Family Court Representation in the Virtual Age

Kristen Conklin: Hello and welcome. My name is Kristen Conklin and I am the Executive Director of the New York State Permanent Judicial Commission on Justice for Children. COVID-19 has required judges, attorneys and litigants to embrace new and perhaps unfamiliar technologies in order for the courts to perform their vital functions during this era of virtual proceedings.

With the generous support of the Redlich Horwitz Foundation, the Unified Court System is producing a series of remote programs to show attorneys, parents, youth and child welfare agencies how to best utilize technology platforms to communicate with their clients and participate in hearings and conferences.

On today's program, we have the Honorable Richard Rivera, who wears many hats in the Third Judicial District as an acting Supreme court Justice, Supervising Judge of the Domestic Violence and Mentor Courts, Presiding Judge of the Domestic Violence part, and also Presiding Judge of the Youth Part. He does all of that from the bench located in Albany County Family Court. We also have Professor Jaya L Connors, the Assistant Professor of Law and Director of Family Violence Litigation Clinic at the Justice Center at Albany Law School.

Welcome to each of you. Let's begin by briefly hearing from each of you about your roles and the hats that you may wear. Let's start with Judge Rivera.

Judge Rivera: Hello everybody. As you heard, it does seem like I have many hats. I was elected Family Court Judge and since then accumulated the other responsibilities that were mentioned. It keeps me busy. But I signed up for this and I don't regret it. I don't have any regrets. Obviously, we've had to change with the times, but the different hats that I wear do allow me to do different things. To me, that makes the whole job as a whole more interesting. The Youth Part keeps me busy. In fact, right before coming here to this session, I had to handle a couple of cases in the Youth Part this afternoon. So, that all keeps me busy.

As you know, I was elected in 2014. They created the domestic violence part here in Family Court in 2017 and that's when I was appointed to preside over that part, which I still do today. We don't have an integrated court here in Albany County, and that was sort of a step in that direction, to try to keep all domestic violence cases with one particular judge, of the four of us that currently preside in this courthouse. So, I've been doing that since.

We also then started to Raise the Age to 18, and in 2018, when it became law, created the Youth Part. That law requires that it be a sitting Family Court judge that presides over it. So, I was appointed to preside over that. In that court, I do sit technically as Acting County Court Judge, because it is still a criminal court with criminal matters. So, I do that. Then, as you mentioned, in 2019 I was elevated to Acting Supreme. So now, I also handle matrimonial cases and article 78s, and some of the other matters that come to Supreme Court. So, it does keep me busy.

On top of that, I do like to speak to classes, and Professor Connors is nice enough to invite me every year to speak to her class. I enjoy doing that and I've done that with other courses as well. So, I try to keep myself busy.

Kristen Conklin: It sure sounds like it. Thank you so much, judge. Professor Connors?

Prof. Connors: I should've gone first because it's going to seem like after all that's on Judge Rivera's plate, it's going to be like my work is so easy peasy. What I do is, I'm the Director of the Family Violence Litigation Clinic at Albany Law School, where second and third year law students represent survivors of domestic violence, intimate partner violence, primarily in Family Court matters. We represent children, where I'm on the attorney for the child panel in Albany County Family Court. So, the court appoints cases involving children in families or homes where there's domestic violence, and the students and I work on these cases. I supervise the students. In Rensselaer County Family Court, our clinic represents adult survivors of domestic violence. Generally, these cases are Article 6 Custody Visitation, Article 8 Family Defense cases, sometimes Article 10 cases, which is abuse and neglect.

I also teach a weekly class on family law with a focus on domestic violence. As Judge Rivera mentioned, he has graciously, given his enormously busy schedule, made time to speak to my students. It's been really wonderful for the students to hear from a sitting Family Court judge who wears so many hats, who has such experience and background in the area of domestic violence, it's pretty huge, and I really appreciate it.

Kristen Conklin: Great. Thank you. So, we'll stick with you Professor Connors. A pandemic doesn't stop family violence. It doesn't mean PINS no longer needs supervision. It doesn't mean juvenile delinquents no longer need to be dealt with. How did the system deal with this reality in a virtual setting? Within your particular role, what does that look like now? Then, we'll move to Judge Rivera with the same question.

Prof. Connors: Okay. I'll speak to primarily domestic violence because that is what my clinic handles, not so much the JDs or the PINS.

With the onset of COVID, as you're aware, the courts responded immediately and they limited the kinds of cases the courts would be hearing. They limited it to what they deemed to be essential matters. Luckily, the domestic violence cases were deemed essential. Family violence cases were deemed essential. So, as far as my clinic and our clients and the students were concerned, it was pretty seamless, which was again, thanks to the way the courts handled it so quickly, by going remote. So our matters, all the matters that we have before the court went forth. They were adjourned for a short time with temporary orders being extended, but all matters were heard remotely. I'll defer to Judge Rivera on the JD and the PINS matters.

Judge Rivera: To piggyback and echo what Professor Connors said, even though there was the shutdown from COVID, the court system never completely shut down. We did continue to address what were categorized as essential matters. As Professor Connors indicated, issues of domestic violence were considered essential, so litigants were allowed to continue filing petitions for temporary orders of protection. But along with that, we were also considering JDs and PINS as essential matter. So, if a petition was filed for a juvenile delinquent who had been arrested for committing an offense, those were still being heard as essential. Same thing with PINS, any issues involving runaways, any outstanding warrants that hadn't been vacated were addressed as essential matters.

The court was also addressing removals. So, any abuse and neglect cases that required the removal of children, those were still being considered essential matters. Aside from that, on a case-by-case basis, some child support issues. If there were really needs from the family, and there were no child support orders and the judge considered it essential, then those matters were heard. But for the most part, everything else was considered non-essential initially. They consolidated our space, so we were all located here in Albany at the Judicial Center.

So in every type of court, a judge was assigned on a weekly basis, to be the essential matters judge. We went to the courthouse actually, and we did appearances there. Some of them were in-person, a lot were virtual. Then, as things started progressing, and what I mean by that is, as COVID started getting worse here in New York or the numbers started climbing, they started changing that slightly.

: At about a month later, I would say maybe around April, we became virtual. So, even the judges who were on duty were appearing from home, or a virtual location. But, everything's still continued, and nothing was ceased, nothing halted. In fact, to give you an example, at one point, there was an officer at the essential matters court that tested positive for COVID. So, they needed to shut down the physical building. What they did is that, they had one of the judges from our sister counties preside over any essential matters, because they were not able to do that physically at the courthouse in Albany.

: Then obviously we eventually went virtual, so that no longer was necessary because we were all appearing from home. But, they wanted to continue the process. Now we're at, because I believe part of your question was what it looks like now, correct?

Kristen Conklin: Yes.

Judge Rivera: So since then, we're at sort of beyond stage four. So, we're almost completely "back to what it used to be." The only thing, the only function that we as a court system are not yet allowed to do is to issue orders on default. We can dismiss petitions for failure to prosecute, if the people have been noticed on an appearance and failed to show. However, we're not allowed to issue orders on default if the respondent party is not present. So, we have to keep adjourning those, but those are not necessarily essential. Because, any matters related to domestic violence, orders of protection are being administratively adjourned. I think right now, most of them expire in December.

For those that aren't administratively adjourned, the judges have the ability to adjourn and extend those orders of protection. But, everything else pretty much is being handled now. We are having in-person appearances, but there's also this variation from Skype, 100% Skype, to some in-person, others on Skype, some on the phone, completely on the phone. So, there's this whole variation now because of the adjustments that we've had to make.

Prof. Connors: I'm sorry, I have a quick question for the judge. The inability to issue default orders means you have to keep continuing the temporary orders, Judge. Are you coming up against standards and goals for some of these cases?

Judge Rivera: Well, the answer is yes. Right now, and I don't know when that's going to start, I think because of COVID, we're not being pressured on handling cases that are beyond standard and goals because the court system

understands, also court administration understands, that a lot of that was paused. So, if a petition was filed on January 13th, I think it was the following week that they shut the process down, then obviously that case, if they had an actual appearance, the clock started ticking for standard and goals, and it doesn't stop. So, those cases are probably beyond standard and goals by now.

However, what they did do for us to address that initially, they had us review all pending motions, and they had us review all pending decisions. So, while we were on this virtual process, the judges were required to address all of those, and decide all of those. So, cases that had pending decisions were all decided prior to the fully reopening of the court system. The only thing that is still being affected by standard and goals, are those cases that had appearances but had not yet been resolved. As of now, and let's hope things don't change, but as of today's date, and I haven't heard anything about you need to start working on your S&G numbers. But I can tell you, at least from my perspective, we've been working as hard as possible.

Prior to the reopening of the court system, we were having virtual conferences, which as the stages progressed, they allowed us to do more and more. One of those things was conferencing cases that had already been fully submitted, but perhaps not yet decided. Some of those did get adjourned, some of them did get resolved, others have been scheduled or waiting for hearing dates.

Prof. Connors: Great.

Kristen Conklin: Thank you both very much. Moving on a little bit, during this time and up until today, did you notice any trends, for instance, where there more family violence issues that you might trace to the pandemic?

Prof. Connors: Do you mind if I go first judge?

Judge Rivera: No. Not at all.

Prof. Connors: Well, I have this statistic up in my head. I know that New York State reported over 30% increase in the number of calls made to the state's hotline, the domestic violence hotline. I also heard, and this is from reading the statistics, the statewide statistics, that the shelter occupancy rates had risen. But, from meeting with local domestic violence providers in the Capital District area, they told me that initially the shelter rates went down when COVID initially hit our area because people were afraid. They were afraid to go into shelters because of fear of infection.

I've since heard as of last week that those shelter rates are all the way back up again. People are seeking shelter from family violence. I've also heard from others, legal services providers, not-for-profit organizations, that there are just right now too many cases to handle. That they have had to turn clients away, because they don't have sufficient staffing. This is something that I've heard from a couple of providers, legal services providers, is that, with lot of the court matter still being remote, batterers are breaking cell phones of the survivors. This is nothing new. This has always occurred, but now losing access to your telephone may mean losing access to everything, including the court, the attorney. It may mean your case is being dismissed because you're unable to appear.

Before COVID, if you needed to run and get away, you could go to a neighbor's house, you could go to a family member's house, maybe go to an elderly relative's house, somebody to help you to get to court. But now, again with COVID, and again, this is all anecdotal, I'm hearing that this kind of relief is no longer available to many of the individuals who are victims of domestic violence.

Judge Rivera: From the court's perspective, it did appear that there was a spike. Obviously, I'm not a statistician or anything of that sort, but I can tell you that it did seem like we had more requests for orders of protection, at least after the first couple of weeks. Initially, I think people didn't realize that they can actually come to the courthouse and file, because they heard that everything was shutting down. But, once they started realizing that, people were still finding petitions.

I have to say, it may not have been some of the people that Professor Connors is speaking of right now, because obviously they may not have had the ability to leave the home or to call the courthouse. I think most of these were people who now are home bound. Whereas the domestic violence in the home may not have risen to the level where they felt the need for an order of protection, because they could go to work, or the other person went to work, or they could leave the home and maybe things would calm down and they'd come back and there would be some semblance of peace, well, now they're all stuck in the house together, and where there's children, the children are as well.

While a domestic violence is domestic violence, it doesn't need something to be the reason for it. We all know that there are certain things that can trigger that for example, alcoholism or substance abuse can trigger it, issues with the children, issues with the home or just plain whatever. So, when you're in the same household together, and you're not able to leave, that's going to probably more than likely increase the

incidents of domestic violence. But, a lot of those people were coming to court, and we were able to remove the abuser from the home and give them that sense of security. So, it did seem like the applications were going up, but I can't fully say that that was solely because of COVID. It's just conjecture on my part, because it seems to make sense.

Some of those requests came from intimate partners that weren't necessarily married, didn't have children together, and maybe the relationship had technically ended, but they were living together. So, it was more of sort of an eviction. I say that because, once we finally were able to do the appearances, the petitioners indicate, "Well, he's moved. I no longer need the order of protection," and the petitions were being withdrawn. So, that may have been the difference there. Whereas, there were some true victims out there who maybe did not get access to the court because of what was going on at the home, there were others who were able to do that and got some form of relief.

As far as legal services providers, I did hear the same thing. Here in Albany Family Court, we use The Legal Project, and they've been extremely helpful for representing the victims of domestic violence. We use the law school as well, but right now Professor Connors program is focusing mostly on the children, and that's been extremely helpful. Then, we have a good 18-b panel, and there have been a certain number of attorneys, once the DV part was created, that I had chosen and gave some training to, to assess them. So, obviously we've been using them as well.

We try to make sure that those that need representation receive it. From what I understand, Equinox has still been assisting in that area. We also have the Help Center. The Help Center was virtually assisting petitioners with filing petitions here in court as well. I haven't heard any reports on that. I'm assuming it was working fine, but I do know that that aspect of assistance was still there.

Kristen Conklin: That's great to hear, Judge. Speaking of access to justice, were there any issues? What kind of access to justice issues may have been revealed? In your experience, did you observe any race, gender, economic or geographic specific issues that came up as a result of going virtual?

Prof. Connors: Well, I think from my perspective, we did have a couple of clients who did not have the resources. They didn't have an iPhone, first of all, and they didn't have good internet. In one of our cases, our clients had to access the elderly parent’s internet, and they wouldn't let her in the house, so she had to be out in the porch accessing the internet, to call into the

court. So, I think the one thing that this pandemic has from my perspective brought out is the fact that you need access to technology. Technology should not be a luxury, it should be accessible to everybody. Five miles down the road from where I live, and I live in a rural area, there is no internet access.

From our clinic's perspective, most of our clients who were single parents working minimum wage jobs, they were able to access the court through telephone. Maybe not through Skype, but through telephone. That was good, the fact that they could access the court. But on the other hand, you still have, and I know the judge is aware of this, because we've been on appearances where this has come out, there've been glitches where, it's hard to really fully hear what the court is saying, you don't know when to speak, sometimes there's static. So, I think having access to technology, decent technology, has been an issue that's come out.

I think that in terms of children, this lack of adequate technology, with schools going back now, and in many cases, in many situations, the schools are going fully remote or a hybrid, even if it's hybrid, there's some form of learning that's going to be remote learning. For these kids who don't have access to adequate internet, that's going to have an effect on their learning, and it's going to have an effect on access to justice issues for these children.

I just want to say, even in those cases where people did have access to a telephone or Skype or whatever else, you never know if that individual is totally safe. Because, they might say that they are safe, but you never really know, because you're not in the home with them. In the past, we could go, we could meet with our clients face-to-face. We're going to start doing that slowly, making sure that we're socially distanced and all that. But what it did show to us is, when COVID hit and everyone had to stay in their homes, when we were meeting with clients via Zoom, we weren't really sure whether or not that client was really alone.

Judge Rivera: I can see where that is certainly a possibility because, it is hard to tell unless you hear someone in the background, if they're alone or if they're safe, or if they're able to speak freely. If a police officer went to the door and the victim doesn't open the door fully, you can't really tell if someone's behind the door threatening them. So, that's the one aspect about this process, until there's that separation. Even then, that you're not fully aware of. When the cases once came to us here at the courthouse, I can say as far as access to justice or legal services, we did work or try our best to make sure that anyone and everyone who wanted

representation had that. That's the one thing that we've tried to do here in Family Court in Albany, all throughout, even prior to COVID.

Because I preside over the DV part, it's one of those things that I take seriously. We always assign an attorney for the children, so the children always have representation. There's never a worry about that. It's generally just the parents, the victims in this case, the survivors who may not have one. So, that's the one impact on not having the Legal Project at full capacity. But as I said before, we do have options, and we've been utilizing those options. I try to get the word out there as much as possible, that anyone who's a service provider, let victims know that they can request an attorney. That they should never feel like they can't or shouldn't. Even if they think they make too much money, sometimes there are those that are working think that they make too much money, and so they don't even apply. They should always apply because the judges can have some discretion over that, and they may be able to give them an attorney for free based on their budgets, and they can have that assistance.

But, that is one of those issues as Professor Connors has mentioned, that has come to light, that not everyone has access to electronics. Sometimes when they do have access to electronics, depending on the case, that access can be hampered or terminated, especially in domestic violence cases. We as a court have been sensitive to that. I know that I never shy away from calling somebody. The glitches that we've found out have forced us to keep adapting as we go along, but that's sort of a good thing. Honestly, maybe it took a virus to show us where we could improve the services we provide, or where we need to be flexible when maybe we haven't been in the past. It used to be that if you wanted to appear by telephone, you had to have a reason. You couldn't just simply say, "I want to appear by phone. I don't want to be in court."

While I often heard the survivors asking not to be present in the courtroom, I often still encouraged them to appear, and I reassured them, "We do have security here in the courtroom at all times, we have security outside, your attorney will be here. You can come with anyone you want to support you, including Equinox." But, if there was this adamant fear, then I was always willing to make any adjustments. Now, we sort of have to, but we're getting used to it. Just today, I had a glitch where I had an attorney in my courtroom, I had two attorneys on Skype, and then I had the litigants by phone. The attorneys on Skype couldn't hear the attorney in the courtroom, and he's yelling as loud as he could. So, I finally told the attorneys on Skype, "Just hang up, I will call you."

So, I had them on the phone with their clients, and the other attorney in the courtroom, and that worked a whole lot better. So, it's those kinds of adjustments that we realize we often need to make, and we try our best to do that.

Kristen Conklin: Well, you've, intentionally or not judge, led us right into my next question, which is: What lessons have we learned that we can apply in the post-pandemic era? I'd also like to tweak it a little bit and say: What are the positives of engaging in this virtual court system, and to the extent you can comment on what's here to stay, or what do you wish will stay, after we return to whatever the new normal looks like?

Judge Rivera: Well, if you don't mind me continuing, or if you want to go first Professor, you can.

Prof. Connors: No, judge. That's fine. I just briefly wanted to say that, I've heard from domestic violence service providers, that a lot of the victims, that they have really appreciated being able to appear remotely. They don't have to sit in waiting rooms, waiting for the case to be called, missing work with the alleged batterer sitting not far from them. Now, they can even go to work because, they know when they have to call in or when the court's going to be calling them, and just kind of slip out, have the court appearance and go back to work. They don't lose a day's worth of pay.

Also, for those survivors or victims who are primary childcare providers, they don't have to worry about getting childcare when they go to court. They're at home with their children and they can appear from their homes. So, I think that the virtual court is something that I have heard has really helped a lot of victims, both in terms of their emotional stability, as well as economically, and in terms of childcare.

Judge Rivera: I'm glad that Professor Connors said that because it sort of confirms what I felt and believed to be true, that there are a lot of positives, especially on the part of the litigants, regardless of the type of case, because they don't have to sit around in the waiting area waiting to be called. They're allowed to do other things, whether it's work or whatever they might need to do at home. They don't even have to sit inside their home, because they can appear virtually from their phone if they have one, and they could be in their car. Obviously, we don't want them driving while they're on the phone, but they could be in their car, they could be in the backyard, they could be in the home, wherever they want to be, and still be available for the court system and for their appearance.

From the attorney's perspective, same thing, because they also have to wait with their clients in the courthouse until their case is called. So, rather than billing their clients for dead time, so to speak, they can work on someone else's case while they wait for the Skype appearance or while they wait for the call. Their calls are now being handled for the most part on time, because with Skype, I just found out, you actually can have two different Skype invitations at that time. You can jump from one to the other. You probably don't want judges knowing that, but yes, I do know that.

But for the most part, you have to handle each case as it comes. So, if you're scheduled for 9:00, you can almost be assured it's going to go on at 9:00, unless the prior case ran over a little bit, but the attorney can do something else. They also don't have to leave home. The attorneys who have children who are still school-age and have the same issue as everyone else with a school aged child, can either do their homeschooling or work around that. So, there've been a lot of positives that I've heard and that I've seen. So, that's a good thing.

I think it's good for the court system to know how to be electronic, quite frankly, especially since a lot of us are probably older. I know there's some younger judges out there, but most of us are probably older. I was already used to Skype for business, because I'm a member of the Franklin Williams Commission and they're located primarily in New York City, so I couldn't attend every single meeting, which was once a month, so I would often Skype in. I was already used to this process. That wasn't an issue for me. But, it's opened a door to all these other glitches that we've worked through, and that I think are necessary. I have no problem if this continues, to a degree.

Some of the negatives are that, obviously, there were reasons, practical reasons, why sometimes the court would "double book," in other words, put two cases on for 9:00 and two cases on for 9:15. That's because sometimes cases would settle, other times they would withdraw, people would not show up. So, if you had a case on at 9:00 and your next one wasn't until 10:00, and they withdrew at 9:00, you have a whole entire hour with nothing to do unless you had other casework that was waiting. I don't mean that you sit around idly, but there are so many cases that need to be heard, it seems like a waste of time. So, we often scheduled more than one case for a certain time slot, for that purpose.

You can’t do that as much now. There's very little wiggle time and very little free time. The court system has to deal with a lot of other issues that have nothing to do with the litigants, for example, whether or not

you keep the staff here over time, which is past five o'clock, because that's a cost obviously to the county, and it's a cost to the system. So, there are these other reasons behind decisions that we make as a court system. So, we have to find a way to manage all of that and still address the reasons why we're all here, which is the litigants that come to our courthouse. But, that's minor, right? In the grand scheme of things that's minor.

The other thing is that, we also don't have that interaction, that face-to-face. Yes, I can see all of you on the Skype screen and we can do that with litigants, but it's not exactly the same as having people in your courtroom and you're having exchanges. There's something about that, that you sort of miss. But again, in the grand scheme of things, that's also minor. I don't know for sure what OCA is planning to do going forward, but I think for at least the foreseeable future, we will still be doing a lot of virtual appearances.

What I do plan on doing here in my courtroom, and I've already instructed the attorneys that, and not just for the family court, but also for the youth part and the matrimonial cases, any trials that I'm going to hear will be done in-person. I believe it's more expedient that way. Otherwise, it requires that everything be done in advance. For example, attorneys would have to submit their evidence in advance, if it's going to be by Skype, so that everyone has it at the same time, because you can't hand it in the courtroom if you're on Skype. They'd have to make their own witnesses available by Skype, and it can be very difficult to examine and cross examine somebody who's on a screen, because you can't control them the same way you could if you were in the courtroom. So, there is those minor things I figure it's best that it be done in.

However, I will make exceptions. I know there are people, for health reasons, who still don't want to come out, because there is no vaccine. I'm not going to force anyone to risk their own safety and their health and welfare, just for a trial. But, I am requiring that those trials and hearings be done in-person. Outside of that, we've been doing variations.

Prof. Connors: Judge, if I can ask a follow-up on that, is that basically a court-by-court or a judge-by-judge decision at this point?

Judge Rivera: At this point, it's a combination of both. I know that for example in New York City, their opening up process was delayed compared to us Upstate, because our numbers went down much quicker and were never as high, clearly. But, it's also court-by-court because not every court has the same amount of judges, not every court has the same amount of caseload. I do

want to say this, that even though we are fully open, it doesn't mean it's without restrictions. I must say that. They are limiting us to 50% of our courtrooms having in-person appearances at a time. So, it's not like all four of us are having appearances all the time.

So, my way of addressing that is to having it done mostly virtual and by telephone, and then allowing those people who wants to be in-person to actually appear. But, we do have a shared calendar in our courthouse that all four of us share. On that, we indicate when we're having our in-court trials so that we can limit it to two judges having a trial on any given day. So, that is how Albany Family Court has handled it, but I can probably guarantee you that other courts are doing it slightly similar, although we're all under the same restriction to limiting our court usage to 50%, at least in the Third District, let me say that.

Prof. Connors: I can speak to that. I think the judges are doing it differently. There're judges in another court where, each of the judges is handling their calendar differently, in terms of how they are holding appearances as well as hearings.

Judge Rivera: Well, and that doesn't surprise me. They didn't specify that we all had to do it exactly the same way. We just have to make sure that we're not using all four of our courtrooms for in-person appearances at the same time, that we are having at 50%. But beyond that, it really is up to us as to whether or not we do it completely virtual or some form or fashion thereof.

Kristen Conklin: Great. Thank you so much. I have a few questions that pertain mostly to Professor Connors, but Judge Rivera, I'll invite you to weigh in if you have comment on any of them.

Professor Connors, you were uniquely situated and that you practice as an AFC, but also oversee the law clinic. Can you tell us how going virtual changed not only how you did business, but also how you guided your students in terms of representing their clients?

Prof. Connors: Well, my clinic as well as the other clinics in the Justice Center, we met remote immediately and, thank God, we have a really good IT department, so we were able to do that. I always think, if it had been 10 years earlier when this pandemic had hit, really, I don't know what we would've done. We would have been struggling trying to work through these issues, and access to justice for our clients, and access to an educational program for our students.

The clinic went remote. Our matters were deemed essential matters, and luckily most of the clients we were representing, as I said earlier, had access to a computer or cell phone. So, we were able to communicate with them, and we were, for the most part, able to move forward as seamlessly as possible. The students were brilliant. They really just adapted. I think I was thinking it actually turned out better than I thought. I was so stressed out about the thought of having to not only teach, but have to supervise the students on these cases remotely. But, I think because a lot of the students that I had last semester and this semester, they're my children's ages or younger, so they've grown up with communicating with friends and family remotely. So for them, it wasn't such a big leap.

I think also for the clients that we had, both in the AFC work and in adult work, that the children we represented had access to Zoom, that the cases, the few cases that we had that were AFC at that time, we had families where we knew these children were being given a place to meet with us remotely via Zoom on their phones. So, we were able to move forward seamlessly. The students continued to provide quality legal representation, and they also compiled a resource guide for survivors during the crisis. They authored a question and answer guide, and it's available on the law school website, that kind of walks you through all the various steps and scenarios. It refers them to services that are available not only to Albany area, but statewide.

So, I think for the most part, thank God for the technology we had, thank God that we're living in a time where such technology is available, thank God that—I'm not a religious person, I just say thank God a lot—just FYI, thank God the clients that we had had access to some form of communication, either through phone or through the internet.

Kristen Conklin: For attorneys who may not have gone through this yet, virtually yet, or maybe just haven't gotten the hang of it, what would you say? Could you describe for us how you communicate with your clients before, during and after a virtual hearing, and what you recommend or suggest for other attorneys who are similarly situated?

Prof. Connors: Well, with child clients, we always communicate via Zoom, before and after. You want to see the child, you want to see your client. I think when the pandemic hit, we were lucky enough, because we'd established a relationship with our child clients, we had met them personally. The child clients had gotten to know us. We had a face-to-face meeting, so we had an established relationship. I think with child clients, establishing a relationship, whether you're meeting them virtually or not, is really

difficult. You have to not just meet them one time. But, because we had met with them prior to going remote, we had established relationships, so that worked well. Post-COVID, we continued that relationship, met with them via Zoom before and after.

Now, going forward, we're going to be meeting child clients for the first time on a Zoom platform. We're not going to be meeting with them face-to-face, unless somehow we can convince the caregiver to meet with us in the park, and then we can try to engage in some kind of child interview with the child in an outside location.

So, as Judge Rivera indicated, we're going to have to be flexible. I think flexibility is number one thing all new attorneys need to have. You need to be flexible in terms of how you're meeting with your clients. You need to have patience, because, as the judge was also saying, sometimes there are going to be glitches, if you're using technology. You have to be patient, you have no choice.

Things are the way they are. Right now, none of us can change this pandemic. It's not going away anytime soon. It might get worse. I hear that it's mutating, this disease, so I don't know where we're going to be a couple of months from now. We may be shut down again like we were earlier, but having flexibility is key.

With adult clients, the number one thing is to find out from the client, what feels safest and most convenient for that client, and you try to work with that client. We've met with clients outside of CVS stores in the parking lot, where the client's been wearing a mask and we've been wearing a mask. We're sitting in cars and we're having discussions. We've met with clients via telephone. The clients have said to us, "This is the safest place for me to meet with you, via my phone. I'm sitting in my car outside." That's fine. We've met with clients via Zoom. So, the number one thing is flexibility.

For the clients who don't have access to the internet and are trying to find ways to meet with attorneys, I would suggest that there are domestic violence shelters and programs near the attorneys that are in fact making their spaces available for survivors or victims to meet with counsel. So, they should reach out to those programs.

I have to say that the courts have been completely great in terms of how they have addressed the glitches that we talked about earlier. We had situations where the client's phone cut out during court, because I think you'd asked even during court, what do you do if you have to meet with a

client. In one of the cases we had, the judge allowed us to step away from the Skype, in the sense that we could mute our audio and video, talk to our client via phone, then come back into the Skype appearance.

So, the judges I've worked with, Judge Rivera including, have been wonderful, wonderful. Without the bench and the bar working together, understanding that flexibility's a necessity, understanding that you need to be patient, this can't happen. We're fortunate enough to be in a judicial district where you don't have to worry about that.

Kristen Conklin: That's great, thank you. There has been some suggestion that children, and you alluded to this a moment ago, that children may actually communicate as well or even more effectively through Skype or Zoom, rather than face-to-face. You touched on it a bit, but can you expand on what your experience has been? And Judge Rivera, if you've dealt with this in the courtroom, I'd love to hear your take on it as well.

Prof. Connors: I think the child clients that we had, and I'm not talking about toddlers or babies, I'm talking about, we've represented elementary school aged children who were incredibly mature developmentally. Both of those cases, these were children who could do more with a cell phone than I could ever, than I ever thought was possible. So, they had no problem meeting with us virtually, and communicating with us. I think that as we go forward now with the new cases we have, it's going to be a little challenging because, the first time we're going to be meeting with our children is remotely, and then we're going to have to see how it goes. It's going to be challenging because we don't really know if the parent/caregiver is going to allow the child, the freedom to meet with us. In the prior cases we had, that was already established, as I said, so it wasn't much of an issue.

But now, I'm worried that, if we are meeting with our clients virtually, that you don't really know with child clients what's going on. Even in the best of times, even when you're meeting with them directly, even when you establish a good, solid relationship with them, which allows you to really counsel them on issues and cases, and get their input, you don't really know what's going on.

Now, meeting with kids via Zoom, you have a one-dimensional view of them. You don't know who else in the room, same as with the survivors of domestic violence. You can't see the child, you really can't go into their household, which we were able to do before to see what the circumstances were. So, we're going in with a lot of unknowns. We are putting forth a position before the court based on meeting with a child

on a screen, without really having the ability to do outside fact investigation about their home and everything else. So, I think that's going to be challenging. I think that's going to be something that we have to consider as we move forward.

I think also, what I worry about is, in Family Court, the goal of the court really is to rehabilitate most of the cases, to rehabilitate the family. When we were able to meet with the child directly and the family directly, you were able to resolve a lot of the issues. You could proactively look at the hotspots, issues that may be coming up, and then try to find a way, not just to respond through legal response, but a comprehensive response, like helping find childcare or saying, "We can help you with getting grandma to provide or a third-party to provide supervised childcare, so that mom has some time to do what she needs to do."

Well now with COVID, that's going to be an issue. It's going to be an issue both for our child and adult clients.

Kristen Conklin: I just would ask if Judge Rivera had similar feelings, or what his experience was with young folks or youth that appeared before him during this time virtually.

Judge Rivera: There's some similar feelings. The times that we see young people in our courtroom are very limited, because it's limited by the type of case. For example, certainly JDs and PINS, we see those juveniles when they have matters pending, and the Youth Part, we see the adolescent offenders when they have matters pending. So, with respect to those cases, it's always best for me to be able to see the young person, because I'm talking to them, and I generally like to say something beyond the case, maybe tell them something that'll help curb their behavior. It's hard to judge whether or not someone is really getting it or paying attention, if you can't see their face.

So, there are times when the parents don't have access to technology, and so the child, therefore, doesn't, but they have access to the phone. So, we made do. But for the most part, seeing them in-person, you can still see their reaction. The issue of who's with them is not as much of an issue, because generally the parents are not supporting their behavior. So, you don't have that fear that the parent is going to somehow interfere with what the child says or shouldn't say. That applies to JDs, PINS and the Youth Part.

The only other time where, as Professor Connors said, where that issue becomes an issue with us, is with the neglect cases. When we're having

permanency hearings, children of a certain age are required to be invited to the permanence hearing. They're allowed to appear and be heard from, and speak when spoken to. If they're at home with the parent and you're trying to find out, "Well how are things going? Is everything okay? Is there anything you need me to know?" There might be that aspect because they're at home, but they may not be 100% honest. Even though when they're in the courtroom their parents are there as well, their focus is with the judge, and there's a little more freedom because it's not just them and their parents, it's them, their parents, the caseworker, the lawyers, the judge… there are more people in the room, so they tend to be a lot more engaging.

For the most part, we, as judges, don't focus so much on the reasons for them being in front of us. We don't focus so much on the neglect and the abuse when we're addressing the children. I generally like to start out with something light, something welcoming to get over the stress and the pressure of being in court. I always make sure that I address their actual concerns. It's a lot easier, again, when you can see them as opposed to when they're on the phone, because you can't gauge their response.

I recently did one where the two oldest kids, who have now gone home, were on the phone because their parents didn't have access to Skype. However, because there's a neglect case, there were caseworkers involved. So, I know that the case workers have been in touch. They are going into the homes now, so I know that if there are any issues, they will report it. So, I'm okay with those young people talking to me over the phone, because then the case workers can let me know if what they said is true or not. So, that really is the only case where there may be that particular issue, but I can see how it would be much harder for an attorney to interview.

Judge Rivera: Now, once the client is on Skype, it is going to be hard for the attorney of that child to control what they say or don't say, like any other client. But other than that, we don't have as many problems in our end.

Kristen Conklin: Great. we're going to move towards wrapping up. So ,I'll ask Professor Connors, what do you wish the court, not necessarily specifically Judge Rivera, but the court in general, better understood about the dynamics of representing children or other clients from a distance?

Prof. Connors: Well, I think I really have to say, the judges that we've been working with really understand, because all the judges that we've worked with are involved with community groups and organizations where we work together, to try to provide kind of a community response to the needs

that we're seeing. So, I think the judges get it. I think what I would like to see is really for attorneys for children to really get that this is hard work. Even prior to the pandemic, you really needed to establish a positive relationship with your client, your child client, letting them know who you are, why you're there, in order to make them understand that you are their voice before the court. Only when you could establish that relationship, can you really counsel your client.

Each child is different, but one thing is clear, you need to put a lot of effort into getting to know your client, in order for the child client to trust you. I think the judges see it. When they see attorneys representing children, they have an idea of who's really making an effort to practice child-centered law, as opposed to attorneys who are not, who unfortunately sometimes they have too many cases to deal with. You can certainly see when children are getting adequate legal representation.

I think that at this point in time, courts understand that, with the fact that the attorneys are going to be for the most part meeting their clients virtually, or there might be times where they cannot meet with their client for whatever reason, because perhaps one of the family members, there's not internet access, the child may have underlying health issues, somebody in that family may have underlying health issues. So, there may be issues with that client, having access to that client. If the attorney advises the court of that, the court's going to understand that, given what we're going through right now.

Kristen Conklin: Thank you. I'm going to give Judge Rivera the last word. What, if anything, do you wish AFCs and other attorneys better understood about representing clients in cyberspace and appearing in virtual courts?

Judge Rivera: Well, first I want to echo what Professor Connors said. I'm going to say this: Attorneys have to remember that everything that was required of them prior to COVID is still required. They still have an ethical obligation to represent their client to the best of their ability, based on the case that they have. None of that has changed. The way in which it's done may have to be adjusted, but the requirement hasn't changed.

Professor Connors can tell you, when I speak to her students, I always say, "It's all about preparation, and that preparation starts with your interview with your client, after you've reviewed the petitions pending that interview is crucial," which is part of getting that relationship started.

The attorneys have to remember thatthey can still request that the court hear cases when there's an emergency that we may not be aware of. I may have adjourned for a month, but you may need to be seen sooner than that. They should still be making those requests. They should still be making objections to things, making requests for temporary orders that are necessary. All of that is still required. I agree with Professor Connors. We are aware, we see the type of representation we get from attorneys, not just the ones that we assign or appoint, but also the private ones.

I think every judge, I know I was, I can speak for myself, practiced before we became judges. So, we know what is required. We also understand when lawyers are busy and they have a lot of cases, but that is never an excuse. Unfortunately, you either have to tell the judges, "I have too many cases, I'm going to need to cut back. Could you please not reassign me any new ones," or do whatever it takes to do your job, but you still must do that.

Flexibility, as Professor Connors mentioned before, is key. The attorneys have to now be even more flexible than they may have been before, because they may not be able to have that face-to-face, one-on-one conversation. You may have to do it over the phone, or in the car, or on a parking lot, as Professor Connors indicated. But, the main point that I think I want to get across is that they have that responsibility.

I, as a judge, cannot make the argument for the lawyer. I can rule on motions. There are certain times when the court on its own motion can do certain things, but as far as the representation, for example, of a defendant in Youth Part, the defense attorney has to represent that client and make whatever motions.

I'll say this as a side note—and I'm sorry, I didn't mean to go further—but when Raise The Age was created, because it was completely new, there was and to some degree there still is, this confusion about the Youth Part. I want attorneys to understand, if you're involved in the Youth Part, it is still a criminal procedure, even though in Albany County you're located in the Albany County Family Court, and it's being presided over by the elected Family Court Judge, it is still a criminal procedure, any 16 or 17 year-old or any juvenile offender who appears in the Youth Part, is subject to jail time. It is not an automatic removal.

Prof. Connors: I just have to add one more thing before we end. I have to applaud the Office of Attorneys for Children Offices, part of the Appellate Division. They are a wealth of resource.

Judge Rivera: They are.

Prof. Connors: Betsy Ruslander's office in Third Department, Linda Kostin in the Fourth, the First and Second, they have wonderful CLE programming, they have a wealth of information, they have all the resources an attorney needs to provide excellent legal representation to children. So, I would underline, underline, underline, the need for new attorneys who are going to be attorneys for children, to get involved, see what's out there, because there's a lot out there to help you in your practice as you move forward.

Judge Rivera: Absolutely. That means there's no excuse.

Prof. Connors: Exactly.

Kristen Conklin: I think that's a great place to end. Thank you both very much for your time today, Judge Rivera and Professor Connors.

Once again, I'd like to extend a very special thank you to Redlich Horwitz Foundation for their generosity in funding these programs. I'd also like to acknowledge the Office for Justice Initiatives, led by Deputy Chief Administrative Judge Edwina Mendelson, the Child Welfare Court Improvement Project led by Trista Borra, the PJCJC Fund, which is the nonprofit arm of the Permanent Judicial Commission on Justice for Children, the Unified Court System Division of Technology, and a very special thanks to John Caher, our Senior Advisor for Strategic and Technical Communications. Thank you again for watching, and please stay tuned for more remote programming.