EDITOR’S FOREWORD

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The Lippman Court. Indeed, the Lippman era. There is no mistaking the direction and dynamics that have distinguished New York’s Chief Judge Jonathan Lippman and the Court of Appeals, the state’s high court, since he assumed the center seat a short—but remarkable—six years ago in February 2009.

From the very outset, Chief Judge Lippman left no doubt that he intended to make the most of his tenure that would come to an end at the close of 2015, the year of his forced age, 70, retirement under New York law. As was outlined in the pages of this law review barely one year into Lippman’s tenure, he was already making his mark.¹ Not by the insistence upon some rigid interpretive methodology, nor by the adherence to some popular partisan ideology, not by the pretense of certainty on difficult legal issues joined with a concomitant discouragement of differing perspectives. No.

Instead, from the very beginning there has been the Lippman hallmark of seeking justice, fairness, and decency whenever and wherever a gap or ambiguity in the law permitted an interpretation and application that better promoted those policy goals. Likewise, in his role as the chief executive of the state’s mammoth judicial branch, the Lippman hallmark has been the unrelenting push for reforms of old, inequitable and unwise ways of managing courts and trials and convictions.²

For this, and for so much more, including his enthusiastic and

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unfailing support for the Albany Law Review\(^3\) and of Albany Law School students generally,\(^4\) we are extremely proud to dedicate this issue of the law review’s *State Constitutional Commentary*—as we did our Cooke Symposium this past spring—to our friend and mentor, Chief Judge Jonathan Lippman.\(^5\)

This year’s *State Constitutional Commentary* symposium—the ninth actual such event named for Lawrence H. Cooke, former chief judge of the New York Court of Appeals and 1938 graduate of Albany Law School—brought together another extraordinary panel. The concept of this year’s symposium, *High Courts, Center Seat: Chief Justices at Albany Law School*, was a wide ranging discussion of judicial administration, selection, and decision making from the perspective of those who preside over their states’ judicial branches.\(^6\)

And yes, it *was* indeed another extraordinary panel. In past years, the Cooke symposium has brought to Albany Law School many of the most venerable names in the American judiciary to discuss issues facing the nation’s state high courts and their court systems. Among those who have participated are a veritable roster of American judicial royalty. A short list of some of the Chief Justices from recent years makes the point: Wisconsin’s Shirley Abrahamson, Christine Durham of Utah, James Hannah of Arkansas, Margaret Marshall of Massachusetts, New Jersey’s Stuart Rabner, and South Carolina’s Jean Toal.\(^7\)

A few years ago, the symposium brought together some of the nation’s leading voices on the issue of wrongful convictions—with Chief Judge Lippman moderating their discussion.\(^8\) And on two occasions, the Cooke Symposium hosted the entire membership of

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\(^4\) See e.g., ALBANY LAW MAGAZINE, Summer 2014, at cover, 20–21 (speaking to Albany Law students in the courtroom following oral arguments and opening the session by welcoming the students and referring to Albany Law School as the Court’s “home school”).

\(^5\) See Galvao, *supra* note 2; Bonventre, *supra* note 2.

\(^6\) For more description, see Bonventre, *supra* note 2.


\(^8\) *Wrongful Convictions: Understanding and Addressing Criminal Justice*, *supra* note 3.
New York’s highest court.\footnote{See The Untold Secrets of Eagle Street, supra note 3; Symposium, Judges on Judges: The New York State Court of Appeals Judges’ Own Favorites in Court History, 71 ALB. L. REV. 1045 (2008).}

This year’s gathering of four of the nation’s most prominent state chief justices,\footnote{Thomas Balmer of Oregon, Mary Ellen Barbera of Maryland, Mark Cady of Iowa, and Paul Reiber of Vermont.} once again with Chief Judge Lippman as moderator, was unquestionably a most worthy edition of this singular annual event.

The very same can be said about this year’s edition of this special annual issue of the Albany Law Review, State Constitutional Commentary. Following the dedication to Chief Judge Lippman—including a tribute by Antonio Galvao\footnote{Galvao, supra note 2.} and my “Lippman Top Ten”\footnote{Bonventre, supra note 2.}—the issue proceeds with several important and fascinating perspectives on state courts, state constitutions, and state constitutional adjudication.

Loren Selznick of Bloomsburg University of Pennsylvania contrasts the rights of family business owners under federal and state religious freedom laws. She shows that the accommodation of religious objections to legal mandates is unpredictable, even in states where strict scrutiny is the required test.\footnote{Loren F. Selznick, Running Mom and Pop Businesses by the Good Book: The Scope of Religious Rights of Business Owners, 78 ALB. L. REV. 1353 (2014/2015).} Weber State’s Richard Price explores the development of independent search and seizure jurisprudence in several state high courts. He concludes that an uneven development of state constitutional law appears largely to be the consequence of uneven legal argumentation by the litigants.\footnote{Richard S. Price, Lawyers Need Law: Judicial Federalism, State Courts, and Lawyers in Search and Seizure Cases, 78 ALB. L. REV. 1393 (2014/2015).}

State constitutional restrictions on the legislative policy process are the focus of a study by Nancy Miller of Rice, Keith Hamm of Wisconsin at Milwaukee, and Ronald Hedlund of Iowa. The authors find that state constitutions generally provide greater specificity about legislative powers than does the U.S. Constitution about Congress.\footnote{Nancy Martorano Miller, et al., Constrained Behavior: Understanding the Entrenchment of Legislative Procedure in American State Constitutional Law, 78 ALB. L. REV. 1459 (2014/2015).}

Idaho State’s Shane Gleason and Georgia State’s Robert Howard apply social network and policy diffusion analyses to state high court decision making in education reform. Among other
observations, the authors find that courts that become “more professional” (e.g., develop a large body of their own case law) are less likely to refer to other courts’ decisions.¹⁶

Peter Galie, emeritus of Canisus, and Christopher Bopst, chief legal officer of Sam-Son Logistics, continue with their look at outdated provisions in New York State’s constitution in the concluding part two of their Constitutional ‘Stuff’. The authors identify a “startling” amount of material in the state charter that is obsolete and incoherent.¹⁷

Caroline Levine of Western Michigan’s Cooley Law School considers the readily amended Florida constitution. In particular, she addresses the right of self-representation and how the many state constitutional issues that arise in criminal cases are difficult for the nonlawyer to navigate in the absence of an attorney.¹⁸

Finally, a student note by Lindsay Zanello, the law review’s managing editor for the 2014–2015 academic year, examines state and federal search and seizure jurisprudence on canine sniffs. She finds the case law to be confusing, conflicting, and very much in flux.¹⁹

Before concluding, a few words of thanks are in order. First, Danielle Quinn, the law review’s 2014–2015 Executive Editor for State Constitutional Commentary, was largely responsible for soliciting all the articles in this issue, as well as for keeping track of all the details entailed in publishing this journal and for organizing this year’s Cooke Symposium. On a personal note, I thoroughly loved working with her and was thoroughly impressed with her enthusiasm, professionalism, and administrative and editorial skills. A great deal of gratitude is also owed to Joey O’Rourke, our extraordinary editor-in-chief for the 2014–2015 year, and for his well-chosen successor, Sean Mix. Joey tirelessly and exquisitely oversaw the entire editorial and administrative operation of the Albany Law Review throughout his tenure. Indeed, with the assistance of our new editor-in-chief, he has faithfully put the final touches on the issue. Joey is surely one of the most talented and

successful EIC’s we have had in my 25 years as faculty advisor. Thanks Joey, and thanks and good luck to Sean for a great year.