

EDITOR'S FOREWORD

*Vincent Martin Bonventre**

“The State of State Courts,” this year’s edition of the *State Constitutional Commentary* Symposium, was another remarkable event. The annual symposium, named in honor of Chief Judge Lawrence H. Cooke—an advocate of independent state constitutional adjudication as an obligation of state courts to safeguard fundamental liberties—is now a six year old tradition. Its namesake, a 1937 graduate of Albany Law School, led New York’s highest court, the New York Court of Appeals, as the nation’s preeminent state tribunal in protecting rights and liberties in an era when the federal Supreme Court began accelerating in the opposite direction.¹

True to the legacy of Chief Judge Cooke—who also served as *State Constitutional Commentary* chairperson from its founding in 1996 until his passing in 2000—this journal, as well as the annual symposium it hosts, is intended to promote an understanding of the vital role played by the state courts, in the development of *American* (not just *federal*) constitutional and public law. The remarkable annual events, the Cooke Symposia, have become no less than a public celebration of that legacy by some of the nation’s most eminent jurists each year.

The inaugural symposium *cum* celebration, in 2007, featured the venerable Chief Judge Judith Kaye of New York, Chief Justice Shirley Abrahamson of Wisconsin, Chief Justice Christine Durham of Utah, and Chief Justice James Hannah of Arkansas. Now that was quite an ambitious and propitious beginning!² The following

* Editor, *State Constitutional Commentary*; Faculty Advisor, *Albany Law Review*; Ph.D., M.A.P.A., University of Virginia; J.D., Brooklyn Law School; B.S., Union College. Professor of Law, Albany Law School; Blog: New York Court Watcher.

¹ See Vincent Martin Bonventre, *Tribute to Chief Judge Lawrence H. Cooke 1914–2000*, 64 ALB. L. REV. 1 (2002); Judith S. Kaye, *Chief Judge Lawrence H. Cooke*, 71 ALB. L. REV. 1055 (2008).

² See *Symposium: Chief Justices Discuss State Courts and State Constitutional Law in the 21st Century*, 70 ALB. L. REV. 825 (2007).

year, Chief Judge Kaye returned with her entire court. The seven judges of New York's highest court regaled us with their respective picks of "favorite" judge in Court of Appeals history.³

Last year, an inspiring trio of extraordinarily courageous jurists spoke about the challenges facing judges and lawyers, and the responsibility to confront them and be true to principle. Chief Justice Margaret Marshall of Massachusetts, Chief Justice Jean Toal of South Carolina, and Chief Justice Marsha Ternus of Iowa were our "Great Women, Great Chiefs."⁴ And this year, in a successful effort to continue this singularly distinguished string of annual events, we enlisted New York's already-renowned current Chief Judge, Jonathan Lippman, to moderate a panel of esteemed jurists. Making a second appearance at a Cooke Symposium were two of America's most revered top judges: Wisconsin's Chief Justice Abrahamson and Utah's Chief Justice Durham. They were joined by a newcomer—and a more recent appointee to her state's high court—Connecticut's Chief Justice Chase Rogers. It is an understatement to say that this was an extraordinarily enlightening and exhilarating event, with Chief Judge Lippman leading the panel through an array of critical issues facing state judiciaries around the country.⁵

This year's *State Constitutional Commentary* opens with a dedication to Chief Justice Christine Durham of Utah. For thirty years on that state's highest court, Durham has been recognized as one of the most brilliant, beloved, and revered members of the American judiciary. It is our honor to pay tribute to this renowned jurist and good friend of the *Albany Law Review*.

Among the contributors to this issue of *State Constitutional Commentary* are former United States Supreme Court Justice Sandra Day O'Connor, Former Arizona Chief Justice Ruth McGregor,⁶ former New York Chief Judge Judith Kaye,⁷ and current Oregon Chief Justice Paul De Muniz.⁸ They are all part of the *Perspectives* section addressing the vexatious issue of judicial selection.

³ See *Symposium: Judges on Judges: The New York State Court of Appeals Judges' Own Favorites in Court History*, 71 ALB. L. REV. 1045 (2008).

⁴ See *Symposium: Great Women, Great Chiefs*, 74 ALB. L. REV. 1557 (2010/2011).

⁵ See *Symposium: The State of State Courts*, 75 ALB. L. REV. 1683 (2011/2012).

⁶ Sandra Day O'Connor & Ruth McGregor, *Judicial Selection Principles: A Perspective*, 75 ALB. L. REV. 1721 (2011/2012).

⁷ Judith S. Kaye, *A Perspective on State Courts Today*, 75 ALB. L. REV. 1727 (2011/2012).

⁸ Paul J. De Muniz & Phillip Schradle, *A Modest Proposal for Selection of Oregon Judges*, 75 ALB. L. REV. 1733 (2011/2012).

Our *Articles* section, as usual, covers a wide variety of topics dealing with state adjudication and state public law: Michael Rebell on developments affecting New York's state constitutional right to a sound basic education;⁹ Susan Herman on Chief Judge Kaye's legacy of state constitutional scholarship;¹⁰ Peter Galie and Christopher Bopst on New York's constitutional prohibition on government gifts or loans to private enterprises;¹¹ Judy Cornett and Matthew Lyon on the political debate over contested judicial elections in Tennessee;¹² and Jessie Cardinale on the inequitable restrictions on infertility insurance, with Hawaii and Rhode Island case studies.¹³

In the *High Court Studies* section, Michael Ariens examines the jurisprudence of Texas Chief Justice Wallace Jefferson.¹⁴ Finally, a student Comment by Chelsea Cerutti looks at the issue of donation after cardiac death, focusing on New York Law with reference to Oregon's Death with Dignity Act.¹⁵

This seventeenth issue of *State Constitutional Commentary* is as good as it is—and *superb* it is—because of the efforts of many. Our symposium participants, our authors, and, of course, the exceptionally bright and capable students of the *Albany Law Review* who prepared the issue for publication. They make me look terrific, as their Faculty Advisor, to my colleagues.

Among those students, two in particular must be mentioned. Patrick Woods, our Editor-in-Chief for this past year, has been nothing short of brilliant and indefatigable in his role overseeing the entire *Law Review* operation. He has steered this, the nation's first student-edited legal journal, with wisdom, foresight, devotion, and with success unsurpassed in the more than twenty years I have served as Faculty Advisor. I thank you and salute you Patrick.

⁹ Michael A. Rebell, *Safeguarding the Right to a Sound Basic Education in Times of Fiscal Constraint*, 75 ALB. L. REV. 1835 (2011/2012).

¹⁰ Susan Herman, *Portrait of a Judge: Judith S. Kaye, Dichotomies, and State Constitutional Law*, 75 ALB. L. REV. 1957 (2011/2012).

¹¹ Christopher Bopst & Peter Galie, *Anything Goes: A History of New York's Gift and Loan Clauses*, 75 ALB. L. REV. 1985 (2011/2012).

¹² Judy M. Cornett & Matthew R. Lyon, *Contested Elections as Secret Weapon: Legislative Control over Judicial Decision-Making*, 75 ALB. L. REV. 2071 (2011/2012).

¹³ Jessie R. Cardinale, *The Injustice of Infertility Insurance Coverage: An Examination of Marital Status Restrictions Under State Law*, 75 ALB. L. REV. 2113 (2011/2012).

¹⁴ Michael Ariens, *A Judge in Full: Wallace Jefferson of Texas*, 75 ALB. L. REV. 2131 (2011/2012).

¹⁵ Chelsea A. Cerutti, *Donation After Cardiac Death: Respecting Patient Autonomy and Guaranteeing Donation with Guidance from Oregon's Death with Dignity Act*, 75 ALB. L. REV. 2179 (2011/2012).

Then there is Nicole Nielson. As this year's Executive Editor for *State Constitutional Commentary*, Nikki was responsible for organizing the symposium, for soliciting the contributions to this issue, and for putting it all together. Incredibly energetic, enthusiastic, efficient, effective, committed to excellence, capable, and all around amazing, Nikki is primarily to credit for all that went well in our symposium and all that is best in this issue of *State Constitutional Commentary*. It has been an absolute pleasure and source of pride to work with her. Thank you Nikki for great work and a great year.