

Inaugural Hon. Joseph W. Bellacosa Distinguished Jurist-In-Residence Lecture

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Recommended Citation

Kaye, Hon. Judith S. (2007) "Inaugural Hon. Joseph W. Bellacosa Distinguished Jurist-In-Residence Lecture," *St. John's Law Review*: Vol. 81 : No. 4 , Article 1.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol81/iss4/1>

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INAUGURAL HON. JOSEPH W. BELLACOSA DISTINGUISHED JURIST-IN-RESIDENCE

LECTURE

HON. JUDITH S. KAYE†

This lecture begins with a tribute to the students, faculty, and administration here at St. John's, who have given me a truly remarkable and memorable day, crammed from beginning to end with thoughtful, stimulating questions and conversations: about justice, about lawyers and courts, and, in particular, about the Court of Appeals.¹ And I am of course most grateful to the catalyst for this special day, my beloved former Court of Appeals colleague and forever friend, Judge Joseph Bellacosa.

You have no more devoted alumnus. Indeed, in all his transmogrifications—lawyer, Clerk of the Court of Appeals, Chief Administrative Judge of the State of New York, Judge of the Court of Appeals, Dean of St. John's University School of Law, Professor, Commission Chair, Trustee, author, commentator, colleague, friend, and sports fan—Joseph W. Bellacosa is one of a kind. He is a scholar, profound thinker, prodigious researcher, a facile writer in any language, and downright fun. His wonderful traits are numerous: abundant talent, boundless energy, warmth and exuberance, devotion to family and friends, strong moral fiber, wisdom, diligence, and humility.

Judge Bellacosa spent twenty-five years at the Court of Appeals, in two installments—in two positions—with perfect attendance throughout.

† Chief Judge of the State of New York; Chief Judge of the Court of Appeals of the State of New York. Special thanks to my extraordinary counsel, Mary C. Mone, for her help in preparing this lecture.

¹ I attended Torts classes with Professors Mary Lyndon and Lawrence Joseph, Property with Professor Robert Parella, Clinics in Elder Law, Securities Arbitration and Child Advocacy, and a faculty lunch. I happily filled what had been set aside as "Private Time" by visiting the law journals and then hobnobbing with students in the cafeteria.

Lured from the Law School to Albany as Clerk of the Court, he was without question a trailblazer from the start. He transformed the management, organization, and staffing of the Court of Appeals, enormously improving efficiency and bringing us into the twenty-first century years before it actually arrived. His many innovations continue to enhance and streamline our operations to this day.² Regrettably for me, one of his first acts after I arrived on the bench in September 1983 was to leave the Court to return to teaching. I always took that personally.

But fortunately for all of us, Judge Bellacosa returned to the court system in 1985 as Chief Administrator of the Courts, months later becoming Chief Administrative Judge. During his two years in that role, in addition to managing the day-to-day operations of our vast court system, he oversaw statewide implementation of the Individual Assignment System for trial court dockets, which—like so many other reforms he introduced—persists to this day.

With his appointment as Associate Judge of the Court of Appeals by Governor Mario Cuomo in January 1987, Judge Bellacosa began the second installment of his quarter century at the Court of Appeals. I was fortunate to have had the pleasure of his company on the Court until he left in 2000 for St. John's Law School.

As a Court of Appeals Judge, his extraordinary contribution to the jurisprudence of the Court is included in several hundred signed writings occupying portions of volumes sixty through ninety-four of the official reports of the State of New York. In his writings, you will see both good law and good sense—and every now and then a cherished Latin phrase, a jurisprudential nuance, a rubric, Occam's razor, and a twist or turn of phrase evidencing the unmistakable fingerprints of the preeminent lawyer and judge, scholar and teacher, Joseph W. Bellacosa. Battling out issues with him during deliberations was always a pleasure. Well, nearly always.

Today, however, I do not want to address internal battles in Court of Appeals deliberations, nor the range of issues we hear as

² Judge Bellacosa's many innovations in court administration are outlined in a transcript of the ceremony marking his departure, printed in volume sixty of the official reports of the State of New York. See John Gary, Motion Clerk, N.Y. Court of Appeals, Address at Ceremony Marking Resignation of Joseph W. Bellacosa as Clerk of the Court (Oct. 28, 1983), *in* 60 N.Y.2d vii, viii–xi (1984).

Judges of the State's highest court. Those defy imagination. Any given day at Court of Appeals Hall could contain argument on education funding under the State Constitution alongside cases such as a slip-and-fall on a patch of ice in Forest Hills, a construction site injury under the Labor Law, a multiple murder case raising federal constitutional issues, and a certified question from the United States Court of Appeals for the Second, or Third, or Fifth Circuit on an open question of New York State law. For me, my *judicial* role at the Court of Appeals is, and always has been, Lawyer Heaven—the absolute pinnacle of our great profession.

Instead, what I want to talk about today is the kind of problem that gives me, in my *executive* role as Chief Judge of the State of New York, the greatest “agita” (to use a favorite word of our honoree).

An enormous part of the business of state courts in the twenty-first century involves much more than looking to precedents, determining who is right and who is wrong under the law, and declaring a case concluded. That, of course, works well in a large segment of our dockets—commercial cases, personal injuries, property damage, or product liability. But we have literally millions of cases in our courts every year—especially our family and criminal courts—that, in the past thirteen-plus years of my term as Chief Judge, have constantly challenged us to think differently about the true meaning of delivering justice.

This is not an issue that has concerned New York alone. In a speech to the American Bar Association a couple of years ago, United States Supreme Court Justice Anthony Kennedy challenged the ABA to address what he called the “inadequacies” and “injustices” of our prison and correctional systems.³

³ A transcript of Justice Kennedy's address may be found online. See Anthony M. Kennedy, Assoc. Justice, Supreme Court of the U.S., Speech at the American Bar Association Annual Meeting (Aug. 9, 2003), available at http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Justice_Kennedy_ABA_Speech_080903.pdf [hereinafter Justice Kennedy's 2003 Address to the American Bar Association]. The American Bar Association responded to Justice Kennedy's address by establishing the Justice Kennedy Commission, which presented its recommendations for criminal justice reform at the very next annual meeting. In addition to advocating for federal sentencing reform, the Commission named alternatives to incarceration, such as “community-based treatment,” as one of its “Ten Basic Principles.” See JUSTICE KENNEDY COMM'N, AM. BAR ASS'N, REPORTS WITH RECOMMENDATIONS TO THE ABA HOUSE OF DELEGATES 6 (2004), available at <http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Justic>

Justice Kennedy noted that our inmate population had reached 2.1 million—about one in every 143 persons—whereas countries like England, Italy, France, and Germany incarcerate only about one in a thousand persons. In some cities, he said, the criminal justice system supervises more than fifty percent of young African-American men. And he observed that the United States spends more than \$40 billion annually on housing, feeding, and caring for our prison population. In Justice Kennedy's words: "Our resources are misspent, our punishments too severe, our sentences too long."⁴

The human costs, of course, are far, far greater—incalculable—to the generations of people going to prison instead of work or college; to their families, to their children growing up without parents, to all of us. It is not just their future, it is ours, too.

It struck me, as a state Chief Judge that, although Justice Kennedy laid his challenge at the doorstep of the ABA, it was most pointedly directed at the states and the state courts of this country, where well over ninety-five percent of this nation's litigation is conducted. No one goes to prison without a court order, and these orders issue overwhelmingly from state courts. No child is removed from the home without a state court order. Parental rights are terminated in state courts. Domestic violence victims receive orders of protection in state courts. Overwhelmingly, what we are confronting in the state courts are problems of poverty, and the absence and failure of community supports to reach people in need.

I. PROBLEM-SOLVING JUSTICE

Since the early 1990s, the New York State court system has been turning the prism to find the most effective ways to deliver justice in this brave new world. Again and again we asked ourselves whether, while delivering justice, we could also save lives and improve public safety by enabling people to climb out of a downward spiral of criminal behavior, to reenter society from prison, to obtain treatment for mental illness, or to find a path

eKennedyCommissionReports_Final_081104.pdf.

⁴ Justice Kennedy's 2003 Address to the American Bar Association, *supra* note 3.

away from a violent spouse or drug dependency. The fact is that it is not just their future, it is ours, too.

More precisely, what, for example, is “justice” in the case of a drug addict recycling through the courts again and again, receiving a jail sentence of “time served” and going right back to drug abuse at the same street corner? In effect, the process becomes the punishment. And what is “justice” for a defendant with serious and persistent mental illness who cycles through jail again and again without treatment? What is “justice” for someone who has committed an offense like vandalism or shoplifting or public drinking, who gets no meaningful punishment but does incalculable damage to the community’s sense of security and merchants’ ability to do business? What is “justice” for a domestic violence victim, in court with her spouse because of a minor skirmish that she downplays, when we know so much more today about the persistent, continuous, and insidious nature of domestic violence? Do we just wait for the homicide-suicide?

Clearly the challenge in these cases is not simply to resolve a particular legal question, but to find a way to make the court intervention a meaningful one: to address and resolve, not just the immediate dispute, but also the underlying problem that brought the parties into court in the first place. To turn them from a life of crime and antisocial behavior. To improve their future and ours. We call this “problem-solving” justice.

We began using this problem-solving approach with the formal opening in September 1993 of our first problem-solving court, the Midtown Community Court on West 54th Street in Manhattan. The opening was the result of a genuine collaboration of city, state, and federal government, citizens, businesses, and foundations. In fact, all of our problem-solving courts⁵ require collaborations in their planning and operations—amongst the prosecutor, defense counsel, criminal justice agencies, social service agencies, community groups, and more. The District Attorneys—and one St. John’s alum in particular

⁵ The New York State Court System’s problem-solving courts now include Integrated Domestic Violence Courts, Domestic Violence Courts, Drug Treatment Courts, Mental Health Courts, Sex Offense Courts, Youthful Offender Domestic Violence Courts, and Community Courts. *See* New York State Unified Court System, Problem-Solving Courts, http://www.nycourts.gov/courts/problem_solving (last visited July 19, 2007).

(District Attorney Charles Hynes, in today's audience)—have been absolutely essential partners.

In the Midtown Community Court, low-level offenders are sentenced to pay back the neighborhood with community service. Performance of the sanction is closely monitored by the court. Overwhelmingly, it is completed. At the same time offenders receive on-site services like drug treatment, job training, and counseling. We make maximum use of technology to keep track of cases and compliance with mandates, and we develop partnerships with the community to find jobs and other opportunities. In its thirteen years of operation, the Midtown Court has unquestionably contributed to the revitalization of the West Midtown area. Indeed, only days ago, a community organization of theater owners and businesses gave the court its Golden Scroll Award. This court, by the way, has inspired other community courts not only in our State, but around the country and around the world.⁶

The same principles apply in our drug treatment courts and mental health courts, which again divert defendants from jail to treatment, reconnect them, where possible, with family and friends who care whether they live or die, and restore their greatest loss—their sense of human dignity. Here, too, our problem-solving drug courts and mental health courts closely monitor compliance with the participant's treatment plan which the prosecutor, the defense counsel, and the court must agree to. These courts also use a system of rewards and sanctions along the way, and provide links to needed services such as health, housing, education, and more. Rewards include applause from the courtroom and certificates at key intervals. Sanctions for

⁶ There are over thirty community courts either in operation or in planning around the United States that were inspired by the Midtown model, including the Red Hook Community Justice Center in Brooklyn, New York, which recently received the American Bar Association's Problem Solver Award. Recent years have also witnessed growing international interest in New York's community court model. For example, the British government has opened pilot community courts in Liverpool and Manchester and has announced plans to create ten additional community courts by the end of 2008. Seventeen community courts are already in operation in South Africa. In May 2007, Ireland's National Crime Council published a report recommending the establishment of community courts throughout Ireland. Community courts are also in the works in New Zealand, Canada, and Australia. Additional information is available online. See Center for Court Innovation, Community Court, <http://www.courtinnovation.org/index.cfm?fuseaction=page.viewPage&pageID=570&documentTopicID=17> (last visited Aug. 15, 2007).

noncompliance with the program can include spending a day or more in jail, writing an essay, or sitting in the jury box watching a day's court proceedings. Typically, a participant is not finished until he or she is enrolled in school or employed. Drug court is no get-out-of-jail-free card. There are offenders who decline the opportunity, seeing it as more difficult than the alternative. There are those who run out of second chances, fail the program, and go to jail.

The development of problem-solving courts was a response to the fact that society was leaving these problems at the courthouse door, filling our dockets to overflowing, clearly signaling that new approaches were necessary if the courts were to provide effective justice and maintain the trust and confidence of the public. My favorite skeptics are those we turn around—sometimes even our own judges. And my favorite praise comes from judges overseeing these courts who tell me: “This is what I became a judge to do,” or “This is the most satisfying work I've ever done as a judge.” That is Chief Judge Heaven.

II. FOCUS ON QUEENS AND KINGS

Today right here in Queens County, our problem-solving courts include a felony drug court, a misdemeanor drug court, a mental health court, and an integrated domestic violence court, with a new driving-while-intoxicated (“DWI”) court in the works.

But rather than go on about the nitty-gritty of the operations of these courts, and the many studies and evaluations of their efficacy, I thought I would tell you just a few of our success stories. To me, they are evidence that we are doing well and we are doing good.

I will start with an anecdote from Judge Leslie Leach, Administrative Judge for the Supreme Court, Queens County, who presided over the Queens felony drug court for five years. He pointed out that some of the offenders are much needier than most of us here today could ever imagine. His example came from an exchange with an offender who missed a court-mandated appointment. Judge Leach learned not only that the young man did not have an alarm clock, but also that there was not a single clock in his home. What is more, no one in his family had completed high school. No one had ever held a job. These are remarkable odds to overcome. The life stories of individuals who have been through these courts are often heroic. Do we simply

incarcerate them when they commit a nonviolent crime to support a drug habit, or do we attempt a more meaningful, constructive intervention? For me, this is not a close question.

At a Queens Drug Court graduation a couple of years ago (graduation ceremonies mark the completion of the treatment programs), I heard some remarks that have stayed with me to this day. The speaker said she had hit rock-bottom in her life, and she was so worn down when she was first arraigned in court that she could not bear to look any higher than the judge's desk. As she went through the program, things got better. Her life got better. And little by little, she was able to lift her head when she appeared in court—up to the judge's shoulders, then to his chin. She reconnected with her family and obtained a job. "And now today," she announced with triumph and dignity, head held high, "Judge, I'm looking you right in the eye." Pretty powerful evidence of what can be accomplished. It is her future, but ours, too.

Not long ago, in a rural upstate county, the Judge overseeing a drug court tragically and inexplicably took his own life. Drug court participants wanted to do something to memorialize him. They chose a project (a bench), made drawings, solicited donations of materials, set up an account at a local bank, and secured county authorizations for the project. As the Chief Clerk of the court wrote me:

Now we have people who know how to network; who can put a project together from beginning to end; who are meeting with public officials on their own; who are working toward a common goal. Some of these people couldn't get from point A to B before entering this program. This project alone gives me fuel to continue touting the importance of this court.

That speaks much more eloquently than I ever could to the effectiveness of our problem-solving approach. It is not just their future, it is ours, too.

Another powerful drug court story comes from an early participant in our first Drug Court in Rochester, and I feel compelled to read her words in full:

I first became a Drug Court client in July of 1995. On August 27th, 1995, I got high for the last time. I now have over 16 months clean. The road to recovery has not been an easy one, but it has been worth it.

When I first stood in front of [the judge], . . . I shuffled in here in handcuffs, wearing a red, jail-issue uniform, 6 months pregnant, with a smirk on my face and a defiant look in my eye. I stood here, and hated the people in this room who were trying to help me. I was angry and resentful because the system wouldn't allow me to commit crimes and do my drugs in peace. More important, I did not believe that I could stop using.

My life hadn't always been like this. I had gone to college and had a career. I was using and drinking from time to time, but I believed I had control over my use. By the time I figured out that the drugs were controlling me, I was at the bottom of an abyss. Drugs had gradually changed me from a law-abiding, productive member of society, into a desperate, deviant criminal. I was homeless, penniless, malnourished and dirty. My possessions fit inside a couple of shopping bags. I spent every day stealing for the money to buy my drugs and every free minute getting high. I got caught numerous times, but still I couldn't stop. . . . I had no support system, and no incentive to stop. Drug Court finally provided me with both. If it were not for this program, I am certain that I would not be alive today. I am certain that my 15-month-old twin boys would not be happy and healthy, with a sober mom who is always there for them.

. . . .

Today, I feel better than I've ever felt in my life. As long as I stay drug free, I will never again stand in this or any courtroom charged with a crime. Now that I'm not addicted, I have no need or inclination to break the law. Now that my head has cleared, my perspective has changed. I am responsible for my own life

I want to say that I think Drug Court is the best alternative to incarceration, because it fosters human motivation and the will to change, and provides a framework within which that change can take place. Without this program, so many sick, addicted people would be locked up instead of rehabilitated. When you take drugs away from an addict and provide that addict with the help he or she needs, you can see a changed human being result.

I am one of those people. I want to thank [the judge] and [my case manager] from the bottom of my heart for their dedication, knowledge, and extraordinary compassion.

Similar stories come from our Mental Health Courts. In one case, a twenty-year-old woman suffering from major depression and alcohol abuse was charged with assaulting and robbing her mother. Her life also was complicated by juvenile diabetes. Along the way, she resisted treatment and spent several days in jail. But she ultimately came to accept treatment, telling the court: "I love myself much more than what I did before. If you have self love all things are possible." Several months after her graduation, the clerk in the Mental Health Court saw this young woman at a local restaurant enjoying a meal with her mother. She asked him to send her regards to everyone.

In another case, a young college student was caught robbing his second victim by police officers canvassing the neighborhood with his first victim! Sent to the hospital with injuries he received at Riker's Island after ranting at other inmates, he was diagnosed as having his first psychotic break and suffering from paranoid schizophrenia. His cases were transferred to the Brooklyn Mental Health Court, where he reported every week with his father—both father and son looking distressed and fearful. By the time he successfully completed his two-year treatment program, he was back in school studying graphic design and again living at home with his parents. To my mind, that is a much better outcome than years in prison.

In yet another case, a middle-aged man with a long criminal record was arrested for a felony drug sale. His history of psychiatric hospitalizations starting at age ten—more than 30 years—led to the transfer of the case to Mental Health Court. Upon pleading guilty, his options were either dismissal of the indictment if he successfully completed treatment, or five to ten years in prison if he failed. After eighteen months of treatment, he graduated from the program, enrolled in culinary school, and is now working in a restaurant and reunited with his twenty-year-old son and his son's mother.

In another case, a forty-five-year-old woman charged with robbery, who had a lengthy criminal history and a history of untreated schizoaffective disorder (which affects both mood and thought), was arrested for pickpocketing during her mental health court treatment. Given another chance at treatment, she successfully completed the Mental Health Court program and became employed for the first time in her life, doing warehouse

inventory. She told everyone at the court that she was happy that she was now paying taxes.

The stories are legion—and I have not even touched on the integrated domestic violence courts.

Years ago, we had two murder-suicides of intimate partners, one in Kings County, one in Westchester County. In each case, the woman died with an order of protection in her pocket. I have learned that this is not at all unusual in domestic violence cases. There was a public outcry to the courts: “Do something.” And we did. Thankfully—and I say this with great trepidation—we have not had a repeat of that grisly scenario in our domestic violence courts. Again, I applaud the judges and staff, and all of our collaborators in these excellent initiatives. I have to believe that their special efforts in securing victim safety and offender accountability—the focus of these special courts—are making all the difference.

And here I will bring my remarks to a close with a couple of observations.

As I thought about today’s lecture, a lot of subjects came to mind, but for several reasons our problem-solving courts seemed the best choice. First, I thought it important for you all to hear about new thinking and new approaches to delivering justice. Surely in my own time in law school, initiatives such as these would have been viewed as scandalous. And the fact is, they still have not made it into the books that are the lifeblood of law students. But we should always be thinking about better ways—the best way—to deliver justice in a rapidly changing world. There is nothing rote or mechanical about delivering justice.

Second, I thought the subject of problem-solving courts would be a particularly good one at this law school, which is imbued with a spirit of public service and assistance to people in need. It is *your* future, but ours, too.

And finally, I had a personal reason for picking problem-solving courts as today’s subject. Finding the best way to deliver justice is so much a part of the person, and the life, of today’s honoree, Judge Bellacosa. I knew he would take pride in these life-saving efforts. Judge Bellacosa describes his world today as four Fs: family, friends, faith, and fun. But we know additionally the pleasure he takes in the law as an instrument of justice, in turning the prism to reach proper, correct, fair, and humane solutions that serve the public well. So to his self-description, I

add a fifth "F": fabulous! I am so pleased to be here with you today to honor him.