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Stand Tall With New York - The Courts

The Honorable Judith S. Kaye: New York's Justice System - A Tower Of Strength In The Aftermath Of 9/11 And Into The Future

The Editor interviews The Honorable Judith S. Kaye, Chief Judge of the State of New York.

Editor: Where were you on 9/11?

Kaye: Unforgettable. I was in Albany for the Court of Appeals Session. My plan for September 11 was to hear oral arguments at the Court, and then to speak at an Access to Justice Conference that evening. So much for plans.

Editor: What was the effect of 9/11 on the courts?

Kaye: The most direct physical effects were on our bustling Manhattan courts, located in what became known as the Frozen Zone, close to the World Trade Center. One of our courts - the Court of Claims - was actually in the World Trade Center. The Frozen Zone was virtually inaccessible by public transportation, without telephone service, for weeks surrounded by the smoke and smell of Ground Zero. Beyond those physical effects, the human effects were felt throughout the entire court system, starting with the loss of three of our court officers who - along with fellow officers - raced to Ground Zero to aid the rescue effort. The human impacts of September 11 were - are - enormous. Sixty or more of our people lost loved ones. To this day, a court officer at 8:46 every morning sings God Bless America in the lobby of

one of our downtown Manhattan courthouses.

Editor: Did the courts remain open notwithstanding transportation, communication and other difficulties? What lessons were learned?

Kaye: Chief Administrative Judge Jonathan Lippman and I decided immediately that, for both practical and symbolic reasons, our courts should remain open, and I know that was an important decision. But the people who had to implement that decision - the judges and court personnel - had the far harder job, and they were amazing. When Judge Lippman and I toured the lower Manhattan courts on Saturday (September 15), we found our people - red eyed and somber - planning for "normal" operations Monday morning. We established regular lines of communication with the Administrative Judges, as well as with our communications, technology and security personnel. That was key. Remarkably, we were able to have a whole new Internet telephone system - 600 telephones - delivered and installed over a September weekend, and to restore our case computers.

Were lessons learned? Most certainly. To this day, we're still encountering new challenges - like better ways to deal with long lines at magnetometers - and learning new lessons. Looking back, overwhelmingly it was the resolve, the dedication of our people that made all the difference for the New York State courts.

Editor: Many lawyers had to vacate their offices, lost their files and experienced transportation difficulties. Clients were similarly affected. Some lawyers and clients lost their lives. What steps were taken to mitigate the ensuing effects that these events had on pending litigation and other matters being handled by the court system?

Kaye: Close to 17,000 lawyers had their offices in the Frozen Zone - 1400 were located in the World Trade Center. Their offices, their records were destroyed or inaccessible. We formulated a three-fold plan. First, in handling dockets, the courts would be sensitive and flexible on a case-by-case basis, but no blanket adjournments. Given our huge filings, the courts would otherwise quickly drown in backlogs. Second, we offered to copy court records for lawyers free of charge, and do everything possible to help them reconstruct client lists and case files. Third, we set up genuinely informative hotlines, so that lawyers and the public could learn about scheduling and other matters. And throughout, in every way possible, we tried to let the public - including jurors - know what we were doing. The organized Bar, by the way, was fabulous in identifying, dividing and filling emergency legal needs. We kept close communication with the Bar leaders from Day One.

Editor: The families of victims faced significant legal problems arising from the inability to prove the deaths of

their loved ones. What actions were taken to expedite the issuance of Death Certificates?

Kaye: I hope that someone, someday will tell the full story about the justice system's response - that includes the Bar. One errant lawyer or judge is headline news, our good works barely noticed. The Death Certificate procedure you ask about is one superb example of what I consider our "shining hour" of professionalism and public service. Survivors would have been unable to access vitally needed funds - like bank accounts and insurance proceeds - without proof of death, often a long drawn-out process even when there are remains. The courts were able to set up a procedure for practically overnight turnaround leading to a Death Certificate. That required the submission of proof - obviously we had to be careful - an added, difficult burden for many grieving survivors. Within hours of our call to the Bar, hundreds of lawyers stepped forward to help families. The response was breathtaking - and very, very effective.

Editor: How much of an additional burden did the litigation and the complex legal issues resulting from 9/11 place on the courts? Have the courts been able to cope with the increased workload and are their calendars now reasonably clear?

Kaye: We by now have a pretty good idea of the physical and emotional challenges of 9/11. I'm not sure we can even yet see the full range of legal challenges. Courts are a mirror of society - what's in the news today will likely be in the courts tomorrow. But for us, "tomorrow" may be days or years off. Immediately we saw an impact on housing and family court dockets, but it will take a while longer for the really knotty commercial cases to hit the courts. I expect the courts will see more issues

relating to insurance, real estate, business failures, immigration, privacy and security. I note, for example, that as of June 4, a special docket will be established in our Housing Court to address eviction cases against small businesses in lower Manhattan - mom and pop enterprises - who in January and February really began to feel the fallout of relocated businesses and lost jobs. Hopefully, through the extraordinary volunteer efforts of the Bar, many claims to victim funds will be amicably resolved, without the need for lawsuits - but I guess we'll be seeing some of those cases too. Undoubtedly, there's a lot ahead for the courts.

Editor: Bring us up to date on the current status of the Commercial Division. Has the Commercial Division further expanded New York case law relating to business and commerce? To what extent has the commercial court attracted to it cases that might otherwise have been brought in federal courts or in other jurisdictions?

Kaye: What a pleasure it is for me to talk about the Commercial Division! Only last week I attended what was billed as a "Grand Opening Celebration" - and it truly was - of the Albany County Branch of the Commercial Division. That brings us to a total of six counties - New York, Monroe, Erie, Westchester, Nassau and now the Empire State's capital, Albany. Hopefully, we will have a Suffolk County opening soon. I am always also pleased to see the participation - and delight - of the Bar in having this special commercial forum and making it as good as it can possibly be. At the Albany celebration, I learned that the Presiding Judge there, Louis Benza, had already scheduled a meeting with the Bar, to hear its needs and

concerns. And one of the Albany lawyers told me that, instead of filing in the federal court, he had chosen to await the arrival of the Commercial Division. That's music to the ears of a State Chief Judge who happens also to be a former commercial litigator. I've just had a chance to browse through the most recent issue of the *Commercial Division Law Report*, a compendium of case summaries of the Commercial Division Judges - from "Account Stated" to "UCC" - published five times a year. Impressive! Through the Commercial Division, New York is building a solid body of commercial law. That's as it should be for New York law and courts and - perhaps above all - for New York litigants and the public.

Editor: What role did the Commercial Division play in handling business disputes growing out of 9/11? How do you assess its performance and the state of its docket?

Kaye: It's still early to assess the full September 11 impact. With lawyers and litigants - including major institutional litigants like the Attorney General, Port Authority and Corporation Counsel - closed out of their offices, there was naturally an immediate drop-off in dockets. I know too that, with respect to the hundreds of motions on the calendar every day, we were very slow to declare defaults. We took none for a long time, simply adjourning motions when we received no opposition. More recently, we have been making special efforts to reach out to attorneys near the World Trade Center before allowing a default. So in all, I would say we are back to "normal," whatever "normal" means today. It's surely different. For our Manhattan Commercial Division judges, normal means an annual caseload of around 450. Again, the Bar has been most cooperative

- lawyers helping one another - and we are pretty much back to normal in the flow of our dockets. No day passes, however, without many reminders of September 11. Today, for example, we're dealing with "Secure Cards," so that lawyers in and out of our courts every day won't have to stand on long lines, yet we still assure security within the courthouses. We're also planning a national "Nine Eleven Summit," September 25 to 27 in downtown Manhattan, to address subjects such as disaster-related litigation, security and budget issues, and possible new threats.

Editor: One of the major challenges for the court system will be to continue to contribute to making New York an attractive place to do business and to resolve business disputes. What are some of your plans for the near term and long range? How can corporate counsel and the business community contribute to the realization of those plans?

Kaye: With legal matters so central to modern-day life, I sincerely believe that our court system contributes to the vitality of our City, State and nation. We certainly saw that in the aftermath of September 11. Indeed, for many of us, keeping the courts going was our contribution as New Yorkers and Americans, showing the world the high value we place on our justice system and our ideal of equal justice. In particular, the business community needs to know - and I hope and believe they do - that the New York State courts offer an attractive forum for the fair and efficient resolution of their disputes. Disputes are, after all, inevitable. I'm delighted when I hear that our Commercial Division is being designated as a forum of choice in contracts. I believe that a strength of our

Commercial Division is that it was a response to the request of the business community, that it was planned cooperatively with them, and that - even after seven years - in many respects it remains a cooperative venture with our users.

Editor: On a personal note tell us why you are dedicated to the rebirth of the city and why you feel that it is good place to live, work and conduct a business or practice law.

Kaye: I do love this great City - my home - maybe (if such a thing is possible) even a little more now. We all tend to see the world through our own spectacles so, for me, the question is, will our courts and lawyers contribute to the new vitality of the city? Unequivocally yes. We know that courts are essential to the recovery effort, and to the strength of this great nation - we will do our part.