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Hon. Janet DiFiore

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# A Tribute to Chief Judge Judith S. Kaye

*Hon. Janet DiFiore*<sup>†</sup>

I am honored that the *Brooklyn Law Review* invited me to offer a brief tribute to our beloved former Chief Judge, Judith S. Kaye. This special issue devoted to her legacy, including her own remarkable essay written shortly before her death, “Reflections on Opportunity in Life and Law,” renews my admiration for her accomplishments as a woman, a jurist, and a leader who seized every opportunity to improve our system of justice.

Article VI, section 28 of the New York State Constitution vests the Chief Judge with two very demanding roles and sets of responsibilities. One is adjudicative: sitting on the Court of Appeals, the State’s highest court, and deciding cases of statewide importance. The other is administrative: overseeing the State’s judicial branch of government and setting priorities for one of the largest, busiest court systems in the world.<sup>1</sup> Judith Kaye embraced and carried out this dual constitutional role with thoughtful scholarship, bold leadership, and a clear vision for the future of the New York courts.

As Chief Executive of one of the largest, busiest, and most complex judicial systems in the world, she successfully guided our courts and legal profession through a period of rapid social and technological change. In the process, she transformed and modernized our entire court system, with a special focus on serving the needs of families and children, reforming the jury system, and establishing Community Courts, Drug Treatment Courts, Domestic Violence Courts, and Mental Health Courts to deal more effectively with the modern-day societal problems

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<sup>†</sup> Chief Judge of the New York Court of Appeals and the State of New York. Prior to her appointment to the New York Court of Appeals on December 1, 2015, Chief Judge DiFiore served as the Westchester County District Attorney, the Supervising Judge of the Criminal Courts for the 9th Judicial District and a Justice of the New York State Supreme Court, a Judge of the Westchester County Court, and an Assistant District Attorney in Westchester County. She received her J.D. from St. John’s University School of Law.

<sup>1</sup> As Jeffrey Toobin described it in *The New Yorker*, “The Chief Judge has responsibilities that are both rarefied and banal: guiding the jurisprudence of the top court, and supervising the gritty details of the sprawling state judicial system.” Jeffrey Toobin, *Special Kaye*, *NEW YORKER*, Dec. 15, 2008, at p. 34.

swelling our court dockets. During her tenure, our court system became a laboratory for innovation, generating many important reforms that changed the way justice is delivered in the twenty-first century.<sup>2</sup>

Judith Kaye's opinions on the Court of Appeals span a quarter century, from 1983 through 2008, and about 50 volumes of the *New York Reports*, from 60 N.Y.2d through 10 N.Y.3d. Early in her tenure she earned a national reputation as a vigorous proponent of state constitutionalism through scholarly, persuasive writings that found it appropriate at times to recognize greater rights and safeguards under the State Constitution than may be recognized by the U.S. Supreme Court under our federal Constitution.<sup>3</sup> In so many other critical areas, Judge Kaye indelibly shaped the law of our State in elegantly written, well-reasoned opinions, including same-sex marriage and adoption rights,<sup>4</sup> legal ethics and professionalism,<sup>5</sup> public school financing,<sup>6</sup> capital punishment,<sup>7</sup> and commercial law, to name but a few.

There is no question that Judge Kaye's jurisprudence and transformative leadership of the New York courts will stand the test of time. But in the end, it is Judith Kaye the human being, with her unique personality, character, and life-long commitment to justice that will always stay with us. Like countless others, I cherish special personal memories of Judith, beginning when we first met and she questioned me with great intensity and concern about my experiences sitting in Westchester County Family Court. I was so impressed by her knowledge of Family Court and her obvious desire to improve its functioning. Above all, I was inspired and reassured to know that our Chief Judge had children and families as the number one item on her reform agenda.

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<sup>2</sup> John Caher, *Kaye Seen as Tireless Reformer, Comfortable with the Middle Ground*, 223 N.Y.L.J. 1 (Apr. 25, 2000).

<sup>3</sup> See, e.g., *People v. Rosen*, 81 N.Y.2d 237 (N.Y. 1993) (right to counsel); *O'Neill v. Oakgrove Constr. Inc.*, 71 N.Y.2d 521 (N.Y. 1988) (First Amendment); see also Judith S. Kaye, *Dual Constitutionalism in Practice and Principle*, 61 ST. JOHN'S L. REV. 399 (1987).

<sup>4</sup> See *Hernandez v. Robles*, 7 N.Y.3d 338 (N.Y. 2006) (dissenting on ground that marriage is a fundamental right that may not be denied to same-sex couples); *Matter of Jacob*, 86 N.Y.2d 651 (N.Y. 1995) (recognizing adoption rights of same-sex couples); *Alison D. v. Virginia M.*, 77 N.Y.2d 651 (N.Y. 1991) (dissenting from decision denying visitation rights to lesbian who raised child with biological mother).

<sup>5</sup> See *Graubard Mollen Dannett & Horowitz v. Moskovitz*, 86 N.Y.2d 112 (N.Y. 1995) (establishing legal framework for partners leaving law firms).

<sup>6</sup> See *Campaign for Fiscal Equity, Inc. v. State of New York*, 100 N.Y.2d 893 (N.Y. 2003) (holding that the State Constitution requires that students receive meaningful high school education).

<sup>7</sup> See *Hynes v. Tomei*, 92 N.Y.2d 613 (N.Y. 1998) (striking down plea bargaining provisions of new death penalty statute); *People v. Smith*, 63 N.Y.2d 41 (N.Y. 1984), cert. denied 469 U.S. 1227 (1985) (invalidating state's former death penalty statute).

In the ensuing years, I was the beneficiary of many kind words and supportive gestures from Judith Kaye—but none more special than her final ones. On February 8, 2016, during my formal investiture ceremony in the magnificent courtroom in the Court of Appeals, I took the Oath of Office before the Governor and other State officials, my colleagues on the bench and at the bar, and every New Yorker, wearing Judith Kaye’s black robe. She entrusted it to me in her final days, assuring me with her typical thoughtfulness and grace that it was only fitting that I should wear her robe while publicly pledging my own commitment to administer justice and discharge the duties of the office of Chief Judge. Needless to say, I was moved and honored beyond words.

Judith S. Kaye was a highly principled and intellectually gifted judge, a spectacular leader of our judicial system, and a pioneer for women in the legal profession and the judiciary. She devoted herself, with every fiber of her being, to serving the courts and the public good—to improving the law and the administration of justice for the benefit of every person who enters a courthouse in New York State seeking justice. Thanks to her single-minded determination and passion for justice, she was remarkably successful in pursuit of these worthy goals. She leaves behind a legacy of judicial leadership, reform, and public service that will inspire successors for generations to come.