

INTRODUCTION TO THE NINTH ANNUAL
CHIEF JUDGE LAWRENCE H. COOKE SYMPOSIUM,
HIGH COURTS, CENTER SEAT:
CHIEF JUSTICES AT ALBANY LAW SCHOOL;
AND “THE LIPPMAN TOP TEN”

*Vincent Martin Bonventre**

Welcome to the Chief Judge Cooke Symposium. Named after Lawrence H. Cooke, this symposium has previously brought some of the nation’s most preeminent jurists to Albany Law School, such as: Chief Justice Margaret Marshall of Massachusetts,¹ Chief Justice Shirley Abrahamson of Wisconsin,² Chief Justice Christine Durham of Utah,³ Chief Justice Marsha Ternus of Iowa,⁴ and Chief Judge Judith Kaye of New York.⁵ We have even invited a few men: Chief Justice Jim Hannah of Arkansas,⁶ Justice Jack Landau of Oregon,⁷ and of course, Chief Judge Jonathan Lippman of New York.⁸ Additionally, both Chief Judge Kaye⁹ and Chief Judge Lippman¹⁰ have each brought the entire Court of Appeals with them to participate in previous Cooke symposia. The last time the Judges of the court discussed “The Untold Secrets of Eagle Street”—including the handshake. We know there’s a handshake; we just don’t know

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¹ Symposium, *Great Women, Great Chiefs*, 74 ALB. L. REV. 1595 (2010/2011).

² Symposium, *The State of State Courts*, 75 ALB. L. REV. 1703 (2011/2012).

³ *Id.*

⁴ *Great Women, Great Chiefs*, *supra* note 1.

⁵ *The State of State Courts*, *supra* note 2.

⁶ Symposium, *Chief Justices Discuss State Courts and State Constitutional Law in the 21st Century*, 70 ALB. L. REV. 825 (2006).

⁷ Symposium, *Exceeding Federal Standards*, 77 ALB. L. REV. 1247 (2013/2014). Justice Landau also published an article in *State Constitutional Commentary* recently. Jack L. Landau, *Do Precedents Take Precedence? Stare Decisis and Oregon Constitutionalism*, 77 ALB. L. REV. 1347 (2013/2014).

⁸ Symposium, *The Untold Secrets of Eagle Street*, 76 ALB. L. REV. 1897 (2012/2013); *The State of State Courts*, *supra* note 2; Symposium, *Wrongful Convictions: Understanding and Addressing Criminal Justice*, 73 ALB. L. REV. 1201 (2010).

⁹ *The State of State Courts*, *supra* note 2.

¹⁰ *The Untold Secrets of Eagle Street*, *supra* note 8.

what it is!

Today we have an extraordinary panel of judges and for that reason it's going to be very hard to top this symposium next year. In introducing the judges, I'm not going to read their official biographies which are included in the program we've created for you today. And by their "official biographies," I mean the biographies listed on each state's website. What's funny is that the Vermont website is quite spare in describing that state's justices, while the Oregon site goes on interminably about the members of its supreme court. I will not be repeating either of those!

I am, however, going to say a few words about each of our participants. Chief Justice Thomas Balmer of Oregon was appointed to the Oregon Supreme Court in 2001 and elected by his colleagues as chief justice in 2012. He has practiced both privately and in government. While he was a government attorney, he successfully defended Oregon's Death with Dignity Act before the federal courts. He is also responsible for numerous initiatives as chief justice. Recently, he commissioned a study on the juvenile justice system and its treatment of mental illness. Chief Justice Balmer's court is probably the nation's leader in independent state constitutional adjudication. One of the former justices of Oregon, the iconic Hans Linde, is actually on the board of *Albany Law Review's State Constitutional Commentary*. Chief Justice Balmer has written numerous law review articles, and two years ago he wrote one for the *Albany Law Review* entitled, *In the Balance: Thoughts on Balancing and Alternative Approaches in State Constitutional Adjudication*.¹¹ We are thrilled to have you here Chief Justice.

Next, we have Chief Judge Mary Ellen Barbera of Maryland. Yes I said judge, because the jurists on the high court in Maryland are referred to as "judge." Also, Maryland's high court is the "Court of Appeals." We are kind of partial to both those titles here in New York! Chief Judge Barbera was appointed to the Court of Appeals of Maryland in 2008 and elected chief judge in 2013. Chief Judge Barbera attended law school at night, as a mother of two, while she worked as an elementary school teacher—pretty extraordinary. She is the first woman to become chief judge of Maryland, and she is truly an inspiration to the people of Maryland and beyond, to men as well as women. Thank you so much for being here Chief Judge.

¹¹ Thomas A. Balmer, *In the Balance: Thoughts on Balancing and Alternative Approaches in State Constitutional Interpretation*, 76 ALB. L. REV. 2027 (2012/2013).

Chief Justice Mark Cady of Iowa has been a member of Iowa’s high court since 1998, and Iowa’s chief justice since 2010. After working as a county attorney and then as a private practitioner, he was appointed to the trial bench of Iowa—a mere five years out of law school. He then served on Iowa’s intermediate court for four years, was appointed to that state’s high court in 1998, and in 2010 (on an interim basis) and 2011 (on a permanent basis) was elected chief justice by his colleagues. Notably, the Iowa Supreme Court has a tradition of often leading the rest of the country and, more specifically, it has been at the forefront of criminal justice, as well as racial and gender equality. Chief Justice Cady was the author of an article two years ago in the *Albany Law Review* which referred to Iowa’s court as “the vanguard of equality.”¹² Beyond that, he was also the author of his court’s opinion in *Varnum v. Brien*,¹³ a 2009 decision that was heard around the country, if not the world, unanimously recognizing the equal right of same sex couples to marry.¹⁴ Subsequently, there was a vile election campaign, which resulted in the removal of three justices from the Iowa court. One of them was the former Chief Justice Marsha Ternus, who participated in the Cooke symposium several years ago. Ironically, and with profound implication, the remaining justices of the court then elected Mark Cady, the author of that decision, to replace Ternus as chief justice. We are very proud to have you here Chief Justice Cady.

Chief Justice Paul Reiber of Vermont was appointed to the Vermont high court in 2003 and the very next year he was appointed chief justice. He was in private practice for twenty-nine years. As chief justice, he was the first judge in twenty years to address both chambers of the Vermont legislature in advocating for a comprehensive restructuring of the Vermont court system. Most recently, he has advocated for treatment-based approaches to substance abuse rather than campaign for the war on drugs. Like the Oregon Supreme Court, the Vermont Supreme Court has never hesitated to criticize or reject questionable U.S. Supreme Court decisions, and it regularly adopts its own approach to constitutional rights issues. In fact, I teach several Vermont Supreme Court cases in my classes. It is great to have you here Chief Justice Reiber.

¹² Mark S. Cady, *The Vanguard of Equality: The Iowa Supreme Court’s Journey to Stay Ahead of the Curve on an Arc Bending Towards Justice*, 76 ALB. L. REV. 1991, 1991 (2012/2013).

¹³ *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

¹⁴ *Id.* at 907.

Finally, it's my great privilege to introduce our honoree, New York's Chief Judge Jonathan Lippman. This symposium and this year's issue of *State Constitutional Commentary* are dedicated to him. Chief Judge Lippman was appointed to the center seat of the New York Court of Appeals in 2009. Beyond that factoid, however, I have compiled a Top Ten List of the greatest things about Chief Judge Lippman. I did receive some suggestions from his staff. But if it were up to them, the list would be the Top One-Hundred and Ten greatest things about the Chief Judge.

Here is my—very nonexclusive—Lippman Top Ten:

10. From 1996 to 2007, he assisted Chief Judge Kaye, serving as New York's chief administrative judge. That's eleven years—so there's little doubt that he knows more about the New York court system than anybody else on the planet.

9. Within the very first year of being chief judge, he authored *People v. Weaver*¹⁵—perhaps the most important Court of Appeals search and seizure decision in a generation. He wrote that a warrant supported by probable cause is required for electronic surveillance of an individual's movements, even if those movements are in public places.¹⁶ His reasoning was based upon essential privacy interests. It was, by the way, infinitely more persuasive than the subsequent Supreme Court decision, which was based on some bizarre rationale of trespass law.¹⁷

8. Regarding the right to counsel, Chief Judge Lippman authored the majority opinion in *Hurrell-Harring v. State*¹⁸ in 2010. In that case he sustained a cause of action claiming a systemic inadequacy in providing constitutionally mandated legal representation in criminal cases.¹⁹

7. Regarding interrogations and confessions, Chief Judge Lippman authored the unanimous opinion in *People v. Thomas*²⁰ just last year. In his opinion he explained how false representations of a suspect in custody—that particular case involved lies about the welfare of the suspect's wife and child—could amount to coercion.²¹ Such lies could, in turn, result in an involuntary confession that

¹⁵ *People v. Weaver*, 909 N.E.2d 1195 (N.Y. 2009).

¹⁶ *Id.* at 1203.

¹⁷ *U.S. v. Jones*, 132 S. Ct. 945 (2012).

¹⁸ *Hurrell-Harring v. State of New York*, 930 N.E.2d 217 (2010).

¹⁹ *Id.* at 18.

²⁰ *People v. Thomas*, 8 N.E.3d 308 (N.Y. 2012); see also Dorothy Heyl, *The Limits of Deception: An End to the Use of Lies and Trickery in Custodial Interrogations to Elicit the "Truth"?*, 77 ALB. L. REV. 931 (2013/2014) (discussing *People v. Thomas*).

²¹ *Thomas*, 8 N.E.3d at 313–14.

must be excluded.²²

6. Related to the *Thomas* decision, Chief Judge Lippman has been a champion in the study, prevention, and uncovering of wrongful convictions. Among other things, he has established a special task force on the subject. Indeed, a few years ago he organized and moderated the Cooke Symposium exploring the problem of wrongful convictions.²³ Beyond that, he then helped to inaugurate the *Albany Law Review's* special annual issue, *Miscarriages of Justice*, which studies such problems in the criminal justice system.

5. Related to the *Hurrell-Harring* decision, he has been a relentless advocate for adequate legal representation for the poor. His efforts have resulted in the creation of the Office of Indigent Legal Services, which is devoted to the improvement of legal representation of indigents in criminal cases.

4. Related to that, he has been just as vigorous and relentless in promoting civil *Gideon* rights by providing legal representation for the indigent in civil cases involving basic necessities, such as housing, child custody, and consumer credit. As a result of the task force expanding access to civil legal services, among other efforts of his, funding has now increased to \$70 million in this state.

3. Related to the *Weaver* decision, the *Hurrell-Harring* decision, and many others, is Chief Judge Lippman's welcoming attitude toward dissenting opinions, where his colleagues freely air their disagreements. This has resulted in clearer, crisper, and more forthright decisions from the Court of Appeals, including the recognition that many of the issues before the court are extremely close, and there are often intelligent, legitimate reasons for the court to decide the case either way.

2. Chief Judge Lippman has been an extraordinarily strong supporter of our law school. Whether moderating a symposium (this is the third Cooke Symposium he has moderated), writing for the *Albany Law Review*, welcoming our students into his court, or generally branding Albany Law School as the Court of Appeals' home school, he has been a huge boost to our law school and a great encouragement to our students.

1. Finally, Chief Judge Lippman is the perfect successor to some of the greatest chief judges in the history of the Court of Appeals, such as Benjamin Cardozo, Cuthbert Pound, Irving Lehman, Stanley Fuld and Judith Kaye. In addition, he personifies those

²² *Id.* at 1028.

²³ *Wrongful Convictions: Understanding and Addressing Criminal Injustice*, *supra* note 8.

noble qualities of Chief Judge Lawrence H. Cooke, after whom we have named these annual symposia. Rather than being tied and committed to rigid rules of construction or interpretive methodology, Chief Judge Lippman has devoted himself to insisting upon doing justice, insisting upon fundamental fairness, and insisting upon protecting basic human dignity and decency in the law.

It is truly my honor to introduce our moderator, honoree, and friend, the great Chief Judge of New York, Jonathan Lippman.