Pace Law Review

Volume 10
Issue 2 *Spring 1990*

Article 8

April 1990

A Leader in the New York Court of Appeals

George A. Davidson

VIII. A Leader In The New York Court of Appeals

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Good afternoon, my name is George Davidson. I'm President of the Society and it's my privilege and pleasure this afternoon to introduce to you our former colleague at The Legal Aid Society, New York Court of Appeals Judge, Judith Kaye. Before I get on with that task, let me add to Arch Murray's remarks of this morning. He gave credit to all the organizers of this event but he left somebody out, the person that had the brilliant idea to put on this event. That person is Arch Murray himself.

As one who began her legal career on the eve of the *Gideon* decision and has devoted her time for many years to making *Gideon* a reality, serving The Legal Aid Society as a Vice President, Director and member of the Executive Committee, Judge Kaye is unusually well positioned to provide a perspective on the *Gideon* era. I would like to focus today on Judge Kaye's contribution to, once again, what has become one of our nation's finest appellate courts. Much of that contribution is evident in her excellent opinions and in the scholarly and thoughtful addresses she has given to this association and elsewhere.

I'd like to focus on a contribution which is less easy to discern from written opinions. Judge Kaye has a unique combination of character, temperament, and talent, which gives her an unusual ability to bring a group together to reach agreement rather than falling apart in disagreement and faction. Speaking of bringing groups together, we are delighted that much of Judge Kaye's family is here as well as one of her law clerks.

I took a look at *Gideon* last night. Although it is a unanimous opinion of the Court, there were three separate opinions written. Thus, it really was an early sign of the disease that plagues the Court today. I then took the most recent bound volume of the Supreme Court reports off the shelf. In the whole volume, there was only one case which was decided by a single opinion. In over eighty percent of the cases, there was a dissent

311. This section of the conference was presented by George A. Davidson — President, The Legal Aid Society; LL.B., magna cum laude, Columbia University, 1967; Law Clerk to Hon. Paul L. Hays, United States Court of Appeals for the Second Circuit, 1967-68.

and the Court wrote a total of sixty-five opinions to dispose of twenty-one cases — an average of over three opinions per case. Fully one out of every five cases was decided by a five to four vote. Appalling as that is, the last time I went through this exercise a couple of years ago, the percentage was one out of four. With this apparent inability to act as an institution and the transformation of the U.S. Reports into a tax supported vanity press for squads of law clerks, the Supreme Court has sadly dissipated its moral authority. One need only compare *Brown v. Board of Education*[312] as an instrument for the moral and intellectual leadership of the nation to a case like *Bakke*[313] to know that value of institutional action.

What a refreshing contrast when I pulled down from the shelf the most recent volume of the New York Court of Appeals reports. Of the fifty cases decided by a full signed opinion, forty-four were decided without dissent and only one was decided by a four to three vote. In the vast majority of cases, the opinion for the court was the only opinion written. These fifty cases produced only fifty-eight written opinions. Apologists for the Supreme Court cannot explain why cases are any easier in the state court. Case after case the New York Court of Appeals docket includes the toughest constitutional, statutory and common law issues that can be found and at least as difficult as anything that the Supreme Court deals with. Nor is this unanimity the mark of any unimaginative pedestrian bench. The New York Court of Appeals has an excellent progressive record on civil rights, criminal law and poverty law. Much of this fine record of institutional effectiveness — I would not put a number on it, but it is far more than one-seventh — is attributable to the work of Judge Kaye and we are delighted that she has joined us today.

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312. 347 U.S. 483 (1954) (separate but equal has no place in public education). Implemented in Brown v. Bd. of Educ., 349 U.S. 294 (1955).

313. Regents of the Univ. of California v. Bakke, 438 U.S. 265 (1978) (where the Court struck down the use of explicit race classification used in medical school admission programs).