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- Kevin Iredell:** Welcome to the Lowenstein Sandler podcast series. I'm Kevin Iredell, Chief Marketing Officer at Lowenstein Sandler. Before we begin, please take a moment to subscribe to our podcast series at [lowenstein.com/podcasts](https://www.lowenstein.com/podcasts). Or find us on iTunes, Spotify, Pandora, Google podcast, and SoundCloud. Now let's take a listen.
- Kathleen McGee:** Hello, and welcome to "Regulatory Matters", a podcast devoted to covering the ever-changing regulatory landscape affecting business today. This podcast is hosted by a group of women partners from the law firm of Lowenstein Sandler, who collectively cover much of that regulatory landscape. We're so glad you've decided to listen. And if you have a regulatory matters issue you'd like to hear more about, please let us know.
- Kathleen McGee:** So when people think about how regulations matter in a business context, their mind might often go to stories of Big Tech these days. With today's guest, however, "Regulation Matters" gets into the business of regulations. Specifically, we are going to be exploring how fines and fees associated with civil and criminal infractions are used as revenue sources for municipalities across the nation, and perpetuate a cycle of poverty among those who can least afford the fines and fees.
- Kathleen McGee:** I'm so honored to have my good friend, Joanna Weiss, co-founder and co-director of the Fines and Fees Justice Center with us today. We are going to be discussing her work and the foundation's mission. And frankly, just catching up a little bit. Let's get started. Joanna, thank you. Hi.
- Joanna Weiss:** Hi. Thank you so much for having me. It is delightful to be with you.
- Kathleen McGee:** Well, it's always delightful to be with you, and I'm really honored that you're here. And I'm really honored that you're willing to help us educate our listeners a little bit on how regulations are a business for many municipalities. I think it's the hidden dark secret that a lot of people still aren't very aware of. And I'm really looking forward to shedding a little light on that today.
- Kathleen McGee:** I know your background well, and I've had the privilege of working with you in the Bloomberg administration a million years ago. Would you please share an overview of your career with our listeners though? Because I think how you got to where you are is really important for people to know about.

Joanna Weiss: Sure. So I started out with you in the Bloomberg administration, and worked in city government actually, for over 13 years. I spent the first six years or so working for the City Law Department, or the Office of the Corporation Counsel, where I was working on 9/11 litigation and preparing people for their testimony before the 9/11 Commission and really researching the city's response to 9/11. I moved from there to the Mayor's Office to work as the Deputy Administrative Justice Coordinator. It was a new office within the Mayor's Office that was really dedicated to working with the city's administrative tribunals, which are sort of like city courts. In other cities, they handle city regulatory issues and violations of city regulatory law.

Joanna Weiss: There are about 13 different tribunals across the city, and we help them operate more professionally and give better access to justice to people who are appearing before these tribunals. We're really the face of justice for the average New Yorker. Making sure that people who were unrepresented litigants really could have their case heard and have a fair chance at a hearing. I moved on from there to other positions within the Mayor's Office, helping get new businesses launched off the ground. And then briefly worked with another city regulatory agency, again, on the operational side.

Joanna Weiss: I moved from there to what was once called the Laura and John Arnold Foundation, it's now Arnold Ventures. They're one of the biggest philanthropies in criminal justice reform. And helping them to develop their fines and fees portfolio and figure out what kind of investment strategies in criminal justice reform would yield the best results. And I started a portfolio there dealing with the issue of fines and fees in the criminal legal system. And that's really how I started to get involved in this work.

Kathleen McGee: It's such an interesting trajectory, because you were never actually a criminal prosecutor. But you found your way into criminal justice, I think policy is the right way to brand you now. You're a policy wonk, which is great. And I think it's interesting for many listeners who don't understand the labyrinthine and really vast system that is the administrative courts in New York, so letting people know that exists is important. You're right, that is how most people interact with the court system.

Kathleen McGee: Tell me a little bit about what drove you to examine the impact of fines and fees. I'm curious about how you saw something that maybe most people would gloss over.

Joanna Weiss: I think you've really hit the nail on the head, Kathleen. People gloss over it because fines and fees are really invisible to people who have the means to navigate the criminal legal system and the civil legal system. If I get a traffic ticket or a parking ticket, I pay and I walk away. It is invisible to me what happens to the people who can't do that and who don't have the same experience. Or the people who are living in communities that are much more likely to be heavily ticketed, and end up amassing massive amounts of debt in either the civil or legal system.

Joanna Weiss: And when I was looking at different issues in the criminal legal system, and I had worked on several different issues at the foundation, this one struck me as the most grossly unfair system, that was literally government and private

entities preying on low income communities and communities of color and extracting wealth from those communities. And profiteering off of those communities in ways that I found shocking. And seeing that the impacts were really derailing people's lives with very little benefit to government or society more generally, and often many harms. And so this was really what drove me to get more involved in this issue.

Kathleen McGee: Thank you for that. You mentioned criminal and civil fees. Tell me, are these fines and fees related to both? Are they administrative? How do we think about what category they fall into here?

Joanna Weiss: Sure. I think it helps if I back up a little bit and explain what I mean when I talk about fines and fees, because they do occur in different systems. We're all familiar with the idea of a fine. The fine is a monetary punishment. It's meant to deter or punish people for violation of the law. We see those in the civil context with traffic tickets and parking tickets. But in this country, we also impose fines on misdemeanors and felonies in the criminal legal system, even if there's some other punishment as well. So someone may be incarcerated, but they may also incur a fine on top of that.

Joanna Weiss: Fees are something really different. Fees are taxes that are imposed on people for every touch that they have, particularly with the criminal legal system. You see some of it in the civil legal system as well. So for example, there can be fees, depending on where you live, arrest fees, booking fees, there can be fees for prosecution. We all know that if you are too poor to pay a lawyer, one will be appointed to you, but you can be charged fees for that lawyer. You can be charged essentially room and board for every day that you are incarcerated, including pre-trial. So if you are too poor to pay bail and you are held in custody, you may be charged a daily room and board fee for every day that you are held in custody.

Joanna Weiss: There's also fees at the back end for probation and parole or other forms of supervision. There are also fees that are imposed on people while they're incarcerated. They're exorbitant costs for phone calls. There are markups on commissary, money transfer fees. There are fees throughout the system. And then, over time, what a lot of government realized is that people in the criminal legal system are incredibly poor. It's very difficult to get money from them. So they started looking more to increasing the use of fines and fees in the civil legal system to try to use them as ways to generate revenue as well.

Kathleen McGee: I mean, grossly unfair seems like an understatement, and certainly predatory. I know that, at least in the business context, having connections and partnerships are really integral to getting something off the ground, like a business. How integral were those types of relationships to your co-founding of the Fines and Fees Justice Center? And tell me a bit about your co-founder and how you guys got started.

Joanna Weiss: Sure. And as anywhere, your partners and your relationships are definitely critical to success, and this is far from an exception. So when I was working at the Arnold Foundation on the issue of fines and fees, I was really the only person in the philanthropy world working on this issue. So I really had a 30,000 foot view of the different projects and what was happening around the

country with fines and fees reform. At the same time, the other entity that was working on this at a 30,000 foot view was the Department of Justice under the Obama administration. My co-founder, Lisa Foster, was the head of the Office for Access to Justice under President Obama in the Department of Justice. And her office really took the lead after the Ferguson report came out and exposed the crisis of fines and fees. Her office took the lead in what the Department of Justice could do in response to the fines and fees crisis.

Joanna Weiss: So she was also working with partners around the country on this issue. So we both came into this with a good idea of what was happening around the country. And so it was easier to develop a strategy of addressing the gaps that we saw in the fines and fees reform movement around the country, to fill those gaps. And also because we already had existing relationships with so many of the people around the country who had been moving this issue forward for years.

Kathleen McGee: When you talk about the Department of Justice and fairly significant foundations, I just want to make it clear to our listeners, this is not a regional issue, is that correct? This is really a national issue?

Joanna Weiss: It is. And when we say a national issue, I don't mean a federal issue, but I mean an issue that is happening everywhere. In every state in this country, in every court in this country, in every county, in every city. And it's deeply entrenched at all levels of government, and it looks different everywhere. So it is ubiquitous and a little bit difficult to unravel, because the system looks different in every state, in every city, and every county. But there are some commonalities that are the same, which is that fines and fees are charged as ways of trying to generate revenue.

Joanna Weiss: They're disproportionately imposed on low income communities and communities of color. And the consequences that have been put in place to try to coerce payment from people who don't have any money look very similar around the country. And the consequences are severe. At the low end, you can have a civil judgment against you, which means there can be a lien on your taxes, on your wages. And at worst, you have your driver's license suspended when you can't afford to pay. You can have warrants for your arrest and you can be incarcerated. The devastating impacts are universal, even if exact manifestations look a little bit different in different places.

Kathleen McGee: You and I had been talking a month or so ago, about one particular example in a state that had been highlighted in the press. I don't know if there are any examples that you'd like to give to the listener that helped to really concretize how this has an impact on a person or a community?

Joanna Weiss: Sure. Because it's so invisible, I'm glad you asked. Because I think it's hard to understand how this cycle really derails someone's financial stability. So I'm going to use the example of driver's license suspensions, because it's still so common around the country. There's been a lot of reform, but there is a long way to go. So still today in the majority of states, if you can't afford to pay your fines and fees, your driver's license can be suspended. The most common place we see this is in the traffic context. So you get a traffic ticket,

which would never come with jail time, it comes with a fine. If you can't afford to pay that fine and the fees that attach to it as well, your driver's license is suspended.

Joanna Weiss: 86% of Americans drive to work. And 30% of jobs require a valid license. So you have two choices when you have your license suspended. Either you give up access to work, childcare, healthcare, and everything else that would allow you to function. And of course, you still won't be able to pay because you can't get to work. Or you continue to drive, which is what about 75% of people are forced to do. The next time you are pulled over, you are charged with driving on a suspended license. That is a misdemeanor almost everywhere. Now you owe more fines and fees, you may face jail time, and you have a criminal record. And so now the fines and fees have accumulated to a point where there's almost no way out for so many people. So once your license is suspended, it really ends up being a life sentence for people.

Joanna Weiss: And when you talk about these fines and fees, it's not just the person who owes them who's impacted. It's their entire family, and often their entire community. We know that most court debt is actually paid off by women, particularly women of color who are paying it for their sons, their husbands, their brothers. And so this is extracting wealth from an incredibly vulnerable community. And it's devastating to that community. And the impacts are also particularly felt in low-income communities and communities of color, both because of the nature of policing, which happens more heavily in those communities. But then you add in the demographics of poverty and it really skyrockets those disproportionate impacts.

Joanna Weiss: So just as an example, in New York. In New York City, about 75% of drivers in New York City are white. About 80% of the people who are charged with driving on a suspended license, which is almost all for unpaid court debt, 80% of those people are not white, they are black and Latinx. So the disparities that we see in the criminal legal system and the racial wealth gap that we see is all magnified to an almost unimaginable level, when we talk about fines and fees and the impacts that they carry.

Kathleen McGee: Now, I understand that you've done some partnership work with some academic institutions in New York City as well. Do you want to talk a little bit about that? Because I think it's important as we're talking about New York City and the disparities just here at home, how you're working to change that. And then part two of that question, what are you doing nationally, and how can people understand that? If we have a listener who says, gosh, this really moves me, I'd like to know more. Where can they go?

Joanna Weiss: Sure. The first thing I would recommend is that you go onto our website and sign up for our newsletter. Because we'll keep you informed on what's happening with fines and fees reform around the country, and you can find campaigns and actions that are happening in your own community to get involved with. We work very heavily with academic partners to really understand the impacts and what the solutions look like. And our solutions are formed both by evidence and really what research and data tells us are solutions that work. And also, we're really heavily guided by the community that's directly impacted by fines and fees to understand how they're

impacted, what the priorities are to address, and what solutions will actually work for that community to address the harms.

Joanna Weiss: So in New York City, we have worked with, I'd say, half the law schools in the wider New York area. We had a partnership with an amazing clinic at Columbia Law School that's run by Colleen Sheehan, who really helped us research the impacts of fines and fees, and worked with people who had had their license suspended to understand the harms and what that looked like in communities across New York City. And also the outskirts, and in Long Island and in Westchester, where we see the problem magnified even further.

Joanna Weiss: We worked with the racial justice fellow at the New York Law School. This was a grant funded position at New York Law School, who did a tremendous amount of research about the disproportionality in license suspensions across New York and across the country, and it's called Driving While Black and Latinx. We have that report up on our website and it's a really valuable tool to understand what these disparities look like. And we work with other academics around the country, really explaining how this works all over, because the impacts are transferable. We can think that the system is different here, but the truth is the kinds of problems that we see and the impacts of fines and fees are unfortunately really universal across the country.

Kathleen McGee: It sounds like they've been woven into the daily tapestry of our lives in ways that we're just starting to see and understand. Just turning things a little bit to a lighter side. I have followed you on social media, and I know you love your staff and you guys have built this amazing organization. So tell me, who works with you on a daily basis? Who are your staff?

Joanna Weiss: Yes. I mean, we are successful because we have a rockstar team. And I think if Lisa and I have done one thing well, we have hired well, in a variety of ways. We have staff on the ground in four states. We work intensely in those states building coalitions and working with all the interested parties who are impacted by fines and fees in these places. We work in New York, in Florida, in New Mexico, and Nevada. And then we have a national team, because we try to take what we learn in our states and from working with partners around the country, to build national campaigns to address the issues that are happening all over the country.

Joanna Weiss: So for example, the issue of driver's license suspensions for unpaid court debt. And we've been working around the country and we've been able to support reform now in 22 states in just four years, which is really a remarkable feat. And it's a credit to all the people who are working on this around the country, but also to our staff. And I think that we try to have a culture of kindness, is how we talk about it. And we talk about it every time we interview a new person. The idea is how we support each other and lift each other up. That we go into this work without ego. And really trying to be collaborative within our team, and also with every partner who we can find and every ally we can find. And to be as broad and inclusive as possible.

Joanna Weiss: And I think it's really been, I'm proud to say, a really successful formula. Because the people on our team are not only mission driven and talented and smart, but they are kind and they are generous and they are collaborative. And I think that is what is required to actually move these issues forward.

Kathleen McGee: I love that. And the culture of kindness, I feel like we need a little bit more of that. Now, I did warn you, because this is about you, that I do ask my guests a question or something that's a little different. I'm not going to ask you to reveal super secrets, but I do know about you that you love to travel, and you're a voracious traveler. And I also know that whenever you travel, I travel, because I get to read your travel writing. Which is fantastic, and honestly, as good as it comes. And I'm still waiting on that book that you said you were going to write.

Kathleen McGee: So the question, as you know it's going to come is, where's the one place, if you can name one, that you've so far traveled that provided the best fodder for your travel writing?

Joanna Weiss: This question brings me so much joy after two years of very little travel and letting us think about ...

Kathleen McGee: It brought me joy.

Joanna Weiss: ... when we can go back out in the world again and explore. And thank you for that kind assessment of my writing.

Kathleen McGee: Like I said, it's making me giggle thinking about it right now.

Joanna Weiss: I think the best fodder was my travels in Laos and Cambodia. And it was really because of my travel partner, who is also hilarious, and also an amazing criminal justice reform warrior. But we got ourselves into hilarious circumstances. But I will say that also what makes for good travel writing is traveling with someone who is totally okay with you publicly poking fun at them a little bit, and sharing it with two to 300 of their closest family and friends. And being gracious about it.

Kathleen McGee: She was very gracious about it. And I'm laughing with her, not at her, when I think about ... she has a memory for life. And I do want to see that book published because I think it would be fantastic.

Kathleen McGee: You are a hero of mine. You are a dear friend. Tremendously honored that you were willing to educate us a little bit more about an issue that, I think for those of us who are privileged enough is something, like you said, it's invisible. We don't see it. We pass by it every day. But we all should be aware of it. So thank you so much for being a guest here today.

Joanna Weiss: Thank you so much for having me. And to giving a platform to this issue and talking about it and sharing with your listeners. I'm really, really honored to be here.

Kathleen McGee: Love you, my friend.

Joanna Weiss: I love you, too.

Kathleen McGee: Bye.

Joanna Weiss: Bye.

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