FOREWORD

*Vincent Martin Bonventre**

Who is your favorite judge of all time? If your answer is William Rehnquist, that says something about you. If, on the other hand, your answer is William Brennan, that says something very different. And if your answer is Sandra Day O'Connor or Lewis Powell, that says something else again.

The Judges of the New York Court of Appeals, the state's highest court, were asked a similar question. All of them. They were asked who their favorite Judges were in Court of Appeals history. The only restrictions: their favorites could not be alive and they could not be Benjamin Cardozo. At the 2008 Chief Judge Lawrence H. Cooke Symposium—a now-annual event hosted by *State Constitutional Commentary*—each Court of Appeals Judge answered the question. Every one of the seven attended the "Judges on Judges" Symposium and spoke about her or his favorite Judge of the past.

Recently retired Court of Appeals Judge Albert M. Rosenblatt moderated the presentations, as well as the equally informative question and answer session that followed. It was an extraordinary event to say the least: the entire high court of New York participating, each naming a favorite judge, and each telling us why. To say the least, the discussions were fascinating.

Without delving into what each Judge said—the complete transcripts of the Judges' presentations are included in this issue—let it at least be noted that the list of favorites was as intriguing and diverse as it was revealing. Chief Judge Judith Kaye picked her predecessor, Lawrence Cooke—a warm, big-hearted man who never lost his small town neighborliness and values (i.e. he was from Monticello, New York, which is also Kaye's original hometown), and who championed independent state constitutional protection of

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rights and liberties during his tenure on the Court. Next, Judge Carmen Ciparick chose Vito Titone—a fellow alum of St. John's Law School who, like her, had a jurisprudence (unmistakably "liberal") marked by empathy for the vulnerable and strictly demanding of governmental fairness.

Judge Victoria Graffeo selected Francis Bergan—an Albany Law grad, like Graffeo, whose love for the Court as an institution led him to author its first history, and whose friendship and mutual respect for a strong political figure was instrumental in his rise in the judiciary. Judge Susan Read picked John T. Loughran—an Associate Judge later elevated to Chief, he was a law professor early in his legal career who, once on the Court, developed a reputation for his arguably non-professorial concise and direct writing style.

Judge Robert Smith chose Cuthbert Pound—a contemporary of Cardozo who, like his better known colleague and predecessor as Chief Judge, was a scholar, an intellectual and a liberal; and, like Smith himself (in addition to some of the foregoing similarities), he developed a reputation as a willing and frequent dissenter. Judge Eugene Pigott selected Matthew Jasen—an independent and determined voice, unhesitant to stand alone when he thought his colleagues were dead wrong on an issue important to society and, especially to the common man and woman. He was proud of his roots in Western New York (Buffalo) and his war-time service in the Army—all of the foregoing, much like Pigott himself.

Finally, in a near mesmerizing presentation, Judge Theodore Jones named Harold Stevens—the first African-American to serve on the Court, this fellow St. John's alum of Jones served for a brief period as an interim appointee, having risen through the ranks of the New York judiciary despite a childhood marked by poverty, racial segregation and violence in South Carolina. This presentation, together with all the others, follows immediately after this Foreword.

As if that Symposium were not enough of a treat, this issue of *State Constitutional Commentary* is chocked full of other goodies. Professor Emeritus Stanley Friedelbaum, our Senior Consulting Editor, has contributed every year and he does so again. This time he explores the multivariate facets of public education that have been the subject of judicial review, particularly as exercised by state supreme courts. Professors Diane Sullivan, Holly Vietzke and Michael Coyne of Massachusetts School of Law urge the enactment of legislation, as well as the coordination of other efforts, directed

toward the humane treatment of animals—especially informed by the fact that they "yelp and cry . . . so we know they can suffer."

Two High Court Studies, one on New York and one on Vermont, were authored by student editors of the Albany Law Review. Gordon Eddy assesses the efforts of New York's now-retired Chief Judge Judith Kaye to promote independent state constitutional decision-making at the Court of Appeals. Among other things, he finds those efforts apparent in a substantial portion of the entire body of her judicial writings. Nathan Sabourin examines the trends in the Vermont Supreme Court's criminal jurisprudence. He examines the Vermont Justices' voting patterns over the past five years in a "re"-examination of a study published in these pages more than a decade ago.

Four additional student pieces round out this issue. Incoming articles editor Kevin Blackwell critiques the Louisiana Supreme Court's treatment of the excessive punishment issue in a death penalty case and contrasts that with the treatment given by other courts of their own state constitutional provisions. Martin McGuinness, from the class of 2008, explores the "silver platter" doctrine as applied to state constitutional law—i.e., where evidence sought to be admitted in a federal prosecution was seized in violation of the constitution of the state where it was obtained.

Katherine Breitenbach, the managing editor for the 2007-2008 academic year, studies the impact on domestic violence prosecutions of the Supreme Court's recent rulings on the admissibility of hearsay evidence. She surveys how state supreme and lower courts have ruled when reviewing hearsay issues in such prosecutions. And Gordon Eddy, an articles editor for 2007-2008, contributes a second piece for this issue, this time looking at the virtues and vices of the Supreme Court's hearsay jurisprudence—especially doing so through the lens of recent decisions of New York State Courts—and proposing a "middle course."

Before closing, gratitude should be expressed to all those members of the *Albany Law Review* whose time and efforts were critical to *State Constitution Commentary* for the 2007-2008 academic year. Among those, two must be singled out. Kelcie McLaughlin, the student editor for *State Constitutional Commentary*, did a magnificent job organizing the "Judges on Judges" Symposium. That was a task entailing countless administrative details, long hours, and the exercise of leadership in developing enthusiastic cooperation on the part of the entire law

review membership. She was also responsible for soliciting the written contributions to this issue.

Katherine Breitenbach, the law review's managing editor for 2007-2008, took upon herself the task of organizing and preparing for publication this entire issue of *State Constitutional Commentary* once it became apparent that the issue would not be ready for the printer by the end of the academic year. Following her graduation, and while serving a clerkship at the New Year Court of Appeals, Katie devoted herself to completing the work on the last two "books" of volume 71 of the *Albany Law Review*—one of which is this one. She more than anyone else deserves credit for this year's *State Constitutional Commentary*. She received the Faculty Advisor's Award last year for her extraordinary contributions to the *Albany Law Review*. As the editor of this annual volume, I—along with the entire law review—am even more in her debt and am extremely grateful to this exceptional former student and now fellow attorney. Thank you, Katie.