

CHIEF JUDGE KAYE'S LEGACY OF INNOVATION AND ACCESS TO JUSTICE

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Chief Judge Judith Kaye and I were lifelong friends. We attended Barnard College and NYU Law School together, although she was two grades ahead of me.¹ I recall with great pride, when she was Chief Judge of the New York Court of Appeals, she gave the keynote address at my retirement party from Legal Aid,² and gave special remarks that were quoted in the press coverage announcing my appointment as President of the Legal Services Corporation.³ And I remember with a smile when she would have dinner at my home; she would have a lively, fun-loving, competitive interaction with my husband as to their addiction to family photo albums.

Judith was brilliant, compassionate, a doer, and had an amazing work ethic. She was a cherished friend to me as she was to so many others, and left an enduring legacy. I am so pleased to be part of this tribute to her extraordinary judicial legacy.

Some of the contributions will focus on Chief Judge Kaye's judicial opinions, but when she became Chief Judge, she had to take on effectively a second full-time job. Not only was she the Chief Judge of the Court of Appeals, but she was also the Chief Judge of the State of New York, and in that capacity, she was the CEO of a massive court system. Throughout her career as Chief, she sought to innovate and improve court administration and became a national leader in many areas of court and justice reforms. I would like to touch briefly upon two areas where her innovations resulted in making a real difference in the lives of low-income New Yorkers.

First was her creation of problem-solving courts. She began with the Midtown Community Court, which opened in 1993, the year she

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¹ Judge Kaye was in the Class of 1958 at Barnard and the Class of 1962 at New York University School of Law, and I was Barnard Class of 1960 and NYU Law Class of 1964.

² May 29, 2003, at the Association of the Bar of the City of New York.

³ See, e.g., Daniel Wise, *Legal Aid Veteran Appointed President of Legal Services*, N.Y. L.J. (Dec. 19, 2003); Press Release, Legal Servs. Corp., Helaine M. Barnett Named New Legal Services Corporation President (Dec. 18, 2003) (on file with author); Dave Kenney, *The Advocate President*, EQUAL JUSTICE, Winter 2004, at 16, 17.

became Chief Judge. It was the nation's first community court.⁴ It was located near Times Square in Manhattan, a neighborhood then renowned for pervasive quality-of-life offenses.⁵ It was the first effort to take a different perspective on the swelling misdemeanor docket and to address low-level misdemeanor crimes by combining punishment with help.⁶ Defendants were sentenced to pay their community back through visible community service projects.⁷ They also were mandated to receive onsite essential services, such as drug treatment and job training.⁸ The goal was to make justice more responsive to neighborhood concerns and to halt revolving-door justice, giving defendants the structure and support they needed to get their lives on track.⁹ As a result of the court's emphasis on prompt sentencing and rigorous monitoring, compliance and effectiveness exceeded that typically achieved by other court-centered methods.¹⁰ The impact of the court was felt on the streets of Midtown Manhattan. Each year, the court contributed to the neighborhood when sentenced offenders painted over graffiti, swept the streets, and cleaned local parks and subway stations.¹¹ Independent evaluators documented that the Midtown Community Court approach to justice had not only reduced local crime, but had genuinely changed people's lives by a positive, constructive court intervention.¹²

Chief Judge Kaye was so proud of this initiative. I remember when the American Bar Association (ABA) had its annual meeting in New York in 1993, we took the leadership of the ABA on a tour of the Midtown Community Court. Its twentieth anniversary was celebrated in 2013. With its emphasis on alternatives to jail for misdemeanor defendants, it has been credited with helping to improve public safety,

⁴ Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 YALE L. & POL'Y REV. 125, 132–34 (2004).

⁵ *Id.* at 132.

⁶ *Id.* at 133.

⁷ *Id.*

⁸ *Id.*

⁹ *See id.* (describing the reduction both in short-term jail sentences and in offenders leaving court with no sanction).

¹⁰ *See* Jonathan Lippman, *Problem Solving Justice in New York*, CTR. CT. INNOVATION (Oct. 13, 2006), <http://www.courtinnovation.org/research/problem-solving-justice-new-york> (“[I]t’s clear that drug courts work much better and cost far less than traditional approaches. Research tells us that offenders in court-ordered drug treatment succeed at twice the rate of those who voluntarily enter treatment.”).

¹¹ Kaye, *supra* note 4, at 133, 146.

¹² *See* MICHELE SVIRIDOFF ET AL., DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT, CTR. FOR COURT INNOVATION 9–10 (1997), <http://www.courtinnovation.org/sites/default/files/dispensing%20justice%20locallyI.pdf> (concluding that the Midtown Community Court had an overall positive impact on outcomes and perceptions of the justice system in Manhattan).

reduce the use of incarceration, and forge better outcomes for offenders, victims, and communities. The Midtown Community Court was so influential that it was replicated in dozens of cities across the country, and in more than sixty locations worldwide, including England, Australia, New Zealand, South Africa, and Canada.¹³ The Conference of Chief Judges and the Conference of State Court Administrators adopted a joint resolution endorsing the concept of problem-solving courts.¹⁴ The ABA adopted a similar resolution.¹⁵

Chief Judge Kaye redefined the traditional role of the judiciary in addressing difficult social problems, bringing the courts closer to the communities they serve and making them more relevant to the problems affecting the lives of ordinary people.

Other problem-solving courts followed with the Red Hook Community Justice Center, and some of the principles of the community courts have been adapted in a variety of problem-solving courts: Drug courts aim to break the cycle of addiction, crime, and jail, while domestic violence courts focus on strengthening victim safety and offender accountability.¹⁶

The second area of her contribution I would like to focus on is her access-to-justice initiatives. Chief Judge Kaye stated: "Access to the legal system is an inherent right of citizenship, yet far too many New Yorkers are currently denied this right because they lack economic resources."¹⁷ On another occasion, she noted: "Civil legal services can mean the difference between having a roof over your head or being homeless; between going hungry or receiving food stamps; between children languishing in foster care or being returned to their parents."¹⁸ She further said:

For a family seeking protection from eviction, for an elderly person confused by the social services bureaucracy or for a battered woman fleeing domestic violence, having access to adequate legal services can be critical to their safety and well-being. Yet only a small per-

¹³ Jonathan Lippman, *Chief Judge Judith S. Kaye: A Visionary Third Branch Leader*, 84 N.Y.U. L. REV. 655, 658 n.8 (2009).

¹⁴ See Kaye, *supra* note 4, at 150 & n.98 (describing the resolution and its background).

¹⁵ See *id.* at 150 & n.99 (noting the ABA's adoption of a resolution endorsing the concept of problem-solving courts).

¹⁶ See generally Lippman, *supra* note 10 (sampling the various methods of alternative dispute resolution in New York).

¹⁷ OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, EXPANDING ACCESS TO JUSTICE IN NEW YORK STATE 1 n.3 (2009) [hereinafter EXPANDING ACCESS] (quoting from address given by Chief Judge Kaye to announce the creation of the office of Deputy Chief Administrative Judge for Justice Initiatives in 1999).

¹⁸ Hon. Judith S. Kaye, Remarks at the Association of the Bar of the City of New York for the Release of Civil Legal Services Report (May 19, 1998).

centage of impoverished New Yorkers . . . stand a reasonable chance of getting a lawyer when they desperately need one.¹⁹

In 1999, she created the position of Deputy Chief Administrative Judge for Justice Initiatives to address the concerns of low-income individuals' inability to obtain counsel.²⁰ By creating this position, she brought the "subject of access to justice from the margins of court operations to the center of the table."²¹ This was a unique, high-ranking judicial office with the sole mandate of eliminating disparities in accessing justice.²² She appointed Judge Juanita Bing Newton to head that effort.²³ She made it one of the court system's highest priorities to ensure that low-income New Yorkers have equal access to courts and the legal system.²⁴

Some of the accomplishments of the office included increasing the provision of pro bono services. Continuing legal education (CLE) credit was granted for providing pro bono work.²⁵ In addition, the office focused on enhanced services for unrepresented litigants.²⁶ Resource centers dedicated to helping unrepresented litigants were set up in courthouses throughout the state to provide direct assistance from court-based staff.²⁷ The responsibilities of this position were assigned to Judge Fern Fisher in 2009, who today is the Director of the New York State Courts Access to Justice Program, with statewide responsibility for trying to help ensure equal access to justice.²⁸

Chief Judge Kaye was a leader in the country in terms of recognizing that the court's role is broader than just making decisions. She embraced new ideas with great enthusiasm and determination. Collaboration and innovation were key elements to achieving these initiatives. She accomplished these reforms with great intelligence, superb interpersonal skills, grace, and elegance. Her persistence in delivering justice in ways that are relevant to the needs of the litigants and the

¹⁹ *Court's Special Office Strives to Ensure Equal Justice for All*, N.Y. ST. JURY POOL NEWS (N.Y. State Unified Court Sys., New York, N.Y.), Winter 2002, at 1, https://www.ny.courts.gov/reports/jpn/jpn2002_01.pdf (reporting Chief Judge Kaye's remarks before New York's first Access to Justice Conference).

²⁰ EXPANDING ACCESS, *supra* note 17, at ii.

²¹ Judith S. Kaye, *New York State Court System Access to Justice*, 29 FORDHAM URB. L.J. 1081, 1082 (2001).

²² EXPANDING ACCESS, *supra* note 17, at 1.

²³ *Id.* at ii.

²⁴ *Id.* at 1.

²⁵ *Id.* at 11.

²⁶ *Id.* at 20.

²⁷ *Id.* at 21.

²⁸ See *Administration of the Unified Court System*, N.Y. ST. UNIFIED CT. SYS., <http://www.nycourts.gov/admin/excoofficers.shtml> (last updated Feb. 24, 2016).

communities in which we all live will be a significant part of her lasting legacy, as will her vision and commitment to ensuring equal access to justice for all, regardless of financial means.