

## SPECIAL FEATURES

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### TO WHOM IT MAY CONCERN: WHY WE DO WHAT WE DO—A FAMILY COURT REFLECTION

Members of the New York State Permanent Judicial Commission on Justice for Children,  
Edited by Kathleen DeCataldo, Commission Executive Director

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This article, adapted from the keynote address delivered at the Hofstra University School of Law Family Law Review Annual Banquet on March 24, 2011, focuses on the impact of the Family Law Review, the need to improve the stature of the family court, and shares excerpts of letters written by members of the New York State Permanent Judicial Commission on Justice for Children regarding their passion for working in the fields of child welfare and in the family court.

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Thank you to the Hofstra University School of Law Family Law Review for asking me to join your evening of celebration and offer remarks as your keynote speaker. To begin, I wanted to tell you a bit about what I do. I have the great good fortune to be the executive director of the New York State Permanent Judicial Commission on Justice for Children. The Commission was established in 1988 by the then-chief judge, with the mission to improve the lives and life chances of children involved with the New York State courts. Today, the Commission continues to be chaired by former chief Judge Judith S. Kaye. The Commission is comprised of professionals from many fields, including judges from across the state, children's advocates, academics, medical and mental health professionals, representatives of state agencies, such as the New York State Office of Children and Family Services, Council on Children and Families, State Education Department, Health, Office of Mental Health and local social services district representatives. In all our work, the Commission has long recognized the value in partnering with all those who work to promote better outcomes for children and families. This strategy is evident in the Commission composition and in its everyday work that relies on convening stakeholders, conducting research, developing pilot projects, creating written materials and tools, presenting trainings, and initiating efforts to change policy and practice. In the past few years, the Commission has turned much of its focus to adolescents involved with the foster care and juvenile justice systems or a combination of these systems.

But enough about us! That's not why I am here tonight. When I was asked by your editor to be the guest speaker, I politely asked if there is something in particular she wanted me to talk about. She suggested a number of topics—the Family Court Review's impact in the area of family law and more generally the lives of children and families—AND—any thoughts I have on family law and really, any advice for young lawyers would be welcome—in 15 minutes!

So to prepare for tonight's celebration of the publication of the Family Court Review, the journal of the Association of Family and Conciliation Courts, I wanted to learn more about both the Journal and the Association.<sup>1</sup> The Association welcomes debate and discussion from all the interrelated fields involved in family law.<sup>2</sup> Did you know that for over four decades—twice as long as many of you have been alive—the Family Court Review has been the leading interdisciplinary academic and research journal for family law professionals? It is published quarterly by the Association of Family and Conciliation Courts in cooperation with the Center for Children, Families and the Law at Hofstra University School of Law—OK—so that part you all knew. Recognizing the importance of the

Correspondence: [kdecatal@courts.state.ny.us](mailto:kdecatal@courts.state.ny.us)

necessary interdisciplinary nature of family court practice, the Family Court Review is read and contributed to by judges, attorneys, mediators and professionals in mental health and human services.

The aim of Family Court Review is to provide comprehensive coverage of family court practice, theory, research, and legal opinion covering the diverse issues facing those who practice in family law, including child abuse and neglect, family law legislation and reform, child support children's rights, custody divorce mediation, among many others.<sup>3</sup> For me, one of the most important contributions of the Family Court Review is to provide a forum for scholarly discourse about the work all of us are about.

And why is that important?

I hope my response is not going to disillusion any of you, but the family court, its practitioners and the important work that we know may have life altering consequences for children and families are all, in many instances, looked down upon by those judges and professionals who work in other courts and, often times, the public too.

Recently, the staff of the Commission was asked by Judge Kaye to compile a list of ways to raise the stature of family court. We had many of ideas: a few of which I summarize here.

First, we recognized the need to begin with the professionals who work within family court. How do they perceive and portray themselves? Do they maintain the same standards as expected in the Supreme Court or the federal courts? Regrettably, the answer is not always yes.

We noted the need to increase professionals' proficiencies—one area where the Family Court Review is so important! Article after article of relevant topics to help practitioners look at their work from a new perspective or become aware of new research or even other nations or states' approaches to these difficult issues we all grapple with.

We also noted the need to promote family court judgeships and other court-related professions as a career, not a stepping stone and overall, improve the relationship between court-related professionals.

Balancing the adversarial nature of the court system with the need to collaborate as a means to achieve the best outcomes for the families in crisis in family court is an ongoing struggle. Innovations such as drug courts and upfront case conferencing are looked at suspiciously by attorneys representing respondents—with *viable* due process based reason. Questions should always be asked as to how new innovations will provide assistance to families without encroaching their rights. In family court, we need to develop a culture of respect which values the families' strengths and rights, as well as the contributions of other disciplines.

The Family Court Review recognizes the need to focus on the families and individuals served by family law professionals because—as stated on the website—“without staying connected to the people, and concentrating on their needs and welfare, the work of family law professionals loses its meaning and relevance.”<sup>4</sup>

Another way to look at the necessity of focusing on the families is to consider the concept of procedural fairness—which refers to consumers' perceptions regarding the fairness and transparency of the court process, including how a particular dispute was resolved.<sup>5</sup> The California Court System website features an entire section on procedural fairness, an initiative aimed at increasing the trust and confidence in California's courts.<sup>6</sup>

Through a survey, the California Court system identified the aspects of court proceedings contributing most strongly to a consumer's perception of procedural fairness as respect, voice, neutrality and trust.

**Respect:** People react positively when they feel they are treated with politeness, dignity, and respect and that their rights are respected. In addition, helping people understand how things work and what they must do is strongly associated with respect and court user satisfaction.

**Voice:** People want the opportunity to tell their side of the story, to explain their situation and views to an authority who listens carefully.

**Neutrality:** People are more likely to accept court decisions when those in authority act with fairness and neutrality (i.e., people who come to court like being treated equally, and seeing that legal principles and assistance from court personnel are consistent). People also respond more positively to court

decisions when the importance of facts is emphasized and the reasons for a decision have been clearly explained.

Trust: People observe behavior or look for actions to indicate that they can trust the character and sincerity of those in authority and those in authority are aware of and sincerely concerned with their needs.<sup>7</sup>

These are important values to keep in mind no matter what role you undertake in the family court system.

The issue of public perception of the family court and the professionals who work there was recently raised to me in a particularly distressing context—the negative perception of the attorneys who represent young people in child protective proceedings and the family courts by the young people themselves.

The context was an upcoming meeting of our Commission on Justice for Children. The meeting was to feature a performance by youth in foster care from the Harlem Dowling and Little Flower foster care agencies in New York City of *To Whom It May Concern*—a consciousness raising dramatic presentation regarding the challenges youth face growing up in foster care.<sup>8</sup> The production is based upon letters written by the young people “to whom it may concern,” where youth shared whatever it was they felt people should know about them and their lives. While I am not going to talk about the youth’s insights—except to tell you that most of the adults were blown away—in tears and renewed in their commitment to try to achieve something better for these youth. I am going to share with you the Commission members’ role in the meeting after the performance.

Prior to the meeting, the facilitator of the youth project related that the youth had little respect for the family court and its practitioners. They had expressed to her their belief that the judges and lawyers in family court were the dregs of the legal profession—they weren’t good enough to practice in the real courts so had to “settle” for family court to make a living. Given the incredible membership of the Commission and their dedication to the work they do for the children and families of New York, it was an opportunity not to be missed to address these negative perceptions. We conceived of the idea to ask our members to write a “to whom it may concern letter” about why the work they do is their passion and share the letters with the young people after their performance. Our chair, former Chief Judge Judith Kaye was not onboard initially—she thought it was corny—but ultimately agreed. I can tell you she was impressed both by the experience of writing her own letter and by the power and passion woven throughout each letter we received from our members.

I want to share some excerpts of those letters with you tonight. The authors are identified by their profession, except for the letter of our chair, Judge Kaye.

First, a caseworker:

I grew up in the child welfare system. Not the same way you did, I did it as a caseworker. But for me, just like for you, foster care changes the way I look at the world and how I want it to be. Growing up in foster care puts you in touch with some of the most painful stories that life can dish out—but also allows us to be part of some of life’s most inspiring stories. Being part of the system has defined my passion for this work, my desire to create a world where every night every child can lay their head on their pillow safe in body and spirit.

From a lawyer now working in state government. Her letter began with short vignettes of the people whose struggles she witnessed and attempted to alleviate. She said:

And I learned more in the two and a half years running a legal services project for youth out of the shelter that was their temporary home than I learned in the hallowed halls of Harvard Law School . . . I have a passion for my work because each of these people, and many more like them, allowed me into the deeply personal struggles of their childhoods. Their experiences are so unacceptable in a society of plenty, so unjust in a society built on equality and justice for all, and so invisible to most of the people with the power to make meaningful change. Having come to understand their stories, I can never turn my back. I have dedicated the power I sought from becoming a lawyer to make real change so that the next Samantha is not homeless, the next John grows up with the love and care every child deserves, the next Alonso is free, and all children dream of the great things that are within their reach.

From an administrator in a child welfare organization:

For most of my career I've worked as an administrator to help others who do this direct work with families, always trying to help support them in what they need to do their jobs, so they can provide the help to children and families. This work has long been a passion of mine; there is no other work I want to do. Whenever I think the work is hard—and it is—I remind myself that what's really hard is being a kid and not having what you need to be safe, taken care of, and feel loved. That is what motivates me and makes me want to keep doing this work until I can't any more.

Most of the other adults I've met that do this type of work are among the best, most dedicated people I know. We know that it is simply unacceptable for children to grow up in our State and country without the care, love and support they need, or to come into foster care but leave without a family or adults who will be there for them when the going gets rough. I know we must do better and that failure is not an option—that helps me stay passionate about this work. We must listen more to young people—they know what they need, what works in our child welfare system for them and what doesn't. Hearing young people and their families talk about how child welfare has helped them, and what isn't working, also motivates me and renews my energy for this work when I get discouraged.

From a lawyer who represents children in family court:

Every day the children and young adults we represent . . . provide us with inspiration and hope. Their courage in the face of adversity, their resilience in the face of dashed expectations and their willingness to join us as partners in re-imagining their future provides a daily lesson in the strength of the human spirit. Underneath justifiable anger and frustration there is almost always a smile of forgiveness.

After spending over thirty years as an attorney for children in foster care, I can say with certainty that my reason for staying in this field is the same as my reason for entering it. I adore my clients. I respect their indignation, I respect their dreams, I respect their wisdom and I receive tremendous gratification from fighting for their rights and their wishes.

From the Former Chief Judge of the State of New York, Judith Kaye:

When I reached the [court of appeals], my predecessor Chief Judge twisted my arm to head up one of his initiatives, the Permanent Judicial Commission on Justice for Children. Though reluctant at first to step into such new and unfamiliar territory, ultimately I accepted. (I learned a lesson here too: always you have to be open to new ideas, not be negative.)

Looking back, it was one of those life-transformative decisions that took me down a whole new path: justice for children. To this day I chair the Commission, and lament only that it took me so long to realize how great the needs are in this area and how much we all can do. The years before I now describe as my own "wasted youth."

She ends her letter with:

[My purpose is to see] to it that every kid has stability, someone in his or her life who cares, cares about the child's health and education, someone who is there through good times and bad, who teaches a young man to tie a tie, or gets them citizenship papers, or a birth certificate, or a social security number. Someone who functions like a good parent or family member. Every kid deserves to be valued, to have an opportunity at life. And every one of us can contribute to accomplishing that. My purpose is to help make it happen.

I will close with one last excerpt from the letters—this from a family court judge:

It is difficult to express, in words, how blessed I feel to have a chance, every day, to directly and profoundly improve the life of a child. I can say, without hesitation, that there is no better feeling than knowing that

I have somehow made a child safer, helped a family solve problems that no one else seemed to listen to, “got through” to a teenager who was on a path of self-destruction that no one had been able to interrupt, convince a mom to enter rehabilitation and then watch her succeed and be embraced by the family who had given up on her. Just a few examples of why I have the greatest job in the world!

So. . .my purpose, my reason for getting up every morning, is to continue, in whatever small way I can, to make sure that we are, collectively, doing everything in our power, each and every minute of each and every day, to give children and families the best chance that we can for happy, healthy and safe lives.

These letters should serve to inspire and excite anyone considering making the work of child welfare, juvenile justice or the family court their career. Hopefully, these letters also enlighten and challenge those who disparage the work and the professionals of family court to inquire a little more deeply into the importance of the work done day in and day out in family and juvenile court. Our children and families are relying on us—and we know together—we can do better for them. I look forward to working with all of you!

## NOTES

1. The Association of Family and Conciliation Courts is an interdisciplinary and international association of professionals dedicated to the resolution of family conflict. <http://www.afccnet.org/about/index.asp>. (last visited October 24, 2011).

2. Family Court Review, The Journal of the Association of Family and Conciliation Courts, <http://onlinelibrary.wiley.com/journal/10.1111/%28ISSN%291744-1617/homepage/ProductInformation.html> (last visited October 24, 2011); the Association of Family and Conciliation Courts at <http://www.afccnet.org/about/mission.asp> (last visited October 24, 2011).

3. Family Court Review, The Journal of the Association of Family and Conciliation Courts, <http://onlinelibrary.wiley.com/journal/10.1111/%28ISSN%291744-1617/homepage/ProductInformation.html> (last visited October 24, 2011); the Association of Family and Conciliation Courts at <http://www.afccnet.org/about/mission.asp> (last visited October 24, 2011).

4. Family Court Review, The Journal of the Association of Family and Conciliation Courts, <http://onlinelibrary.wiley.com/journal/10.1111/%28ISSN%291744-1617/homepage/ProductInformation.html> (last visited October 24, 2011).

5. California Courts: The Judicial Branch of California. <http://www.courts.ca.gov/3113.htm> (last visited November 1, 2011).

6. California Courts: The Judicial Branch of California. <http://www.courts.ca.gov/5648.htm> (last visited November 1, 2011).

7. *Id.*

8. To Whom It May Concern is a production of the My Purpose Party (MPP)™ youth program, founded by actress Ari Meyers. MPP is built on a strength-based model that helps young people build self esteem, encourages their ability to be creative and fosters their sense of having something valuable to offer the world.

*Kathleen R. DeCataldo, Esq., a former family court judge and attorney representing children and families in New York is currently the Executive Director of the New York State Permanent Judicial Commission on Justice for Children.*