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RE: (1) Postponing Senate Confirmation Proceedings on the
Nomination of Senate Judiciary Committee Chairman James J.
Lack to the Court of Claims to no earlier than January 9, 2003;
(2) Constituting a More Neutral Senate Forum for the
Holding of the Confirmation "Hearing"; and
(3) Commencing Review of CJA's Documentary Evidence
of Chairman Lack's Unfitness for Judicial Office

Dear Senate Leaders:

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens organization dedicated to safeguarding the public interest in meaningful processes of judicial selection and discipline so as to ensure the integrity of the judiciary -- a goal the People of this State would expect you to share.

This letter requests that you use your preeminent Senate leadership positions to further that goal by advancing democracy's most basic concept: citizen participation.

EXL-1

As you know, on December 10, 2002, Governor Pataki nominated Senate Judiciary Committee Chairman James J. Lack to the Court of Claims, purportedly after he was found "highly qualified" by the Governor's State Judicial Screening Committee. According to the Governor's press release, Senator Lack is "uniquely qualified...by virtue of his extraordinary intellect, voluminous knowledge of the law and...his superb stewardship as Chair of the Senate Judiciary Committee..."

Pursuant to Article VI, §9 of the New York State Constitution, Chairman Lack's nomination to the Court of Claims is subject to "the advice and consent of the senate". We understand that Senate confirmation proceedings are being scheduled for Tuesday, December 17, 2002. This, notwithstanding there is no urgency to fill the judgeship to which Chairman Lack has been nominated. This is evident from the fact that Governor Pataki kept it vacant these past two years.

If Senate confirmation proceedings are, indeed, being scheduled for December 17, 2002, they must be postponed to a date not earlier than 30 days from the date of Chairman Lack's nomination, *to wit*, January 9, 2003. This is within your power to do and CJA asks that you do it.

Almost precisely six years ago, the Association of the Bar of the City of New York issued a "*Report on Nomination and Confirmation of Court of Claims Judges*", reflecting unflatteringly upon the speed with which Court of Claims nominees were then being confirmed under Senator Lack's "stewardship" of the Senate Judiciary Committee. The Report began as follows:

"In recent years there has been no meaningful opportunity for public input in connection with the confirmation of Court of Claims nominees. Though the advice and consent process is the only democratic check on this segment of the judiciary...the Senate often confirms the Governor's nominees within days of their nomination."

The Report gave a brief historical review of the purpose of "advice and consent", quoting from the 1973 Report of New York's Joint Legislative Committee on Court Reorganization, Number 76 of the Federalist Papers, and, more recently, the words of U.S. Supreme Court Justice Stephen Breyer:

“We live in a democracy, and in a democracy power is supposed to flow from the people. People nonetheless are prepared to put unelected judges in high offices and grant them power to affect everyone’s lives, because of the importance of such structures in our system of government...[T]he confirmation process...offer[s] people a glimpse of the person who might hold that powerful office.” (at p. 3).

The Report concluded that in order for the Senate’s “advice and consent” function to be meaningful, a minimum of 30 days was essential between gubernatorial nomination and commencement of Senate confirmation proceedings. This would

“encourage public participation without hampering the Governor and the Senate in promptly discharging their responsibilities in filling vacancies. It would enable interested members of the public – both individuals and organizations – to make their views known prior to the Senate’s consideration of the nominees. It would also provide the public, in Justice Breyer’s words, with ‘a glimpse of the person’ who might hold an office with the ‘power to affect everyone’s lives.’” (at p. 5).

Enclosed is a copy of the City Bar’s five-page Report, as well as its three-page appendix. The appendix charts the time period between nomination and confirmation of Court of Claims judges in 1995 and 1996, contrasted to 1993 and 1994. The difference is striking. In 1993, *before* Chairman Lack assumed his “stewardship” of the Senate Judiciary Committee, there were at least nine weeks between nomination and confirmation. This dropped to four weeks in 1994, the first year of Chairman Lack’s chairmanship when Democratic Governor Cuomo was yet in office and making the nominations. In 1995, with Republican Governor Pataki making the nominations, Chairman Lack, a Republican, had moved up Senate confirmations to within days of the nominations – and, according to the chart, confirmations were even held on the same day as the nominations were made. In 1996, most Court of Claims confirmations were within less than two weeks of the nomination, the swiftest being for former Senate Judiciary Committee Chairman Christopher J. Mega, whose renomination to that Court was confirmed the very next day.

The City Bar presented its Report to Chairman Lack in January 1997. Had Chairman Lack chosen to do so, he could have risen above politics and imposed the simple and salutary rule that the Senate Judiciary Committee would not move to confirm judicial nominations in less than 30 days' time. This, he did not do – and the reason is obvious. A “rubber stamp” committee does not need time for receipt and review of adverse information from members of the public or to otherwise independently examine nominee qualifications. Indeed, a “rubber stamp” committee can altogether dispense with procedures and standards for confirmation because there is no true confirmation “process”. Such “process”, to be meaningful, would include requiring the Governor to substantiate the purportedly “well qualified” ratings of his judicial nominees with documentation and/or requiring the nominees to complete Senate Judiciary Committee questionnaires pertaining to their qualifications and fitness; requiring Committee staff to interview members of the public who contact the Committee with objections and to examine their substantiating documentation; rendering a written report of the results of staff interviews and investigations so that the deliberations of Committee members and the full Senate would be properly informed. Yet, Chairman Lack’s Senate Judiciary Committee has been operating without such requisites to “process” – and has NO written procedures and standards for confirmation of judicial nominees, at least none publicly available.

CJA has six years of direct, first-hand experience with Chairman Lack’s on-the-job performance in overseeing judicial confirmations – not only to the Court of Claims, but to the Court of Appeals. We can attest to his flagrant disregard for the most fundamental rules of procedure, standards of evidence, due process, honesty, and decency – the very qualities essential to being a judge. Indeed, the massive documentary evidence substantiating our experience with Chairman Lack establishes that he has wholly corrupted his preeminent position on the Senate Judiciary Committee to accommodate political interests intent on using the judiciary for political patronage. This, with knowledge that the citizens of this State are *defenseless* against the judicial misconduct of the nominees being confirmed, as of every other judge of this State, because of the corruption of the New York State Commission on Judicial Conduct – as to which Chairman Lack, with the documentary proof first provided him six years ago, has taken NO investigative steps. This includes his having failed to hold a long-overdue oversight hearing of the Commission¹.

¹ On December 18, 1981, the Senate Judiciary Committee held a joint oversight hearing with the Assembly Judiciary Committee. It has held no subsequent oversight hearing of the

In the unlikely event you are unaware of how Chairman Lack has run the Senate Judiciary Committee, presiding over the confirmation of approximately 200 judicial nominees², CJA can provide details so scandalous that they should rightfully result in his criminal prosecution for official misconduct (Penal Law §195.2) -- not simply rejection of his confirmation to the Court of Claims. Thus, over the past six years, Chairman Lack, in violation of his duties, has rejected, *out of hand*, information as to the unfitness of the judicial nominees the Committee was confirming, as well as information as to the dysfunction, politicization and corruption of the so-called "screening" processes that produced them. These purported "screening" processes are the Governor's Temporary Judicial Screening Committee, which existed for the first half of the Governor's first term until the hue and cry raised by the organized bar following publication of CJA's Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*" (New York Times, 11/16/96), forced the Governor to belatedly appoint his four Department Judicial Screening Committees and his State Judicial Screening Committee. There is also the New York State Commission on Judicial Nomination, which springs into existence to fill Court of Appeals vacancies. Over the past six years, CJA has demonstrated that these judicial screening bodies, whose operations take place entirely behind closed doors, are unworthy of public confidence and that their "highly qualified" and "well qualified" ratings of judicial nominees are fraudulent and "rigged". Nonetheless, Chairman Lack has refused to examine and discuss ANY of the substantiating documentation we have provided him, has refused to explain why, and has denied our requests to testify in opposition to nominees whose ratings we documented to be fraudulent and "rigged".

Commission, either jointly or separately, in the 21 years since. The Assembly Judiciary Committee held one additional oversight hearing of the Commission on September 22, 1987, but not in the 15 years since.

The failure of both Judiciary Committees to hold subsequent oversight hearings is all the more egregious in light of the 1989 report, "*Not Accountable to the Public*", by former State Comptroller Edward Regan, which found that the Commission was "operating without appropriate oversight" and that legislative change was needed. The indicated legislative change was never made.

² We have been unable to obtain the precise number because the Senate Judiciary Committee has claimed to have NO single document responsive to our December 19, 2001 informational/FOIL request for the names of all the Governor's judicial nominees that the Committee has confirmed, *infra*.

Only in a state such as this, where flagrant disregard of the most fundamental evidentiary and due process standards pervades *every* level of the judiciary³, would the Governor's State Judicial Screening Committee, *with knowledge of Chairman Lack's abusive and violative conduct in overseeing judicial confirmations*, find him "highly qualified" to be a judge.

Chairman Lack's practice in confirming nominees to "lower" state court judgeships, such as to the Court of Claims and interim positions on the Supreme Court, Surrogates Court, County Court and Family Court (outside NYC), is to allow NO testimony at Senate Judiciary Committee confirmation "hearings". Indeed, by denominating the confirmation "hearings" as "meetings", he both dispenses with the necessity of taking the testimony of witnesses AND of having a stenographer present to record what transpires.

And what transpires at these unrecorded "meetings" to confirm "lower" court nominees where NO testimony is permitted? A "coffee klatch", with all but the coffee, where Chairman Lack and Committee members congratulate the nominees who are called up to sit with the Senators around a table and receive praise. For the sake of form, a couple of "soft" questions are asked, along the lines of "Do you believe in G-d and apple pie?". No questions are posed by Senator Lack based on the opposition of citizens, whose requests to testify he has either denied or ignored before the "meeting" and whose very existence he conceals from Committee members. In such fashion, and taking no more than maybe five minutes for each nominee, none of whom are sworn, Chairman Lack

³ Illustrative of the judicial lawlessness that prevails in this State's courts, including the Court of Appeals, is that which is readily-verifiable from the record of the lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*, pending before the Court of Appeals. CJA long ago provided Chairman Lack with pertinent portions germane to Senate confirmation of judicial nominations, beginning in 1996 when we provided him with a copy of the record in *Doris L. Sassower v. Commission on Judicial Conduct* (NY Co. #95-109141), which is physically part of the subsequent lawsuit. Even more extensive portions are in the possession of Governor Pataki, to whom CJA provided them, long ago, in support of a formal request for appointment of a Special Prosecutor, as well as in opposition to prospective judicial appointments. Pertinent portions are also in Assemblyman Keith Wright's possession, having been provided to him by CJA on October 17, 2001 in substantiation of our request that he take steps to secure a legislative oversight hearing of the Commission -- the need for which was the subject of a meeting on that date with Senator Paterson, to which Assemblyman Wright sent a representative.

disposes of the important responsibility he owes the People of this State to safeguard them from unfit judges. No separate votes of Committee members are taken on the individual nominees. Indeed, Committee records show either no votes on the judicial nominees or votes by the members in favor of the nominees as a collective.

With the Committee "meeting" on lower court nominees "wrapped up in no time" by Chairman Lack, and *without* any written report being rendered by the Committee identifying and discussing the documentation received in support of the nominees, *if any*, and identifying and discussing the Committee's *own* investigation of the nominees, *if any* -- including evaluation of information and evidence received from citizens adverse to confirmation, whether *in camera* prior to the Committee "meeting" or at the "meeting" -- Chairman Lack proceeds to the Senate floor, if not directly then almost invariably on the same day as the Committee's confirmation "meeting". There, he extols "lower" court nominees he has *not* investigated, purporting there is a general view of their excellence for which the Governor is to be congratulated. Wholly omitted is any mention of citizen opposition, let alone its basis.

The result, upon information and belief, is that throughout the years of Chairman Lack's "stewardship", from 1994 to the present, ALL "lower" court nominees have been unanimously confirmed not only by his Senate Judiciary Committee, but by the full Senate⁴.

Upon information and belief, Chairman Lack has scored a similar 100% rate for the three Court of Appeals nominees he shepherded from the Senate Judiciary Committee to the Senate floor. Here, too, he has operated with comparable disregard of the duty he owes the People of this State to scrutinize nominee qualifications and monitor the integrity of the "merit selection" process that has produced them. Thus, under his "stewardship", citizens are barred from presenting their legitimate opposition testimony to confirmation of Court of Appeals judges. This is not because Chairman Lack has first interviewed these citizens or because, after reviewing their substantiating documents, he has deemed what they have to say unworthy. Rather, Chairman Lack, by his Senate Judiciary Committee staff, simply rejects their meritorious opposition, *out of hand*. The most spectacular demonstration of this was in 1998 when Chairman Lack, with written notice of CJA's request to testify in opposition to Albert

⁴ Such information was sought by CJA's comprehensive December 19, 2001 informational/FOIL request to the Senate Judiciary Committee -- without response, *infra*.

Rosenblatt's confirmation, upended 20 years of precedent for Court of Appeals confirmation hearings by holding a NO NOTICE, by-invitation-only "hearing", at which NO opposition testimony was permitted. This, in order to "ram through" the confirmation of Justice Rosenblatt, whose unfitness included his believed perjury on the publicly-inaccessible questionnaire he filed with the Commission on Judicial Nomination in response to two specific questions: whether, to his knowledge, he had every been the subject of a judicial misconduct complaint and whether he had ever been sued as a judge, other than by way of an Article 78 proceeding, both of which he would have had to have answered in the affirmative, supplying appropriate details and documents.

Tellingly, at the very outset of that NO-NOTICE "hearing", held on December 17, 1998, Chairman Lack sought to explain away his convening it *on less than 24 hours notice*. He did this by purporting that the nomination would otherwise "expire and have to be resubmitted after the first of the year" (transcript, at p. 3). This, in face of Judiciary Law §68.4, which expressly provides that when the Governor's appointment is made while the Senate is in session, the Senate has 30 days from receipt thereof to confirm or deny it. In other words, the Senate had until January 8, 1999 to confirm or deny Justice Rosenblatt's appointment, made by the Governor and received by it on December 9, 1998. Likewise, it is in the face of §68.5, which expressly states, "The failure of any officer or body to perform any act within a limitation of time established by this section shall not invalidate any appointment to the office of chief judge or associate judge of the court of appeals". Such provision is consistent with Article VI, §2 of the New York State Constitution, which sets no time parameters within which the Senate must confirm or deny a Court of Appeals appointee.

No less deceitful was Chairman Lack's November 29, 2000 "hearing" to confirm Victoria Graffeo to the Court of Appeals, notwithstanding it was held with notice. Once again, Chairman Lack refused to allow opposition testimony that he *knew* would have established Justice Graffeo's unfitness, as well as that of the "merit selection" process that had produced her nomination and appointment. To deflect press inquiries about his preclusion of this important testimony – as to which CJA had provided him with the documentary proof – Chairman Lack affirmatively misrepresented its nature and relevance.

As may be seen from the foregoing, CJA strenuously opposes Chairman Lack's confirmation to the Court of Claims – and can substantiate his absolute unfitness for judicial office by extensive documentary proof from six years'

direct experience with his appalling “stewardship” of the Senate Judiciary Committee.

We have already notified the Senate Judiciary Committee of our request to testify in opposition to Chairman Lack’s confirmation – requesting, as well, the presence of a stenographer so that a record will be made of the confirmation of at least one “lower” court nominee in the period of his tenure as Chairman. Additionally, we have requested that the Committee access from its files the originals of the documents we provided it over these many years to support our requests to testify as to the unfitness of five separate judicial nominees it was confirming based on fraudulent and “rigged” ratings. By these documents, CJA opposed confirmation of: (1) Juanita Bing Newton’s renomination to the Court of Claims, confirmed June 11, 1996; (2) Andrew O’Rourke’s nomination to the Court of Claims, confirmed January 13, 1998; (3) Albert Rosenblatt’s appointment to the Court of Appeals, confirmed December 17, 1998; (4) Victoria Graffeo’s appointment to the Court of Appeals, confirmed November 19, 2000; and (5) William Wetzel’s renomination to the Court of Claims, confirmed June 20, 2001.

Such original documents not only constitute the BEST EVIDENCE of Chairman Lack’s criminal betrayal of the public trust and disregard for its fundamental rights and welfare, but are IRREFUTABLE evidence. These must be examined by Senators in discharge of their “advice and consent” responsibilities – with specific questions based thereon directed to Chairman Lack for response. Indeed, in light of Chairman Lack’s supposed “extraordinary intellect” and “voluminous knowledge of the law”, he must be required to address the myriad of serious and substantial legal issues therein presented – ALL ignored by him without the slightest comment or concern. The most sweeping of these issues is the corruption of the New York State Commission on Judicial Conduct, which necessarily taints and corrupts the judicial screening committees, dependent as they are on the Commission for accurate information about the fitness of sitting judges seeking reappointment to the same judicial office, or appointment to other, often higher, judicial office. It would, therefore, be appropriate – and a fair test of his “extraordinary intellect” and “voluminous knowledge of the law” -- if, for starters, Chairman Lack addressed the appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551), furnished him under a June 17, 2001 coverletter, in opposition to confirmation of Court of Claims

Judge William Wetzel. Those appellate papers establish, *inter alia*, that Justice Wetzel knowingly and deliberately obliterated ALL cognizable adjudicative standards to “throw” that important case to “protect” a corrupt Commission, to the detriment of the People of this State. As Chairman Lack did not see fit to require Justice Wetzel to in any way account for his verifiably fraudulent decision in confirming him for reappointment to the Court of Claims⁵, it is only fair that Chairman Lack should now himself be required to account for the decision. Indeed, in so doing, Chairman Lack will not only have to confront the utter lawlessness of that decision, including Justice Wetzel’s indefensible failure to have disqualified himself for interest and bias, but the *verifiable* corruption of the same components of the judicial selection “process” that has now led to his own December 10, 2002 nomination, *to wit*, the Governor’s State Judicial Screening Committee and the Governor

We are already assembling a duplicate set of these appellate papers, as well as CJA’s other documentary submissions to the Senate Judiciary Committee over the past six years, in the event the Committee has destroyed the originals. This seems likely in view of the Committee’s disregard for proper procedure, including appropriate record-keeping relating to its confirmations of judicial nominees. Indeed, based on the Committee’s non-response to most every question posed by CJA’s comprehensive December 19, 2001 informational/FOIL request, it would appear that the Committee maintains only the most minimal documentation relating to such confirmations.

A copy of CJA’s comprehensive December 19, 2001 informational/FOIL request is enclosed, as its specific questions are a ROADMAP exposing the


⁵ I brought a full copy of the lower court record in *E. R. Sassower v. Commission* to the Committee’s June 20, 2001 “meeting” on Justice Wetzel’s confirmation in further support of CJA’s June 17, 2001 letter requesting to testify. I made this known to Chairman Lack during the Committee “meeting”, when, following the Committee’s “chit-chat” with Justice Wetzel, I orally reiterated my request to testify, by stating, “Judge Wetzel is a demonstrably corrupt judge, known as such by the Governor. I’ve brought with me the case file proof of his corruption and request the opportunity to testify in opposition based on direct, first-hand experience.” I do not recall whether Chairman Lack denied the request or simply ignored it in hurriedly closing the meeting – Judge Wetzel having been the last of the eight judicial nominees whose confirmations were being considered. In that connection, it must be noted that at the outset of the June 20, 2001 “meeting”, I rose, on a “point of order”, stating, “The Center for Judicial Accountability, acting in the public interest, has made a written request to have these important proceedings recorded by a stenographer”. Chairman Lack’s response was to threaten to have me removed by security officers – at least one of whom I believe was present in the room, having been called in advance by Chairman Lack and/or his staff in anticipation of my presence at the Committee “meeting”.

sham judicial confirmation “process” over which Chairman Lack has presided. The public has a right to answers from Chairman Lack at his confirmation “hearing” to each and every one of these questions – and you must procure them from him on the public’s behalf.

Finally, it is obvious that Chairman Lack is disqualified from presiding over the Senate Judiciary Committee’s confirmation “hearing” of his own nomination to the Court of Claims and must recuse himself. It must also be recognized, however, that the members of the Senate Judiciary Committee are, likewise, disqualified from holding such “hearing”. Not only is there an unmistakable “appearance” that they could not be “fair and impartial” in evaluating their Chairman’s nomination, their knowledge and complicity in his above-described official misconduct gives them an interest in precluding and suppressing CJA’s intended testimony.

CJA, therefore, requests that you, as the Senate’s leadership, constitute a more neutral Senate forum through which evidence can be independently reviewed and testimony taken, alternatively, that the Senate, as a whole, conduct the confirmation “hearing”. Needless to say, deferring the Senate’s confirmation proceedings for three additional weeks to January 9, 2003 will enable you to responsibly arrange the logistics and undertake the appropriate preliminary review of the voluminous documentation supporting CJA’s intended opposition testimony. Plainly, even were a “hearing” to proceed on December 17, 2002, NO Senate vote to confirm could properly be taken without examination of this substantiating documentation.

Yours for a quality judiciary and
fundamental democratic rights,


ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures:

- (1) “*Report on Nomination and Confirmation of Court of Claims Judges*”, Association of the Bar of the City of New York, January 1997 [8 pages]
- (2) CJA’s December 19, 2001 informational/FOIL request on judicial confirmations [3 pages]

cc: Senate Judiciary Committee Chairman James J. Lack; NYS Senators; Press