

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE MEMBERS PRESENT (Continued):

Senator Michael F. Nozzolio

Senator Thomas F. O'Mara

Senator Michael H. Ranzenhofer

Senator Diane J. Savino

Senator Susan J. Serino

---oOo---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPEAKERS:	PAGE	QUESTIONS
Vincent Doyle III Past president, NYS Bar Association Chair, NYS Bar Association, Committee to Review Judicial Nominations	5	
Evan M. Goldberg President NYS Trial Lawyers Association	10	13

---oOo---

1 SENATOR BONACI: Okay. Can I have your
2 attention.

3 My name is Senator Bonacic. I chair
4 Senate Judiciary.

5 We're going to start the public hearing
6 today.

7 We gave a notice, issued on January 29, 2016,
8 pursuant to Section 104 of the Public Officers Law.

9 We're here today for the public hearing,
10 pursuant to Governor Cuomo's nominee for associate
11 judge of the Court of Appeals, Michael Garcia.

12 At this time, we're going to wait for Ruth,
13 so I won't acknowledge her now.

14 This hearing is the sixth vacancy on the
15 Court of Appeals that the Judiciary Committee has
16 considered since 2013. The seat became vacant due
17 to retirement of Judge Susan Read.

18 We thank Judge Read for her years of service
19 to this bench.

20 Before I ask the witnesses to come up, who
21 will testify, let me acknowledge the Senators that
22 are here:

23 Senator Diaz, Senator Nozzolio,
24 Senator Boyle, Senator Hoylman, Senator Serino,
25 Senator Breslin.

1 I think we have enough for the public
2 hearing.

3 We have two witnesses, the witnesses
4 appearing for the Committee.

5 Number one, Vincent Doyle III, past president
6 of the New York State Bar Association, and current
7 chair of the association's committee to review
8 judicial nominations.

9 Vincent, good afternoon.

10 VINCENT DOYLE III: Good afternoon,
11 Senator Bonacic, members of the Senate Judiciary
12 Committee, ladies and gentlemen.

13 As the Senator just indicated, my name is
14 Vincent Doyle. I am a past president of the
15 New York State Bar Association. I'm the current
16 chair of the association's committee to review
17 judicial nominations.

18 It is my privilege to appear before you today
19 in support of the appointment of Michael J. Garcia
20 as associate judge of the New York State Court of
21 Appeals.

22 On behalf of the association, I thank you for
23 the opportunity to testify concerning Mr. Garcia's
24 qualifications for the Court of Appeals.

25 In testimony just last month on

1 Chief Judge Janet DiFiore's nomination, our state
2 bar president, David P. Miranda, outlined the
3 process by which our association evaluates Court of
4 Appeals candidates.

5 In the interest of time, I will not repeat
6 that testimony here. It is in my written testimony.

7 Following those procedures, however, after
8 Mr. Garcia was selected as a candidate by the
9 commission on judicial nominations, Mr. Garcia's
10 qualifications were evaluated by our committee, in
11 accordance with our procedures, and, he met with our
12 full committee.

13 As a result of our investigation, and
14 interview, it was the opinion of our committee that
15 Mr. Garcia is "well qualified" for the position of
16 associate judge of the Court of Appeals.

17 "Well qualified" is our highest rating.

18 Mr. Garcia possesses strong skills that we
19 believe will serve him well as an associate judge.

20 Since 2008, he has been a partner at
21 Kirkland & Ellis, LLP, where he established a
22 pro bono criminal-defense program, and received
23 awards from the Legal Aid Society for outstanding
24 pro bono service.

25 Previously, he served as United States

1 Attorney for the Southern District of New York, a
2 250-lawyer office.

3 Earlier in his career, he served in several
4 positions, within the U.S. Department of Justice,
5 and the Department of Homeland Security, as well as
6 nine years as an assistant U.S. attorney.

7 He was his law-school class valedictorian.

8 And I'm pleased to note that he served two
9 years as law clerk to then-Associate Judge
10 Judith S. Kaye.

11 And, of course, the association joins
12 New York's legal community, and the state as a
13 whole, in mourning Judge Kaye's recent passing.

14 Mr. Garcia has been active in the New York
15 State Bar Association.

16 In 2010, he co-chaired our association's task
17 force on government ethics, which published a report
18 containing a number of recommendations to help
19 restore public confidence in governmental
20 institutions.

21 On behalf of the New York State Bar
22 Association, I am pleased to endorse
23 Michael Garcia's appointment to the Court of
24 Appeals, and urge confirmation of his appointment.

25 Thank you for your attention, and for

1 inviting participation by the New York State Bar
2 Association in this important process.

3 SENATOR BONACI: Thank you very much,
4 Mr. Doyle.

5 We've been joined by Senator Croci,
6 Senator DeFrancisco.

7 Does anyone have any questions of
8 Mr. Doyle?

9 Hearing none, I think you're finished, and
10 thank you very much for your report.

11 VINCENT DOYLE III: Thank you, Senator.

12 SENATOR BONACI: Before I call up our second
13 witness, I circulated the resume of Mr. Garcia to
14 the Judiciary Committee on Monday, February 5th, to
15 provide an overview of the nominee.

16 Based on my review of the candidate prior to
17 this hearing, I think Governor Cuomo has nominated
18 an outstanding, impressive judicial nominee, with
19 extensive experience in criminal and regulatory
20 laws, as you will hear today.

21 Not to repeat some of the things that
22 Mr. Doyle said, but, I just would like to point
23 out some of the highlights that struck me.

24 As been said, he has served as a clerk to the
25 late-Judge Judith Kaye.

1 He was nine years as a federal prosecutor in
2 the U.S. Attorney's Office in Manhattan, from
3 1992 to 2001.

4 There, he personally prosecuted a number of
5 high-profile cases involving national security,
6 including the 1993 terrorist bombing of the
7 World Trade Center, and the 1998 bombings of the
8 U.S. embassies in East Africa.

9 For his work on these cases, he was twice
10 awarded the Department of Justice's "Exceptional
11 Service Award," the DOJ's highest honor.

12 He led various executive-branch enforcement
13 agencies, including Secretary for "ICE," which
14 stands for "Immigration and Customs the
15 Enforcement," within the Department of Homeland
16 Security, where he oversaw 20,000 employees, from
17 2001 to 2005.

18 He served as the United States Attorney from
19 2005 to 2008, where he supervised numerous
20 public-corruption matters involving state, local,
21 officials, fraud, and chaired the Attorney General's
22 Advisory Committee on Terrorism and National
23 Security.

24 He currently works as a partner in
25 Kirkland & Ellis, LLP, in New York, where he has

1 been for the past 6 1/2 years.

2 Interestingly, he served as independent chair
3 of the investigatory chamber of the Ethics Committee
4 of FIFA, investigating corruption in World Soccer,
5 from 2012 to 2014.

6 He served as vice president of the
7 Americas for Interpol, the international police
8 organization.

9 I mean, what a varied background; very
10 diversified, and experienced.

11 That said, we're charged with the duty of
12 doing our due diligence.

13 And, at this time, let me call up
14 Evan Goldberg, on behalf of the New York State Trial
15 Lawyers Association.

16 Evan, good afternoon.

17 VINCENT DOYLE III: Good afternoon,
18 Mr. Chairman.

19 Esteemed members of the Senate Judiciary
20 Committee, good afternoon, all.

21 My name is Evan Goldberg. I'm the president
22 of the New York State Trial Lawyers Association, and
23 I appear here today on behalf of the NYSTLA Board of
24 Directors, and our 3500 attorney members who have --
25 who practice in trial and appellate courts

1 throughout New York State.

2 Thank you, Chairman Bonacic, for inviting us
3 to participate today, and for this opportunity to
4 speak in support of Governor Cuomo's nomination of
5 Michael Garcia for associate judge of New York State
6 Court of Appeals.

7 For 60 years, NYSTLA has fought to protect
8 equal access to the civil justice system for all
9 New Yorkers.

10 The constitutional right to a trial by jury
11 is the foundation of that equal access.

12 The appointment of a new judge to the
13 Court of Appeals is of great significance to NYSTLA.

14 The legal rights of hundreds of thousands of
15 ordinary New Yorkers that NYSTLA members represents
16 depend on judicial restraints, and careful
17 application of the law, by each member of the court.

18 NYSTLA's judiciary committee had the honor of
19 interviewing all the candidates recommended by the
20 New York State Commission on Judicial Nomination, to
21 fill the vacancy created by the retirement of
22 Judge Susan Read.

23 The panel was impressed by Michael Garcia's
24 commitment to ethics, and the fair interpretation of
25 the law.

1 The committee rated him as "qualified" and
2 "recommended."

3 Mr. Garcia has a distinguished legal
4 record.

5 His CV, as the Chairman noted, is too full of
6 noteworthy and diverse acts and accomplishments to
7 go through in my testimony, but I would like to
8 focus on a few important aspects.

9 Michael Garcia has proved himself to be a
10 national and international expert on the law.

11 He has served on the President's
12 Corporate-Fraud Task Force, and the
13 Attorney General's Advisory Committee on
14 White-Collar Crime, and chaired the
15 Attorney General's Advisory Committee on Terrorism
16 and National Security.

17 He led critical national-security agencies,
18 working domestically and abroad, to ensure the
19 safety of our country.

20 Court of Appeals judges must rule on a wide
21 breadth of legal matters.

22 In his tenure as a United States attorney,
23 Michael Garcia supervised not only criminal cases,
24 but a 50-lawyer civil division.

25 His law-enforcement experience ranges from

1 prosecuting terrorists, to international fraud
2 investigations, and serving as vice president of the
3 Americas for Interpol.

4 His broad range of public and private-sector
5 experience will give him important insight into the
6 variety of cases that will be decided by the court.

7 In conclusion, Governor Cuomo has made a
8 worthy choice in his nomination for associate judge.

9 We welcome Michael Garcia's commitment to
10 justice and ethics, and look forward to his
11 confirmation as an associate judge of the
12 New York State Court of Appeals.

13 And thank you, all, for the opportunity again
14 to testify today.

15 SENATOR BONACI: Thank you, Mr. Goldberg.

16 Senator DeFrancisco.

17 SENATOR DeFRANCISCO: I -- I've got a letter,
18 indicating a group of judges, whether they were
19 qualified/highly qualified; recommended/highly
20 recommended.

21 And --

22 EVAN GOLDBERG: Our letter?

23 SENATOR DeFRANCISCO: -- you know the letter
24 I'm talking about?

25 EVAN GOLDBERG: Yes, our letter.

1 I can see it.

2 SENATOR DeFRANCISCO: Okay, you -- okay.

3 What's the difference between "recommended"
4 and "highly recommended"? What's the criteria?

5 EVAN GOLDBERG: Well, what I can tell you is
6 that, in Mr. Garcia's case, he'd appeared before
7 us, seeking nomination as chief judge to the
8 New York State Court of Appeals.

9 Mr. Garcia had never been a judge before.

10 We interviewed him; we found him to be
11 "qualified," and recommended him to be appointed as
12 chief judge of the state of New York.

13 After that decision was made, when the
14 screening panel once again reconvened to interview
15 candidates for the vacancy created by Judge Read's
16 departure, Mr. Garcia was given the opportunity to
17 come back again, and to revisit his recommendation.

18 But Mr. Garcia was happy with the
19 recommendation, and elected to maintain it.

20 SENATOR DeFRANCISCO: Okay, but, just --
21 I don't want to beat the -- a dead horse, but, are
22 there certain -- are there certain guidelines
23 which would make someone; for example,
24 Erin Perada (ph.) -- Peradido (ph.) --

25 EVAN GOLDBERG: Paradata.

1 SENATOR DeFRANCISCO: -- Paradato, "highly
2 qualified" and "highly recommended," what -- what
3 factors made her "highly qualified"?

4 EVAN GOLDBERG: Well, I can't go into --

5 SENATOR DeFRANCISCO: Or "highly
6 recommended," (unintelligible) to this record --

7 EVAN GOLDBERG: There's no -- there's no
8 checklist, Senator, as to what makes one "highly
9 qualified," what makes one "qualified."

10 I will point out that Justice Erin Paradato
11 was a sitting justice of the Appellate Division,
12 with extensive appellate-court experience, and that
13 is something that weighed heavily into the
14 committee's consideration.

15 SENATOR DeFRANCISCO: Okay.

16 Thank you.

17 SENATOR BONACI: Anybody have any other
18 questions of Mr. Goldberg?

19 Senator Diaz.

20 SENATOR DIAZ: Yeah, I just -- I just wanted
21 to follow up on (unintelligible) question.

22 When you say "qualified," or "recommended,"
23 so that -- you mean that you are the one to pick --
24 the trial lawyer are the one to pick, you are the
25 one to pick Michael Garcia?

1 EVAN GOLDBERG: We -- we are --
2 unfortunately, we're not the ones to pick.

3 All we do is --

4 SENATOR DIAZ: No, no. (Unintelligible) you
5 all the one to pick --

6 EVAN GOLDBERG: All we do is give ratings.

7 SENATOR DIAZ: -- you all are the one to
8 pick.

9 So when you say "highly qualified" or "highly
10 recommended," against "qualified" and "recommended,"
11 that mean that you support -- you the one in charge
12 of picking, you will not choose Michael Garcia?

13 EVAN GOLDBERG: For the chief judge position,
14 during which Mr. Garcia received the "qualified"
15 and "recommended" rating, there were other --

16 SENATOR DIAZ: That is not my question.

17 I am not a lawyer, but that is not my
18 question.

19 My question is: "Qualified" -- "qualified"
20 and "recommended," versus "highly qualified" and
21 "highly recommended," you are the one to pick among
22 those, who will you pick?

23 EVAN GOLDBERG: I would have -- I would have
24 to look at all the factors, so -- Senator Diaz.

25 I -- it's not our position to make the pick.

1 We rate the candidates, based upon their
2 experience --

3 SENATOR DIAZ: When you -- when we --

4 EVAN GOLDBERG: -- based upon their writings,
5 based upon how they interview with us, and express
6 their thoughts and viewpoints concerning legal
7 processes, legal principles, and their willingness
8 to --

9 SENATOR DIAZ: But you was -- you look into
10 all those thing when you was interviewing, so before
11 you make a recommendation?

12 EVAN GOLDBERG: Of course we do.

13 SENATOR DIAZ: Well, then -- then, answer my
14 question.

15 EVAN GOLDBERG: This was the first time that
16 Mr. Garcia had appeared before us.

17 Oftentimes, candidates start out at a certain
18 rating, and then change their ratings upon repeat
19 visits to our screening committee.

20 And in this case, Mr. Garcia had not
21 returned.

22 SENATOR DIAZ: What were you -- why were you
23 feeling -- let's go in the limbo here.

24 What would you say, what would you think,
25 would the reason why, among, one, two, three four,

1 "highly qualified" and "highly recommended," they
2 going to choose only one -- the one that says only
3 "recommended"?

4 EVAN GOLDBERG: I'm certain, Senator Diaz,
5 that you would have to ask the Governor that
6 question, as to why he made his selection.

7 We weren't the only ones to issue --

8 SENATOR DIAZ: You said -- will you -- will
9 you say because he's the only minority there?

10 EVAN GOLDBERG: I have no idea.

11 SENATOR DIAZ: Would you think that would --
12 that would carry its own weight, being the only
13 Hispanic minority?

14 EVAN GOLDBERG: I -- I have no -- I'll tell
15 you that that does not factor into our
16 consideration, Senator, when we rate candidates for
17 judicial appointments.

18 We rate them upon what's before us.

19 The interviewing, the writings, their legal
20 philosophy; what comes before us.

21 SENATOR DIAZ: How many -- how many Hispanic?

22 EVAN GOLDBERG: I'm aware --

23 SENATOR DIAZ: And I would like to see
24 Hispanic, but I don't like to see this thing here,
25 like you say, four of them, "highly qualified" and

1 "highly recommended," and then the other Hispanics
2 say "qualified" and "recommended," (unintelligible)
3 one.

4 I don't -- you know, it doesn't feel right.

5 EVAN GOLDBERG: Senator, I'm going to tell
6 you that my children are half Hispanic. My wife is
7 from Ecuador.

8 And I would like nothing more than worthy
9 Hispanic candidates to be on the bench.

10 My father was a Supreme Court justice in the
11 state of New York.

12 I have tremendous respect for the judiciary.

13 And I can assure you that the process was
14 fulfilled.

15 SENATOR DIAZ: How will you feel --

16 SENATOR BONACI: Last question, Senator.

17 SENATOR DIAZ: -- last question: How will
18 you feel if you were one of those judges, one of the
19 four that are "highly qualified," "highly
20 recommended," and you were not the judge -- and
21 you -- and you passed -- you have passed for one
22 that is only "qualified" or "recommended"?

23 How would you feel if you were the one of the
24 four?

25 EVAN GOLDBERG: Well, the New York State

1 Trial Lawyers, Senator, is not the ultimate arbiter
2 as to who is "highly recommended" or "highly
3 qualified."

4 We issued our recommendations.

5 And as to how candidates feel?

6 I'm sure that candidates, having put forth
7 their candidacy, were disappointed in not receiving
8 the nomination from the Governor.

9 But, I'm not answering that question.

10 SENATOR DIAZ: Aren't we always supposed to
11 always to choose the best among everything?

12 Aren't we supposed to do the best qualified;
13 the "highly qualified" and "highly recommended"?

14 EVAN GOLDBERG: I think, in this case,
15 Senator, we were very fortunate to have a number of
16 "bests," and we had many fine candidates to choose
17 from.

18 And I think New York State is very lucky and
19 fortunate that the Court of Appeals has been
20 constituted with qualified members who are going to
21 do justice for the people of the state of New York.

22 SENATOR BONACI: Okay. We would like to move
23 on.

24 Anybody have any other questions of
25 Mr. Goldberg?

1 Hearing none, thank you very much.

2 And we're joined by four other Senators:

3 Senator O'Mara, Senator Amedore,
4 Senator Ranzenhofer, and our Ranking Member of
5 Judiciary, Hassell-Thompson.

6 In addition to these two speakers, we've had
7 quite a bit of written submissions, and let me just
8 put them in the record.

9 Letter of support from Carol Robas -- Roman,
10 president and CEO of the Women's Legal Defense and
11 Education Fund, submitted February 4, 2016.

12 Submission by Carol Nowe (ph.), in opposition
13 to the judicial system, in general, submitted
14 February 5th of 2016.

15 Submission by James Brady, in opposition to
16 the judicial system, and the nominee, submitted
17 February 5, 2016.

18 Letter of support from Betty Lugo, president
19 of the Puerto Rican Bar Association, submitted
20 February 5, 2016.

21 Letter of support from Kevin Gomez, submitted
22 February 6, 2016.

23 And, letter of support from the
24 El Museo del Barrio, submitted February 8, 2016.

25 We have a submission from the Center for

1 Judicial Accountability, in opposition to the
2 judicial system, and the judicial pay raises,
3 submitted February 8, 2016.

4 At this time, we welcome our ranker,
5 Senator Ruth Hassell-Thompson, who will now address
6 the Judiciary Committee.

7 SENATOR HASSELL-THOMPSON: Thank you,
8 Mr. Chairman.

9 I won't take very long.

10 I will say to you that this is the last time
11 I will take a constituent before any hearing that
12 may come, which delayed me.

13 And I do apologize to all for that, but my
14 constituents continue to be important as well.

15 Each time we've come to participate in the
16 role of appointing, and hearing recommendations from
17 the governor, on nominees to any of the courts; but,
18 particularly, to our Court of Appeals, I would hope
19 that all of us do so thoughtfully and with great
20 care.

21 I have been branded with the term "social
22 engineering," and it is one that I have no
23 embarrassment for accepting that title, primarily
24 because, until we get to the point that we no longer
25 have the necessity to ensure that there is a balance

1 of diversity.

2 It's very interesting that when people of
3 color talk about diversity, it becomes social
4 engineering; but, yet, I've sat for -- my --
5 ancestrally, for hundreds of years, and watched
6 this -- this bench, and others, not be reflective of
7 the needs, and certainly of the ethnicity and
8 culture, of the people who they are bound to serve.

9 So it gives me great pleasure to have been
10 afforded the opportunity to sit on the State Senate
11 at this time in my life, and in the life of the
12 history of the state of New York, and be able to do
13 what is necessary to ensure that our courts are as
14 reflective of the people who live in this state.

15 And in that process, it allows us to be
16 assured that the judgments that are handed down have
17 the best possible chance to be just and centered.

18 I have had the opportunity to meet, as all of
19 us -- as many of us have, with our nominee,
20 Mr. Garcia.

21 There had been some concerns of -- in his --
22 in some decisions that he made in his past
23 administrative responsibilities, that had questions.

24 I feel that, to the best of my knowledge,
25 those questions have been satisfied, and my

1 questions today will be strictly about the role that
2 he will play on the court, and what that will mean
3 to the people of state of New York.

4 And, again, Mr. Chairman, I thank you for
5 the opportunity to address this body.

6 And I, again, make no apologies for my role
7 in determining that the state of New York must be
8 reflected -- reflective of, particularly, when it
9 comes to policies of this high caliber, by people
10 who are qualified.

11 And everybody who knows me knows that quality
12 and -- comes before quantity.

13 And so that I am pleased in the nomination
14 that the Governor has made in this candidate, and
15 I look forward to the opportunity, with you, to ask
16 pertinent questions that would help us to ascertain,
17 not his qualifications, but his -- what drives him
18 to want to do this, and make sure that he is
19 representative of who we want to be representing us
20 on the Court of Appeals.

21 Thank you, Mr. Chairman.

22 SENATOR BONACI: Thank you,
23 Senator Hassell-Thompson.

24 Yes, Senator Diaz.

25 SENATOR DIAZ: I'm Puerto Rican and Hispanic.

1 I have broken-English. I want people -- my people
2 to be appointed. I want to see minority candidates
3 there.

4 But it bothers me, it hurts me, it really
5 hurts me, because I hear Senator Thompson say that
6 she want -- she -- she -- whoever knows her, knows
7 that she wants -- she preferred quality before
8 quantity here. (Unintelligible) I don't know.

9 But, you know, when I -- I -- to me, as a
10 Puerto Rican, as Hispanic, I would be very, very
11 honored to have a Hispanic being appointed.

12 But when I see four member being nominated,
13 being qualified as "highly qualified," and then the
14 Hispanic being "qualified," and I said -- I would --
15 I'm willing to have a Hispanic there, but -- but --
16 but it's questionable.

17 It is not supposed to be Hispanic/Black,
18 Hispanic/White, highly qualified/highly recommended.

19 It -- they always said, we got the best; not
20 only because he's Hispanic, not only because he's
21 Black, not only because a minority, but because the
22 best.

23 But when they bring me -- when they bring
24 here, a qualification of "highly qualified," four
25 member of the Judiciary, highly -- "highly

1 qualified," and then the minority, only minority
2 one, "qualified," and then we have to choose the
3 one, I would choose that one, under protest.

4 But to me, to me, to me, hello!

5 To me, something is not right.

6 SENATOR BONACI: Okay. Let me jump in here.

7 I think we're going a little astray.

8 I think we're putting too much emphasis on
9 "highly qualified" or "qualified," because, when an
10 individual comes before us, we look at resumes, we
11 question the nominee, we try to get to the essence
12 of their experience, their character; what they're
13 made of.

14 And it's the combination of all of those
15 things where we make a judgment.

16 It's not going depend on whether a bar
17 association or a trial association, with many
18 members weighing in --

19 SENATOR DIAZ: Wait, wait, wait, one --

20 SENATOR BONACI: I want to finish.

21 We listened to you, Senator Diaz, so let me
22 finish my remarks.

23 -- it's -- it's -- where they weigh in,
24 that's just one factor of many factors that we make
25 judgments on.

1 And, we have put people on the bench that
2 were African-American, that were women, that were
3 Hispanic.

4 We -- we do not care about the color of the
5 skin or the sex of the person.

6 We care about competence, experience,
7 qualifications; that's how each member makes their
8 judgment, that's how they vote.

9 Now, do you want to say something else,
10 Senator Thompson?

11 SENATOR HASSELL-THOMPSON: I think I really
12 wanted to just asked the question:

13 I think that -- it has been my experience,
14 that when each of the associations have come before
15 this Committee, they have established what their
16 criteria is.

17 And the criteria of this organization, is
18 that there's no such thing as a "greatly qualified."

19 They either "qualified" or "not qualified."

20 It's like a school that gives you "a pass" or
21 "a fail."

22 It's not an A, it's not a B, it's not a C.

23 If you pass, you pass.

24 And I think that that's been my experience.

25 If that's not correct, then I will stand

1 corrected.

2 There are some organizations who have a
3 different criteria.

4 And my understanding is that, in the other
5 organizations, he was "very qualified."

6 And so if that is the truth, then we're
7 talking apples and apples.

8 But if we're not, then that's -- you know,
9 that's -- that's open for discussion.

10 But my comments have to do with the fact that
11 the person started out "very qualified."

12 Whatever the language that the organization
13 used to determine it, he's "very qualified."

14 After he's qualified, then I begin to look at
15 other issues.

16 And so I would not do social engineering
17 before I look at the quality.

18 And that's -- that was what the nature of my
19 discussions was about.

20 And I will stand on that, and I will repeat
21 it every opportunity that I have.

22 SENATOR BONACI: Okay. We're joined by
23 Senator Savino.

24 Senator Diaz, you have something to say?

25 SENATOR DIAZ: Yeah, Mr. Chairman, then we --

1 then, based on what you and the Madam Senator say,
2 then we should get rid of these recommendations.

3 Why then we use these people to -- to send
4 these people to -- to send these people to us, then,
5 for a recommendation.

6 Why?

7 So we come -- we come -- we gonna come here
8 and say, Oh, well, that's (unintelligible). I don't
9 care (unintelligible).

10 But, then, don't use them, don't send
11 (flailing arms around and hits microphone) --

12 SENATOR BONACI: Let's not do that.

13 SENATOR DIAZ: -- don't bring them to testify
14 or to -- or require -- or to request a
15 recommendation from them, because if that doesn't
16 count, that doesn't count. Right?

17 Why you --

18 SENATOR BONACI: Okay, Senator Diaz. Thank
19 you for your remarks.

20 That concludes the public hearing.

21 I'm now going to call --

22 SENATOR DeFRANCISCO: Excuse me, I have one
23 quick question.

24 SENATOR BONACI: Oh, you do,
25 Senator DeFrancisco?

1 SENATOR DeFRANCISCO: One quick comment.

2 SENATOR BONACI: Yes.

3 SENATOR DeFRANCISCO: Since I started all
4 this --

5 SENATOR BONACI: I know you did.

6 SENATOR DIAZ: Yes, you did.

7 SENATOR HASSELL-THOMPSON: Yes, you did.

8 SENATOR DIAZ: Yes, you did.

9 SENATOR DeFRANCISCO: -- I wanted to explain
10 what I was getting at.

11 SENATOR DIAZ: Oh, go ahead, the Governor is
12 watching.

13 Go ahead, explain.

14 Go ahead.

15 SENATOR DeFRANCISCO: What I was getting at,
16 was that we've had this kind of mincing of
17 recommendations by this organization in the past.

18 And, I didn't understand then, and I don't
19 understand now, why there's all these different
20 permutations of their recommendations.

21 And it would be a lot simpler if they
22 indicated "qualified" and "recommended," if they
23 choose to, rather than all of these little
24 qualifications that, really, they can't explain from
25 one to the other.

1 That's why I was raising it.

2 This individual -- and whoever gives their
3 opinion, like the trial lawyers did, can be taken,
4 or it can be thrown out as totally not worth the
5 mention.

6 The governor's gonna make the decision on who
7 he's going to appoint, and we're going to make the
8 decision on who we recommend.

9 And I don't think we should read anything
10 more to this than that.

11 Thank you, Mr. Chair.

12 SENATOR BONACI: Thank you,
13 Senator DeFrancisco.

14 And maybe that's a suggestion, that the bar
15 association and the trial lawyers, as they move
16 forward in the future, when the next Court of
17 Appeals nominee comes, you may want to consider that
18 classification.

19 The public hearing is closed, and now let's
20 call our nominee.

21 (Whereupon, at approximately 1:02 p.m.,
22 the public hearing held before the New York State
23 Senate Standing Committee on Judiciary concluded,
24 and adjourned.)

25 ---oOo---