BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON THE JUDICIARY

PUBLIC HEARING

HEARING FOR COURT OF APPEALS NOMINEES
JUDGE LESLIE STEIN AND JUDGE EUGENE FAHEY

New York State Capitol Building
172 State Street, Room 124 CAP
Albany, New York 12247

February 9, 2014
11:30 p.m. to 2:00 p.m.

PRESIDING:

Senator John J. Bonacic
Chairman

PRESENT:

Senator George A. Amedore, Jr.

Senator Neil D. Breslin

Senator John A. DeFrancisco

Senator Ruben Diaz, Sr.

Senator Martin Malavé Dilan

Senator Flanagan

Senator Ruth Hassell-Thompson (RM)

Senator Michael F. Nozzolio

Senator Thomas F. O'Mara

Senator Bill Perkins

Senator Michael H. Ranzenhofer

PRESENT (continued):

Senator Sue Serino

Senator Michael Venditto

---oOo---

SPEAKERS:	PAGE	QUESTIONS
Vincent Doyle	7	12
Chair, Committee to Review Judicial Nominations New York State Bar Association	26	29
Evan Goldberg	21	
President-elect NYS Trial Lawyers Association	32	

---oOo---

SENATOR BONACIC: First of all, good morning.

My name is Senator Bonacic, and I chair the Judiciary Committee.

I'm joined by Senator Nozzolio at this time, Senator Amedore, Senator Breslin, Senator Diaz.

We have 23 members on the Judiciary, and because of this terrible weather, some may be a little late getting here.

So -- but we do have enough proxies to not only conduct the public hearing, but we don't need proxies. But when we commerce the Judiciary Committee hearing, we will have sufficient votes to move our business.

So let me start by saying that, in accordance with Section 104 of the Public Offices Law, on February 2, 2015, we issued a public notice for this public hearing.

Senator Ranzenhofer is with us.

Senator, good morning.

SENATOR RANZENHOFER: Good morning.

SENATOR BONACIC: I have behind me Jessica Cherry, who is our counsel to the Judiciary.

And, the public hearing will be for Governor Cuomo's Court of Appeals nominee, Judge Leslie Stein, and Judge Eugene Fahey.

The purpose of the hearing is to fill the vacancies of Judge Victoria Graffeo and Judge Robert Smith.

I don't have Senator Ruth Hassell-Thompson here yet, but she is our Ranker on Judiciary.

Before we start the public hearing, I just would like to say a couple of words about Judge Graffeo and Judge Smith.

As you know, Judge Victoria Graffeo served on the Court of Appeals honorably for the past 14 years.

She has an exemplary reputation, and service to the bench is undeniable.

Her experience as a jurist and temperament were an asset to our state's highest court, and her contribution to the law in New York State will undoubtedly have a lasting effect.

Many were very disappointed to see her go.

And we would like to acknowledge her, and thank her for her unwavering dedication to the bench, and we wish her success in all of her future endeavors.

With respect to Judge Smith, he filled the vacancy. Judge Smith had served on the Court of Appeals since his appointment in 2003.

He was widely respected for his thorough and diplomatic legal analysis, in addition to his lively participation during oral arguments.

His temperament and vast legal experience have been an asset to the bench, and we thank him for his many years of service to the state, and we wish him well in all of his endeavors.

And, Judge Fahey has been put forth by Governor Cuomo to fill the vacancy of Judge Smith.

For this public hearing we have two witnesses, and they're going to provide oral testimony regarding both Judge Stein and Judge Fahey's qualifications.

The witnesses appearing before the Committee will be: Vincent Doyle, who is the past president, Chair of Committee to Review Judicial Nominations. for New York State Bar Association, and, Evan Goldberg, who is president-elect, co-chair of the Judicial Screening Committee, New York State Trial Lawyers.

Each witness will be limited to 10 minutes of oral testimony for each nominee, followed by questions from members of the Committee.

We have also had written testimony submitted to the Judiciary Committee, regarding both judges,

and they have -- and they will be included in the record.

I've circulated the resume -- resumes of both judges to the Judiciary Committee on Wednesday, February 4th, to provide an overview of the nominees.

Based on my review of both candidates, prior to the Committee, starting in the hearing, I think Governor Cuomo has nominated two very well-rounded judicial nominees with decades of experience in the courtroom, combined, for our highest bench.

As you will hear today, let me talk a little bit about Judge Leslie Stein.

She has nineteen years of judicial experience: six on the Supreme Court, last seven years on the Appellate Division, Third Department, in Albany.

Judge Fahey also has nineteen years' judicial experience: Supreme Court, 6 years; Appellate Division -- excuse me, Supreme Court, nine years, Appellate Division, Fourth Department, eight years, Buffalo.

Okay, I've been joined by Senator DeFrancisco.

And, now, our first witness, please tell us who you are and what you have to say.

VINCENT DOYLE: Thank you, Senator Bonacic, members of the Senate Judiciary Committee, ladies and gentlemen.

My name is Vincent Doyle. I'm a past president of the New York State Bar Association, and the current Chair of the association's Committee to Review Judicial Nominations.

It is my privilege to appear before you today in support of the appointment of the Honorable Leslie Stein as associate judge of the New York State Court of Appeals.

On behalf of the association, I thank you for the opportunity to testify concerning Justice Stein's qualifications for the Court of Appeals.

The New York State Bar Association is comprised of over 74,000 attorneys, including attorneys in every part of New York State, in every other state in the country, and from over 100 countries around the world.

Since 1967, our association has evaluated candidates for the Court of Appeals.

Since New York amended its Constitution in

1973 to provide for the appointment of Court of Appeals judges, we have provided the governor with our ratings of the candidates whose names have been submitted to the governor by the State Commission on Judicial Nomination.

Following the governor's selection of one of the candidates for appointment, we have also communicated our rating of that nominee to this Committee to assist in the confirmation process.

With respect to the present nomination, we have found Justice Stein to be well qualified to serve as an associate judge of the Court of Appeals.

"Well qualified" is our highest rating.

I would like to outline for you the process by which our association evaluates the Court of Appeals candidates so you can understand the meaning of our rating.

Our Committee to Review Judicial Nominations is appointed by the association's president and made up of 17 members from across New York State.

Every judicial district is represented on the committee.

Consistent with the overall policies of our association, the committee appointments reflect the diversity of our membership and society as a whole.

Members are also selected so that a wide variety of practice areas are represented, with a particular emphasis on appellate practice.

Upon the announcement by the Commission on Judicial Nomination of its list of candidates for appointment to the Court of Appeals, our committee chair appoints subcommittees to investigate the qualifications of each candidate.

The subcommittee reviews -- the subcommittees review biographical material provided by the candidates, read sample of the candidate's writings, including written decisions if the candidate is a sitting judge, and interview persons familiar with the candidate's work, background, and character.

In the case of judges who have been nominated, the subcommittee includes in their interviews lawyers who have appeared before the judge.

Finally, the subcommittees meet with the candidates.

Based on the information gathered during the investigation process, the subcommittee prepares a report, and recommendations regarding the candidates to present to the full committee.

After the completion of the investigations,

the committee meets as a whole to review the subcommittee reports concerning the qualifications of each candidate, and to personally interview the candidates.

The committee then votes to determine whether the candidates will be rated "not qualified," "qualified," "or well qualified."

For appointment to the Court of Appeals -- pardon me, in making their evaluation for appointment to the Court of Appeals, the committee members are asked to consider the candidate's professional ability and experience, character, temperament, and the possession of the special qualities necessary or desirable for the judicial office sought.

Under the committee's guidelines, a "qualified" candidate is one who affirmatively demonstrates qualifications the committee regards as necessary for that office.

A "well-qualified" candidate is one who, in addition, possesses preeminent qualifications for judicial office.

After being selected as a candidate by the commission, Justice Stein's qualifications were evaluated by our committee in accordance with these

procedures. She met with our full committee on September 15, 2014.

As a result of this investigation and interview, it was the opinion of our committee that Justice Stein is well qualified for the Court of Appeals.

Justice Stein has served with distinction as a member of the Appellate Division, Third Department, since 2008.

Prior to serving on the Appellate Division, Justice Stein served six years as a justice of the Supreme Court, and four years as a judge of the Albany City Court.

Active in the community, Justice Stein is a founding member of the New York State Institute for Professionalism in the Law, a permanent commission which promotes professionalism among members of the legal profession.

Very recently, our association co-sponsored a convocation with the institute, at which I was privileged to moderate a panel concerning changes in legal education.

Justice Stein also serves on the Unified Court System's Advisory Committee, on bar admissions, and the family-violence task force.

Her overall breadth of experience, which includes 13 years of private practice, and 18 years on the bench, including time as a trial judge and an appellate judge, leads us to conclude that Justice Stein will serve the state of New York well as an associate judge of the Court of Appeals.

Accordingly, on behalf of the New York State Bar Association, I am pleased to endorse Justice Stein's appointment to the Court of Appeals, and urge the confirmation of this appointment.

Thank you for your attention, and for inviting participation by the New York State Bar Association in this important process.

SENATOR BONACIC: Thank you, Mr. Doyle.

Any members of the Committee have any questions for Mr. Doyle?

SENATOR NOZZOLIO: I do.

SENATOR BONACIC: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. Chairman.

Good morning, Mr. Doyle.

VINCENT DOYLE: Good morning.

SENATOR NOZZOLIO: I'm very interested in the process that you had to engage in. It sounds as though a recruitment process to find members of the panel appears very extensive.

You indicated members from each judicial district, and the focus, as appropriately it should be here, are practitioners in appellate practice.

Tell me how many candidates you had to review in terms of their qualifications, and give your analysis.

VINCENT DOYLE: We review each of the candidates that are on the list.

So there were seven candidates on the list, we review each.

Our policy, and we'll hear this when we give testimony about Justice Fahey, is if we have previously reviewed a candidate within the last year, or two years, roughly, we may carry over their qualification -- their rating, but only if we do a due-diligence investigation to make sure nothing has changed.

But we review the qualifications of each of the candidates. We do a full, what I would call, written on the papers, and, oral, contacting lawyers, contacting other judges, contacting colleagues. We do that for every candidate.

In person, we meet with each candidate, unless we have previously met with them in relation to the same office, nomination for the same office,

within the last year or so, and they have received a "well-qualified" rating.

SENATOR NOZZOLIO: Well, it's difficult to quantify, put a number to, but, give us an estimate, how many meetings?

And including in those meetings, and conference calls, and the like, did the committee have to engage in in this seven-candidate analysis?

VINCENT DOYLE: It's an extensive amount of work, I'll be honest with you, and this is all volunteer work, for members of the committee that are asked to serve by the president.

The majority of the work is done by the subcommittees. They actually do the investigations.

So, we estimated, at one point, that each subcommittee member can expect to spend anywhere between 20 to 40 hours doing the background investigation, including reading decisions of those who are sitting judges, reading briefs, reading public statements; reviewing the written application materials, background; making phone calls, again, to colleagues, lawyers, who have practiced with or practiced in front of, lawyers with the cases against when they were practicing.

The in-person meetings, the subcommittee has

one with each candidate; so those would be one of those for each of the candidates.

And then we have a general committee meeting, which, again, as I said, we meet with each candidate, unless they have previously received a "well qualified."

So, overall, you know, it's -- I would estimate somewhere between 40 to 50 hours of work on each candidate are spent, either by the subcommittee or the full committee.

SENATOR NOZZOLIO: Well, thank you for the obvious thoroughness of this work, and we appreciate your recommendations.

VINCENT DOYLE: The thanks go to committee members and the staff of State Bar Association, which does terrific work.

But thank you for the question, Senator.

SENATOR BONACIC: Okay, before we get to the next question, let me acknowledge some of the Senators that have come here.

Senator Ruth Hassell-Thompson, who is the Ranker on Judiciary, is present; Senator Serino, Senator Venditto, Senator Dilan, Senator Flanagan, Senator O'Mara.

Thank you all for making the efforts in this

terrible weather to be here for this meeting.

Next question, Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Chairman.

Vince, welcome --

VINCENT DOYLE: Thank you, Senator.

SENATOR RANZENHOFER: -- back to Albany.

And I want to, first, thank you for not only chairing this very important Committee, but also for all of the work that you did for the State Bar Association.

I think with all the work you've done, you've exceeded the chief judge's recommendations for pro bono work that have been coming down the pike.

I appreciate all of the hard work that is done.

Obviously, as members of the Committee, we don't have the time to do the investigation that you have done, and your committee has done.

I don't have a question, because you've already done, you know, so much of the work here.

I appreciate the work that you've done for us. I think the recommendations from the committees are s.

I just want to welcome you to Albany, and the beautiful weather that we're having here.

And, thank you for your service.

VINCENT DOYLE: Well, I was waiting for a chance to say that we're both from Western New York, Senator.

And, Senator Bonacic keeps saying it's horrible weather here.

It's pretty nice here.

[Laughter.]

VINCENT DOYLE: So, thank you.

SENATOR RANZENHOFER: Just another balmy day in Albany.

SENATOR BONACIC: Senator Diaz.

Thank you, Mr. Chairman.

Good morning, Mr. Doyle.

VINCENT DOYLE: Good morning, Senator.

SENATOR DIAZ: I'm going to [inaudible].

I would like to ask you a question.

When there was two lawyers [unintelligible], when you do the interviews and [unintelligible], the judges are aware, already on the bench. They're also aware in the interview.

VINCENT DOYLE: Yes.

SENATOR DIAZ: Here in the South Bronx where I am, we have a saying that says, "If it's not broken, don't fix it."

And I hear the Chairman talking, so I hear only two judges are aware who are already seated.

So when you interview candidates [unintelligible] two seated judges, what was so broken [unintelligible]?

VINCENT DOYLE: Well, Senator, as to the first vacancy, which is a vacancy created by Judge Graffeo, who had reached the end of the term, she was eligible for reappointment.

So she was one of the seven candidates that the commission put forth, along with Justice Stein and five others.

Judge Graffeo did apply, she was on the list of seven, and she was rated by our committee. She was also rated "well qualified."

But the decision of those seven candidates is up to the Governor. Under the law, he is -- he receives a list of seven, and he makes the appointment.

The State Bar Association's role, the role of the committee that I serve on, is simply to rate the candidates. We don't rank them, we don't endorse one.

We found Justice Graffeo to be well qualified as well, but --

SENATOR DIAZ: You, of course, recommend [unintelligible].

VINCENT DOYLE: We have never done that. That's not part of what we view our role is.

We view our role as taking each candidate --

SENATOR DIAZ: Do you think that the Governor made the right decision by not appointing two good judges [unintelligible] looking and committing, support the Governor, in viewing, and saying, Hey, [unintelligible]?

VINCENT DOYLE: We view our role as being, to take each candidate, in and of themselves, and make a recommendation whether they should be rated "well qualified," "qualified," or "not qualified."

And we stop there.

We view, if we went any further, that we would be engaging in the political discussion, which really is for this Committee and for the Senate.

SENATOR DIAZ: [Unintelligible] I believe that, when a group is appointed to recommend [unintelligible]. I mean, I think [unintelligible].

Do you feel that the person that is succeeding the person that is being already doing a good, if you are going to recommend, you should recommend also [unintelligible].

VINCENT DOYLE: Well, under the Constitution, the commission, and we're not the commission, we're a state bar committee --

SENATOR DIAZ: [Unintelligible].

VINCENT DOYLE: -- we simply rate.

SENATOR DIAZ: [Unintelligible] recommend.

VINCENT DOYLE: We simply rate.

We rate. We say whether each candidate is "qualified" or "well qualified" or "high" -- "well qualified" in this situation.

And the other thing, the second appointment, Judge Smith, who is the second judge, Judge Smith is ineligible to continue because he's aged out. He has reached the age of 70, so he's not eligible for reappointment.

SENATOR DIAZ: I just want to be clear on what it is you recommend, and what is your view, keep to yourself.

VINCENT DOYLE: We rated each of the candidates. The Governor chose one of the candidates we rated "well qualified."

SENATOR DIAZ: I just want to be clear: Are you saying, if I'm doing a good job, and I'm holding my duty, and I'm there, why you recommending to kick me out?

Why not say, Hey, that's a good person [unintelligible]?

VINCENT DOYLE: The Constitution gives the Governor that right.

SENATOR BONACIC: Does anyone else have any other questions of Mr. Doyle?

Mr. Doyle, thank you, but don't go too far, because after we do the public hearing for Judge Fahey, we're going to have you back.

VINCENT DOYLE: I'll definitely be back for that.

Thank you, Senator.

SENATOR BONACIC: Our next witness is Evan Goldberg. He's here on behalf of the New York State Trial Lawyer Association.

Evan, good morning.

It's still morning.

You're on.

EVAN GOLDBERG: Good morning.

My name is Evan Goldberg. I am the president-elect of the New York State Trial Lawyers Association, and I appear here today on behalf of the NYSTLA board of directors and our 3500 attorney members who practice in trial and appellate courts throughout the state.

Thank you, Chairman Bonacic, for inviting NYSTLA to participate today, and for this opportunity to speak in support of Governor Cuomo's nomination of Justice Leslie E. Stein for associate judge of New York State Court of Appeals.

For 60 year, NYSTLA has fought to protect equal access to the civil justice system for all New Yorkers.

The constitutional right to a trial by jury is the foundation of equal access, and NYSTLA vigorously opposes any compromise of this critical right, whether by legislation, or through the overly-aggressive application of judicial doctrines and procedures that can deny a worthy litigant their day in court.

The appointment of a new judge to the Court of Appeals is, therefore, always of great significance to NYSTLA.

The legal rights of the hundreds of thousands of ordinary New Yorkers NYSTLA members represent depends upon judicial restraints and careful application of the law by each member of the court.

We applaud judges who demonstrate a preference for allowing cases to be presented to the jury, and who apply great caution in the use of

summary judgment, and, doctrines, such as collateral estoppel, that can sometimes prevent jury decisions from being made on the merits.

NYSTLA's Judiciary Committee had the honor of interviewing all the candidates recommended by the New York State Commission on Judicial Nomination to fill the vacancy created at the conclusion of Judge Victoria Graffeo's term.

The committee rated Justice Stein as "highly qualified and highly recommended."

Her exceptional capabilities, dedication to equality before the law, and the results that she has achieved for New Yorkers more than warrants the highest rating the committee could award, and marked her out among an exceptionally qualified slate of candidates.

Justice Stein has a long history of service not only to the legal system, but to the cause of gender equality and protecting the victims of domestic violence.

Prior to joining the bench, Justice Stein was well-respected for her 15 years of experience in private practice where she focused on family law.

She went on to be elected to the Albany City Court, then to the Supreme Court in 2001.

At the Supreme Court, Justice Stein was proactive not only in the way she administered justice in individual cases, but also with regard to the system.

She served as the administrative judge for the Rensselaer County Integrated Domestic Violence part, that allowed families to resolve their criminal, family, and matrimonial matters before a single judge.

In this role, Justice Stein demonstrated her commitment not just to the rule of law, but to the fair, reasonable, and humane application of the law.

Upon her nomination to the appellate division in 2008, Justice Stein continued to tackle the difficult issue of domestic violence, co-chairing the court system's family-violence task force.

Her commitment to this cause is demonstrative of her finely-tuned judicial philosophy that balances the need of the individual with those of society as a whole.

Her steadfast dedication to improving the lives of others will no doubt be a positive influence on the work of the Court of Appeals.

Justice Stein is also dedicated to improving the legal profession, and ensuring that New Yorkers

are represented by ethical, well-trained lawyers.

She was a founding member of the New York State Judicial Institute on Professionalism, and lectures for a number of state and local bar associations.

On a personal note, just over a week ago, I had the honor of presenting Justice Stein with an award at a bar association event.

Everyone in attendance was impressed by her remarks, and assured that she would uphold the high standard of the nationally-esteemed Court of Appeals.

In conclusion, NYSTLA commends Governor Cuomo for his nomination of Justice Stein.

We welcome her balanced approach to the law, and look forward to Justice Stein applying her well-deserved reputation for balance and reasonableness to the critically important matters before the court.

Thank you for the opportunity to testify today.

SENATOR BONACIC: Thank you very much, Mr. Goldberg.

Does anyone have any questions of Mr. Goldberg?

Thank you very much.

EVAN GOLDBERG: My pleasure.

SENATOR BONACIC: I would like to just note that Judge Stein has received the highest ratings of "well qualified" or "highly qualified" from several bar organizations throughout the state of New York.

Now we're going to start the second phase of the public hearing, and that deals with Judge Eugene Fahey.

So, we're going to call back -- this is like "Groundhog Day" in a way --

[Laughter.]

SENATOR BONACIC: -- we're going to call back Vincent Doyle, to come up, to give testimony on behalf of Judge Fahey.

VINCENT DOYLE: Thank you Senator Bonacic, and the members of the Committee, and, ladies and gentlemen.

You know who I am.

Again, I'm here on behalf of New the York State Bar Association, and as Chair of the association's Committee to Review Judicial Nominations.

It is my privilege to appear before you today in support of the appointment of the

Honorable Eugene Fahey as associate judge of the New York Court of Appeals.

I reviewed the process by which our evaluation evaluates candidates for the Court of Appeals in connection with Justice Stein's hearing; therefore, I will not repeat those procedures at this time.

With respect to the present nomination, we have found Justice Fahey to be "well qualified" to serve as an associate judge of the Court of Appeals.

Again, "well qualified" is our highest rating, and a "well-qualified" candidate is one who, in addition to possessing the qualities necessary for service as an associate judge, possesses preeminent qualifications for that office.

After being selected as a candidate by the Commission on Judicial Nomination, Justice Fahey's qualifications were evaluated by our committee in accordance with our procedures.

Justice Fahey had been a previous candidate on two prior lists released by the commission. Each of those prior times our committee had also found him to be "well qualified."

Our procedure under those circumstances is to do a full investigation in writing, and orally by

phone, but to waive the in-person interview if the candidate had been previously found to be "well qualified."

As a result of this full investigation and consideration, it was the opinion of our committee that Justice Fahey is "well qualified" for the Court of Appeals.

Justice Fahey has served admirably for eight years as a member of the Appellate Division, Fourth Department.

Prior to serving on the appellate division, Justice Fahey served nine years as a justice of the Supreme Court, and nine years as a judge of the Buffalo City Court.

He also served 16 years as a member of the Buffalo Common Council.

His overall breadth of experience leads us to conclude that Justice Fahey will serve the state of New York well as an associate judge of the Court of Appeals.

On a personal note, I have appeared numerous times before -- over the years before Justice Fahey while he was in the City Court, Supreme Court, the commercial division of the Supreme Court, and the Appellate Division, Fourth Department.

Each and every time I appeared before Justice Fahey, I was impressed by his intelligence, diligence, and judicial temperament.

I know that my opinion is shared by others who encountered Justice Fahey.

He is an outstanding jurist, held in the highest regard by the practicing bar.

On behalf of the New York State Bar Association, I am pleased to endorse Justice Fahey's appointment to the Court of Appeals, and urge confirmation of this appointment.

Thank you for your attention, and for inviting participation by the New York State Bar Association in this important process, Senator.

SENATOR BONACIC: Any questions for Mr. Doyle with respect to Judge Fahey?

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. Chairman.

Again, Mr. Doyle --

VINCENT DOYLE: Yes, sir.

SENATOR DIAZ: -- I have to [unintelligible].

VINCENT DOYLE: Sure.

SENATOR DIAZ: The two [unintelligible], how were they rated?

[Unintelligible], how were they rated?

VINCENT DOYLE: The vacancy that Justice --

SENATOR DIAZ: [Unintelligible], that were there, [unintelligible], how were they rated by your committee?

VINCENT DOYLE: We interviewed and rated one, Justice Graffeo -- or, Judge Graffeo, pardon me, was a candidate for the vacancy that Justice Stein has been nominated for. We rated her "well qualified."

Governor Cuomo did not choose to select her for an additional term.

Judge Smith is the second judge who is there now.

He has aged out.

And, pardon me, he won't like me using that term.

He has reached the age of 70, and under the Constitution, he cannot continue to serve. So, he was not a candidate, he was not on the commission's list. We did not interview him, we did not rate him.

SENATOR DIAZ: [Unintelligible].

VINCENT DOYLE: One of the two --

SENATOR DIAZ: [Unintelligible.]

VINCENT DOYLE: -- "well qualified."

SENATOR DIAZ: [Unintelligible.]

VINCENT DOYLE: With the same process that all of the other candidates went through, yes.

SENATOR DIAZ: [Unintelligible.]

VINCENT DOYLE: The intention?

SENATOR DIAZ: The, uhm --

VINCENT DOYLE: Oh, intensity?

Yes.

"Well qualified" is "well qualified."

We meant it as much for Judge Graffeo as we did for everyone else.

SENATOR DIAZ: [unintelligible], there was nothing broken?

VINCENT DOYLE: Again, that's -- that's not our role.

The Constitution gives the Governor that --

SENATOR DIAZ: I will tell you what I'm saying: [unintelligible] saying that if something isn't broken, it doesn't need fixing.

VINCENT DOYLE: I don't think in this setting you can say that.

That as a certain import, the Governor has that choice under the Constitution, Senator.

SENATOR BONACIC: Any other questions of Mr. Doyle?

Okay, Mr. Doyle, thank you very much for

your appearance today.

VINCENT DOYLE: Thank you, Senator.

SENATOR BONACIC: Okay, Mr. Evan Goldberg, welcome back.

EVAN GOLDBERG: Thank you.

It's been too long.

Again, for the record, my name is Evan Goldberg, and I am the president-elect of the New York State Trial Lawyers Association.

I'm appearing here today on behalf of our board of directors, and our 3500 attorney members who participate in trial and appellate courts throughout the state.

Thank you once again, Chairman Bonacic, for inviting NYSTLA to participate, and for this opportunity to speak in support of Governor Cuomo's nomination of Justice Eugene Fahey for associate judge of the New York State Court of Appeals.

We respectfully ask that the history of our organization and its mission of ensuring continued access to the civil justice system, as stated during the testimony in support of Justice Stein's confirmation, be incorporated by reference.

NYSTLA's Judiciary Committee had the honor of interviewing all the candidates recommended by the

New York State Commission on Judicial Nomination to fill the vacancy created by the retirement of Judge Robert Smith.

Among such an impressively credentialed panel of candidates, Justice Fahey stood out for his judicial experience, as well as for his reputation for fairness on the bench.

The committee rated Justice Fahey as "highly qualified and highly recommended."

Justice Fahey is widely respected for his almost two decades of judicial experience.

Serving first as a Buffalo City Court judge, he quickly advanced to the Supreme Court, before being appointed to the Appellate Division, Fourth Department.

Many NYSTLA members have had the honor of appearing before Justice Fahey, whether at trial or on appeal.

Members of the plaintiffs' bar, indeed, all who appear before Justice Fahey, recognize that they are given an unbiased and objective hearing, and that their legal arguments receive close attention by one of our state's most learned judges.

The breadth and depth of legal knowledge Justice Fahey has attained over the course of his

career is readily apparent upon even a cursory examination of his record.

Before serving on the bench, Justice Fahey represented clients as a practicing attorney, earning a reputation for collegiality and fairness that followed him to the bench.

As a judge of the Buffalo City Court, and, later, as a justice of the Supreme Court, Justice Fahey handled thousands of criminal, civil, and commercial cases.

The experience clearly served him well on his nomination to the Appellate Division, and his well-stated and thoughtful decisions provide a clear guide for both attorneys and judges at the trial level.

Equally, Justice Fahey's dissenting opinions have been taken up by the Court of Appeals as the appropriate outcome, demonstrating characteristic resolve in addition to legal scholarship.

In conclusion, Governor Cuomo has made another excellent choice in his nomination of Justice Fahey.

We welcome his thorough and open-minded approach to the law, and look forward to Justice Fahey applying his well-deserved reputation

for fairness to the court and the manner in which they address the most important legal issues of the day.

Thank you again, Chairman Bonacic, for the opportunity to testify.

SENATOR BONACIC: Thank you, Mr. Goldberg.

Any questions of Mr. Goldberg?

I see that Senator Perkins has joined us.

Good afternoon, Senator.

SENATOR PERKINS: Good afternoon.

SENATOR BONACIC: At this point, let me just make a note:

Similar to Judge Stein, Judge Fahey also received the highest ratings of "well qualified" and "highly qualified" from all bar groups across the state.

In addition to the testimony that we've heard, we have had written testimony from bar organizations that will be incorporated into the public record of this public hearing.

At this time, I would like to recognize Senator Hassell-Thompson, our Ranker on Judiciary.

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

I will reserve whatever time I have for the

questioning period.

I don't really have a statement, except to just thank the Governor for sending us extraordinary candidates for us to interview and to review today.

SENATOR BONACIC: That will conclude the public hearing.

We'll take a brief recess for about five minutes, and then convene a meeting of the Judiciary Committee, when Judge Stein and Judge Fahey will appear and address the Committee, and any questions that members will have for those nominees will take place at that time.

So, the public hearing is deemed adjourned at ten after twelve this afternoon.

Thank you.

(Whereupon, at approximately 12:10 p.m., the public hearing held before the New York State Senate Standing Committee on the Judiciary concluded, and adjourned.)

---oOo---