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Judith S. Kaye: A Chief Judge for Families and Children

ANDREW SCHEPARD*

Introduction

Judith S. Kaye served as the first female associate judge of the New York Court of Appeals (the state’s highest court) from 1983–1993, and as the court’s first female chief judge from 1993 until her mandatory retirement in 2008 at the age of 70.¹ As chief judge, she played a dual role: presiding over the Court of Appeals and serving as the administrative head of the sprawling New York State Unified Court System, which, at the time of her death in 2016, had a budget of \$2.5 billion and 16,000 employees.²

Chief Judge Kaye’s extraordinarily eventful judicial tenure confronted:

- **September 11th:** It fell to Chief Judge Kaye to rally the court system after the terrorist attacks on the World Trade Center on September 11, 2001, when three court officers lost their lives

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1. Sam Roberts, *Judith S. Kaye, First Woman to Serve as New York’s Chief Judge, Dies at 77*, N.Y. TIMES (Jan. 7, 2016), <https://www.nytimes.com/2016/01/08/nyregion/judith-s-kaye-first-woman-to-serve-as-new-yorks-chief-judge-dies-at-77.html>.

2. *Id.*

during rescue efforts and major court buildings were rendered unusable due to dust and air-quality problems.³

- **Jury Reform:** Chief Judge Kaye dramatically improved the treatment of jurors. She eliminated virtually all automatic exemptions from the jury pool, thus diversifying and expanding it. Even lawyers became eligible to serve on juries. Chief Judge Kaye also eliminated the automatic sequestration of jurors, thus easing the emotional and economic strain of jury service.⁴
- **The Need for a Commercial Division:** Chief Judge Kaye created a Commercial Division in the New York State Supreme Court (the misleadingly named trial court of general jurisdiction) to ensure that New York courts would continue to be a leading center for resolving business disputes.⁵
- **The Death Penalty:** Chief Judge Kaye repeatedly voted to strike down New York’s death penalty laws.⁶ As a result, no one was executed in New York State during her tenure on the Court of Appeals.

This tribute, however, focuses on Chief Judge Kaye’s special passion—the welfare of families and children involved with the legal system. The question of how to improve the relationship between the legal system, families, and children was always at the center of Chief Judge Kaye’s judicial universe. Her accomplishments in this area make her a candidate for the most consequential family law judge in American history. More specifically:

- *As a judge* of the highest court of an influential state, Chief Judge Kaye authored seminal opinions (including dissents that eventually found their way into the judicial or legislative mainstream) on

3. See THOMAS A. BIRKLAND, EMERGENCY PLANNING AND THE JUDICIARY: LESSONS FROM SEPTEMBER 11, at 1 (Ctr. for Ct. Innovation 2004), <https://www.courtinnovation.org/sites/default/files/emergencyplanning.pdf>.

4. Hon. Jonathan Lippman, *Chief Judge Judith S. Kaye: A Legacy of Visionary Leadership*, 10 GOV’T, LAW & POL’Y J., Winter 2008, at 4, 6; see also Somini Sengupta, *New Law Releases Juries in New York from Sequestering*, N.Y. TIMES, May 31, 2001.

5. *Commercial Division—N.Y. Supreme Court, History*, N.Y. STATE UNIFIED CT. SYS., <http://ww2.nycourts.gov/courts/comdiv/history.shtml> (describing creation of Commercial Courts Task Force by Chief Judge Kaye in 1995 and her establishing commercial divisions in judicial districts statewide that same year).

6. Roberts, *supra* note 1. See generally Deborah L. Hiller, *Death Becomes the State: The Death Penalty in New York State Past, Present and Future*, 28 PACE L. REV. 589 (2008); see also *People v. Smith*, 468 N.E.2d 879 (N.Y. 1984).

- same-sex marriage and adoption, de facto parenting, domestic violence, and child abuse and neglect.⁷
- *As a judicial administrator*, Chief Judge Kaye:
 - Created problem-solving courts that changed the way courts addressed family-related problems like domestic violence, mental illness, and drug abuse.⁸
 - Established that counsel for a child has the same duty of vigorous advocacy for the client's preferences that lawyers for adults do.⁹
 - Created an interdisciplinary institution within the state court system—the Permanent Judicial Commission on Justice for Children¹⁰—to develop and advocate for positive policy changes on behalf of children.¹¹

After providing a brief biography of Chief Judge Kaye, this essay will provide an overview of these accomplishments for families and children. Space does not allow for a full discussion of all of Chief Judge Kaye's landmark achievements for families and children. For example, in 1997 she took a step towards increasing transparency of family court proceedings by issuing new administrative rules that encouraged family court judges to open proceedings to the press and public, subject to exceptions such as the need to protect the privacy of the children involved.¹² As the *New York Times* noted at the time, few states “ha[d] made public access the norm in the wide array of sensitive cases that come before Family Courts, including adoptions, child abuse and neglect cases and termination of parental rights.”¹³ In the public announcement of the rule, Chief Judge Kaye emphasized that “[i]t is vital that the public have a good understanding of the court and confidence in the court process.”¹⁴

7. See *infra* Part II.

8. See *infra* Part III.

9. See *infra* Part IV.

10. *NYS Permanent Judicial Commission on Justice for Children*, N.Y. STATE UNIFIED CT. SYS., <https://nycourts.gov/ip/justiceforchildren/index.shtml> (last visited May 13, 2022).

11. See *infra* Part V.

12. See *In re* Application for News Media Coverage in the Matter of M.S., 662 N.Y.S.2d 207, 209 (Fam. Ct. 1997) (recognizing presumption of open family court proceedings that “may be overcome only by a finding that closure is essential to preserve higher values and is narrowly tailored to serve that interest”).

13. See Alan Finder, *Chief Judge in New York Tells Family Courts to Admit Public*, N.Y. TIMES (June 19, 1997), <https://www.nytimes.com/1997/06/19/nyregion/chief-judge-in-new-york-tells-family-courts-to-admit-public.html>.

14. *Id.*

A longer and more in-depth analysis of all of her accomplishments for families and children awaits a full biography, which Chief Judge Kaye richly deserves.

Whenever possible, this essay will incorporate Chief Judge Kaye's own words to describe her family law achievements. Some of the quotations come from her judicial opinions; more come from an extensive oral history of her life and career that Chief Judge Kaye provided to the Historical Society of the New York Courts in 2011 after her retirement and are included with the permission of the Historical Society.¹⁵

I. A Brief Biography of Chief Judge Kaye¹⁶

Nothing in Chief Judge Kaye's background indicated that she would focus her judicial energy on bettering the lives of families and children in court. The future chief judge, then Judith Ann Smith, was born in 1938 to Jewish immigrant parents living on a farm near Monticello, New York. Her parents, Benjamin Smith and the former Lena Cohen, opened a women's clothing store when she was six, where she worked from about the age of 12 through college.¹⁷

After graduating high school at age 15 (she skipped two grades) and attending Barnard College, the future Chief Judge Kaye began what she thought would be a career in journalism. She abandoned her journalism ambitions to go to NYU Law School at night and graduated sixth in her class.¹⁸ She worked at two major commercial law firms and was named the first female partner at one. She married a colleague at one of the firms, Stephen Rackow Kaye, and had three children and, eventually, seven grandchildren.¹⁹

During his campaign, Governor Mario M. Cuomo promised to name a woman to the then-all-male New York State Court of Appeals. Soon after taking office in 1983, he appointed Judge Kaye.²⁰

A decade later, the same Governor Cuomo elevated Judge Kaye to Chief Judge Kaye at a particularly dark time in the history of the Court of Appeals. Sol Wachtler, the chief judge whom Judge Kaye replaced,

15. Anne C. Reddy & Hon. Robert M. Mandelbaum, An Oral History of Hon. Judith S. Kaye, conducted on September 26, 28, 2011 and October 19, 20, 2011 at Skadden, Arps, Meagher & Flom LLP by the Historical Society of the New York Courts [hereinafter Kaye, Oral History].

16. This biographical sketch draws heavily on Roberts, *supra* note 1.

17. *Judith Smith Kaye*, HIST. SOC'Y OF THE N.Y. CTS., <https://history.nycourts.gov/biography/judith-smith-kaye/>.

18. Roberts, *supra* note 1.

19. *Id.*

20. *Id.*

“abruptly resigned in disgrace after his arrest on charges of blackmailing his former lover and her daughter in a bizarre attempt to win back the older woman’s affections.”²¹

Chief Judge Kaye undertook the task of rebuilding the Court of Appeals after the Wachtler fiasco. She proved herself to be a “collegial consensus builder” but, as discussed subsequently, dissented when her convictions called for it.²² As also discussed subsequently, she undertook her administrative responsibilities as head of the court system with great vigor. She rejected “overtures to join the Clinton administration after 1992 as attorney general and a possible Supreme Court nomination.”²³

Chief Judge Kaye served on the Court of Appeals until 2008, when she reached the mandatory retirement age of 70.²⁴ While of counsel to Skadden, Arps, Slate, Meagher & Flom she continued to work on behalf of families and children through her membership on important boards and commissions. She died in January 2016 at the age of 77.²⁵

II. Chief Judge Kaye’s Major Family Law Opinions

Chief Judge Kaye’s major family law opinions—several of which were dissents—establish her as a champion of nontraditional families and particularly sensitive to the emotional needs of children. Several interpreted outdated or contradictory statutory language that cabined the legal definition of family to traditional relationships by blood, marriage, or adoption. Some of Chief Judge Kaye’s Court of Appeals colleagues opted to wait for the legislature to expand the outdated language to include less traditional family structures such as same-sex couples. Chief Judge Kaye, in contrast, did not believe the courts should wait for legislative change. Rather, she applied a child-friendly canon of statutory interpretation to resolve plausible ambiguities in a statute affecting children—the child’s best interests, which have always been a subject of special judicial solicitude. Those best interests include preserving a child’s emotional relationship with significant adults in the child’s life, even if they were not parents by marriage, blood, or adoption.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

A. Alison D. v. Virginia M. (1991)²⁶—*Standing of De Facto Parent to Seek Visitation (Dissenting Opinion)*

In *Alison D.* the Court of Appeals addressed the issue of what kind of relationship with a child qualified an adult as a “parent” authorized to seek visitation under the relevant section of the New York Domestic Relations Law § 70.²⁷ The petitioner was a nonbiological, nonadoptive adult (a “de facto parent”) who raised a child with the biological parent in a long-term same-sex relationship. The parties agreed to raise the child together, and the petitioner’s long-term relationship with the child was “encouraged or at least condoned by [the biological parent and] . . . apparently existed between [the child] and the [de facto parent] during the first six years of the child’s life.”²⁸ Then the couple’s relationship ended, albeit not amicably. The biological parent cut off the other parent’s visitation with the child they had raised together.

In a *per curiam* opinion, the majority emphasized that the statutory definition of “parent” meant only biological or adoptive parent, and it was up to the legislature, not the court, to expand the definition.²⁹ Thus, the biological parent had the legal right to cut off the de facto parent’s visitation with the child, and the de facto parent had no legal recourse. To the majority, the child’s emotional connection with the de facto parent was legally irrelevant.

Then-Associate-Judge Kaye was the lone but memorable dissenter. She described the importance of the court’s decision by assessing the scope of its impact on children:

The Court’s decision, fixing biology as the key to visitation rights, has impact far beyond this particular controversy, one that may affect a wide spectrum of relationships—including those of longtime heterosexual stepparents, “common-law” and non-heterosexual partners such as involved here, and even participants in scientific reproduction procedures. Estimates that more than 15.5 million children do not live with two biological parents, and that as many as 8 to 10 million children are born into families with a gay or lesbian parent, suggest just how widespread the impact may be. . . .³⁰

26. 572 N.E.2d 27 (N.Y. 1991).

27. *Id.*

28. *Id.* at 30 (Kaye, J., dissenting).

29. *Id.* at 29 (majority op.).

30. *Id.* at 30 (Kaye, J., dissenting).

Judge Kaye also argued that the function a relationship with an adult plays in the child's emotional life is more important than the form of the relationship:

But the impact of today's decision falls hardest on the children of those [nontraditional family] relationships, limiting their opportunity to maintain bonds that may be crucial to their development. The majority's retreat from the courts' proper role—its tightening of rules that should in visitation petitions, above all, retain the capacity to take the children's interests into account—compels this dissent.³¹

She emphasized the importance of judges focusing on the best interests of children in judicial interpretation of a statute that so impacts them:

[I]n the absence of express legislative direction [we] have attempted to read otherwise undefined words of the statute so as to effectuate the legislative purposes. The Legislature has made plain an objective . . . to promote “the best interest of the child” and the child's “welfare and happiness.” Those words should not be ignored by us in defining standing for visitation purposes—they have not been in prior case law.³²

Finally, Judge Kaye emphasized that children's best interests are more important than the “rights” of parents.

[W]hen there is a conflict, the best interest of the child has always been regarded as superior to the right of parental custody. Indeed, analysis of the cases reveals a shifting of emphasis rather than a remaking of substance. This shifting reflects more the modern principle that a child is a person, and not a subperson over whom the parent has an absolute possessory interest.³³

Judge Kaye's dissent was vindicated by subsequent history, well-described in *Brooke S.B. v. Elizabeth A.C.C.*³⁴ In brief, *Alison D.*'s emphasis on the rights of the biological parent continued to be challenged in subsequent litigation as out of touch with the needs of modern families and children.

31. *Id.*

32. *Id.* at 31.

33. *Id.*

34. *Brooke S.B. v. Elizabeth A.C.C.*, 61 N.E.3d 488, 494–95 (N.Y. 2016).

Judge Kaye’s dissent in *Alison D.* gathered more support in a subsequent decision without capturing a majority vote.³⁵ Finally, in 2016—shortly after Chief Judge Kaye died—the New York Court of Appeals overruled *Alison D.* in *Brooke S.B.* and held that a de facto parent had standing to seek visitation if the de facto parent had a preconception agreement to raise the child with the biological parent.³⁶ Although the *Brooke S.B.* majority followed a somewhat narrower approach than Judge Kaye’s dissent in *Alison D.*, the court explicitly adopted her position that a child’s long-term emotional connection with a de facto parent could take precedence over the rights of a parent based on biology.³⁷

B. In re Jacob (1995)³⁸—***Adoption by Unmarried Parents (Same Sex and Heterosexual)***

Four years after *Alison D.*, in *Jacob* the Court of Appeals addressed whether unmarried parents—heterosexual or homosexual—could adopt a child.³⁹ To answer that question, the Court of Appeals had to interpret a complex, often amended, and linguistically inconsistent statute that attempted to define who had standing to adopt.⁴⁰ As in *Alison D.*, *Jacob* presented the court with the question of whether the legislature had to explicitly amend the adoption statute to extend standing to adopt to unmarried parents or whether the court should interpret the statute to allow it and thus serve the emotional best interests of the children waiting to be adopted.⁴¹

By now Judge Kaye had become Chief Judge Kaye and wrote for a 4–3 majority that the adoptions sought—“one by an unmarried heterosexual couple, the other by the lesbian partner of the child’s mother”—were “fully consistent with the adoption statute.”⁴² Echoing her dissent in *Alison D.*, Chief Judge Kaye reasoned that, while the adoption statute “must be strictly construed,” the “primary loyalty of the courts must be to the statute’s legislative purpose—the child’s best interest.”⁴³

35. Debra H. v. Janice R., 930 N.E.2d 184, 201 (N.Y. 2010) (Ciparick, J., concurring).

36. *Brooke S.B.*, 61 N.E.3d at 490.

37. *Id.* at 499–500.

38. *In re Jacob*, 660 N.E.2d 397 (N.Y. 1995).

39. *Id.* at 398.

40. *Id.* at 399.

41. *Id.*

42. *Id.* at 398.

43. *Id.* at 399.

In her oral history, Chief Judge Kaye expressed a special personal fondness for her opinion in *Jacob* but also hinted that the case caused unusual division in the Court of Appeals:

I mean, I've been in places where people have come up to me and said, "Thank you, thank you for *Jacob*." *Jacob*, of course, is a statutory construction case, construing the adoption statute—the Domestic Relations Law of the State of New York. The Court upheld the right of a same-sex partner to adopt a child. I hardly thought it was the end of the world—it just seemed so right to me—but I think you have a clue to the difficulty we had in reaching that decision if you look at the number of months that elapsed between the date that it was argued and the date that it was handed down. I haven't gone back and checked recently, but I know it went over the summer and it was probably maybe four or five or six months between the date the case was argued and the date it was handed down, ultimately a four-three decision. One Judge was plainly holding open the door.

RM [interviewer for the oral history, Hon. Robert M. Mandelbaum]: I think it was May to November.

JSK: Yes. For the Court of Appeals, that's a very unusual time difference. I'm proud of the Court; it was absolutely the right thing to do. I say, it pleases me so much to have a continued affirmance of the case. It helped to give me your son, Robert, my own godson, right?

RM: Absolutely.⁴⁴

C. *Nicholson v. Scoppetta* (2004)⁴⁵—*Domestic Violence, Child Abuse, and Neglect*

In her oral history, Chief Judge Kaye described this case as follows: "*Nicholson* concerned domestic violence . . . that has been a great interest of mine."⁴⁶ The genesis and evolution of Chief Judge Kaye's interest in domestic violence will be summarized later in this article.⁴⁷ It suffices to note at this point that it extended far beyond opinion writing to creating

44. Kaye, Oral History, *supra* note 15, at 115–16.

45. 820 N.E.2d 840 (N.Y. 2004).

46. Kaye, Oral History, *supra* note 15, at 116.

47. See *infra* Part III.B.

changes in court structure to better address the needs of victims and their children. *Nicholson v. Scoppetta* provided Chief Judge Kaye with the opportunity to move public policy about domestic violence in a direction that served those same ends.

Chief Judge Kaye herself provided a pithy and passionate description of the key issue in *Nicholson* in her oral history, “How outrageous is that, as if being a victim of domestic violence isn’t enough, you get your kids taken away?”⁴⁸ Chief Judge Kaye also described the legal issues in *Nicholson* as “another good statutory interpretation that brought fairness and justice to the [child neglect] statute.”⁴⁹

The procedural context of *Nicholson* gave the Court of Appeals particular latitude to shape public policy through statutory interpretation. In *Nicholson*, victims of domestic violence brought a class action in federal court contending that New York City’s child welfare authorities had a policy of automatically seeking to remove a child from a parent’s care for child neglect if the parent allowed the child to witness domestic violence.⁵⁰ They claimed this policy violated their federally protected rights. But they also raised statutory questions—whether the policy of automatic removal was in conflict with New York’s child neglect statutes.⁵¹

Rather than resolve the issues of interpretation of New York statutes itself, the federal Second Circuit Court of Appeals asked the New York Court of Appeals to answer “certified questions” about them.⁵² The “certified questions” raised pure questions of law not tied to the facts of any particular case.⁵³ This gave the New York Court of Appeals significant latitude in establishing the appropriate balance between the protection of children from harm and fairness to victims of violence. As Chief Judge Kaye described it:

[B]ecause when we get a case in the Court of Appeals, facts and law, often the facts will circumscribe the articulation of the law a little bit. When a case comes to us from the Second Circuit, what they’re doing is certifying to us a question of New York law, which we decide in the abstract. There are facts, of course, but the Second Circuit wants

48. Kaye, Oral History, *supra* note 15, at 124.

49. *Id.* at 116.

50. *Nicholson*, 820 N.E.2d at 842–43; *see also* *Nicholson v. Scoppetta*, 344 F.3d 154 (2d Cir. 2003).

51. *Nicholson*, 820 N.E.2d at 844–45; *see generally* N.Y. FAM. CT. ACT §§ 1012(f), 1022, 1024, 1027, 1028 (McKinney 2021).

52. *Nicholson*, 820 N.E.2d at 844.

53. 2D CIR. R. 27.2.

to know, from the Court of Appeals, what the answer is on the law, and then send the case back to them and they will apply the law as we have stated, to the facts that are before them. . . . So what *Nicholson* enabled us to do, by just having that abstract question of law, was to articulate a principle of law, proposition of law, regarding domestic violence cases that had very, very widespread impact, probably more so than had we decided it ourselves, had we applied it to the facts ourselves. It's had a really good life I think; it's a very good proposition.⁵⁴

Chief Judge Kaye's opinion redrew the boundaries between child neglect law and domestic violence.⁵⁵ The fundamental impact of *Nicholson* was to eliminate the child welfare agency's use of automatic presumptions to determine whether a victim's allowing a child to witness domestic violence against her was child neglect. Rather, *Nicholson* required careful analysis of the particular facts without reference to presumptions.

Briefly, the Court of Appeals held that evidence that the respondent parent has been the victim of domestic violence, and that the child has been exposed to that violence, without more, is insufficient to find that the child has been neglected.⁵⁶ It also held that "under the Family Court Act there can be no 'blanket presumption' favoring removal when a child witnesses domestic violence, and . . . each case is fact-specific."⁵⁷

The plain language of the section and the legislative history supporting it establish that a blanket presumption favoring removal was never intended. The court *must do more* than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests.⁵⁸

54. Kaye, Oral History, *supra* note 15, at 116.

55. Justine A. Dunlop, *Judging Nicholson: An Assessment of Nicholson v. Scoppetta*, 82 DENV. UNIV. L. REV. 671 (2005).

56. *Nicholson*, 820 N.E.2d at 844–47.

57. *Id.* at 854.

58. *Id.* at 852 (emphasis in original).

Additionally, with respect to emergency/*ex parte* removals, the court held:

[A] court may enter an order directing the temporary removal of a child from home *before* the filing of a petition if three factors are met.

First, the parent must be absent or, if present, must have been asked and refused to consent to temporary removal of the child and must have been informed of an intent to apply for an order. Second, the child must appear to suffer from abuse or neglect of a parent or other person legally responsible for the child’s care to the extent that immediate removal is necessary to avoid imminent danger to the child’s life or health. Third, there must be insufficient time to file a petition and hold a preliminary hearing.⁵⁹

The relationship between domestic violence and child neglect is a complex and controversial subject, and a full discussion of the impact of *Nicholson* on it is beyond the scope of this article.⁶⁰ It suffices to note here only that the case is a landmark. The decision raised consciousness in the relevant stakeholder communities about the need for careful analysis and individualized treatment of victims of domestic violence and the impact of violence on their children. *Nicholson* has been repeatedly cited for its clear articulation of what the government must prove in a neglect case involving a victim of domestic violence.⁶¹ The Administration for Children’s Services (ACS) reformed its practices after the litigation. A few years after the case was decided, the agency was “removing fewer children,” “charging fewer victims of domestic violence with neglect solely because of the exposure of their children to domestic violence,” and charging more batterers with neglect.⁶²

59. *Id.*

60. See generally Dunlop, *supra* note 55; Lynn F. Beller, *When in Doubt Take Them Out: Removal of Children from Victims of Domestic Violence Ten Years After Nicholson* v. Williams, 22 DUKE J. GENDER L. & POL’Y 205 (2015).

61. See, e.g., *Natasha W. v. N.Y. State Off. of Child. & Fam. Servs.*, 110 N.E.3d 503, 504 (2018) (citing the standard set forth in *Nicholson* and stating, “[o]n this record, it was rational for the Administrative Law Judge to have concluded that the child was placed in imminent risk of impairment, constituting maltreatment”); *In re Lexie CC.*, 138 N.Y.S.3d 753, 756 (2021). (quoting *Nicholson*, stating “[i]n determining whether a parent has failed to exercise a minimum degree of care, the dispositive inquiry is ‘whether a reasonable and prudent parent [would] have so acted, or failed to act, under the circumstances’”) (internal quotation marks omitted).

62. See generally Tina Lee, *Child Welfare Practice in Domestic Violence Cases in New York City: Problems for Poor Women of Color*, 3 J. WOMEN, GENDER & FAMILIES COLOR 58 (2015).

D. Hernandez v. Robles (2006)⁶³—Constitutionality of Prohibition on Same-Sex Marriage (Dissenting Opinion)

In *Hernandez*, a four-judge majority of the Court of Appeals held that New York’s Domestic Relations Law limits marriage to opposite-sex couples, and rejected the argument that this limitation violated the due process and equal protection provisions of the New York Constitution.⁶⁴ Chief Judge Kaye dissented and memorably wrote, “I am confident that future generations will look back on today’s decision as an unfortunate misstep.”⁶⁵

The majority decision caused Chief Judge Kaye great regret as she felt it betrayed the New York judiciary’s historic commitment to the welfare of families and the best interests of children. As she stated in her oral history:

Hernandez is my constant heartbreak, because I thought the State of New York, by the time the case came to us—it was unthinkable to me that we would not approve, uphold, as a matter of constitutional law, the right to marriage; it’s so fundamental. I watched the Massachusetts court and then a few others, and I thought, surely, New York, New York State, that by the time it got to us, that we would issue a decision that would be a fortification of the proposition that would turn the issue decisively. And it was just incredible to me that it didn’t and that I had to dissent.⁶⁶

Subsequent events may have eased Chief Judge Kaye’s “heartbreak” over *Hernandez*. It indeed proved itself to be an “unfortunate misstep” in the history of marriage equality and was rapidly corrected. Marriage equality became the law of New York when the State Legislature legalized same-sex marriage five years after *Hernandez*.⁶⁷ In 2015, the U.S. Supreme Court decided *Obergefell*, which declared state law bans on same-sex marriage unconstitutional using essentially the same constitutional reasoning Chief Judge Kaye advanced in her *Hernandez* dissent.⁶⁸

63. 855 N.E.2d 1 (2006), *abrogated by* Obergefell v. Hodges, 576 U.S. 644 (2015).

64. *Id.* at 12.

65. *Id.* at 34 (Kaye, J., dissenting).

66. Kaye, Oral History, *supra* note 15, at 117.

67. N.Y. DOM REL. LAW § 10A-1 (effective July 24, 2011) (“A marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or different sex.”).

68. Obergefell v. Hodges, 576 U.S. 664 (2015).

III. The Problem-Solving Courts

A. *The Philosophy of Problem-Solving Judging*

Chief Judge Kaye’s family law opinions are a strong basis for her nomination for a place in the family law pioneers’ hall of fame. But she accomplished even more for families and children in her capacity as the Chief Judge of the State of New York, the Chief Executive Officer of the New York Court System. In that capacity, she planned and implemented problem-solving courts focused on creating effective responses to challenges such as drug abuse, mental illness, and domestic violence, which are the underlying causes that bring many families to court.

As described on the New York State Court System’s website:

Problem-solving courts look to the underlying issues that bring people into the court system, and employ innovative approaches to address those issues. Through intensive judicial monitoring, coordination with outside services, treatment where appropriate, the removal of barriers between courts and increased communication with stakeholders, these courts are able to change the way our system manages cases and responds to individuals, families and communities.⁶⁹

Chief Judge Kaye described the functioning of the problem-solving courts in her oral history:

[T]he traditional way [courts administer cases] is to deal with them by taking the case in and managing it to disposition. The problem-solving courts are a different route, and it’s turning the prism just a little bit to figure out whether the interventions—the court intervention, the time the court spends on the case, can be more constructively utilized than simply disposing of the case, the issue. Probably the most typical example would be a young drug offender, somebody—and I’ll take the easiest case. Not easy, but most easily demonstrates what I’m trying to say would be a repeat drug user, possessor, drug offender under the laws of the State of New York, who could be arrested and prosecuted and, in the end, maybe, because the process takes so long, would be held, incarcerated, in jail. The sentence could be nothing more than time served. Then the offender goes back, right to the

69. *Overview: Problem Solving Courts*, N.Y. STATE UNIFIED CT. SYS., http://ww2.nycourts.gov/COURTS/problem_solving/index.shtml (last visited June 8, 2021).

same place, and gets arrested again and the process begins again and goes to the same conclusion, until there's a sheet called a rap sheet, which is the sheet of the defendant's encounters with the court system, that is six feet long.

So problem-solving courts are an effort, really, to intercept, to try to reroute the person, take them off that pathway back to the Port Authority Bus Terminal, or prostitution, or graffiti, or illegal vending.⁷⁰

Problem-solving judging reframes traditional notions of what a judge's role is by focusing on it as a potentially positive intervention in the lives of the people who come before the court. The traditional judge's role was famously captured by Chief Justice John Roberts, who said at his confirmation hearing, "it's my job to call balls and strikes and not to pitch or bat."⁷¹ Chief Justice Roberts used the umpire analogy to highlight that judges must be above partisanship and seek objectivity and neutrality in disputes that courts adjudicate.

The problem-solving judge can also draw on a baseball analogy—the general manager of the family justice system. General managers of baseball teams are responsible for the overall operation of their team. They analyze operations, decide how to allocate the team budget, negotiate contracts, and make trades that benefit the organization and its fans. The team general manager supports player development but also disciplines players and team personnel who deserve it.

The problem-solving family court judge is the general manager of the case team for the families who come before the court. He or she supervises a professional team, gathers resources in the community that might benefit the families and children, and decides how those resources should be used to positively affect individual cases. He or she manages individual cases to provide services to address the underlying problems that the family situation presents and ensure the parties participate in them. On a macro level, in their general manager capacity, problem-solving judges plan and implement changes in how services for the benefit of the children and families who use the court system should be expanded or contracted.

Problem-solving courts have developed in a wide variety of subjects—drug abuse, mental illness, adoption, child protection. Many of them

70. Kaye, Oral History, *supra* note 15, at 200–01.

71. John Roberts: "My Job Is to Call Balls and Strikes and Not to Pitch or Bat," CNN: POLITICS (Sept. 12, 2005), <https://www.cnn.com/2005/POLITICS/9/12/Roberts.statement/>.

deeply affect families and children. As of 2019, there were more than 3,100 problem-solving courts in the U.S.⁷² Problem-solving judging has gained wide acceptance in the legal and judicial communities and has been endorsed by the Conference of Chief Justices and Conference of State Court Administrators.⁷³

Chief Judge Kaye described the role of a problem-solving judge in an address to the National Council of Juvenile and Family Court Judges:

Judicial leadership is key for championing change to ensure that children and families are better, not worse, off for being in the courts. That may not sound like a remarkable discovery—of course we all want to make things better for children and families in the courts. But what I'm talking about goes to the very conception of the judge's role in the process.⁷⁴

By establishing the legitimacy of problem-solving judging, Chief Judge Kaye validated an alternate way of thinking about the role of courts for families and children. Her service as a champion for the idea that courts could be agents for positive change in the lives of parents and children is a major part of her legacy.

B. Integrated Domestic Violence Courts

Chief Judge Kaye especially focused on the development of Integrated Domestic Violence (IDV) courts to systematically address the needs of victims and their children. Chief Judge Kaye traced her focus to a particularly tragic case in Westchester in March 1993 in which a woman was given an order of protection against her husband but was murdered less than two weeks later. Her husband then committed suicide.⁷⁵ The conclusion Chief Judge Kaye eventually reached from analyzing what happened in that case and others was that issuing an order of protection

72. Paul A. Haskins, *Problem-Solving Courts: Fighting Crime by Treating the Offender*, NAT'L INT. JUST. J., Nov. 2019, at 70, 71, <https://www.ojp.gov/pdffiles1/nij/252721.pdf>.

73. In Support of Problem-Solving Courts, Conf. of Chief Justs. Res. 22 & Conf. of State Ct. Adm'rs Res. 4 (Aug. 3, 2000), https://ccj.nesc.org/__data/assets/pdf_file/0017/23462/08032000-in-support-of-problem-solving-courts.pdf.

74. Hon. Judith S. Kaye, *Strategies and Need for Systems Change: Improving Court Practice for the Millennium*, 38 FAM. & CONCILIATION CTS. REV. 159, 162 (2000) (Address to Millennium Conf. of the Nat'l Council of Juvenile & Fam. Ct. Judges, Washington, D.C. Nov. 15, 1999) (emphasis added); see also Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 YALE L. & POL'Y REV. 125, 129–30 (2004).

75. Kaye, Oral History, *supra* note 15, at 122.

was not sufficient to meet the needs of domestic violence victims; rather, courts dealing with domestic violence cases should take a coordinated approach, and services for victims and children had to be made available to them as part of the court process.

Chief Judge Kaye recognized that the notoriously complex New York trial court structure tolerated different courts responding to the same victim and perpetrator of domestic violence with conflicting orders, timetables, and resources. She thus fermented the creation of the IDV courts based on the foundational one-judge, one-family organizational principle of unified family courts to meet those needs:

[T]oday we have domestic violence courts. Because of our fractured court system, you could have a case of, for example, if there were some act of violence or an assault, you could have a case in Criminal Court. You could have a case—the same parties simultaneously—in the Family Court, if there was some issue concerning the children. And simultaneously, you could have a separate case in the Supreme Court, if there was some issue relating to the marriage. That serves people who want to subvert the system and agonize the litigant, because what you need—I think always it’s good, but particularly in domestic violence cases, what the judge needs is very comprehensive information. You really need to know everything about the parties involved and their situation, and when you have a single, integrated domestic violence court which is supported by the resources and the people—I mean, like, where is a person going to live if she has to leave home, or what about the children going to school, or where’s the next meal going to come from? You need people who take these matters very seriously and very comprehensively, and address the situation. . . .

So I think we have learned as a court system and as a society, we have learned a great deal more about domestic violence—not that it doesn’t still go on and that we don’t have a lot more to learn. But fortunately, I think our consciousness was really awakened by events back in 1993.⁷⁶

76. Kaye, Oral History, *supra* note 15, at 123–24.

Today, the New York State Court System has established more than 40 IDV courts based on the model of one family—one judge.⁷⁷ “The[se] [IDV] courts seek to achieve more informed judicial decision-making, fewer conflicting orders, improved service delivery to victims and their children, and a more efficient and comprehensible case processing system.”⁷⁸ They are also the legacy of the victim of domestic violence in Westchester who sparked Chief Judge Kaye’s commitment to creating a judicial system responsive to the needs of victims and their children.

IV. Establishing the Role of the Attorney for the Child

In 2008 Chief Judge Kaye definitely resolved previous uncertainty about the role of the Attorney for the Child (AFC) by issuing Rule 7.2 of the Rules of the Chief Judge, which held AFCs to similar standards of professionalism and advocacy as a lawyer representing an adult.⁷⁹ The voices of children, she believed, should be heard in legal proceedings that greatly affected them.⁸⁰ They were thus entitled to a lawyer playing a traditional advocate’s role guided by what the client wanted to achieve, not what the lawyer thought was good for the client.⁸¹ Chief Judge Kaye rejected the idea that AFCs were, in effect, informal guardians for children who were free to substitute their judgment for that of their child-client.

AFCs may be appointed in many different types of cases—e.g., custody, juvenile delinquency, foster care review, persons in need of supervision, etc.⁸² The difference between representation by an AFC functioning as a traditional lawyer representing an adult and a best interests lawyer is profound for a child client. For example, assume a 12-year-old child

77. *New York State’s Integrated Domestic Violence Model: Results from Four Recent Studies*, CTR.FORCT.INNOVATION, https://www.courtinnovation.org/publications/new-york-states-integrated-domestic-violence-court-model-results-four-recent-studies?gclid=CjwKCAjwqvyFBhB7EiwAER786fXzuYOFFN0FFk9e-4B77QGF7SWpOjmYMazfliRV1jjCksF4mKieBRoCaG4QAvD_BwE (last visited June 8, 2021); see also Amanda B. Cissner, Sarah Picard-Fritsche & Michael Rempel, *New York State’s Integrated Domestic Violence Court Model: Results from Four Recent Studies*, 2014 DOMESTIC VIOLENCE REP., Apr./May, at 51, 51.

78. *Id.*

79. N.Y. COMP. CODES R. & REGS. tit. 22, § 7.2 (2021) (issued 2007); see also Merrill Sobie, *The Attorney for the Child Comes of Age*, N.Y.L.J. (Apr. 5, 2021), <https://www.law.com/newyorklawjournal/2021/04/05/the-attorney-for-the-child-comes-of-age/>.

80. N.Y. FAM. CT. ACT § 249 (2021).

81. *Id.*

82. *Id.* § 249(a). Counsel is required for juvenile delinquency, child welfare, person in need of supervision, and other listed proceedings, and may be appointed in custody or other proceedings. *Id.*; see also MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT AND DEPENDENCY PROCEEDINGS § 1(c)–(d) (AM. BAR ASS’N 2011), <https://www-media.floridabar.org/uploads/2017/09/171018-ABA-Model-ADAC.pdf> [hereinafter ABA MODEL ACT].

wants to live primarily with his mother following a divorce. An AFC following an adult model of representation would advocate for the child to live primarily with his mother. Assume, however, that an AFC who follows a “best interests” model of representation believes that the child’s relationship with the father is more important than the child’s relationship with the mother and the mother’s parenting style is too dogmatic and authoritarian. That lawyer might conclude that the child’s preference for the mother is not in the child’s best interests and “override” the preference by advocating for placement with the father. A best interests lawyer believes that the child-client’s preferences can be “overridden” by an adult representative, much in the way that a guardian can “override” a ward’s preferences because the ward is incompetent to make such a decision.

Until Chief Judge Kaye issued Rule 7.2, even the term used in New York for lawyers for children—law guardian—reflected the ambiguity in the philosophy of representing children. “Law” reflected the traditional client-driven “like an adult” philosophy of lawyering, while “guardian” signified the “best interests” approach.⁸³ Two fundamentally different approaches to representing a child client were merged into a single phrase. The value preferences of the lawyer appointed to represent the child about which approach to follow governed.⁸⁴ “Representation was frequently grounded upon the subjective views of appointed counsel; child ‘A’ hence received vastly different representation than child ‘B’.”⁸⁵

Exercising her administrative powers, Chief Judge Kaye rejected “best interests” representation and issued a rule that codified the policy that children are entitled to the same model and quality of advocacy as adults.⁸⁶ Rule 7.2 referred to the child’s representative as the “attorney for the child” (as opposed to law guardian). The rule—which is still in effect—clarifies the nature of the representation child-clients should receive:

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

83. See ABA MODEL ACT, *supra* note 82, § (1)(c), for more precise definitions of “Child’s Lawyer” as distinct from “Best Interests Advocate.”

84. Sobie, *supra* note 79.

85. *Id.*

86. *Id.*; see N.Y. COMP. CODES R. & REGS. tit. 22, § 7.2 (2021).

(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.⁸⁷

Firmly establishing that an AFC ordinarily has the same responsibility to his or her client as a lawyer for an adult is another landmark achievement in Chief Judge Kaye's portfolio of progress for parents and children in the legal system. Chief Judge Kaye's rule generated ripples of additional reform as its philosophy became a foundational part of family law proceedings. Two years after the rule was promulgated, in 2010, the New York legislature amended the relevant section of the Family Court

87. N.Y. COMP. CODES R. & REGS. tit. 22, § 7.2(b)–(d) (2021).

Act, substituting the words “attorney for the child” for “law guardian.”⁸⁸ Citing Chief Judge Kaye’s rule, subsequent cases reinforced the idea that attorneys for children should be vigorous advocates for their client’s preferences rather than their perception of their client’s best interests.⁸⁹

V. The Permanent Judicial Commission on Justice for Children

In her 2011 oral history, Chief Judge Kaye traced her passion for bettering the lives of families and children in court to her becoming chair of the New York State Permanent Judicial Commission on Justice for Children in 1988:

I want to step back—a couple of decades, in fact—to the mid-eighties, when Sol Wachtler . . . became the Chief Judge, replacing Larry Cooke, his idea was to have a commission, he called it the Permanent Judicial Commission on Justice for Children. And he told me, I remember at the time, that when word went out that this commission was being organized, he had more people submitting their names, wanting to be part of this than for anything else he had done. And for, I guess, a couple of years, the commission sort of stumbled along. It never really got going well, and he would talk to me about it from time to time, until once he said to me—I think it had to be around 1988—he said, “Why don’t you take over this commission? I think you’d really enjoy it.” And I said, “That’s ridiculous, you know, I’ve spent my life in commercial subjects; I don’t know anything about this area of the law, that everything is in acronyms that I can’t figure out, and I think it would be a mistake.” But he persisted and ultimately, I stepped into the role as co-chair, with Ellen Schall as my—now the Dean of the Wagner School of Public Policy at New York University—as my co-chair. So together we co-chaired that commission for a couple of years, until Ellen one day told me that she was going to leave me; she felt I could do it on

88. N.Y. FAM. CT. ACT § 242 (2021); *see also* Representation of Children, 2010 N.Y. Sess. Laws ch. 41 (A. 7805-B) (McKinney 2021).

89. *See* Jennifer V.V. v. Lawrence W.W., 130 N.Y.S.3d 121 (App. Div. 2020) (“best interests” determination made by court not AFC); Silverman v. Silverman, 129 N.Y.S.3d 86 (App. Div. 2019) (reversing trial court custody determination because AFC stated child’s preference but used litigation tactics that undermined child’s position); Newton v. McFarlane, 103 N.Y.S.3d 445 (App. Div. 2019) (child has right to appeal adverse custody determination against child’s preferences); *see generally* Sobie, *supra* note 79.

my own. And to this day, I chair the Permanent Judicial Commission on Justice for Children. It is a centerpiece of my life.⁹⁰

Under Chief Judge Kaye’s leadership, the Commission brought about systemic reform to benefit families and children—including convening stakeholders, conducting research, developing pilot projects, creating written materials and tools, presenting trainings, and initiating efforts to change policy and practice through changes in rules and legislation.

At its inception, the Commission predominantly targeted its efforts toward the youngest children coming before the courts—securing early intervention, establishing a statewide system of Children’s Centers in the Courts, improving court proceedings, promoting the healthy development of children in foster care, and focusing on the needs of infants involved in child welfare proceedings. The Children’s Centers were an especially notable Commission project. They provided a “safe haven” for children who accompany their parents to court.⁹¹

Today there are more than thirty centers in New York State, serving more than 51,000 children annually. These children centers provide a two-pronged service: (1) quality drop-in child care services while their caregivers attend to court business; and (2) a site—possibly the only place until a child enters school—where families can learn about and gain access to vital services such as Early Intervention, Head Start, WIC, and Food Stamps.⁹²

In 1994, the New York State Court of Appeals designated the Commission to implement the New York State Court Improvement Project (“CIP”), a federally funded project to assess and improve foster care, termination of parental rights and adoption proceedings.⁹³

Since 2006, the Commission has expanded its focus to include older youth involved with the courts. Chief Judge Kaye commented on that focus in her oral history and described in part how the Commission developed one of its signature initiatives—changing school disciplinary practices to keep kids in school and out of court:

90. Kaye, Oral History, *supra* note 15, at 117–18.

91. Anthony J. Sciolino, *The Changing Role of the Family Court Judge: New Ways of Stemming the Tide*, 3 CARDOZO PUB. L. POL’Y & ETHICS J. 395, 408 (2005).

92. *Id.* at 409–10.

93. *Id.* at 409.

Well, I think what I feel good about right now is that first of all, this has been a tremendous interest of mine through the Permanent Judicial Commission on Justice for Children. I told you we changed our lens from zero-to-three to adolescents, as a kind of a last clear chance, and the Commission has been working on projects around adolescents. And lo and behold, the sea has changed around us. I think it's just so terrific that I pick up the paper every day and I see a task force on out-of-state placements for young children and how damaging that is. I see the State of Texas, which has 900,000 pieces of data on children from the seventh grade through graduation and beyond about the effects of school discipline on children. I see this with brain research on adolescent children. It seems to me that the air is alive with interest in reaching out to adolescents to keep them out of our prisons, out of our courts. You know, the only way you get to prison is through the court, so when I say keep them out of prison—nobody goes voluntarily. So keep them out of the courts; keep them in their schools. Let's figure out what to do with them after that, but keep them in their schools. And it's very exciting to me that as we have been pursuing this path, that it's just bubbling all around us, to the point where a foundation actually reached out to me. I still am not comfortable raising money—it's something I never had to do as a judge—and they came to me to say that they would fund a nationwide summit. And I think they see what I've told you I see about my life as Chief Judge, which is my ability to convene the most knowledgeable people, dedicated people, to do something really important about this issue.⁹⁴

VI. A Chief Judge for Families and Children

Through her opinions and administrative achievements, Chief Judge Kaye played an extraordinary role in modernizing the New York State judicial system's understanding and treatment of families. No one expected that focus and those achievements when Judge Kaye was first appointed. In her 2016 obituary, the *New York Times* noted that the judicial nominating commission's 1983 list of seven candidates for the vacancy on the Court of Appeals, which Chief Judge Kaye filled by appointment from Governor Mario Cuomo, included two women: a sitting State Supreme Court justice who had served as president of the Women's Bar Association; and Chief Judge Kaye, "whom the association, in contrast to other bar groups, rated

94. Kaye, Oral History, *supra* note 15, at 256–57.

not qualified.”⁹⁵ When Governor Cuomo appointed Chief Judge Kaye anyway, despite the rating from the Women’s Bar Association, the *New York Times* reported that Marjorie E. Karowe, then the president of the women’s bar group, called Governor Cuomo’s decision “unfortunate.”⁹⁶ The *New York Times* then reported: “By 2008, Ms. Karowe had reversed her verdict. ‘Judge Kaye,’ she said, ‘has proved herself to be a remarkable chief judge.’”⁹⁷

Chief Judge Kaye’s focus on the welfare of families and children evolved and expanded over a long career. A full exploration of her motives and methods awaits a longer scholarly examination. A few takeaways about her philosophy of bringing about change in a complex judicial system where stakeholders (often judges) are resistant to change are, however, appropriate.

A. Develop Consensus.

Chief Judge Kaye understood the importance of developing consensus in support of change, whether among her colleagues on the Court of Appeals or stakeholders in a proposed judicial system reorganization.

B. Treat Your Opposition Seriously and Generously, but Move Forward, if Necessary, Without Them.

Chief Judge Kaye was hardly a naïve optimist. She knew there would always be resistance to the reforms that she advocated for that had to be contended with. She described her generous approach to her opposition in her oral history:

I got a . . . lesson, too, once we announced our reforms [new rules for the divorce bar’s relationship with clients] which is the word “pushback.” People hollered and screamed and carried on when we announced what the reforms were, and hollering and carrying on and screaming is the typical reaction to everything you try to change. I call it “pushback.” I became very familiar with pushback and even more familiar with “push forward,” because the change was necessary—change was good. It was just tough. I shouldn’t be too arrogant in saying that, because it’s very easy to advocate for change when you are the person imposing change. It’s a lot harder

95. Roberts, *supra* note 1.

96. *Id.*

97. *Id.*

to advocate for change when you are the person who has to do the changing. . . .

You just can't proclaim rules and go about your business. You have to be there on the scene to make them happen.⁹⁸

Chief Judge Kaye never demonized those who "pushed back" on her reforms but tried to persuade and educate them. Eventually, however, if persuasion failed, she moved forward.

C. Project a "Can Do" Spirit that Attracts Reform-minded People.

Chief Judge Kaye's personality and leadership style encouraged innovation and a "can do" spirit that inspired those around her to aspire higher, a trait captured in the following excerpt from her oral history:

Now you know my most unfavorable word is "pushback," and I certainly heard that a lot and saw that a lot. But my four favorite words, especially from judges but from anybody, were, "I have an idea." . . .

I just loved hearing that.⁹⁹

Her optimism attracted good people with good ideas to work on projects she cared about. She supported and developed those innovations, and the people who came up with them.

D. Project a Positive Vision of What Courts Can Achieve.

Above all, Chief Judge Kaye conveyed a powerful and inspirational vision of a court system that serves families and children humanely, modernizes legal doctrine to meet the needs of contemporary families, and addresses the underlying problems that brought them to court. That vision remains a beacon of hope for all of us concerned with the welfare of families and children.

Chief Judge Kaye's legacy lives on. She would be pleased that there is a high school with branches in Manhattan and Queens named after her. The high school's mission is:

98. Kaye, Oral History, *supra* note 15, at 184–85.

99. *Id.* at 206.

To provide access to a meaningful high school experience for students who have faced significant barriers to their education, building the skills necessary to become independent and successful in a competitive, post-secondary world.¹⁰⁰

Chief Judge Kaye would want to make sure, though, that the staff of the school was diverse, innovative, optimistic, and excellent. She would also want to make sure that the staff had the resources they need to meet the challenges they face.

VII. Conclusion

The work of reforming the legal system for the benefit of the families and children never ends. But today's work begins at a better place because of Chief Judge Kaye's legacy. Her ground-breaking opinions sensitized the family law community to emerging family structures and the emotional needs of children. She administered a complex judicial system to realize innovative ideas about the role of courts in dealing with families in crisis and brought talented, committed people together to create positive change. She showed us all what was possible with leadership and energy. The best way to honor her legacy is to continue with the work she would be proud of. If you "have an idea" to make the family law system function better for families and children and work to implement it, you can be sure that Chief Judge Kaye looks down on you from heaven with her trademark wisdom, grace, and smile.

100. JUDITH S. KAYE HIGH SCHOOL, <https://www.jskhigh.org> (last visited June 20, 2021).