

John Caher: Welcome to Amici, news and insight from the New York Judiciary and Unified Court System. Today, we feature a segment from the January 11, 2016 edition of The Capitol Pressroom, a news and analysis program aired daily from the New York State Capitol. In this program the host, Susan Arbetter, the Albany-based State Capitol Correspondent and News and Public Affairs Director for WCNY Syracuse Public Television, interviews Henry M. Greenberg, a partner at Greenberg Traurig who began his legal career as clerk to then Associate Court of Appeals Judge Judith S. Kaye, who died January 7th at her home in Manhattan. Mr. Greenberg remained very close to Judge Kaye and in this interview provides extraordinary and very personal insight into a truly historic figure.

Susan Arbetter: Welcome to The Capitol Pressroom for Monday, January 11th. I'm Susan Arbetter. Last week, cancer claimed the life of former Chief Judge Judith Kaye. She was a trailblazer in the legal profession, the first woman to serve as the state's top jurist, and the architect of the state's modernized court system. Today, we'll discuss her legacy with attorney Hank Greenberg of Greenberg Traurig, who clerked for Judith Kaye in the late 1980s.

If you didn't know Judith Kaye you would say she was almost regal in her bearing, and why shouldn't she be? She presided over the state's highest court for almost fifteen years, writing opinions on such heady topics as the death penalty and same sex marriage. But her forbidding appearance melted away as soon as she said hello. She was one of those rare people equally comfortably speaking about everyday things as she was the quest for justice.

During a lengthy exit interview in 2008, Judge Kaye joked with a reporter about shoe shopping, but ultimately ended the conversation with a passionate plea to lawmakers to raise judicial pay, something she had failed to accomplish during her tenure and which she had strenuously advocated for. Judith Kaye was certainly a treasure. Joining me today to talk about her life and legacy is Hank Greenberg of the firm Greenberg Traurig. Hank Greenberg is a former law clerk to Judge Judith Kaye. He also worked with her on the Commission on Judicial Nomination, which she chaired and which Hank Greenberg was counsel to. Welcome to The Capitol Pressroom, Hank Greenberg.

Hank Greenberg: Hi Susan. How are you?

Susan Arbetter: Good. You clerked for her when she was a Judge on the Court of Appeals in the late '80s. What was she like then?

Hank Greenberg: Extraordinary, as she was throughout her life and throughout her tenure on the Court of Appeals. When I was her law clerk, she was then an Associate Judge on the Court, soon to become Chief Judge in 1993. Her focus then of course as an Associate Judge was primarily the work of the Court of Appeals. As we know, in the years that went on as Chief Judge, she then held two huge jobs at the same

time, Chief Judge of the Court of Appeals, one of seven, and Chief Judge of the State of New York, which brought with it enormous administrative responsibilities and all the work associated with that.

Susan Arbetter: What was she like to work for?

Hank Greenberg: She was miraculous. This is a cynical time and age when people look at public service and public servants all too often with skepticism. Judith Kaye is as good as it gets. She was the whole package. Your introduction I think sort of captured her qualities as a human being. You used the phrase “regal,” and I think that’s right, but down-to-earth is also right. She came from a very small town, one that I grew up right next to in the Catskill Mountains. She actually attended grade school a one-room schoolhouse and graduated from a small high school in Monticello, New York, and then went on to Barnard at age fifteen.

That very human quality — both of her parents were immigrants. This is the American Dream writ large. What she brought to the table a judge was an extraordinary collection of skills. To work with her was to work with somebody who had a single-minded commitment in every case that she decided to reach a fair, just, right result. She was blessed with a brilliant legal mind. In addition to being a great thinker and a deep thinker about the law and the philosophy of the law, she was blessed with an extraordinary writing ability. Probably in her lifetime and career, in addition to being just a miraculous judge and writing decisions that were profound and important, she wrote with a grace and a fluidity which was really miraculous to behold.

I read a lot. I’ve never had the privilege of working with someone who wrote as well as she did, so to be her law clerk ... Oftentimes you’ll hear people sort of talk about law clerks, “They write the opinions for the judges.” That’s not what I did working for Judith Kaye. What you really got with Judith Kaye was heart and soul and brains and empathy, everything you would want to see and hope for in a judge. Like I said, the best of the best.

Susan Arbetter: As she was Judge, and Chief Judge, she was such a pioneer. She modernized jury service in New York. She ensured that there were special courts for victims of domestic violence and people with mental illness. What do you think drove that in her?

Hank Greenberg: It’s a great question, Susan, because her career before she became Chief Judge and even as an Associate Judge was as a litigator, a lawyer’s lawyer, someone who was in the trenches, trying cases and arguing appeals and representing clients. Then she had the benefit before she became Chief Judge of being an Associate Judge for ten years, so she sort of mastered the craft of judicial decision-making and judicial writing.

When she was elevated to Chief Judge in 1993, she had vast experience, understood the problems of the judiciary, that branch of government, the

problems and challenges that lawyers face. Most importantly, she understood the human dimension of what the courts do. She had an enormous passion for making sure as Chief Judge that the court system addressed the needs of the people who came before the judges every day in a wide range of cases.

One of her great innovations, and in its own way it produced something of a revolution amongst courts throughout the nation, was developing problem-solving courts, identifying and assigning judges to deal with specific unique problems involving domestic abuse, drug courts. She created a Commercial Division that focused primarily on dealing with commercial cases, courts that dealt with mental illness. Where did that come from? Susan, I think you put your finger on it. It was this basic humanity married to a brilliant mind. But it was the human part of Judith Kaye that made her so very special. She cared deeply about people and was utterly determined to make sure that the court system was responsive to the needs of the public that it serves.

Susan Arbetter: What do you feel were some of her most notable opinions, whether majority or not?

Hank Greenberg: She wrote hundreds of opinions in a wide range of areas, and so many of them had a profound impact on the shaping of the law. It's very hard to sort of identify one or two or three that were the most important. But since you asked, I think many observers and commentators ... The most high profile of cases that she decided, the death penalty, was an area where she was a fervent critic and four times as a Judge of the Court of Appeals she voted to strike down the death penalty.

One of her more memorable decisions was actually a dissent. It's sort of ironic that it was a dissent because she was very much about consensus decision making and was rarely in dissent, but in Hernandez versus Robles in 2006 she felt compelled in a case involving a claim of entitlement to same sex marriages, a fundamental right. A majority of the Court was not prepared to accept that as a Constitutional right. As I said, she dissented infrequently, but this was one occasion and one issue that she was unable to sort of suppress the need to vote apart from the majority. She wrote a dissent that has in years to come, of course, proven to be visionary and has been cited by courts throughout the nation.

It took several years before the State Legislature got around to recognizing same sex marriage as a statutory right, but in this area, Susan, like in so many others she saw into the future and prophesied correctly where the law would end up. Today, of course, the United States Supreme Court has now nationalized the right to same sex marriage. Judith Kaye in New York saw that future and memorialized it in a truly beautiful and eloquent dissent.

Susan Arbetter: Hank, this is sort of tangential, but both she and former Chief Judge Jonathan Lippman both had said that they would not have stopped serving if they didn't

have to because of the mandatory retirement age of 70. Is it time to change that?

Hank Greenberg: I certainly think it is long since time. The 70-year-old mandatory retirement provision in the State Constitution has been on the books probably for well over a hundred years. When it was originally made part of our Constitution, it was done in the time when living to age 70 was a rare thing. We have lost over the last decade or so the service of so many great, great judges who were at the top of their game, really at their very peak at age seventy. Judith Kaye is one, but judges come to mind like Howard Levine and Stewart Hancock and Carmen Ciparick, these were people who all wished to stay on the Court and were forced to retire, and we all as a state lost out by having to lose them at 70.

Susan Arbetter: What was it like working with her at the beginning of your law career? Now you're at sort of the top of your law career, certainly not the end; I don't want you to think that. You're right there at the top of the heap, so you are now ... Were working with her on the Commission on Judicial Nominations. How did she change? How did you change?

Hank Greenberg: The privilege of having her as a mentor is indescribable as a young lawyer in the Court of Appeals. We all have the institutions in our lives that are important to us. To some people it might be their high school or their college, but for me the Court of Appeals is the institution that I've always adored and revered. To be a law clerk at the Court at so early a phase in my career was a dream come true.

Then to work closely with this unbelievably brilliant, gracious, thoughtful person...we don't have nearly enough time for me to describe for you all the lessons that I learned, but they were immense.

Susan Arbetter: It sounds like you're going to miss her?

Hank Greenberg: Oh, my goodness, we're all going to miss her, Susan. This is a great loss to the state. We have not had a finer public servant in modern history of the state. I always thought it was utterly appropriate and fitting when she was appointed by Mario Cuomo. I think of the two of them simultaneously running different branches of government and what an incredible period in our state's history. We were all so fortunate to have that for as long we did.

Susan Arbetter: Attorney Hank Greenberg is with the Albany law firm of Greenberg Traurig. He clerked with Judge Judith Kaye in the Court of Appeals in 1988 through 1990. Thank you so much Hank.

Hank Greenberg: Thank you Susan.

John Caher: We'd like to thank Susan Arbetter and WCNY for sharing this program with us, and thank you for listening to this edition of Amici. If you have a suggestion for a

topic on Amici, call John Caher at 518-453-8669 or send him a note at jcaher@nycourts.gov. In the meantime, stay tuned.