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JUDITH S. KAYE

Juvenile Justice Reform: Now Is the Moment

ABOUT THE AUTHOR: The Honorable Judith S. Kaye served as Chief Judge of the State of New York for fifteen years until her retirement in 2008, longer than any other Chief Judge in New York's history. She was appointed to the Court of Appeals as an Associate Judge in 1983 by Governor Mario Cuomo, becoming the first woman ever to serve on New York's highest court. She is now Of Counsel at Skadden, Arps, Slate, Meagher & Flom LLP.

EDITOR'S NOTE: This article is an edited version of Judge Kaye's remarks delivered on August 27, 2010 at the CityLaw Breakfast Series, hosted by the Center for New York City Law, held at New York Law School. Her remarks were followed by a question-and-answer dialogue with attendees. The video of her address is available at http://www.nyls.edu/centers/harlan_scholar_centers/center_for_new_york_city_law/events/video_archive. The citations to some of the information referenced by Judge Kaye were provided by the *New York Law School Law Review*.

JUVENILE JUSTICE REFORM: NOW IS THE MOMENT

As Daniel Webster observed, justice is “the greatest interest of man upon earth.”¹ That perception is proved beyond doubt today—you are all here at the crack of dawn on a beautiful summer Friday to chew on the subject of justice for breakfast. Amazing! I would like to focus on a particular part of the justice system that is not only near and dear to my own heart, but is also a pressing issue in New York and throughout the nation today: juvenile justice.

Forgive me, please, if I begin by first talking just a bit about myself. I have spent nearly fifty years as a lawyer and more than a quarter-century as a judge and New York’s Chief Judge. Those are three separate roles I have been privileged to hold: a lawyer, then a judge of New York State’s high court (the Court of Appeals), and then Chief Judge of the State of New York. But I want to be sure you understand that when I speak of fifty and then twenty-five years in office, that is not a total of seventy-five years as a lawyer and judge—there was a bit of overlap there.

Even so, by any measure, it was a long and much-loved entanglement with our justice system, which I hope will continue far into the future. Do not for a minute be led astray by the letters “R-E-T” after my name. That does not stand for “retired.” It stands for “retooled,” “re-titled,” and “ready to transform.” And my heart, I have to tell you, right at the outset, is in the area of juvenile justice.

I began my lawyer life steeped in the delights of commercial litigation—mergers gone bad, contracts challenged, businesses imperiled. All quite fascinating, as you might imagine, especially for a young woman back in the 1960s. But somewhere along the way I found my true self. I now refer to those early days as my “wasted youth.” Just imagine what I could have done had I been awakened decades earlier to where the real need and importance for lawyers is: the area of juvenile justice.

What I encountered during my own cherished years in the courts was eye-opening and heart-rending—the genuinely wasted youths, the luckless, unfortunate kids growing up in our courts and agencies, abandoned in one way or another, shuffled from place to place, school to school, with no one to believe in them, encourage them, or mentor them. No one to teach them to tie a tie, obtain birth certificates, citizenship papers, social security cards, or school supplies.

When we were building the new family court in Queens some years ago, the architect explained to me that he had carefully researched the operation of family courts and concluded that the design of a family court necessarily begins with large, comfortable public waiting areas because the dockets are so massive and the waits so long. How sad that is, and how true that is. Indeed, the court’s waiting areas are beautiful and, I might add, fully utilized despite the best efforts of judges and court personnel. And talk about heroes—they are the true heroes, dealing with staggering caseloads.

If the filled court waiting areas are not nightmarish enough, just take a look at the grim statistics, both the court statistics and statistics beyond the courts. Today, the rate of incarceration in the United States is several times higher than other Western nations, heavily comprised of twenty- to thirty-year-old minority men, and

1. Daniel Webster, Statement at meeting of the Bar of Massachusetts, in *Appendix to 2 LIFE AND LETTERS OF JOSEPH STORY* 624 (William W. Story ed., London, John Chapman 1851).

now more and more young women, too. And with more young teenage pregnancies, the cycle starts anew. This is America?

We know that the average annual cost to incarcerate a person is about three times what we spend educating a child. We know that close to a third of all kids suspended from school a few times before the spring of their second year of high school simply drop out. We know that a majority of state prisoners are high school dropouts. We know that about half of all inmates have children, some are even the sole custodial parent. That is a lot of broken families and devastated children. It is what the *New York Times* referred to as “the incarceration generation.”² I repeat: This is America?

Once a leader in juvenile justice, today the United States is almost Third World in its punitive approach to youth crime. By youth crime I refer not just to homicides and armed robberies, but also to school scuffles, vandalism (like writing on desks), petty larceny, and similar adolescent behavior that can earn a first-time offender removal from school, friends and family, and time in one of our detention facilities recently condemned by the Department of Justice and others.

These commitments are not only expensive, they are also overwhelmingly ineffective. We know that incarceration more often leads not to rehabilitation but to recidivism. In fact, we know more about adolescent behavior and adolescent brain development today than ever before—about juveniles’ impulsiveness, difficulty thinking in terms of long-term benefits, and reluctance to trust adults. Here I am drawing on Justice Kennedy’s recent opinion for the U.S. Supreme Court in *Graham v. Florida*, the juvenile life-without-parole case decided in May 2010.³ We know the science—it is voluminous. We are just not using it intelligently to deal constructively with what we now know about adolescent behavior and misbehavior.

Shame on us. Shame on us for doing this to our kids, for greasing the downward spiral of their lives. Shame on us for doing this to ourselves, and to our nation’s most precious resource. We, after all, depend on the strength of the next generations for our future in this rapidly changing, challenging world.

How good it is that at least the secret is out today, that from every quarter—the U.S. Department of Justice, our Governor, our Mayor, our Chief Judge, our State Commissioners, the popular press—there are calls for justice for juveniles. “Real Justice for Juveniles” was a recent *New York Times* editorial headline, and momentum at long last is building for systemic reform.⁴ Indeed, it is fair to say that there is today a clamor for change. This is the moment, and we must seize the moment.

I do not exaggerate when I say these words. A few examples prove my point. The other day I opened my brand new *American Bar Association Journal* to find this featured article: “What’s The Matter With Kids Today?” by Mark Hansen, which focuses on the Supreme Court’s recent *Roper* and *Graham* cases and all the brain

2. See Erik Eckholm, *In Prisoners’ Wake, a Tide of Troubled Kids*, N.Y. TIMES, July 4, 2009, at A13, available at <http://www.nytimes.com/2009/07/05/us/05prison.html>.

3. 130 S. Ct. 2011 (2010).

4. Editorial, *Real Justice for Juveniles*, N.Y. TIMES, June 11, 2010, at A30, available at <http://www.nytimes.com/2010/06/11/opinion/11fri3.html>.

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research centered on adolescents.⁵ This line of leading researcher Laurence Steinberg jumps off the pages: “The brain of a teenager is like a car with a powerful gas pedal and weak brakes.” How do we learn to best deal with this now-established fact? The Hansen article speculates on the nationwide impact the two recent Supreme Court decisions will have on children throughout the criminal justice system. There is no doubt that they will.

The summer 2010 issue of *Daedalus*, the Journal of the American Academy of Arts and Sciences, is dedicated to the subject of mass incarceration, and it features an excellent piece by Columbia Law School Professor Jeffrey Fagan, titled “The Contradictions of Juvenile Crime and Punishment.”⁶ Impressive though the article is—I am most especially drawn to its closing reference to a current opportunity for reform—I am bowled over by the eighty meaty, authoritative footnotes reflecting a depth of recent research and scholarly writing regarding the contradictions in juvenile crime and punishment. So I pose the same question to you: What are we doing with the massive new scientific data being accumulated to change the daunting statistics about adolescents?

Recently, my email exploded with messages from friends directing my attention to an excellent op-ed by Commissioners John Mattingly and Vincent Schiraldi,⁷ “Wrong Way to Punish Youths,” urging collaborative programs to close deplorable youth detention facilities, to realign state dollars, and to reallocate savings to local governments so that they can create meaningful programs to improve youth outcomes.⁸ This morning I learned of yet another article by Commissioners Mattingly and Schiraldi, “Building a Safe and Effective Juvenile Justice System,” in the *New York Law Journal*, making the same powerful, irrefutable argument.⁹

I do not exaggerate when I say that *now* is the moment. Now is the moment for genuine reform. I admire and applaud these efforts. I urge you to support them and, even more, to challenge yourselves to think of additional ways to reroute the deadly “cradle to prison,” “school to prison,” or “placement to prison” pipeline. The winds of change need to blow all through the juvenile justice system, not just at the gates of our youth prisons.

We need to address the crisis in our youth prisons, yes, but we also need to *prevent* juvenile delinquency to keep kids out of the justice system. Courts are just

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5. Mark Hansen, *What's the Matter with Kids Today: A Revolution in Thinking About Children's Minds is Sparking Change in Juvenile Justice*, A.B.A. J. (July 5, 2010, 4:30 AM), http://www.abajournal.com/magazine/article/whats_the_matter_with_kids_today/.
 6. Jeffrey Fagan, *The Contradictions of Juvenile Crime & Punishment*, 139 DAEDALUS 43, 43–61 (July 2010).
 7. John Mattingly was at the time Commissioner of the Administration for Children's Services in New York City. Vincent Schiraldi is the City's Commissioner of Probation.
 8. John Mattingly & Vincent Schiraldi, Op-Ed, *Wrong Way to Punish Youths*, TIMES UNION, Aug. 23, 2010, available at <http://www.timesunion.com/opinion/article/Wrong-way-to-punish-youths-625987.php>.
 9. John Mattingly & Vincent Schiraldi, *Transforming Juvenile Justice*, 244 N.Y. L.J. 6 (2010). The commissioners speak of one entire facility we have in the State of New York, the Tryon Boys Residential Center, where not a single youth is housed, but sixty state employees continue to maintain that institution at taxpayer expense.

not a good place for kids to grow. We need to find ways to keep them in their homes and in their schools, with their families and friends, and we need to provide them with services in their communities so that they are able to flourish. We need to create a host of meaningful interventions—off-ramps—that will hold young people accountable for their behavior. At the same time we have to offer them the structure, support, and positive relationships with adults that they need so they can hold their heads up and nurture their dreams.

I do not have a big list of interventions and off-ramps. If I did, I surely would not have waited until today to reveal it. But what I do know, what we all know, is that we have to deal with kids' issues long before they reach the stage of school suspension, expulsion, court referral, and delinquency. There are so many good ideas, good ways to intervene early. And that includes good ideas from the courts—another voice that should be heard.

Just now my own thoughts center on schools, education, and school-justice partnerships to prevent juvenile delinquency. For myself, I am especially interested in youth courts—school-based, court-based, police- or probation-department-based—where peers, instead of police or judges, can intervene early. Youth courts train teenagers to serve as judges, jurors, and attorneys, teaching them about our justice system. They then handle real-life scrapes with the law committed by their schoolmates, like the school scuffles I mentioned earlier. They also administer meaningful sanctions, like community service and behavioral modification classes. Youth courts can involve the private bar as mentors to see that kids stay on the right track.

I am very proud that there are first-rate youth courts up and running around New York City, and with Manhattan District Attorney Cyrus Vance, we are in the planning stages for more of them here in Manhattan. Youth courts are truly a great idea, which I hope we can, together, make into a reality.

In recent months, I have visited youth court programs in Staten Island and Rochester, New York. I have watched teenagers who had been trained to play the roles of judges, jurors, and attorneys. With the consent of the local District Attorney, these young people meet a couple of evenings each week to weigh the cases of their peers who have been accused of non-violent illegal behavior like graffiti, disorderly conduct, public drinking, and vandalism.

There was, for example, the case of James, who was caught shoplifting at the local mall. He was sentenced by the youth court to perform community service. Brianna, age sixteen, was arrested for trespassing and marijuana possession. She was sentenced to write a letter of apology and attend a workshop on how to make better life decisions. Crucially, if James and Brianna complete their sentences as ordered, they will have the cases against them dismissed. What the youth court offers these teens is in effect a second chance, an opportunity to avoid a criminal conviction by paying back the community they have harmed through their behavior.

In responding to youth crime, youth court provides the right message and, crucially, the right messenger. The young people who have their cases heard by these courts learn that they are accountable for their actions. They also learn that they are valued members of the community, and that if they take responsibility for their

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actions, they can move forward with their lives. All of this is communicated not by distant adult authority figures, but by what is known as “credible messengers”—other young people who have been there and done that.

I believe that youth court has the potential to educate young people about the law, to encourage a greater sense of civic engagement, and to offer an important early intervention for misbehaving teenagers. That is why I have chosen to make an investment in spreading the youth court model across the state.

There are a lot of great ideas out there, but one thing we do know for sure is that we need to be in this together, coordinately and cooperatively—government, advocates, law students, and the private sector. We know that the time for action is now. I encourage the law students among us to get involved with projects like the Diane Abbey Law Center for Children and Families and the Center for New York City Law, founded by my friend Ross Sandler. These wonderful organizations are at your fingertips, and you should be taking full advantage of these unique opportunities. I assure you, your contributions can and will make a world of a difference—for you and the people you serve.

Clearly, today we have to remain open to and ready for comprehensive innovation and change. No closed doors, no pushing people or ideas away. This is just too important. This is the time and the place for dramatic change. I know this is true. So do you. We have no better evidence than the fact that you all are gathered here today!

Remember the movie *Field of Dreams*? “Build it and they will come.” That is what we have to do in New York. It is in our hands, all of us working together, using all of our resources to build the partnerships, the interventions, the off-ramps from disaster, so that the dreams of our children and the dreams of our nation can be fulfilled.

* * *

POSTSCRIPT

Much as I enjoyed preparing and delivering the foregoing remarks, without question the pleasure was surpassed by the half hour or more of commentary and exchange that followed.¹⁰ What a thoughtful, caring, distinguished audience! At Professor Ross Sandler’s suggestion, the “questioners” themselves offered their own ideas and initiatives—starting with Commissioners Gladys Carrión and Vincent Schiraldi—so that the session became more of an interactive panel that, frankly, I wished had gone on all day. Many wonderful ideas emerged that energized us all.

A couple of examples in particular are worth noting. I was delighted to see John Jay College President Jeremy Travis in the audience, along with Dr. Jeffrey Butts, who by extraordinary coincidence is just now moving to New York City to affiliate with John Jay College. Dr. Butts, a long-time researcher and author on the subject of youth courts (and lots of other things), reaffirmed the value of youth courts and underscored the need for evidence-based conclusions about their organization and operation. President Travis, eloquent as always, addressed “pushback”—the inevitable issue—and offered an excellent example of a teenager unnecessarily engaged with

10. An edited transcript of selected portions of the question-and-answer dialogue appears below.

the police over a cell phone, which might, perhaps better for all involved have been handled in a youth court. What good fortune to have them both in New York City at this time!

And on the subject of happy coincidences, I enjoyed the coincidence of, first, my friend Judge Karen's story (privately told to me that morning and also shared with the audience) of how reaching out to the family pastor had kept a teenager appearing before her out of detention, and then a questioner's later independent reference to the importance of involving the faith-based community in juvenile reform.

Yes, collaborations of all sorts are essential. The problem is that, when we have a good idea, we each need to push it—or it gets lost. That is called perseverance.

To summarize: We need every single good idea for juvenile justice reform. We need collaborations. We need perseverance. We need serendipity. And we need them now.

* * *

QUESTION & ANSWER SESSION

Richard Jordan, President, Concerned Citizens Speak:

Have you given any thought about the use of the \$700 million of Race to the Top money in terms of this type of education for our schools statewide?¹¹

The Hon. Judith S. Kaye, Of Counsel, Skadden, Arps, Meagher, Slate & Flom LLP, and former Chief Judge of the New York Court of Appeals:

I certainly give a lot of thought to the use of money in every constructive way. My interests center on schools catching kids when there are early signs of difficulty and on seeing that they stay in school. Anything that enhances those objectives is something that definitely has my attention and obviously has yours, and I know where I'll find a ready partner.

And I want especially to introduce Dr. Jeffrey Butts. I don't know about all the rest of you, but I believe in serendipity, don't you? I don't totally rely on serendipity; we need to do a lot of hard work, but serendipity matters too. You know the universal proposition in humanity? It can be summarized in a single word: "pushback." When you put out a good idea, you can be sure that everybody's going to tear it to bits and criticize it. And one day while I was sitting and scratching my head, thinking, "How do we get this youth court model going?" I learned that Dr. Jeffrey Butts was packing his bags and moving to New York City and was affiliated with the great John Jay College of Criminal Justice—could there be a better sign from the heavens? Now that Jeff is here, we have tangible evidence that this is going to be a remarkably successful and wonderful initiative. So say a word, Jeff. Tell them what you have been doing.

11. See *New York Wins Nearly \$700 Million in Race to the Top Competition*, N.Y.S. EDUC. DEP'T (Aug. 24, 2010), <http://www.oms.nysed.gov/press/NewYorkWinsNearly700MinRacetotheTopCompetition.html>.

Dr. Jeffrey Butts, Executive Director, Research and Evaluation Center at John Jay College of Criminal Justice:

I really believe in the model of youth courts as an early intervention for young people who are just starting to become involved with the police and courts. We know who these young people are. The system has noticed them, but they're not really adjudicated yet. They're not in the "deep-end." But I also think it's important that we develop youth courts in a way that leads to a path in which we can start to refer to them as an evidence-based program.

I've done some research on youth courts, other people have as well, but we tend to do these large studies based on the question "Does it work?" or "Does it not work?" We compare youth court to traditional methods of handling young offenders and we need to start doing studies that are smaller and are focused on questions that we can answer with high degrees of rigor. So that means little experiments, because I have personal beliefs about what the best model is, and other people do too. But until we resolve some of those disputes and nail down the key components of effectiveness, the whole idea of youth courts will continue to be seen only as a promising model—a good idea for which there is no evidence.

And in this environment, if you don't have rock-solid evidence behind your program, you eventually lose the competition for funding. Even though I'm a researcher, I'm not one who believes that research should control everything or that we should make all decisions based only upon evidence, but if you're not in that game, you eventually get squeezed out. Youth court is one example, and there are other examples of good early intervention programs that involve practical, skill-based youth development, such as attaching kids to the work force—young people, not just kids, but young people—so that they have some sense of how to plug into the labor force in the future.

And also, I think we should remember that these are often teenagers and adolescents, and much of their life revolves around friends and fun. If you have a program that doesn't allow young people to have fun in some way, they're not going to want to come back to it. And, as every parent knows, as every school system knows, involving kids in things like music and arts and sports—physical activity in general—is a good way to get them attached to what you're doing, and then you can sneak in the lessons and the pro-social development, skill-based activities along with it. But too many of our programs are based on the premise that the best way to reach a young person is to force them to comply with what we want them to do. I don't know a lot of teenagers, but the ones I've met don't naturally respond to that.

Judge Kaye:

Thank you, Jeff. As I've said, the theme of my remarks this morning is about this being the moment for some meaningful change. Where I am trying to place the focus is on the steps before juvenile delinquency—early signs of trouble—and I think some of Dr. Butts's thoughts are excellent. I walked up the street with Professor Carlin Meyer, who laid on my plate another subject that is fascinating, and that is the movement from my years in law school of ho-hum kind of thinking to the fact

that what we have today is experiential education in law schools, and New York Law School is a prime example of experiential education. So when Dr. Butts mentioned a couple of ideas, I think of the enormous pool and reservoir of strength and energy and talent that we have in our law schools moving from the books into the community, and what a great idea it would be to engage the students wherever they are in some of these projects.

Carlin Meyer, Professor of Law and Director of the Diane Abbey Law Center for Children and Families at New York Law School:

I want to endorse one particular thing that Judge Kaye had to say, and that is the importance of serendipity. It so happens that this past summer some of my students and I visited the youth courts and met with two groups—one from Red Hook and one from Greenpoint, both in Brooklyn. We talked about ways in which, through experiential education, we could become involved in supporting youth courts, and we also developed a plan to have a symposium on juvenile justice reform here at New York Law School on April 29, 2011. Many of the people we had talked about involving in that symposium are now sitting in this room. One of the things we've done already is involve some of the students who are participating in those courts, who will be coming to the symposium, to let us know their view of the youth courts. All of the Abbey Center law students will be doing projects next year, and not just research papers, that will make a serious difference to the world of children and families. So we hope you'll let us know if you have projects that you would like New York Law students to help with.

Judge Kaye:

I think we just have to challenge ourselves to be creative and imaginative. I had dinner the other night with a prominent judge, I might say a federal judge, a graduate of the New York City Public School system, and we got naturally onto the subject of juvenile justice. I was shocked to learn that he is never called on by his public school to assist in any way. Isn't that amazing that we don't think of the resources that are right at hand? How could we use alums of all sorts—high school alums and college alums—and bring them in to aid in this really pressing situation? We need them, we need great ideas, and we need creativity. The one thing we don't need is pushback. And I agree with you, Dr. Butts, we need the evidence too. I believe in serendipity, but we can't limit ourselves to serendipity. We need evidence. You're absolutely right.

Karen Smith, Former Acting Justice, New York State Supreme Court:

As an acting Supreme Court Judge, I am assigned on weekends to do the juvenile detention, a new program when family court is not in service. Kids come in front of us and we have to decide whether to put them in secured detention or in unsecured detention or back into the home.

Sending the kids back home does not happen a lot. And one of the reasons why it doesn't happen is because a lot of the kids come from communities of very broken homes, people who are not well. Just this past month, I called a mother of a juvenile

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who was appearing in family court and asked her to come in to take him home. She had asthma, was very sick, there were no other adults in the house, and she couldn't. The kid was arrested for loitering in a New York Housing Authority building.

The bottom line is that I called the mother and I said, "Do you have a pastor?" And she said, "Yes." I said, "Can I have his number?" I called the pastor. I said, "Would you be willing to come down and pick the child up to bring him home, and would you be willing to sit down with Judge Melissa Jackson, who is now the head of New York County Criminal Court, and talk about developing a group of pastors who could serve as guardians until the following week when the child will be seen in family court?" As Hillary Clinton has so aptly taken over the phrase, "It takes a village to raise a child." The pastor agreed, came down, and I was able to not put that child in detention. The person representing the state in these things was furious with me, and she said, "We don't do things like that here." I said, "Well, then you can come up and wear the robe. I'm the one wearing the robe."

Judge Kaye:

And isn't that the theme of the day? The way we do things around here is not the way we want to do them anymore.

Dr. Anne Klaeyen, New York Society for Ethical Culture:

I'm the Clergy Leader at the New York Society for Ethical Culture. We have, since January 2010, been involved in putting together a coalition called "Justice for Juveniles: A Call to Ethical Action!" and have reached out to both faith-based and community-based organizations. I want to speak on behalf of those faith-based organizations, which can do a lot for children. I want to encourage you, if you are members of a congregation, to please speak to your clergy, please speak to your social justice committees, and say, "We need to do something."

Judge Kaye:

I've been before audiences like this where there have been doctors and mental health professionals and all, and they've stood at the microphone and said "We are ready to help you." Well, *you* have to take the initiative too.

Dr. Klaeyen:

The New York Society for Ethical Culture is partnering with the DOME Project to offer tutoring and mentoring. I think we need to fill in these alternatives to incarceration. The diversion program is sixty days long and is very intensive, but then what happens to these thirteen- to fifteen-year-olds at the end of the sixty-day period?

But it's not enough just to talk. I think that if every congregation would have a mentoring or tutoring program and would partner with a group, as we partnered with the DOME Project, we could see a lot of action. As you say, the stars are aligned right now; things are really happening, but each one of us has to do something.

Judge Kaye:

Commissioner Carrión, would you mind bringing us up to date on your truly heroic efforts to correct this abysmal situation that we have at hand?

Gladys Carrión, Commissioner of the New York State Office of Children & Family Services:

The progress we have made in New York State—our ability to close facilities and our work to transform the juvenile justice system, the part for which I'm responsible—is only possible with the collaboration and alignment of so many people who have been here. But also, those alternative programs are really what have enabled me to depopulate so many of my facilities. So that really is important. And I am as focused on doing that end of the work as I am in narrowing the front door into the juvenile justice system.

For us, it's really important to also ensure that only the most dangerous young people be removed from their communities. We really need to focus on creating those alternatives and working to make sure that those young people who don't belong in my system never get near that system at all. And to bring everybody up to date, we just finalized our settlement with the Department of Justice.¹² We will shortly be finalizing our Implementation Plan, which will be approved by the Department of Justice. The monitors have been assigned for oversight of the system, and we have about \$18.5 million to use to start doing work to really improve the conditions within our facilities. But what is really important is for us to work together, and identify the resources we need to divert as many young people as is possible.

Judge Kaye:

Is the faith-based community part of your efforts as well?

Commissioner Carrión:

Absolutely. Yes, they are. We continue to do the work, and there are some wonderful partners here that work with us to be able to do that. It really does take a partnership with the judiciary, which has been a great partner, as well as great partnership with the state and probation and the local stakeholders. New York City has done a wonderful job. There's much more that needs to be done, particularly as you point out, to divert young people from coming into the system. The youth courts are a wonderful, wonderful idea, and what we need is to find ways that all of us together can support the development of more youth courts and really involve the young people in understanding that they can make better choices. As adults, we have the responsibility of supporting them, and we need to really step up to do that. And so I will continue to work with you, in whatever role you are in, as you know.

12. See Press Release, *Justice Department Announces a Comprehensive Agreement with New York to Remedy Violations and Ensure Constitutional Rights at Four Juvenile Justice Facilities*, U.S. DEP'T OF JUST. (July 14, 2010), <http://www.justice.gov/opa/pr/2010/July/10-crt-811.html>.

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Judge Kaye:

And the same goes for me.

Commissioner Carrión:

And so I'm looking forward to working with all of you in this room to make sure that we have the model juvenile justice system, which is a really small system that only houses those young people that can't remain safely in the community.

Judge Kaye:

Thank you, Commissioner Carrión.

Arthur Abbey, Partner, Abbey Spanier Rodd & Abrams LLP, and Chairman of the Board of Trustees of New York Law School:

Where does New York State stand in relation to the other states? Are we way behind? Are there other states that are way ahead? What is the situation?

Judge Kaye:

What a good question. One thing that used to break my heart, and still does, is that we spend so much time visiting other states. Missouri seized all the headlines for a long time. We're all going to Missouri to see what they're doing in Missouri, what they're doing in Michigan, what they're doing in Chicago. And to me, this is just senseless. Why aren't they all coming to see what we're doing here? The McArthur Foundation funds a lot of very creative and wonderful nationwide projects, and during my years as Chief Judge, I met with The Pew Charitable Trusts and I met with the Annie E. Casey Foundation and I met with a whole lot of places that indeed do a lot of funding in New York, but they always picked other states in the end. And there was an article saying that what they looked for were prominence, diversity and willingness to change. We're certainly prominent. Diversity, we have a lot of diversity, and—I figured this is where we fumble and fall—readiness for change. I think I have to conclude that they felt we were not sufficiently ready for change, and therefore funded ten, fifteen, twenty other places.

But I think now we are ready for change, and we want the visits to New York. It's not the tourism we're looking for, right? We want people to come to see what we are doing in New York and, under the great leadership that we have now, I think we will have more and more visitors coming to New York to see it. It's fine that we learn from others. We should always be learning from others, but enough visits to other states. People should come here to see the great things that we are doing in the area of juvenile justice. We are the model. We need to make ourselves the model.

Cassandra Frederick, Social Worker:

I have a lot of friends that have gone through the juvenile justice system and have not made their way out of the juvenile justice system. One of the things that I wanted to ask you about is the policy around zero tolerance in schools. Usually, once a student

has an infraction, it's zero tolerance and the student is out of school, displaced, and moved to a suspension site. And this is happening all the time, students being put into these suspension schools that are not conducive to their learning.

Judge Kaye:

Terrible. Don't you think they're just terrible?

Ms. Frederick:

It's one of the hardest things that I've worked with as a social worker and a counselor. And there is also the issue of students walking through metal detectors every day and criminalizing the youth. I think there are a lot of different subtle things that are happening in schools that are criminalizing these students, which make them more dangerous or make them think they're dangerous, and which get them really tied up into the system.¹³

So I'd like to know what some of your comments are on these policies. I work with the Drug Policy Alliance, which is trying to figure out ways to do drug education that is beyond zero tolerance and talks about safety. I know that sometimes it's really not about the drugs; it's about the situations that people are going through because, even if the drugs weren't there, it would be something else. And the criminal justice system: we have to move into a public health approach in learning how to deal with the youths, move away from criminalizing this behavior, and into actually talking about *understanding* the children.

Judge Kaye:

I affirm everything you've said. And while I chose today to focus on youth courts, my interest generally is on schools, particularly this zero tolerance policy because we know what happens when there's been a suspension. So often for kids, that's just the end and they don't come back. I participated in a conference several months ago called *Building School Justice Partnerships: Keeping Kids in School and Out of Courts*. I'm following up on that right now, working with the police department and with the New York City school system. And there again, we have many wonderful examples in other parts of the United States, such as Birmingham, Alabama. We brought a judge here—Judge Huff—who took the leadership role in negotiating a protocol among the schools and the police which would define when the police would be brought in and when a child would be arrested. We need to pursue that avenue and find more collaborative ways going forward. I have a small working group and that is going forward. But you're absolutely right. We definitely need to focus on the zero tolerance policy, whether it's zero any more in New York State or not. That is an area that's very, very problematic.

13. See *The School-to-Prison Pipeline Symposium*, 54 N.Y.L. SCH. L. REV. 862 (2009–10).

Jeremy Travis, President, John Jay College of Criminal Justice:

I applaud you, as you know, and, just to say it publicly, it is wonderful to hear your voice so focused and so clear on this topic and to hear the call for youth courts, which you're championing now, because with you behind it, things are highly likely to happen. But you mentioned pushback, so in imagining where the pushback will come from, I want your candid assessment of that. I want to raise these issues by telling a story, a brief one.

A person who works for me has a young son who has been in the New York City Public School system and he was maybe in the seventh grade or so. As we all know, there is a no cell phone policy in the Department of Education. He came to school with his cell phone. His teacher saw his cell phone and came to take his cell phone away from him. He reacted by taking her cell phone away from her and running down the hallway with it. She called the police and the police on duty reacted by arresting this young man for theft; taking him to the precinct; calling his mother; and taking him in the system. He was then prosecuted by NYC Corporation Counsel. Many adjournments later, and with some intervention from myself and others, we got a very good pro bono attorney to represent him. And this all started because there wasn't the approach that you're talking about, which is that these minor infractions need a different way of being handled.

But the environment within which that case arose is this zero tolerance environment. So we have in the city a set of realities that affect young people: high levels of interaction with the police on the street, and we've tripled the number of stop-and-frisks in this city in the last four years, which are heavily concentrated in communities of color.

Those are the realities of young people growing up in New York City. They go to school and are subjected to a zero tolerance policy that often, as in the case of my young friend, leads to interventions in the system. I can't comment generally on the Corporation Counsel's Office, but in this case, it had a sort of no-surrender attitude.

This wonderful idea that you're now promoting comes to us in an environment where there's a different way of thinking, that's defended as being the right way of thinking about how the system should interact with young people. We have a number of agencies and philosophies that we're going to have to overcome to make this happen. And those are pretty powerful countervailing forces. So the pushback is going to be pretty strong, and I'm just wondering about your clear-eyed assessment of what it's going to take to move through that other reality.

Judge Kaye:

I heartily endorse everything you've said, and have indeed experienced it in the wake of a recent fabulous full-day session at Skadden Arps, promoting school justice partnerships and having brought together people from Los Angeles, Birmingham, Alabama, and Syracuse. Yes, I brought everybody together and there was, "No, you can't do that," "Stay out of my bailiwick," "Don't come here," or "Don't come there." Absolutely. I see it. There's pushback all over. So are we going to be negative? Are we going to just stop in our tracks? Are we going to allow the naysayers just to stop us

dead in our tracks? No, absolutely not. We're going to be wise and try to build our coalitions intelligently and pursue ideas that we believe are good ideas, drawing on people willing to give us the evidence that we need to make our case.

Interestingly, I witnessed a case like the one you described in Teen Court, in Rochester, New York. Indeed the police officer was there to testify, and the kids examined and cross-examined him. It was also about a cell phone, and that was a model overseen by a judge. These teen court, youth court, and peer courts have different models. They did a great job and I met the parties afterwards. The kid was there and his mother was there. It was a pretty nice lesson for everybody, and the judge was just great. There was a teen jury that formulated the punishment that this child would receive for pursuing his cell phone. He didn't take back the cell phone; the vice principal took his cell phone and wouldn't give it back and he got a little out of control. I imagine this happens every day.

In the course of organizing my symposium on promoting school justice partnerships, I learned about Positive Behavior Intervention Systems, and we have some of those going here in New York City too. I've visited schools that function around Positive Behavior Intervention Systems. We just need to look for the good things. Are we believers or are we naysayers? We are believers.

The Hon. Paula Hepner, Supervising Judge, Kings County Family Court:

I feel the need to end on a bit of a higher note here for juvenile justice because there are some things that people will be coming to New York to see. We are a leader in at least one sector of the population in juvenile justice. For the past six years, I've had the good fortune in our family court in New York to lead a work group focused on lesbian, gay, bisexual, and transgender children, and I've had the good fortune to be on the advisory committee of the first national project to study LGBT kids in detention centers and in detention facilities in the juvenile justice system. A report issued earlier this year shows that, quite to the contrary of our thoughts on this topic, somewhere between ten percent and thirteen percent of youth in detention facilities fall into the category of LGBT kids.¹⁴

In New York, we have a nondiscrimination policy in the Department of Juvenile Justice in New York City, and, thanks to Commissioner Carrión and her committee, we now have a nondiscrimination protocol for the treatment of LGBT kids in our facilities. These policies are being looked at around the country as the leading edge on this movement to raise issues and visibility about our particular population of kids and how they can be served better in our juvenile justice system: less isolated and less victimized. And so thanks to Commissioner Carrión for being a leader in that area; people will be coming to New York to see how she does it and how we do it here.

14. KATAYOON MAID, JODY MARKSAMER & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS, EQUITY PROJECT 2 (2009), http://www.equityproject.org/pdfs/hidden_injustice.pdf.

Judge Kaye:

I congratulate you on the many, many things you have accomplished, and surely what you've just related to us gladdens my own heart. But what I would be interested in having you do is to roll the clock all the way back and tell us how you got from A to Z—and I don't mean the substantive things as much as procedural—how you met at every single juncture the inevitable pushback that you confronted, and maybe that could be a plan for us that would be more widely applicable to other issues too.

Vincent N. Schiraldi, Commissioner, New York City Department of Probation:

I want to also end on a positive note because I just came here from D.C. six months ago, and I've been in a lot of other jurisdictions. New York has an enormous amount going for it. The sixty-two percent decline in the number of kids going to Office of Children and Family Services (OCFS) from New York City rivals anything going on anywhere around the country, and this all happened before I got here. I think there's just an increasing collaboration between us. We're meeting soon with our staff to talk about how to really completely reduce the use of non-secured care and create a whole continuum for the young people that would otherwise be in OCFS non-secured care. Bit by bit, we are moving towards local control of young people who would formally go to the state system.

Commissioner Carrión is not going to be around forever, and most centralized state bureaucracies in juvenile justice around the country stink. It's not a good model. It's a lousy model. And so more and more I want to see if we can shift towards local control of that. There are a lot of problems with local control too, but they tend to be a bit better than the centralized control.

And I think New York really has the opportunity to be the leader in this field. I think California dramatically reduced the number of kids in the youth authority, but they screwed it up. They really didn't do it well. They just sort of dumped everybody back on the counties. They gave them money, but they just dumped everybody back. And I think New York can really be the kind of place people will come to and say, "Wow, this is how you do it if you want to reduce centralized state bureaucracy?" Put more people in local, technical assistance, training, oversight—all those things, and I think that can be one place where we cut our teeth.

But also I want also acknowledge the NYC Law Department, because the very first thing Angela Albertus, Chief of the Family Court Division, came to us and said is, "We need to divert more kids." And so we're looking at youth court as one way of doing that.

Judge Kaye:

I hope you will allow me to be part of that because I say pushing people away is a bad thing. And I think I've got some wonderful partners here that I'm delivering to you as well.

Ross Sandler, Professor of Law and Director of the Center for New York City Law at New York Law School:

Well thank you. This has been a very stimulating and, in some ways, unusual event because not only did everybody get “to-do’s” out of here, but we’re all a lot smarter about this, and we have an optimism that you convey so strongly. Thank you all.

CORRECTION:

An earlier version of this article misidentified an individual who asked a question during Judge Kaye’s question-and-answer dialogue with event attendees. The speaker was incorrectly identified as The Honorable Karen Wolff, Family Court Judge, New York State Supreme Court. However, Judge Wolff was not in attendance at the event. The speaker should have been identified as Karen Smith, who had served as a Justice on the New York State Supreme Court. The Law Review apologizes for the error.