



NEW YORK WOMEN'S BAR ASSOCIATION

PRESIDENT'S MESSAGE

OCTOBER 2020

It has been inspiring to see how well our Association has adapted to our social-distancing reality this year. Our committees continued to deliver stellar content and camaraderie through virtual media. On September 24, 2020, the NYWBA took our **Annual Membership Reception** virtual. In order to give new and prospective members an opportunity to learn more about the exciting opportunities our Association has to offer, we held virtual break-out rooms with many of our popular substantive law committees for attendees to introduce themselves and talk about their plans for this year. Everyone who registered for the event received an NYWBA logo face mask in the mail. Many thanks to NYWBA Past President **Virginia A. LoPreto** and Vice President **Magnolia D. Levy** for their work in reconceptualizing our reception and for bringing it to fruition alongside our Executive Director, **Karen Lu**, without whom none of these events would be possible.



Amanda B. Norejko

October is **Domestic Violence Awareness Month**. This time of year has special significance for me. Twenty-one years ago, I met my husband at our first Domestic Violence Awareness Month event, a march in Riverside Park with survivor advocates and service providers from around New York City. We were both studying at NYU School of Law and volunteering with the Courtroom Advocates Project, a pro bono program run by Sanctuary for Families and New York Legal Assistance Group that utilizes law students to assist pro se litigants petitioning for Orders of Protection in Family Court. Inspired by those experiences, I spent most of the next two decades providing legal services to survivors of domestic violence and their children. What I learned from the courageous women and men who came to me for help transforming their lives will stick with me for the rest of mine.

Unfortunately, the desperate need for these services for survivors continues, and the COVID-19 pandemic has only exacerbated the danger and narrowed the options available to those seeking freedom from abuse. Forced to quarantine together, victims lack the privacy they need to reach out to crisis hotlines for help. An economic crisis increases the ability of perpetrators to utilize finances as a tool of abuse. Unemployment makes it harder to afford to move out of an abusive home. The United Nations estimated that there was a 20% increase in domestic violence cases during the COVID-19 lockdown. Home isolation often empowered abusers and reduced escape options available to victims. Governments largely failed to prepare for the way the public

(Continued on Page 2)

NYWBA International Women's Rights Committee presents a CLE Program:

Moving Beyond the Barriers: An International and Comparative Examination of Laws and Policies Governing Self-Managed Abortion

Speakers:

Jessica Mason Pieklo, Esq.,

Senior Vice President, Executive Editor, Rewire

Yveka Pierre, Esq.,

Litigation Counsel, If/When/How:
Lawyering for Reproductive Justice

Patty Skuster, Esq.,

Senior Legal Advisor for
Technical Innovation and Evidence, Ipas

Karolina Więckiewicz, Esq.,

Aborcyjny Dream Team

Moderated By:

Professor Cindy Soohoo, Esq.

Professor of Law and Co-Director of the
Human Rights and Gender Justice Clinic,
New York School of Law

Date	October 13, 2020
Time	12:00 p.m. – 1:30 p.m.
Place	via Zoom conference
CLE	1.5 Credits
Cost	Free – NYWBA & WBASNY Members \$25 – Non-members
Info	Email cle@nywba.org .
RSVP	Before October 10, 2020 to intlchairs@nywba.org .

* CLE Credits: 1.5 credits in Professional Practice: The NYWBA is an accredited CLE provider. Approval of CLE credit is pending in accordance with the requirements of the NYS CLE Board for the above-listed credit hours for established attorneys and as transitional credit hours for newly admitted attorneys.

** Free NYWBA members, \$25, non-member: Full and partial scholarships based on financial need are available. For info on the guidelines and to apply, contact CLE Co-Chairs at cle@nywba.org or 212-216-1135. All requests are confidential.

President's Message (Continued from Page 1)

health measures imposed to curb the spread of infection would create another public health crisis by giving abusers increased opportunities to terrorize their victims.

Our NYWBA Domestic Violence Committee, led by Co-Chairs **Shani Adess**, **Margaret C. Farmer**, and **Laura A. Russell**, conducted a CLE program on September 2, 2020 titled *"When Home is Where the Hurt Is: Assisting Immigrant Domestic Violence Survivors."* The program highlighted the challenges faced by immigrants who are subjected to intimate partner violence and the legal remedies available to them.

While Orders of Protection are often a critical component to ensuring the safety a domestic violence survivor, there are a host of other needs that must be provided to help survivors and their children live free from violence. Access to housing, health care, child care, and economic self-sufficiency are all factors in obtaining and maintaining survivors' safety.

I hope that this October, NYWBA will choose to become an ally to survivors of domestic violence. There are many opportunities to get involved in this cause through volunteer work - both legal and non-legal, donating to a domestic violence charity, posting awareness-raising messages on social media, and wearing purple on October 22, 2020 to start a conversation about intimate partner abuse.

One key element to combating domestic violence is economic empowerment. Women are particularly at risk of economic abuse. Wage inequality, lack of paid parental leave policies, employment discrimination, and a wide range of structural inequities cause women to be more likely to experience poverty and less likely to obtain promotions to the highest levels of their profession or to accumulate comparable wealth to their male counterparts. Women have suffered a proportionally greater impact on their finances due to the COVID-19 pandemic with more women than men losing their employment or having to curtail their work activities to shoulder a greater share of the burden of child care after the closure of schools and day care facilities.

In September 2020, the NYWBA launched a "Financial Fitness" series, which focused on women's economic empowerment. Ameriprise Financial Services, LLC and BlackRock Investments LLC presented "Women, Wealth, and Well-Being," to offer key investment information to members at various stages of their careers. Prudential Advisors offered "Bridging the Working Women Retirement Income Gap" to discuss challenges faced by women in planning for retirement.

October is also **Breast Cancer Awareness Month**. Last month, I had the pleasure of attending the Judges and Lawyers Breast Cancer Alert (JALBCA) Virtual Gala, held on September 8, 2020. Co-Presidents **Jaci Flug**, a Past President of WBASNY, and **Hon. Saliann Scarpulla**, an NYWBA member, did a fantastic job transforming JALBCA's gala into a fun and compelling virtual event. Congratulations to the JALBCA honorees: **Honorable Jenny Rivera**, **Judith Livingston, Esq.**, and the IBM Legal Department! The Gala highlighted critically important services, including awareness-raising medical screenings, and legal services, funded by JALBCA. Donations to support this great work can be made at <https://jalbca.org/donations/>

PLAN YOUR 2020 VOTE

Standing in line at the polls on Election Day is so 2019. This year, New York has taken a host of measures to make voting safer and easier during the pandemic.

For the first time in our State's history, all registered voters can request an absentee ballot (under the "temporary illness" excuse).

You must postmark, apply online, email or fax your completed application for the General Absentee ballot by **October 27, 2020**. You may apply in-person at a Board of Elections office by **November 2, 2020**. Ballots will be mailed beginning on/after September 18, 2020. You can apply for your absentee ballot online at <https://nycabsentee.com/>.

If you choose to vote by absentee ballot, there are several ways you can cast your completed, signed ballot.

1. Put it in the mail ensuring it receives a postmark no later than November 3.
2. Drop it off at an Early Voting poll site between October 24 and November 1.
3. Drop it off at a poll site on November 3 by 9 p.m.
4. Drop it off at your county Board of Elections Office starting September 8 through no later than November 3 by 9 p.m.

In addition to absentee voting, New Yorkers can also take advantage of Early Voting. For nine days, from October 24 to November 1, registered voters can cast their vote in-person at an early polling site.

For more information on early polling sites and Board of Elections Offices near you, go to <https://vote.nyc/>.

You are required to wear a mask/face covering and maintain 6 feet of distance when entering any Board of Elections facility.

Of course, New Yorkers can still vote in-person on Election Day, November 3, as well.

Whatever method you choose, make sure your ballot is cast so your voice is heard.

The NYWBA is a community that cares about the issues affecting women's lives. I hope you'll join us this year and use your knowledge and talent to make a difference by becoming active in our Committees and raising your voice to help empower others.

Amanda

WELCOME NEW MEMBERS

Katherine LeGeros Bajuk
Nicole Adler
Catherine E. Archias
Hayley N. Bronner
Allison Canton
Hon. Billie Colombaro
Karen C. Davakis
Amanda Hertz
Caroline Holderness
Brittany N. Holzwanger
Katherine Howard

Molly Kalmus
Meredith M. Kershaw
Ellyn D. Kessler
Jacqueline Mancini
Melissa B. Mantel
Amy Marques
Sheella Martinez
Randy Perskin
Dorian E. Rojas
Juliana Thibaut

as of 09/21/2020

SUSTAINING MEMBERS

With their generous contributions, our sustaining members make it possible for us to accomplish so much more. We honor and thank them for their support.

William G. Goldsmith
Michele E. Kahn
Gary Roy Klein
Cassandra M. Porter
Andrea Vacca

NOTES ON MEMBERS

The NYWBA sends our sincerest condolences to our Past President **Deborah G. Rosenthal** whose sister-in-law passed away on August 4, 2020.

Has something noteworthy happened to you or another NYWBA member? Send your news to Newsletter@nywba.org.



NYWBA wishes to acknowledge the generous gift from

**FOUNDER AND PAST PRESIDENT
HON. FLORENCE PERLOW SHIENTAG
(1908-2009)**

Her financial bequest has helped to underwrite the cost of this Newsletter and many of our CLE programs.

Your Opinion Matters

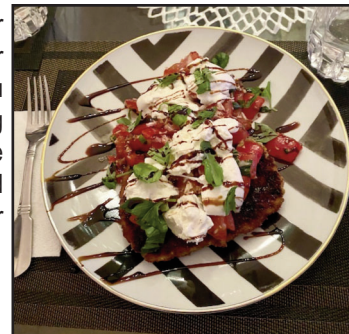
NYWBA is seeking monthly opinions on legal matters. Please send your op-ed piece to opinions@nywba.org.

Cooking with NYWBA Bruschetta Style Chicken Breasts (Serves 2) Recipe by Jennifer P. Brown

This is a quick and easy dinner for 2, which can easily be doubled or tripled for a larger group. If you want, you can make the topping ahead of time and leave it in the fridge overnight to marinate, and then top the chicken right after cooking.

For the chicken breasts:

2 6-8 oz chicken breasts
1 cup seasoned breadcrumbs
1/2 cup flour
2 eggs
1/4 cup Parmesan cheese
2 tbsp olive oil
Salt & pepper



For the topping:

3 vine ripe tomatoes diced
1 garlic clove finely minced
2 tbsp finely chopped basil, plus additional cut into ribbons to sprinkle over the top
1 1/2 tbsp grated Parmesan cheese
1/2 tbsp balsamic vinegar
1 tsp olive oil
Salt and pepper to taste
1 ball of Burrata
Balsamic glaze to drizzle

Directions:

In a bowl, mix together tomato, garlic, chopped basil, Parmesan cheese, balsamic vinegar, olive oil. Add salt and pepper to taste. Set aside.

Rinse and pat the chicken breasts dry. Pound until about a 1/2 inch thick and even. Season well with salt and pepper.

Create your dredging station by putting the flour on a dinner plate, mixed with some salt and pepper. Next to that, place a medium sized bowl with the eggs beaten and seasoned with salt and pepper. Next to that, place a dinner plate with the breadcrumbs and Parmesan combined.

Heat the olive oil in a large skillet (I prefer my cast iron pan). You want it to be hot but not smoking. If it starts to smoke, turn the heat down a bit.

Dredge each chicken breast in flour, dust it off, wash it in the egg bath and then coat with the breadcrumb mixture and set aside.

Pan fry each breast in the hot oil for 3 minutes per side. Remove from pan and place on a plate lined with paper towel to soak up extra oil.

Plate 1 breaded chicken breast per plate. Divide the tomato mixture in half over the top of each chicken breast. Break up the Burrata into chunks and dot over the tomato mixture. Sprinkle some of the basil ribbons on top. Drizzle with balsamic glaze.

Jennifer P. Brown is a Past President of the NYWBA, a Family and Matrimonial Law practitioner and the author of the soon to be published cookbook "When Life Gives You Lemons – An Attorney's Journey Through Quarantine as an At Home Chef."

JUSTICE RUTH BADER GINSBURG

1933-2020



The NYWBA joins the nation in mourning the loss of Supreme Court Justice Ruth Bader Ginsburg, a legendary jurist, trail-blazing advocate, and feminist icon. Her contributions to gender justice and civil rights were profound and enduring, and the impact of her loss is too vast to measure yet intimately personal for many women.

Justice Ginsburg said that she would like to be remembered as “[s]omeone who used whatever talent she had to do her work to the very best of her ability. And to help repair tears in her society, to make things a little better through the use of whatever ability she has.”

After taking her oath of office on August 10, 1993, Ginsburg served 27 years on Supreme Court, becoming its most celebrated member. However, her accomplishments that changed the shape of our legal system and our lives began decades earlier.

Justice Ginsburg was born Ruth Joan Bader on March 15, 1933, in Brooklyn, New York. She met her husband, Martin D. Ginsburg, during her undergraduate studies at Cornell University. After graduation, Martin was called into military service. Ruth, despite scoring high on the civil service exam, could only get a job as a typist, and when she became pregnant, she lost that job.

Two years later, when she enrolled at Harvard Law School along with her husband, she was one of only nine women law students among a class of over 500. The law school's dean criticized the women for taking the admission slots that could have gone to men. Despite this patriarchal environment, Ginsburg's brilliance propelled her to become the first female member of the prestigious *Harvard Law Review*.

Ginsburg excelled in law school despite the challenges of caring for a young daughter and a husband who was suffering from testicular cancer at the time. She said, “If you have a caring life partner, you help the other person when that person needs it. I had a life partner who thought my work was as important as his, and I think that made all the difference for me.” The two would enjoy a successful and loving partnership for over 56 years of marriage. During law school, she not only continued her own studies but also took notes for her husband so that he would not fall behind in his studies while he convalesced.

Martin recovered, graduated from law school, and accepted a position at a New York law firm. To join her husband in New York City, Ruth transferred to Columbia Law School, where she was elected to that school's law review. She graduated first in her class in 1959.

Despite her outstanding academic record, Ginsburg continued to encounter gender discrimination while seeking employment after graduation. Though recommended for a Supreme Court clerkship, she was denied an interview. Ginsburg has said that no law firm in New York City would hire her. Her mentor, law professor Gerald Gunther, helped her obtain a clerkship by telling U.S. District Judge Edmund L. Palmieri that he

would never send any other top candidates to Palmieri for a clerkship if he did not give Ginsburg a chance. Ginsburg clerked for Judge Palmieri from 1959 to 1961, having had the customary one-year clerkship extended for a second year. Ginsburg went on to teach at Rutgers University Law School (1963–72) and at Columbia (1972–80), where she became the school's first female tenured professor.

During the 1970s, Ginsburg also served as Director of the Women's Rights Project of the American Civil Liberties Union (ACLU). In that capacity, she argued six landmark cases on gender equality before the U.S. Supreme Court, winning five of them. Ginsburg recognized the unconstitutional unfairness of how women were treated, by law, differently from men. Hundreds of state and federal laws restricted what women could do, barring them from jobs, rights, and even from jury service. She employed her intelligence, courage, and tenacity to devise an effective legal strategy to address these injustices.

In 1971, Ginsburg wrote her first Supreme Court brief in the case of *Reed v. Reed*. Ginsburg represented Sally Reed, who thought she should be the executor of her son's estate instead of her ex-husband. The constitutional issue was whether a state could automatically prefer men over women as executors of estates. The answer from the all-male Supreme Court: no. It was the first time the court had struck down a state law because it discriminated based on gender.



RBG at the Supreme Court swearing in WBASNY members (2017)

Ginsburg would go on to file dozens of briefs seeking to persuade the courts that the 14th Amendment guarantee of equal protection applies not just to racial and ethnic minorities but to women as well. Her victories at the Supreme Court gave rise to a revolution in gender equality jurisprudence under U.S. Constitutional Law by extending the Equal Protection Clause of the Fourteenth Amendment to women.

In 1980, President Carter appointed Ginsburg to the U.S. Court of Appeals for the District of Columbia. She served there until she was appointed to the U.S. Supreme Court in 1993 by President Clinton. There, her impact on cases involving civil rights and equality under the law was profound.

In 1996, Justice Ginsburg wrote the Supreme Court's landmark decision in *United States v. Virginia*, which held that the state-supported Virginia Military Institute could not refuse to admit women. “Reliance on overbroad generalizations ... estimates about the way most men or most women are, will not suffice to deny opportunity to women whose talent and capacity place them outside the average description,” Ginsburg wrote.

In 1999, Justice Ginsburg was awarded the American Bar Association's Thurgood Marshall Award for her contributions to gender equality and civil rights.

In 2000, Justice Ginsburg began to gain notoriety for her blistering dissents, notably with her objection to the majority's decision in *Bush v. Gore*, which effectively decided the presidential election in favor of President

JUSTICE RUTH BADER GINSBURG 1933-2020



WBASNY members & Ginsburg in Cooperstown, 2012



Ginsburg with Irwin & Karen Rosenthal

George W. Bush. Ginsburg deliberately and subtly concluded her decision with the words, "I dissent" — a significant departure from the tradition of including the adverb "respectfully."

Justice Ginsburg made her dissents a special event in her signature style, delivering them wearing her "dissenting collar." She viewed her dissents as a chance to persuade a future court. "Some of my favorite opinions are dissenting opinions," she told NPR. "I will not live to see what becomes of them, but I remain hopeful."

Dissenting in *Ledbetter v. Goodyear* in 2007, she called on Congress to pass legislation that would override a court decision that drastically limited back pay available for victims of employment discrimination. The resulting legislation was the first bill passed in 2009 after President Obama took office.

On June 27, 2010, Justice Ginsburg's husband Martin died of cancer. Martin had been her biggest supporter throughout her career, and she described him as "the only young man I dated who cared that I had a brain." The day after his death, Justice Ginsburg was on the bench reading an important opinion she had authored for the court. She was there, she said, because "Marty would have wanted it."

In 2013, when the Supreme Court struck down a key provision of the Voting Rights Act, contending that times had changed and the law was no longer needed, Justice Ginsburg dissented, noting that throwing out the provision "when it has worked and is continuing to work ... is like throwing away your umbrella in a rainstorm because you are not getting wet."



NYWBA Director Kay Marmorek dressed as her superhero RGB

In 2014, she dissented fiercely in *Burwell v. Hobby Lobby*, a decision that allowed some for-profit companies to refuse, on religious grounds, to comply with a federal mandate to cover birth control in health care plans. Such an exemption, she said, would "deny legions of women who do not hold their employers' beliefs, access to contraceptive coverage."

In 2015, Justice Ginsburg was in the majority on two landmark Supreme Court rulings. On June 25, 2015, she

was one of the six justices to uphold a critical component of the 2010 Affordable Care Act — often referred to as Obamacare — in *King v. Burwell*. The decision allows the federal government to continue providing subsidies to Americans who purchase health care through "exchanges," regardless of whether they are state or federally operated. On June 26, 2015, the Supreme Court, with a 5–4 majority ruling, handed down its historic decision in *Obergefell v. Hodges*, which made same-sex marriage legal in all 50 states. Justice Ginsburg is considered to have been instrumental in the decision, having shown public support for the idea in past years by officiating same-sex marriages and by challenging arguments against it during the early proceedings of the case.

In 2016, Justice Ginsburg released *My Own Words*, a memoir filled with her writings that date as far back as her junior high school years. The book became a *New York Times* Best Seller.

Justice Ginsburg endured several health challenges since being appointed to the bench, undergoing treatment for colon cancer, pancreatic cancer, and lung cancer. Through all the grueling medical procedures, she persevered and continued to dedicate herself to her life's work of making the United States a more perfect union for all its people.

Justice Ginsburg once said, "Fight for the things that you care about, but do it in a way that will lead others to join you." Her fighting spirit inspired millions, helped to transform our laws and our lives and catapulted her to rock-star status among people of all ages who affectionately nicknamed her "the Notorious RBG."

Recognizing that our country has a long way to go to ensure equal rights to historically oppressed people, Justice Ginsburg expected those influenced by her work to take up her torch. "Dissents speak to a future age," she said, "... the greatest dissents do become court opinions and gradually over time their views become the dominant view. So that's the dissenter's hope: that they are writing not for today, but for tomorrow." Her powerful words, including her great dissents, will live on, not simply as historical footnotes, but as a blueprint for creating a more just nation in the generations to come.

While we grieve the loss of the woman who inspired us, we must also resolve to honor her legacy by working to the very best of our abilities to repair those tears that remain in our society and fighting to the end to secure justice and equality for all.

Reflections by Jessica Wang, NYWBAF Fellow at Legal Services NYC

I spent this past summer interning at Legal Services NYC's (LSNYC) Pro Bono Unit through the New York Women's Bar Association Foundation Fellowship. One of LSNYC's core initiatives is immigration relief for low-income survivors of domestic violence, as well as LGBTQ individuals who are fleeing persecution. LSNYC also has an Affirmative Violence Project aimed at the local LGBTQ population to widen the program's reach and address broader communities across the city who are eligible for asylum, but are either unaware or cannot access the services of the program.

The outreach initiative I worked on is a new affirmative initiative specifically targeted to women who have suffered gender-based violence in the form of female genital mutilation (FGM), which is a well-established basis for granting asylum. The initiative explored ways to reach out to these women and relevant medical services providers. It also helped gather legal research on these types of cases to help determine whether or not they would be successful if brought in court. Although the case law for FGM-based asylum in our jurisdiction was scarce, cases from sister circuits provided clarity as well as a generally well-established standard.

It was particularly heartening to see the effects of medical research and NGO advocacy in the progression of case law for asylum seekers. For example, many initial FGM cases did not receive affirmative judgments because courts were operating under the misguided belief that FGM procedures could only take place once when, in reality, there were numerous procedures. Subsequent rulings held that the asylum claim was premised on how the women were persecuted by FGM as a result of their gender and belonging to a particular cultural or tribal group.

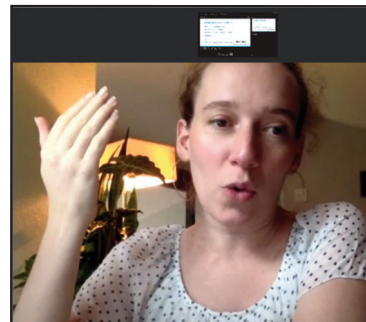
Initially, LSNYC conceived of this new initiative focusing solely on FGM as a basis for asylum. However, when our research demonstrated an overlap with asylum cases based on threats of honor killings, we decided to include honor killing-based asylum claims as part of the initiative as well. The research gathered through this initiative will not only inform the project but will form the foundation for a new training at LSNYC on honor killing and FGM-based asylum claims.

I was also assigned a case for a client who was fleeing persecution in his home country for being a member of the LGBTQ community and having an intellectual disability. In preparing for his removal hearing and the evidentiary burden for an asylum claim, we had to research the way his home country treated LGBTQ individuals and members of the intellectually disabled community. Additionally, we had to defeat the government's potential rebuttal that the country was willing to come to the aid of our client despite his being persecuted. Unfortunately, my research elicited only blanket statements about the inefficacy of government agencies in bringing persecution cases to justice or holding corporations accountable for equitable practices. Thankfully, with the guidance of my supervisor and another LSNYC attorney with experience litigating asylum claims based on intellectual disabilities, we were able to construct our research based on prior affirmative Board of Immigration decisions concerning similarly situated countries with government administrations who were unable or unwilling to protect their citizens from persecution. This experience taught me the importance of flexibility and creativity when it comes to case strategy.

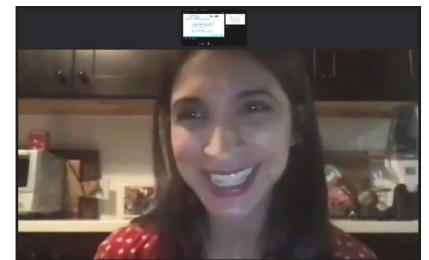
Furthermore, while this particular case involved a male client, the research tools and case law it builds upon will also benefit female clients in the future. LGBTQ-identified women who also face discrimination due to their mental

CLE: When Home is Where the Hurt Is

The NYWBA's Domestic Violence Committee held a CLE on September 2, 2020 entitled *When Home is Where the Hurt Is: Assisting Immigrant Domestic Violence Survivors*, led by **Micah Horwitz, Esq.** from New York Legal Assistance Group and **Pooja Asnani** from Sanctuary for Families, Center for Battered Women's Legal Services. The panelists provided an overview on how to screen for immigration eligibility for survivors, as well as on the current atmosphere for immigrants in the United States today. Particularly in the midst of the COVID-19 pandemic, when we know survivors are increasingly isolated and at risk of escalating violence, it is all the more important to broaden our knowledge base to ensure we are able to holistically advise survivors with whom we are in touch and provide them with further access to legal services to enhance their access to safety and protection. Ms. Horwitz and Ms. Asnani's expertise enabled them to build upon the skills of CLE participants from a wide range of practice areas, in order to more holistically respond to the needs of immigrant survivors, identify forms of relief for which they may be eligible, and thereby help them lessen their dependence on their abusive partners.



Micah Horwitz, NYLAG, walks participants through issues that may arise when working with immigrant survivors



Pooja Asnani, SFFNY, walks through eligibility for T visas for survivors of trafficking.

disabilities are often the targets of physical, mental, and sexual abuse. Similarly, the governments of their countries of origin are either blithely or deliberately ignorant of their plight and refuse to take concrete steps to protect them. Our case provides guidance to attorneys in our organization who have similarly-situated clients seeking asylum.

Finally, I would like to thank NYWBAF for their fellowship, which allowed me to pursue a gender focus in the work I produced this summer. It was overwhelmingly clear that gender-based violence is a pervasive reality for many asylum seekers. I hope the work that I pursue post-graduation will positively contribute to the jurisprudence of affirmative asylum claims and the recognition of gender as a protected status for asylum claims.

Jessica Wang is a 2L at Cardozo School of Law

NYWBA Pro Bono and Public Service Committee

NYWBA is pleased to announce the formation of the Pro Bono and Public Service Committee. The goal of this new committee is to facilitate our members' participation as volunteer attorneys. It will inform our members about ways to participate with established pro bono organizations, educate our members about the ethics and logistics of pro bono assignments, and conduct CLEs on subject matters that have a high need for volunteer attorneys. In the future, the committee looks forward to engaging in public service by directly providing clinics and discussions. The Co-Chairs of the Committee are **Alison King**, Pro Bono Counsel at Arnold Porter, who has an established career assisting low-income individuals, and **Rose Marie Cantanno**, Associate Director of the Consumer Protection Bureau at New York Legal Assistance Group, who represents and advocates for homeowners in all aspects of foreclosure. We encourage you to join this committee during its inaugural year to discover how you can include pro bono representation in your practice and to engage with the committee in carrying out its goals and activities. If you are interested in being a part of this new committee, email the Co-Chairs at probono@nywba.org.

Period Poverty Donation Drive

Under the leadership of our Immediate Past President **Virginia A. LoPreto**, the NYWBA made a commitment to address the issue of "Period Poverty," which is the lack of access to sanitary products needed during menstruation.

Our community cares about issues affecting the lives of women and girls, most of whom menstruate during some portion of their lives. Rationing of tampons, pads, or other menstrual products can cause unnecessary humiliation and trauma, interruptions to school and work, and even lead to toxic shock syndrome, a potentially life-threatening condition.

Those who are fleeing domestic abuse and human trafficking are often forced to choose between a life of violence and a life of poverty. Many homeless women and girls have to sacrifice buying sufficient hygiene products to buy food for themselves and their children, putting their health in jeopardy.

This year, the NYWBA will collect donations for the purchase of menstrual products and drug store gift cards for two local organizations.



Covenant House New York is New York City's largest provider serving youth experiencing homelessness. Annually, it provides shelter services to over 1,900 young adults ages 16-24, using trauma-informed principles to help homeless youth leave the streets and achieve independence. Covenant House New York provides housing, health care, and support services including workforce development, vocational training and educational support. It maintains an on-site clothing boutique, providing free shirts, pants, shoes, and other accessories for any young person who is in need.



Sanctuary for Families serves nearly 10,500 survivors of domestic violence, sex trafficking and related forms of gender violence in New York City every year. It provides a wide range of assistance including shelter, legal, clinical, and economic empowerment services to help clients transform their lives. Sanctuary for Families also maintains The Butterfly Boutique, an on-site space where clients can "shop" for donated clothing, toiletries such as menstrual products, accessories and other basic necessities to meet their immediate needs – 100% free of charge.

Both organizations are in dire need of hygiene products and drug store gift cards to help their clients who cannot afford them.

The NYWBA asks its members to consider making a donation to this important cause. Show New Yorkers in need that this is a community that cares about them.

To donate, go to

<https://www.nywba.org/donation/>.

DONATE



10% discount for NYWBA members

JAVON ZOW
Store Manager
T. 212.421.4444
50th@SuperRunnersShop.com
JAVON.ZOW@SRS.COM

Are Women More Likely To Lose Custody If They Claim Their Child Has Been Sexually Abused By The Father?*

By Patricia Ann Fersch

Complaints About "Inappropriate Touching"

As a family law practitioner, I often hear (usually from mothers) complaints about the father touching their child's private parts inappropriately. These complaints go beyond what would be considered "appropriate" touching such as helping a child take a bath, or helping a male child urinate in the toilet or a female child clean herself properly after using the toilet. The child can be male or female but the complaint is the same—the father is touching the child for his own sexual gratification and the mother wants his visitation stopped, supervised and possibly criminal charges brought against him. She claims to be acting to protect the child. There is a swift denial by the father but an investigation into the claims raised by the mother is commenced.

There is no physical evidence of a "bad touch"—no scratches, abrasions, infections, rashes or tears of all which under a proper medical examination could lead a medical professional to the conclusion that sexual abuse had occurred. The only witnesses are the father or the child who could be as young as two years old or even younger, who by nature of his/her age and vocal abilities would be an "unreliable" witness under questioning.

Courts Considerations in Addressing These Cases

Without any physical evidence, what can a court do? The following are considerations a court must make in its determination of child sexual abuse:

- The court must consider the relationship between the parties to the extent that it must look at whether the allegation is being brought because the mother, accuser, does not want the father to have a relationship with the child. Allegations of sexual abuse are cause to suspend or order visitation to be supervised temporarily while an investigation proceeds.
- The court must consider was the complaining parent or the accused sexually abused themselves perhaps making them hypersensitive to issues of a sexual nature involving their child?
- The court must consider potential coaching of the child by the mother to achieve the desired result—the child reporting inappropriate touching by the other parent.
- The court must consider the result of experts assigned to the case, including forensic psychology experts trained in interviewing children in sexual abuse cases and making assessments as to the allegations being made.

The Cases

Perhaps one of the most publicized claims of inappropriate sexual touching occurred in the case brought by Mia Farrow against Woody Allen alleging inappropriate sexual conduct between Mr. Allen and his and Ms. Farrow's adopted daughter, Dylan Farrow, who was age 7 at the time of the allegation in 1992. The investigation was conducted by the Connecticut State's Attorney who referred Dylan to the Child Sexual Abuse Clinic at Yale-New Haven Hospital who concluded that Woody Allen did not sexually abuse Dylan. No charges were pressed against Mr. Allen. To this day, Mr. Allen denies that they ever occurred. Ms. Farrow, now age 35, continues to insist on the veracity of her claims and is supported by her brother, investigative reporter Ronan Farrow, born Satchel Farrow, the only biological child of Ms.

Farrow and Mr. Allen. Dylan Farrow wrote an open letter to the New York Times on February 1, 2014 at the age of 28, during the start of the "Me Too" movement.

"Unfounded"

Most often in these cases the child protective agency is called in by the court to "investigate" these claims or a claim is made direct to them. As part of their investigation, they may retain the services of a forensic psychological expert to interview the child using the "funnel" approach—open ended answer questions asked of the child initially narrowing down to very specific questions. The child may also be interviewed by the police department, in New York City, the Special Victims Unit (SVU).

A parent should absolutely avoid interviewing the child themselves as their interview may simply confuse the child, or appear to a court or investigator that they are coaching the child and ultimately derail the investigation.

At the conclusion of the investigation, if the investigative body has insufficient evidence (physical evidence or testimony), the charges may well be deemed "Unfounded." This is not necessarily a claim of absolute "Innocence" or "Not Guilty" but rather is a statement by the investigative authority that they have insufficient evidence to support the complaint made.

Custody of the Children

While these sex abuse allegation investigations are taking place, a civil proceeding for custody of the child is likely taking place as well.

In the case of Woody Allen, a New York State Supreme Court judge awarded custody of all the children of Ms. Farrow and Mr. Allen to Ms. Farrow notwithstanding that the investigation against him was deemed "Unfounded." The outcome in Ms. Farrow's case is unusual. In a study by Professor Joan Meier, The George Washington University Law School, mothers who make allegations of sexual abuse are credited as truthful 19% of the time. Schmidt, Samantha, "A gendered trap: When mothers allege child abuse by fathers, the mothers often lose custody, study shows" (Washington Post, July 29, 2019). According to Professor Meier, "When you go to court and you report child sexual abuse by the father, you're done. You're cooked."

In other cases, where the complaining parent continues to pursue allegations of sexual abuse against the child even after investigations which found to the contrary, the complaining parent or mother places their own custody of the child in jeopardy as the father can argue that so long as the mother continues to believe that they are sexually abusing the child, their ability to have a positive relationship with the child is forever damaged, essentially amounting to a claim of parental alienation. The court may well agree and in my experience, the court twice awarded custody to the "alleged abusers," the fathers. In my cases, both mothers claimed they did not believe that the fathers were sexual abusers during court proceedings but their actions in both cases belied those statements. They continued to make the claims outside the courtroom, proving their statements overall to be not credible.

(Continued on Page 9)

Fersch (Continued from Page 8)

If the complaining parent, usually the mother, can present a good faith basis for their belief as to the sexual abuse but the evidence presented at court shows the contrary or more exactly, that the allegations are "Unfounded," the court in a "best interest of the child" analysis will not necessarily award custody to the father. In this situation, the mother will be shown to have acted appropriately to protect the child based upon her "reasonable" beliefs at the time of the allegations.

What About the Accused Fathers?

No crime in our society is considered worse than sexually abusing children. There are numerous cases of stigmas of false claims of sexual abuse ruining lives of the accused. The adage, "where do I go to get my reputation back" applies. To be accused of sexually abusing your own child is horrific for any parent, often a father, especially one who did not sexually abuse his child. The taint of the accusation alone is devastating as well as the loss of time with the child as the investigation into the allegations goes on. These fathers ask themselves what must my son or daughter think of me? Who are they to believe?

Does the Family Court Always Get it Right?

In the Meier study only reported cases were reviewed and so the results may well be skewed to only those judicial opinions that were published. Most cases heard in Family Courts are not reported. The results raise a troubling issue though, does Family Court get it right? Are women more likely to lose custody as a result of reporting child sexual abuse?

Are women more likely to use claims of sexual abuse to try to gain a custodial advantage over children against men in a child custody proceeding thereby making the Family Court decisions as reported in the Meier study accurate, or are the courts unwilling to hear and lend credibility to claims of sexual abuse by a child's father with no physical evidence proffered by the mother, rendering a "gendered trap" for mothers claiming "abuse"?

As is often the case in custody cases, the deliberating process is highly subjective. Expert reports and GALs (Guardian Ad Litem, also sometimes called AFCs—Attorneys for the Children) are appointed by the court to investigate on behalf of or represent the child(ren), are often appointed by the court. Meier's study is even more disturbing in this regard as she reports that the likelihood of a woman losing custody is even greater where there is a GAL or an expert investigator.

As a family law practitioner, I find this topic to be incredibly difficult and painful with extremely difficult consequences. I look to evaluate each potential client on their claims of child sexual abuse or their denial of same if they have been accused. I look towards motives and the actual reporting and how they came to the information they are reporting. Did they question the child to obtain the information? Did the child come to them and tell them? Under what set of circumstances did the child come to them? If it is a father, I ask detailed questions about why the mother would say this about him? Why she would make it all up if not true? Was there something he did that could be considered inappropriate or sexual in nature with the child? I evaluate how zealous the mother is in prosecuting her claims against the father, is it because she is "protecting the child" or seeking to harm the father. In sum, I try to gather the initial evidence that the court will inevitably need to weigh and make my own assessment of the parent's credibility before the case begins.

COMMITTEE CALENDAR

Criminal Law Committee Meeting via Zoom conference on Monday, October 5, 2020 at 6:00 p.m. RSVP CrimLawChairs@nywba.org.

Diversity Committee Meeting via Zoom on Wednesday, October 14, 2020 at 6:00 p.m. RSVP DiversityChairs@nywba.org.

Solo and Small Law Firm Committee Meeting via Zoom conference on Thursday, October 15, 2020 at 9:00 a.m. Topic: "Starting and Growing Your Own Practice." RSVP ssfchairs@nywba.org.

The New York Women's Bar Association
invites you to Zoom with a Judge

Featuring:

Honorable Andrea Masley
Supreme Court, New York County

Discussion Facilitators:
Vivian Rivera-Drohan and **Fran Hoffinger**

Participation will be limited to
20 NYWBA members only*

Date: Thursday, October 8, 2020

Time: 5:00—6:00 p.m.

Place: via Zoom

RSVP: <https://bit.ly/3cy60uZ>

*Your membership MUST BE
current to participate.
To find out your membership status,
email ed@nywba.org.

Save the Date

*The NYWBA Litigation Committee
will present a CLE on the new Title IX rules*

October 22, 2020, 6-8pm



* This article was previously published on August 21, 2020 on [Forbes.com](https://www.forbes.com)

How To Get an Order of Protection During a Pandemic

By Margaret C. Farmer

Walking into Brooklyn Family Court in the morning, it can feel like an airport. There's a quick-moving, anxious energy. The ceiling soars about 3-4 stories high and the revolving door is turning nonstop. A long line of people are weaving through the labyrinth that leads through security. There are officers guiding you, and litigants rushing in and out. There's a feeling of anticipation and nervousness.

But it's not an airport, it's a hall of justice. It's a place where people go seeking an answer when faced with some of life's most difficult problems. It's a safe place for victims of domestic violence to walk into and ask for the state's protection when a family member or intimate partner is abusing them.

That was up until mid-March 2020: domestic violence survivors could walk into Kings County Family Court, tell the court officers that they wanted an order of protection, and would be directed to the "Petitions Room" on the 6th floor to begin a process that would take most of the day, but at least, by the end of the day, they would have seen a judge and, hopefully, received the relief they asked for.

From one day to the next, as the threat of COVID-19 became realized in New York City, the courts announced that their doors were closing. No one could walk into the courthouse for help. Six months later, their doors remain closed.

Starting shortly after the initial closing and continuing today, Family Court only accepts new cases that are "emergency/essential." These cases are heard exclusively in a virtual setting, i.e. by phone or video with the Skype video calling platform. The definition of "emergency/essential" is a new standard that practitioners struggle to decipher. At first, it was unclear what kind of cases would be heard. Eventually, orders of protection began to be accepted for filing, and the initial proceedings took place. But only new filings; all other orders of protection were simply extended.

The Court created a new virtual mechanism by which petitioners could file for an order of protection by email and then appear by phone. However, this process requires access to a computer and a document drafting software such as Microsoft Word, or assistance by an attorney or nonprofit organization. Today, would-be petitioners are calling the court for assistance, and are given the phone number for an organization to assist them in drafting the family offense petition. The petitioner can then contact the organization, explain their story and see if they qualify for assistance. If they do not, the petitioner is referred elsewhere or back to the Court. If they do, and the organization has the capacity to assist, an attorney can draft the pro se family offense petition, attach the petitioner's signature, and email the petition to the Court. This process takes about two to three hours at a minimum, as the attorney must collect the entire history of domestic violence, including any aggravating factors, the relief being sought, and evaluate and advise on other legal issues such as custody, visitation, support and criminal cases. The petition must address other

issues too, including whether the parties have other pending cases, any current or previous orders of protection, children in common, whether the respondent has access to firearms, or has used or threatened to use a firearm, and additional questions. After the petition is emailed to the Court, the Court staff will email the petitioner a phone number to call and appear before the Judge. The Judge will decide whether the order of protection will be granted and under what terms. A summons, with virtual appearance information, and the temporary order of protection, if granted, will be emailed to the petitioner. Adjourn dates could be months away if no children are involved or as little as a week away if there are children or someone is excluded from their residence.

There are obvious problems with this system, including that many people in need of assistance do not have access to the technology necessary to complete this process, or the language capability or other assistance that was offered previously in person. Legal Services organizations are taking the place of court staff, who used to file these, which puts a strain on legal services resources. The assigned counsel panel has stepped up to enter cases earlier than before, but the entire system continues to be pushed to its limits. Petitioners can only file for an order of protection, not custody or support. Many domestic violence survivors are not able to pay bills without support, so they are deciding between safety and homelessness. COVID-19 is a particularly dangerous time for domestic violence victims, as they face increased isolation and danger at home with their abusers, and decreased access to resources, along with many other challenges.

The Domestic Violence Committee of the NYWBA continues to advocate for more access to the courts, especially around the filing of petitions for orders of protection, custody and support. We understand the limited resources of the family court, and know the court system is trying, but clients need to obtain safety, while knowing they can also obtain custody and support.

To file a family offense petition, SELF-REPRESENTED INDIVIDUALS should email: **NYFCApplications@nycourts.gov** or call 646-386-5299. You will be provided assistance on how to proceed.

ATTORNEYS should use the new Electronic Document Delivery System (EDDS.) For information about using EDDS, go to **<https://bit.ly/32RUcjE>**.

For further information, you can contact the NYC Family Court by email at **NYFCInquiry@nycourts.gov** or by telephone at 646-386-5299.



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- Add NYS resource info (above) in your cell phone under a fake contact name to avoid suspicion.
- Create a code word for friends and family that will tell them you need help.
- Know the areas in your home with a lock on the door.
- Prepare a go-bag with important documents, medication and extra clothing.
- Tell your family and friends where you will flee if you need to leave urgently.
- Talk with your children about safety so they have a sense of acceptable situations.
- Advocates are available to help you days, evenings and weekends.

opdv.ny.gov  



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