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Honoring Corporate In-House Counsel

*The New York County Lawyers' Association honored corporate in-house counsel at NYCLA's Centennial Dinner on December 16 at the Waldorf Astoria Hotel. Forty-six General Counsel of major corporations attended the Dinner as Honored Dais Guests. The principal speaker was Chief Judge of the State of New York **Judith S. Kaye**, who was the first woman to occupy the State Judiciary's highest office when she was appointed in 1993 and is now the longest-serving Chief Judge in the State's history. On December 31, Judge Kaye stepped down from the bench, having reached the 70-year mandatory retirement age. With her permission, we have published Judge Kaye's remarks because of their focus on corporate in-house counsel.*

It's a great pleasure to be here with my Court of Appeals colleagues to join so many friends at this New York County Lawyers' Association Centennial Year dinner. And it's a particular pleasure this year to join in honoring corporate in-house counsel.

As you know, I leave the bench in just 15 days – not quite my centennial year, or even my semisesquicentennial year. My age, however, is right on the button for mandatory retirement under New York law. You can't imagine how gratifying it is these farewell days for me to be able to begin every speech by talking about my age.

I'm sure, however, that I was asked to give these remarks not at all because of my impending retirement, but because of my past experience as in-house counsel. I thought I would share with you some of what I've learned firsthand about the fabulous people who are our honorees, and the critical role they play.

My first position as a lawyer right out of law school was as a litigation associate at Sullivan & Cromwell. That was a day when women were not exactly in demand



Judith S. Kaye

among "Wall Street" law firms – you know, we were there only to find husbands. Miracle of miracles, Sullivan & Cromwell opened its doors to me. And guess what: I met my husband there, and left the firm.

After working on challenging commercial matters at the law firm, I knew

life would be different – but just as stimulating – in the legal department of IBM, a powerful worldwide corporation that was changing the course of human history. But I could never in a million years have anticipated the question my client asked on my first day as in-house counsel: "What's the law on taking in the flag

A link to the Atlantic Legal Foundation report mentioned in Judge Kaye's remarks can be found at www.metrocorpcounsel.com.

in inclement weather?" (That's a quote.) I had no idea, but I learned fast. I learned that there was a whole volume of the U.S. Code called "Flag," and instantly I became an expert. Clearly in-house counsel have to be flexible, always ready for the unexpected.

But I also quickly learned a great deal about the importance of in-house counsel in serving their clients – in my case, confronting the unanticipated day-to-day concerns that demand immediate answers to questions you wouldn't necessarily ask of outside counsel, as well as playing a part in long-term corporate strategy. I also came to understand in-house counsel's participation in the actual development of the company's business, having had the extraordinary experience of being involved in negotiations for IBM's entry into two new businesses, photocopying and simultaneous foreign language translation, each with innumerable legal hurdles.

Sadly, by the time IBM's first copier was marketed, my career as in-house counsel had come to an abrupt end. When I became pregnant with my first child, I learned something about "maternity leave." Back in the 1960's, if you were expecting maternity, you had to leave. Fortunately, in the last half century we have progressed to new definitions, maternity leave (of absence), even paternity and family leave.

After part-time work with the dean of NYU Law School, my alma mater, and two more children, I returned to law firm life, where my client contacts most often were in-house counsel. My practice included a wide range of issues – contracts, banking, tax, real estate, securities – for clients in a wide range of industries. That meant that in preparing cases, I had opportunities, under the guidance of in-house counsel, to get right to the heart of many different businesses, from animal foods, to asphalt roofing, to commodities trading.

To this day I've kept in my Chambers several timeless documents from those days – souvenirs – like the Cottonseed Oil and Crude Soybean Oil Futures contracts regulations and a Poultry Facts Book filled with fascinating data on egg production and consumption, common poultry diseases, even egg abnormalities. It disappoints me that I have reached the end of my 25-year Court of Appeals career without ever having had occasion to cite those treasured publications in an

opinion for the Court. Believe me, I tried.

When I became a Judge of the Court of Appeals in 1983, and especially after becoming Chief Judge of the State of New York, my executive-administrative role, in 1993, I already had perspective on in-house counsel both from having briefly been one and from having worked with many of them. But in my role as Chief Judge, I have gained new perspectives on in-house counsel and our many common concerns.

By the early 1990's, I was well aware, for example, that in New York in-house counsel often turned from the state to the federal courts and alternative dispute resolution forums. Paper-heavy, pretrial-motion-oriented commercial cases understandably placed heavy burdens on our judges, who might have several hundred cases of all types on their dockets. That in turn meant delays. One thing for sure, the state courts didn't want to lose their business.

Fortunately, just before I became Chief Judge, four specialized Commercial Parts had been created in Manhattan, which ultimately led to the Commercial Division of the State Supreme Court – with a lot of help from the Bar in planning and implementation. By now, most of you know that the Commercial Division is a statewide success. Indeed, many of you have celebrated anniversaries with us over these past lucky 13 years of an ongoing partnership about the Division, adapting it to changing needs and new technology. The result is one of America's leading forums for resolving business disputes, one truly befitting a world capital of business and finance.

This was one of our earliest partnerships, and over the years I have learned that in-house corporate counsel, as well as their outside counterparts, are valued collaborators for the courts.

Indeed, in every crevice of our court system there is evidence of our vital partnership with the corporate community, in particular our two-way relationship with in-house counsel. I think of our prized jury system, our own efforts to make jury service less burdensome all around, including minimizing inconvenience to corporate employers, expecting that they in turn will do their part to enable their employees to perform their civic responsibility. Similarly, we look to our great in-house counsel for support with pro bono services for the needy, especially in these difficult times when legal services can

make all the difference, whether with foreclosures, or evictions, or in family matters, or with myriad other problems.

My final point is another area of mutual concern – although perhaps less obviously so, and perhaps even less obviously so in today's economy. We thus far have had, and continue to have, a phenomenal bench, but judicial compensation has reached the point where many have questioned whether we can maintain the quality of our state and federal judiciaries.

And what I want to end with tonight is not another plea– you've heard me make them many times in recent years. Rather, I want to express my thanks–our thanks–for the support you have given us, most recently in the excellent report of the Atlantic Legal Foundation, a long-standing nonprofit, nonpartisan organization, whose Board of Directors and Advisory Council include this nation's leading commercial practitioners, many of them general counsels of major corporations.

Their concern is that judicial compensation in New York, having been frozen for more than a decade, cannot continue to provide the quality of judges needed for the complex controversies that flood our courts, even more so in this troubled economy. The report is a comprehensive, articulate call for freeing judicial compensation from the jaws of politics, and rallying business leaders to use their considerable influence to ensure that we will have a judiciary commensurate with New York's place in the nation and global marketplace.

Not a popular message today, I know, but one that deserves to be heard, and heeded.

I conclude with my thanks to the Atlantic Legal Foundation and its many constituents, to tonight's honorees, and to all of you, for your tremendous service to the public, for the support you have given to the courts, and for your assistance and friendship. And thank you boundlessly for the extraordinary professional life I have enjoyed among you – my lawyer-life, my judge-life, and most especially the Role of a Lifetime, my Chief Judge life.

A link to the report of the Atlantic Legal Foundation mentioned in Judge Kaye's remarks can be found on the home page of our website (www.metrocorp-counsel.com).