Speaker 1: All rise. Welcome to the 60th anniversary of New York's Family Court. Senior Attorney and Co-Legal Director, Empire Justice Center, Amy Schwartz-Wallace-Wallace, Esquire. Support Magistrate, Rensselaer County Family Court, Thomas Gordon. Retired Judge of New York State Family Court, Monroe County, Judge Joan Kohout. Acting Justice of New York State Supreme Court, Onondaga County, Justice Michelle Pirro Bailey. Dean of New York State Judicial Institute, Judge Kathy Davidson. The Administrative Judge of the Eighth Judicial District, Judge Kevin M. Carter. The Administrative Judge of New York City Family Court, Judge Anne-Marie Jolly. Retired Associate Judge of New York State Court of Appeals, Judge Howard Levine. The Acting Chief Judge of New York State Court of Appeals and the State of New York, Judge Anthony Cannataro. The 60th Anniversary of New York's Family Court will now begin. Will all be seated.

Hon. Anthony Cannataro: Good morning everyone. It is truly an honor and a privilege for me as Acting Chief Judge of the Court of Appeals and the State of New York to welcome all of you both in person and virtually to Court of Appeals Hall for our commemoration of the 60th anniversary of the New York State Family Court. Can I get a round of applause for the New York State Family Court?

Before I proceed with my substantive remarks, I would like to take a moment to briefly acknowledge the presence and participation of some very special guests who have taken time out from their busy schedules to celebrate this milestone anniversary of the Family Court. Starting with my colleague, Associate Judge Rowan Wilson, who I believe is joining us virtually this morning, and retired Associate Judge Howard Levine, one of our panelists today and a leading figure in the history of the Family Court. I'd also like to acknowledge the presence of some other dignitaries who are in the room today, including the Presiding Justice of the Appellate Division Third Department, Elizabeth Garry, thank you for joining us, Liz, Beth, excuse me. DCAJ, Deputy Chief Administrative Judge Tamiko Amaker is with us today. Deputy Chief Administrative Judge Deborah Kaplan is with us. Deputy Chief Administrative Judge Norman St. George is also here today.

We have some Administrative Judges joining us in the audience today including Gerald Connolly, Andrew Crecca, Donna Marie Golia, Anne Minahan and James Murphy. And we also have with us and I think as a presenter today, the Dean of the Judicial Institute, Judge Kathy Davidson. And there's a few Supervising Judges who I'd like to mention as well from the Family Court including Joseph Egitto is Judge and Allison Hamanjian from Staten Island, Caren Loguercio, Martha Mulroy, and my former colleague Supervising Judge Amanda White. I'd also like to acknowledge the presence of Justin Barry, who's Chief of Administration at the Office of Court Administration, Jan Fink, OCA Counsel for Family Matters, and finally, and this is an item of personal prerogative for me, Eugene Hurley, the newly appointed Clerk of the New York City Family Court. Congratulations Chief.

Back in another life, Mr. Hurley was my deputy clerk, so very proud to see him moving on in the world. Thank you also to everyone else who has joined us

today. Enshrined in the Judiciary article of the state Constitution that was approved by voters at the November 1961 general election, the new Family Court that was inaugurated on September 1st, 1962 transformed how our court system responded to a broad range of sensitive legal matters involving children and families, including family violence, child abuse and neglect, foster care, juvenile delinquency, child custody, visitation, and support, and so many other areas. The creation of courts dedicated to adjudicating legal disputes involving children and families is a relatively novel concept in the evolution of our legal and judicial systems. And although New York was a national leader in this area, it was not until September 1902 that the first Children's Court opened its doors, Doors at 3rd Avenue and 11th Street in Manhattan.

Described by the New York Times as one of the great steps forward in the direction of child saving, children's courts and domestic relations courts were expanded to every county of the state by the 1920s in order to remove children from adult criminal courts and ensure adjudication of family law cases by judges with specialized knowledge. Initially, these courts were an important step forward, but in the years following World War II, when the volume and complexity of family court filings increased dramatically, it became painfully clear that New York's family court system was not properly designed or equipped to efficiently and holistically resolve family law disputes. In 1953, an influential report issued by the New York City Bar Association from the special committee to consider the administration of laws relating to children and families in New York City, describe New York's system of children's and domestic relations courts as a jurisdictional hodgepodge where claims of domestic violence, child abuse, juvenile delinquency, paternity, and non-support are handled in several entirely independent and unrelated tribunals causing the people in this community who are least able to cope with it to be knocked around the courts as if in a pinball machine.

And so thanks to the state constitutional amendment of 1961, which by the way is the last time that the structure of the court system was updated and modernized, New Yorkers were finally provided with a single tribunal dedicated to adjudicating the unique issues involving families and children. Importantly, the new Family Court also came with a brand new Family Court Act, which set forth urgently needed procedural laws and protections that serve to dramatically upgrade the quality of justice, including state paid legal representation for children, expanded due process protections, enhanced rights of appeal, and uniform evidentiary and discovery rules that produced more rigorous fact finding and informed decision making. The groundbreaking nature of the Family Court Act was highlighted only five years later in the landmark case of In re Gault when the United States Supreme Court repeatedly cited to New York's Family Court Act in holding that children have a right to counsel, a constitutional privilege against self-incrimination, a right to confront and cross-examine witnesses and a right to adequate notice of the charges against them.

As you will hear from our distinguished panelists today, the history of the Family Court since 1962 has been one of continuous progress and positive growth in

the delivery of justice services to children and families. Indeed, we have much to be proud of and much to celebrate and commemorate today, but at the same time, we all know that it hasn't been easy. Decade after decade the Family Court has been challenged to keep pace with the rapid changes that have transformed our society, including as you will hear today, major demographic shifts involving legal norms around issues of marriage, parenthood, and gender identity, revolutionary advances in technology and in the hard and social sciences, and of course are constantly growing dockets. But through it all there has been one constant, the incredible commitment of Family Court Judges, non-judicial staff, and partners in justice who have devoted their professional lives to serving the needs of children and families in crisis. Their dedication, their compassion, and their resolve are simply unmatched.

And I can personally attest to that fact having started my judicial career as an Acting Family Court Judge in Kings County where for two years I personally witnessed the extraordinary work of these highly skilled and dedicated professionals. And what struck me then and has remained with me over the years is the unique role of the Family Court Judge, particularly the need to coordinate the efforts of many different justice agencies and service providers in order to address the underlying problems in the lives of the families that we serve so that we can foster positive outcomes that promote the best interests of children and the wellbeing of our families and communities. Serving as a Family Court Judge was by far the most challenging, most emotionally draining, and the most rewarding job I ever had. And so you can understand why I have the utmost respect and admiration for people who work in our family courts. For so many of them, it's not just a job, but a calling.

And it is that sense of vocation and the knowledge of what is at stake in each and every Family Court case that explains why we have made so much progress, so often it seems, against the odds to improve the delivery of justice to families and children in New York. And among those achievements include Raise the Age and other important reforms that have successfully diverted young people away from the punitive approaches of our adult criminal courts and toward the life-changing rehabilitative services available in our Family Courts, major advances in the adjudication of family violence matters that have significantly improved victim safety and helped to reduce recidivism, the steady implementation of best practices, including interagency collaboration in child welfare matters leading to reductions in foster care placements and speedier permanency for children, the adoption of digital technology to improve the efficiency and convenience of court services, including the New York City Family Court's achievement in 2018 as one of the largest paperless courts in the nation, and operational improvements implemented as part of the excellence initiative to speed case management and to reduce backlogs in all our courts.

I am barely scratching the surface of what has been accomplished, but I'm sure that our panelists today will describe how these and many other reforms have greatly improved court outcomes and services for children and families in New York. And while there are many positive developments to celebrate today, this

milestone anniversary also provides us with an opportunity to look ahead to the next 60 years and the challenges that need to be overcome in order to achieve our shared vision of a just, effective, efficient, humane and racially equitable family court system for all New Yorkers. Some of these challenges are the perennial ones that we are all familiar with. Outdated facilities, limited resources, insufficient number of judges and court personnel. In 1965, the Family Court statewide had 105 judges assigned to handle just under 100,000 new filings. By 2019, the last full year before the pandemic, 170 judges, including 30 multi-hat and Acting Family Court Judges, were being asked to handle nearly 600,000 new filings. And Judge Jolly, I believe, has the per judge breakdown of that number.

And so we are grateful to Governor Hochul and the state legislature for creating four new judgeships in the New York City Family Court earlier this year. These new judges are urgently needed, especially in light of Secretary Johnson's October 2020 report describing the dehumanizing and disparate impact of under-resourced courts like the Family Court on litigants of color and the Fund for Modern Courts report of January '22, documenting the negative impact of the pandemic on access to justice for Family Court litigants. But of course there are so many other challenges that need to be addressed including the fact that lawyers who represent indigent children and parents in Family Court and who are so essential to preserving the integrity of families and the wellbeing of children have not received a raise in almost 19 years. The continued disproportionate representation of children of color in our juvenile justice and child welfare systems and the lack of diversity on the Family Court bench outside New York City where only 14% of Family Court Judges come from diverse backgrounds compared to 50% in New York City.

Clearly so much more work needs to be done and yet, I know that the people assembled in this courtroom feel positive and optimistic about the future of the Family Court, as do I. Because if the last 60 years have taught us anything, it's that the dedicated and compassionate judges, lawyers, and family justice professionals who have devoted their careers to the Family Court will never stop working to improve the lives of families and children. We will never stop working to foster more effective and equitable court outcomes. We will never stop working to provide more effective services and interventions to prevent and heal trauma to children. And we will never stop working to eliminate the racial and ethnic disparities that are so damaging to public trust and confidence in our entire judicial system.

And so before I conclude my remarks and turn the microphone over to our outstanding co-hosts and event organizers, I want to take this opportunity on behalf of our entire court system to convey my heartfelt thanks and appreciation to Family Court Judges, court staff, court attorneys, assigned counsel, presentment agency lawyers and staff, probation officers, social workers, mental health professionals, and all of our family justice professionals for your extraordinary service and commitment to New York's children and families. Thank you all for your service to the Family Court and thank you for

being the strong and committed leaders we need to achieve a more just and effective family justice system for all New Yorkers. And now I'd like to introduce you to the co-hosts of today's program, Judges Kevin Carter and Anne-Marie Jolly. Judge Carter, the Administrative Judge of the Eighth Judicial District in western New York, has been a distinguished Family Court Judge and practitioner for more than 30 years. Prior to his appointment as Administrative Judge in 2021, Judge Carter served as Supervising Judge of the Family Court in the eight counties comprising the Eighth Judicial District.

Administrative Judge Anne-Marie Jolly, who is actually celebrating her one-year anniversary today as Administrative Judge of the New York City Family Court, has devoted her entire professional career to serving the justice needs of families and children. Judge Jolly was appointed to the Family Court bench in 2010. In 2015, she was appointed Deputy Administrative Judge of the New York City Family Court. And for the last year, as I mentioned, she has been leading our efforts to improve court operations and services and to expand access to justice. And also for anyone who doesn't know, Judge Jolly trained me when I was a newly minted Family Court Judge in 2011, so she has a very special place in my heart. I want to thank both Judge Carter and Judge Jolly for organizing and co-hosting today's program. We are looking forward to an inspiring and enlightening program. And now without further ado, I'm going to turn it over to Judge Jolly.

Hon. Anne-Marie Jolly: Thank you, Judge Cannataro, and good morning everyone. I first want to say Judge Carter and I are fortunate to have, we're the faces of the program, but we had many people supporting and doing the heavy work including Jan Fink, Mary Kornman, Natasha McDougal, forgetting someone. Am I forgetting?

I know I'm forgetting someone. That's that's a problem when you say things off the top of your head, so my apologies. There were others who were involved. On behalf of the New York City Family Court, I too would like to welcome you to this joyous, important, and reflective celebration. A milestone such as a 60th anniversary is perhaps the most perfect occasion to reflect on what we do, how we've changed over the years, and what we can do to make the court more effective and responsive in the future. The Family Court is a very special court. The Family Court deals with the very human interests and emotions that create and sustain families and the very human need to protect and nurture our children. On a personal note as Judge Cannataro noted, today marks my one year anniversary as the administrative judge of the New York City Family Court.

I'm beyond giddy inside, just so you know. I feel like I'm really making my mother proud. I weave that in as often as I can. I've worked in the Family Court for more than 31 years. I first began my career as an attorney for children then called Law Guardians. I've served as a court attorney referee in the New York City Family Court. I've also served as counsel to two Administrative Judges during my career. I've worked at the Judicial Institute and I've proudly served as a Family Court Judge for almost 13 years. I have witnessed and been a part of many positive changes in our court and as we move forward, I am proud to say

that I will continue to remain committed and be a positive part of the processes that we will continue to enhance and improve how we serve those who come to our court.

As we commemorate the 60th anniversary of the Family Court, I think of my family, I especially think of me being not only a mother but a child. A child of a fierce, bold, creative, and strong soul for whom I am grateful. I am grateful for the sacrifices that she has made in her lifetime from struggling and making her way from Haiti to the United States to learning English, to receiving a college degree at the same time I was receiving my junior high school degree, to so much more all to make the best possible life for me. Her struggles have made me who I am. This woman, my mother, is part of the reason why I was called to the Family Court and why I remain committed to the Family Court. Many of us who work in this court have some family story that pushes us and I'm grateful to be able to acknowledge my own family as prime motivators as we commemorate the 60th anniversary of the modern day family court and one year as administrative judge of the New York City Family Court.

Over the years, much has changed in the way the legal system treats the matters that are dealt with in Family Court that so deeply impact the lives of children and families. From the 1870s when judges were able to summarily order a child to be removed from a parent on the application of a private child welfare agency through the establishment of the Children's Court in 1922 and later the establishment of the Family Court in 1962. This court has continued an evolution that gradually provided due process rights in family proceedings akin to those that already were available in civil proceedings, in criminal matters, and contract proceedings since the founding of our country. The history of the treatment of family matters in the New York State Courts over the past 200 years is the subject of a very interesting article soon to be published by the well known Family Court expert and commentator, Professor Merril Sobie in the next issue of the Magazine of the Historical Society of the New York Courts.

We are distributing a copy of that article to the audience here at the Court of Appeals Hall today, and it will be posted online along with the video of this event. Professor Sobie's expertise has enlightened and guided us in many ways over the years. He is the author of the "Authoritative Practice Manual, New York Family Court Practice," and another book, "The Creation of Juvenile Justice, A History of New York's Children's Laws." He is also the McKinney's commentator for the Family Court Act and portions of the domestic relations law. I am happy that Professor Sobie is here celebrating with us today. If everyone could just please give Professor Sobie a hand.

We are thankful to Professor Sobie for his guidance over the years and for providing this new article that gives us a concise and captivating description of the development of the modern family court. And we thank the Historical Society of the New York Courts for making this article available to us and for their constant good work making the history of our courts come alive for us. Despite the changes that we have seen in the Family Court since it was

established 60 years ago, one thing that has not changed is the recognition in the law in ever evolving ways of the unique legal needs of children and families. Also unchanging, as referenced by Justice Cannataro, is a dedication of all those who work in the court as well as the many lawyers, advocates, child protection agencies, and others who are devoted to better understanding the needs of children, families, and the more vulnerable members of our society and protecting their legal rights in this changing world.

In the last decade, the modern New York State Family Court has improved the quality, efficiency, and accessibility of its service to the public with the introduction of electronic files, as mentioned, new alternative dispute resolution programs, equal justice committees dedicated to examining and improving court practices to guarantee equality of justice for all persons who are served by the court, and the use of vastly improved technology that was required by the COVID Pandemic to facilitate more virtual appearances so that when a court proceeding doesn't require an in-person appearance, our many litigants who cannot afford childcare or cannot take the time out of their workday for traveling to court can appear without putting their children or their jobs at risk. Today, we will present two panels of distinguished contributors to the ever evolving world of family law.

Our first panel includes the honorable Joan S. Kohout. She is a former acting Supreme Court Justice and judge of the Family Court in Monroe County. She's now retired after 30 years on the bench. Earlier in her career, she spent 12 years representing indigent defendants at the Monroe County Public Defender's Office, eventually serving as a supervising attorney of the Family Court section of that office. For many years, Judge Kohout has been a leader in juvenile justice issues and she continues to serve on the juvenile justice subcommittee of the Unified Court Systems Family Court Advisory and Rules Committee. The other panel member is the Honorable Michelle Pirro Bailey. She is an Acting Justice of the Supreme Court in Onondaga County where she presides over the Integrated Domestic Violence Court. She has been a Family Court Judge since 2008 and has served as Onondaga's County's lead judge for child protective cases. She is also co-chair of the Unified Court Systems Family Court Advisory and Rules Committee, and a member of the Permanent Judicial Commission on Justice for Children.

Moderating this panel will be the illustrious and ever dedicated Judge Howard A. Levine, retired judge of the New York State Court of Appeals, who has for many years been a prominent and wise voice in the field of family law. During his varied and noteworthy legal career, Judge Levine served for nine years as a Schenectady County family court judge, as well as on the Appellate Division Third Department, and on the New York Court of Appeals, during which he offered many significant opinions in the area of family law. He has maintained a robust interest in family law matters and has been a prominent advocate in the field for which we are really appreciative. As a testament to Judge Levine's deep dedication to family law matters, he was awarded in 1980 the New York State Division for Youth's Service to Youth Award. And in 1987, the New York State

Bar Association established an annual award in his honor, the Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare. At this time, I'm honored to introduce the Honorable Howard A. Levine.

Hon. Howard A. Levine: Thank you for that lovely introduction, but you're raising the expectations of too many people here. Well for anniversaries, you might also know that I started my family court career in 1971 and served a full tenure term actually.

PART 1 OF 4 ENDS [00:29:04]

So last year I celebrated the 50th anniversary of becoming a Family Court Judge.

If Charles Dickens was still alive, he might have introduced me today as the Ghost of Family Court Past. When I came on the court, it was still working through novel problems of procedure and substance as one might expect for a newly created constitutional court in 1962 and the accompanying new Family Court Act with newly created substantive and procedural articles for juvenile justice, including delinquency in PINS, persons in need of supervision, for those of you not familiar with PINS, and for child abuse and neglect. I regard my service as a Family Court Judge as one of the true highlights of my 32 years on the bench. I learned an enormous amount about human nature at its most exalted best and most depraved worst. It was also the key to my development of the personal quality of empathy, the quality which I view as essential at every level of judicial training and service.

But there were problems and frustrations. Foremost, despite its constitutional status, Family Court remained the stepchild of all the courts of record in New York State. That was manifested in inferior physical facilities, more limited support staff, including the absence of any law clerks. Also, the family courts in urban areas were inundated with support proceedings, taking precious time and attention from children in child related cases. The court was being used, essentially, as a collection agency for contribution from fathers mostly who were legally obligated to support dependence on public assistance. Meanwhile, new areas of family related problems were added to the court's jurisdiction, foster care, for example, foster care review and termination of parental rights. Rarely were these new responsibilities accompanied by additional resources to process and resolve them. There were not enough judges, not enough probation officers, not enough foster parents, and not enough residential alternatives to warehousing delinquents and PINS together in training schools.

There was also a scarcity of mental health resources for children brought to court and there was also a scarcity of lawyers to represent children. The lawyers were entitled, Law Guardians, a new concept, creating an ambiguity as to what their responsibilities were, and there was no organized system then of screening and training them. All the foregoing limited the options available for meaningful rehabilitation services to keep children at home with their families or with relatives familiar to them or local small residential arrangements. That's the way it was during my tenure on the court.

But the court prevailed. No doubt because of the dedication of the judges and their inventiveness and, to be frank, because society needed us. I should also mention, certainly in this building, the role played by Chief Judge Judith Kaye, in raising the stature of the court and increasing its resources. Now we have two ghosts of Family Court present and future here with me, and I'm going to turn the rest of the program pretty much over to them and asking them some questions about the changes and how good they have been and what the future holds, what they would like to see.

So for Judge Kohout, when I was in Family Court, the dispositional options for difficult JD cases, cases where the home environment was poisonous, those options were weak. Bad home life dictated some kind of placement, but those were limited to state training schools or private residential facilities who were selective in accepting cases in which I had to do my own personal negotiation with them to get placements. And the question really is are there more placement options that have been developed since my day?

Hon. Joan S. Kohout: First, I want to say, and I think we've heard this today, that once a Family Court Judge, always a Family Court Judge. And although I'm retired, I'm proud to be part of that group of people who have experienced the Family Court. Family Court was seen as an experimental court in 1962 when it was formulated and it was seen as a best-interest court. Parens patriae was still strongly applied and due process rights were fleeting. It was an informal court. When I was first an attorney in 1974, in Albany, I would go to Family Court and we would sit around a table smaller than this and sort out the family problems. As time went on, then you had more to due process rights. In re Gault made it very clear that youth had constitutional rights as we've heard, and when it came to placements, the placements really were disciplinary in orientation, without a lot of services.

And as time went on, those services improved and it was, really, a pendulum that I saw over the 30 years I was a judge, rehabilitation and then moving more toward punitive placements. I hope, Judge Levine, that we have recognized that youth who receive rehabilitative services, that families that receive the services and support they need to accept their children home successfully, have been provided and will be provided in the future. But Family Court services have been chronically underserved and probation is used very often for the older youth, for the younger youth, to keep them out of the courts through diversion, and also to provide services while they're on probation.

We can offer the help, but we cannot make the children and their families accept the help. So the help needs to be tailored to them, not what we as, frankly, well meaning White people think our minority families need, but we need to listen to them. And I think that family engagement has improved somewhat over time and I'm hopeful that that'll continue in the future.

Hon. Howard A. Levine: Thank you. And now Judge Bailey, a question for you that has been alluded to by Judge Kohout. How has the child's voice become louder in Family Court?

Hon. Michele PIrro Bailey: Well, Judge, it certainly has. Before I answer that though, I do want to say that I'm very honored to be here today to celebrate this milestone, and in particular with my colleagues on the Family Court bench, who do such important and meaningful work every day.

First of all, the role of the attorney for the child has enhanced the voice of the child in the courtroom. That transition from Law Guardian to Attorney For the Child, AFC, has highlighted the lawyer's obligation to represent and advocate the child's wishes and interests in the proceedings. The AFC is subject to ethical rules applicable to all lawyers and cannot disclose the child client's confidences without the approval of that child client. The attorney for the child must have a thorough understanding of the child's circumstances and must consult with and advise the child. In the last decade, the AFCs have expanded their advocacy efforts to include filing legal memoranda and motions and presenting petitions on behalf of their child clients.

The child's voices also increased in the courtroom by the participation of children in their permanency hearings. The Family Court Act requires jurists to have age appropriate consultation with the child at the permanency hearings which are held about every six months. Children 10 and above are notified of their permanency hearing. They have the right to participate and may only waive that right after having meaningful consultation with their attorney. With respect to the children under 10, the court has the discretion to determine the manner and extent to which they participate in the permanency hearing based on the best interests of the child. Some of those young children just want to come and see that their judge is a real person and say hello and know their name. If a child chooses to participate, it may be in person, by phone or other electronic means like Teams or in a written statement to the court. However, no child shall be compelled to attend their permanency hearing.

Finally, Judge, technology helps children to be heard. The use of Microsoft Teams has enabled us to have children, their parents, their foster parents, their residential placement staff, service providers, court appointed special advocates, all to participate in the permanency hearing from school, home, work or other location. Hearing from an array of people who play a role in the child's life, not only adds to the volume of the child's voice, but also contributes to our ability to make sound and informed decision making. Thank you.

Hon. Howard A. Levine: Thank you. Judge Kohout, in my day, many colleagues oppose the version, at least for JDs, keeping youngsters completely out of the juvenile justice system in favor of some formal intervention. What is the status today of diversion in the system?

Hon. Joan S. Kohout: Diversion is used greatly in the juvenile system currently, not just for the younger children, but also for the children who are being transferred from the criminal court as adolescent offenders. Which means that probation needs to have, and I believe is trying to have, services that are tailored also for 16 and 17 year olds. This is something new to them. There hasn't been sufficient financial

support for these services and the development of these services, but they are extremely important. It's a true diversion program that keeps the children, if successful, from entering the system.

We know that when youth enter the juvenile justice system and the deeper they get into the system, the poorer the outcomes, the more likely it is that they'll get involved with criminal justice system or mental health system in the future. So it's really important that we take out the children and provide them the services, and their families, the support. We can't do it alone. Family Courts can't do it alone. We have to rely on the educational system to make sure that they are providing the proper services for children. That's a huge problem in many of our areas and we have to recognize that there's a difference in the provision of services in our rural communities that don't have good transportation, may not have very many mental health providers, from our urban centers and make sure that the legislature knows that we need to have special help for those rural areas.

Hon. Howard A. Levine: Thank you very much. And I ought to add here, we've been discussing the change from Law Guardian as a term for representation to Attorney For the Child. And I want to point out that Merril Sobie, Professor Merril Sobie, was instrumental in getting that change made legislatively as well as being pretty much the author of the Minimum Standards for Representation that was circulated on behalf of the New York State Bar Association. Another round of applause for Merril.

Now, Judge Bailey, how is the Family Court addressing the limited availability of certified adoptive parents?

Hon. Michele PIrro Bailey: The court is consistently inquiring about whether children may be placed with relatives or other suitable adults. Because we recognize the importance of these relationships to successful outcomes for children. We continue to grant custody to relatives and other adults when it's appropriate. However, this option lacks a certain sense of real permanency and lacks the kind of financial and services support that is often necessary to adequately and appropriately care for a child. The Kinship Guardianship Assistance Program, known as KinGAP, provides a foster child with a permanent placement with a committed adult, who has been the child's foster parent for at least six months. KinGAP preserves the parental relationship while keeping the child safe. The program provides supportive services, financial support and medical coverage for the child, similar to the maintenance payments received when the child was in foster care.

When KinGAP was originally enacted in 2011, eligibility was restricted to foster parents who were related by blood, marriage or adoption to the child. KinGAP was expanded in 2017 to allow for two kinds of, what we call, Fictive Kin, those persons related by blood, marriage or adoption to the half-sibling of the child who is also the perspective or appointed relative guardian of the half-sibling, and also persons who have a positive relationship with the child established

prior to the current placement. Those can be godparents, neighbors, family, friends, stepparents, someone who has a meaningful relationship with the child.

One group that KinGAP can particularly benefit are those youth age 14 or older who have been freed for adoption but won't consent to adoption or youth 16 and older who have a goal of APPLA, Another Planned Permanency Living Arrangement. In those circumstances, the foster parent can become a permanent resource without adopting the child. During the last decade with the assistance of the Child Welfare Court Improvement Project, a lot of work has been done to increase the use of kinship guardianships where appropriate. In 2012, there were 56 kinship guardianships granted in New York State. In 2021 there were 13 times as many, 738. These efforts to achieve permanency for children have also helped to decrease the number of children in foster care in New York from 20,016 in 2012 to 14,358 in 2021. Thank you.

Hon. Howard A. Levine: That's great. Thank you. Now as we get along toward the end of our program, Judge Kohout, we ought to talk about Raise the Age. What is the origin and best arguments from science that has supported Raise the Age? And how is it working out today in Family Court for 16 and 17 year olds?

Hon. Joan S. Kohout: Well, science now has proven what many of us always knew, which is that adolescents have different brains. Sometimes one wonders whether they use those brains at all. And I just can relate one story. When I was a brand new judge, I had a juvenile before me and he had had done something. I just couldn't figure out why he might have done that. And I asked the question that you should never ask a teenager, "Why did you do this?" He looked at me so blankly. It was clear to me that he didn't know. He couldn't answer the question. He wasn't being difficult. It was because he had not thought this through. And now we know clearly that it's because adolescents' brain development is not complete. They don't have the ability to have good judgment. They're impulsive, they do things, they don't know what they do, they're influenced by their peers in ways that are hard for adults to understand sometimes.

So the legislature took this into account with the Raise the Age Bill. In my view, it was incomplete. Truly, if we're recognizing that adolescents don't think clearly like adults, we should have taken all our juveniles, 18 and under, and put them in Family Court. Maybe allowing certain very serious cases to move to criminal court, but recognizing that brain development doesn't change just because the offense is more serious or less serious. So we have work to do in that area, Judge Levine. However, we have 16, 17, 18, or sometimes 18 year olds, that come into the Family Court now, they benefit from the diversion services, they benefit from the approach of a Family Court Judge. As I said, once a Family Court Judge, always a Family Court Judge. And although I have dear criminal court colleagues who are very good judges, they sometimes just don't get it when it comes to adolescence. So Family Court is where they should be.

Howard A. Levine: Thank you. We're about ready to close. So I'm going to ask the two of you to individually tell everybody what you would want to see by way of improvements for Family Court in the future.

Hon. Joan S. Kohout: I'll start with that. In the juvenile area, we need to make sure that youth has the same protections that the adults do. We need to look at sealing of records for juvenile delinquents and persons in need of supervision. Sometimes people are shocked to know that a youth who's a person in need of supervision, whose petition is dismissed because the burden of proof is not met by the petitioner, is not subject to expungement of that record at the current time. Additionally, as I indicated, I think we need to take a look at bringing all youth into the family court initially, and we also need to make sure we have adequate resources for the Family Court, be it probation services. We need more judges. We need to make sure we have adequate funding through preventive services so these youth do not end up in the juvenile justice system.

Our child protection agencies are chronically underfunded. They don't have the number of workers they need. They don't have the money for the preventive services that can be given to children and families at very young ages so that we do not see them later on in the juvenile justice and criminal justice system.

Hon. Howard A. Levine: You're up Judge Bailey.

Hon. Michele PIrro Bailey: I see the unfinished business and challenges I had to include our attorney crisis, the lack of a raise in 18 years, the decreased number of attorneys interested in practicing in Family Court, the lack of adequate training and statutory and regulatory requirements and case law nuances of the child welfare practice, funding for services. Again, mental health, substance abuse and education, dire need for funding. Recruitment and retention of foster and adoptive parents. We still need them despite KinGAP. Identifying committed permanency resources for older youth who have an APPLA goal, someone they can lean on, talk to, go to their house for the holiday. And achieving successful readiness for youth who age out of care between 18 and 21. Are we doing a good job at getting them ready to live on their own?

Howard A. Levine: That's good. That's a Good Job Program. And I want to close by saying that I agree, once a Family Court Judge, always a Family Court Judge.

Hon. Kevin Carter: Good afternoon. I would like to just thank Judge Levine and Judge Bailey, Judge Kohout, did such a wonderful job. I think they deserve another round of applause. At this time I'll take a moment just to recite the first CLE code. The first CLE code is 98-54. That's 98-54, for the first CLE code.

The second panel, we'll discuss the expanding concept of the family. We are honored today to have Judge Kathy Davidson and as the panelists we have Amy Schwartz-Wallace-Wallace and Thomas Gordon. Judge Davidson was elected to Family Court in 2003. In 2007, she was appointed Supervising Judge of the

Family Courts in the Ninth Judicial District. In 2018, Judge Davidson was appointed to serve as the Administrative Judge for the Ninth Judicial District. On July 7th, 2021, Judge Davidson was designated dean of the New York State Judicial Institute and as an editorial comment, I will say she's doing a spectacular job. Judge Davidson currently serves as a commissioner on the Franklin H. Williams Judicial Commission and is a member on the Permanent Judicial Commission on Justice for Children, the Commission on Parental Legal Representation and the Committee on Families and the Law, in addition to holding membership in numerous professional and volunteer organizations.

Mr. Gordon. Mr. Gordon is a Support Magistrate in Rensselaer County, Family Court. He is a member of the Family Court Advisory and Rules Committee. Prior to joining the court system, Support Magistrate Gordon was a supervising attorney at the Legal Aid Society of Northeastern New York. Prior to that, he was a supervising attorney with the juvenile rights division of the Legal Aid Society in New York City. He is past president of the New York State Support Magistrates Association.

Amy Schwartz-Wallace-Wallace is a Senior Attorney and the Co-Legal Director at the Empire Justice Center, a statewide civil legal service organization. Ms. Schwartz-Wallace is currently the New York State Bar Association's co-chair of the Domestic Violence Committee of the Family Law Section and serves on the New York State Bar Association's House of Delegates and the nominating committee for the Seventh Judicial District.

Let's welcome our second panel.

Hon. Kathie Davidson: Good afternoon. Good thank you to the Chief Judge Cannataro, to the DCHAs, Judge St. George, Judge Kaplan. I think Judge Amaker, I'm not sure where she went. And then obviously in her absence, Judge Mendelson, thank you for those kind words. Judge Carter and Judge Jolly, we go way back from the Ninth and all my distinguished colleagues, my Family Court people in the house, it's such a pleasure to be part of the second panel and thank you for this honor.

So we have the great pleasure of being able to talk about the extended family and just a few leading up to a recent 360 article. It stated that 18% of American children actually live in the traditional, nuclear family, 18%. And that was a 2020 consensus. 46% of the children live in a two parent family for the original first parents. So we already see that studies are showing that the family is expanding and we're having a new version of what is a family.

In our discussion, this is going to be more of a discussion, we started talking about same-sex marriage, polyamorous relationships, and how in fact does our current laws and how do we patchwork them together, as Ms. Schwartz would tell you, to really ensure that all the new forming families are protected. So as I said, this is going to be a little bit more of a discussion on our side, when we started to figure out questions, we ended up just going into very deep and rich conversations. So we hope to be able to share that.

So as I said, the tradition of the family, that consisting of mother, father and their biological has expanded over recent years. But recent legislation regarding same-sex marriage in New York in 2011 represented a major milestone in that concept. What are some of the ways that the concept of family has expanded prior to the same-sex marriage?

PART 2 OF 4 ENDS [00:58:04]

Amy Schwartz-Wallace: It's come at us, as the judge mentioned, it is literally a patchwork. I think as people try to find recognition for their families, they sought out the legal tools that were available to them. And the legal tools that are available to people over the last 20 years are truly a patchwork. They started from things like partnership agreements, contracts. We couldn't do postnuptial agreements, but people had agreements when they were trying to dissolve their relationships. They did it through wills, they did it in some cases in the LGBT families to create family, they would do adult adoptions. So one partner might adopt their other adult partner as a way of creating family. And you think about that, I mean it seems so strange now, right? But we think about that in the shadow of AIDS and people needed ways to protect their families.

And so people did those things. They did them through powers of attorney or advanced directives. Later on we had things like civil unions, we had registered domestic partnerships. My personal favorite is the super romantic reciprocal beneficiary status, which somebody can get in Hawaii.

There are lots of different ways that people would try to create family. We create family through our adult to adult relationships. We create family through our adult to child relationships. And then we have to try to protect them with the legal tools that may be available to us at the time. I think in the United States, after the Braschi decision, which was really wrestling with how do we define family in the context, not a Family Court case, but in the context of rent stabilization, access to housing. The Court of Appeals was wrestling and they said, we conclude that the term family as used in the CPL in NYCR should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate. Instead should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. 1989.

People thought it was a slippery slope. And I was thinking about this on my drive up. It is really not a very steep slope because it wasn't until we had marriage equality many, many years later, after 1989, and I'll talk a little bit later about the definition of family in the context of domestic violence cases. But we had then moved on to civil unions when the state of Vermont was ordered by the highest court to create legal relationships, familial legal relationships rather than do marriage. And they certainly had the ability as a legislature to do marriage. They instead did civil unions. And New York then had to wrestle with what do we do with a civil union? What the heck is it? How do we recognize it?

And there are all kinds of decisions about how to navigate civil unions, sometimes in family courts, sometimes in other courts.

And as I was saying yesterday on our conversation, New York, despite that it's a marital equivalent and a quasi-marital status, we've yet to have full recognition of civil unions equated to marriage. And so we go right by, right. We have a civil union, we're trying to determine how that family is to be recognized. We look at every single right, rather than recognize the whole status in and of itself. We'll turn it over to Tom.

Tom Gordon: So I would argue though that we had to, when we started to invest to get into this area and recognize alternative relationships, there had to be a legal foothold. And strangely, that was something, a concept that grew out of the Family Court called equitable estoppel. So in paternity cases, the concept is that where there's an existing parent-child relationship or existing relationship between a man and that child, this concept of equitable estoppel could be invoked to prevent the man from later claiming that he's not the father or maybe invoked to prevent another man from claiming that he is the father of this child. So we'd see it as early as 1963, year after the Family Court Act being invoked in the Kings County Supreme Court in Gersky versus Gersky, and in by the Appellate Division, the Second Department in Monteleone versus Antea in 1977.

So this is an old concept. And the effect here is that either as a bar to denying paternity or as a bar to claiming paternity is essentially to declare a man to be the father of a child who may not be his, in fact is not the biological father. Now these cases grow out of an earlier era, also, of course, when paternity testing was more primitive and uncertain so that we were using blood grouping and then HLA testing.

But now we're in a situation where of course it's DNA testing, but the concept still remains. This concept of equitable estoppel still remains. And by the time the Court of Appeals decides Shondel J. Versus Mark D. in 2006, the concept has not only grown out of Family Court or various court decisions, but now it's been enshrined in the Family Court Act, in various sections of the Family Court Act to recognize this concept. And in fact, in that Shondel J. case, the child wasn't just tested once the child was tested twice. The child and the punitive father, excluded twice. And yet the court said in that case, that this man is for all intents and purposes the father of the child. This is kind of a narrow section, but it really a narrow issue being paternity. But that concept now was expanded and adopted by many of the courts that decided these later alternative parenting arrangements.

Hon. Kathie Davidson: Would you say, talking about expanding the concept of what in fact the family is and the factors that went into that case and making those determinations, how do you see that expanding, especially in lot of equitable estoppel and the work that you do also?

Amy Schwartz-Wallace: Sure. Well, I think in the context of domestic violence, for example, we have positive law that allowed us to provide protection in Family Court. And it was hard fought. I was on the advocacy team trying to move the expanded definition of family. That's what we called it eventually. It wasn't always called that. It was expanded access to Family Court. But we ultimately settled on the ability to have people be deemed family. And that finally passed in 2008. But that bill was hanging around. I used to joke with the other advocates that the bill's almost able to drive now because it'd been pending so long that it could drink, it could drive. That's how long it took to actually move that bill in the legislature because I think there was such a concern about the slippery slope. We now have had expanded access to Family Court for family offenses since 2008.

The definition not only includes if you need an order of protection, it not only includes people who are related by blood or marriage, but people who have intimate relationships. And the courts have really, as somebody that was trying to move the law, I mean, I've definitely seen that definition get stretched pretty far. But I think that that's not necessarily wrong. That there are people that need protection, they need orders of protection. They are in relationships to one another that, but for a piece of paper that says married or civil union, they are family without any of those other traditional connections. And I think that's where we're starting to move. We'll talk about that more fully later. But I do think that intimate relationship is sort of opening up the family court to other ways to determine what family may look like. And the other thing that I wanted to mention was that despite marriage equality, it has not been the cure all for families, including in family court.

We have a lot of people that were excluded from the protections of Family Court because they couldn't marry. And so cases like Brook S.B., which we'll be talking about more fully are the products of, I mean in Brook S.B. for example, these are poor folks of limited means who didn't have access to going across state lines or to another country to get marriage. They didn't have the ability to do a second parent adoption. Second parent adoptions are expensive, they're intrusive. Most legal aid organizations don't do them. And so we have this gap of people that are unable to avail themselves even if the small bits of laws, whether it's based in positive law or common law, equitable estoppel and other things. So I think that even with marriage, there are some folks that are still really challenged by the systems that we have that could benefit from some broadening of those concepts.

Hon. Kathie Davidson: If you could expand the equitable estoppel to same-sex marriage and also the non-traditional relationships. A little discussion further on that too.

Tom Gordon: Thanks. Well, yeah. What happened with the early cases that, there were some early cases that came along that sort of attempted to expand this definition. And one of the early cases was a case out of the First Department Thomas S. versus Robin Y. That was 1994. This is a case where there was a same sex relationship. The parents had been raising this child and that there was a sperm donor who had some relationship with the family. And eventually because that

relationship broke down, filed for paternity in Family Court. Judge Kaufmann who heard the case actually used equitable estoppel to deny him that right to get an order filiation and the rights that come after that, which is standing for visitation and custody, particularly visitation in this case. Interestingly, the first department in reversing it also based their, much of the argument in reversing Judge Kaufmann's decision also depended on equitable estoppel.

And talking about the relationship that the punitive father in that case had established with the child are using equitable estoppel both ways. But equitable estoppel didn't go away and it still dogs us to this day in paternity cases, I don't mind telling you. But beyond that, it didn't go away in these cases and that in same sex relationships. And so ultimately when the Court of Appeals decides Brook S.B., they very heavily depend or rely on this concept of equitable estoppel and the relationship that the child had developed with the parents in that case to find that second parent, that non-genetic parent is in fact a parent more than just a person, an auntie or whatever. She was a parent of this child.

Similarly in, there's a case out of the Third Department in 2018. Again following now same sex marriage, but before the Child Parent Security Act where again, much like in the Thomas Y. Case, Thomas S. case, the donor had come in and asked for visitation in that case. And it was denied to the sperm donor in that case. One of the things utilized in that case was equitable estoppel. So equitable estoppel became that foothold in many ways, a legal foothold in that expansion of rights.

Amy Schwartz-Wallace: And I'll just say, as a member of the LGBTQ community myself, I'm always a little nervous having being a test case or having your life sort of subjected to being a test case or to not necessarily having a clear law or a roadmap to figure out who your family is going to be. I said, going back to the DV concept earlier, I started my career doing cases at a Legal Aid Society in Rochester, getting orders of protection for clients. And those were not something that I could actually get for myself. I could get all of my clients an order of protection. But if I had a similar situation, I couldn't go to the very court that I practiced in to get an order of protection if God forbid I ever needed one for me. So I think equitable estoppel is an amazing tool. It's a foothold. It provides a lot of ability to drill down into the facts of a case and really look at families and how family relationships are created and who said what and did what when.

And I think those are really good. I think we also want to... The reason that there were changes in Brook S.B. was not necessarily changes in equitable estoppel, but it was changes in the culture that informed the changes. And that made the court from Allison D. to Brook S.B. and all of the heartbreaking cases in between that time where kids couldn't necessarily remain, have a legal connection with their families was really because of some of these other changes. And so I think that equitable estoppel is vital and we use it all the time. We're using it now in determining the cases that don't fit as neatly into Brook S.B., which are the post conception decisions and trying to figure out what should happen with the families where the other parent maybe came in a week after somebody became

pregnant or a few weeks after there was an adoption or other things. Those are the things that the courts are literally struggling with right now. Those are the cases that I think we're still having to decide in the shadow of the lack of marriage equality and the patchwork of protections.

Tom Gordon: But the important... I mean, so Brooke S.B., as important as the decision as it is vitally important, and Christopher YY being very important. One of the problems that still remained was these were rights that really could only be obtained in a breach. You didn't have an affirmative right, it was something that you had to have determined during what was usually a very expensive and emotional court proceeding. When somebody would come in after a breakup and seek visitation or custody and being told that they had no standing, and then a court had to decide yes, in fact that they had standing. And nobody could depend on it. Nobody could depend or 100% understand that if they got into one of these situations that they were going to be recognized as a parent that the Brook S.B. concept, that that would cover them in that situation. And that was a problem. That's why the CPSA, the Child Parent Security Act was so important was because it bridged that gap. It gave an affirmative right as opposed to something that could be obtained.

Amy Schwartz-Wallace: Exactly. And-

Tom Gordon: After much litigation.

Hon. Kathie Davidson: Could you talk a little bit about, as we were discussing our call, we had many great conversations, the polyamorous relationships-

Tom Gordon: Yes.

Hon. Kathie Davidson: ... LGBTQ community. Could you expand?

Amy Schwartz-Wallace: Absolutely. I mean, think that's where I think the courts are going to... There's more attention to some of the things that I think even folks in the LGBTQ community were, those are being hailed as really problematic as if you open up marriage to these groups, then it's going to open up the floodgates and there's... Why stop at two parents? There could be three parents or four parents. So I think those are the things that we're trying to wrestle with as a country, as a state. There have been at least two decisions, one in the family context, and one again in the housing context, housing is... New York City housing, I live in Rochester, so I know those are really heavily litigated as well. But there was a case West 49th versus O'Neill, and it's the first case that I've read that's really wrestled with Braschi, which is where we started, just now today.

And how to recognize a relationship that was polyamorous where, you had one individual who had two partners who didn't necessarily get along and like each other, but they really both viewed themselves as being in a partnership with this

individual. And now how do you apply rent stabilization to that? We're seeing those cases in the Family Courts right now where you may have two biological parents who are known biological parents and who may be involved to some extent, but you may also have a third parent who is maybe more than a step-parent and was heavily involved in that child's life. There was a case in the Fourth Department, and there have actually been a few cases. The case I worked on was Tamika out of the Fourth Department, and it didn't make it to the Court of Appeals, but the concept of post-conception agreements, equitable estoppel is going to be used in those contexts in the absence of law.

In the article that the judge mentioned at the top of the program on chosen families, we couldn't have asked for better timing for an article on this topic. It was pretty amazing that this came out a few days ago, really sort of laying these things out. And I just wanted to give a shout out to the Chosen Family Law Center in New York City who really are amazing folks who are really thinking about how to protect families that aren't, where you have two people, two spouses, you may have multiple spouses. You may have two spouses and a third person, or nobody's married.

And so they're trying to use creative legal tools akin to what I think we talked about earlier, which were our wills and powers of attorney and advanced directives and domestic partnerships and other things that I guarantee the courts are going to be struggling with and wrestling with when you have three people that may have been trying to determine, or the three people at the conception of a child and wanting to be parents and trying to figure out how to be parents. And those cases are starting to come. There was one in Long Island or Staten Island, I don't know, somewhere downstate [inaudible 01:19:42] I don't know.

You're all... Yeah. But it's a really important case. And the court was struggling with Brook S.B. and marriage equality and all of those other things and into this amazing soup.

Tom Gordon: Yes. And the legislature was struggling too. Because if you recall, when the Child Parent Security Act was first proposed, there was a section that recognized polyamorous relationships and that there was the opportunity to maybe have a third or fourth parent in one of the sections. That was ultimately too soon as it turned out and it didn't make the final version. And maybe that section had some problems and had to be reworked and rethought. And maybe that's where the courts are going to step in. Maybe that's what it took to get to the CPSA, was some court decisions to sort soften the ground. And maybe that's what's going to happen here. And even when you look at equitable estoppel, that's a concept that's going to have to be expanded because equitable estoppel has always been a binary concept. It's always been this person's the father, that person's not the father. This person's a parent, therefore that person's not a parent. So it's always been not just an inclusion, but an exclusion mechanism. So there's going to have to be an expansion there to drop the exclusion part if we're going to get there.

Amy Schwartz-Wallace: I agree.

Hon. Kathie Davidson: I feel, in light of, this is the 60th anniversary and we're talking about originally the Family Court came in existence because we had all these laws everywhere. Would you say, just based on what you presented thus far, obviously is a much more... Maybe we're at that point again. As the concept of the family expands and we need to address it in a much more, as we say, holistic approach. What is your feelings about that, both of you?

Tom Gordon: Well, yeah, absolutely. I think of course we're going to evolve and we have evolved. We've come an amazing distance already and the things that have happened in just the last few years. When you just start with same sex marriage being legalized in New York, just in the few years since then, what's happened in terms of the expansion of the family, it will happen, it will probably evolve and it probably will start with the Family Courts. I mean, that's where these cases are going to start. That the real work in doing these cases is going to start with the family courts. And I think it's going to percolate up. It's going to, we're going to see these cases, we're going to have to figure them out, and then the appellate courts are going to have to sort them out beforehand. But I think the real work is going to come at the family court level.

Amy Schwartz-Wallace: Yeah, I totally agree. I think that those families are actually out there and have been out there the whole time. So I think we are just starting to put a legal framework around it. And maybe our tools are growing, but I think that those families are... Given some of the changes that have come in the law, those families may finally start to feel safer coming to our family courts. They may not have felt like family court was a safe or welcoming place for justice for them. But I think that with some of the tools that we have and some of the changes societally and in the law and trainings, trainings of judges, trainings for attorneys, for the child, trainings for attorneys, I think we're better equipped to handle those families more so than we were in prior years.

Tom Gordon: Amen.

Hon. Kathie Davidson: That's good. So we talked a little bit about the new frontier aspect. I think that was Jan Fink's question that she wanted to ask. So I'll put that back to you again, the new frontier for family, which you've kind of said, but I think has even more to it in terms of what we're looking at.

Amy Schwartz-Wallace: I think changing our language, I think we haven't seen a lot of cases involving transgender family members. In fact, I haven't mentioned even those folks in the courts. And those are the most... The community of transgender, gender non-conforming folks are the most fearful of what court adjudication would look like for their families. And so I think that those are, the courts are really trying to educate themselves. There's new judicial ethical rules and ethical rules for court staff on recognizing and supporting trans folks in our courts. I think that there isn't a lot of law in family law right now. Unfortunately, most of the cases involving trans folks are health and jail cases. And that's not what people,

that's not the life experience of trans people. Not It's just about healthcare and jail. It's about being parents and being spouses and other things. But we're not seeing those cases at least published in the way. And so I would hope that we're going to start to see some cases that are involving those community members in a way that is welcoming and respectful and see the law develop around those communities as well.

Hon. Kathie Davidson: Because I think it is definitely, I think especially when you think of the youth and because of whatever decisions they're making about their own life, their own body and transitioning, I've seen cases before me where their family no longer wants them. So who is the new family who's willing to step in and be that supportive? And I think we have to make space for that as judges, practitioners, because I think that's a huge area that I struggled with and will continue in taking the challenge of training because that for me, especially towards end of sitting on the Family Court, many cases and the family would acknowledge, but at that point, you're no longer welcome in the home. That's huge. So who then becomes the family? So that's why this is so important for our youth. I know our time is almost up, so any finishing thoughts?

Tom Gordon: Yeah.

Hon. Kathie Davidson: Are there ever any finishing thoughts? What? Any finishing thoughts?

Tom Gordon: I would just say amen to what Amy said about that. We were just in the last couple of days just struggling with forms and trying to deal with the language around transgender, just in terms of our family court forms. We have a long way to go. It's a really hard job and we really have to put our nose to the grindstone to figure that out because that is something to really make people feel welcome and normal in court is really important and it's a struggle, something that we're going to have to really work for.

Hon. Kathie Davidson: Thank you. Thank you for a few extra minutes.

Hon. Kevin Carter: I just want to thank you Judge Davidson and Mr. Gordon and Ms. Schwartz-Wallace. We really appreciate that wonderful presentation. Thank you so much.

PART 3 OF 4 ENDS [01:27:04]

Hon. Kevin Carter: Okay, before we go on, I have to read the second CLE code. And the second CLE code is 3591. You can see I'm getting very good at this. 3591 for the second CLE code. 3591.

In closing, we will discuss racial equity and family court, and I have the pleasure to introduce to you DCAJ, Edwina Richardson-Mendelson. She's not with us today, but she took the time to send us some video remarks and we'll hear those in a moment.

Deputy Chief Administrative Judge Richardson-Mendelson leads the New York State Unified Court System's Office of Justice Initiatives, which is tasked with ensuring meaningful access to justice for all New Yorkers in civil, criminal and family court regardless of income, background or ability. She also leads the Equal Justice in the Courts Initiative to implement the recommendations of special advisor on equal Justice Jeh Johnson and the implementation of the November, 2020 recommendations of the New York State Courts. As the honorable Deputy Chief Administrative Judge Norman St. George repeatedly says, Justice Richardson-Mendelson is our titan for justice. I like that moniker. I think it really applies. We will now watch video remarks from Judge Richardson-Mendelson.

Hon. Edwina Richardson-Mendelson: It is my honor, privilege, and pleasure to participate in this event commemorating the 60th anniversary of the New York State Family Court.

Family Court is the court of my heart. I have spent almost my entire professional life serving in that critically important court. First, as an advocate for those who have been victimized by intimate partner violence, where I learned the foundational lesson that attorneys have a sacred obligation when representing their clients. Well, clients aren't cases, they're not issues in cases. They're people. And they're people with often complex lives and legal needs that require a comprehensive understanding of the law and a commitment to listen and learn from those we are privileged to have as clients.

My next role in the court of my heart was to serve as an assigned counsel, 18b attorney in the New York City Family courts where I represented all different categories of court users, mostly parents, but also children, grandparents, aunts, uncles, persons deemed legally responsible for court involved children, foster parents, adoptive parents, and more. I appeared in every type of case we address in the Family Courts. That includes paternity, child support, custody, visitation, we call them parental contact matters now, child protective actions, domestic violence, family offense, guardianship, adoption, juvenile justice, PINS, person in need of supervision cases, and more.

So much that happens in our Family Courts touch upon constitutional rights, particularly as they relate to the liberty rights of young people and the rights of parents to decide the life course of their children. And it is fitting that our modern day New York State Family Court's jurisdiction is enshrined in New York State's own constitution.

I've spent over three decades of my professional life working in and for the New York State Family Courts that is half of the existence of the modern era court and I have seen many areas of positive growth and positive maturity in our court. Of note, I have witnessed increased complexity in applicable laws and a corresponding significant increase in the quality of legal advocacy available and for that I'm grateful.

I had the privilege of participating in our 50th anniversary commemoration of the New York State Family Court 10 years ago, and at the time I was Administrative Judge of the New York City Family Court. I recall attending one of the anniversary events and being asked to discuss my favorite case. It is always risky to discuss a favorite because there are so many significant cases.

For example, the 1970 United States Supreme Court case, In re Winship, that re was regarding a 12-year old who was arrested. That decision, going all the way up to the United States Supreme Court, established definitively that guilt beyond a reasonable doubt is a mandate in our juvenile delinquency matters just as it is in the adult criminal justice system.

Now, I could have selected that case or a host of others as important cases, but I pick as my favorite, I picked it then and I pick it now, the 2004 Court of Appeals decision, Nicholson v. Scoppetta. That is my favorite and I do discuss it often.

My deep fondness and appreciation for that particular decision is because it had such a great impact on the practical lives of Family Court participants. I witnessed the impact of that great decision and the changes in our court practices that have evolved since that decision was issued. At the time of our anniversary commemoration, I had the privilege of discussing that decision with the late Chief Judge, Judith Kaye, the decisions author, and she described it to me as one of her favorite decisions as well.

She told me of the special context in which the high court, in receiving this case as a federal class action suit certifying critically important questions, allowed the Judges of the Court of Appeals to have an expansive and free flowing decision issued rich with guidance for our Family Courts and indeed it has spurred significant transformation for those who have been victimized by intimate partner violence and for all families appearing in child protective cases in our state family courts.

And I have to mention that I just mentioned Nicholson v. Scoppetta as a case, as a decision. There were individuals, Ms. Nicholson and others who joined in that case who had great pain in their lives but, because of their sacrifices and what happened to them, they're responsible for transformation in our family justice system and I'm really grateful for that and I must acknowledge that.

My pride in the Family Court is so deep, and I'm unapologetic about being proud of the Family Court. In all my years in that court, I have gotten to know the hearts, the minds, the spirits of those who have dedicated their lives to promoting justice in the Family Courts. I know and I have worked so very closely with so many of our jurists, our professional staff and the advocates who have dedicated their lives to service in a court that is for many reasons an unspeakably difficult court in which to operate.

I am a glass three quarters full type person and I am a realist. Those qualities coexist easily in me. I operate in hope and optimism while at the same time recognizing the thorny and negative aspects of our court and our systems of justice. I realize that our courts and our systems of justice, including our family justice system, does need improvement. And that we have much to do to make them the very best they can be in service to the people who are serving in the courts as well as to the communities that we are so deeply privileged to serve.

Many moons ago, when I appeared as a lawyer in family court appearing in courtrooms where I was unknown, I suffered the indignity and the disrespect of being rudely told to step out of a courtroom. I was mistaken for my client or a caseworker or an interpreter, though English is my sole language. I was not able to walk freely into our courts as my colleagues did. Those colleagues did not look like me. That was three decades ago. Three decades ago, someone looking like me despite wearing a business suit, did not default in recognition as an attorney. Although I was.

Quite recently at a Bar Association meeting, I heard reports from young attorneys of color who currently serve in our Family Courts in the state in this present day season and they reported that they continue to experience this very same reception. I tell you, that breaks my heart. It was unacceptable when it happened to me way back when and it's unacceptable today. It remains unacceptable today.

Despite the pain of hearing those types of stories, and I've been hearing lots of stories in recent times, I am energized and I am strengthened in my resolve to work to the very best of my ability to do what is mine to do as I lead our state court system's Equal Justice in the Courts Initiative where our goal is, and it's our mandate, is to eradicate racism and all forms of bias and discrimination in our courts.

The reforms that are in place that we are implementing include mandated comprehensive racial bias training for all judges and non-judicial staff, a new mission statement for the Unified Court System that incorporates principles of equity, diversity and inclusion, a new social media policy with clear guidelines and boundaries on what constitutes biased and prohibited conduct, creation of equal justice committees comprised of judges and court staff working in every judicial district, including New York City, to implement equal justice reforms at the local level. This has and will transform our institutional culture. I'm telling you.

Targeted improvements in our human resources promotional interview practices to effectuate our commitment to diversity and inclusion in the workforce, the production of and the display of a new jury orientation video to educate every potential juror in the state of New York about the dangers of implicit bias and to ensure fair decision making that is free of biases and stereotypes. I'll tell you that other jurisdictions have asked to use our jury orientation video and I am proud of that as well.

A new requirement to have a full disciplinary hearing for any substantiated claims of discrimination, new and improved processes in the office of the Inspector General to facilitate the filing of racial bias and discrimination claims, including the appointment of an ombudsperson to promptly handle complaints. Improved availability and transparency of data for those who are interested in reviewing both our progress on diversity in the courts and the impact of the criminal justice system on people of color, and a series of programs and initiatives including this is new, the wearing of name tags by court officers, which is designed to help us foster trust between court officers and the communities we serve.

I am so excited about this multilayered, multifaceted, and multi-year endeavor that we are engaged in. This will not be one and done. Those of us working to promote equal justice in our courts owe the highest level of commitment and insistence on excellence to each other and to the communities we serve.

We welcome constructive and deserved criticism and that's how we even got to having an Equal Justice in the Courts Initiative in the first place. Our then Chief Judge Janet DiFiore, it was Chief Judge DiFiore who invited Secretary Johnson to come in and to honestly investigate the courts, assess us, and report on racism in the courts. We invited criticism from impacted individuals, entities, and all interested communities and we continue to do so.

But please know that while we welcome criticism, we need action beyond words of criticism and my ask of you and I do have an ask of you and I like to say, when a judge asks you something, it's a court order. So my ask of you is that we all join in this endeavor to make the courts the very best they can be for those serving in them and so importantly, for those who are served in and by our courts. There is a lot for us to do. There's work for us all to do. And I very much look forward to working with you all. So I end now by thanking you for all you do to promote justice in our courts and beyond. I'm grateful to have been able to speak with you here at our 60th anniversary commemoration. Thank you all for being here.

Hon. Kevin Carter: Awesome. I wish Justice Mendelson was here. I could thank her in person, but she's not here so I'll just have to send her a great big old thank you card. I plan to do that soon. As was pointed out, I'm the Administrative Judge of the Eighth Judicial District. It includes several counties really, Allegheny, Cattaraugus, Chautauqua, Erie, Niagara, Orleans, Genesee, and Wyoming counties in upstate New York, and I can tell you that that's a big county in terms of space is certainly has about 4 million people therein. So I'm representing the county and the district and I feel very good about that. I hope you've enjoyed the program today and the presentations. I'm thankful and pleased to have been asked to deliver closing remarks today on racial equity in the family court.

As we celebrate 60 years of Family Court, which is as much about its history as it is about its future, let us think about the history of family court as a great story, okay? What makes a great story? All of the stories have beginnings and endings.

All stories have characters and expressions of personal experiences. With all stories, there is dialogue. But I said a great story. And I believe to have a great story, you need those things, but you also need adversity, you need to have the overcoming of adversity, and you need change influenced by experiences positive and negative experiences alike.

Professor Sobie, who you've heard about once stated that Family Court was once described as an unstable tribunal ceaselessly progressing to reflect societal norms that are ever shifting while Supreme Court was described as a rock of stability. I leave it to all of you to think about that description and whether it has changed or whether it remains the same through the years.

Many, many years ago we had child saver laws where children who were deemed incorrigible were taken away from biological parents to live with non-biological families. The conduct of their biological parents was never considered. It's probably no surprise that the children subjected the most to the child saver laws were immigrants across racial lines.

Most of the jurisdiction over families remained with the criminal courts. Criminal courts that determined juvenile delinquency matters and modern day child neglect cases. It was only once the criminal caseload became to cumbersome was there a need for consideration of a special court to handle children and family issues. Early family courts gave parents very little rights. When parents were petitioned to the courts, the burden was on the parents to prove to the court that they deserved to have their children returned. The courts automatically sided with the state, judges simply signed orders prepared by the state and private agencies to remove children. Appeals were precluded and reunification was rare.

However, personal stories over the years influenced by a variety of experiences helped us to recognize the need for change to appropriately address issues confronted by our families. Family Courts throughout the state have heard millions of personal stories over the 60 years. Each of these stories are unique. Each one signifying a need for change, and in fact, as you've heard today, we have seen the court system undergo significant change in the law and the manner in which it is managed to address the ever-changing dynamics of the family unit.

We know the definition of family has changed, we've heard that, and has expanded through the years as the result of legislation and case decisions. You have heard about the increase in access in our courts, the access to justice in our courts, and as we consider more fully the stories of personal experiences as well as the change in law, we know that change isn't easy and is often met with much resistance.

How have we sought to overcome the adversity? First, we recognize that the system is not perfect, nor are the people who work within the system, and we realize that there was a need for change and we know that there is a continued

need for change. You have heard about implicit bias training throughout this several years for our court employees. Training to address differences that have led to discriminatory and racist behavior within the system directed towards employees as well as the very patrons that utilize our courts, the very patrons that we are paid to serve. For many employees, their interaction in the workplace with people of different races, ethnicities, and sexual orientation is their only interaction. Thus, bias training is essential. We also recognize the need for zero tolerance to combat bias and discriminatory behavior we've witnessed over the years.

We also recognize another essential component in overcoming adversity and having a great story, and that is the need for inclusion and hiring practices. Our goal is to successfully hire a diverse workforce. When I began practicing in the Family Court in 1990 in the Eighth Judicial District, there weren't many people of color, if any, working in the courts. There were certainly no judges of color and at the time, only one support magistrate of color. In fact, prior to my tenure on the bench, we had only seen one person of color ever elected to a Family Court in the entire Eighth Judicial District. I was elected in 2002.

Now, there is a stark difference when you compare hiring in New York City Family Courts and Family Courts outside of New York. In 2000, 56.4% of non-judicial employees in the New York City Family Courts were white. While 87.1% of the employees and Family Courts outside of New York City were white. This year, 46.5% of the employees in the New York City Family Courts are white, while 82.1% of the employees in Family Courts outside New York City are white. In 2000, 26.7% of employees in New York City Family Courts were black, while only 6.8% of employees in Family Courts outside New York City were black. This year, roughly 27.9% of the employees in the New York City Family Courts are black while roughly 8.6% of the employees in Family Courts outside of New York City are black.

Of course, I know that you all know that diversity is not just racial, it crosses gender, religious, ethnic lines also, and we should always be mindful of that and we should not focus on just the non-judicial employees. Let us consider the judiciary of Family Court also.

In 2000, 77.6% of the Family Court Judges in New York City were white. Outside New York City, 97.3% of the Family Court Judges were white. In 2022, 56.6% of Family Court Judges in New York City are white, while 75.3% of the Family Court Judges outside New York City are white. 14.3% of the Family Court Judges in New York City in 2000 were black. That percentage has increased to 28.3% in 2022. In 2000, only 2.7% of the Family Court Judges outside of New York City were black, and in 2022 the percentage has increased to 11.8% of the Family Court Judges who are black outside of New York City.

Currently, I am the only person of color elected to a Family Court in the entire Eighth Judicial District. Outside of New York City, the courts have been slow to achieve diversity on the bench and we need to address that. Having been

elevated to administrative judge in July of 2021, I now view the Unified Court System from a broader lens. We have seen change, there is no doubt about that, and we've overcome adversity in 60 years for sure.

We can continue to change by continuing to listen to the personal stories, understanding the experiences, and welcoming the journey. We thank Judge Cannataro, Judge Richardson-Mendelson, Judge Jolly, Judge Levine, Judge Kohout, Judge Bailey, Judge Davidson, Ms. Schwartz-Wallace, and Mr. Gordon. And many, many thanks to DCAJ St. George and DCAJ Kaplan. We really appreciate your efforts and support. And we also thank Judge Carol Sherman, Mary Kornman, Janet Fink, Natasha McDougal, Trista Borra, who worked countless hours to bring this program to fruition and to all of you for your time, focus, and concentration, consideration. We thank you. Now the greatest words of all, we are adjourned.

PART 4 OF 4 ENDS [01:53:38]