

LEAVEWORTHY



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Memorial Edition
Honoring Judge Kaye

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A reminder to our readers:

Your contributions regarding cases, articles, interesting events, and the like will all be considered for publication in future issues. Submissions can be sent to appcourts@nysba.org.

The opinions expressed herein are those of the authors or article subjects only and do not reflect the official position of the Committee on Courts of Appellate Jurisdiction or the New York State Bar Association.

Chief Judge Judith S. Kaye: She is Forever in Our Hearts

By Hon. Victoria A. Graffeo



Honorable Judith S. Kaye

Judith Kaye, the first female Chief Judge of the New York Court of Appeals, served for a record-breaking 15 years before retiring in 2008. She died on January 7, 2016 at the age of 77.

“Honorable” was truly an appropriate title for Judith S. Kaye. Chief Judge Kaye was an exceptional leader and legal scholar who inspired generations of female attorneys and earned the respect of the Bar, her fellow jurists, and the people of New York. She had “rock star” status in the legal community because she embodied the finest characteristics of professionalism and leadership. She was a true visionary, pushing New York’s massive court system into the modern era by recognizing that courts do more than adjudicate legal rights; they also serve as a conduit for needed services to combat recidivism. Hence, the development of problem-solving, community, and youth courts. Judith Kaye unquestionably had “true grit”—she persevered with boundless energy until her objectives were achieved. For someone with such authority, she had a rare sense of humanity.

Her desire to improve society went well beyond her caseload or administrative responsibilities, as evidenced by her efforts to push for improvements in the foster care system so that more children could have permanent homes.

And it was universally recognized that Judge Kaye had “class.” She had a style all her own and a formality that reflected her commit-

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Judge Kaye: Forever in Our Hearts (cont'd)



Judge Kaye holds granddaughter Shirin.
Photo by Lisa Bohannon.

ment to excellence, but she also radiated warmth and concern for everyone she met. Her keen legal mind and clarity of written expression created a legacy of case law that is unsurpassed. Her career on the bench exemplified public service, and all of us who were fortunate to call her our “Chief” and our dear friend were truly blessed. Forever in our hearts. Chief Judge Kaye.

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LEAVEWORTHY thanks the Court of Appeals and its Public Information Officer, Gary Spencer, for providing the photographs of Judge Kaye and the Court of Appeals used in this issue.

My Week Clerking for Judge Kaye

By Alan J. Pierce

When I was a personal law clerk to Judge Richard Simons in the fall of 1985, he suffered from appendicitis over a weekend just before we were to go to Albany for arguments. So on Monday morning, I went into Chambers in Rome with little to do. Then I got a call from Judge Simons from the hospital. He informed me that Judge Kaye was short one of two clerks as of Friday, and at her request, he wanted me to go to Albany and help her. I immediately packed and headed to Albany. Our chambers was close with hers, and she had been very friendly in the year I had been there, but I was still a little apprehensive.

Judge Kaye could not have been nicer to me. But she was appropriately demanding

as well, pushing me—as I expected—on my analyses of the cases I had worked up for the term. It was a great experience working for another Judge who was so intelligent and who cared so much about the cases. That is what immediately stood out to me—her intelligence and her passion for the law. While there were differences between Judge Kaye’s and Judge Simons’ chambers, they were the same in that both worked together as a unit, from the Judge to the law clerks, to the administrative assistant.

Friday afternoon of that first week came—yes, in 1985, the Court heard seven cases at oral argument on the first Friday of the two-week term—and I received a call

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Alan J. Pierce

Judge Kaye Thrived at Skadden, Arps in NYC

By Barry H. Garfinkel

Of Counsel, Skadden, Arps, Slate, Meagher & Flom

Former Chief Judge Judith S. Kaye graced the halls of Skadden, Arps for seven years. From the outset of her time with the firm, this trailblazing former jurist was an incomparable asset. When Judge Kaye joined us, it was unclear what aspect of the practice would best benefit from her enormous talents.

Before joining the Court of Appeals, she was a litigation partner at the Olwine Connelly firm. Our firm told Judith (that's how she wanted to be addressed) that she could do "whatever she wanted"—including any pro bono projects that appealed to her. Given her high position at the Court of Appeals, initially she was reluctant to appear as trial or appellate counsel of record. In due course, this changed.

Judith Mastered Arbitration

However, since Skadden had a growing and vibrant International Arbitration practice, she thought that would be a comfortable fit. And indeed it was. At the firm, Judith quickly mastered the intricacies of this world, although she was a newcomer to it.

She was called upon to advise and comment on briefs that the firm's attorneys were planning to submit in international and domestic arbitration cases. Given her stature, she was frequently asked to serve as an arbitrator or chair of an arbitration tribunal, although "conflict" issues prevented her from taking on many assignments.

In another aspect of the firm's arbitration practice, other law firms implored Judith to be their "expert" on New York law in pending disputes. She oftentimes was reluctant to do so, since she considered that it would likely require her to be "going head-to-head" with former colleagues of the Court of Appeals. As an arbitrator, Judith was cited by *Chambers* in the first rank of international arbitrators.

Many Leadership Roles

Skadden was fortunate to have Judith sit as a moot-court judge on arbitration and litigation cases, including those in the federal and state courts. Counsel in other firms called upon Judith as well to function on their moot courts. In all her efforts, Judith was a prodigious worker, frequently at her desk at Four Times Square on weekends.

Another significant role in the international arbitration world was her signal achievement in envisioning and launching the New York International Arbitration Center. Without her talent in cajoling 40 law firms to financially participate in the venture, there would be no Center. Her determination made it happen.

Judith had an "open door" at the firm. She enjoyed helping other attorneys—associates and partners. She made it clear to



all that no one should have any hesitancy in seeking her help. She was passionate in her desire to mentor younger lawyers at the firm.

Judith wore the proverbial "white hat." She was called upon to be Independent Counsel in two major investigations. In one, she was appointed by Governor Andrew Cuomo to investigate several ethics violations by former Governor Patterson. She also conducted an independent investigation of the athletics program at SUNY-Binghamton, after allegations of NCAA rules violations surfaced with regard to the men's basketball program.

Governors Patterson and Cuomo appointed her to be Chairwoman of the 12-member Commission on Judicial Nomination, which submits a list of potential Court of Appeals appointees to the Governor.

At the firm, Judith was a valuable Trustee on the Board selecting finalists awarded Skadden Fellowships to work in pro bono organizations throughout the nation. She chaired the State Permanent Judicial Commission on Justice for Children. It was this role for which she was most grateful to Skadden.

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Judge Kaye Thrived at Skadden, Arps (cont'd)

She was permitted—no, outright encouraged—to continue her passion for “keeping kids in school and out of courts.” Judge Kaye used her position and gravitas to illuminate what was happening nationally to kids being criminalized for being kids. She was a tireless advocate for Youth Courts.

Judith flourished on the Boards of many organizations. She was a Board leader in the Historical Society of the New York Courts, which she founded when on the Court of Appeals. She was a guiding light on the Lincoln Center’s Board of Directors. She also served on the Boards of the Museum of Jewish Heritage and the American Arbitration Association. It was a joy and privilege to have Judith at the firm. Her exuberance was without bounds. She was gracious, caring, and attentive. She inspired affection in all who met her. We will miss her terribly.



Among those celebrating Judge Kaye and honoring other luminaries at the recent Annual Dinner of the Committee on Courts of Appellate Jurisdiction were, left to right, State Bar President David P. Miranda, Fourth Department Associate Justice Erin M. Peradotto, State Bar President-Elect Designee Sharon Stern Gerstman, Fourth Department Presiding Justice Gerald J. Whalen, and State Bar President-Elect Claire P. Gutekunst.



The Year Judge Kaye Ran a Race for Justice

By Timothy P. Murphy

Sometimes the best thing a judge can do is give of her time, as Judge Kaye did in a memorable case.

The Chief Judge was an avid runner. Though not a marathoner, she especially enjoyed running in the now famous four-mile Midnight Run in Central Park, held on New Year's Eve. Her dedication to running the race was well known. In 2002, she passed on the opportunity to officially swear in Michael Bloomberg as Mayor of New York City at midnight. Why? Because she had a race to run. When Judge Kaye eventually swore in the mayor later in the afternoon, she was still wearing her running bib under her robe.

On New Year's Eve in 1987, she ran a race of a different sort when she was asked to grant emergency relief on behalf of a child. Her actions at that time were emblematic of her lifelong passion for improving the lives of children, including in her subsequent role as chair of the New York State Permanent Judicial Commission on Justice for Children.

Terrence was nine years old in December 1987 when he showed up at school bloody and bruised. The eldest son of a Zimbabwe diplomat, Terrence lived on Midland Parkway in Jamaica, Queens, with his three- and seven-year-old sisters, along with his mother and apparently monstrous father. The level of abuse perpetrated upon this child was unthinkable.

Child Needed Protection

The father would tie up Terrence with wire or rope, bind his legs, and hang him naked from a pipe in the basement of their home. The boy would then be struck with an electrical extension cord, as his mother and two young siblings were forced to watch. (Terrence's counsel later described the boy's back as looking like a Venetian blind because of all the markings.) New York City authorities got involved. The boy was removed from the home, but the father had diplomatic immunity because of his job with the Zimbabwe government. The father could be neither prosecuted nor subjected to any Family Court order. All the federal government could do was expel him from our country. But when an individual has diplomatic immunity, so do any children in his or her custody. Young Terrence would have to go back to Zimbabwe as well.

Legal Aid Society counsel for Terrence had to do something to protect the boy. They argued in Queens County Family Court, under the guise of a Family Court Act child protective proceeding, that the State Department—which was standing in the shoes of the Zimbabwe government as custodian for the boy—was not acting in the child's best interests in insisting that he be returned to Zimbabwe.

The law guardians had trouble trusting assurances that sufficient child protective services were in place to keep Terrence

safe in his native country. Family Court dismissed the petition, since New York courts had no jurisdiction. The Second Department agreed, further rejecting the boy's motion for a stay pending appeal. See *Matter of Terrence K. (Lydia K.)*, 135 AD2d 857. That motion was denied on December 31, 1987.

So on New Year's Eve, Terrence's attorneys sought a stay of the Second Department order. That is where Judge Kaye entered the story. Counsel was heard on the motion by then Associate Judge of the Court of Appeals Judith Kaye. The arguments in her Park Avenue chambers began at 11 p.m. and lasted past midnight. The judge gave the parties her time, prepared the necessary paperwork, and, for the first time, missed the Midnight Run.

Judge Kaye Granted Stay

She ultimately granted a stay, a decision reversed by the full court a week later. See *Matter of Terrence K.*, 70 NY2d 951. The gallant efforts of Terrence's attorneys did not stop there. They subsequently obtained temporary relief through a Family Court custody petition against the U.S. Secretary of State.

The case was removed to District Court for the Eastern District, where Judge Jack Weinstein denied relief, concluding that New York State courts had no jurisdiction to entertain the matter. The Second Circuit also denied relief in the custody matter, which was consolidated with a federal asylum case filed by the attorneys. The next stop was the U.S. Supreme Court, where Justice Harry S. Blackmun did what Judge Kaye did: he granted a temporary stay regarding this latest litigation, only to be later reversed.

In early March 1988, Terrence was returned to Zimbabwe, but only after having received professional counseling to address the abuse he had endured and the changes that he was facing at the time. When first told that he would have to return to his native country with his parents, Terrence crawled into a cardboard box and sat there, rocking back and forth. But by the time he was returned in March, he was ready.

The case sparked national and international attention, with both President Reagan and the President of Zimbabwe making public comments. The *New York Times* covered the case extensively. In 1993, psychologist Leonard T. Gries authored a book about the case: *Gregory of Zimbabwe: A True Story of Overcoming Child Abuse and the Scandal of Diplomatic Immunity*.

The odds were always against permanently keeping Terrence here. But the attorneys sought to avoid his immediate removal—giving the boy more time to prepare for what he

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The Year Judge Kaye Ran a Race for Justice (cont'd)

would be facing back to his native land, as he began what would become a lifelong journey in coping with the harm his father caused.

When asked in 1988 about the goals of the legal team, then Legal Aid attorney Janet Fink observed, "What we were asking for essentially was time."

It has been reported that Terrence has grown up to be a healthy and productive young man and has ventured back to our country to visit. He was one of so many children whose lives have been touched by Judge Kaye.

My Week Clerking for Judge Kaye (cont'd)

from Judge Simons that he was coming to Albany for the second week. I had to get home to Rome and pack up our briefs and records for the next week. I spoke to Judge Kaye when she came back to chambers from the bench, and she thanked me for assisting her chambers that week. Gracious as always!!

What a great experience, one I enjoyed discussing with Judge Kaye over the years whenever we talked. My experience was not unique. Her law clerks will tell you that they universally loved her and working for her. What better testament to a Judge—she was beloved by the people who served her largely in the shadows.



Three former Court of Appeals Judges who shared warm remembrances of Judge Kaye at the recent Annual Dinner of the Committee on Courts of Appellate Jurisdiction are shown here: Hon. Carmen Beauchamp Ciparick (above) and Hon. Victoria A. Graffeo and Hon. Robert S. Smith (below). Also at the dinner were Hon. Peter Tom, Acting Presiding Justice of the First Department (above left), and Steven N. Feinman of White Plains (above right).





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Above left, Alan J. Pierce, Chair of the Committee on Courts of Appellate Jurisdiction, presents an award to Hon. Jonathan Lippman, who recently retired as Chief Judge of the New York Court of Appeals. In his remarks, Judge Lippman spoke of Judge Kaye's passion for bringing justice to children, her intelligence and vision, and her sense of style and wit. Judge Ciparick is surrounded by Court of Appeals Judge Jenny Rivera and Presiding Justice Whalen.

