

# CHIEF JUDGE JUDITH S. KAYE: A VISIONARY THIRD BRANCH LEADER

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## INTRODUCTION

Judith S. Kaye's constitutionally mandated retirement from the bench on December 31, 2008, brought to a premature end her magnificent twenty-five-year career on the New York Court of Appeals, including almost sixteen years as Chief Judge of the State of New York. Judged by the esteem in which she is held by her colleagues on the bench and at the bar, she resumes the practice of law and private life as one of the most effective and beloved chief judges in the history of our state. As someone who worked closely with her for many years, and now proudly assumes her mantle as chief judge, I know first-hand the immense challenges she overcame to transform the public face and daily operations of the New York State courts.

On the Court of Appeals, Judge Kaye's scholarly, elegantly written opinions have shaped the constitutional and common law of our state for generations to come. I will leave it to others to comment on her jurisprudential contributions.<sup>1</sup> Instead, I wish to focus on her accomplishments and her legacy as the chief executive of New York's judicial branch of government.

When Governor Cuomo appointed her to serve as chief judge in 1993, Judith Kaye inherited one of the largest, busiest court systems in the world—a sprawling, antiquated system that often struggled to keep pace with 2.5 million annual filings. For the better part of two decades, which were characterized by rapid social and technological change, she introduced bold systemic reforms that modernized the

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<sup>1</sup> See, e.g., Vincent Martin Boventre, *Editor's Foreword*, 70 ALB. L. REV. 795, 795 (2007) (describing Judge Kaye as “leading authority on state constitutional law” and “thoughtful proponent of independent state adjudication”); Vincent Martin Boventre, *New York's Chief Judge Kaye: Her Separate Opinions Bode Well for Renewed State Constitutionalism at the Court of Appeals*, 67 TEMP. L. REV. 1163 (1994) (detailing Judge Kaye's contributions to state constitutionalism); Albert M. Rosenblatt, *The Jurisprudence of Judith S. Kaye: A Legacy of Humanism*, GOV'T L. & POL'Y J., Winter 2008, at 8 (describing Judge Kaye's constitutional, common law, and humanist jurisprudence); Marcia B. Smith, *Judith S. Kaye: Progressive Decisionmaking Rooted in the Common Law*, 59 ALB. L. REV. 1763, 1764 (1996) (describing Chief Judge Kaye's “policy-oriented approach to statutory interpretation” and preferential use of state constitution as source of individual liberties); see generally Tribute, *Judith S. Kaye*, N.Y. ST. B. ASS'N J., Nov./Dec. 2008, at 11–31.

courts and visibly improved the delivery and administration of justice across the board. She now bequeaths to us a nationally respected state court system best known for developing effective, cutting-edge approaches to the complex social problems reflected in more than four million annual court filings.

In a profession long characterized by its adherence to precedent and tradition, Judith Kaye embraced reform and innovation and made them hallmarks of her leadership. In the early 1990s, New York's courts seemed impervious to change, with so many intractable conditions and so many inflexible constituencies. Yet the forces of resistance gradually yielded to the power of her bold ideas and unique persona. They have not yielded always and everywhere—she would be the first to admit that—but often enough that the courts' ability to serve the justice needs of its citizens has been transformed for the better.

In January 1994, the new Chief Judge outlined her vision for the future of the New York courts in her first State of the Judiciary address. She spoke of her determination to restore public trust and confidence in the courts by focusing on the “fundamental areas of concern that touch the public most directly: how, for example, the jury system might be improved; how individual courts could meet local needs; how families might be better served by the court system.”<sup>2</sup> In pursuit of this vision, Chief Judge Kaye ushered in an era of innovative thinking and new paradigms for delivering justice.<sup>3</sup>

## I JURY REFORM

Not so long ago jury service in New York was viewed with widespread dread and disdain. So many professions and interest groups were exempt from jury duty that the remaining New Yorkers bore a disproportionate burden of this civic obligation, getting called back

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<sup>2</sup> Judith S. Kaye, Chief Judge of the State of N.Y., *The State of the Judiciary 1993*, at 2 (Jan. 1994).

<sup>3</sup> Chief Judge Kaye was instrumental in establishing the Center for Court Innovation (CCI), an independent nonprofit that serves as the court system's research and development arm. CCI incubates new court prototypes and then works with the Unified Court System to implement them. *CTR. FOR COURT INNOVATION, A DECADE OF CHANGE: THE FIRST 10 YEARS OF THE CCI 2-5*, available at [http://www.courtinnovation.org/\\_uploads/documents/10th\\_Anniversary1.pdf](http://www.courtinnovation.org/_uploads/documents/10th_Anniversary1.pdf) (last visited Mar. 26, 2009); *A PROBLEM-SOLVING REVOLUTION: MAKING CHANGE HAPPEN IN STATE COURTS* (Greg Berman et al. eds., 2004) (collecting essays on problem-solving courts by CCI authors); *DOCUMENTING RESULTS: RESEARCH ON PROBLEM-SOLVING JUSTICE* (Greg Berman et al. eds., 2007) [hereinafter *DOCUMENTING RESULTS*] (collecting results of CCI-directed research on effectiveness of variety of problem-solving courts). For other publications by CCI, see generally <http://www.courtinnovation.org>.

every two years like clockwork and serving for a minimum of two weeks at a time. These dissatisfied citizens rightly questioned the system's fairness.

Enter Judith Kaye. She created the Jury Project—a thirty-member blue-ribbon task force charged with producing a blueprint for comprehensive reform—and then worked tirelessly to implement its recommendations. In meetings with legislators, public officials, and bar associations, she educated, argued, and cajoled until her persistence finally paid off in January 1996 when the Legislature eliminated all automatic exemptions. This major breakthrough expanded the state's jury pool by over a million people, lengthening juror call-back intervals to a minimum of six years and cutting the average term of service in half.<sup>4</sup> For the Chief Judge, however, the significance went well beyond the practical: “Symbolically, it told the public that we all stand equal before the law, that no person, no group, is more powerful or privileged so as to be automatically excused from a fundamental obligation of citizenship.”<sup>5</sup>

Additional reforms followed fast and furiously: Juror compensation was increased, mandatory jury sequestration in criminal trials was eliminated, juror facilities were upgraded statewide, automated call-in systems were implemented, and new measures were adopted to enhance juror comprehension.<sup>6</sup> The end results were improved citizen satisfaction and participation in the jury system and increased public respect for the courts, with New York now recognized as a national model for jury reform efforts.<sup>7</sup>

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<sup>4</sup> Judith S. Kaye, *Refinement or Reinvention, the State of Reform in New York: The Courts*, 69 ALB. L. REV. 831, 841–43 (2006).

<sup>5</sup> *Id.* at 843.

<sup>6</sup> See N.Y. COMP. CODES R. & REGS. tit. 22, §§ 220.10–.12 (2001) (authorizing, at court's discretion, juror note-taking and distribution of trial materials and written copy of court's instructions to jury for their use during deliberation).

<sup>7</sup> See, e.g., Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 NOTRE DAME L. REV. 449, 482–85 (2006) (citing jury reform under Chief Judge Kaye as example of how judicial leadership can be “the most important catalyst for change”); Colleen McMahon & David L. Kornblau, *Chief Judge Judith S. Kaye's Program of Jury Selection Reform in New York*, 10 ST. JOHN'S J. LEGAL COMMENT. 263, 289 (1995) (“Thanks principally to the vision and dedication of Chief Judge Kaye, New York has become the nation's leader in rethinking and reforming the jury system . . . .”); American Bar Association, Jury System Impact Award, <http://www.abanet.org/jury/awards.html> (last visited Mar. 26, 2009) (recognizing Chief Judge Judith S. Kaye as 2008 award recipient for making “significant contributions and tremendous efforts to the improvement, preservation and strengthening of the American Jury System”).

## II PROBLEM-SOLVING JUSTICE

Since 1993, no new idea has done more to make the court system relevant to the lives and concerns of litigants and communities than problem-solving justice. The concept has been pioneered by Judith Kaye in various forms, including community courts that address pervasive quality-of-life offenses;<sup>8</sup> drug courts that aim to break the cycle of addiction, crime, and jail;<sup>9</sup> and domestic violence courts that focus on strengthening victim safety and offender accountability.<sup>10</sup> By combining punishment and rigorous court monitoring with essential services like drug treatment, counseling, and job training, problem-solving courts have successfully reengineered how courts respond to societal dysfunction, especially low-level, nonviolent crime. These courts have a demonstrated record of reducing recidivism and forging better outcomes for offenders, victims, and communities.<sup>11</sup>

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<sup>8</sup> Community courts are neighborhood-focused courts in which the justice system partners with local stakeholders, such as residents and merchants, to target quality-of-life offenses like prostitution, graffiti, and shoplifting. The Midtown Manhattan Community Court, located only blocks from Times Square, is so influential that it is being replicated in dozens of U.S. cities and in more than sixty locations worldwide, including England, Australia, New Zealand, South Africa, and Canada. See Rehka Mirchandani, *Beyond Therapy: Problem-Solving Courts and the Deliberative Democratic State*, 33 LAW & SOC. INQUIRY 853, 854, 866 (2008) (describing community focus of problem-solving courts and using Midtown Manhattan Community Court as early example of problem-solving court movement).

<sup>9</sup> New York was the first jurisdiction to develop a statewide drug treatment initiative for nonviolent drug offenders and to integrate that approach into the day-to-day work of its criminal courts. N.Y. STATE COMM'N ON DRUGS & THE COURTS, CONFRONTING THE CYCLE OF ADDICTION AND RECIDIVISM: A REPORT TO CHIEF JUDGE JUDITH S. KAYE (2000), available at <http://www.nycourts.gov/reports/addictionrecidivism.shtml>. There are now more than two hundred drug courts in operation or in the planning stages around the state. Welcome to the Drug Treatment Courts Website, New York State Courts, [http://www.nycourts.gov/courts/problem\\_solving/drugcourts/index.shtml](http://www.nycourts.gov/courts/problem_solving/drugcourts/index.shtml) (last visited Mar. 26, 2009).

<sup>10</sup> Domestic violence (DV) courts are specialized tribunals overseen by a dedicated judge and staffed by specially trained personnel. DV courts focus on ensuring victim safety and holding offenders accountable. They facilitate access to essential services, ensure intensive judicial monitoring of defendants, and promote coordination between the court, community stakeholders, and victim services providers. See generally ROBERT V. WOLF ET AL., PLANNING A DOMESTIC VIOLENCE COURT: THE NEW YORK STATE EXPERIENCE (2004), available at [http://www.courtinnovation.org/\\_uploads/documents/dvplanningdiary.pdf](http://www.courtinnovation.org/_uploads/documents/dvplanningdiary.pdf) (discussing inception and development of model for first New York DV court). Integrated Domestic Violence (IDV) Courts take the DV Court concept a step further by following the “one family/one judge” model, with a single judge presiding over all criminal, family, and civil matters involving the same family. Katheryn D. Katz, *Family Law, 2001–2002 Survey of New York Law*, 53 SYRACUSE L. REV. 579, 622 (2003).

<sup>11</sup> See GREG BERMAN & JOHN FEINBLATT, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 11, 151–68 (2005) (documenting research showing problem-solving courts reduced recidivism and street crime, increased compliance with court orders, and

Judith Kaye essentially started a revolution that has redefined the traditional role of the judiciary in addressing the difficult social problems reflected in our record-breaking court dockets: drug abuse, family violence and dysfunction, mental illness, and so many more.<sup>12</sup> She courageously put her own credibility on the line as a strong advocate for this nontraditional judicial role and mindset, one in which judges are encouraged to interact directly with litigants and collaborate with attorneys and service providers in an effort to forge better court outcomes not only for individual litigants but for society as a whole. In doing so, she was true to her vision of bringing the courts closer to the communities they serve and making them more relevant to the problems affecting the lives of ordinary people. Some critics have questioned the propriety of this new, proactive judicial role,<sup>13</sup> but the nation's Conference of Chief Justices, as well as the Conference of State Court Administrators, have both adopted resolutions expressing strong support for problem-solving principles and for extending and integrating them into conventional court settings and the broader administration of justice.<sup>14</sup>

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improved community quality of life); *see also* DOCUMENTING RESULTS, *supra* note 3 (collecting effectiveness research on problem-solving courts).

<sup>12</sup> *See* Judith S. Kaye, *Delivering Justice Today: A Problem Solving Approach*, 22 YALE L. & POL'Y REV. 125, 143–45 (2004) (describing successes of problem-solving community, domestic violence, and drug courts); Judith S. Kaye, *Problem-Solving Courts: Keynote Address*, 29 FORDHAM URB. L.J. 1925, 1927 (2002) (advocating consideration by judges in “cases involving social problems” of how courts can “fashion more meaningful outcomes” and “bring together the resources to address the underlying problem”); Kaye, *supra* note 4, at 836–50 (discussing internal and legislative reforms to New York court system started during tenure of Chief Judge Kaye). There are many other types of problem-solving courts, including mental health, parole reentry, juvenile reentry, youthful offender, domestic violence, and sex offense courts. *See, e.g.*, Center for Court Innovation, <http://www.courtinnovation.org> (follow “About” hyperlink) (last visited Mar. 26, 2009) (listing types of problem-solving New York state courts); Problem-Solving Courts, New York State Courts, [http://www.courts.state.ny.us/courts/problem\\_solving](http://www.courts.state.ny.us/courts/problem_solving) (last visited Mar. 26, 2009) (describing operation and purposes of same).

<sup>13</sup> *See* Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783, 786 (2008) (noting opposition to drug courts based on claims that such courts undermine traditional adversarial system and harm judicial impartiality, yet do not reduce recidivism); Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1529 (2003) (questioning why drug court judges should “be coordinators of social services and enforcers of discipline” and concluding lack of effective probation services is “best answer”); Jane M. Spinak, *Romancing the Court*, 46 FAM. CT. REV. 258, 269–71 (2008) (arguing that judges in problem-solving courts are “unable to integrate the legal and social service tools given to them” and are thus ineffective).

<sup>14</sup> CONFERENCE OF CHIEF JUSTICES & CONFERENCE OF STATE COURT ADMINISTRATORS, CCJ RESOLUTION 22 & COSCA RESOLUTION IV: IN SUPPORT OF PROBLEM-SOLVING COURTS, *available at* <http://cosca.ncsc.dni.us/Resolutions/CourtAdmin/resolution/problemsolvingcts.html> (adopted at fifty-second annual meeting, Aug. 3, 2000); CONFERENCE OF CHIEF JUSTICES & CONFERENCE OF STATE COURT ADMINISTRATORS, RESOLU-

### III FAMILY JUSTICE

No area received more of Judith Kaye's time and personal attention than improving the quality of justice provided to families and children. As Chair and Co-Chair of the Permanent Judicial Commission on Justice for Children since its inception in 1991, she personally spearheaded New York's efforts to promote permanency for children in foster care through programs like Adoption Now—which helped reduce by half the number of children awaiting adoption<sup>15</sup>—and to comply with federal mandates on early intervention programs for infants and toddlers with developmental delays. She recognized from the outset that courts cannot act alone to achieve meaningful foster care reform and used her position as chief judge to foster cross-agency collaborations to develop comprehensive solutions on behalf of families and children. She was similarly assertive in ensuring that the unique expertise and experience of family court judges and staff informed the policy decisions of legislators and executives.

Judith Kaye's genuine concern for children is reflected in the great personal pride she takes in her Children's Centers—safe and nurturing places inside the courthouse where parents and caregivers can leave their children while attending to court business. Today, Children's Centers are located in thirty-four courthouses around the state, caring for more than fifty-five thousand children every year while also providing access to vital services such as Head Start, WIC (a supplemental food and nutritional counseling program for women, infants, and children), food stamps, and health and literacy providers.<sup>16</sup>

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TION 22: IN SUPPORT OF PROBLEM-SOLVING COURT PRINCIPLES AND METHODS, available at <http://cosca.ncsc.dni.us/Resolutions/CourtAdmin/Problem-SolvingCourtPrinciplesMethods.pdf> (adopted at fifty-sixth annual meeting, July 29, 2004).

<sup>15</sup> Judith S. Kaye, Chief Judge of the State of N.Y., *The State of the Judiciary 2008: A Court System for the 21st Century* 6 (Nov. 12, 2008), available at <http://www.courts.state.ny.us/admin/stateofjudiciary/soj2008.pdf>.

<sup>16</sup> *Id.* at 5–6; Judith S. Kaye, *Children's Centers in the Courts: A Service to Children, Families and the Judicial System*, N.Y. ST. B.J., Sept./Oct. 1995, at 6. Kaye's children-first reforms extended to matrimonial litigation, helping to cut case processing times in half and greatly reduce children's exposure to harmful conflict. See MATRIMONIAL COMM'N, STATE OF N.Y. UNIFIED COURT SYS., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 18 (2006) (commission created by Judge Kaye, reporting reduction in matrimonial case processing time from 796 days to 319 days).

## CONCLUSION

This brief tribute to Judith Kaye necessarily omits many of her most remarkable accomplishments. No assessment of her legacy would be complete, however, without mentioning the following: the improvement of access to justice through increased pro bono and enhanced services for self-represented litigants; the establishment of the Commercial Division; her presiding over an unprecedented boom in court facilities construction, including forty-six new courthouses and thirty-seven major renovations; the integration of the latest technologies and alternative dispute resolution techniques into the daily work of the courts; the jump-starting of the Rockefeller Drug Law reform; the introduction of major reforms of the legal profession and the judicial elective and fiduciary appointment systems; her keeping the courts open in the difficult aftermath of September 11, 2001; the upgrade of the Town and Village courts; and on and on. Each and every one of these initiatives was the result of Judith Kaye's legendary persistence and unstinting commitment to fostering public trust and confidence in the courts and the legal profession.

During nearly sixteen years at the head of the New York State courts, Judith Kaye virtually rewrote the script for how a twenty-first century chief judge can lead the courts in delivering justice in ways that are relevant and responsive to the evolving needs and expectations of our citizenry. Her jurisprudential and administrative achievements have left an imprint on New York State history.