

The Journal News

Ed Forbes

Senior Director, Opinion and Engagement

Why Hector LaSalle's appointment deserves some common decency

Your Turn

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Guest columnist

Regarding "Hochul taps LaSalle to lead NY courts; will he pass muster with Senate progressives?" *lohud.com*, Dec. 23:

On Dec. 23, 2022, the front-page headline of The Journal News announced: "LaSalle picked as NY's chief judge." This was unsurprising. Justice Hector D. LaSalle has decades of experience in public service and is the presiding justice of the Second Department, one of our most consequential courts. His nomination has been widely praised including by our former Chief Judge Jonathan Lippman and Judge Joseph W. Bellacosa. His nomination has nonetheless been criticized by some academics.

Well-founded opinions are entitled to respectful consideration. But as lawyers, we have a special responsibility to further the understanding of and confidence in the rule of law. In this spirit, it must be explained that LaSalle's jurisprudence as a Justice of the Second Department — an intermediate appellate court — is necessarily constrained by controlling decisions of the state's highest court, the Court of Appeals. This is the very essence of the rule of law. It should not be overlooked.

The Commission on Judicial Nomination

LaSalle's nomination carries the merit-based imprimatur of the bipartisan Commission on Judicial Nomination.

The Commission is comprised of distinguished members of the legal profession and the community. For example, Commission Chair, Judge E. Leo Milonas, has 26 years of judicial experience. Robin A. Bikal of White Plains is an experienced attorney appointed by Senate Majority Leader Andrea Stewart-Cousins. Michael J. Hutter is one of the nation's leading law professors and was nominated by the Commission in 1998. The Commission's exceptional caliber and diverse composition foster great confidence in its collective judgment.

The commission's nomination

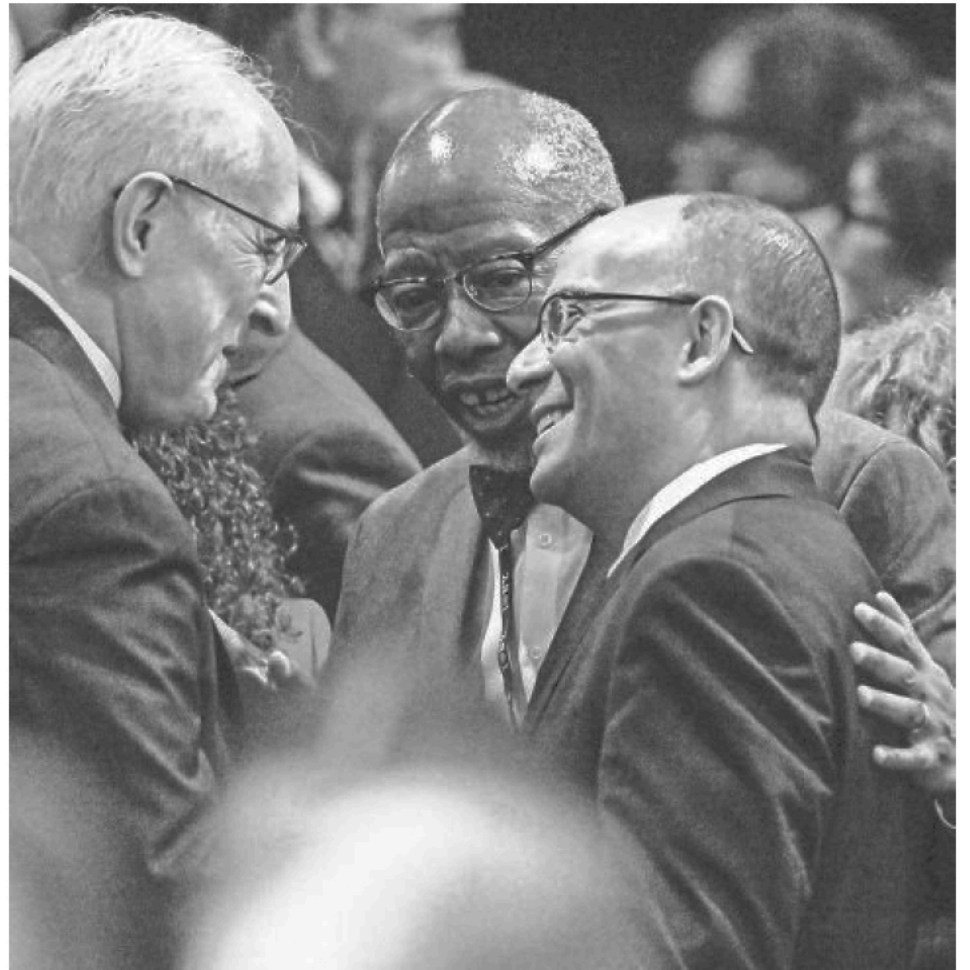
On Nov. 23, 2022, the commission made its collective judgment: "Hon. Hector D. LaSalle, the Presiding Justice of the Appellate Division, Second Department, was found by the Commission to be well qualified for the position of Chief Judge based on his character, temperament, professional aptitude, experience, qualifications and fitness for office."

LaSalle's service as presiding justice of the Second Department is important. The Second Department contains more than one-half of the State's population and includes the 10 counties of Richmond, Kings, Queens, Nassau, Suffolk, Westchester, Dutchess, Orange, Rockland and Putnam. The court hears disputes from urban, suburban and rural communities. The Second Department has given us outstanding jurists, such as Albert M. Rosenblatt and Alan D. Scheinkman. LaSalle enhances this august tradition.

The governor's nomination

On Dec. 22, 2022, Gov. Kathy Hochul announced the nomination of LaSalle for chief judge.

"New York's Court of Appeals has a long history as a beacon of justice, and Judge LaSalle is an outstanding jurist in that tradition," Hochul said. "Judge La-



New York Gov. Kathy Hochul's next Chief Judge nomination Hector D. LaSalle, right, talks with other guests before Gov. Hochul's inauguration ceremony Jan. 1 in Albany, N.Y. HANS PENNINK/AP

Salle has a sterling reputation as a consensus-builder, and I know he can unite the court in service of justice."

Further, the governor said, LaSalle possesses the "skills, experience, and intellect to ensure that our highest court is seen as a leader across the country."

LaSalle has adhered to the rule of law

LaSalle's jurisprudence is animated by respect for the rule of law and the doctrine of *stare decisis* — a crucial fact that has been overlooked by the judge's critics.

The doctrine of *stare decisis* provides that once a court has decided a legal issue, subsequent appeals presenting similar facts should be decided in conformity with the earlier decision.

As a justice of an intermediate appellate court, LaSalle was duty-bound to, and did in fact, faithfully apply the controlling decisions of the Court of Appeals.

We can observe LaSalle's rulings in these cases:

- *Cablevision v. Communication Workers*, 131 AD3d 1082, 1083, 2d Dep't 2015: "neither the Martin rule nor any other authority precludes causes of action from being asserted against individual members of the union defendants in their individual capacities," citing *Martin v. Curran*, 303 NY 276, 1951.

- *Evergreen Ass'n v. Schneiderman*, 153 AD3d 87, 2d Dep't 2017: "[a] government investigation should not be allowed to trespass on the principle that debate on public issues should be uninhibited, robust, and wide-open," quoting *Parkhouse*, 12 NY3d 660, 668, 2009.

This commitment to the rule of law should not be overlooked.

In a related context, Chief Judge Charles D. Breitel squarely rejected "facile labels" and found the better approach is to assess "the whole judge." The commission and the governor assessed the "whole judge."

Their shared judgment that LaSalle is well qualified is objectively unassailable. That judgment deserves fair and decent consideration before our state Senate.

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