

JUDITH SMITH KAYE: A CHIEF JUDGE FOR THE AGES

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Judith Smith Kaye's death on January 7, 2016, caused a state-wide lament. Flags were flown at half-mast on government buildings.¹ National and state media paid homage to her life and legacy.² Fifteen hundred people crowded into Lincoln Center to attend her funeral.³ From Montauk to Niagara Falls, the public mourned her passing.

Why? Why this outpouring of grief and love and admiration? The

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¹ Press Release, Andrew M. Cuomo, Statement from Governor Andrew M. Cuomo on the Passing of Former Chief Judge Judith Kaye (Jan. 7, 2016), <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-passing-former-chief-judge-judith-kaye-0> ("Governor directs flags on all state government buildings to be flown at half-staff on January 8, 2016."); see also Press Release, Andrew M. Cuomo, All Flags to Fly at Half-Staff Tomorrow in Honor of Former Chief Judge Judith Kaye & Statement from Mayor De Blasio (Jan. 7, 2016), <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-passing-former-chief-judge-judith-kaye-0> ("In honor of former Chief Judge Judith Kaye, the [s]tate's first female Chief Judge and first woman appointed to the Court of Appeals, all flags shall be lowered to half-staff tomorrow, January 8, 2016, by order of the Mayor of the City of New York, Bill de Blasio.").

² See, e.g., Ashby Jones, *Judith Kaye, First Woman to Serve as New York State's Chief Judge, Dies at 77*, WALL STREET J. (Jan. 7, 2016), <http://www.wsj.com/articles/judith-kaye-first-woman-to-serve-as-new-york-states-chief-judge-dies-at-77-1452187787>; Tom Precious, *Judith Kaye Dies; First Woman to Serve as New York's Top Judge*, BUFF. NEWS (Jan. 7, 2016, 1:57 PM), <http://politicsnow.buffalonews.com/2016/01/07/20705/>; Sam Roberts, *Judith S. Kaye, First Woman to Serve as New York's Chief Judge, Dies at 77*, N.Y. TIMES (Jan. 7, 2016), http://www.nytimes.com/2016/01/08/nyregion/judith-s-kaye-first-woman-to-serve-as-new-yorks-chief-judge-dies-at-77.html?_r=0; Joseph Spector, *Judith Kaye, First Woman Chief Judge, Remembered "As Remarkable Leader"*, DEMOCRAT & CHRON. (Jan. 7, 2016, 5:47 PM), <http://www.democratandchronicle.com/story/news/politics/blogs/vote-up/2016/01/07/judith-kaye-first-woman-chief-judge-has-died/78407660/>.

³ See Andrew Denney, *Kaye Honored as Trailblazer, Innovator, Friend*, N.Y.L.J., Jan. 12, 2016 ("[R]oughly 1,500 mourners . . . gathered at Lincoln Center Monday to pay their respects to Kaye and honor both her trailblazing legal career and her indefatigable spirit."); Chauncey Alcorn & Leonard Greene, *Judith Kaye, First Woman to Serve as N.Y. Chief Judge, Honored at Lincoln Center Memorial Service*, N.Y. DAILY NEWS (Jan. 11, 2016), <http://www.nydailynews.com/new-york/memorial-held-judith-kaye-female-n-y-chief-judge-article-1.2493148> ("The first woman to serve as the state's chief judge was hailed as a pioneer by mourners who filled a Lincoln Center theater Monday for a memorial service in her honor.").

reason, I believe, is because people from all walks of life—people who had never met Judith Kaye—sensed that they had lost something pure, something special.

We live in a cynical age. Displays of respect for public service and public servants are rare. The coarsening of public discourse quickens. Judith Kaye is our answer to the cynics.⁴

She was a miracle, the best of the best—a perfect blend of brilliance, compassion and practicality. Our state has produced many of America’s greatest jurists. But none stood taller than Judith Kaye.⁵

She was the first woman judge and Chief Judge of the New York Court of Appeals.⁶ She was the longest-serving Chief Judge in New York history.⁷ She was the most accomplished court administrator of her time.⁸ She penned hundreds of judicial opinions, many of them landmarks.⁹ She published over two hundred extrajudicial writings that helped shape the path of the law.¹⁰

But beyond the achievements—astounding though they are—there was so much more. She exemplified an elevated vision of the promise and potential of public service. She was a great souled

⁴ See Richard C. Wesley, *A Portrait of Judith S. Kaye*, 84 N.Y.U. L. REV. 676, 680 (2009) (“In this cynical age in which we live, it is refreshing to see someone who is the real deal—a person whose compassion and commitment are genuine. It was a great honor for me to serve with her on the New York Court of Appeals. I truly believe it changed my life.”).

⁵ See *id.* at 676–77.

⁶ See, e.g., State of New York Court of Appeals, *Statement on the Passing of Former Chief Judge Judith S. Kaye From Acting Chief Judge Eugene F. Pigott, Jr.* (Jan. 7, 2016), <https://www.nycourts.gov/ctapps/news/PressRel/01-07-16-CJ-Kaye.pdf> (“Chief Judge Kaye passed away last night. She was the first woman Judge and Chief Judge in Court of Appeal’s history. She was the Court’s longest serving Chief Judge. She served tirelessly and compassionately for over 25 years. The Court of Appeals and the entire New York State Court System is saddened by her loss. She has been an inspiration to all of us who were privileged to know her and she will be greatly missed.”).

⁷ *Id.*

⁸ See Jonathan Lippman, *A Visionary Third Branch Leader*, 84 N.Y.U. L. REV. 655, 661 (2009) (“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.”).

⁹ *Id.* at 655.

¹⁰ See Susan N. Herman, *Portrait of a Judge: Judith S. Kaye, Dichotomies, and State Constitutional Law*, 75 Alb. L. Rev. 1977, 1983 (2012) (“[W]hen you factor in the amount of time that it consumes to be chief judge of all the courts of New York State as Chief Administrative Judge and to have the full workload of a judge on the Court of Appeals, it is nothing less than astonishing that Judge Kaye managed during that same period of time to publish over two hundred articles.”). For a partial listing of Judith Kaye’s published extrajudicial writings, see Steven C. Krane, *Judith Smith Kaye*, in *THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY* 821–24 (Albert M. Rosenblatt ed., 2007).

human being. And, she touched countless people with her ever-present kindness and grace.

Judith Kaye's life is a testament to the American dream. She was the daughter of immigrants from Eastern Europe who fled religious persecution.¹¹ She grew up in a small town in upstate New York, and attended a one-room schoolhouse.¹² From such humble beginnings, she willed herself to surmount obstacle after obstacle and became the leader of New York's court system and highest court.

Yes, Judith Kaye was chief among Chief Judges in New York history.¹³ And yes, she is gone. But while our state is still lighted with her radiance (to borrow Learned Hand's phrase), we do well to pause and reflect on this extraordinary person and her extraordinary life.¹⁴

What Shakespeare said of Hamlet rings truer when said of Judith Smith Kaye: She was a woman, take her for all in all. We shall not look upon her like again.¹⁵

¹¹ Steven C. Krane, *Dedication to Judith S. Kaye*, 70 Alb. L. Rev. 807, 808 (2007).

¹² *Id.*

¹³ See Randall T. Shepard, *Judith Kaye as a Chief among Chiefs*, 84 N.Y.U. L. REV. 671, 672 (2009).

¹⁴ Hand used the phrase: "lighted with his radiance" in his magnificent eulogy of Justice Benjamin Cardozo. See LEARNED HAND, *THE SPIRIT OF LIBERTY* 133 (1952) ("He is gone, and while the west is still lighted with his radiance, it is well for us to pause and take count of our own coarser selves."). Hand's eulogy of Justice Cardozo was also published jointly, under the title, "Mr. Justice Cardozo." Learned Hand, *Mr. Justice Cardozo*, 39 COLUM. L. REV. 9, 9 (1939); Learned Hand, *Mr. Justice Cardozo*, 52 HARV. L. REV. 361, 361 (1939); Learned Hand, *Mr. Justice Cardozo*, 48 YALE L.J. 379, 379 (1939).

¹⁵ See WILLIAM SHAKESPEARE, *THE TRAGEDY OF HAMLET, PRINCE OF DENMARK* 91 (Philip Edwards ed., 1985) ("[He] was a man, take him for all in all. I shall not look upon his like again.").