

DAY 2 – OCTOBER 14, 2022
PANEL 1: PROTECTING THE CHILD: FOCUS ON
INTIMATE PARTNER VIOLENCE AND CUSTODY
LAW¹

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JENNIFER FRIEDMAN:

Good morning to those in the room, and to those virtually. I'm so happy to be here for the second day of our two-day conference. I want to just repeat, and you've heard this several times, but it bears repeating and it's important—our trigger warning. We are dealing, once again today, with some very serious and important issues, but issues which also may cause folks to feel triggered. If you are [triggered], for those in the room, please feel free to take a step outside, look at the beautiful view. We are in a lovely space. For those online, please feel free to turn off the program, walk away, and take a breath in those moments.

¹ See Sanctuary for Families, *Day 2: Welcome / Protecting the Child: Focus on Intimate Partner Violence and Custody Law*, YOUTUBE (Oct. 24, 2022), https://www.youtube.com/watch?v=-Qs91S_yq-w&list=PLg6AMDhsnPQff9Ov29QqAvTJPIStuUc4i&index=7 [<https://perma.cc/B2HJ-69SU>].

I am really pleased that we have an entire panel today dedicated to vicarious trauma, which I think all of us can appreciate. It is very much in the air during these two very intense days, diving into these challenging issues. I'm so honored to introduce Mylan Denerstein, a board member at Sanctuary for Families, and our host in this gorgeous and amazing space today here at Gibson, Dunn and Crutcher's New York office. Here, Mylan is a litigation partner, Chair of the Public Policy Practice Group, Global Chair of the firm's Diversity Committee, and co-partner in charge of the New York office. Mylan has been a public servant for most of her career, serving first as a federal prosecutor in the Southern District of New York and ultimately as Deputy Chief of the Criminal Division and then as Deputy Commissioner for Legal Affairs for New York City's Fire Department. This year, Mylan was appointed to serve as the independent NYPD monitor who oversees the necessary reform process that was originally ordered by federal Judge Scheindlin in 2013 when she ruled that NYPD's stop-and-frisk policy was unconstitutional. We are so grateful to Mylan for co-chairing Sanctuary's own board advocacy committee and for cultivating the firm's pro bono relationship with Sanctuary. The firm regularly contributes over a thousand hours of pro bono service to Sanctuary every year. It is my pleasure to introduce Mylan Denerstein.

MYLAN DENERSTEIN:

Good morning, everybody. It's an honor to have all of you online and all of you here at Gibson Dunn. It is our pleasure to host all of you because you're doing such important work, and we really value all your contributions. Thank you for allowing us to have you join us at Gibson. What I'm so excited about this conference, and I know you all heard from Justice Webber yesterday and you're going to hear from Judge Mendelson today, is the idea that everybody's engaging to make things better and recognizing that bias, which is real, really can negatively impact people of color and certainly people who identify as women or identify as something other than what's gender conforming.

So, I think it's really terrific that you all are here. I was talking to Jennifer before, and I think what I'm most excited about is two things. One, I think a topic that we all need to focus more on is self-care and preservation and so I'm so excited you're going to be spending time on that and really excited to hear about strategies and how we can all manage these very traumatizing situations better. And second, I'm so excited there's an advocacy element because this is such a great opportunity, having everybody come out with directions and things that we can all work on together to make the system better for the future, because ultimately, that's what it's all about. We don't want things to continue as they are. We want them to get better so that people feel like they are getting their needs met and being treated fairly. I love Sanctuary. In one of my roles, I

had the pleasure of negotiating legislation against Dorchen, and if you all know Dorchen, that is no small feat. I remember her telling me, Mylan, you're not doing enough. And it took me a weekend, because sometimes it's hard to hear the truth, to process that, but then I came back and we did more, and that's what it's all about. And so I really commend all of you for taking your time to be here and to participate and to be present. And again, just thank you for allowing Gibson to be a small, teeny part of this. I hope you have a wonderful day and a wonderful weekend and I'm very happy it's Friday.

ANGELA YEBOAH:

Good morning, everyone. My name is Angela Yeboah, and I am the Advocacy Services Program Manager for Fairfax County's division for Domestic and Sexual Violence services in Fairfax, Virginia, and I will be your moderator. I know today will be a robust conversation on intimate partner violence, custody cases involving child safety concerns, as well as parental alienation. I'm excited to introduce you all to a dynamic group of panelists today. So, first we have Joan Meier, who is appearing virtually. Joan is the national Family Violence Law Center Professor of Law at George Washington University Law School. In addition to her decades as a clinical professor and practitioner at GW, Professor Meier has conducted groundbreaking research on the intersection of abuse allegations and custody proceedings. Next, we have an amazing young woman, Ally Cable, survivor and founder of the youth advocacy initiative at the Center for Judicial Excellence Youth Speak. And, I would also like to add, in her spare time she is a third-year undergraduate student at NYU studying neuroscience on a pre-med track. Next, we have Michael Scherz. Michael's the director of the Domestic Violence Project at Lawyers for Children where he leads an interdisciplinary team that ensures children's voices are heard, while also helping families repair harm and heal. And then we have Kara Bellew. Kara is a partner at Rower LLC who has been practicing exclusively in the field of matrimonial and family law since 2005. And last, but certainly not least, appearing virtually, we have the Honorable Anne-Marie Jolly, who has sat on the family court bench for over a decade presiding over family law cases and currently serves as the administrative judge of the New York City Family Court. So, welcome to our panelists.

I would like to begin with Professor Joan Meier. Joan, you conducted a first-of-its-kind study from George Washington University which looks at how mothers who report domestic violence or child abuse often lose custody or contact with their children.² Can you share with us what led you to do this research and then walk us through the research itself?

² See Joan S. Meier, Sean Dickson, Chris O'Sullivan, Leora Rosen & Jeffrey Hayes, *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations* (Geo. Wash.

JOAN MEIER:

I'm happy to do that. I had been working at DV LEAP, which I founded, the Domestic Violence Legal Empowerment and Appeals Project. I founded it to provide a resource for appeals in the domestic violence field, and I was really hoping not to do a lot of work on custody, because it's so painful. But everything that walked in the door, basically, was custody. And over many years, we saw thousands of cases that were incredibly troubling, and over time, while we did trainings, and I did scholarship, we did everything we could to try to tilt what was going on in the courts that was so destructive to children and protective parents. It became clear to me that nobody really believed what we were trying to say, which is that this pattern existed, and I wanted to see if the data bore out what we were seeing experientially. I hoped that if we got the data, and it did bear it out, that that would help the larger world, the courts, and the policy makers to understand what was really happening in courts. So, I was able to put together a social science team and I was very fortunate to get the perfect people on this team and we put in a grant to the National Institute of Justice, and it was awarded. Would you like me to go on, Angela, and talk about how we did the study?

ANGELA YEBOAH:

Yes.

JOAN MEIER:

Okay, so, in order to get a national picture, the only way to do that was to look at opinions that were filed online. It's not possible to go to every courthouse in the country and find out what's happening in cases. And, by the time we did the study, we were very fortunate that pretty much all appeals were published online, even in state courts. Of course, trial court opinions are not typically published online, and I'll come back to that in a minute, but we were able to get—we searched for every electronically published court opinion within this ten-year time period. On the slide, we narrowed it down to private custody cases, meaning parent versus parent, involving abuse and alienation claims. They could be claims brought by anyone against anyone in the case, and to our horror we got over 15,000 cases with that search. It was a very thorough and careful search to make sure that we matched state language for how they define DV, etc. We narrowed it down to over 4,000, and we, and our two soldier coders who were both law grads, spent over a year triaging and coding all of

Univ. L. Sch., Working Paper No. 2019-56, 2019),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448062 [<https://perma.cc/UZ2B-RHWG>].

these cases. And I'm only going to talk to you about a tiny fraction of what we coded. We still haven't analyzed everything because we've been quite overwhelmed with everything that we did. At the most, at the highest kind of "most highlight" level, there's a lot of other questions that we want to explore as well. Should I go on, Angela, with the contents?

ANGELA YEBOAH:

Yeah, I'm looking forward to hearing more.

JOAN MEIER:

I'm talking about what we found in terms of how often courts credit or accept mothers' abuse claims and how often they removed custody from a mother alleging abuse. We talk about some interesting gender findings, and we talk, briefly, about what we found in terms of the impact of guardians ad litem and custody evaluators. In terms of how often mothers' allegations of abuse were believed, we found even more stunning results than I had expected, which is that less than half the time mothers' partner violence claims, which I call DV, were believed. They were believed only forty-five percent of the time. Child physical abuse was credited less than a third of the time, twenty-nine percent. And sexual abuse, less than one-fifth of the time, fifteen percent. And this is in cases that we call pure abuse cases where, to the best of our knowledge, there were no alienation cross-claims, this averaged out to courts accepting mothers' reports of fathers' abuse in the family less than half the time, only forty-one percent. And, of course, it shows that courts are far less likely to accept child abuse claims than partner violence claims.

Now, when you move on to the cases with cross-claims—so mother alleges abuse, father claims alienation by the mother—what happens, and what we found, was that those cross-claims dramatically reduced the rate at which courts accepted abuse claims, especially child abuse, which averaged out to twenty-three percent whereas before it was forty-one percent. So DV is now thirty-seven percent, child physical abuse is down to eighteen percent, and child sexual abuse was down to two percent, which reflected one case out of approximately fifty cases. Again, when the father cross-claims alienation, courts are far less inclined—roughly half as inclined—to believe mothers' abuse claims. What can be translated is that an alienation cross-claim reduces the likelihood of any abuse allegation by a mother being believed by a factor of two and reduces the likelihood of child abuse being believed by a factor of almost four.

I want to take one moment here to contrast what courts are finding with what past studies have found about child sexual abuse claims in custody

litigation. So only one claim out of fifty-one was believed when alienation was cross-claimed. But a range of, including very large studies especially in Canada but also in the United States, have found that fifty to seventy-three percent of child sexual abuse claims that are made, even in the context of custody litigation, have been considered to be likely valid. And these studies relied on the views of evaluators and child welfare agents, none of whom are particularly objective or particularly expert. Contrary to what we would hope, but even with a fairly skeptical population of assessors, they were much more willing to believe child sexual abuse than courts have been.

So, moving on to mothers' custody losses, we defined this very narrowly because we didn't want to get into arguments that we were tilting our findings. So, we said we're only looking at cases where mothers started with the kids. They may or may not have had a legal order, but they started as primary care giver for the kids, and then at the end of the case, the father was awarded primary physical custody, and we just focused on physical here. And what we found was, again, in the pure abuse cases without the alienation cross-claims, the mothers were on average losing custody to fathers they alleged had committed some kind of abuse roughly a quarter of the time. Now, when alienation cross-claims are thrown in, that again skyrockets to average out at half the time. So, mothers' odds of losing custody go way up, and about half of mothers do lose custody, if they allege child abuse and the father responds with an alienation cross-claim. A little bit less drastic when they're just alleging partner violence. And you can see the difference in impact when there is an alienation plan. Again, this translates into the finding that fathers have almost three times the odds of taking custody from mothers alleging any kind of family abuse when they allege alienation than when they do not. So again, your odds if you're a father accused of abuse are improved by a factor of three if you cross-claim alienation. Now, interestingly, even in cases where the father's abuse was confirmed—that is, as I said earlier, it was credited by the court—thirteen percent of the time, custody was still removed from the mother and given to the abusive father. None of these cases were child sexual abuse, which is good news and not surprising—that if a court finds a father as a sexual abuser, they're not giving him custody. But in these cases, there could be any number of reasons why a mother was seen as unacceptable even though a father was abusive. The big one probably being that she's an alienator or seen as one. But, anyway, that's a fair number of cases in which mothers proving abuse by fathers are losing custody.

Okay, moving on to the gender findings. Three key findings: one is that we were able to find that alienation's power as a claim is gendered overall. That is, that it's an effective defense for fathers accused of abuse, but not for mothers accused of abuse. We had enough cases to do that comparison. We did also find, interestingly, that alienation's power was not as clearly gendered in the non-

abuse cases. So, in that setting, we found that the impact of proven alienation was remarkably equal for fathers and mothers. So, for the idea that alienation claims are more powerful for fathers, what we found was that, looking at all alienation cases, mixing abuse or non-abuse cases, when fathers accused mothers of alienation, they took custody away forty-four percent of the time. When mothers accuse fathers of alienation, there was a significant number of those, they took custody away in only twenty-eight percent of the cases. So, mothers have twice the odds of losing custody to the fathers compared to fathers when accused of alienation. That's a pretty clear gender bias there. Not too surprising in terms of the history of the theory of alienation.

Okay, now, when you have abuse and alienation, what we found was that when mothers allege child abuse, the regression analysis predicts that mothers' custody losses will increase from thirty-two percent without an alienation claim to fifty-two percent with an alienation claim. And regression analyses are a little different than all the other numbers I've just been giving you, but they're a little bit more neutral, statistically predictive. But we found at the same time that when fathers accused mothers of any type of abuse, and the mothers cross-claim alienation, it had no effect on the frequency of fathers losing custody. So that's a clear gender bias when you have these cross abuse and alienation claims.

Now, a really interesting gender parity or possible gender parity. First of all, we found that when a court decides that a parent is an alienator, fathers and mothers are equally penalized. They lose custody at very high rates. There are a lot of ways to explain that, but I won't go into that now. Secondly, in the cases where we did not see an abuse claim in the data set that we had, which was court opinions, we did not get a statistically significant gender difference. It looks like (in a lay sense) fathers are doing better than mothers, losing custody significantly less than mothers who are losing it at thirty-nine percent compared to twenty-eight percent. But this is not a statistically significant difference because we didn't have enough cases where fathers start with the kids to get statistically significant results out of this.

All right, so the way I summarize what we found about alienation is that it actually supports everybody to some extent. For instance, it definitely supports the critique that the abuse field has been leveling, which is that alienation in cases with abuse seems to be gendered and very powerful in denying mothers' and children's claims of abuse and in taking custody away. But the relative gender parity in the non-abuse cases, as well as in abuse cases where courts believe alienation, also supports the argument that a lot of alienation professionals make, that alienation is not just a gendered claim and it's not just an abuse claim and it's something that women allege against men because men are alienators too. This is a lot of the arguments we hear in the field, in the literature, and among experts, that the abuse critique is false because alienation

is gender neutral, everybody does it, and women are victims of it. Yes, we can confirm that, and it's also true what the abuse field is saying that alienation is a very powerful weapon against abuse claims. And, I just wanted to throw in, that obviously most of my clients at DV LEAP have been mothers, but not only. I've seen fathers in these cases go through pretty much the same dynamic that I've seen mothers go through.

Lastly, what did we find about GALs [Guardian Ad Litem] and evaluators? What we call GALs, I think in New York, you've got counsel for children. And I'm realizing that your immediate question is going to be, "What do we find about counsel for children?" And I think in these data, we actually mixed—and I know that's a little sloppy from where you sit—but I think we mixed counsel for children and guardians ad litem who are doing best interests because most states don't use counsel for children and the data were too small to really parse them out. What we found was that when there was what we call a GAL in the case, mothers alleging abuse were three to five times more likely to lose custody, and that was an especially strong finding when they were alleging physical child abuse or mixed physical and sexual child abuse. We found no statistically significant impact on protective fathers' likelihood of losing custody. Fathers claiming a mother's abusive were not in any way penalized by the presence of a GAL but mothers absolutely were. We found the same thing with custody evaluators; slightly different range, 2.4 to 6.5 percent. The higher range of custody losses with evaluators in the case occur when mothers alleged physical child abuse or mixed physical and sexual child abuse. And we found the same thing—that there was no statistically significant impact of the presence of an evaluator on protective fathers' likelihood of losing custody. It's pretty clear from these data that these neutral court professionals are putting a heavy thumb on the scale against mothers—at least that's how we see our data, our findings. And it comports with what we've felt we've seen experientially.

Now, I need to end by saying what our limitations are, which is important. First of all, we didn't have any way of second-guessing what courts found or did because we're not looking at the facts, and we can't know the facts. What we're saying here is only what courts are doing and what they're finding. The question of whether that's wrong is a separate question, and there are ways to discuss it but this study doesn't prove anything about that. Secondly, the data set was based on court opinions, because that was the best way to find out what was going on. So even though we were only looking at what trial courts had done, the opinions, the data source, were mostly appellate cases, which may not be fully representative of what's happening in trial court decisions that are not appealed. However, what we found from the brief initial comparison between the several hundred trial court opinions that came up in our search, not surprisingly, was that the rates of custody losses were lower in the cases that didn't go to appeal, which makes sense because moms who lose custody are

more likely to appeal. But we did find that the rates of rejection of abuse claims, the crediting data were not different from what we were finding in the cases that went to appeal. And then our last limitation is that, because this is, again, a product of our data set, which is court opinions, we can only know what was in the case based on what the judge wrote in their opinion. Sometimes there are allegations that kind of fall out by the time the judge writes the opinion, such as abuse claims or alienation claims, if the court decides there's nothing to it or forgets about it because there's a much larger issue in the case. It may not show up in the opinion, and we wouldn't know it was in the case. So when we distinguish between cases that were abuse or not abuse or alienation or not alienation, we're going off of what's in the opinion. It's possible that's not a perfect reflection of claims that were in the case, but I believe that actually strengthens our findings rather than weakening them. But I just want to put that out there to contextualize all of our findings.

ANGELA YEBOAH:

Thank you, Joan. I'm really glad that you brought up the limitations of the research because one would argue that they were just opinions that you looked at, right? The data or the research didn't necessarily look at the validity of the claims or analyze the veracity of the claims that were being alleged, and so I can see some critics saying, "Well, we don't completely have the entire picture. You just read basing everything off of court opinions, and it's plausible that some of these allegations could have been false."

JOAN MEIER:

Yep, that is correct, and this is what I've always hoped these findings would lead us to, but it hasn't happened. The next question is, are women lying ninety-nine percent of the time when they allege sexual abuse? Are they lying eighty-five percent of the time when they alleged—I'm throwing out numbers that may not be exactly right—but are they lying roughly four fifths of the time when they allege child physical abuse? Are they lying over half the time when they alleged partner abuse? That is where the debate should be joined. How often are women lying? Now, as a DV specialist I don't think they're lying anywhere near that often. I'm not saying never, but those numbers to me have nothing to do with reality. But we can have an honest debate about that, but that debate has not happened because the folks that know about my study have either ignored it deliberately, because it hurts their industry which is basically the cottage industry that uses alienation in court, or they don't like the findings and so they just dismiss them out of hand. But they're not really engaging the question which is, are women lying this much? Occasionally you can get someone to say "Yes, they're lying this much," and I'm like, "fine, let's discuss that." Let's look at the research, let's look at what we know. How do you know they're lying?

Let's have that debate, because it all boils down to that. But I think that the field that is being implicitly criticized by the study has been very resistant to having an honest debate about that core question: how often do women lie versus men who are accused of abuse?

ANGELA YEBOAH:

Thank you, Joan. What Joan just spoke about is illustrative of what Ally, our next speaker, experienced as a subject child in a protracted custody case. I think that so much of what Joan mentioned is relatable to your experience, and Ally, would you like to take this time to share with us your experience?

ALLY CABLE:

Hi, everyone. My name is Ally, and today I am speaking as a survivor of the family court system and of a reunification camp called "Family Bridges." When I was sixteen, my sister Kate and I were kidnapped from a courthouse in Kansas, separated, and transported to a remote city in Montana, where we were held captive in a hotel and threatened into a relationship with our abusive father.

This is a short narrative I've written about my story:

I was young when my parents were together, but I still remember lying awake at night listening to my parents fight. My mom worked so hard to the point that she was constantly sick and had to have her tonsils removed. My father, on the other hand, refused to work. He was home every day, but we still had a full-time nanny whose main task was to keep me and my younger sister away from our father's home office where he would talk with his friends and play solitaire. When my parents told us that they were getting a divorce, I was relieved. Their fighting had always given me anxiety, and I was excited for them to live under different roofs so that I wouldn't have to carry that burden. I quickly realized that my father had transformed into a different person. He became vengeful, and his hatred for my mother only grew. Our first custody arrangement was 60/40, but my father manipulated and guilt-tripped me until I asked our guardian ad litem for 50/50. This behavior only escalated as time went by, and my father waged a war against my mom using my sister and I as pawns. He told us that our mom didn't care about us because she worked. That our mom loved our stepfather more than us and that our mom was going to hell for divorcing him.

When my mom remarried and moved to Nashville at the end of my second-grade year, my sister and I expressed to our guardian ad litem and therapist that we wanted to move with her. Our father's anger boiled over, and he began to physically abuse us and sexually abuse me. He was losing control, and it could

only be recovered by wielding against us his physical dominance. Multiple court-ordered custody evaluators determined that my sister and I should move to Nashville with our mom, but the court ignored the recommendations of each one. When the guardian ad litem and our therapist finally told my sister and I that we were not allowed to move with our mom, I panicked. For years, I had been silent about the abuse that I endured, not wanting to get my father in trouble, but I couldn't stand by while the court condemned my sister and I to live with our abuser. I told them. At first our guardian ad litem would not address our abuse. She said that sometimes we have to do things we don't want to do and then she straight out told me that I was lying. A year and a half later, my sister and I finally escaped our father's reach after flying back from a weekend visit with our mom. We decided we'd had enough of sitting idly by while the court allowed our father to abuse us. We forced them to listen, waited in the terminal until airport security came to collect us, and reported our experiences. That was the first and one of the only times my experiences were not just completely ignored in favor of the narrative my abuser meticulously controlled. We ended up staying with a family friend for the school year, and our mom flew back and forth from Nashville to see us. For more than a year, we refused to see our father. I thought the court would finally listen to me and would right their wrong, but that summer we were forced into daily reunification therapy with our father and had no contact with our mom. When my sister and I refused to go home with our father, the case manager for our custody case came to threaten us. He told us that if we kept lying about our abuse that my sister and I would be separated and sent to foster care or juvie. He smiled as he described how we would be strip-searched and deprived of our belongings, all because we refused to live with our abuser. We ended up couch surfing for the remainder of that summer and, finally, when school started again, we were able to stay with a family friend. We spent another year in weekly court-ordered reunification therapy with our father's personal therapist who told us to sweep our abuse under the rug because that's what he did when he was assaulted by his cub scout leader as a kid.

I thought that the court would give up and let my sister and I live in peace, but then they ambushed us by ordering a forced reunification camp. My sister and I were separated at the courthouse, and loaded into different cars. Two strangers drove me. They kept me in the dark, careful not to reveal any plans in their superficial conversations. I didn't know where we were going, if I would eat, or if I would see my sister again. For years, I had been silent. I was afraid to disrupt the peace and possibly hurt someone I cared for, but, sitting in the back of the car, the door child locked as they shut it behind me, stripped of my possessions and people I loved, they regarded me as a criminal. They treated me like I was in the wrong for speaking out against my physically, sexually, and emotionally abusive father and the court who supported him and his actions. The next day, we were flown to Bozeman, Montana, and taken to the Common

Inn and escorted to a conference room. The door was closed, the windows covered, but a placard to the right of the door frame read Family Bridges. When the door finally swung open, I looked up across the room to see him. He'd won back the custody of his daughters who were kidnapped and trafficked across the country to appease him. This told me that the court would never hold our father accountable for his destructive, abusive actions. We were told in no uncertain terms by the workshop leaders that we were at the program because our mom had alienated us from our father. Everyone in the room refused to acknowledge that his own harmful actions had deterred us from wanting to spend time with him. They informed us that we would not see or speak to our mother for a minimum of ninety days. We'd first complete a four-day long education on parental alienation, and then continue our rehabilitation in Kansas where we'd be forced to live with our abuser. They didn't care to call this what it was, reprogramming. When I told them through the tears streaming down my face that our father was abusive, that I was terrified of what he would do if we were left alone with him, one of the workshop leaders, a licensed therapist, looked me dead in the eye from where she was sitting across the conference room and told me that whatever happened in the past didn't matter. She told me that the years of abuse that my sister and I had endured, which had been confirmed only months earlier after an investigation by a Kansas detective, were not real, and we weren't allowed to talk about it anymore. When we peacefully, but stubbornly, refused to cooperate, the camp leaders threatened to separate me and my sister, Kate. They threatened to send us to psychiatric hospitals, wilderness camps, and foster care. They threatened that we would see neither each other, nor our mom until we each turned eighteen. We would have to start new lives in different parts of the country all because we refused to live with our abuser. We stood our ground, hoping to God they were bluffing, but then they forced us to write a letter to our mom. To this day, I can't think of more painful words. We were told to explain to her within a single page that we chose to abandon her and be sent to some facility instead of submitting to their reprogramming and our father's abuse. This was never a choice. The tears flowed down my cheeks, unhindered by my desire to stay strong and exude confidence, because I was not strong anymore. I felt in that moment, that stretched long, the weight of my decision. I saw my shaky words on the page, and I imagined my mom reading them. I wouldn't be there to ease the pain when realization set in, and I could only imagine the worst. At the time, I believed with my entire being that they would make good on their word, and I was scared. We eventually lost our battle against fear and let it take hold of us. We didn't sleep, but exhaustion made it easier to feel numb, and feeling nothing was easier than feeling anything. We went back to Kansas to live with our father, where the abuse continued, only this time, we were threatened into silence. We would be punished with an extension of the no contact order if we deviated from their narrative, and this reality hung over our heads and forced us to fake happiness and compliance in order to survive. We had to maintain the facade and pretend that the program

had been effective. We had to condemn our mother. It was exhausting and I often struggled to imagine a future that I was a part of. It was seven months before we were able to speak to our mom again, but even then, we were still not safe.

What motivated people to turn a blind eye to mine and my sister's suffering I will never know. But no reasoning will ever justify the hurt that we felt and continue to feel because the people who were supposed to protect us, wouldn't. Before this experience, I would have never believed that the family court system would condone and encourage my abuse much less participate in their own form. My sister and I were kidnapped, trafficked across the country, and threatened into our abuser's home, all while court officials ignored our abuse and made money off of catering to our abuser. Immediately after I turned eighteen and left Kansas to live with my mom in Nashville, I began speaking to reporters and sharing my story. I came to the Center for Judicial Excellence in August of last year wanting to do more with my experience, and our director, Kathleen Russell, offered to help me start what is now our youth advocacy initiative, CJE Youth Speak. We provide support for survivors of family court crimes and are working to end reunification camps through advocacy and legislative action. In addition to running CJE Youth Speak, I am also a full-time undergraduate student at NYU studying neuroscience. But everything that I am and have and will accomplish is despite my father, the court, and Family Bridges, not because of them. Protecting abusers in family court is not acceptable, and Family Bridges and reunification camps must be stopped and brought to justice. Thank you.

ANGELA YEBOAH:

I'm always in such awe of Ally and the resilience that you've shown. And you're right. Despite everything, you've emerged stronger, and you're using all your talents to help others, and I'm so privileged to share this space with you. I truly am. Thank you so much for sharing your story.

Michael, how do we transition? I mean, as an attorney representing children, listening to Ally's story, what are your thoughts? Can you share with us your role as an AFC [Attorney for the Child]? I'm sorry to put you on the spot like this.

MICHAEL SCHERZ:

Thank you. I'm honored to be here with you all.

First of all, I don't know what to say, and I have pages of notes, because there isn't really anything to say that can in some way change or make up for

the horror of what you just described. It's just horrifying, I can't think of another word. I want to pause for a second, and then I'm going to look down at my notes and I will have something to say. I think the power of courts is awesome and can be a power of incredible positivity that can change lives in a good way. And I'm speaking to Judge Jolly and to other awesome judges that are out there. I think those of us who practiced in this area have had the honor of being able to appear before judges who understand the awesome power that the courts have, especially the courts were appearing in, and strive to use that power for something akin to justice, or as close to justice as we can get in a painfully flawed system that is massively under-resourced and massively overtasked. So, that's the best I can do for a quick reaction. I'm horrified by it.

I want to use it as a way to center my thoughts in thinking about what a privilege it is for me, every day, to represent children, I'm honored to get to do that. And also what an awesome responsibility it is, in not such a different way than the awesome responsibilities that the courts have. I wish Ally had a lawyer and not a GAL. The GAL system is awful. And Joan's research has, I think, shown one of the awful flaws of the GAL system, or any system that doesn't actually have a lawyer that follows the rules of ethics. Rule 1.14, clients with diminished capacity. Children are considered diminished capacity, although we know that that's not really what they are, but the rules are really clear. For all the lawyers in the room, you all know that rule. Did we need a chief judge rule in New York, Rule 7.2, to tell us what Rule 1.14 of the ethics code said? No, we knew exactly what it was, and we knew what our responsibility was: to advocate for our clients' wishes, whatever way they can be expressed. Sometimes they're expressed in words, other times they're expressed in different ways, right? We have young clients who can't always say what they want, but there are ways to divine what they want from what they're doing, how they are reacting to people—a great ad for an interdisciplinary law practice. We need lawyers, guardians ad litem. Who wants a guardian ad litem? And can I just say one other thing about guardians ad litem? I mean as adults, if you get a guardian ad litem, you have entirely lost your voice, right? Is there any way that a guardian ad litem is a good thing for someone who's competent as an adult? Please tell me that there isn't, right? There is no way that it's good. You fight it if you have the ability to fight it. Of course, there are times when a guardian is necessary to protect the interests of someone who truly has diminished capacity.

Anyway, we don't want that system. We're blessed in New York that that isn't our system. I know there are states that still have it; I don't have the stats in my hand right now of what states do that awful practice. It shouldn't happen, it should have never happened. GAL is just awful. What more can I say about that? Children have to have a voice in whatever form that can take, and Ally clearly wasn't given a voice, and that's horrific. But in New York the model at least, when it's obeyed, is that the children do have a voice. Children should

have counsel, should have independent counsel, and should be able to have what they're asking for advocated for in accordance with Rule 1.14, which I keep on coming back to because I think some people don't understand that a child's lawyer is actually a lawyer. Parents' lawyers don't always understand that. Luckily, in New York, I think the courts understand that, and I think that's really important. I'll get to say more on that later. Thank you.

ANGELA YEBOAH:

Thank you, Michael. Now Kara, I'd like to move on to you. Not only was Ally's voice not heard throughout the process but that of her mother wasn't heard as well. As an attorney who represents DV victims on custody proceedings, can you share with us what the standard is in terms of best interest and how DV impacts best interest?

KARA BELLEW:

Absolutely, good morning, everyone. And just like Michael said, thank you Ally, for sharing your story so bravely. It's horrifying to hear both, not just personally, but as a practitioner and someone who's in and out of court routinely and sees the impact of forced reunification efforts on children. It's really devastating, but I really commend you for being here and for taking your story and putting power into action. It's really impressive.

In dealing with custody, the standard is what's in the best interest of the child or children. Courts really look at the totality of the circumstances, the age of the children, their expressed preferences. Depending on how old the children are, their preferences are given a little bit more weight depending on the age, but that's really at the discretion of the judge and a child's willingness to actually express a preference. Sometimes they don't want to express a preference and they're astute enough to recognize that doing so may really put them in a bind or make them disfavored by one parent. It's scary to speak out. I mean similar to what you said, Ally, it's scary to think that you might take a position against one of your parents, particularly if one of those parents is abusive.

But no matter what the court considers, in the way that I see it, often in my practice particularly, as soon as allegations of domestic violence come out, you're invariably hit with, "Oh this is just being used as a predicate to keep, typically, the father away from the children. These are lies, you're getting a leg up in the litigation." I mean, children are just weaponized. And the allegations of abuse are largely discounted through the inevitable alienation claims that come as a consequence of that. When I first started working at Sanctuary for Families, I saw this routinely, and it's very, very difficult to just constantly try to be combating that. But now that I've been in private practice for almost ten

years, and I see the exact same thing. And now it's just "the mother is too perfect, she's so educated, she's such a high earner, how could this possibly be true?"

I have a case where my client is an attorney and she's a very high earner and that has become the narrative to combat all this, "Judge, she's a lawyer and she's a liar. She's signing affidavits, she is a liar. Let's put her on the stand." The children are corroborating it, they got forced into reunification, and the older child said, "I'm not going." But she's twelve years old. She said, "I'm not doing it." And then there was a little seven-year-old who was getting more and more resistant such that the supervisor of the visitation couldn't even get her to transition to Dad. And the reunification therapist told all the attorneys that the seven-year-old had developed a phobia of her father and that pushing her to transition to him was not helpful. It was actually making her regress, and things were worse. But literally the next day, she told our client to trick the seven-year-old and that the dad was just going to show up at school and the transition would happen at school. Because maybe it was Mom that was making the child so fearful and maybe if Mom wasn't there to help transition the seven-year-old, all the phobias, all the things she had opined about, would somehow be of no moment. And unbelievably, last weekend, after we had been fighting and banging on the courthouse, motion after motion, talking about how dangerous he was, he killed himself. That to me, was tragic. Any loss of life is tragic, and the circumstances were quite profound the way it happened, but it just resonated so much. Like no one was listening to these kids and just by the grace of God, we were able to keep supervised visits in place. But what would have happened if this child would have transitioned to him and he was so psychologically unstable. It's just something that just astounds me in almost every case. And I had a case with Michael involving a very young child. And Michael was so unique, because despite her age, he really listened. He really listened to my client, he really tried to understand the nuances of what was happening and the power imbalance. And I give it to you (Michael), really truly, because people like you are hard to find. But it's very, very challenging.

ANGELA YEBOAH:

Thank you, thank you for sharing that, Kara. You said that it's about truly listening to the child, truly listening to the parent, the protecting parent, and any risk or safety factors that they may be sharing with the court. Judge Jolly, I want to sort of invite you into the conversation as a judge who presides over these very complex cases. You have to listen to everyone. If you have to listen to everyone's position and weigh in what the best interest standards are, what are you looking to see attorneys do in order to help you determine best interest in these complex cases?

HON. ANNE-MARIE JOLLY:

Sure, good morning. First I can't go any further without acknowledging Ally and thanking her for being brave enough and informing us of the horrific experiences she went through. It's clear that the system failed you; I'm hoping that those who are hearing your voice and those who will hear your voice in the future, especially those who practice in New York, will benefit from what you are sharing and improve their practices, if they are not working the way Michael is working. I thank you very much for sharing your experiences.

I am fortunate that I have previous experiences working as an attorney representing children, that's how I began my legal career in family court. And like Michael, we received training on how to speak to our clients and how to get information from children without saying, "Who do you want to live with?" That's not our job, that was never our job, and it's never a position that you want to put a child in, as I think both Ally and Ms. Bellew referenced. As a judge I can conduct in-camera hearings, interview the child, meet with them, not ask those types of questions, not put them on the spot, and sometimes, if we reach that point where they're able to articulate who they spend the most time with, who they want to continue to spend the most time with, I will tell them that I will make the decision. You don't have to be concerned that I'm going to go out there and tell the lawyers that this is your position. I will incorporate that I met with you in my decision and then I'll be the one to make the decision, so I can be the bad guy. So I take that pressure off of young people when I conduct those interviews and make sure that they understand that I'm not going to go out there and repeat what they have just discussed with me.

And they're fortunate that they have their attorney with them. In New York we have zealous advocacy by attorneys for children. We might not have enough attorneys to represent all of the parents who appear in court, but it's rare to not have an attorney representing a child, even a baby, when it's necessary. And those attorneys are very zealous. As a judge who is hearing from everyone, all the zealous advocates on the case, it helps me to have an attorney who is not substituting their judgment unless it's necessary, but they're advocating. If it seems as if it's a difficult position they're taking, they are proposing orders that should be made in place to support their client's position, because when I hear an attorney taking a position without reasonable applications to support that position, it troubles me. Then I challenge them.

Ms. Bellew has already talked about what we consider when we're making a decision pursuant to the domestic relations law; there are various factors that you go through unless there is agreement by the parties about some of the issues. If you're talking about physical and mental wellness, primary caretaking roles, there might be concessions about certain things. Then we litigate the other

issues; I expect attorneys to be prepared. It's unfortunate right now that we have lengthy adjourn dates in between our court appearances, and that's mostly because of the pandemic and the effects that we've felt from the pandemic. With the lengthy adjourn dates, however, I expect counsel to be planning and meeting and trying to address whatever issues they can in between court dates versus them just coming in and saying "All right, let's talk about everything," when that's not fair to the family. It's just not fair to the family for counsel to raise issues for the first time, unless they're a surprise, unless it was just brought to their attention. I expect all counsel to be prepared. I expect them to exchange discovery. If we're saying that the case is ready for trial, it's ready for trial. In my part, when it's on for trial, it's on for trial, which means that you will have exchanged evidence, you will have prepared your witnesses, you will have exchanged witness lists. I think it's completely unfair to parents when I have set down an expectation that we're going to go to trial and we don't do that. Unless there's an emergency, we're going to do that. I expect all attorneys to be fully prepared, I expect them to be zealous, I expect attorneys to take positions on behalf of all of their clients. I expect applications to be made for me to conduct in-camera interviews of their children. I expect that if it's necessary, you might need a social worker. If you are in an office representing children and you don't have a social worker on staff—I know Michael does—but there are 18B attorneys who don't have that luxury. But you can submit an order and get a social worker to help you if you don't know how to interview that child.

As a judge, I like to be challenged by the law. If you have a position that's contrary to what I'm thinking, present me with the law. I have no problems with that, so that I can make a better informed decision and one that might end up in your favor, but I need the law, and I'll need to stay on top of the law, but I'm human and maybe I miss the case. Maybe it is something that just happened and went to the Appellate Division. I do have to say that the vast majority of the cases that we deal with in New York City Family Court, and there are thousands and thousands of those cases, parents aren't represented by attorneys, either because they're working poor and they're not necessarily eligible for assigned counsel, they can't afford an attorney because of their income, or we have such a tremendous shortage of panel attorneys to represent parents so there might be a delay in getting attorneys to represent them. So, as a judge, sometimes we spend a lot of time explaining the process to the parents, explaining to them that you can't just have someone who saw something or heard something from someone else. We spend time discussing evidence and how you're going to be able to get this information to me. And sometimes we just spend time listening to what the parents have to say, especially those who are not represented by counsel.

The question was posed about how I deal with attorneys on the case and how I deal with the best interest. The other part is how do we deal with the

people who are not represented by counsel and move those cases along. The actual benefit is that that child or the children are going to end up with an attorney, which helps. Having the child represented and having a lawyer on the case who can also facilitate the moving along of the case. So basically, everyone should be prepared and everyone should be prepared to challenge the judge who is hearing the case with the law, because that's what we're bound by.

ANGELA YEBOAH:

Thank you, Judge Jolly.

Joan, I now want to turn to you. You mentioned courts' emphasis on shared parenting gender bias and misconceptions about abuse as recognized explanations for why mother's claims of abuse are so widely denied in court. In addition, you've also mentioned another, less-recognized contributor—unconscious psychological denial, also referred to as unconscious denial or psychological denial. Can you explain what that means?

JOAN MEIER:

Sure, and I just want to clarify, Angela, that discussion isn't in the study but it is in my latest article that came out in Georgetown Law Journal where I talk both about the study and more about why I speculate.³ I think, and others think, the trends are what they are. So yes, in that article I put forth what I think is kind of a new art, a new hypothesis.

As to courts' resistance to accepting abuse claims and acting accordingly, and that is the idea of psychological denial, I draw from the literature that actually looks to denial of the sort that happened during the Holocaust with countries near concentration camps or towns near concentration camps, where there was sort of a sense that something might be wrong, but there was a very strong desire not to know. There has been the same analysis done around what happens in autocratic countries where people are disappeared and tortured, and the rest of the society is kind of going about its business. There's a need to not know because to know is intolerable. Then I move into the really brilliant writing of Judith Herman who wrote the book *Trauma and Recovery*.⁴ She's a psychiatrist at Harvard, and she talks a lot about the societies' need to not know about the war at home. She talks about the PTSD for war veterans, and then she says, but there's a war at home between men and women, and society needs to not know. She says it much better than I'm saying it. Basically this idea of

³ See Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 GEO. L. REV. 835 (2022).

⁴ See JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* (1997).

psychological denial and needing to not know has been applied in both domestic violence and non-domestic violence settings, I think particularly when it comes to child sexual abuse, which is for our culture, and probably most cultures, one of the most heinous things to contemplate, especially in interpersonal relations. It is just too awful, and we have a very strong internal protection and defense against knowing about that.

I'm positing that some of what's going on, especially in child sexual abuse cases, is the need to not know. This kind of psychological denial, it's not judges saying, "Oh great, send the kid to the rapist." It's judges saying, "Well, there's all these reasons to not believe it. I'm going to choose to go that way because to believe it, it's too hard for me to handle." And by saying this, I don't mean to put down judges, I think anyone who would have to hear this kind of information and would have to potentially accept this kind of reality day in and day out in a large caseload [would react like this]. It's asking an awful lot of any human being. I think there's a way that the system could be structured to make it more possible. There could be, not only training on vicarious trauma and denial, but support for judges and other professionals who are immersed in trauma material day in and day out and aren't being given the kind of support that this conference is giving to its attendees and participants around what it does to us to be immersed in this material. One of the things it does to us is that we reject it. Especially if we're forced into it all the time. It's just like "No, it can't be true," and we find a lot of reasons to believe it's not true. I think that's human, I think that's understandable, and I think we need to step up and recognize the depth of the difficulty of this material.

ANGELA YEBOAH:

Thank you, Joan. I also think that, oftentimes, it's hard to reconcile what you're seeing in court in terms of presentation with what's being alleged. We know that people that tend to cause harm are very skilled at manipulation in the way that they present in court, and looking at the way that the person is presenting versus all these allegations that are being hurled at them, it's really hard to make that switch.

And for you, Ally, I always find it fascinating that your claims in terms of being abused by your father were being denied or discounted or not believed by so many people, but your father's allegations of parental alienation, without any type of proof, was what they chose to latch onto. Why do you think that is? Did your father present a certain way?

ALLY CABLE:

Yeah, definitely. My father definitely was partly in how he presented himself. He always looked very capable and sympathetic and he definitely manipulated all of the court officials into believing that he was a victim of my mom. And another thing is that the people who did believe my abuse, there were several therapists who did, but they were afraid to speak up in court because they wanted to continue getting clients from the court. That was definitely a big problem, but I think also something that plays a major role is, like Joan was saying, the court wanted to believe him. It was easier to blame my mom rather than admit that they had been wrong and endangered my sister and myself. I hadn't really considered the psychological aspect of it for the judges before, but I'm sure that that also played a role. And then I definitely think I saw this more with our case manager and guardian ad litem. But this willful ignorance was partially driven by greed as well. I think Joan mentioned earlier that these reunification therapies and camps are huge money makers for a lot of people, and I think the longer we were kept in court, the longer we're going through these camps and reunification therapy, the more money that people made.

ANGELA YEBOAH:

Yeah, thank you. Talk to us a little bit more about these reunification camps; are they nationwide?

ALLY CABLE:

Yes, absolutely they are. I mean there's even one here in New York on Long Island run by Linda Gottlieb. I was taken from Kansas to Montana. And Family Bridges, especially, they just go and set up shop in any hotel or motel, anything like that. They actually do that to flout laws because they can't technically be operating as a therapy because their owner, Randy Rand, actually lost his license in 2012, his psychologist license. They really just set up shop so that they can flout these regulations and everything like that. But like Linda Gottlieb's camp is not much better. It's all about threat therapy and it's nationwide. It's definitely important for judges and child advocates and lawyers to understand what these camps make possible for abusers.

ANGELA YEBOAH:

Kara, I want to turn the conversation to you. In your practice when you have a client who discloses child abuse by the other parent, what, if anything, do you do or need to consider before even raising it in court and how do you prepare a client for the possible backlash that could come out of this?

KARA BELLEW:

So, it really depends on what the allegation is and not only what the allegation is but it depends on the totality of the case: who's our judge, who's on the other side, or is there an attorney for the child, and if there is, how involved are they, or how willing are they to really get involved. If there is no attorney for the child, then we look at how can this allegation be sort of vetted and brought to the surface by someone other than the mom, right? Because we always know that if mom raises it, it's going to largely be looked at with skepticism, and it may just entirely be discounted and then weaponized against her. That may involve talking with the attorney for the child. On every case that I'm on where there is an attorney for the child, I try to make that relationship really, really strong, so that I have a good working relationship with that attorney and that my client feels like they have access to that person. That can sometimes involve kind of back channeling; "Hey, I need to talk to you about something," and trying to feel that person out. Again, it really depends on what the allegation is, but if we don't have an attorney for a child on the case then maybe it's something that goes to the therapist, maybe it's something that you take to a pediatrician. I mean, you have to always keep in mind that pediatricians, therapists, they're mandated reporters. You take an allegation to someone like that and it could get reported. You can sort of lose control of how to manage the allegation sometimes. In some situations, that's a good thing. Other times that can really hurt your client and it could potentially hurt your case. It's sort of a hard thing to answer.

But in any case that's mine, I just try to be exceedingly strategic and thoughtful about what we're going to do with the allegation. Sometimes clients, understandably, they want you to act immediately. They want it to be brought to the surface immediately and that's not always the best thing for them, that's not always the best thing for the case, and importantly, it's not always the best thing for the child. I try to keep that sort of strategic focus at every stage of the case because the last thing you want to see happen is that the allegation gets away from you and you can't then un-ring the bell. And it's very, very hard to constantly have to fight against the inevitable; "This is a lie, you're using this as a weapon, this is just being used as a pretext to keep dad away from the children." So, really trying to be thoughtful about how you bring those allegations to the surface I think is incredibly important.

ANGELA YEBOAH:

And there's many mixed messages sent to client because, on the other hand, if you don't protect your child, you're at risk of losing your child. But then when you seek to take steps to do it, you also have to deal with how it could possibly affect your case and you being able to retain custody of your child too. Michael, what about you? How do you address parental alienation claims when they're raised in your cases?

MICHAEL SCHERZ:

I think it's through trying to get as much information as you can. Of course I want my client's view, but I also want to know what both parents are saying. I also have to keep in mind that the vast majority of the claims that are made by someone who's been accused of causing harm, are false. I go in with that knowledge. I still want to listen, because I might have the one case where it actually is true, right? Where there's been harm to my client caused by the primary caregiver, that's the aberration not the norm, for sure. I think the quick answer to that is get as much information as possible from everyone. Of course, primarily my client, but find out what both parents have to say and keep in mind that my client's story is the story I want.

The other thing about working with children is that making sure that I'm actually getting my client's story is not always the easiest thing. This is a pandemic era problem too, with remote interviews. Luckily, we're returning to in-person interviews whenever we can for our clients, except for our clients who are older and don't want to come in, which happens, right? Love working with teens. I mean you want to interview kids in a place where they have privacy, where they can speak freely. Another ad for always working with expert social workers, you want to always have that backup, and I'm lucky that I'm working with social workers who are expert also in intimate partner violence. It's definitely what you want, you want to have as much information as you can. You also want to get to know your client as well as you can so your client can actually feel like they can open up to you, which is a challenge. And it's been more of a challenge during pandemic era where it's really hard to see folks in person. It makes a really big difference, especially with younger kids. Zoom interviews for a three-year-old—I'm not really going to get much even with the best social worker in the world, which is the folks I work with. No offense to any other social workers.

But, I mean, I think it's as much time as you can, as much opportunity to hear your client's voice, and also making sure you can hear what both parents have to say, but also be alert for why they're saying particular things.

ANGELA YEBOAH:

And also being trained on the dynamics of domestic violence and truly being able to understand what that can look like in family dynamics as well. We gather that information.

MICHAEL SCHERZ:

And keeping those wheels in your mind, right? Using children post-separation wheel, you've all seen it, I hope. Not to only talk about the negative wheels, there's some awesome positive wheels out there too. I keep those on my wall, the positive ones. And I think keeping those factors in mind is really important.

ANGELA YEBOAH:

Judge Jolly, you have a really hard job in terms of assessing credibility and differentiating between an actual allegation of alienation versus a parent who is protecting their child from abuse or where the child is just reacting to the abusive parent's behavior, especially when you're dealing with an imperfect protective parent. How do you address that?

HON. ANNE-MARIE JOLLY:

Sure. I just want to say, there are no perfect parents. And as a judge, maybe it's more from personal experience, but reality is, as I'm dealing with cases, I'm not looking for perfection. There is no way that any person [is perfect], that's an unrealistic expectation for people who think that.

I have to say that I'm grateful to be a judge in New York City and in the state of New York because we are fortunate to have a Family Violence Task Force which began its work in 1994. And the purpose of the task force is to ensure that every judge, every justice, support, magistrate, referee, court attorney, anyone who is clerical staff, anyone who comes into contact with family violence issues—that they be well versed about those issues. The Family Violence Task Force conducts semi-annual trainings about all issues that relate to domestic violence, and I'll tell you a few of the topics they include: avoiding the traps of a single theory of parental alienation, addressing domestic violence on children as it relates to appellate decisions, litigating custody and visitation in this world in which we're dealing with domestic violence, assessing risk to children and domestic violence cases, matching conditions to risk and issuing orders of protection, unfair assumptions implicit in the explicit bias in domestic violence cases. When judges are new to the unified court system, there's training provided by the Judicial Institute. When judges are newly assigned to the New York City Family Court, we do additional training. We go to great lengths to make sure that as we interview support magistrates and court attorney referees that they understand the issues that revolve around domestic violence and that they are present in some of the cases that they deal with. We coordinate with the Center for Court Innovation. I mean we recently had a class of support magistrates and court attorney referees and the issues that were involved in that training were dynamics of domestic violence, trauma and vicarious trauma, and access to justice and implicit bias issues.

I just want to respond to Professor Meier, who talked about judges who were doing this work on a regular basis and how they are dealing with vicarious trauma. We offer training and awareness sessions for judges for that, as well as to the jurists' clerical staff. Our clerical staff are sitting with people as they assist them with the drafting of family offense petitions, as they deal with custody petitions, and application support when someone is trying to get that initial order and they're unsuccessful, but they made it to the courthouse or they're on the phone with them. We provide wellness support, definitely for our jurists, and we're working on improving wellness support for our clerical staff. We talk about bias on a regular basis; we're fortunate to have our Deputy Chief Administrative Judge for Justice Initiatives who is leading us in our charge relating to equal justice. And there's a lot of work that we are doing to support our judges. With all of that training that is required for all of the judges' non-judicial staff, that's a step in being aware of domestic violence, the control issues.

As a judge, managing and processing all of these issues, clearly it's easier if there are lawyers on the case because the lawyers will have subpoenaed maybe that pediatrician, they will have subpoenaed police reports and gotten that information. Much more challenging for individuals who are unrepresented to get that information, but we direct them a bit to tell them, listen you're going to need some proof in order to support the claims that you are making because I have to process evidence, that's what I have to process. I'm going to stress again, the court conducts in-camera interviews of young people and part of the training, for me, comes from having been an attorney for children and the additional training comes from what's offered through the Family Violence Task Force and what the Judicial Institute offers. As a judge, I have to assess credibility, which can be challenging, but in the context of all the trainings we receive through the Family Violence Task Force and Judicial Institute, you understand that maybe if someone is not consistent in their testimony and they're a victim of domestic violence, that might be why. But you have to have that foundation and understanding about that and not just make a determination. That person, because they're looking away, makes this automatic assumption that they must be lying, that she must be lying about what is going on. It really is a matter of making sure that you're educated, you continue to be educated, and have advocates before you who are fully educated as well about all the issues that revolve around domestic violence and inter-partner violence. It's a matter of juggling and assessing credibility, and the evidence that is presented to the court. And again, as I said, it's a little bit more challenging when we're dealing with individuals who are unrepresented, and I'm most grateful if there's an attorney representing the child. And then hopefully we'll get more attorneys on the 18B panel to represent parents so it's a less challenging process for the parents.

ANGELA YEBOAH:

Thank you, Judge Jolly.

Kara and Michael, in terms of practical advice, what is one piece of practical advice you would give to practitioners who have to deal with some of these complex parental alienation claims in their cases? Briefly.

MICHAEL SCHERZ:

I think it comes down to having as much time as you can to try to figure out what's closest to true and getting as much information as you can. And the word I had in my notes was "rapport," rapport-building with my client, figuring out more about my client's wishes and interests and just getting as much information as possible. The other thing maybe, is as time goes on, you get to see the parties in court so you can learn a lot. And if you're lucky to be in a courtroom where the parties wait actually in the room while you're waiting for the case to be heard, you can actually learn a lot from those moments too. I think it's all information; I don't know if that was a very good, responsive answer.

KARA BELLEW:

I think, be tenacious and constantly reframe the allegation. Just because your client has concerns doesn't mean that they're trying to alienate their children from their abusive mother. And giving voice to those concerns and not being scared or timid to do that, even if you're just being attacked from the other side. Because I do think that the more the court hears that, it starts to sink in. Whether it's completely far afield or not so. If you don't have the counter voice in the room constantly attacking against it and constantly reframing it and reframing the very legitimate concerns of your client, then the alienation claims will start to resonate with the court very unfairly. I think tenacity is what I would say.

ANGELA YEBOAH:

And Joan, based on your research, what do you think as advocates we can do in terms of finding a solution?

JOAN MEIER:

I would just add to what's been said that we often advise people to get a counter expert to deconstruct the alienation expert and to show why their report

or their analysis is not valid. Take what Michael's describing, take all that information, and point out in an authoritative expert report that this information shows that alienation is not what's going on. It shows that. I think it's pretty hard to counter, at least around the country. Again, I don't know New York City. I have dealt with some Westchester type cases in New York, where all the same things were going on that I've seen around the country. But it's pretty hard to counter the alienation line even if you are a good advocate. If you don't have someone at a sort of expert level to challenge this supposedly expert opinion about alienation—if it's coming from an evaluator or a GAL, or another expert. If it's just coming from a litigant, then I agree completely with what Kara and Michael had to say. You might be okay without an expert.

Generally, systemically I've been working on this for over ten years trying to get the system to recognize that alienation cropped up as a way of denying abuse. I mean, this is not a theory that developed in psychotherapy or developed in child development, it developed in the context of litigation to deny child sexual abuse and eventually was applied more broadly, and then it has been refined endlessly and made into a cottage industry. It's not a thing that stands on its own two feet; it's a thing that was designed as a way to deny abuse claims. And that is not the only way it's used, and obviously, as my research shows, there are other claims of alienation that aren't about abuse. But when it's used in the context of abuse claims, courts should be suspicious of them. And I think the best way to help a court be suspicious is to bring an expert on board to do the trainings that counteract the pro-alienation trainings that are so ubiquitous.

ANGELA YEBOAH:

Thank you, Joan.

Before we move into the Q&A, I just want to give Ally the last word. Ally, what would you like for the audience to take away from your experience?

ALLY CABLE:

I think the main thing really is that I was never heard throughout my whole court case, over like ten, twelve years. Definitely kids need a voice and I think Michael is definitely doing a really good job at giving kids voices, so that's great. But really no treatment or court order should ever be able to completely cut off contact with a safe and loving parent unless there's evidence of substantial abuse and I think that that's definitely really important and something that people should know about this.

ANGELA YEBOAH:

Now we will move into the Q&A.

RUCHAMA COHEN:

Hi, everyone. Thank you to all of our distinguished speakers. The first question is for Judge Jolly. Can you speak to what seems to be the prevailing trend in New York of 50/50 custody awards?

HON. ANNE-MARIE JOLLY:

I'm not sure that's the trend in New York City Family Court. I can only speak about my experiences, and I have not seen this trend. I'm at a disadvantage because I don't know that data and I can't speak for matrimonial proceedings. I can speak about family court, and I think that the judges and the referees who are managing these cases are going through the factors that are necessary, unless all counsel are agreeing to this type of an outcome. There has to be a hearing and determinations based upon the various factors and the evidence that's presented, I don't think that there's an automatic 50/50 view that is taken when managing the cases. I think there are some people who come, if they're unrepresented, *they* think and present to the court that it should be 50/50. And I think that the court—I can't speak for the whole court, I speak for myself—as I explained there are various factors I have to consider including where the child lives before these proceedings, how old is the child, who provides a primary care, all of that. It's not an absolute decision that the mother's going to automatically get custody because that's where the child lived before the case was filed, and it doesn't mean that it's going to be automatic for the father if that's the situation as well. And I tell them there has to be a hearing. I often tell people, of course we're not talking about cases with domestic violence, I tell them it'd be better if you were able to try to resolve the case on your own. I try to make referrals for mediation. Of course, if there's domestic violence, we don't send those cases for mediation even though I think there should be some trained professionals in the future and down the road who understand the dynamics of domestic violence who are properly trained to provide a tool to the parent who is the victim of domestic violence when they are ready and if they have counsel. Because they have to maintain this relationship with this person throughout the life of their child. There's a hearing conducted in every case, might be abbreviated might not be, but I don't approach the cases as if they need to be 50/50.

MICHAEL SCHERZ:

If I may say one thing to that, I've never hated math more than I've hated math since I've worked on custody cases, but I also think math is incredibly telling. There are many times where, especially early in the case but throughout

a case, there'll be one parent—it's always the person who's alleged to have caused the harm—who is insisting on a property right. And Ally, when you were speaking, you were talking at one point about a 60/40 split then a 50/50 split, and every time I hear those numbers, I'm thinking—we're not talking about property. And I think it's really important when parents or parents' lawyers start talking about math and start talking about the percent of time they have. In my mind, I have to tell you that immediately sets up alarm bells that I'm dealing with a parent who is talking about their property and not about an independent, amazing child. And I'm so glad I have a chance to say that. I'm going to go to court today and someone will talk about math.

RUCHAMA COHEN:

Michael, how would you handle a case where the child, say, over the age of ten, expresses a preference to live with the abusive parent?

MICHAEL SCHERZ:

Oh, well, after I find out that that's really their preference, I'm obligated to advocate for what they want. Although, again, look at Rule 1.14 and see what my exceptions are. And also I should tell you, I work with experienced MSWs who are mandated reporters, they're independent professionals that I'm lucky enough to get to work with. They are mandated reporters; they need to put that out there. My clients also know that; we tell them, when we talk about what confidentiality is, we talk about what the exceptions are. But I think the first thing is, unless there's an exception to the rule, I'm advocating for what they want.

RUCHAMA COHEN:

Ally, can you speak to the relationship you have with each of your parents today?

ALLY CABLE:

Of course. With my mom, I actually see her every other weekend. She comes up to New York, and we have a clinic because my parents are ophthalmologists. I have a great relationship with her; she's always been very supportive of me and in speaking out as well. I do not talk to my father today. I think that if he had not escalated everything as far as he did, and he had shown that he wanted to put my sister and I before his control, his want for control, I think that we would be in a different place. I mean everything that he did really, really threw that out the window.

RUCHAMA COHEN:

For Judge Jolly, do you believe that in-camera proceedings should happen early on in the proceedings or as a last resort?

HON. ANNE-MARIE JOLLY:

It's never a last resort; it depends on the application made by the attorney for the child. They're usually the ones who will raise it. If it's earlier than trial, the application is usually made by the attorney for the child. I trust that that attorney has met with their client, interviewed them on more than one occasion, and made this decision to make the application for an in-camera interview. It depends; if we haven't yet gotten to the final custody determination and we're dealing with access by one of the parents or both of the parents and it's necessary, then yeah, I'll engage in that in-camera. As often as it's necessary but also making sure it's not traumatic for the child. Sometimes they feel as if they're going to the doctor's office, and that's not always—my apologies to any doctors—but it's not always a pleasant experience going to the doctor for not just children, right?

When they're coming in to see me, you want to make it as comfortable as possible. I will not wear my robe. I try to engage in light conversation before we get into things. It takes a while and sometimes it is necessary to do more than one in-camera interview because if you spend an hour with them, they're not yet comfortable. and that's okay. You can't force that relationship. Michael talks about building a relationship and having a social worker. I have experience interviewing children, I rely on that. But I also recognize it might not be, as they say, one and done. I might need to have the child come back at another occasion when they don't have school, when they're not thinking about their after-school activities that I've taken them away from, they're very unhappy about that. So I have to process all of that.

RUCHAMA COHEN:

Kara, what do you do when you're advising a protective parent in a situation with AFCs, Attorneys for the Children, who are not up to Michael's standards—who are not trained in DV, not really interested in engaging with a child, and tend to side with the abusive parent? I know Michael mentioned earlier that the GAL system is deeply flawed, and I'm inclined to agree in theory that it's better to have an AFC. But I'm sure I'm not the only one in this room who's had to deal with some terrible AFCs.

KARA BELLEW:

That's a good question, and it's complicated. It doesn't have really an easy answer. But I think part of it is educating your client about how to express the concerns that she has, and really focusing on framing them as concerns as opposed to just bashing the other parent. I try to really sit with my client and really hear what are really the concerns and of your litany of ten things, what is the most compelling? And then, how can we frame that so that this attorney for the child, who maybe has not been very receptive to you and has been discounting what the kids are saying, how can we make it resonate and how can we make it palatable to him or her? And sometimes that involves me sitting down with the attorney for the child on my own first and trying to frame the issue a little bit, preview it for them, and then bringing my client in. I tend to like to meet with my client and the AFC together. When I'm not there, I find that what I hear from the attorney versus what I hear from my client—sometimes they're different enough that it leaves me thinking, "Okay, what really happened?" Because obviously, everybody takes away something different, even from the same conversation. I think it's really about just trying to manage that relationship with the attorney for the child, manage the communication, and how the concerns are raised.

RUCHAMA COHEN:

Professor Meier, we had a question as to whether your study examined the average age of the children at all.

JOAN MEIER:

No, we did not. I think that data was not clear enough in the opinions for us to systematically log it.

RUCHAMA COHEN:

I just have one more question, and I guess anyone can take it, and that is, how do you get judges to use findings from a family offense proceeding or the fact that there's an order of protection as relevant in custody? Because sometimes we have these experiences where there's an order of protection and then the judge will move on to custody as if the coercive control is just stopping because there's an order of protection. I don't know who wants to take that.

MICHAEL SCHERZ:

It's a factor in the custody determination—it has to be. Domestic violence is a mandated factor. Judge, is that what you were getting ready to say?

HON. ANNE-MARIE JOLLY:

That's exactly what I was going to say. You can't move on to the custody, and sometimes even the visitation and access issue, until you've addressed the family offense matter. And if there's a finding and then there's an issuance of a final order of protection and there's been testimony and history, it can't be disregarded by the court. It should not be disregarded by the court. And if you believe it's being disregarded, then, as an advocate, you have to remind the judge of their obligation as to what they need to consider either in your presentation of proof or through your client's testimony. And then in your summation, remind the court. And then fortunately, if the judge has made the wrong decision, we have the Appellate Division to remind us what we should have considered in issuing that order, not disregarding domestic violence and violence.

JOAN MEIER:

May I add one thought on this topic? Around the country, it's been a pitched battle on whether custody judges have to admit evidence, cast evidence of domestic violence. It's something that seems so obvious to all of us as a matter of common sense as well as statutory law. Courts often try to exclude that stuff and say it was already adjudicated, I don't have to consider it now. Or, it's in the past; there was an order but it was two years ago and now we're here. The exclusion of evidence of domestic violence is something, again, that a lot of courts do around the country, and I think it's probably partly for the reasons I've described. They don't want to be dealing with that in the custody setting and, of course, it defeats shared custody if that's a high value for courts, which it is in a lot of cases. But it's a more contested question than I think, Judge Jolly's very refreshing perspective suggests.

HON. ANNE-MARIE JOLLY:

I also want to add that, in support matters, our support magistrates receive the registry checks on all of their cases, so they have to process that information as they're making the decision. They may not have been told by one of the parties that there's an existing order of protection. But when a magistrate gets a result of that registry check, they have to factor that in and consider, "Who do I have before me?" More than just the presentation of the numbers, as Michael was saying. But it's more than just numbers as you're dealing with support. And going back to the 50/50 question. When I hear 50/50 I think, "Oh this person who's raising it has child support in the back of their mind," or, if they're really pushing that they want a hundred percent and they never had the child in their care, there's support in the back of my mind as a little checklist. Is this what we're really talking about?

ANGELA YEBOAH:

This concludes our panel. Thank you all for participating. I want to say thank you to Judge Jolly, Kara, Michael, and Ally, and thank you to the audience.

JENNIFER FRIEDMAN:

Thank you, thank you so much. This gave us so much to think about. I'm really pleased the way the themes are coming together. I think we saw a lot of the themes from yesterday regarding better understanding of lethality and lethality factors and how those are not just for an order of protection case, those are for a custody case, also that we hope that all judges are getting trained on understanding some of these warning signs. Which Kara, I really was so moved by your story of the recent case and how scary that really is and obviously connects yesterday. Thank you all for bringing together those themes.

Yesterday, we also heard about gender bias by Justice Ellerin in the 2010 gender study, and we heard today from Joan Meier about how these allegations of domestic violence are just not being credited and why is that, and is that gender bias? I'm so glad that these themes have been raised and we can think about how all these things blend together, knit together. Fortunately my job isn't to then know what the answer to that is, but I'm seeing the themes, and I'm glad that we're seeing them.

With regard to the cottage industry that was discussed and fortunately, it's not hugely prevalent, but there is reunification therapy happening in New York. It is a growing industry. And we heard on the Blue Ribbon Forensics Commission about the cottage industry of forensic evaluators and the ways in which there is self-dealing, and we heard testimony in the hearings for the Blue Ribbon Commission from parents who talked about the fact that their counsel or opposing counsel had a relationship with the forensic evaluators upstate. I think that's not as much of an issue that I've heard about down here, but there were several people from north of the city who have talked about that.

And then finally, I can't help it—and I would love to have been on this panel—but I can't help but think about a case I have in which the son who visibly observed, for years, his father having relationships with young women and in fact purchasing women and pretty much being like a pimp. And the child used the word “trafficker,” and he was I think about thirteen years old. He's on the internet, he knows things, he's seen it happen before his own eyes, and the attorney for the child said, well, the mom must be alienating the child and must be putting this idea in his head because how could a child know that? And I'm thinking, this kid saw a lot. This kid knew. The attorney for the child,

unfortunately, this is a current case, is not always—and yes we love Michael, we want Michael actually to just train AFCs and ATVs who serve as AFCs around the state. That’s a suggestion. I’ll end there. Thanks, everyone.