EDITOR’S FOREWORD

Vincent Martin Bonventre

State Constitutional Commentary is sweet sixteen! Yes, this is the sixteenth annual issue. An adaptation of State Constitutional Commentaries & Notes—a compact political science quarterly published at Rutgers University under the direction of Professor Stanley Friedelbaum—State Constitutional Commentary has become a mainstay of the Albany Law Review and of the national scholarly literature on America’s state courts, state public law, judicial federalism, and indeed, all aspects of state adjudication, fundamental law, and relations cum dynamics with the jurisprudence of the Federal Supreme Court.

Beyond that, the Albany Law Review now hosts a State Constitutional Commentary symposium. This annual roundtable of scholars and jurists, named after Lawrence H. Cooke—a 1937 graduate of Albany Law School, former Chief Judge of New York, and first chairperson of the journal’s Board of Editors—has become one of the most eagerly anticipated, well-attended, important, and exciting events of the Law School’s academic year.

Indeed, the symposium held two years past featured every member of New York’s highest court, the Court of Appeals. The enthusiasm of the judges and the members of the bench bar, academy, and student body in attendance at that event was the stimulus for New York Appeals, an annual issue of the Law Review inaugurated last year with an in-depth study of each of the current members of the state’s high court. The symposium last year focused on the causes, ramifications, responses, and remedies for wrongful convictions. That event, in turn, engendered yet another special annual issue, Miscarriages of Justice. The inaugural edition—

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1 Symposium: Judges on Judges: The New York State Court of Appeals Judges’ Own Favorites in Court History, 71 ALB. L. REV. 1045 (2008).

focused on the Benthamite notion that it is better for ten guilty persons to be acquitted than for one innocent person to be convicted—is at the printer as this is being written.

That brings us to this year’s *State Constitutional Commentary* symposium: *Great Women, Great Chiefs*. Chief Justices Margaret Marshall of Massachusetts, Marsha Ternus of Iowa, and Jean Toal of South Carolina—three extraordinary women and jurists who have headed their respective states’ high courts and judicial branches—spent the day at the Law School. At that symposium, they were, in order, introduced by Albany Law School Professors Donna Young, Rosemary Queenan, and Mary Lynch, each of whom provided an outline of the ground breaking careers of the three Chief Justices as well as of some of the landmarks and milestones that have marked their respective tenures atop their states’ judiciaries.

To say the least, the presentations of these great women, great chiefs more than measured up to the adulation of the introductions. The three chiefs were inspiring, commanding, exhorting, witty, entertaining, enlightening, and veritably mesmerizing. The standing-room-only crowd of students, professors, local judges and attorneys, and other interested members of the community were as appreciative, enthusiastic, and, in fact, exhilarated as any audience I have observed for any event.

A transcript of that symposium opens this issue of *State Constitutional Commentary*. Following that, several articles reflecting the broad scope of state adjudication and public law, to which this journal has been dedicated for sixteen years, are included. Three “High Court Studies”—a regular, student-authored feature of *State Constitutional Commentary*—come next. A student comment completes the issue.

Gerald Benjamin, political science professor at SUNY New Paltz, and Zachary Keck, a student at New Paltz and research intern at the Center for a New American Security, compares the gubernatorial power in New York with that in other states to reorganize and reduce government by executive order. John Dinan, political science professor at Wake Forest, argues that recent assertions of sovereignty by several states (e.g., rejecting federal health care legislation and federal limits on medical marijuana) may well be aspects of a healthy safeguarding of federalism principles that are integral to our constitutional division of governance.

Lawrence Friedman of New England School of Law examines
Robert Williams's *The Law of American State Constitutions* and, among other things, agrees that state constitutional adjudication should be truly independent and not merely instrumental to reject Supreme Court rulings. Cheryl Hanna of Vermont Law School revisits the Vermont Supreme Court's landmark same-sex marriage decision in *Baker v. State*, focusing on Justice Denise Johnson's concurring opinion on sex discrimination as a framework for addressing discrimination based on gender stereotyping generally. Helen Hershkoff of New York University School of Law argues that the clear statements requirement about state procedural versus substantive law emerging from the Supreme Court's 2010 *Shady Grove* decision undermines federalism.

Johanna Kalb of Loyola University New Orleans' College of Law explores the concept of personal dignity in state court jurisprudence as a basis for a human rights framework for addressing a broad variety of substantive legal claims. Justin Long of Wayne State Law School views the recent Oklahoma constitutional amendment barring the state courts from "considering international law or Sharia law" as proof that state constitutions are vital resources to contest federal or national values, notwithstanding the particular amendment's "stupidity, fear, and hate."

Jason Mazzone of Brooklyn Law School argues that the Supreme Court's 2008 decision in *Danforth v. Minnesota* may well be a double-edged sword for state courts: while they may extend federal procedural retroactivity beyond that required by the Supreme Court, they will still be operating under the Court's own analysis. Donna Young of Albany Law School posits New York's recently enacted Domestic Workers Bill of Rights as a model for addressing the interests of domestic workers and protecting them from exploitation and abuse.

In the "High Court Studies" section of this issue, this year's student Executive Editor for *State Constitutional Commentary*, Jessie Cardinale, contributes judicial profiles on two of the jurists who participated in this year's symposium: Chief Justice Marshall of Massachusetts and Chief Justice Ternus of Iowa. Nisa Khan, a *Law Review* member of the class of 2012, then profiles South Carolina's Chief Justice Toal. One last student piece, a comment by Amanda De Vito, contests the constitutional validity of New York's statutory framework for gestational surrogacy parenting arrangements.

This has been a remarkable year for the *Albany Law Review*, and that includes a remarkable year for *State Constitutional*
Commentary—both the symposium and this issue. For the success, credit of course is due to our contributors and to the membership of the Law Review. A few individuals deserve special mention.

First, our Editor-in-Chief, Caitlain Devereaux Lewis. She has been extraordinary. As an editor, supervisor, organizer, representative—leader. It has been an absolute pleasure and privilege to work with her. More importantly, the Albany Law Review has continued to make great strides with her—the Law School’s Benjamin Cardozo Award recipient this year—at the helm.

Our Managing Editor, Christina Tripoli, should also be mentioned. Besides performing the technical and tedious editing and formatting that is the nature of her position in the most meticulous, and even punctilious fashion, she did so with dedication and perseverance even while (and after) studying for the bar exam.

Finally, Jessie Cardinale. I’m not sure how to express my pure delight and immense gratitude for a year of working with her on State Constitutional Commentary. As this year’s Executive Editor, she was entirely responsible for planning, organizing, and overseeing the Great Women, Great Chiefs symposium. The fact that it was an enormous success is primarily because of her hard work, wonderful ideas, and lots of worrying and taking care of countless details, both large and small. And yes, she also is responsible for soliciting the authors who contributed to this year’s issue, as well as for overseeing the organization and editing leading up to the issue’s publication. Oh, and as previously mentioned, she authored two of the articles—two high court studies—included in the issue. She was just amazing—as amazing as she was fun to work with. Thank you, Jessie.