

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON THE JUDICIARY

3 JUDICIARY COMMITTEE TO CONSIDER
4 THE NOMINATION OF MICHAEL J. GARCIA
5 FOR ASSOCIATE JUDGE OF THE NEW YORK STATE
6 COURT OF APPEALS

8 New York State Capitol Building
9 172 State Street - Room 124 CAP
Albany, New York 12247

10 February 8, 2016
11 1:30 p.m. to 2:30 p.m.

12 PRESIDING:

13 Senator John J. Bonacic
14 Chairman

15 COMMITTEE MEMBERS PRESENT:

16 Senator Philip M. Boyle
17 Senator Thomas D. Croci
18 Senator John A. DeFrancisco
19 Senator Ruben Diaz
20 Senator Martin Malavé Dilan
21 Senator Ruth Hassell-Thompson (RM)
22 Senator Brad M. Hoylman
23 Senator Michael F. Nozzolio
24 Senator Michael H. Ranzenhofer
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COMMITTEE MEMBERS PRESENT (Continued):

Senator Diane J. Savino

Senator Susan J. Serino

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SPEAKERS:

PAGE

QUESTIONS

Michael J. Garcia
Nominee for Associate Judge of the
New York State Court of Appeals

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1 SENATOR BONACIC: We're going to start the
2 Senate Judiciary Committee meeting, and the purpose
3 is to hear from Michael Garcia himself, who has been
4 nominated for the position of the associate judge
5 for the Court of Appeals.

6 So, where are you, Michael?

7 Come on in.

8 Welcome.

9 Who is those two good-looking children behind
10 you?

11 MICHAEL J. GARCIA: Where? Where?

12 [Laughter.]

13 MICHAEL J. GARCIA: This is my daughter,
14 Sophia, and my son, Michael, Mr. Chairman.

15 SENATOR BONACIC: Welcome, and we're glad
16 that you're here.

17 MICHAEL J. GARCIA: Me, too.

18 SENATOR BONACIC: I'd ask you to give us your
19 background, qualifications, and any relevant
20 information regarding what you think your ability is
21 to serve as an associate judge of the New York Court
22 of Appeals.

23 MICHAEL J. GARCIA: Thank you very much,
24 Mr. Chairman, and thank you for the privilege of
25 introducing my children today.

1 Unfortunately, my wife is stuck in
2 Puerto Rico, and couldn't get back on a flight last
3 night, and can't be here today.

4 But, Mr. Chair, Senator Hassell-Thompson,
5 members of the Committee, I would like to start by
6 saying, I am honored to appear before you today,
7 having been nominated by Governor Cuomo to serve as
8 an associate judge on the Court of Appeals of the
9 State of New York, to answer any questions you may
10 have, and to seek your recommendation for Senate
11 confirmation of that nomination.

12 Before answering your questions, I would like
13 to tell you briefly something about myself, my
14 connection to New York, and my professional career
15 and values.

16 I was born, raised, and educated in New York.
17 I grew up and attended public schools in
18 Valley Stream, Long Island.

19 My parents did not go to college.

20 My father, Manuel, went to work in the
21 mailroom for a company in New York City, and
22 30 years later, he retired as president.

23 My mother worked in the home until my younger
24 brother was in high school.

25 Both my parents emphasized education and took

1 great interest in our progress.

2 With their support, after finishing
3 high school, I attended the State University of
4 New York at Binghamton, graduating with honors.

5 I received my degree from Albany Law School,
6 graduating as valedictorian of my class.

7 I have now been a member of the bar of this
8 state for more than 25 years. I have spent most of
9 my career as a lawyer in public service.

10 After working less than a year at a law firm
11 after graduation, I was fortunate enough to obtain a
12 two-year clerkship with Judge Judith Kaye on the
13 New York Court of Appeals. I could not have asked
14 for better training.

15 Judge Kaye exemplified fairness and integrity
16 in the judicial process. She treated everyone --
17 clerks, colleagues, litigants, and staff -- with
18 respect. Her work ethic was second to none.

19 After my clerkship I became a prosecutor,
20 trying terrorism cases in federal court. Those
21 cases included the '93 bombing of the World Trade
22 Center and the 1998 bombings of the U.S. embassies
23 in East Africa.

24 Those cases did much to establish the model
25 for trying terrorism cases in criminal court.

1 Nearly nine years later, I left New York to
2 lead the Commerce Department's Export Control
3 Office, charged with enforcing U.S. laws limiting
4 the export of dual-use products; those products that
5 could have military, as well as civilian,
6 application.

7 Following that role, I became head of my new
8 Homeland Security Agency, Immigration and Customs
9 Enforcement. This agency had more than
10 20,000 employees, and the administrative challenges
11 with daunting.

12 We launched a number of new initiatives,
13 including "Operation Predator," aimed at taking
14 child-sex predators off the street, and a robust
15 antihuman trafficking program. Both programs
16 continue to this day, and have removed from our
17 streets thousands of people who preyed on society's
18 most vulnerable victims.

19 In 2005, I returned to New York to become the
20 U.S. Attorney for the Southern District of New York.

21 In that position, I led a superb office of
22 attorneys in the criminal and civil divisions,
23 bringing cases from affirmative civil-rights
24 actions, to securities fraud and terrorism
25 prosecutions.

1 In my time in these various roles in the
2 public sector, I have tried always to keep in mind
3 the principles instilled and exemplified by
4 Judge Kaye, and the fact that the true aim of any
5 such position is to serve the public.

6 In each instance, my decisions were guided by
7 the facts and by commitment to fairness for all
8 parties involved, and to the integrity of the
9 process.

10 I have spent the last seven years in private
11 law practice. I have enjoyed representing clients
12 and having my own docket of cases. Those matters
13 included cases done through a pro bono project
14 I initiated with the Legal Aid Society, through
15 which attorneys at the firm represented defendants
16 in criminal appeals in New York State courts.

17 These years at the firm gave me experience
18 in, and great appreciation for, the work done by
19 attorneys practicing law, day in and day out, in the
20 state.

21 I've had many different roles as an attorney.

22 At times I have been called upon to make
23 difficult decisions under intense public scrutiny.

24 Whatever the case, I've approached these
25 decisions with a commitment to fairness and

1 integrity, as well as a well-grounded appreciation
2 for the independence of the judiciary.

3 If I am fortunate enough to be confirmed by
4 the Senate, I can assure you that I will continue
5 that commitment in this new role, one of great
6 public trust, working every day to ensure that all
7 parties are heard, are treated fairly, and that
8 justice is done.

9 I am truly humbled and honored by this
10 nomination, and the opportunity, if confirmed, of
11 returning to that great institution, the New York
12 State Court of Appeals.

13 Thank you very much for your attention, and
14 for the opportunity to appear before you today; and,
15 of course, happy to answer any questions you have.

16 SENATOR BONACIC: Thank you, Mr. Garcia.

17 I will start with a few questions, if I may.

18 I always ask this question no matter who the
19 nominee is as they appear in the past, always
20 concerned with judicial independence, and I ask the
21 classic question:

22 The Governor uses executive authority to
23 bypass the Legislature.

24 The question of, "Constitutional authority,
25 did he exceed it or not?" and that issue comes in

1 your lap as a Court of Appeals judge.

2 Do you feel beholden to the Governor who's
3 put you forward as a nominee, or can you exercise
4 judicial independence on the merits of the issue
5 before you?

6 MICHAEL J. GARCIA: To get to the heart of
7 your question, Mr. Chair, absolutely would exercise
8 judicial independence, and believe completely in the
9 independence of the judiciary.

10 And while I am, as I said, very honored to be
11 nominated by Governor Cuomo, and to appear here
12 before you, I greatly appreciate that independence,
13 and would uphold it, if I were confirmed to that
14 position.

15 SENATOR BONACIC: Many members of the
16 Judiciary Committee, including myself, have seen a
17 lack of commercial-litigation experience in the
18 nominees that have come before us, that now serve on
19 the Court of Appeals.

20 And I see you were on a commission, and also
21 on a task force, with commercial litigation.

22 Can you share with us your knowledge of
23 commercial litigation and your experiences in that
24 area?

25 MICHAEL J. GARCIA: Certainly.

1 And as I said, for the last seven years,
2 Mr. Chair, I have practiced at a large
3 commercial-litigation firm in New York City. I do a
4 great deal of regulatory work. I do civil work.

5 I was fortunate enough to be appointed to the
6 chief judge's task force on commercial litigation in
7 the twenty-first century, which gave me an even
8 greater appreciation for the processes of the
9 commercial division, and the issues that commercial
10 litigators face practicing, day in and day out, in
11 our state.

12 SENATOR BONACIC: Thank you.

13 Who's your favorite Court of Appeals judge?

14 MICHAEL J. GARCIA: Personally,
15 professionally, Judge Judith Kaye.

16 SENATOR BONACIC: I'm not going to ask you
17 why, because we know about Judith Kaye, a friend,
18 and a great jurist.

19 My last question is: When you become a
20 Court of Appeals judge, do you see yourself as a
21 consensus-builder, go along to get along, or do you
22 see yourself, if you feel strongly about an issue,
23 you'll dissent from the court's -- the other members
24 of the Court of Appeals?

25 Could you share some insight on how you would

1 view that?

2 MICHAEL J. GARCIA: Certainly, Mr. Chair.

3 And I do believe there is great value in
4 unanimity. I certainly think that you have an
5 obligation to listen, and to respect the views of
6 others, your colleagues on the court, and strive for
7 that; at the same time, where you feel strongly
8 about an issue, there is, I think, an obligation in
9 those circumstances to make your view known.

10 But, again, I think the goal is to strive for
11 unanimity, and, certainly, collegiality, and listen
12 to the views of the other colleagues on the court.

13 SENATOR BONACIC: Thank you.

14 I have no other questions of Mr. Garcia.

15 The batting order of the next three Senators
16 that have questions, is we are going to start with
17 our ranker, Senator Ruth Hassell-Thompson;
18 Senator Nozzolio; and Senator DeFrancisco.

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

21 Good morning.

22 MICHAEL J. GARCIA: Good morning.

23 SENATOR NOZZOLIO: It's afternoon.

24 SENATOR HASSELL-THOMPSON: Good afternoon.

25 I'm sorry. It's been a long morning.

1 MICHAEL J. GARCIA: It has.

2 SENATOR HASSELL-THOMPSON: I wanted to --
3 I noted, when I was looking through, that you
4 started a pro bono program at Kirkland law firm.

5 What would -- what -- would you favor a
6 mandatory pro bono program for the state attorneys?

7 MICHAEL J. GARCIA: As you said, Senator,
8 I started that mandatory program with the Legal Aid
9 Society.

10 I think, pro bono commitment, I take very
11 seriously.

12 It was a terrific -- it is a terrific program
13 at the firm for representing criminal defendants on
14 appeal in state courts, coordinating with the
15 Legal Aid Society.

16 I know there are very strong feelings on
17 mandatory pro bono and the amount. I think it's
18 very important to listen to those views. I also
19 understand different attorneys are in different
20 circumstances with respect to what type of
21 commitment they could make.

22 And I realize that that issue, right now, and
23 I'm sure the Chief Judge also will be looking at it,
24 is an important one for the profession.

25 SENATOR HASSELL-THOMPSON: Thank you.

1 Would you be in favor of switching the
2 responsibility for the funding of public defense in
3 criminal cases from the county to the state?

4 And, additionally, would you favor
5 establishing a statewide public defender's office?

6 MICHAEL J. GARCIA: I -- my initial reaction
7 to that, Senator, is it sounds like a very good
8 idea. I would really have to know more about the
9 underlying budget issues, et cetera, regarding that.

10 I would feel a little, I don't know, out of
11 my depths at this point to give a firm opinion on
12 that.

13 SENATOR HASSELL-THOMPSON: But you will get
14 back to me?

15 MICHAEL J. GARCIA: I would, Senator.

16 SENATOR HASSELL-THOMPSON: Would you be in
17 favor of establishing a statewide standard as to the
18 numbers of felonies and misdemeanors that a public
19 defender could handle in a year?

20 MICHAEL J. GARCIA: I think that is a good
21 idea.

22 SENATOR HASSELL-THOMPSON: Let's go to the
23 state court system for a minute.

24 Are you -- as you are aware, the judicial pay
25 commission has recommended a substantial increase in

1 the pay for Supreme Court justices.

2 Do you have any concerns on how the costs of
3 raises will impact the operations of the state's
4 budget?

5 MICHAEL J. GARCIA: First let me say,
6 obviously, my experience, and the people -- you
7 know, my respect for the state court bench, I think
8 they are an incredibly talented, diverse bench
9 across the state, facing very different issues, and
10 really doing the work of the court, day in and day
11 out.

12 I think anytime have you budget issues,
13 you're always balancing priorities, and balancing
14 how do you -- how will what the allocation is affect
15 the work of that court.

16 And beyond that, in this particular case, you
17 know, all I can say is, I certainly support the work
18 and the talent that we have on the New York State
19 bench.

20 SENATOR HASSELL-THOMPSON: Would you be in
21 favor of a state constitutional amendment, merging
22 village and town court justices, justice courts,
23 with the Office of Court Administration?

24 MICHAEL J. GARCIA: I understand that
25 position, and I've seen much written about it,

1 particularly within the last year or so.

2 I think it's difficult. You know, it's a
3 "one size fits all" rule, and I think it would have
4 to be carefully considered how that would affect
5 different communities and municipalities.

6 SENATOR HASSELL-THOMPSON: Would you be in
7 favor of a state constitutional amendment, providing
8 that nominees for justices of the Supreme Court be
9 chosen by the voters and not by judicial delegation?

10 MICHAEL J. GARCIA: Again, I would hesitate
11 to give an opinion on whether I thought that was a
12 good idea or not.

13 I think there is, obviously, differences of
14 opinions in that case.

15 Whatever changes may come in the process,
16 certainly, at some point could be challenged, and
17 probably would be inappropriate for me to opine on
18 that at this point.

19 SENATOR HASSELL-THOMPSON: Do you have any
20 changes that you would like to see in the use of
21 bail in the state's courts as a mean of pretrial
22 detention?

23 MICHAEL J. GARCIA: Again, I am familiar,
24 Senator, with especially Chief Judge Lippman's work
25 in bail; certain of the reforms, the issues

1 surrounding an ability to pay, leading to
2 incarceration of defendants.

3 I understand that Chief Judge DiFiore now
4 will be looking at those issues.

5 And I certainly think they are important to
6 look at, particularly for those reasons.

7 SENATOR HASSELL-THOMPSON: Two more
8 questions.

9 One, federal experience; and the other,
10 private.

11 What do you consider your greatest
12 accomplishment as the U.S. Attorney for the
13 Southern District of New York?

14 MICHAEL J. GARCIA: Well, if you'll permit
15 me, I'll give a very short, maybe, story there.

16 Usually, the United States attorney does not
17 appear in court very much. You're running the
18 office, and managing.

19 But, we had a civil-rights case. It involved
20 a prisoner who was killed by a guard. We tried it;
21 my assistants tried it. We got a guilty verdict,
22 which was thrown out by the judge. The office
23 appealed that case, and I thought that case was very
24 important.

25 I personally took the appeal, argued the

1 appeal, and the District Court decision was
2 reversed, and the conviction was reinstated.

3 SENATOR HASSELL-THOMPSON: I've heard --
4 thank you.

5 I heard your answer to Senator Bonacic's
6 question about commercial practice.

7 But, tell me a little bit about the kinds of
8 cases your work consisted of while you were in
9 private practice, and how much of it -- of that
10 caseload was litigation?

11 MICHAEL J. GARCIA: A great deal of it was
12 litigation, but, of course, in a big firm -- you
13 know, a big commercial firm, the litigation doesn't
14 necessarily translate, of course, into appearing in
15 court.

16 I did. It was the exception, rather than the
17 rule, as when you -- I was a government attorney.

18 But my docket ranged from, everything from
19 internal investigations for companies, and dealing
20 with the government who was looking to press charges
21 or take some kind of action; representing
22 individuals who were under investigation.

23 I did some civil work. I defended
24 depositions. I also did civil-litigation motion
25 practice, and I argued certain motions in district

1 court.

2 But it was really a blend of that.

3 Some regulatory practice as well, appearing
4 before regulatory bodies and agencies, primarily
5 federal.

6 SENATOR HASSELL-THOMPSON: Thank you,
7 Mr. Garcia.

8 Thank you, Mr. Chair.

9 MICHAEL J. GARCIA: Thank you, Senator.

10 SENATOR BONACIC: We're joined by
11 Senator Dilan.

12 The next senator is, Senator Nozzolio.

13 SENATOR NOZZOLIO: Thank you, Mr. Chairman.
14 Good afternoon.

15 MICHAEL J. GARCIA: Good afternoon.

16 SENATOR NOZZOLIO: Congratulations on your
17 nomination.

18 MICHAEL J. GARCIA: Thank you.

19 SENATOR NOZZOLIO: You have an excellent
20 resume; a tremendous and very compelling family
21 history.

22 I would like to talk briefly about three
23 issues, and three major items of discussion.

24 It's going to be a long time that you're
25 going to be on the bench, so this is your last time

1 to give us some advice regarding legislation and
2 legislative approaches.

3 I say "only advice."

4 Senator Croci and I are involved in issues
5 regarding cyber security.

6 And your experiences in counterterrorism,
7 in -- with Interpol, to me, cried out for your
8 knowledge to help us and guide our state's policy in
9 protecting our citizens.

10 Do you have any general comments about taking
11 that approach?

12 MICHAEL J. GARCIA: Well, Senator, as you
13 know better than anyone, it is an incredibly
14 important issue right now.

15 I have seen it both in the public side,
16 between Homeland Security, and on the private side,
17 in terms of hackers and people trying to infiltrate
18 different systems. It is a very, very difficult
19 issue.

20 I think, to me, the hardest part of that is
21 really getting the right expertise in the room and
22 technical knowledge, which I will tell you,
23 I certainly don't have any of that.

24 But the right experts --

25 OFF-CAMERA SPEAKER: (Inaudible.)

1 MICHAEL J. GARCIA: -- yeah, they are a lot
2 better than I am at that.

3 -- but, to get those people in the room to
4 provide guidance on how things work in the real
5 world; what the type of threats are.

6 And there are some terrific folks that I have
7 come across in that area who really specialize in
8 that. And I think, to bring them together in a
9 forum where they can inform the types of measures
10 you are looking to do, would be very beneficial.

11 SENATOR NOZZOLIO: With your experience in
12 international police protection, do you think the
13 answer lies there, or part of the answer lies there?

14 MICHAEL J. GARCIA: I think, certainly,
15 because it's a cross-board of crime in so many
16 cases, right, and it implicates many different
17 things, I think those types of agencies certainly
18 can have a role in coordinating responses, but,
19 I would look to them as more of that type of
20 coordinating body, rather than a place where you're
21 going to get substantive input in your
22 (inaudible/audio failure.)

23 SENATOR NOZZOLIO: Thank you.

24 Senator Bonacic's question about
25 independence, I always like to follow up his eternal

1 question with my eternal question:

2 That what we don't -- we certainly hope for
3 independence in our judges.

4 What I hope for is not, though, an
5 independence from the Constitutions of the State of
6 New York, and the Constitution of the United States.

7 As you are now going to be authoring your own
8 opinions on things, as you help others write theirs,
9 now you're going to be writing yours, where do you
10 put your constitutional approach to legal
11 opinion-making, in terms of a continuum in order of
12 priority?

13 MICHAEL J. GARCIA: And I think, Senator,
14 that, obviously, my approach, I would expect, if
15 confirmed, would be a very practical one, adhering
16 and respecting the Constitution and the precedents
17 that have been handed down.

18 I have always approached the law that way,
19 with that type of respect and deference; and I would
20 expect to do that.

21 SENATOR NOZZOLIO: Please don't shy away from
22 that view and responsibility.

23 Certainly, that we have wonderful
24 constitutions. We need to ensure their integrity,
25 and the integrity of the opinions based in them.

1 You're asked a lot of legislative opinions
2 and are seduced, as judges, to be involved in the
3 Legislature.

4 We ask you to help us stay true to the
5 constitutional principles that have been the
6 cornerstone of our nation's freedoms.

7 Lastly, I had the opportunity to drill down
8 on your background. I wanted to know all about you,
9 so I talked to one of your law-school classmates.

10 MICHAEL J. GARCIA: Which one?

11 SENATOR NOZZOLIO: And although I couldn't
12 identify with your position as valedictorian, the
13 judge who I talked to, Judge Craig Doran, said,
14 I think very aptly, that you were first in your
15 class, but you were a class act to everyone else in
16 that class. You were helpful to members of the
17 class who didn't necessarily get things as quickly
18 as you did.

19 And that collegiality and sensitivity to your
20 peers was most welcomed and well endorsed.

21 So I wish you well in your endeavors, and
22 thank you very much for what I hope will be a long
23 tenure on the Court of Appeals.

24 MICHAEL J. GARCIA: Thank you, Senator.

25 I appreciate that.

1 SENATOR BONACIC: Thank you,
2 Senator Nozzolio.

3 Senator Diaz.

4 SENATOR DIAZ: Thank you, Mr. Chairman.

5 Mr. Garcia, I am from Bayamon, Puerto Rico.

6 Where are you from?

7 MICHAEL J. GARCIA: I am from Valley Stream,
8 Long Island.

9 [Laughter.]

10 SENATOR DIAZ: So you're not from
11 Puerto Rico?

12 MICHAEL J. GARCIA: No.

13 My wife is in Puerto Rico, but I am not from
14 Puerto Rico.

15 SENATOR DIAZ: I have a (unintelligible) --
16 one of the Senators here brought to our attention an
17 evaluation made by the U.S. State Trial Lawyers
18 Association.

19 And that evaluation, they evaluated you
20 "qualified" and "recommended."

21 But they have four candidates that they
22 evaluated, "highly qualified," "highly recommended."

23 They just qualify you, they just say you were
24 "qualified" and just "recommended."

25 And the Governor jumped, not one, not two,

1 not three, but four candidate that being "highly
2 qualified" and "highly recommended" to choose you
3 that was "qualified" and "recommended."

4 What were you -- why were you singled out?

5 MICHAEL J. GARCIA: Well, Senator, first,
6 I would say I have tremendous respect for that
7 organization, the New York Trial Lawyers
8 Association; appeared before them.

9 I appreciated their "qualified" and
10 "recommended" rating.

11 I think, in total, I appeared before 11 bar
12 associations, ranging from city bar, tri-county bar
13 out west, and the state bar, of course, and received
14 various recommendations from them all, ranging from
15 "qualified" to "highly qualified."

16 And, again, I respect the view of the trial
17 lawyers, and I respect their organizations.

18 SENATOR DIAZ: Were you -- do you concerned
19 that the press and the media and people would say,
20 Ah, just because he's a Hispanic?

21 MICHAEL J. GARCIA: I'm sorry, I didn't
22 get --

23 SENATOR DIAZ: Are you concerned, that the
24 Governor just jump four "highly qualified" and
25 "highly recommended" to chose you, the people would

1 say, Ah, just because he's a Hispanic?

2 MICHAEL J. GARCIA: I would think, Senator,
3 one, the folks on the list that you mentioned who
4 got those ratings, I have tremendous respect for,
5 and are all "very qualified" and "highly
6 recommended," in my view. I have great respect, as
7 I said, for their accomplishments.

8 I think my record, both in public service and
9 in private sector, qualifies me to be on the Court
10 of Appeals.

11 SENATOR DIAZ: So you say that -- you say
12 that the New York State Trial Lawyer Association did
13 you bad, did you --

14 MICHAEL J. GARCIA: Not at all, not at all.

15 As I said, I respect that organization, and
16 I respect their opinion and their rating.

17 SENATOR DIAZ: Right. Thank you.

18 SENATOR BONACIC: Okay. I have several --
19 I was just curious, of the 11 bars that you appeared
20 in front of, did you have a drink in any of them?

21 MICHAEL J. GARCIA: Sometimes I felt like it.
22 But, no, I didn't.

23 SENATOR BONACIC: Senator Croci is next.

24 SENATOR CROCI: Thank you, Mr. Chairman.

25 And thank you, Mr. Garcia, for appearing here

1 today.

2 For your children's sake, you probably don't
3 hear this often, but, the candidate that we're being
4 presented with today, it's not just the
5 accomplishments, and you should know this, of
6 somebody who has been a very good lawyer and a very
7 good jurist, or an aspiring jurist, but a very good
8 lawyer or a very good professional, but somebody who
9 is a patriot; because, Mr. Garcia, your credentials
10 are that of somebody who has spent a life in public
11 service as a patriot.

12 And I want to thank you for your service to
13 our country, and for coming back to New York,
14 because, so many times, we lose some of our very
15 best and brightest; don't return. And you've taken
16 those skills and you've come home.

17 I'd like to ask two questions.

18 One -- the first question is:

19 Some of the greatest matters that this
20 legislative body will have to consider this year
21 regar -- are concerning the security of New Yorkers,
22 and the legitimacy of our government and its
23 institutions.

24 And you've had tremendous amount of
25 experience, both in public-corruption areas, as well

1 as private fraud areas, as well as the security of
2 our country and our state.

3 So I wanted to ask a question, which I've
4 also asked of our now-sworn in, I believe, Chief
5 Judge, Judge Kaye, is: Do you believe, as we pursue
6 ethics reform in this legislative session, and as we
7 model ourselves after some of the best practices at
8 the federal level, that we should be looking for
9 reforms that include all of the branches of
10 government in New York in order for any meaningful
11 ethics reform to be successful?

12 MICHAEL J. GARCIA: Well, thank you, Senator.

13 And, one, thank you for those kind words;
14 and, obviously, you -- I greatly respect your
15 service as well.

16 But, yes, I think when you're looking at a
17 reform process, in general terms, without commenting
18 on any particular provisions, it is important to
19 look broadly across government, and to see wherever
20 you can make changes that would be productive and
21 move things forward.

22 So, as a general matter, yes.

23 SENATOR CROCI: Very good.

24 And, second, do you believe -- as we talk
25 about the Constitution, and constitutional matters,

1 I think we've covered independence, and I think
2 you've answered that for the Committee.

3 But, do you believe that the Second Amendment
4 to the United States Constitution confers an
5 individual right?

6 MICHAEL J. GARCIA: Yes, yes. I do. And I'm
7 aware of the Second Amendment jurisprudence, and,
8 certainly, respect and adhere to that case law.

9 SENATOR CROCI: Thank you very much.

10 That's all the questions I have,
11 Mr. Chairman.

12 SENATOR BONACIC: Thank you, Senator Croci.
13 Senator Hoylman.

14 SENATOR HOYLMAN: Thank you, Mr. Chair.

15 And good seeing you again, Mr. Garcia.

16 I have a couple of questions for your kids.

17 [Laughter.]

18 SENATOR HOYLMAN: I'm kidding, of course.

19 MICHAEL J. GARCIA: That's scary.

20 SENATOR HOYLMAN: No, you have quite a
21 stellar background. You've represented some
22 incredibly interesting clients -- FIFA, this body,
23 among others -- and I really admire your service,
24 both to Judge Kaye and to the pro bono causes that
25 you helped initiate in your private practice.

1 MICHAEL J. GARCIA: Thank you.

2 SENATOR HOYLMAN: You know, there's been a
3 lot of discussion in Albany about a piece of
4 legislation called the "Reproductive Health Act,"
5 and a bill that would, essentially, align
6 New York State with the holding in Roe v. Wade,
7 codifying in our state law, a woman's right to
8 choose, to make clear that our state protects that
9 core right, establishing the decision.

10 And many of us in the Senate have been
11 struggling to get that bill on the floor, and
12 passed, and it's heartened to see our Chairman
13 supports that legislation.

14 So I had a couple of questions relating to
15 that: a woman's right to access comprehensive
16 reproductive health care.

17 And I really think a lot of New Yorkers want
18 to know, do you think that Roe v. Wade is settled
19 law?

20 MICHAEL J. GARCIA: I do. And I would
21 respect, obviously, the Supreme -- there are many
22 Supreme Court decisions on women's reproductive
23 rights.

24 I certainly would respect and adhere to those
25 Supreme Court precedents.

1 SENATOR HOYLMAN: Thank you very much, sir.

2 And your -- the tradition you represent, as,
3 you know, from Cardoso, to Kaye, is that, you know,
4 quite a stellar one.

5 And I was thinking about how you, as a
6 litigator, as someone who hasn't written opinions,
7 who comes before us, could you describe what you
8 think your operating philosophy is going to be on
9 the court?

10 Do you think that our Constitution is
11 dynamic, is -- is it a living, breathing document
12 that has to be adapted to the times, or do you favor
13 something that's based in originality, you know,
14 original intent?

15 MICHAEL J. GARCIA: Thank you, Senator.

16 And, also, thank you for your time the other
17 day. I enjoyed speaking with you in your office on
18 some of these topics.

19 I think I approach, and would approach, of
20 course, as you say, I've not been on the bench, but,
21 in very practical terms, I think, clearly, you have
22 to look at not only the Constitution, but as we were
23 talking about, the precedent that has developed over
24 time, including some of the cases that you've
25 mentioned.

1 So I would look at it, obviously, you're
2 applying the Constitution, you are always anchored
3 there, but, you are looking at the law that's been
4 developed over time.

5 And I think I would have, I would say, a very
6 practical and commonsense approach to that process.

7 And I think, also, you have to respect -- as
8 I said earlier, respect the views of others and keep
9 an open mind. People may approach things
10 differently than you do, and at the end you may
11 disagree, but you always should respect those views,
12 and respect the process as well.

13 SENATOR HOYLMAN: And as a litigator, what do
14 you think you're bringing to this job?

15 MICHAEL J. GARCIA: I think any bench
16 benefits from different types of talents and
17 experience, background.

18 This court, and I have tremendous respect for
19 the folks that are on the court -- I knew the
20 Chief Judge, when she was district attorney, I was
21 United States attorney -- and there's a deep level
22 of experience in the judiciary there.

23 I think coming from both my role in the
24 public service, and then seven years as a litigator
25 in a large firm, is a nice complement to that pool

1 of talent and experience.

2 SENATOR HOYLMAN: Thank you very much.

3 Thank you, Mr. Chair.

4 SENATOR BONACIC: Thank you, Senator Hoylman.

5 Senator DeFrancisco.

6 SENATOR DeFRANCISCO: Would you please
7 explain to me the rule against perpetuity?

8 [Laughter.]

9 MICHAEL J. GARCIA: I have some of my
10 professors from law school here.

11 SENATOR DeFRANCISCO: I haven't asked that in
12 years. I used to ask it all the time.

13 I just couldn't help myself.

14 Actually, I'm going to speak to your
15 children. Okay?

16 You've got to really be proud of your father,
17 when you think that, when your ancestors came over,
18 they never went to -- I guess it's your grandfather,
19 they never got to college. Never got to college.

20 And if you look at your father's resume --
21 and you should probably read it, because it is
22 absolutely unbelievable -- he not only went beyond
23 the last generation, he went on to college, and law
24 school. Became a U.S. attorney; a U.S. attorney for
25 probably the best U.S. Attorney's Office in the

1 country. Handled cases that some lawyers only dream
2 about. And people kept relying on him for higher
3 and higher positions, and more and more
4 responsibility.

5 And what did he do? He answered the bell
6 every single time.

7 And this country is so great to make this
8 happen, and you've got that same opportunity, and so
9 do all your friends.

10 And please remember, opportunity is what we
11 have; what we do with it is up to us.

12 And your father is a huge role model.

13 He is now, at a very young age, going to be
14 on the highest court in the state of New York.

15 And my guess, he will probably be on the
16 Supreme Court some day. It's just a matter of time.
17 He's got to get a little older.

18 [Laughter.]

19 SENATOR DeFRANCISCO: But, seriously, your
20 record is absolutely unbelievable, and the
21 experiences you have are across the board.

22 No one can question your willingness to take
23 on tough issues, tough cases, and your ability to
24 make good decisions.

25 So, I just want to congratulate the Governor,

1 and thank you for being willing to do this, because,
2 one other thing: Money isn't everything.

3 You may not get that car when you go to
4 college, because he's taking a pay cut, a serious
5 pay cut, to serve the public, to serve the public,
6 which is another incredible attribute that you have.

7 So, thank you for doing this, and best of
8 luck.

9 You'll, no doubt, be unanimously confirmed
10 today.

11 And, God bless you, and all your activities
12 in the future.

13 MICHAEL J. GARCIA: Thank you very much,
14 Senator. I appreciate that.

15 SENATOR BONACIC: Senator Boyle.

16 SENATOR BOYLE: Thank you, Mr. Chairman.

17 Thank you, Mr. Garcia, for coming here.

18 Senator DeFrancisco, I guess him getting to
19 the Supreme Court depends on how well he gets along
20 with Donald Trump.

21 [Laughter.]

22 SENATOR DeFRANCISCO: I don't think so.

23 SENATOR BOYLE: Michael, thank you again for
24 coming in, and, your background, as has been said,
25 is truly amazing.

1 We heard a lot of good candidates over the
2 years, but this is, yours is the creme de la creme.

3 I'm perhaps most impressed with the fact,
4 I read in your background, that you graduated from
5 Albany Law School in 1989.

6 I graduated Albany Law School in 1988.

7 I didn't know you, because were you studying,
8 obviously, to make valedictorian.

9 [Laughter.]

10 SENATOR BOYLE: A quick comment.

11 The -- what I've described as a crisis of
12 confidence in our judicial and prosecutorial system
13 in the last couple years, obviously, we see it in
14 communities of color.

15 My county of Suffolk County recently had our
16 police chief arrested by the FBI; the shows like
17 "Making a Murderer"; this is what America is seeing,
18 and it's scaring a lot of people.

19 And I know, from your position as a great
20 prosecutor when you were there, and now your work
21 with pro bono, please just keep this in mind, as you
22 sit on that bench -- I know you're going get
23 there -- about people worried about this system.

24 And, we're counting on you to make it right.

25 MICHAEL J. GARCIA: Thank you, Senator.

1 I will.

2 SENATOR BONACIC: Thank you, Senator Boyle.

3 Senator Ranzenhofer.

4 SENATOR RANZENHOFER: Thank you, Chairman.

5 Just, briefly, and thanks for reaching out
6 after the Governor placed your name in nomination.

7 I'm not going to go over in great detail, but
8 I do want to just mention for the record, that, you
9 know, finishing number one in your class is not too
10 bad. Being U.S. attorney is not too bad. Being a
11 partner at Kirkland & Ellis is not too bad.

12 So, I mean, certainly, you have the
13 education, and the qualifications, and the
14 experience for this job.

15 And I know a lot of emphasis was placed on
16 the rating of "qualified" and "recommended," as
17 opposed to "highly qualified," but I remember, with
18 yesterday being the Super Bowl, that there was
19 somebody by the name of Tom Brady, who -- there were
20 about 200 people picked before him, and he ended up
21 okay.

22 [Laughter.]

23 SENATOR RANZENHOFER: So, I wouldn't lose any
24 sleep over that recommendation. I think the vast
25 school of thought from the bar associations, and the

1 people you know, have evaluated you, are -- that you
2 are, you know, a Class A candidate, and they expect
3 that -- you know, to continue that tradition on the
4 court.

5 So, congratulations on your nomination.

6 MICHAEL J. GARCIA: Thank you, Senator.

7 SENATOR BONACIC: Thank you,
8 Senator Ranzenhofer.

9 Anyone else have any other questions for
10 Mr. Garcia?

11 Hearing none --

12 MR. BRADY (Off-Camera): I do.

13 SENATOR BONACIC: Oh?

14 MR. BRADY (Off-Camera): [Inaudible.]

15 SENATOR BONACIC: No, no, no, no.

16 Mr. Brady, you're out of order.

17 You're out of order.

18 You don't have to --

19 SENATOR SAVINO: You're not a member of the
20 Judiciary Committee.

21 SENATOR BONACIC: I'd like to call the vote
22 now.

23 All those in favor of Mr. Garcia, having it
24 go to the floor?

25 (All those in favor say "Aye.")

1 SENATOR BONACIC: Anyone opposed?

2 SENATOR HASSELL-THOMPSON: I'll make the
3 motion.

4 SENATOR BONACIC: Motion by
5 Senator Hassell-Thompson.

6 It's unanimous, it goes to the floor.
7 Congratulations.

8 MICHAEL J. GARCIA: Thank you, Mr. Chairman.

9 [Applause.]

10

11 (Whereupon, at approximately 2:09 p.m.,
12 the public hearing held before the New York State
13 Senate Standing Committee on Judiciary concluded,
14 and adjourned.)

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