a forensic evaluator telling them how the parties parent. If they need someone to assess the mental health capacity of a party, they can bring in an expert witness to do that. They don't need a forensic evaluator. I think the issue comes back to resources. If we had enough resources in family court for judges to really take the time to evaluate the parties in the litigation, we wouldn't need forensic evaluators.

WILLIAM C. SILVERMAN:

It's a shortcut.

JOAN GERHARDT:

It's a shortcut. Although it takes many, many months.

WILLIAM C. SILVERMAN:

It's a long shortcut. But what are the chances of that passing? I know that's an impossible question, but is that something that you think we could actually get done?

JOAN GERHARDT:

I think it needs advocacy. I think that the legislature is very attuned to the challenges of family court. I've only been at NYSCADV four and a half years, and even in that short interval, I've seen significant changes in awareness of legislators with the problems in family court. So I think it's possible. I do think there are significant opponents, like the people who serve as forensic evaluators, who don't want to see their role eliminated. I think judges don't want to see that role eliminated. So it's not an easy lift.

But there are other things, too, that we can look at with forensic evaluators. Training. There is no training requirement statewide for the psychiatrists, psychologists, and social workers who serve as forensic evaluators. There is a bill that passed both the Senate and Assembly in the 2022 session, that is on Governor Hochul's desk right now, to standardize training in domestic violence, child abuse, and child sexual abuse for all forensic evaluators. Hear, hear! Right? Hear, hear. So we are really hoping that she signs that bill.

There is a bill to ensure consistent, statewide access to the forensic evaluation reports. Some of you who might be practitioners probably are aware that some courtrooms don't allow the parties to have access to the forensic evaluation report, which is hundreds of pages long in some instances. So I know of survivors who have actually been charged by attorneys to sit in that attorney's office to review the report. So they have to pay for the privilege of reading about their family in order to challenge it. That's ridiculous. We should not be treating these reports any differently than any other piece of evidence offered in a case. And there's very sensitive information in the reports, obviously, but there's sensitive information shared in every courtroom. Why are we elevating this one document more than any other? It makes no sense.

WILLIAM C. SILVERMAN:

One of your proposed pieces of legislation would allow courts to factor domestic violence convictions into visitation, custody, and parental rights decisions. You need legislation for that?

JOAN GERHARDT:

Well, apparently. [*Laughter*] I think this really does come down to judicial training and judicial accountability, which we talked about this morning. I do question how effective training can be on sensitive issues like domestic violence and implicit bias. Someone has to be receptive to hearing the message in order for training to work, and that's a huge piece of it. But we also need to look at who's doing the training. Because every single time someone—an attorney, an advocate—has elevated the need for training, I hear someone who operates in the court system say, "But we do training!" Yes! No one's disputing that the training's happening. But, what's the training? Because the message isn't getting through, it's just not getting through. So there's lots of legislation to look at. There's legislation to increase the number of judges in family court in New York City. There's legislation to make sure courts stay open longer in New York City, so up until midnight, which is sort of an interesting proposition. Again—resources, right? Resources. There's also some legislation we're looking at with respect to orders of protection to expand the conditions where you might get an order of protection. There is not currently a bill on coercive control, but we're looking at that. But also, adding what a judge can put on a condition of an order of protection, like housing costs or the duration of orders of protection. We've lived with these durations for a long time, maybe it's time to elongate the effectiveness of an order of protection so parties don't have to keep going back to court.

The other thing we're taking a really close look at, and I'd be very interested in talking to any of you about this, is the applicability of a law to prohibit abusive litigation in New York State. There is such a law in two states, that I'm aware of: Washington State and Tennessee. Tennessee is not typically the state that we look at for innovative legislation; usually, we look at California. But in this case, this is a really interesting law that's in both of those states, which essentially would give the court a protocol for labeling a party as an abusive litigation individual. And that would be if there's a family relationship there, so it has to be a family or household relationship, the court would have to determine if domestic violence has been perpetrated, which is a little bit of a sticky wicket, so we'll have to look at that. But if those two considerations are indeed true, then one party could go to the court and say, "I want a hearing because this is abusive litigation." And then the court would have to hold a hearing and take a look at whether the issues in the lawsuit have been litigated recently. Is the filing with the intention of harassing, intimidating, or coercing the other party? Is there a basis in law for additional prosecution, whatever the

prosecution is? And if the court decides that it is harassment or intimidation, and there's no law that justifies the proceeding, then the court can dismiss the case, call it abusive litigation, and then issue an order saying that individual cannot file anything else for a period of time—usually two to three years. If they do attempt to file, then it goes to the judge who first made the order and said this person is an abusive litigation individual. And then the court would have to decide if that claim is valid, if the lawsuit is valid, before it even goes to the victim. The victim wouldn't even see it unless the judge says, "Yes, this is valid."

WILLIAM C. SILVERMAN:

So, I think we have to stop there.

I want to thank all the panelists. I just want to make one other point. We've talked about additional judges. You know, they did vote these additional judges, but they didn't fund them. They created them but they didn't fund the judges, so actually this is going to cost the court system millions of dollars this fiscal year. Hopefully they'll fund them next year. But where are those millions of dollars going to come from? We can contemplate that over wine. Thank you all very much.

JENNIFER FRIEDMAN:

Thank you, panelists. [*Applause*]

And also, by the way, I'd like to acknowledge Genie, who is our events coordinator who has been working very hard. And for those here, join us for reception. Everyone else, we look forward to seeing you for day two, either at Gibson Dunn or online. So have a good night, thank you. [*Applause*]