

Transcript of Welcome and Opening Remarks at the October 14, 2021 Convocation:  
Watchdogs or Lap Dogs? The Ethical Challenges Facing Government Lawyers

Paul C. Saunders:

Good morning, everybody. My name is Paul Saunders and I chair one of the two co-sponsors of this program, the New York State Judicial Institute on Professionalism in the Law. The Judicial Institute was created by then Chief Judge Judith Kaye slightly more than 20 years ago for the purpose of promoting a dialogue between the bench, the bar and the academy on issues relating to professionalism in the law, and this convocation today is undertaken in the spirit of that mandate. I'm delighted to welcome all of you to the convocation on the subject of ethical challenges facing government lawyers, a topic we believe is not only timely but extremely important. Our belief is reinforced by the fact that we've had somewhat more than 500 people register for this program.

Paul C. Saunders:

The topic of this conversation was inspired by an op-ed in the New York Times written by Sherrilyn Ifill earlier this year. She is the CEO of the legal defense fund. And in the article that she wrote, she criticized the behavior of some government lawyers and she wrote that, and I quote, "As a profession, we must confront ourselves if lawyers are to be worthy of the mantle of leadership that is so routinely and unquestioningly conferred on us and if we are to protect the rule of law in our democracy." We've taken up Ms. Ifill's challenge and this convocation is the result.

Paul C. Saunders:

In today's highly charged political climate, government lawyers face unprecedented ethical challenges. Whether they're employed by elected officials with agendas or agencies that are untainted by politics, they must often make decisions that reflect a clash between what the ethical rules require and what their superiors demand. We will neither be able to address all of the issues that Ms. Ifill raised nor solve all the problems that she exposed, but we do hope, however, that this convocation will engender a conversation that will last and that will enable us and others to take a hard look at the rules of professional responsibility for lawyers and we may even recommend changes to those rules where appropriate.

Paul C. Saunders:

We've put together a distinguished group of knowledgeable jurists, academics and practitioners to address this important topic. In the interest of time, I would ask you to refer to their biographies that are in the links found in the agenda on the website of the Judicial Institute on Professionalism. On behalf of the Judicial Institute and our co-sponsor, the New York State Commission to Reimagine the Future of New York's Courts, I would like to thank all of the participants for their time and their wisdom, and I would also like to thank Chief Judge Janet DiFiore for her unwavering support of the Judicial Institute and the Commission.

Paul C. Saunders:

It is now my pleasure to introduce a good friend and colleague, the chair of our co-sponsor, Hank Greenberg. Hank is a member of the Judicial Institute. He is also the chair of the New York State Commission to Reimagine the Future of New York's Courts, and he is the immediate past president of the New York State Bar Association. Hank, over to you.

Henry M. Greenberg:

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Okay. Just a few words before we launch into the panel discussions to frame for everyone what the architects of this convocation had in mind in addition to what Paul described, and the important issues and the importance of the convocation itself. The great United States Supreme Court Justice, Louis Brandeis, famously described attorneys in public service as the people's lawyers. That phrase, the people's lawyers, captures the highest aspiration of the legal profession to do justice by preserving and protecting the public. However, this high and noble calling is not always followed by those given the honor of public service. Don't misunderstand me, to be sure, most government lawyers serve the public honorably and well, they do admirable and critically important work, truly, they are the people's lawyers. That said, in recent years however, we have seen, with disturbing frequency, high-ranking government lawyers that did not appreciate their obligation to the public and the common good.

Henry M. Greenberg:

We have observed lawyers, lawyers charged with enforcing the law, facilitate its circumvention and, in some cases, its violation. This was not always so, at least not with this degree of frequency, it was not always the case. We, the legal profession, used to be confident that the norms and traditions of public service in addition to black letter rules of ethics provided the guardrails necessary to ensure appropriate behavior. Attorneys in public service understood that they must turn square corners in discharging their responsibilities. They grasped intuitively that a government lawyer is more than a zealous advocate, that at times justice and fairness, the public good dictate behavior different from a lawyer in private practice would respond. Are these longstanding norms and rules that have served us well in the past, are they still adequate to the task of constraining inappropriate behavior today? What can the legal profession do to ensure that attorneys in public service do the public good all the time? These are among the critical issues the convocation will be considering.

Henry M. Greenberg:

My deepest thanks to our extraordinary leader, Paul Saunders, the committee that meticulously planned this convocation, and its co-sponsors, the Judicial Institute on Professionalism in the Law and the Commission to Reimagine the Future of New York's Courts. And I join Paul in thanking, all of us indeed owe an enormous debt to this distinguished experts and public servants, past and present, who have and will generously share their thoughts, ideas, and insights.

Henry M. Greenberg:

Let me leave you with this thought. We all know that we live in a cynical age. The space of respect for public service and public servants are sadly rare. The coarsening of public discourse quickens, the polarizations of our politics widen, the individuals from whom you have heard and will hear are our answer to the sects. They are the best of the best. They exemplify Brandeis's notion of the people's lawyers. Thank you.

Chief Judge Janet DiFiore:

Good morning, everyone, and welcome to today's convocation, one that carries a very catchy title, watchdogs or lap dogs, the ethical challenges facing government lawyers. And while the title is indeed clever and attention grabbing, there's no question that the substance of today's discussion is both important and timely as the ethical challenges facing government lawyers at all levels have grown urgent in the face of our increasingly polarized political environment. And so, I want to commend our sponsors, the Judicial Institute on Professionalism in the Law and its chair, Paul Saunders, as well as Hank Greenberg and our Commission to Reimagine the Future of New York's Courts for assembling an

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extraordinary roster of accomplished professionals with decades of public service experience to engage in a frank dialogue about the difficult ethical challenges and conflicts facing government lawyers in these politically charged times, including folks who really need no introduction, Loretta Lynch, former United States Attorney General, Paul Clement, former Solicitor General of the United States, and Neal Katyal, former Acting Solicitor General.

Chief Judge DiFiore:

And while it is our hope and expectation that today's convocation will lead to suggested reforms to clarify the ethical obligations of government lawyers, we also hope that it will point us to new ways in which we can reaffirm the basic values that define us as lawyers and members of a self-regulating profession including the clear understanding that being a good lawyer is about much more than zealously representing the interest of any one person, party or cause, that the solemn oath we swear to defend and uphold the constitution means that we are officers of the court and of the legal system, professionals who have an overriding duty of fidelity to the law and to the constitution. And that as members of a privileged profession, we are public citizens as the ABA Model Rules of Professional Conduct remind us public citizens with special responsibilities, not only to serve our clients, but to promote justice and defend the rule of law.

Chief Judge DiFiore:

This is who we are and these are the noble values that define our profession. And as members of the bench and bar responsible for regulating our profession and legal educators responsible for the training and formation of aspiring and newly admitted lawyers, it is up to us to respond to the imperatives of the moment and to preserve the values we cherish and hold dear. And so, I am grateful to the extraordinary group of jurists, lawyers, academicians, and leaders of our profession who have come together at this moment in time to examine the unique challenges of representing and counseling government actors and help us develop an effective framework to guide government lawyers in ethically representing their clients.

Chief Judge DiFiore:

The work that brings us together today is so very critical. We are at a time when less than a quarter of all Americans, less than a quarter of all Americans trust their government to do what is right for them most of the time. And so, we must do everything in our power to reaffirm the public's trust and confidence in the integrity of the government's lawyers, lawyers who have an enormous impact on the ways in which our democratic institutions operate and function. These are the trained, skilled, and ethical lawyers who we rely upon to do what is right even at times presenting personal risk in order to protect and advance the rule of law and ensure that everyone is bound by the law. And that no one is above the law, including the men and women who lead our government.

Chief Judge DiFiore:

And so, on behalf of all of us in the New York State Courts, I am grateful to our distinguished speakers and panelists for participating in this timely dialogue on the ethical challenges facing today's government lawyers. And we are grateful as well to all who are joining us today for your interest and for your commitment to defending and upholding the rule of law which we all know and understand is the foundation of our democracy and the peace and prosperity we desire for our nation, for our families and for ourselves. Thank you and best wishes for a stimulating and productive convocation.