

DAY 2 – OCTOBER 14, 2022
PANEL 2: PROMOTING EQUITY FROM THE BENCH: JUDICIAL SELECTION, OVERSIGHT, AND TRAINING¹

HON. SHAHABUDDEN ALLY
SUPERVISING JUDGE/ACTING JUSTICE OF SUPREME COURT,
NEW YORK COUNTY CIVIL COURT

SAVINA PLAYTER
PRESIDENT, BRONX WOMEN’S BAR ASSOCIATION

HON. TAMRA WALKER
FAMILY COURT JUDGE

ROBERT TEMBECKJIAN
ADMINISTRATOR AND COUNSEL, NYS COMMISSION ON
JUDICIAL CONDUCT

HON. JUANITA BING NEWTON
RETIRED JUDGE, NEW YORK COURT OF CLAIMS

HON. SHAHABUDDEN ALLY:

Good morning, everyone. I trust that you've all had a wonderful conference yesterday and today. This panel will be a complement to the wonderful programming you've had so far. Okay, so this is the title of this conference, *Justice for Survivors of Intimate Partner Violence: Transforming an Inequitable Family Law System*. Everything that we've heard so far is valuable to understanding the whole, right? One of the things that we have to also understand is the decision-makers, the judges—the things that go into actually becoming a judge, training for judges, decision-making, and things that keep judges out of trouble. And as a judge, I would tell you that's a very important almost daily assessment. I'm the supervising judge of New York County Civil Court. I'm the president of the Asian Judges Association. And I know I'm in a family law conference, I'm not lost, it's not a civil conference. I spent two decades working in family law matrimonial and family court.

¹ See Sanctuary for Families, *Promoting Equity from the Bench: Judicial Selection, Oversight, and Training*, YOUTUBE (Oct. 24, 2022), <https://www.youtube.com/watch?v=RvpKOhg2mk0&list=PLg6AMDhsnPQff9Ov29QqAvTJPISuUc4i&index=8> [https://perma.cc/44XR-8FCQ].

We have a star-studded, stellar panel. I trust you all have the materials, so you have full biographies. On the screen is Savina Playter, who's an attorney in private practice on the 18B panel and the President of the Bronx Women's Bar Association. There's also Robert Tembeckjian, who is the administrator and counsel to the New York State Commission on Judicial Conduct. We have the Honorable Judge Tamra Walker, a family court judge in Queens County sitting primarily in a CVO (child visitation order), protection docket, but if you know anything about family court, you know you don't really specialize, you do everything. And then last but certainly not least, is the Honorable Juanita Bing Newton. Simply put, this judge is responsible for training almost every judge that has gone through judicial training and is on the bench, so when we talk about judicial training, we really do have *the* expert on this panel today. My job is to try to figure out how we can extract all the expertise in the time we have.

The first topic we're going to get into is pathways to the bench. We must be curious as to how judges become judges, right? Like you don't really just wake up one morning and say, "I'm going to be a judge," right? Maybe that's a thought and when you look at the judges, you think they all look the same in how they got there. But do we know the different ways of how someone becomes a judge in New York City? In New York City, there's actually more than one way. So, to begin that conversation, I'm going to ask Judge Walker to tell us briefly about her path to the bench.

HON. TAMRA WALKER:

Good morning, everyone. My name is Judge Tamra Walker. I am currently sitting in Queens County Family Court, and I am going to talk to you a little bit about my path to becoming a judge. I just want to let you all know that family court has been my passion. I've actually been in family court for my entire legal career and it goes back to law school. When I was in law school, I was a judicial intern for a judge in Kings County Family Court. Also, as a law student at St John's University School of Law, I was in the Domestic Violence Litigation Clinic, where I worked through the assistance of the New York Legal Assistance Group (NYLAG). I worked with NYLAG to help represent petitioners in intimate partner violence cases and through that, I gained experience in working with the survivors of intimate partner violence and taking them through their cases. We worked on cases in Staten Island, the Bronx, and Queens at that time, so I really became comfortable working with the survivors of intimate partner violence. Also, while in law school, I was part of the Courtroom Advocates Project with Safe Horizon, a project where I was able to assist survivors in drafting petitions and hearing or going through cases during the intake process. I think that all of those experiences in law school really helped me because, working with those survivors, I felt the empowerment that they felt when they were first filing for that family offense petition. I felt how

scared they may have felt going into court for the first time. I also had to experience the other part of the dynamic when cases were adjourned for return of process and then the survivor decided that they no longer wanted to pursue their case or they reunited with the offender. At that point, as a young law student, it was frustrating. But now sitting on the bench, I understand that that's a part of the dynamic for survivors of intimate partner violence.

After that, when I became a lawyer, I worked for the Administration for Children's Services (ACS), starting as a staff attorney. I was in the Bronx Family Court at that time, and I worked on Article 10 cases: many, many cases, hundreds of cases. I ultimately became a supervisor, being able to train young junior staff attorneys at ACS. I also worked with intimate partner violence survivors because they were often my witnesses in cases involving the children. I had to work with them and their attorneys to get them ready for the stand and for testifying, which is a very traumatic experience as you may know. I wanted to do it with patience and compassion to not re-traumatize them, and as a supervisor, I would ultimately teach and train staff attorneys how to do the same.

After that, I became a referee and as you may know, referees hear a lot of the custody, visitation, and family offense cases throughout the City of New York, so that experience was also very vital to me. I was a referee for five years. Referees also go through a very rigorous training. At this point, they are trained in all aspects of the Family Court Act, but primarily Article 6, custody and visitation cases, and they learn about evidence, witnesses, experts and entering decisions on these cases; and of course the same for Article 8 family offense petitions. But, in addition to that training, there's also training in implicit bias, which is very important, and there's training in the dynamics of domestic violence, including understanding trauma and vicarious trauma. That training is conducted for the referees who are really doing the work of the judge as well, so it's very important that that training is not just for judges but also referees. Referees also go through observations, which is a very critical part of the training. That observation includes sitting with judges and other referees and observing the entire process—and not just sitting with one judge who may think or feel one way, but seeing different family court judges throughout the five boroughs. So that was very important for the observation portion of the referees' trainings.

That leads me to 2021, when I was appointed to the bench to sit as a judge in the New York City Family Court. I was appointed by Mayor de Blasio last year, so I think it's still pretty new to me and exciting. Of course, since becoming a judge, there was much more training because this is not an easy job, and we have to be trained on all aspects of the Family Court Act. First, there was some specialized training in family court with family court judges training

the new judges. We were also trained by referees because they have such a wealth of experience and knowledge especially in custody, visitation, and order of protection cases. There's also trainings on implicit bias and training on case management because these cases need to move, and there needs to be some finality, and these survivors need to know what comes next. So currently, I am sitting in a CVO part: custody, visitation, and orders of protection in Queen's Family Court. I've been doing this now for quite some time because I was a referee doing the same thing. In Queens, the judges are primarily the ones who hear the family offense petition cases. So, what happens in Queens is the cases are filed virtually and in person on intake, which is the initial hearing, and that's when it's really important to know how to speak to survivors because like I said, I learned in law school that this could be their first time telling their story. So, it's important to listen, to have compassion, and also to explain the next steps. For example, they may not understand that on the next court date, the offender will be served and will be in the courtroom with them. So it's important to explain that and explain the resources that they may have to assist them, such as going to Safe Horizon to sit before the case is heard. It's important to explain service to them, what's going to happen next. So that's what we do and then as judges, we hear the case in Queens for the duration.

HON. SHAHABUDDEN ALLY:

We're going to get to training in a second. Do you mind if I go down the list to the next speaker, Judge Bing Newton. What was your path to the bench? If you could take about two minutes to do that.

HON. BING NEWTON:

I remember where I was fifty years ago today; I was sitting in a law school class where there were the same number of women as there are men in this room today. Do you know how many men there are? One, two, three, four...we found five someplace else. There were five women in a class of 350. When I hear my colleague Judge Walker talk, I say, "Wow, how things have changed!" All of that stuff she did in law school, I didn't do. We did have clinics. We were a progressive school, but all of the things that you take for granted were not there. I heard Justice Ellerin, my mentor, speak. Any woman who was a judge before a certain day could stand up and testify she was a mentee of Justice Ellerin. I was on the Commission in 1986, before she was, that's how old I am. I was on the original Franklin Williams Commission that Judge Troy Webber talked about during Judge Kluger's program yesterday, so that's how old I am. So, I have lived through this. I know very little about family court, ladies and gents, but I do know a lot about being a judge. I was a judge for thirty-seven years. I was appointed to the secret court known as the Court of Claims. How many of you have heard of it? That's an actual question, I want to know how

many of you have heard of the Court of Claims. Okay, good. This is a pretty good audience because most people have never heard of the Court of Claims. It is not small claims court. I was appointed by Governor Cuomo, and again by Cuomo, and Pataki in between. I spent most of my time sitting in the criminal supreme term, but I've sat in the matrimonial part. I was a trial judge and I've mostly done the matrimonial consent part. You know how attorneys settle when you say you know how to make a decision? That's the first lesson I learned as a judge. Make a decision. That's right, making a decision is just part of the job. I spent most of my time doing administration. I was the Administrative Judge of the Supreme Court Criminal Term. I was the Administrative Judge of Criminal Court following Judge Kluger. I was the First Deputy Chief Administrative Judge for Justice Initiative which is now held by Judge Mendelson. Then I left all of that to go to the Judicial Institute, which was my passion. I was the first person in my family who was not a teacher, so I went back to teaching. My true passion was realized when I was on the board and participated in a place called "The Institute for Faculty Excellence for Judicial Education," and so I think that presents to you the fact that I really am an educational geek. My relationship to family court was accidental. My first job while in law school was working with the Legal Aid Society in the Bronx office because I too am from the Bronx. While you're in legal aid, you could have the housing court cases or the civil court cases—I got all of the matrimonial cases. One case involved a bigamist and I knew enough to know that I didn't know what to do with it, so I called the boss.

You must ask yourself: what do you want the learner to know, what do you want the judge to know? And then what do you want them to think about what they know? And then what do you want them to do in response to what they've learned? Because if you don't answer those three questions, it's just a nice session with coffee and bagels and I think the judiciary needs to know what you think on those issues as they develop increasingly more beneficial educational sessions. I'm delighted to be here.

HON. SHAHABUDDEN ALLY:

So, what you should know about Judge Bing Newton is, although there is a current one, she will forever be known as the Dean of the Judicial Institute. When you say the Dean, it's only Judge Bing Newton and it still is a very heavy responsibility to train judges.

ROBERT TEMBECKJIAN:

One item—because Judge Newton was elected to her office.

HON. BING NEWTON:

No, I was appointed.

ROBERT TEMBECKJIAN:

Did you ever run?

HON. BING NEWTON:

No, never ran. I never belonged to a political club. I never ran, and I will gladly tell you my story of getting to the Court of Claims. I had a benefactor who helped me, and it was the Chief Administrative Judge of the Courts along with the Chief Judge because I had worked for them, and they thought I was a hard worker. An opening came up for twenty-three vacancies, so there were no incumbents to the Court of Claims. And I said, you know, "Judge Bellacosa, do you think I am worthy to be a judge?" And he said, "I think you are. We will, I will, support you." I usually don't tell that story because you have to be at the right place at the right time, have the right credentials and the right supporters, and that's not how most people get to the bench. But you never know when you work for the right person at the right time, and if you see an opportunity, go for it! So I, like yesterday's speakers, hope the family court sees many of you on the bench one day.

The mayor's committee is an open process. It creates outstanding people; the only problem that I have with appointed people is that sometimes the judges feel that they have to behave in a certain way not to only do justice to the cases and controversies before them, which is basic, but also, they have to be reviewed. And so, they can't do crazy things. As an administrative judge, I have said to judges, "sit down, and answer my question." This is about wellness. What is going on in your life that has you acting this way? When you have a colleague, when you have a family member, when you have a child, when you are a supervising judge, you have to sit down, bring it down a notch and say, "Please, what is going on?" I've been on the Commission on Judicial Conduct for several years. No longer one of my fun jobs. You have to ask, what is going on in the judge's life that has her behaving in a certain way? Because your personal life runs over to your public life and so we did bring judicial wellness into the courts many years ago when it was first pooh-poohed. Judge Lippman said, "What's wrong with you, Juanita? You're always doing something just out of the box."

ROBERT TEMBECKJIAN:

All I was trying to say was that in New York City, while family court judges are appointed, throughout the rest of New York State, they are elected,

and that process is entirely different than the one that Judge Walker had to challenge and master in order to become a family court judge. Often, and particularly the lesser populated counties, family court judges are also county court judges and surrogate's court judges, they wear three hats and their time, attention, training, and focus is often divided. And that, I think, creates a completely different set of challenges for litigants and the judges than those who might appear before somebody who came up the way Judge Walker did.

HON. SHAHABUDEEN ALLY:

We're going to get into another topic now, but for your edification, you might already know this, but we're talking about New York City, so we already see that the mayor will appoint judges to family court, criminal court, and there's a third exotic, interim civil. I'm not sure how often that happens, but it happens. Those are three boxes that have to be checked off. So, we have the mayor of New York City appointing family court, criminal court, and interim civil. We have the governor, appointing the Court of Claims. That is sixty-two counties statewide. This is in New York City. Then there's a third, and that's the way I became a judge, that's elected. I was elected to the New York City Civil Court out of Manhattan. It was a close race; I ran uncontested, and I still thought I was going to lose county-wide. I started my judicial career in criminal court even though I was elected to civil court. Then eighteen months later, I was promoted to Supervising Judge of Civil Court. We are the small claims court. I know we're not the Court of Claims, but I will proudly wear small claims. It's the People's Court. We also have a housing division and then general civil. The Supreme Court's elected as well and that's statewide.

The election process is a process all in itself and so we're going to turn our attention to the screen now. Ms. Playter, if you could take about two minutes to tell us, as part of a screening panel, whether it's the electoral or the judicial appointment process, what are some of the qualities that we're looking for?

SAVINA PLAYTER:

Good morning, everyone, and I'm so happy to be here. As judge Ally said, I am the President of the Bronx Women's Bar Association and I'm also the Chair of the Bronx Family Court Bar Association, and I continue to represent 18B persons in lawsuits and legislation as we fight for appointed council and raising the rate. I'm very happy to be here today because in my background I have pro bono represented Indian women who are victims of domestic violence. I consider this a very important topic in my life, and I'm glad that we have a two-day conference on this issue.

Now I'm going to turn to the question. So, I have sat on screening panels representing the Black Bar Association of Bronx County and the Bronx Women's Bar Association to select judicial candidates, as part of the independent judicial screening committee for the Bronx Democratic County Committee. I've also sat on screening panels for the judicial candidates seeking judicial positions in the New York Court of Appeals. The panel, in my experience, is comprised of volunteers from bar and community associations. Typically, panel volunteers are chosen by the president of these organizations or in some instances they are judicial committees within the association that may select who will attend and participate in the screening panel. Now, what are we looking for in the screening panel? Now, if you come from, for example, an affinity bar association like the Bronx Women's Bar Association, you might be asking questions such as, "how have you advocated for women?" If you come from another affinity bar association, you might be asking a question that pertains to that makeup of the membership of your organization to attempt to address some of the concerns that they may have. What we're looking for in the screening panels are really the skills and qualification of the judge. We're looking for temperament. We're looking for legal skills, knowledge of substantive law, analytical ability, oral communication skills, legal writing, courtroom trial skills, the strengths and weaknesses of the nominees, willingness to listen, patience, fairness, open-mindedness, objectivity, firmness, and, of course, service to the law. If you're a sitting judge and you're trying to go from the lower court to the Supreme Court, we're looking for your ability to control courtroom proceedings, your preparation, your attentiveness, whether you can manage a docket, your courtesy to litigants, your courtesy to counsel and court personnel, what have been your public disciplinary sanctions (if any), and very importantly, the quality of your judicial opinions.

HON. SHAHABUDEEN ALLY:

So now we have a logical progression. It's important for us to know how judges come on the bench because it comes with training, experience, and that's what we're going to get now. Every judge is an expert on something. Are they sitting in the court where they're an expert? I see a lot of shaking heads, and trust me, I know my audience. That is an issue with judges who are sitting in court: they might not have their expertise. I was in the criminal court. I had to have criminal court experience but still, even with my experience, it was still challenging.

Let's get to training. Judge Walker started the conversation with training; we're going to get back to Judge Walker, but we're going to start with a dual analysis in training. We're going to start with the Dean; the Dean's going to give us the front end of judicial training and then I'm going to ask Mr. Tembeckjian to give us the back end of when judges don't follow judicial training, what

happens there. I'm going to ask Judge Walker to give us the day-to-day training that a judge gets. Ms. Playter is going to give us, from a practical practitioner's point of view, her training, and then maybe I'll say a word or two. Okay, that's the lineup.

HON. BING NEWTON:

I'm going to stay within two minutes while you explain dual analysis to me. You didn't bring that up in our sessions. Let me hit some high points: I think judicial education suffers from a lack of input of money and time. When I became the Dean of the Judicial Institute in 2009, they had new judges' school, and it was in December. It's an interesting notion because who could come in December? It was designed for those people newly elected throughout the state. It really wasn't designed for everyone else because most family court judges in New York don't even know they're going to be judges and don't start until January. The first thing I did was speak to the Chief Administrative Judge and say to her, "I want to move new judges' school from December to January and make it mandatory." And she said two things: "how many people and what's the cost?" And I said, of course, "I have no idea, because I just got here, but it will be worth it if you think about the pedagogical value of bringing all the judges together." One year we had as many as a hundred people, which was not what she expected and we had the attending cost because we brought everybody into the Judicial Institute for a week. Now, a week is not enough to learn how to be a judge because you have to realize that being an exceptional lawyer does not mean you'll be an exceptional judge. It just means you've been an exceptional lawyer and so our focus was to put as a curriculum item, "How to be a Judge." Because Bob, Mr. Tembeckjian—I know him so well I'll call him Bob—will tell you that many of the faux pas that judges make, and I don't want to say sanctionable actions, come from judges not really understanding their role and overstepping that role. And so, we want them to learn how to be a judge. We want them to learn the tools of a judge. Evidence, for example. Have you been frustrated in a trial because the judge doesn't understand the rules of evidence? A lot of judges do not understand the rules of evidence; that's on my list of what do you want a judge to know and how do you want them to use it. Many judges don't have a clue as to the importance of administration, except the Fund for Modern Court which, with respect to the open Chief Judge's position this year, stated that they think that the screening panels should consider the administrative ability of any candidate before they come out of the panel to the governor. This is the first time I've seen such a public understanding that judges have to manage their court and manage their dockets.

The items I put in the materials for your consideration, that I think judges must be taught, are, first, the rules of the Chief Judge.² Interestingly, there are very few things that we are statutorily required to teach and they all relate to domestic violence. Secondly, the rules of the Chief Administrative Judge³ which are Mr. Tembeckjian's rules, the rules of judicial conduct—you need to start with the fundamentals as a judge. So, we want them to know that. Thirdly, I added something that I thought Justice Webber referenced yesterday about having a rule of civility. There is already in Part 1200, the “Standards of Civility” of the courts.⁴ Judges should read them. Counsel, you should read them because, as Justice Ellerin told you yesterday, we found that women are undermined more in court by fellow counsel who are male than by judges, which is an improvement from 1986. In 1986, everybody was rude to women, but that's okay, there has been progress since 1986, my dear friends. And so we have a combination of things that we want to teach the judges, both concrete like how to run the court, knowing the rules of evidence, and fundamentals like ethics, which are the foundation. And then, of course, we treat other topics, such as domestic violence and implicit bias, which we've been doing since 2009 and I hope they are, with rigor. But someone yesterday said something that struck me as I watched it, she said you can train people as much as you want but you have to have people who are receptive. So I think that one of the things we try to do in judicial education is, by our demonstrative ways, have people know what's acceptable and what's not acceptable.

So, I'll tell you how I learned about domestic violence. In September 1975, in Archie Gorfinkel's part in the Bronx, Part 1E in the Criminal Court, there was a domestic violence misdemeanor case. Husband and wife, but the husband punched out the cops so there was a resisting arrest. I was busy with all the other cases in that part where there were about seventy-five cases and I was working alone. And as the judge called that case into the record, and I was not paying attention, he reamed me out publicly and said, “Miss Bing, don't you ever treat these cases in such a cavalier manner.” And that changed my attitude about domestic violence cases. I was forever receptive to what we needed to learn about domestic violence and I think that's a real important thing that that young lady said yesterday. And I wish I could attribute who it was, but I don't remember, but it struck me that we have to get people to be receptive to what we are teaching them.

² N.Y. COMP. CODES R. & REGS. tit. 22, § 17.

³ N.Y. COMP. CODES R. & REGS. tit. 22, § 100.

⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 1200, App. A.

And lastly, a caveat: when we teach any issue, we have to teach judges how to be neutral magistrates. Some of you may wonder why, when you invite a judge to a program, she doesn't come. That might suggest the judge is not interested or is hard-hearted, but we have some suggestion from the Advisory Committee on Judicial Ethics some from the Commission on Judicial Conduct that says judges may not go to trainings that are geared to one side and not another in an adversarial proceeding. So, before you condemn the judge for not coming to your wonderful program, question whether or not this is something he or she can attend. And that's more than two minutes, and I have a lot more to say, but I defer to you Mr. Administrator, panel-leader.

HON. SHAHABUDDEN ALLY:

Panel-leader—my resume just was updated to include “panel-leader.” I will move down to Mr. Tembeckjian, but the judge mentioned many things that are worth noting. For example, that good judges have to be managers and administrators as well. How many of you have been part of a courtroom that was not managed well and becomes very frustrating and affects the case? I spent twenty years as a litigator. I will tell you that is a key component of judging. I love the line that training is only as good as the receptive nature of that training. Excellent, excellent line. So, we got the front end of training; what training should look like. Now, maybe let's move on to the back end: what does training look like when we don't adhere to it. Bob?

ROBERT TEMBECKJIAN:

Well, I suppose my part of the program, having heard now how you become a judge, is how you leave the bench, involuntarily. The Commission on Judicial Conduct is a state entity. It's created in the state constitution, and has the responsibility to receive and investigate complaints of misconduct by judges. There are 3,500 judges or so in the unified court system throughout New York State, and when a judge violates or appears to have violated one of the rules on judicial conduct or the Code of Judicial Conduct, there is recourse. Anyone can make a complaint to the Commission and if, on its face, it credibly presents information to suggest that a rule was violated, we can investigate. Where appropriate, we can formally charge the judge with misconduct and in appropriate cases, publicly admonish, censure, or remove the judge from office. In situations where the misbehavior was less egregious and didn't warrant public action, we can confidentially caution the judge. It's important to say a word about what the Commission is not. It is not an appellate court; it is not a place where a decision or a ruling, interim or final, can be appealed. Even if we were to determine that a judge in a particular case ruled a certain way because of bias, prejudice, conflict of interest or otherwise warranting the most egregious discipline, we can impose removal from office, but that still doesn't have any

legal effect on the case itself. You have to resort to the appellate courts or move to re-argue or in some other fashion—according to law, through the courts—redress what might have been the injustice in the decision in your case because of the misconduct that motivated it. But if you conclude or have reason to believe that a judge in a family court or any proceeding has violated the rules, was impatient or discourteous, didn't afford the parties the opportunity to be heard, or had a conflict of interest, I would commend to your attention the rules on judicial conduct which are available on our website. They're available on the court system website. It's 22 NYCRR, Part 100.⁵ It is a very useful document for lawyers, litigants, and particularly judges to be acquainted with because it's violations of those rules that we impose. There are a couple of cases and they really represent just a small slice of the kinds of matters that the commission has publicly disciplined judges for. Our website has all of the 900-plus cases since 1978 that have resulted in public discipline, and they are very interesting reading because they get into detail, both in terms of the facts and how those facts violated the rules, and why certain sanctions were warranted.⁶ One of the cases in the materials involved a judge who really didn't understand his role in a family court proceeding. He was not the social worker, he was not the advocate. He had before him an individual, a young litigant, who had a drug problem. And judges are not without compassion and they're not without interest in what happens to the people that are before them, but this judge took the unwarranted and the very unwise step of taking this young man out for a private conversation at a beach nearby, in order to just, in his view, acquaint him with the fact that he was sympathetic. The judge was sympathetic, empathetic, but he stepped out of the role of the neutral magistrate. Even if that conversation ultimately may have been helpful to the individual, it compromised the judge's role as the impartial arbiter of the issues before the court. And that was something that should not have happened.⁷

One of the other cases in the materials involved a judge in a family court proceeding, which can probably be the most volatile setting in our panoply of courts in this state or in any state. It's a place where more often than not, nobody is happy coming in or walking out no matter what the result of the case may be—not the participants, not the litigants, not the children in custody issues. There's almost nobody who's happy walking out of a family court proceeding, but it's not the role of the judge to make light of the circumstances or the litigants who are before the court. So, in one of the cases in the materials, the

⁵ *Supra* note 3.

⁶ *See* NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, <https://cjc.ny.gov> [<https://perma.cc/UA34-R8VH>].

⁷ *See* Determination in Relation to Andrew G. Tarantino (March 28, 2011).

judge was theoretically in his own mind trying to lighten the mood by making fun of the image of a turtle that was on the sweatshirt of a young woman who was one of the parties before the court. And he was making scatological references to what appeared to him to be something that resembled a phallic symbol on the turtle on the sweatshirt, and it humiliated the young woman. It certainly didn't fill her with enthusiasm for returning to the court and it utterly destroyed the judge's impartiality, and it revealed, among some other things, that this individual was really unfit to be a judge.⁸

There's another case which, and as I said, all of these are on our website and I would urge you to look at this one too. It's not a family court judge, but it was a domestic violence situation; it happened to be a town court justice, the name of that case is *Romano*. It's not in the materials, but look for it on our website.⁹ The judge in this town court was arraigning the defendant in a domestic violence situation and he made what he thought were jokes about the domestic violence situation, including saying, "Well, what's wrong with this?" after he read out the charges. "You have to keep these women in line." Now, not only the defendant but the victim was in the courtroom and even if they weren't it presents a cavalier attitude toward the seriousness of domestic violence, toward the victims of domestic violence, and regrettably it encouraged the defense lawyer to make another joke, so-called, about the place of women. That judge was removed from office. It wasn't a family court judge, but it was the kind of situation that a family court judge could confront. I don't believe all the training in the world would have would have changed the attitude of this particular judge, but to the extent that training might have acquainted successors as to the consequences of that kind of behavior—you will lose your judgeship if you make that kind of remark in court—it does have a significant mitigating effect on behavior and it forces the new judges to think about how their words and their actions are perceived. Everyone laughs at the jokes of a judge whether they're funny or not because in the courtroom you're sort of trapped and if you don't laugh at the judge's joke, then it's probably going to be detrimental to your client. But what some judges think of as humor is not very funny at all. But there is a place that you can go when you confront these kinds of outlandish circumstances, not as a means of forum shopping because even if you make a complaint against him or her, we can't take the judge off your case. There are advisory opinions that say that the judge doesn't have to get off the case unless we, at the Commission, have formally charged the judge with misconduct. So,

⁸ See Determination in Relation to Gilbert L. Abramson, New York State Commission on Judicial Conduct (Oct. 26, 2010).

⁹ See Determination in Relation to Ralph T. Romano (Aug. 7, 1998), <https://cjc.ny.gov/Determinations/R/Romano.Ralph.T.1998.08.07.DET.pdf> [<https://perma.cc/Q2CD-RWEC>].

we're not in a place where you can go to get a new judge in your case, but we are in a place where you can get some redress for these kinds of egregious misbehavior that unfortunately, for all the benefits of training, continue to occur and will always occur. One reason why we've constitutionalized this disciplinary system here is so that it will be around for as long as there's a judiciary.

HON. BING NEWTON:

A footnote, please. Many of the people you appear before are not judges (i.e., support magistrates and referees). They are employees of the unified court system, and they can be subject to disciplinary action through the informal, through the administrative judge, and certainly complaints can be sent to the Inspector General of the Unified Court System. And Judge Ally, you're in a supervisory role now. Any update on that, so that people can know where to send their complaints?

HON. SHAHABUDEEN ALLY:

I think starting at the supervising judge level is usually a good start, trust me I get them all the time. It also helps administration know that something might not be happening or something is happening. Unless you have someone who's in the courtroom with the jurors at all times, which is not possible, we rely on feedback. And I think as everyone has said, not every complaint turns into an action, but that's your step. That's as much as you can do; you could raise this and then the action comes back.

ROBERT TEMBECKJIAN:

And that would apply to non-judges who are applying for appointment as well. So if you've had a negative experience with, a support magistrate or even an attorney on the other side who has now applied to be a judge, that should also be referred to the mayor's committee in the appointment process. Because as you heard from Judge Walker, there's vetting that goes on.

HON. BING NEWTON:

I just want to say something that troubled me yesterday. I listened very carefully and the notion that you will not report an egregious act or behavior because you fear retaliation is something you just have to eschew from your life. You have to be advocates but you have to be warriors in some respect. I read the Jeh Johnson report and said it looks like the report we issued in 1991, and a lot of it was based on people who tolerated behavior because they thought they had to. They wouldn't get promoted, they wouldn't get reassigned, they wouldn't

whatever. But we can't change anything if we don't know about it; if the mayor's committee doesn't know about it, a bad judge is going to maybe be reappointed. So I know it's hard and I know you have to pick your battles, but I hope that that's not a general feeling that none of you will report behavior that should be reported. Find somebody else to report it for you. Let's be creative. I'm serious. If you think it's going to hurt your client, be creative advocates. We can't permit the bench to be filled with people who are inappropriate.

HON. SHAHABUDDEEN ALLY:

So just to summarize. This is a high-level summary: the mayor's process will take any complaints. Please reach out to the mayor's process. It's confidential and that would be part of the vetting. If you don't reach out there's no way for it to be known. I think I summarized that.

So, for Judge Walker and Ms. Playter, I know I put you both in a tough position because now you're both going to have to answer from the practical day-to-day point of view. Judge Walker, you're on the bench, you handle a CVO docket—but it's not fair to say only a CVO because child protection cases come in with those types of cases, child support, juvenile delinquency. I haven't been to family court for four years but I don't think it's changed, but the kitchen sink type of cases where it's only one family, so you can't separate them out, are quite common. How do you keep yourself up to date with the law and especially when it relates to intimate partner violence? And Ms. Playter, I'm going to ask the same question for you but in a different context. So, you're up next. Judge Walker, you're up.

HON. TAMRA WALKER:

So, first, I talked a little bit about it, but when I was first appointed, right away we were given training on all aspects of the family court. At that point I had been presiding over the custody, visitation, and family offense petition cases as a referee, but there was more detailed training regarding Article 10, child protective proceedings, juvenile delinquency proceedings, and child support even, and really how to manage your calendar. Further, as Judge Bing Newton said, in the beginning of the year now at the Judicial Institute, there is training for all of the state's new judges, and that was very helpful, there, there were also breakout sessions for family court judges. However, for all the judges there was overall encompassing domestic violence training, implicit bias training, and case management training, and every summer at the Judicial Institute, there is ongoing training for all judges. So, I know there is ongoing training for judges, and the Office of Court Administration is continuing the conversation for the dynamics of domestic violence. And also, there's mandatory implicit bias trainings for all court staff because treatment with

dignity and respect doesn't just start in my courtroom, it starts when they walk into the courthouse, when the parties, the families, the people that we serve walk into the courthouse. So, everyone that they come across has to know how to treat others with dignity and respect and avoid any bias because that's not the court system that we want to promote.

HON. SHAHABUDEEN ALLY:

Ms. Playter, what do you think?

SAVINA PLAYTER:

I think I'm going to talk about the screening panel first. There isn't any formal training that attorneys who sit on the on the screening panel have, so what they're bringing to the screening panel is really their years of experience—their expertise from whatever practice area they've been in whether it's family, criminal, federal or state court, and what they're able to gauge from a practitioner viewpoint, what they're seeing in the courts, vis-a-vis the judges, on how to gauge temperament.

Now in terms of what kind of training the attorneys have. I've been sitting in family court for many years and as the President of the Bronx Family Court Bar Association, one of the ways that we were able to obtain training for ourselves and share training across the city and state is by launching a series of order of protection CLEs, and it was tremendous that there were so many practitioners, referees, and judges who attended. This was in response to the Covid increase in order of protection cases, as those of us who practice in Family Court all know, and it was very helpful.

HON. TAMRA WALKER:

I've actually attended some of those trainings through the Bronx County Bar Association and they were very helpful especially when they were virtual throughout Covid. That was very helpful for all jurists.

HON. SHAHABUDEEN ALLY:

So, I'll add thirty seconds and tell you this: there needs to be interdisciplinary trainings between the judges and the courts. So, when I sat in criminal court, I sat in a domestic violence part. It was almost impossible to be a domestic violence judge in criminal court without knowing family law and it's impossible to be in family court without knowing the criminal aspects. There was a badge of honor for years where a criminal court judge would say, "I don't know family law; go to family court." And a family court judge says, "I don't

know criminal law; go to criminal court.” It was the same family, so those same families think, “Wait a second, someone has to know something.” So there has to be cross-training. And now I sit in civil court so I thought, I'm done with criminal and family law, but we see it every day. But you might not know how we see it: name changes. I've reviewed so many orders of protection and transcripts on name changes, so now I'm training my civil court judges on aspects that they probably have not been trained on.

Okay, so here we are. We're coming up on ten minutes until the panel's over, so I'm going to take moderator privilege—I just created that term—and institute a lightning round. Judge Bing Newton's going to give me a talking to about this lightning round; it's just another way of me saying “a time limit.” I'm just trying to figure out how do I get myself out of the judge's crosshairs. So I have a question for each of you, ready? Lightning round. Judge Bing Newton, what recommendation to the dean do you have for improving training including more training for intimate partner violence and domestic violence for the bench?

HON. BING NEWTON:

Stop treating it as a specialty. There was a lady yesterday who said, “you know, they didn't listen to my domestic violence complaint because I wasn't in a domestic violence part and therefore maybe I wasn't worthy.” Domestic violence can be in a contract dispute; it can be anywhere and so we should not have these specialized domestic violence training for domestic violence judges. We should have domestic violence training for all judges, period.

HON. SHAHABUDEEN ALLY:

Judge Bing Newton gets the award for the most amount of applause on a panel I think I've ever moderated. I don't think this has ever happened.

HON. BING NEWTON:

I speak for my people.

HON. SHAHABUDEEN ALLY:

You speak from the heart. Bob, it's almost unfair for you to follow up. In fact, if you can give Mr. Tembeckjian a round of applause after his answer I think that'd be only fair. This comes from the audience question, so thank you very much for submitting your questions. This is great; Mr. Tembeckjian, what happens when you receive a complaint that has been filed. Is there access? Does the public have access to the complaint? Is it only the findings? What happens at that point?

ROBERT TEMBECKJIAN:

The public does not have access to the complaint. Any complaint that comes in is going to be reviewed and analyzed, and then it is going to be considered by the entire Commission, so it's not disposed of at the staff level. And if we investigate the complaint, we will be interviewing witnesses, looking at transcripts, reviewing other documentary evidence, and so forth. The entire process, under law, is confidential until the judge is disciplined publicly and then the entire record of that proceeding becomes public retrospectively. While it's going on, it is not public. Round of applause, please.

HON. SHAHABUDEEN ALLY:

Thank you. Listen, it's hard work up here. Sometimes you got to create your own buzz. So, let's talk about the elected process. Ms. Playter, the elected route seems to be in the hands of political parties in each county. How do we place the power in the hands of the voters? What should the voters be doing to learn more about the judges?

SAVINA PLAYTER:

I think that during the COVID pandemic when judges were running, an important process started to happen, at least the Bronx County. There were several forums where the judges were able to answer questions and I think that several judges appeared for interviews. Folks in the community were able to submit questions about child support, about the running of the courts, about moving cases along, the high volume of cases, and I think that we can continue that process. I think it will be very helpful to the community.

HON. SHAHABUDEEN ALLY:

I will tell you, as an elected judge, by the time you get to the ballot, you know what the decisions are. This is in New York City. I'm not talking about the state; the state has contested elections. In New York City, for the most part, we do have contested elections, but it's a process. And until they change the process, we have to work within the process. So be proactive at the very beginning of it. You know, when I said I ran unopposed, it wasn't because no one else thought at that point, I want to be a judge. Also, it takes a lot of work, but it's a lot of front-end work. So, you should be involved in the front end as well.

And Judge Walker, you're a family court judge. I happen to be married to a family court judge as well. It is grueling, it is grueling. I am lucky. This is being

broadcasted, right? I am very much lucky to be, and it is grueling, it is a non-stop nine a.m. to four-thirty or five o'clock day. It's like Groundhog's Day which repeats every single day. What do you do to stay well, to keep yourself grounded? You're dealing with very heavy subject matters; it's not light at all. I mean you walk through the door, and it must be something that takes a toll on you. Maybe I'll have Judge Bing Newton chime in as well about judicial wellness. What do we do?

HON. TAMRA WALKER:

So, I think what's important is to really have open lines of communication with colleagues. I know that supervising judges are also very important to talk to. If you're having any issues, talk about cases, about any conflict that you may be having, and I know in Queens especially, the supervising judge has an open-door policy in order to hear from us if we're having any wellness issues. If we want to talk about it or vent about it. And there is a judicial wellness committee, and we were trained at the Judicial Institute about that committee that we can always reach out to. For me, personally, I go for a run, a lot. I run a lot of miles to clear my head, but it's a very difficult job. We see and hear about a lot of difficult aspects of life, and these are people's lives, and we have to take it seriously. It's hard sometimes to not take it home, but we know that it's for the greater good and we have to move forward because we have a job to do. We have to maintain our sanity in order to keep doing that job.

HON. SHAHABUDEEN ALLY:

So, we spent a good amount of time talking about what judges are not supposed to do, judges who are not behaving, but I will say, for the most part, our judges are hard-working judges who care about the law and care about the litigants before them. You know, we do highlight the ones that are not, but we do have hard-working judges in our family court. I think that Judge Walker here is a great example of the judges in our family courts. So, we have three minutes for closing thoughts. Ms. Playter, I'm going to begin with you. Thirty seconds for your concluding thoughts, your summation, if you will.

SAVINA PLAYTER

I'm going to use my time to talk about diversity. I think that diversity on the bench is an essential component. It's important to have a fair and impartial judiciary. I think that having a diverse bench brings a different level of experience and these perspectives to bear. They really allow judges to make better and more informed decisions. But more importantly, it also increases the public's confidence in the judge's ruling.

HON. SHAHABUDDEEN ALLY:

I like that theme. Let's keep that going. Judge Walker, diversity on the bench.

HON. TAMRA WALKER:

I believe that diversity on the bench is an important factor, not only just diversity among women, color, race, gender, expression, and identity. I think that diversity of experience is important, diversity of where you're from is important, and cultural diversity. Because especially with the type of cases that we see, there's oftentimes cultural components in how the parties that appear before us may behave and to just have that experience and to recognize that and to hear these cases without judgment, if you will, without bias, and really recognizing that everyone has a different background, that's important.

ROBERT TEMBECKJIAN:

Well, it seems to me the courts, like all large institutions in our society, are usually behind the curve. But in the forty years or so that I've been doing this kind of work, I've seen a dramatic change in the diversity of the bench, and I think Judge Bing Newton's earlier observation just on the gender breakdown alone is worth underscoring. But, to the extent to which these large institutions catch up to society, it is only for the better to have the institutions reflect the communities in which they serve and to whom they serve.

HON. SHAHABUDDEEN ALLY:

And for the last word, Judge Bing Newton.

HON. BING NEWTON:

To ask me what I think about diversity is like asking me what I think about breathing. It's wonderful to see that we embrace, and I'd like to reflect back fifty years ago. Fifty years ago we would not have seen this. And so, I think you should all be proud of the fact that change is not going to come, the change has been coming and continues. There's hope that there will continue to be change because there has been change. You just have to keep your foot to the—I was going to say pedal to the metal but that encourages speeding. Just keep yourself focused because the good that you want to do, the good that can come out of a court system that I believe in, and that I hope you do too, will come with the advocacy and the courage that you exhibit. And so, we have to thank people like Sanctuary and all the other people who are involved in this tremendous conference.

HON. SHAHABUDDEEN ALLY:

You know, this panel began by me telling you it was going to be a great panel and it's going to conclude by me telling you this was a great panel. Thank you all very much for your time.

KARLA GEORGE:

I just wanted to thank this panel. I am biased because this was my panel that I planned. And so, thank you, and thank you to our guest speaker Judge Kluger. I wanted to say that this is why we were brought here today to hear from you, Judge Bing Newton. You were fantastic as well as all of the other panelists. So, thank you for coming out and thank you Ms. Playter for being here and giving us your knowledge. We really appreciate you, so thank you once again and a round of applause for everyone so nobody feels left out. Thank you.