DEDICATION TO JUDITH S. KAYE

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What can you say about the longest serving chief judge in the history of the Court of Appeals that has not already been said? What superlative can you use to describe a woman who has transformed the position of chief executive officer of the New York State court system that does not seem inadequate or trite? How can you possibly pay tribute to one of the great jurists of our time in a few short pages? The answers to all these questions are obvious. You cannot do justice to the Chief Judge through mere words. Many, including this writer, have tried mightily, and volumes of words have been uttered in various combinations in an effort to describe the transcendent nature of this great New Yorker’s contributions to New York—all without avail. But words are all we have sometimes, and we often just have to make do. I have been asked to pay tribute to a woman who was not just a brilliant jurist, but a role model for women and men alike. It is a daunting task, but a joyous one at the same time.

I had the great honor to serve as a law clerk to Judith Kaye, then the junior Associate Judge on the Court of Appeals. Had she been able to drive—she never earned her driver’s license—Judith Kaye would have driven a car bearing a “Court of Appeals 7” license plate. Within a few short years she had moved up in seniority to “Court of Appeals 3” due to the ill-advised and nonsensical law that required us to put Court of Appeals judges such as Hugh Jones, Matthew Jasen, and Bernard Meyer out to pasture at the ridiculously young age of seventy. And by 1993, less than ten years after her appointment to the bench, after a brilliant career as a commercial litigator, she had been named the Chief Judge of the State of New York, entrusted with the leadership of the court system in the wake of the arrest and resignation of the former Chief Judge Sol Wachtler. She turned down offers to become a justice of

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the Supreme Court of the United States and our nation’s Attorney General, deciding instead to devote her efforts to the courts of the State of New York, serving as our Chief Judge for the past fourteen years, longer than any of her twenty-one predecessors. The nation’s loss has been New York’s gain. As a jurist, and as an administrator, Chief Judge Kaye has made New York proud.

Judith A. Smith was born in 1938 in Monticello, New York. Her parents were Polish Jews who had immigrated to the United States in the face of religious persecution. Young Judith began her schooling in a one-room schoolhouse, but when she was six the family moved into the village of Monticello and opened a ladies clothing store. She worked at the store from the time she was old enough to reach the countertop—about age twelve—all the way through college. While attending Monticello High School, she participated on the debate team and was editor of the student newspaper. Graduating at the age of fifteen, having skipped two grades, Kaye was admitted to Barnard College. Although she hoped to fulfill her ambition of being a journalist (she had spent summers during high school working at the *Evening News*, a local paper, in addition to the family store), Barnard did not offer a journalism degree. Instead, Kaye majored in Latin American Civilization while serving as Editor-in-Chief of the *Barnard Bulletin* and as a campus stringer for the *New York Herald Tribune*.

Although Kaye graduated from Barnard in 1958 with the ambition of becoming a foreign correspondent, her first job was as a reporter for the *Hudson Dispatch*, a daily newspaper in Union City, New Jersey, where she was assigned to the society page. Thinking that a law degree would enhance her chances of becoming an international reporter, Kaye entered the New York University School of Law. She took classes at night while working by day as a copy editor at a news service syndicate. Eventually, the law began to interest her more than journalism, and Kaye devoted her efforts to her legal career. Having served as an associate editor of the Law Review, she graduated cum laude in 1962 from New York University School of Law and was inducted as a member of the Order of the Coif. She was 1 of only 10 women in a graduating class of nearly 300.

Kaye’s first legal employer was the Manhattan law firm of Sullivan & Cromwell, where she worked as an associate for two years. It was at Sullivan & Cromwell that she met the late Stephen Rackow Kaye, my mentor of twenty-five years at the Proskauer
firm, whom she married in 1964. After leaving Sullivan &
Cromwell, Kaye worked for one year in the IBM legal department in
Armonk, New York. Then, while carrying, giving birth to, and
caring for the Kayes’ three children, she returned to New York
University School of Law where she served as a part-time assistant
to Dean Russell Niles.

Kaye joined the law firm of Olwine, Connelly, Chase, O’Donnell &
Weyher in 1969. Initially a part-time associate, she was named the
first woman partner in the firm in 1975 and distinguished herself as
a commercial litigator. Not content solely to provide outstanding
legal services to her clients, Kaye was deeply involved in a variety of
activities aimed at the improvement of the legal profession and the
administration of justice. President Jimmy Carter appointed her to
the United States Nominating Commission for Judges of the Second
Circuit, and she also served on the Board of Directors of the Legal
Aid Society and on the New York State Bar Association’s Judicial
Selection Committee. Kaye was active in the New York State and
New York City Bar Associations, as well as the American Bar
Association. In 1981, she was appointed by the New York Court of
Appeals as a charter trustee of the Clients’ Security Fund (now
known as the Lawyers’ Fund for Client Protection).

In 1983, however, her distinguished legal career took a dramatic
turn. Mario Cuomo, campaigning for the office of governor, declared
his intention to appoint the first woman to the New York Court of
Appeals if he were elected. A former law clerk to a judge of the
Court of Appeals, Cuomo had an abiding respect for the Court,
which since its creation had been populated entirely by men.
Cuomo was elected and had his first chance to appoint a judge at
the end of 1982. The list of names provided to the incoming
Governor by the Commission on Judicial Selection, however, failed
to include any women. Cuomo was critical of the Commission,
which had another opportunity to generate a new list only a few
months later. The Commission’s list for the second vacancy
included the names of two women, including the Deputy Chief
Administrative Judge for the New York City courts and a forty-four-
year-old private practitioner named Judith Kaye. Kaye was
nominated by Governor Cuomo, confirmed unanimously by the
Senate, and sworn in as the first female judge of the Court of
Appeals in September 1983.

Whether working from her chambers on Park Avenue, her home
on Central Park West, or the Court of Appeals Hall in Albany, Kaye
tirelessly devoted herself to the work of the Court. Many commentators have tried to analyze her judicial philosophy, or to detect patterns or trends in her decision-making over the passage of time, and it is doubtless that her writings will be the subject of scholarly debate for decades to come. At bottom, however, Kaye’s judicial opinions can be harmonized under a single theme, indeed, a single question: “Does it make sense?” That mantra, coupled with an abiding respect for stare decisis and the stability of the law, are the overarching principles that can be extracted from the jurisprudence of Judith Kaye.

By 1992, Kaye was poised to continue to serve as an Associate Judge at least until the expiration of her term in 1997—perhaps being reappointed at that time by the Governor. Other opportunities might well have presented themselves in the interim. Kaye was widely recognized as one of the stars of the judiciary, not just in New York, but nationally. In the fall of 1992, however, an event took place that changed the course of her life; Chief Judge Sol Wachtler was arrested by FBI agents for allegedly having harassed and threatened a former lover and her young daughter. Wachtler resigned as Chief Judge and eventually pled guilty to a felony charge. This sudden and untimely resignation left a vacancy at the helm of the Court. The selection process concluded when Governor Cuomo nominated Judith Kaye to be our twenty-second Chief Judge in 1993.

Kaye’s performance as Chief Judge, ongoing as of the date of this writing, has been nothing short of “phenomenal” (to use one of Kaye’s own favorite words). As a judge of the Court of Appeals, she continued to combine the highest level of judicial reasoning with a pellucid writing style, all under the umbrella of “what makes sense.” Critics, of which there are but few, have attacked Chief Judge Kaye for allegedly having altered her judicial philosophy in the face of criticism from Governor George Pataki, who early in his term expressed his dissatisfaction with the Court’s record in criminal cases. The evidence—particularly Chief Judge Kaye’s opinions in cases relating directly to the Governor’s powers—simply does not support such a conclusion. What emerges from a fair and careful reading of the full body of Chief Judge Kaye’s writings is the same approach to judicial decision-making that she embraced from the earliest stages of her career on the bench: a firm commitment to the incremental and sensible development of the common law coupled with a respect for the stability of that law and fundamental
principles of stare decisis.

If Kaye’s contributions to the jurisprudence of New York State could be eclipsed, it would only be by her monumental achievements as Chief Judge of the State of New York, the “CEO” of the state court system. It has been in that role that her creativity, initiative, and drive have been most evident. Virtually from the moment she took the oath as Chief Judge, she began working to improve the functioning of the court system in every way possible.

One way Judge Kaye has improved the court system’s functionality is through the creation of problem-solving courts. The concept of problem-solving courts was born through the Midtown Community Court, where low-level crimes in and around the Times Square area of Manhattan are dealt with through a combination of punishment (often visible community service projects) and treatment, training, and counseling. The Community Court has been replicated throughout the state, the country, and in other nations as well, as a model of judicial innovation. Kaye expanded the concept of problem-solving courts to drug courts, which replace punishment for drug abuse with treatment, monitoring, and essential services. Like the Community Court, the drug court is designed to deal with crime by attacking its root causes in an effort to end recidivism and improve the quality of life in the neighborhood. Integrated domestic violence courts were likewise created to enable the court system to address in a comprehensive fashion the many legal issues that domestic violence engenders. Instead of assigning these issues to the separate courts that would ordinarily hear such matters, the integrated domestic violence court permits a single judge to hear multiple cases involving the same family, thereby coordinating the justice system’s response to the situation as a whole. The creation in 1996 of the Center for Court Innovation, a public-private partnership that is charged with the development of new approaches to the myriad of issues that confront our courts, is one of many testaments to the vision and creativity of Chief Judge Kaye.

Another specialized court that was created under Kaye’s leadership was the Commercial Division of the Supreme Court. When she became Chief Judge, lawyers and litigants in complex business cases shunned the state court system and its overburdened dockets. The federal courts were a more attractive alternative, as were specialized business courts such as the Delaware Chancery Court. Working closely with the organized bar, Chief Judge Kaye
created the first Commercial Division in New York County in 1995. The positive reaction to the Commercial Division in Manhattan led to the establishment over the ensuing years of Commercial Divisions in nine other counties.

Early on in her tenure, Chief Judge Kaye announced her intention to focus on the jury system. She began by successfully urging the legislature to abolish all automatic exemptions (Chief Judge Kaye herself served three times but was never impaneled as a juror) and expand the jury pool, thereby reducing the average length of a juror’s service from two weeks to one day or one trial. An automated call-in system was instituted to allow jurors to find out in advance whether they were needed on a particular day or could go about their business. Automatic sequestration in criminal cases was eliminated in 2001; joining the rest of the country, New York gave trial judges the discretion to decide whether sequestration was necessary in each particular case. All of these changes, spearheaded by Kaye, vastly reduced the burdens on jurors and the court system.

Kaye considered it part of her role as Chief Judge to take steps to restore public trust and confidence in the legal profession. She began in 1993 by announcing a series of changes to the rules governing the conduct of attorneys in matrimonial cases, based on the recommendations of a commission that had found widespread problems with the handling of such matters in New York. Although the rules were initially received with hostility by leaders of the organized bar in New York, many of whom complained that lawyers were already over-regulated and that matrimonial lawyers were unfairly being singled out, the new rules served as the springboard for a series of changes over the next few years. Kaye created the Committee on the Profession and the Courts, which held public hearings throughout the state in an effort to understand the sources of public dissatisfaction with the legal profession and the judicial system. A report issued in 1995 led to several reforms, including mandatory continuing legal education for all lawyers in New York, tougher rules regulating frivolous litigation conduct, the adoption of standards of civility for lawyers, and the creation of the New York State Judicial Institute on Professionalism in the Law.

Perhaps only someone with the leadership qualities of Chief Judge Kaye could have led the court system through and beyond the tragedy of the terrorist attacks of September 11, 2001. On that morning, she and hundreds of others were in Albany for the opening
day of a national conference on access to justice. Displaying her strength and resolve, Kaye insisted that the conference proceed. Refusing to allow terrorist acts to interfere with the functioning of the judicial system, she toured the court facilities in lower Manhattan within days of the attacks, met with city engineers, arranged for a new telephone service, and decided that the courts would reopen the following Monday, September 17th. Working closely with the other branches of government and the organized bar, Chief Judge Kaye coordinated recovery efforts from her midtown chambers and the headquarters of the Office of Court Administration on Beaver Street in the “frozen zone” of lower Manhattan, providing needed support for the 1,300 lawyers whose offices were destroyed in the attacks and the 14,000 lawyers who were displaced from their offices, and ensuring the proper functioning of the courts despite the loss of life and destruction of infrastructure. Within a few short weeks, the courts were running at full speed, albeit with tighter security and a greater awareness of the fragility of the freedoms they help protect.

For more than two decades, Judith Kaye has served the people of New York with the highest distinction. Both as a jurist and as a judicial administrator, her tireless efforts and relentless pursuit of new ideas and solutions to problems long considered insoluble, have been recognized across the country. Indeed, the list of honors she has received is beyond impressive. The American Bar Association presented her in 2005 with its John Marshall Award, given to recognize those dedicated to the improvement of the administration of justice, and in 2000 with its Margaret Brent Award for outstanding achievement by women in the law. The New York State Bar Association presented her with its Gold Medal in 1997 for distinguished service, the highest honor that Association bestows, and its first Ruth G. Schapiro Memorial Award in 1992. Her alma maters have both honored her, New York University School of Law presenting her with its Vanderbilt Gold Medal, and Barnard College awarding her its Medal of Distinction. Dozens of bar associations, law schools, and universities have recognized her achievements with awards, medals, and honorary degrees, and she has had the privilege of delivering many distinguished lectures and addresses throughout her long judicial career.

Judith Kaye’s legacy, while still incomplete, may never be all it might have been. Reappointed in early 2007, shortly after the untimely death of her husband of forty-four years, her career will be
truncated artificially at the end of 2008 by the law requiring retirement at age seventy, at a time when most appellate judges are still well in their prime. As with so many of her predecessors and colleagues on the Court of Appeals, mandatory retirement will force a premature end to a brilliant judicial career.

When Chief Judge Kaye leaves the bench, however, it will be a time to celebrate the career of the woman who brought our state court system into the twenty-first century and transformed it into the prototype for all other states to follow. We will honor her leadership in times of crisis and her strength and grace under the harshest conditions. To be sure, pundits will read and analyze her many judicial opinions, scholarly writings and speeches, assessing her career as a jurist. But perhaps most significantly, generations of lawyers will continue to look to her as a role model, the archetype of what can be made of a life in the law, and a stunning example of how a single individual from modest beginnings can, with perseverance and determination, realize her full potential and achieve greatness and immortality.