



2001

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Recommended Citation

Judith S. Kaye, *Coping with Disaster*, 3 J. APP. PRAC. & PROCESS 453 (2001).

Available at: <https://lawrepository.ualr.edu/appellatepracticeprocess/vol3/iss2/2>

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THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

ESSAYS

COPING WITH DISASTER

Judith S. Kaye*

Months ago, when I was first invited to speak at this luncheon, I expected to welcome you warmly to this great city—my home city—and to talk about some aspect of appellate practice. Maybe the changing nature of our dockets, or expediting appeals, or maybe a really yummy subject like e-filing in the courts.

None of us back then had any inkling of how huge and heartfelt my welcome would be, or how grateful we in New York City would be to greet a conference of out-of-town visitors and even in-town visitors. And I've lost my zest for a luncheon speech on the subject of e-filing.

Only one subject dominates my thinking these days, and that is the tragic events of September 11—and to be even more specific, as the Chief Judge I have few thoughts other than the impact of those tragic events on the New York City courts. One of our courts was actually situated in the World Trade Center; our other busy Manhattan courts, only blocks away, were in

* Chief Judge of the State of New York; Chief Judge of the New York Court of Appeals. This essay is the text of the keynote address given at the National Appellate Bench/Bar Conference and Colloquy on October 5, 2001.

what was called the frozen zone—no telephone service and virtually inaccessible.

Where were you on September 11, 2001? Surely none of us will ever forget September 11, 2001, just as we remember December 7, 1941, and November 22, 1963. September 11, 2001—another day that will live in infamy. There are so many hair-raising stories—like the Cantor Fitzgerald executive who decided to take his son to his first day of kindergarten that morning. And the fellow who stopped to have his eyeglasses fixed instead of taking the elevator to his office near the top of the Tower. And the woman serving as a grand juror who otherwise would have been at her desk on the 90th floor. How precious, and fragile, our lives are.

I was physically out of harm's way that day, in Albany, where the Court of Appeals was in session. I was doing one of my two jobs, as Chief Judge of New York's seven-member court of last resort. My other job, the other box of stationery, is as Chief Judge of the State of New York, Chief Executive Officer of New York's Unified Court System. Together with the Chief Administrative Judge, Jonathan Lippman, and the Administrative Board (composed of our fabulous Presiding Justices—you know the group), we oversee New York's huge, bustling state court system. My job training, for both jobs I am privileged to hold, did not include a manual for coping with this tragedy.

While physically in Albany on the 11th, my heart was here in New York City, where my husband, children and grandchildren live—and where many of our courts and our central administrative offices are located. I was on the phone a lot that day. We resolved early on that our objective would be to have the Manhattan courts up and running as quickly as possible. The courts, after all, provide an essential public service. And we want the terrorists to know that they cannot defeat us or what we stand for.

What I'd like to share with you today is just a little about our experience in actually accomplishing that objective. I thought I would focus on three areas—the subject is vast and our time is limited. I'll start with the first subject on everyone's list: people.

PEOPLE

Disaster planning often focuses on natural causes. Fortunately, Manhattan hasn't had many earthquakes, floods, wildfires, or ice storms. We do have plans for the possibility of dastardly intentional acts—and we've had them—but certainly not of this order of magnitude. This was a savage attack on our people, our values, and our institutions, raising unprecedented fear and uncertainty in everyone's mind. Who are the perpetrators? Is there more to come? How will we respond as a nation?

For me, for each of us, the subject is an intensely personal one, whether or not we live in New York City. Yesterday I received a list of members of our own court family directly impacted by the disaster. I expected it to be a substantial list—I've seen so much sadness in the faces of our people as I've visited the New York City courts. We all grieve for the loss of three court officers who, along with many of our court officers, joined the remarkably selfless rescue workers who rushed to the site on September 11. Our court officers now wear black bands on their badges. We all mourn with them.

I knew the list of court family members impacted by the disaster would be large, but I was frankly astonished to see more than fifty names—judges, court personnel, even in other parts of the state, who have missing (now presumably lost) spouses, children, siblings, cousins, nieces, and nephews—firefighters, police officers, World Trade Center employees, investment bankers, lawyers, a court clerk in Queens missing her *two* firefighter sons. Our personal sadness is very deep. Our hearts are broken, because we are sensitive, caring human beings. That's the horrible downside of what happened here on September 11.

But there is also an upside, because our spirit is not, and cannot be, broken.

My own feeling—a feeling that was shared system-wide—was that we needed to resist the human inclination to postpone, to cancel, to adjourn our scheduled activities. Instantly, everything we were doing, all our important affairs and activities, seemed so trivial, so insignificant. On the morning of the 11th the court system was starting a two-day national conference in Albany on Access to Justice. As Presiding Justice Cardona can tell you, with heavy hearts we went ahead with the conference, and both of us participated.

As you see, and many of you know, I am a prepared-text speaker—an appellate judge at heart. I labor over my speeches like a judge preparing an opinion. But I didn't have the fortitude to give my prepared speech that evening and instead spoke of the disaster. Later that week in Albany, Judge Cardona and I attended the investiture of a good friend as a federal magistrate-judge. I might add that each event was hugely attended. To this day, events are packed. Everyone wants to gather, to touch flesh, to plan for the future, to celebrate good things. After the investiture I headed home.

As events unfolded in Manhattan on September 11, Joe Sullivan's court, the Appellate Division at 27th and Madison, like my own Chambers in Midtown, was not in the danger zone. The Appellate Division in Manhattan stayed open—like Guy Mangano's and Larry Bracken's court in Brooklyn, and Tony Cardona's court in Albany, and Gene Pigott's court in Rochester. The following day in Manhattan, a few trial court judges worked at the Appellate Division to hear emergency applications. With other Manhattan courts unreachable, the Appellate Division opened its doors to people in need—people searching for relatives who had been evacuated from the temporary holding cells in criminal court, others facing eviction, a woman concerned about possible delay in her insurance case and her life-saving chemotherapy.

That Saturday, September 15, Chief Administrative Judge Lippman and I toured the facilities in lower Manhattan. There was—indeed there still is—a burnt metallic smell in the air. We met city engineers working round the clock to change all the air filters in the courthouses and inspectors testing for structural damage. We met court officers—red-eyed but on duty—and judges and court personnel planning for the following week. We

determined right then and there that those courts would open Monday.

SCOPING OUT AND SOLVING THE PROBLEM

Which brings me to my second subject: The decision to open was of course only the beginning of the challenge. Easier said than done.

The physical needs were obvious, and attention turned there first—air quality, stepped-up security, new quarters for courts that could not return, even a whole new Internet telephone system—more than 600 phones installed over the following weekend. But difficult as it is to solve problems, knowing what the problems are proved even harder. New issues reveal themselves daily.

An estimated 14,000 lawyers were lost or displaced on September 11th—some without office space, some without access to files. More than 1,300 attorneys registered the World Trade Center as their business address.

From creative, committed people came wonderful ideas, like the courts providing, free of charge, copies of lost records, computer runs of an attorney's cases, even assisting lawyers in reconstructing lost client lists. We set up readily reachable, effective hotlines in every court for lawyers and litigants; and where a victim's remains have not been recovered or identified—as is true for most of the 5,000 or more missing persons—a swift system of establishing death was put in place, to ease the emotional and economic pain of grieving families. We quickly discovered that we will need to expedite Family Court permanency proceedings, to assist with newly orphaned children.

Simply reopening on September 17 did not mean that everyone was back to normal. Not by any means. We held a Vigil of Hope that week in one of our courthouses—the lobby and surrounding area were filled to overflowing. “God Bless America” was sung like it has never been sung before. It became clear that people were immensely grateful for the opportunity simply to be together, to see and hug one another. So Judge Lippman, Judge Pfau, and I have been doing as much of that as time permits, visiting judges and staff in their courts to

offer comfort and convey our appreciation, trying also to get the word out that counseling is available to anyone who would like it.

Reopening also did not mean that the workload and litigation automatically resumed. There were missed court dates during the days the courts were closed. Other appearances had to be rescheduled. Criminal cases were delayed by absent police officers, who had more pressing assignments.

To help, the Governor—he and the Mayor, by the way, have been outstanding in leading us all through this crisis—signed Executive Orders temporarily suspending appeal deadlines and statutes of limitations. Judge Lippman and I, in a letter to the Bar, urged attorneys to cooperate and help one another, to be understanding and cooperative toward those directly impacted. Our judiciary has that same objective: to be sensitive and flexible, yet to move forward as much as feasible with the business of the courts—a difficult, delicate balance. Those goals require constant reinforcement as new challenges emerge daily.

THE WORST AND THE BEST

I've talked about the people impact of the disaster and about scoping out and solving the problems. I'd like to conclude with a segment I think of as the very worst and the very best of humanity. In these recent weeks we have surely seen both—beginning with the hideously evil acts of September 11, the very worst of humanity.

When I think of the best of humanity I think of jurors and I think of lawyers.

Jurors long ago earned a special place in my heart, but their dedication these recent weeks has been truly exemplary. With lower Manhattan in disorder—the courts inaccessible by phone and virtually unreachable by public transportation—jurors still showed up in the hundreds, despite our announcements over the airwaves and on the Internet. They wanted to contribute, to serve. Many even declined offers to be excused. When I gave a group of jurors last week the news that they could go because they would not be needed, they were plainly disappointed.

And talk of stories—we have loads of them here too. Like the retired firefighter who asked for a deferment of jury service because of his commitment to working at Ground Zero. But he refused a long deferment. He asked to be called again in April—he would be ready. And the man who managed to get a message through to the courts from Philadelphia, where he was with family, mourning the loss of his firefighter son, to let us know why he was not responding to his summons. What an extraordinary display of dedication, of patriotism, of commitment to our system of justice.

I don't know how many of you read this morning's *New York Times*, but out of the disaster and disorder came a little reward for jurors and for the Chief Judge. For years, I've been angling for a juror call-in system in New York City, like we have in other parts of the state. Indeed, two of the five counties of New York City already have it, but New York County, Kings County and the Bronx have been resistant because of their heavy demand for jurors and the uncertainties of a call-in system. Over and over again I have been told it just can't work. *Well, now we're going to do it!* The sight of rooms filled with unneeded jurors these past three weeks was the final impetus for a reform that is terrific.

And on the subject of terrific, I end with a few comments about the New York bar. This is surely a shining hour for the New York bar. I'm sure that lawyers elsewhere deserve kudos too. I just know best about the spectacular response of the New York bar.

One quick example: The court system worked closely with the Mayor's office to streamline a system for obtaining Death Certificates, where there are no bodies and no remains. A call went out last Wednesday afternoon for *pro bono* lawyers to help families complete the necessary forms. That evening I was at the City Bar Association for the regular meetings Judge Lippman and I have been holding with leaders of the organized bar and I was called out because of a problem. The 500-person City Bar meeting room was filled to capacity with volunteers; the stairways were filled, and the capacious lobby—all the way out to the street—was filled with overflow. A very nice problem to have! That sort of response has continued every day since, as lawyers in large numbers show up at the Family Assistance

Center and throughout the City and State to volunteer their services.

In addition to Bar Association volunteer services in local communities, the various bar groups have scoped out anticipated legal problems—again, it's hard to anticipate all the problems—and sensibly divided up their responses. The New York County Lawyers Association, for instance, will provide a trust and estates lawyer free to every family of a uniformed officer; the New York State Bar Association is focusing on reconstructing law practices for lawyers who have been lost and for lawyers whose records are destroyed or inaccessible; the New York City Bar Association has a program called *Facilitator*, training lawyers to offer pro bono services in ten areas, like Social Security, Workers Compensation, unemployment assistance, life and health insurance, family law and immigration; the Trial Lawyers will, also pro bono, handle claims under the new federal legislation.

Every single day, at some point I am reduced to tears, not only by the senseless grief that has been visited on wonderful people, but also by the incredible goodness and kindness of people around the world. Every day is definitely better than the last.

Having completed these remarks early this morning—*very* early this morning—I want to express my special thanks to all of you. I had not previously pulled these thoughts together, and I found the process enormously strengthening. I therefore thank you for the opportunity this occasion afforded, and of course for the pleasure of being with you.