

JUDITH S. KAYE: THE GREAT REFORMER

THE HONORABLE JONATHAN LIPPMAN*

I. JUDGE AND LEADER.....	85
II. THE JURY SYSTEM.....	86
III. SPECIALIZED COURTS.....	87
IV. CHILDREN AND FAMILIES.....	89
V. PUBLIC TRUST AND CONFIDENCE.....	90
VI. LEGACY.....	92

I

JUDGE AND LEADER

Judith Kaye admirably served New York as a Judge of the Court of Appeals for a quarter of a century, including almost sixteen years as Chief Judge of the state. As a jurist, her legal scholarship and erudition inspired state and national legal trends. As a leader of the New York courts, she presided over a long and sustained period of reform and innovation unique in the history of our state.

In 1983, Governor Mario Cuomo appointed Judith Kaye, then an accomplished commercial litigator, to the Court of Appeals as an associate judge. A decade later, he wisely selected her to serve as New York's Chief Judge, making her not only the first woman ever to serve on our state's highest court, but also the first to be accorded the awesome responsibility of leading New York's vast and complex court system.

In 1993, Chief Judge Kaye inherited a court system that in many ways was conducting its business as it had in the 1950s—a system struggling to keep pace with the needs and expectations of a rapidly changing society. By the sheer force of her vision and leadership, Chief Judge Kaye revitalized our court system and brought it roaring into the twenty-first century.

Chief Judge Kaye's influence on the law of our state has been equally significant. While the cases decided by the Court of Appeals span the universe of legal issues facing New Yorkers today—multimillion-dollar commercial and insurance matters, criminal offenses, landlord-tenant disputes, and family law issues—Chief Judge Kaye's

* Copyright © 2017 by Hon. Jonathan Lippman, former Chief Judge, New York Court of Appeals; Of Counsel, Latham & Watkins.

judicial philosophy was firmly rooted in the human implications of a judicial decision and in finding a fair and just result for the parties. The final inquiry on the facts presented and the applicable law was always: "Does it make sense?" And whether the issue was a child's right to a basic education, New York's death penalty legislation, or the adoption or marriage rights of our citizens, it is clear that Chief Judge Kaye's decisions will stand the test of time. They are so well written and so clearly convey her reasoned, principled efforts to decide society's most vexing problems in ways that maintain clarity and continuity in the law.

The same humanism embodied in her writings on the Court of Appeals also motivated her extraordinary efforts to improve the quality of justice, as evidenced by just a brief overview of the avalanche of reforms she brought to the New York courts.

II

THE JURY SYSTEM

From day one, Chief Judge Kaye was determined to revolutionize the jury system in our state and make New York a model for jury reform for the entire country.

Under her visionary leadership, New York's antiquated and inefficient jury system was overhauled. Legislative, rulemaking, and operational improvements markedly increased citizen participation and improved public attitudes toward the courts. Public confidence in the fairness of the court system skyrocketed. All automatic exemptions were eliminated, and Judith Kaye herself reported for jury duty, along with everyone else—governors, mayors, firemen, and laborers alike. Improvement after improvement followed:

- ◆ The average term of service was cut in half.
- ◆ A one day/one trial system was implemented in sixty of the state's sixty-two counties. Under this system, jurors completed their jury service after only one day if they were not picked to serve on a jury.
- ◆ Juror call-back intervals were increased to six years.
- ◆ Juror compensation was increased.
- ◆ Juror facilities were upgraded around the state.
- ◆ Automated call-in systems were implemented.
- ◆ Mandatory sequestration was eliminated, saving New York millions of dollars annually and sparing thousands of jurors from overnight separation from their families.

- ◆ Court rules were adopted to permit juror note-taking, juror notebooks, and juror questioning of witnesses, and to provide jurors with a copy of the judge's charge in civil cases.

"The Jury Project," as she termed it, was one of the most ambitious and successful court reform initiatives in the history of New York State. As Chief Judge Kaye observed so often, the jury plays a crucial role in our democracy. Jury service should be a positive experience that reflects favorably on the justice system. Her willingness to roll up her sleeves and improve the experience of every single citizen who set foot in a courthouse had a decidedly positive impact on the 650,000 New Yorkers summoned annually for jury service.

But Chief Judge Kaye did not simply rest on her achievements. Her interest in helping jurors better understand the trial process led her to appoint fifty trial judges across the state to experiment with a host of innovative practices such as juror questioning and note-taking. In addition, she appointed a Jury Commission in 2004 to recommend ways to increase the number of jurors actually chosen to serve on a jury and to make better use of jurors' time.

Chief Judge Kaye's broad contributions to jury reform were recognized when she was named Co-Chair of the Commission on the American Jury, a key element of the ABA's American Jury Initiative, a nationwide program to strengthen the jury as a democratic institution and improve public understanding of its role in our system of law and government.

III

SPECIALIZED COURTS

Chief Judge Kaye started another revolution in New York by creating hundreds of problem-solving courts—drug courts, community courts, domestic violence courts, and mental health courts—that redefined the role of the judiciary and for the first time actually targeted the underlying problems that caused the same people to return to our courts again and again and again. The nature and quality of court outcomes for these litigants—and their communities—became more important than case disposition statistics. The New York courts led the country by challenging tradition-bound judiciaries to rethink their most fundamental precepts and to focus more intensively on the human beings and societal trends reflected in these cases.

Problem-solving courts feature the active involvement of judges and collaboration with criminal justice, social service, and treatment agencies. Judith Kaye understood that the problem-solving approach facilitated the courts' ability to provide more effective and lasting

solutions to the grim realities that drive much of the state courts' docket: the devastating cycle of drug addiction and recidivism and the societal scourge of domestic violence. Problem-solving courts provide significant savings to state and local governments by reducing the costs of incarceration, public assistance, and other programs.

A particularly fertile area for Chief Judge Kaye's innovative problem-solving work involved family issues and domestic violence. She created Integrated Domestic Violence (IDV) Courts which follow the "one family, one judge" model in which a single judge presides over all criminal, family, and civil matters involving the same family. Under Chief Judge Kaye's leadership, this approach promoted informed, effective decision-making that eliminated costly inefficiencies, facilitated access to justice, and, most importantly, enhanced victim safety and offender accountability.

Chief Judge Kaye's commitment to problem-solving justice was very much reflected in New York's statewide drug treatment court initiative, with more than 140 drug courts in operation in New York. The number of participants in the drug court treatment program has grown to more than 90,000, with over 42,800 successful graduates and 867 drug-free babies born to mothers undergoing court-mandated drug treatment.¹ Chief Judge Kaye championed the drug court model in which judges mandate and then actively monitor the defendant's treatment. A study funded by the U.S. Department of Justice found that drug courts reduced recidivism by an average of 38–50% when compared with drug offenders not handled by the drug courts.² Studies in other states reached similar conclusions, demonstrating that judicially-mandated and judicially-monitored drug treatment reduced recidivism rates.

Launched in 1993 by Chief Judge Kaye, the Midtown Community Court targeted quality-of-life offenses, such as prostitution, graffiti, and shoplifting. The Midtown Community Court sentences low-level offenders to repay the neighborhood through community service while at the same time offering them help with problems that often underlie criminal behavior. Residents, businesses, and social service agencies collaborate with the court by supervising community service projects and by providing on-site social services, including drug treatment, health care, and job training. This model has been replicated both nationally and internationally.

¹ *Problem-Solving Courts: Drug Treatment Courts*, N.Y. ST. UNIFIED CT. SYS. (Jan. 5, 2016), https://www.nycourts.gov/courts/problem_solving/drugcourts/overview.shtml.

² Ojmarrh Mitchell et al., *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts*, 4 J. CRIM. JUST. 60 (2012).

Chief Judge Kaye's innovative thinking about new ways to deliver justice extended to business cases. In 1995, she created a specialized tribunal for the resolution of business disputes, the Commercial Division. This highly successful initiative garnered national attention for promoting the high quality, cost-effective resolution of commercial disputes through modern case management techniques, new technologies, and ready access to alternative dispute resolution (ADR). In its first year of operation, the Manhattan branch alone saw a 29% drop in the average disposition time for cases and an 85% increase in the number of cases settled before trial.

Chief Judge Kaye's passion as a former commercial litigator made the commercial division a nationally renowned forum for resolving complex business disputes with efficiency and expertise—one that in concrete ways helped to attract and retain business in New York, so critical to our state in economically challenging times.

IV

CHILDREN AND FAMILIES

Under Chief Judge Kaye's stewardship of the courts, children and families became priority number one. She put an all-consuming spotlight on the plight of families in New York—a concern that had never before been seen as the province of the judiciary, but even more importantly, one that produced dramatic results for children who needed a champion and found one in Judith Kaye.

Chief Judge Kaye's special interest in issues affecting families and children—divorce, foster care, domestic violence, child abuse and neglect, adoption, and juvenile delinquency—was a centerpiece of her efforts to improve court operations. These family law cases alone accounted for one-fifth of the state's dockets. She also worked tirelessly to improve Family Court facilities, making personal visits herself to Family Court courthouses around the state.

Early in her tenure, she spearheaded the adoption of court rules to open Family Court to public scrutiny, and comprehensive new rules to address flaws in matrimonial litigation. She appointed a statewide task force to examine every facet of the divorce process in New York and recommend reforms covering areas such as contested custody cases, forensic experts and law guardians, ADR, collaborative divorce efforts, interim counsel fees, and enforcement of court orders.

Chief Judge Kaye's laser-like focus on the well-being of children was epitomized by her introduction of the Adoption Now Program that reduced the number of children awaiting adoption by 50%—once a seemingly impossible task. She summoned state and city child wel-

fare commissioners to appear in her chambers each and every Friday afternoon for months and months until she was satisfied that, together, they were making concrete progress toward ensuring that these children would have a legitimate chance at a meaningful life. She also created the Permanent Commission on Justice for Children to bring New York into compliance with federal mandates, and to establish safe and nurturing childcare centers in courthouses for children whose parents or caregivers must attend to court business.

In essence, when it came to our families, our greatest resource, Judith Kaye used her remarkable leadership qualities—her absolute resolve, her creativity and compassion, and her ability to work collaboratively with government and the private sector—to forge comprehensive solutions to the staggering challenges faced by the family justice system.

V

PUBLIC TRUST AND CONFIDENCE

In an era of rampant cynicism toward government, no one worked harder than Judith Kaye to enhance public trust and confidence in the justice system or to make the courts and the legal profession more responsive and relevant to the public they serve.

In 2003, Chief Judge Kaye appointed a blue-ribbon commission to examine and recommend improvements to New York's judicial elective system. The commission's excellent 2004 report set the agenda for an important public debate about judicial selection in New York.³ The commission called for:

- ◆ establishing independent judicial election qualifications commissions to prescreen judicial candidates before they appear on the ballot;
- ◆ adopting noncompetitive, nonpartisan retention elections for incumbent judges;
- ◆ creating a pilot program for public financing of judicial elections;
- ◆ expanding the campaign finance disclosure system on the web;
- ◆ disseminating voter guides to all households with registered voters; and
- ◆ regulating more strictly expenditures for campaign activities.

Upon release of the commission's report, ABA President Dennis W. Archer issued a statement that "New York has taken an important

³ JUDITH S. KAYE, *THE STATE OF THE JUDICIARY* (2004), <http://www.courts.state.ny.us/admin/stateofjudiciary/soj2004.pdf>.

step to bolster and maintain the public's confidence in the integrity and fairness of its courts," and suggesting that other states "act as New York is doing to maintain independent courts that uphold the rule of law and protect our rights and liberties."⁴

Chief Judge Kaye spoke and wrote extensively about public attitudes toward the justice system and the importance of educating citizens about the role of the Third Branch. Over the years, she took the lead in sponsoring a series of joint initiatives with local governments, community and civic groups, educators, and lawyers all across the state, including Senior Citizen Law Days, Clergy Days, Court Appreciation Month, Media Days, mentoring programs, internships, mock trials, and court tours and visits.

Chief Judge Kaye spearheaded many important reforms of the legal profession in New York. Many of these reforms recognized that lawyers, key agents of the justice system, must be responsive to the needs of a rapidly changing society. They include:

- ◆ mandatory continuing legal education;
- ◆ mandatory arbitration of attorney-client fee disputes;
- ◆ rules requiring letters of engagement in most cases;
- ◆ reform of the fiduciary appointments process;
- ◆ standards of civility; and
- ◆ statements of clients' rights.

Chief Judge Kaye modernized the court system in every conceivable way, including expanding technologies to every corner of the state, building new courthouses and upgrading existing courthouses to promote the public's respect for the dignity and majesty of the law, and revitalizing the town and village courts that are so critical to communities and daily life outside New York City.

And woven through all of these reforms was her commitment to expanding access to justice: reconfiguring the indigent defense system, raising assigned counsel rates, increasing resources for civil legal services, and enhancing pro bono representation for indigent clients.

With all of that, Chief Judge Kaye was a beacon of strength in responding to the horrific events of September 11. In a matter of days, she had the courts in lower Manhattan up and running despite personal losses to the court system family. Her visibility and her strength and indomitable persona inspired the courts, the public, and our partners in government to have faith that the rule of law would prevail in the midst of such great adversity.

⁴ Statement of Dennis W. Archer, President, Am. Bar Ass'n, RE: Report of the New York Commission to Promote Public Trust and Confidence in Judicial Elections (July 2, 2004) (on file with N.Y.U. Law Review).

VI LEGACY

On a first-hand basis, I can attest to the many dimensions of Judith Kaye's greatness. She is clearly one of the most influential jurists of her generation, a brilliant legal scholar with a distinctive, clear writing style. She grappled with the most significant, complex legal issues, and, in the process, contributed her singular humanity and erudition to the evolution of the common law and state constitutionalism.

New Yorkers have Judith Kaye the court reformer to thank for a modern-day court system that is fair and accessible, efficient and accountable, and responsive to the needs and expectations of society. And her successes in New York helped start the engines of court reform throughout the country. Under her leadership, New York became a laboratory for court innovation and a model emulated by state judiciaries large and small. She wrote the script for what it means to be the chief judge or chief justice of a state court system in the twenty-first century and gave new definition to the words court reform, dedication to the public good, and public service.