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Problem-Solving Courts: Keynote Address

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New York Court of Appeals

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THURSDAY, FEBRUARY 28, 2002

PROBLEM-SOLVING COURTS:

KEYNOTE ADDRESS

Chief Judge Judith S. Kaye

For me, coming to the Fordham Law School always is a treat. I've spent many hours researching in your wonderful library, and I've attended a zillion great functions here. Until today, my favorite visit took place one Election Day when I popped in to see my friend the Dean, and his assistant asked: "Are you a student here?" Today's visit, however, takes the cake—it's the best. Imagine: two whole days dedicated to "Problem-Solving Courts: From Adversarial Litigation to Innovative Jurisprudence," from birth through adolescence, to a long and productive life.

And if it weren't treat enough just to be here at Fordham again, and to be part of this important symposium, I have a note saying, "You don't have to speak for a whole half-hour. We're just pleased to have you with us." What a terrific welcome! So, recognizing that you all have been at this since 8:30 this morning, and have another very full day tomorrow beginning at 8:30, I will try to be brief. That, I know, is one of humanity's most failed aspirations. I notice in a letter outlining guidelines for submissions to the *Fordham Urban Law Journal*, that the *Journal* does not publish "public relations type material, opinion essays, or articles summarizing information readily available elsewhere." What I have to say this afternoon happens to fall into all three categories. In my opinion, problem-solving courts are by far the most exciting, most promising recent development in the law. And that public relations-type opinion is amply buttressed by information readily available elsewhere.

Of all the phenomenal people, and categories, you have on your program—judges and professors and Bar leaders to name a few—I see that I am the only person in the Chief Judge category, so I would like to speak from that perspective. It's good—very, very good—to speak from the Chief Judge perspective.

I may be the only person on the program in the Chief Judge category, but I am not alone among Chief Judges in the view I hold about problem-solving courts. At its Summer 2000 meeting, the nationwide Conference of Chief Justices unanimously endorsed the concept of problem-solving courts, and resolved to encourage the

broad integration of the principles and methods used in those courts into the administration of justice, in order “to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and community.” The Conference of State Court Administrators and the American Bar Association each adopted a similar resolution.

With Chief Judges, State Court Administrators and the American Bar Association all endorsing and encouraging the development of problem-solving courts, the subject is surely an important one for law schools and law students—the next generation of practicing lawyers, law professors, bar leaders and judges.

Why is this innovation so appealing to judges at the helm of our nation’s State courts?

The State courts, as you no doubt know, handle more than ninety-five percent of the country’s litigation—tens of millions of cases each year. In New York alone, our State courts handle well over three million cases annually, more than a million of them in our criminal courts, more than 700,000 in our family courts. And numbers like those are not unique to New York. A Chief Judge could not help but wonder, faced with such numbers, whether we are managing our enormous dockets most effectively. Always we ask ourselves, *how can we do better?*

Seeing the huge number of criminal and family cases, it would also have to strike a Chief Judge that we are very likely simply recycling some of the same people through those courts. Surely not one in every eighteen New Yorkers is in our criminal courts each year. Indeed we know that we see some of the same people—drug addicts, for example—coming through the courts again and again and again, committing non-violent crimes to feed and support a habit. Complex social problems, like recidivism of this sort, are plainly not most effectively addressed by the traditional approach of drugs, crime, jail; drugs, crime, jail. That’s a reason why our dockets are so large. So we ask ourselves, *how can we do better?*

As a Chief Judge, you not only study the case numbers but you also read the newspapers—knowing that the courts are a mirror of society, and that what’s in the news today will likely be in the courts tomorrow. Occasionally, your heart sinks as you read of a homicide by an intimate partner, the deceased clutching a court’s order of protection in her hand, or you read of a starved or beaten child who had many times been before the courts on neglect

charges against a drug-abusing parent. And you wonder, *how can we do better?*

In handling cases involving social problems like drug abuse, domestic violence, family dysfunction and mental illness that so frustrate other agencies and institutions you ask yourself, can the courts perhaps fashion more meaningful outcomes when those matters come before us? Can the courts—with their authority—bring together the resources to address the underlying problem, knowing as we do that the sort of conduct before us may well otherwise recur and even escalate? Can the court intervention be not simply a statistic—a case disposition—but a more comprehensive one, signaling a positive change in defendant's behavior?

As Chief Judge, you challenge yourself and others around you with questions like these, and you look for effective, innovative ideas that your good sense and every instinct tell you may well be sound solutions. And then you try a pilot or two, and you study the results very carefully.

Perhaps you attend a drug court graduation or a family treatment court graduation. You hear a lifelong drug addict who never before could complete treatment tearfully thanking everyone, including the judge he reported to weekly, for giving him back his life. Grown men tell you that for the first time, they are able to have an apartment, a credit card. Or you hear an addicted mom grateful for her chance at recovery, and the opportunity it affords her to raise her children.

Or you attend a domestic violence court opening and you hear a District Attorney, the head of the Legal Aid Society and its chief criminal defense attorney, say publicly that they support these courts because they make sense for the public and for their clients. Or you notice—and you hope and pray for the future—that, since the day the domestic violence court began, there has not been a single fatality in the aftermath of those tinderbox cases. Or you hear a person who has been a trial judge for twenty-one years say, “This is the best thing I’ve ever done” or “This is what I became a judge to do.”

Are there difficulties with this approach? Surely there are. And no one is better able to spot problems than a law-trained audience. We live for problems! We can find the speck of dust in every ray of sunshine. Lawyers and judges are, moreover, a group that is especially wedded to precedent and tradition. We make a virtue of our imperviousness to change—we call it stability. We are scathingly

critical of what we have, yet at the same time we are resolutely opposed to any change.

Problem-solving courts are a significant departure from our traditional adversarial model for case dispositions. And naturally there are difficulties getting any new ideas off the ground. But as we must re-examine and refine our jury system to meet modern needs, and as we must re-examine and refine other justice system staples to meet today's challenges, we need to bring the same energy and creativity to resolving legitimate issues raised by this new approach to the new challenges of the modern-day dockets.

We know that these courts work in practice, because we have experimented for nearly a decade now, and we have hard data to show their success. These courts work in practice, we can make them work in theory too. Together we can create a good conceptual framework for these courts, identifying core principles and best practices in the process.

I'd like to conclude with another concern of Chief Judges, and that is the public view of our courts today. Some Americans point proudly to a history of landmark decisions where courts established, validated, and enforced some of the basic values and principles of a civilized society—like voting rights and equal opportunity and free expression. But others point to more recent history and express dismay, as courts are assailed from all sides. They are seen as unresponsive to the needs of victims, unthinking about the impact of their decisions on communities, and yet less protective than they used to be of the rights of defendants.

The quiet revolution called problem-solving justice means, for victims and communities, enhanced safety and a greater voice. For offenders, it means a chance to avoid incarceration and get their lives back, provided they are willing to do their part and fulfill their rigorously monitored responsibilities. For lawyers and judges, who keep the wheels of justice turning and know first-hand where the current system has fallen down, problem-solving justice is an avenue to more lasting, and by definition therefore better, outcomes. For society generally, it is an opportunity to restore trust and confidence that the courts are indeed concerned with producing meaningful results, not simply proliferating legal process.

And these, in short, are some of the reasons why Chief Judges—among many caring, thoughtful, knowledgeable, responsible people—support problem-solving courts.