

INTRODUCTION OF THE PANELISTS

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PROFESSOR MICHAEL J. HUTTER: Good afternoon. I have the distinct pleasure of introducing the Honorable Jonathan Lippman, known initially as the Chief Judge of the Court of Appeals, but he actually wears a second hat. He is also the Chief Judge of the State of New York, which means not only is he administering one of the leading state courts, the Court of Appeals, but also the entire structure of the New York Court System, probably the most byzantine court structure in the country. But I believe in a couple of years, it may not be so under his leadership.

With most lawyers and other judges when you mention Judge Lippman they will instinctively think of his administrative role and opine that in that role he has been terrific. And administratively he has accomplished many remarkable matters through his career.

Before his appointment to the Court of Appeals, he was the Chief

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Administrative Judge of the State of New York for thirteen years, and in that position he was the go-to person for all the problems of the courts. Thirteen years in a position that generally would spit out the occupier after a year or two because of the burn out. But he continued mainly because no one wanted him to leave, he was doing such a great job. When he became a state supreme court judge, he was elevated to the Appellate Division, First Department, as the Presiding Justice. He then took over probably one of busiest appellate courts, not just in the State of New York, but in the country, managing at that point fifteen, sixteen judges at the same time, and again bringing remarkable changes to that court. In his three years now as the Chief Judge of the State of New York, he's continuing that change.

Through the years, his administrative accomplishments are long. Any time there were issues with the jury system, he took them on and resolved them. He then tackled the most burning issue that was devastating the New York Judiciary, judicial compensation. And he went a long way in getting, finally, significant resolution of that vexing issue. He has been on the forefront with respect to domestic violence matters, taking care of the foreclosure problems plaguing our state courts, and most importantly, his creation of a task force to expand access to civil legal services to ensure that the wonderful New York Court System is available to everyone, not just someone who has the money to hire an attorney.

His administrative experience is absolutely spectacular. But you do not see the real measure of Judge Lippman simply by his administrative accomplishments. There's also the other side, the judge side, actively deciding cases and leading the Court of Appeals in a direction that he thinks is best for the State of New York and will keep the Court as one of, if not the, most pre-eminent state courts in the country. Within three years, he has clearly indicated the idea that the Court of Appeals continue in the tradition of former Chief Judge Cardozo, in developing the common law to adapt to and reflect the myriad changes in society that occur on an almost daily basis. If you look at the decisions of the Court, he encourages dissent. He has dissented a lot, but always in the sense of setting a path for the direction of the court. When you look at his record, I think his accomplishments as a judge and a leading intellectual figure in New York Law, as well as the law of the United States, will be clear.

This is a little anecdotal joke, and I'll add in my embellishment. Two Court of Appeals Chief Judges previous, the Judge got his

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desk, and he told his wife, “this is Judge Cardozo’s desk.” The judge was beaming and really proud to sit at Cardozo’s desk. The wife then reported, “and after you’re finished, it’ll still be known as Cardozo’s desk.” I think I can honestly say that at the end of Chief Judge Lippman’s tenure, that that desk will be known as “Lippman’s desk.” That’s how wonderful a job he has done and what that portends for the future.

CHIEF JUDGE LIPPMAN: Thank you, Mike, for that lovely introduction, I really appreciate it. It’s always great to be here, and today I think we’re really going to have some fun. I wouldn’t say any of the people at this table are wallflowers, nobody’s going to hold their fire, and we’re going to have a good discussion about what’s going on in the state courts. There’s a reason why the American Bar Association (“ABA”) put together a special committee on the preservation of the justice system. There is a reason why in the state courts around the country, you are seeing a stress and a strain that we haven’t seen in many, many years. This country is going through difficult economic times. It’s had an impact on the courts, and our ability to deliver justice, and certainly to deliver equal justice. There’s been, no doubt, cause and effect with what’s going on around the country.

We’re going to have the introduction of the other three panelists, and then we’re going to dive right in. I’ll try to keep them from throwing things at each other, you know, they have a tendency to do that, some of them. In New York, we never do that. But here, you know, don’t deny it. Shirley, you know. So I’m going to just warn them that we’re going to start off with the fiscal situation in their states, in our state, and how the cost-cutting frenzy around the country has directly impacted our state courts. We’re going to start with that, but first we’re going to have introductions of the other panel members. I thank the *Albany Law Review*, I thank the leadership, and it’s great to be at Albany Law School.

DEAN CONNIE MAYER: Welcome, everyone. I’m absolutely delighted to be here, and I thank the *Law Review* for inviting me and giving me the opportunity to introduce one of the panelists today. It’s International Women’s Day, so I think it’s a perfect day for this particular panel. Thank you all for coming. As Supreme Court Chief Justice Roberts has said, “Chief Justice Durham has demonstrated her commitment to public service, judicial education, and the cause of justice throughout her twenty-five years on the

Utah Supreme Court.” These words were spoken by Chief Justice Roberts as he honored Chief Justice Christine Durham, with the William H. Rehnquist Award for Judicial Excellence by the National Center for State Courts in 2007.

Chief Justice Durham’s appointment as the first woman on the Utah Supreme Court and subsequent election as court’s Chief Justice are both tributes to her perseverance and dedication to the profession. Not only is she an accomplished scholar, educator, and a distinguished jurist, but she manages to balance her life and responsibilities with those of a mother of five children; Jennifer, Meghan, Troy, Melinda, and Isaac.

Christine Durham graduated from Wellesley College in 1967 with high honors. She earned her J.D. from Duke University Law School in 1971. After receiving her law degree, she practiced law in Durham, North Carolina, and was also an instructor of legal medicine at the nearby Duke University Medical School. Before joining the bench, Chief Justice Durham was an adjunct professor at the J. Reuben Clark Law School at Brigham Young University, and a partner with the law firm of Johnson, Durham & Moxley in Salt Lake City, Utah. After serving for four years on the Utah Third District Court, she was appointed to the Utah Supreme Court in 1982. And in 2002, Christine Durham was elected to the chief justice position, a position that she will hold until she steps down at the end of this month, March of 2012.

As Chief Justice, she also heads the Utah Judicial Council, which is a policy-making body of the state court system that monitors bills that could impact the judicial system, and proposes an annual budget to the Legislature. Chief Justice Durham has been active in judicial education: she was a founder of the Leadership Institute in Judicial Education, she helped create and lead the Utah Coalition of Civic Character and Service Education, and she served on the Utah Commission on Civic Education. In 2007 she was awarded the William H. Rehnquist Award for Judicial Excellence, and then the following year, she received the Excellence in Ethics Award from the Center for the Study of Ethics at Utah Valley University. In her 30 years on the Utah Supreme Court, Chief Justice Durham has tackled many important State Constitutional issues ranging from gun rights to the rights of a polygamist to adopt children, and issues of balance between federal and state power. We’re also honored to be able to dedicate our State Constitutional Commentary 2012 issue that is forthcoming to the Chief Justice. Please join me in welcoming Chief Justice Christine Durham.

PROFESSOR DOROTHY HILL: Good afternoon. Thank you, Nikki and Patrick, and all of the members of the *Law Review* for putting together such a fantastic symposium, and for granting me the honor of introducing Justice Shirley Abrahamson, the Chief Justice of the Wisconsin Supreme Court. As a former resident of Madison, Wisconsin, and a Wisconsin Law School alum and—I don't know if I should admit to this—a sometimes Cheesehead, I have long admired Chief Justice Abrahamson. I view Chief Justice Abrahamson as emblematic of the storied Wisconsin public servant; one who is fiercely independent, and uncompromisingly committed to fairness, transparency, and the rule of law.

One of Chief Justice Abrahamson's lifelong pursuits has been to promote the integrity of the judiciary as an institution. This commitment was very much in evidence in Chief Justice Abrahamson's unflinching concurrence and dissent in the 2011 case *Wisconsin v. Fitzgerald*,¹ more widely known as the case challenging Governor Walker's bill that proposed to effectively end the collective bargaining rights of most public-sector unions in Wisconsin, and which prompted tens of thousands of protesters to take to the streets of Madison in opposition. *Fitzgerald*, which came before the high court on an expedited basis, without benefit of the complete trial court record, challenged the law on the grounds that it had been passed in violation of the State's Open Meetings Law. The lower court had enjoined publication of the bill. The majority felt that in doing so, the lower court had "usurped" legislative powers, and voided the injunction, clearing the path to publication of the law and implementation.

In her opinion, Chief Justice Abrahamson warned that a rushed decision on a matter of such public importance made outside the normal Appellate procedures, and which, in her words, lacked "a sufficient, forthright, and reasoned analysis,"² threatened to undermine the very credibility of the court. Chief Justice Abrahamson wrote:

playing by the rules and playing fair are integral to public trust and confidence in our government officials—legislative, executive and judicial. Public trust and confidence in the integrity of the judicial branch is engendered by a court's issuing a reasoned public decision based on public records

¹ *Wisconsin v. Fitzgerald*, 798 N.W.2d 436 (2011).

² *Id.* at 452 (Abrahamson, C.J., dissenting in part).

after public arguments. The judicial branch claims legitimacy by the reasoning of its decisions.³

And she went on,

trust and confidence in the integrity of the judicial branch as an institution is critical at all times but especially when a case has high public visibility, is mired in partisan politics, and is emotionally charged. The need for reasoned judgment is at its greatest in a case such as this one.⁴

Of course, this opinion represents just one among thousands of thoughtful, insightful opinions issued by Chief Justice Abrahamson over the course of her thirty-six years as a Justice of the Wisconsin Supreme Court, the last sixteen of which she has served as the Chief Justice.

Chief Justice Abrahamson has also found time to be an influential and active leader in national judicial organizations and in efforts to affect legal reforms. She's a longtime member of the council of the American Law Institute, past president of the Conference of Chief Justices, and past Chair of the Board of Directors of the National Center for State Courts. In 2008, and again in 2011, Chief Justice Abrahamson headlined two statewide conferences to improve outcomes for abused and neglected children in Wisconsin's foster care system.

Chief Justice Abrahamson is also an engaged and influential scholar. She has published and spoken on diverse subjects including judicial independence and the importance of fair and impartial courts; the benefits and drawbacks of popular elections of state court judges; concerns about centered or therapeutic jurisprudence; and the importance of public trust in the judicial process. In a path-breaking 1997 essay written long before the United States Supreme Court decisions in *Lawrence v. Texas*,⁵ and *Roper v. Simmons*,⁶ Chief Justice Abrahamson urged the Court and lawyers to take off their blinders to legal developments in other countries. Chief Justice Abrahamson wrote, "if the world's courts increasingly talk to and about each other while American courts persist in talking to and among themselves, it is our law that will be deprived of the new ideas and solutions being vetted around the

³ *Id.*

⁴ *Id.* at 453.

⁵ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁶ *Roper v. Simmons*, 543 U.S. 551 (2005).

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globe.”⁷

Chief Justice Abrahamson and her numerous achievements have earned her many awards, such as the 2009 Harry L. Carrico Award for judicial innovation for serving as a national leader in safeguarding judicial independence, improving inter-branch relations, and expanding outreach to the public, and in 2010, the ABA’s prestigious John Marshall Award in recognition of her lifelong commitment to the improvement of the administration of justice. We are so honored to have Chief Justice Abrahamson here with us today.

PROFESSOR VINCENT MARTIN BONVENTRE: We want to get on with the program, but as Faculty Advisor I have a couple of things to do. One is to say: welcome to all of you, and as faculty advisor, for those of you who are not part of the school, what that means is, I’m basically the junior associate to Patrick Woods, our Editor-in-Chief, and Nikki Nielson, our Executive Editor for State Constitutional Commentary. Each year at this event I recognize someone who would always sit up front, who was one of our long presiding judges of the Third Department. He was everybody’s favorite judge. We really miss him, and that’s Judge Anthony Cardona. We have named one of our special issues after him—the *Anthony V. Cardona New York Appeals*. We do miss him.

One person we don’t miss because she’s here, and we love her, is New York Court of Appeals Judge Victoria Graffeo. She’s our own, she’s very loyal to the school, and we’re very, very proud of her.

Chief Judge Lippman, a great chief judge of our great court. It’s never been as bold and dynamic or innovative as it has been under his leadership, not since I’ve been following it. With Shirley Abrahamson of Wisconsin, we’re talking about the pantheon of American judges. She is one of the actual greats and everyone knows it. Christine Durham of Utah, widely acknowledged as one of the most brilliant and admired judges in the American Judiciary.

Now, I have to tell you, Chief Justice Chase Rogers I did not know until today. She’s a graduate of Stanford University and B.U. Law School. She practiced commercial and employment law for a while. She was appointed to the Connecticut Superior Court, which is like our State Supreme Court (their trial court), in 1998. In 2006 she

⁷ Shirley S. Abrahamson & Michael J. Fischer, *All the World’s a Courtroom: Judging in the New Millennium*, 26 HOFSTRA L. REV. 273, 292 (1997).

was appointed to the Connecticut Appellate Court. They do not have the fancy name like we do, Appellate Division, they just call their Appellate Court—Appellate Court. Less than a year later, she was appointed Chief Justice of the Connecticut Supreme Court. Among other appointments that I should mention, there's whole bunches of them, I will mention one which I think is pretty fabulous. She was nominated by President Barack Obama to be one of the directors of the State Justice Institute, and she was confirmed by the United States Senate. You know how they get along all the time. They agreed on her. She's authored over a hundred opinions, a few dissenting opinions, and you know some of us really like dissenting opinions; we're going to be looking at those. But perhaps Chief Justice Rogers' most important achievement has been to restore the public's confidence in state judiciary, because when she took over it was a time of turmoil and scandal in Connecticut, not too different from when Chief Judge Kaye took over the Court of Appeals here in New York. To Chief Justice Rogers' credit, it seems as though there's no more criticism from the legislature or even from the press about the Connecticut Supreme Court.

There are three overriding principles that she says guide her every action: public access to the court, efficient resolution of cases, and fairness. Shortly after becoming Chief Justice, she appointed a Public Service and Trust Committee, she implemented a foreclosure mediation program, and she implemented a pro bono committee to encourage and assist lawyers in providing pro bono. She's bold, innovative, compassionate, and she's esteemed by the bench and the bar, not only in Connecticut, but increasingly all around the country. We're absolutely thrilled to have her here.