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NEW YORK STATE SENATE STANDING
COMMITTEE ON JUDICIARY

In the Matter of
A Public Meeting to Consider the
Governor's Nomination of Hon. Albert M.
Rosenblatt as an Associate Judge of the
New York State Court of Appeals

Room 124
The Capitol
Albany, New York

December 17, 1998
3:30 p.m

PRESIDING:

SENATOR JAMES J. LACK, Chairman, New
York State Senate Committee on
Judiciary

PRESENT:

SENATOR MICHAEL J. BALBONI

SENATOR NEIL BRESLIN

SENATOR JOHN A. DeFRANCISCO

SENATOR HUGH T. FARLEY

SENATOR EMMANUEL R. GOLD

SENATOR KENNETH P. LAVALLE

SENATOR VINCENT LEIBELL

SENATOR FRANZ LEICHTER

SENATOR JOHN J. MARCHI

SENATOR RAYMOND A. MEIER

SENATOR STEPHEN M. SALAND

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PRESENT: (Cont'd.)
SENATOR NICHOLAS A. SPANO
SENATOR RONALD B. STAFFORD
SENATOR GUY J. VELELLA
SENATOR DALE M. VOLKER
DAVID GRUENBERG, Counsel

1 P R O C E E D I N G S

2 SENATOR LACK: If everybody
3 would take their seats, please. I'd like to
4 call the meeting to order.

5 I'm Senator James Lack, Chair
6 of the Senate Judiciary Committee.

7 This is a meeting called,
8 obviously, on short notice for the purposes of
9 the confirmation of Albert Rosenblatt as a
10 judge of the Court of Appeals, the nomination
11 having been received recently from the
12 Governor. I want to thank the members of the
13 Committee for indulging and allowing me to
14 call the meeting on such short notice. As I
15 think all the members know, we agreed to
16 consider, with the consent of the Governor,
17 this nomination in session today in Albany so
18 as not to have the nomination expire and have
19 to be resubmitted after the first of the year;
20 and, the work of the Committee with respect to
21 this Governor's nominee having been completed,
22 we thought it would be appropriate to hold the
23 meeting at this point.

24 The judge will give us a few
25 remarks last and, in the meantime, I would

1 like to ask several people who are here to
2 give comments to the Committee to please do
3 so. And we'll start with the Hon. Jonathan
4 Lippman, the Chief Administrative Judge of the
5 State of New York.

6 Your Honor? Have a seat.

7 JUDGE LIPPMAN: Thank you, Mr.
8 Chairman.

9 It's a pleasure and a delight
10 to be able to be here today to talk to you
11 about the nominee for the Court of Appeals,
12 Albert Rosenblatt.

13 As someone who has spent his
14 entire career in the court system in a
15 nonjudicial capacity or presently as the judge
16 who is the chief administrative judge, I can
17 tell you from overseeing 1300 state judges in
18 the court system of the state of New York that
19 Judge Rosenblatt is clearly not only qualified
20 but is a judge held in the greatest respect
21 from all concerned around the state.

22 I am particularly proud of the
23 fact that Judge Rosenblatt is one of my
24 distinguished predecessors in the role of
25 chief administrative judge of the state courts

1 and in that capacity I can tell you that one
2 really does get a very broad and true
3 perspective as to the problems that we face in
4 our courthouses around the state, and that
5 society faces each and every day, many of
6 those problems which really wind up in front
7 of the Court of Appeals.

8 I could tell you -- so many
9 years I've known Judge Rosenblatt -- in the
10 last ten years from a very broad statewide
11 perspective, that he is truly a legal scholar
12 and in every sense he is thoughtful, he is
13 practical, he has wonderful judgment and, if
14 confirmed, he would be the second chief
15 administrative judge presently sitting on the
16 Court of Appeals and without any hint to this
17 committee, Mr. Chairman-- I do think you could
18 be a majority one of these days on the Court
19 of Appeals, but this is-- I just wanted to
20 come here to say that this is an
21 extraordinarily appropriate appointment by
22 Governor Pataki. This is absolutely a
23 wonderful judge, respected throughout the
24 judiciary, and this nomination clearly is one
25 that will result in great benefit to the

1 people of New York and produce an
2 extraordinary Court of Appeals judge, and it
3 is such a great delight and pleasure for me,
4 on behalf of judges across the state, to tell
5 the Committee of our honor and admiration for
6 Judge Albert Rosenblatt.

7 So thank you, Mr. Chair.

8 SENATOR LACK: Judge
9 Rosenblatt, so you know, Judge Lippman was
10 with the Organization of Judges in Westchester
11 County and on very short notice left there and
12 has driven to Albany just to testify before us
13 today on your behalf.

14 Judge, thank you very much.

15 SENATOR LEICHTER: Judge, one
16 question. Who is the sitting judge in the
17 Court of Appeals and also a chief
18 administrative judge?

19 JUDGE LIPPMAN: Judge Joseph
20 Bellacosa. You know, we can talk about that
21 some time.

22 SENATOR LACK: Judge Lippman,
23 you know Senator Leichter is retiring but all
24 of his faculties do remain.

25 I would like to note first that

1 we received a letter from the president of the
2 New York State Bar Association, James C.
3 Moore, strongly congratulating Judge
4 Rosenblatt on his qualifications and in the
5 name of the State Bar Association. We find
6 the information very useful, Mr. Moore talking
7 about the judge.

8 I'd like to read also into the
9 record a letter that we received today from a
10 person who did want to appear here before us
11 but on such short notice could not and on this
12 record, as a colleague -- he is regretful
13 because he is a colleague of Judge Rosenblatt
14 who practices in the city of Poughkeepsie and
15 is a former president of the State Bar
16 Association and is not -- he puts in his
17 letter here that he is not of the same
18 political persuasion, but nevertheless I'd
19 like to read a letter from Robert L. Ostertag
20 addressed to myself as chair of the Judiciary
21 Committee.

22 "I appreciate very much your
23 allowing me to submit a statement in support
24 of Governor Pataki's nomination of Hon. Albert
25 M. Rosenblatt to the position of Associate

1 Judge of the New York State Court of Appeals.
2 Because of a scheduling conflict over which I
3 have no control, I am unable to be in
4 attendance today however much I would have
5 preferred.

6 "I have known Judge Rosenblatt
7 for 30 years or more. He came to Poughkeepsie
8 to practice law with a local attorney who was
9 then a senior member of the local bar. After
10 several years of private practice, Judge
11 Rosenblatt obtained a position as an Assistant
12 District Attorney for Dutchess County, and
13 from that moment until this, he has
14 distinguished himself professionally, publicly
15 and personally far beyond anyone I have known
16 from this community or most any other. My
17 regard for him at all levels of human
18 experience is virtually boundless.

19 "As an Assistant District
20 Attorney, Judge Rosenblatt was a thorough,
21 thoughtful, efficient and successful
22 practitioner, and after a number of years when
23 the opportunity arose, he sought and was
24 elected to the senior position in that office.
25 He reorganized the office into a smoothly

1 operating, highly competent and effective one.
2 Looking back at that period, I have often been
3 reminded of a pre-television radio program
4 entitled 'Mr. District Attorney,' which began
5 each episode with the monologue, 'It shall be
6 my duty as district attorney not only to
7 prosecute to the limit of the law all persons
8 accused of crime perpetrated within this
9 county, but to defend with equal vigor the
10 rights and privileges of all its citizens.'
11 Judge Rosenblatt's approach to the criminal
12 justice system during that period epitomized
13 the high principles contained in both parts of
14 that statement, and were he never to have left
15 the office, I suspect he would regularly have
16 been re-elected to it, probably without
17 opposition and probably with active bipartisan
18 support as well.

19 "Judge Rosenblatt's career as a
20 jurist is nothing less than exemplary. One
21 need only read any randomly selected number of
22 his opinions at any judicial level to observe
23 the depth and quality of his thought process,
24 his approach to problems, his concern for all
25 parties to litigation, and lately, given his

1 opportunity to write appellate opinions, his
2 concern for public policy and the far-reaching
3 effect of his opinions not only upon
4 litigants, but upon the public at large as
5 well. His ability to convey those principles
6 by written word consistently exceeds that of
7 most others whose opinions I have read over
8 the years.

9 "I know Judge Rosenblatt to be
10 a tireless worker, not only in response to his
11 professional calling but also as to the many
12 community projects he has undertaken over the
13 years, particularly in the context of his
14 history.

15 "I am not of Judge Rosenblatt's
16 political persuasion, but I am thoroughly
17 delighted that this state, subject to the
18 Senate's approval, will have the benefit of
19 his very unique, evenhanded and highly capable
20 contribution to its body of law. I am a
21 former president of the New York State Bar
22 Association, and as such have for many years
23 been concerned with the manner by which we in
24 New York select our judges. We don't do that
25 very well, but sometimes we luck out. We have

1 in this instance, in spades, and I'm tickled
2 to death to be able to support Judge
3 Rosenblatt's candidacy unequivocally and
4 without even a suggestion of reservation.

5 "Respectfully, Robert L.
6 Ostertag."

7 There are several people here
8 who have been invited to speak further on
9 Judge Rosenblatt and I'd like to call them up
10 to make brief remarks, if I could, starting
11 with Winthrop Aldrich. Mr. Aldrich.

12 MR. ALDRICH: Thank you, Mr.
13 Chairman.

14 I'm delighted to be able to say
15 a word in support of the Governor's
16 nomination, and I urge the approval by the
17 Committee and the confirmation by the Senate
18 of Al Rosenblatt to the Court of Appeals.

19 I am the Deputy Commissioner of
20 Historic Preservation of State Parks, and you
21 may think what in the world am I doing here,
22 but in fact there is at least one connection.
23 We are co-residents of Dutchess County and
24 I've had the pleasure of working with Judge
25 Rosenblatt on civic and state affairs and as

1 far as Parks concerns in Dutchess County, for
2 many years and with the greatest of pleasure.

3 Ten years ago, the judge led me
4 to honor and celebrate the ratification of the
5 Federal Constitution by New York State in 1788
6 in Poughkeepsie and more recently he was
7 effective in tracking down a likeness of the
8 first judge on the State Court of Appeals from
9 Dutchess County, Charles Ruggles, (in the
10 1840s) whom I had just known to exist, and he
11 helped arrange for a portrait -- or that image
12 commissioned as a portrait -- to be hung in
13 the Court of Appeals chambers, among the very
14 distinguished collection of likenesses there
15 of forerunners on the court.

16 Our agency has been very
17 pleased in recent years to have a commission
18 from the court to restore those portraits, and
19 we're delighted to have yet another one to
20 work on in the future. In fact, the court, as
21 is so well-known, is an institution that is
22 committed to its own heritage and it reminds
23 me that Judge Rosenblatt will be an eloquent
24 and knowledgeable exponent of that tradition
25 and in a larger sense, of course, the court

1 and this judge are committed to another kind
2 of preservation -- the preservation of our
3 historic constitutional values and, in this
4 connection, the Governor's brilliant
5 appointment of Al Rosenblatt, if confirmed,
6 will continue to do what has been very
7 apparent in recent days and will continue well
8 beyond the completion of his active service on
9 the bench.

10 This is a man of probity,
11 ability, industry and fairness and, without
12 reservation, I urge the Committee's approval
13 and the Senate's confirmation of Judge
14 Rosenblatt to the Court of Appeals.

15 Thank you very much, Mr.
16 Chairman.

17 SENATOR LACK: Stephen
18 Schechter.

19 PROFESSOR SCHECHTER: It's
20 always a delight to come forth and speak on
21 behalf of Judge Rosenblatt.

22 My name is Stephen Schechter.
23 I reside in Niskayuna, New York. I'm a
24 professor of political science at Russell Sage
25 College. I have some written comments which

1 I'll summarize and ask to be included in the
2 record.

3 I first met Judge Rosenblatt in
4 1987 when I was Director of the New York State
5 Commission on the Bicentennial of the
6 Constitution and Judge Rosenblatt was the
7 chief administrative judge of the state of New
8 York. He was chief administrative judge and,
9 in that sense, my supervisor because the
10 Commission was hired by OCA. At the same
11 time, he was a resident of Poughkeepsie, which
12 was then being considered as a site for the
13 bicentennial celebration because it was there
14 that the Constitution was ratified 200 years
15 previously. At the same time, he was an avid
16 historian of the ratification period.

17 Not once did he allow the
18 domains or responsibilities of public
19 administration, local politics or historical
20 scholarship to become confused. It was as if
21 he had an inner compass which naturally guided
22 him through the shoals of indecision and
23 miscalculation. When he arrived at each
24 domain, he was welcomed with the kind of warm
25 regard and respect of someone who earned his

1 reputation honestly and naturally. When he
2 worked on those domains, he exhibited a
3 thoughtful and deliberative regard for the
4 issue at hand. He never rushed to a hasty
5 decision or a prominent position in those
6 deliberations. Rather, he engaged himself and
7 others in a search for the nub of the matter
8 and the most reasonable way of addressing it.

9 One might find nothing
10 particularly earth shattering in these remarks
11 about a nominee to the highest court of the
12 state of New York. In fact, I remember
13 reading a recent comment on this nomination by
14 Professor Norman Olson of John Jay College of
15 Criminal Justice, who remarked that the
16 current justices of the State Court of Appeals

17 "generally speak with one voice...It's rare
18 that one judge can make a difference."

19 Professor Olson was speaking, of course, about
20 the court as an institution that could be
21 tipped one way or the other along the
22 so-called liberal-conservative spectrum of
23 judicial thought and, with all due respect,
24 I'm more concerned about the Court of Appeals
25 as an institution which can be elevated or

1 lowered in the caliber of its deliberations
2 and decisions.

3 In this regard, it is my
4 opinion that Judge Rosenblatt will make a
5 major contribution by joining the cumulative
6 force of those colleagues now on that court
7 and seek to raise its caliber not so much by
8 turning up the temperature of its bench but my
9 engaging its occupants in what Chief Judge
10 John Jay termed the "certain and speedy"
11 search for justice that all expect from it.

12 Thank you.

13 SENATOR LACK: George D.
14 Marlow.

15 MR. MARLOW: Mr. Chairman and
16 distinguished members of this Committee, I
17 would begin by noting that you've had two
18 other items on today's legislative agenda, or
19 two items, rather, that begin with the letter
20 "R" -- Rosenblatt is the only one of -- the
21 only one I've been invited to address.
22 However, I would not, for one, want you to
23 construe my silence about the other "R" to
24 indicate it to be less of interest to my
25 spouse and my house.

1 It is a distinct honor to
2 appear before this esteemed body to respond to
3 your request to tell you about a great person
4 I have known well since 1971.

5 The then Dutchess County
6 District Attorney, Al Rosenblatt, hired me
7 from the Queens DA's office, and I came to
8 work for him from then until he was elected to
9 the County Court bench in 1975 when he again
10 hired me, this time as his first confidential
11 law clerk. A few years later, we became
12 colleagues on the bench and we have been
13 friends now for over 27 years.

14 Because of my close association
15 with him spanning three decades, I can state
16 facts about him which I've learned firsthand.
17 These observations bear directly on his
18 qualifications to serve as an associate judge
19 on our Court of Appeals.

20 Every judge fits his calendar
21 to his or her effective principles in the
22 normal course of his or her private and
23 professional life. I have seen him face that
24 at the altar and always, always reacting
25 informatively with the highest ethical

1 principles which our society expects from its
2 judges.

3 He has taught us lessons about
4 judges which would serve the state, its
5 citizens and the entire court well. For
6 example, he has taught us the importance of
7 insisting that time and effort always be taken
8 to communicate the basis and the reasons for a
9 decision so that all who learn of it can more
10 readily accept it. Because no free society can
11 survive without the utmost confidence in its
12 justice system, the quality he brings to our
13 highest court is an asset of profound value.

14 His uncommon work ethic is also
15 widely known. I can't possibly count the
16 number of times I've spoken to him at his
17 office at ten o'clock at night or later as he
18 was there working on a decision he had to get
19 just right. Anything less is simply
20 unacceptable for him.

21 His tireless efforts to achieve
22 consensus by using his scholarly skills and
23 logic, and his sensitivity to not imposing
24 opinions on his task will also serve the high
25 court. I am constantly told by other friends,

1 acquaintances in the Executive Department and
2 beyond, how much they value his talents and,
3 finally, he is in the unique position of
4 having seen the entire justice system from
5 nearly every viewpoint -- as a young trial
6 lawyer, a prosecutor, county judge, a Supreme
7 Court justice, an appellate judge and as chief
8 administrative judge. No one in our State's
9 history has ever come to this high post with
10 more varied practical and relevant items in
11 his resume. But then I sense I am telling you
12 things that you probably already know.

13 Thank you very much.

14 SENATOR LACK: Thank you.

15 Jennifer VanTuyl.

16 MS. VAN TUYL: Good afternoon.

17 My name is Jennifer VanTuyl. I'm a former
18 prosecuting attorney and former president of
19 the Dutchess County Bar Association. As such,
20 I would fully endorse the comments that have
21 been made by letter by Bob Ostertag, as well
22 as those earlier testifying. But I would like
23 to talk about a period of time in 1987 when I
24 worked with Judge Rosenblatt, and thereafter
25 as his law clerk.

1 Judge Rosenblatt's standards of
2 legal scholarship have always been meticulous,
3 and I think I can speak of this firsthand as I
4 handled appeals in the DA's office and, as any
5 appellate lawyer knows, when you get a file
6 handed to you by a trial lawyer, you learn to
7 handle it as a trial lawyer and Judge
8 Rosenblatt's were the only ones where I found
9 separate files that could be created before
10 the trial even came along; it said "Appeal."
11 He always took the long view and was always
12 preparing for the ultimate determination of
13 the case, and those standards of
14 meticulousness continue to this day, and I
15 also think that's something that you already
16 know.

17 But beyond the standards of
18 meticulous scholarship, I would cite three
19 characteristics of Judge Rosenblatt that
20 unusually qualify him for the Court of
21 Appeals. The first is, he has an almost
22 instinctive sense of just results to assure
23 that all the legal meticulousness never
24 elevates form over substance.

25 The second is what I call

1 foresight or taking the long view. He has
2 always had the ability, like a very fine chess
3 player, to look and see what the consequences
4 of the move will be to the future as it
5 develops, which is certainly a very important
6 qualification to be a judge.

7 Thirdly is clarity of
8 expression. Judge Rosenblatt told all of us in
9 the DA's office that good lawyers need
10 clarity, and I think his own expression
11 confirms the clarity of his thoughts.

12 But beyond the legal, I think
13 that you can be confident that Judge
14 Rosenblatt is also a person of the highest
15 possible character. As a prosecutor, he was
16 known by all for his fairness, and not just
17 for his ability by those who feared his
18 competence in coming up against him, as well
19 as all the attorneys he knew, and this
20 reputation for fairness has followed him as a
21 judge as well.

22 Secondly, he always provided
23 the opportunity for growth in his decisions
24 and encouraged those that came after him to
25 learn and to become the best attorneys they

1 could be. He hired me as the first woman
2 assistant district attorney in Dutchess County
3 in 1971, and I would remind you this was a
4 time when it was highly difficult for many
5 people, particularly police officers, that
6 women should be prosecutors, and I will
7 forever be in his debt for hiring me.

8 I think probably the sure sign
9 of a man is how he discharges power when he
10 has it. He was an administrator in the office
11 of district attorney with a reserve that I
12 think fits the immense power of that post.
13 He's a man who has great respect for
14 authority.

15 In summary, I think if the
16 Senate today has the power to confirm a person
17 who is the classical version of fortitude,
18 justice and temperament, then I would urge his
19 confirmation.

20 SENATOR LACK: For the benefit
21 of my colleagues in the Majority Conference, a
22 staff person is taking down the names and
23 submitting it to the Conference for the
24 purpose of sending up who is here. I
25 recognize the vice-chair, if you have to

1 excuse yourselves briefly.

2 Gerald Hayes?

3 MR. HAYES: My name is Gerald
4 Hayes.

5 SENATOR LACK: Before you
6 start, the Senate is now convening in
7 conference, Senator Lavalie having to leave
8 and Senator Spano, Judge Rosenblatt.

9 MR. HAYES: My name is Gerald
10 Hayes. I'm a practicing attorney in Dutchess
11 County. I want to thank you and members of
12 the Committee for the very high honor of
13 inviting me here today.

14 I began my legal career 30
15 years ago as an assistant district attorney to
16 the legendary Frank Hogan in Manhattan. Three
17 years later I became an assistant district
18 attorney for a man I would endorse and
19 sincerely tell you who I would view now and in
20 the future as the legendary Albert Rosenblatt.

21 I can best describe him to you
22 as a scholar and a gentleman. He made it
23 clear back in the early days in the district
24 attorney's office in the 1970s that it was of
25 paramount importance to be knowledgeable in

1 the world, but more importantly to practice
2 fairly and ethically, and he himself was a
3 walking encyclopedia of the law. He wanted
4 excellence, but he was never pretentious and
5 if you would, let me share a very fond memory
6 I have of essentially my first meeting of the
7 other assistant district attorneys in that
8 office.

9 I was scheduled to begin there
10 in September 1971, the same year that the
11 Criminal Procedure Law was going into effect.
12 I was invited up there one summer to meet the
13 other members of the office. We met at his
14 home and had a cookout and after the cookout
15 we spent several hours sitting around his
16 dining room table discussing the Criminal
17 Procedure Law, and that's the kind of person
18 he was. That's the kind of office he ran. He
19 created a camaraderie that exists to this day
20 among those who work for him. He rose to be a
21 county judge, then to the Supreme Court, to
22 chief administrative judge, to be a justice on
23 the Appellate Division, and he has always
24 remained a gentleman. He's always earned the
25 highest respect of people in all walks of life

1 all over the state, and he's always remained a
2 scholar not only in crafting judicial
3 decisions but in writing of articles on legal
4 concerns, nonlegal concerns, books, lecturing,
5 and there's really no adequate way I could
6 describe to you in a minute or two the respect
7 and the esteem in which he is held.

8 I am pointing to a judge who,
9 in his life, has displayed the highest
10 integrity but, most importantly, when you
11 confirm him you do a great service to the
12 Court of Appeals and to the citizens of our
13 state.

14 Thank you.

15 SENATOR LACK: Thank you very
16 much, Mr. Hayes.

17 Now, Judge Rosenblatt, it comes
18 down to you and you see, you can rest on what
19 he said and you can sit down or you can say a
20 few words. While you're making that decision,
21 let me introduce you to Senator Breslin -- you
22 can skip the next guy, Senator Gold -- Senator
23 Velella, our ranking member Senator Leichter
24 who is here for the next session, Dave
25 Gruenberg, Senator Marchi, Senator Volker.

1 The next one you don't need to know; she's
2 taking votes for me. Senator Saland, Senator
3 DeFrancisco, Senator Balboni, Senator Ray
4 Meier and Senator Farley.

5 You can offer a few words if
6 you would like, and then we'll vote.

7 JUDGE ROSENBLATT: I feel very
8 grateful for the things people said about me.
9 I would like to leave you with some sense of
10 what my feeling is, but a good lawyer "knows
11 when to stop."

12 I want to express to you,
13 Senator Lack, my appreciation for the
14 hospitality you have shown in making the
15 process what it is, as thoughtful -- as
16 hospitable -- as it is. When I came here, I
17 tell you that these surroundings are
18 commodious and they're lovely, but one also
19 senses a little bit of anxiety at a proceeding
20 of this kind. I hope that you will look upon
21 my nomination favorably, and I can only say
22 that if I am confirmed, I will do the very
23 best that I can to justify the confidence
24 shown in me so far, and that I hope will be
25 shown in the future.

1 SENATOR LACK: Well, thank you,
2 Judge, and I certainly think you have the
3 Committee's total attention, not only the
4 members here for you, and anything else that
5 might happen, but there's also reference to
6 our quarters here as commodious, and we thank
7 you for that.

8 Senator Leichter.

9 SENATOR LEICHTER: Yes, thank
10 you, Judge.

11 Had it not been for you
12 appearing before us and coming here on such
13 short notice, I might not have participated in
14 the confirmation. I would note that our
15 periods in law school almost overlapped. You
16 came in the year that I graduated and I think
17 you proved what the dean of Harvard Law School
18 said, that the quality of students was
19 continuing to improve.

20 JUDGE ROSENBLATT: Right, and
21 that may be proven even further because at the
22 present time my daughter is attending the law
23 school.

24 SENATOR LEICHTER: Well, let me
25 ask you just a couple of questions if I might.

1 SENATOR LACK: Just Senator
2 Leichter would ask.

3 SENATOR LEICHTER: How would
4 you describe your approach as a jurist,
5 particularly as concerns your role on the
6 court; what role would you expect to play as a
7 member of the Court of Appeals?

8 JUDGE ROSENBLATT: I would like
9 to think of it as truthful, circumspect,
10 analytical and with due regard for the
11 delicate balance that frames the Constitution.

12 SENATOR LEICHTER: I would ask
13 you if you would consider the Constitution of
14 the state, the federal Constitution, but I
15 want to ask you as well using the Criminal
16 Procedure Law, to give an opinion on a
17 specific matter, if you would generally
18 discuss whether you think that the state
19 Constitution as it reads and as the Court of
20 Appeals has held, offers more protection of
21 the so-called "bill of rights", that
22 provision.

23 JUDGE ROSENBLATT: I agree that
24 the Court of Appeals decision is telling. It
25 certainly is true to say that the state

1 Constitution is broader with regard to what we
2 sometimes colloquially refer to as the bill of
3 rights, and I would say that there are
4 particular cases that indicate a more
5 expansive view of those rights given under the
6 state Constitution, where appropriate.
7 Whether I myself would use it would naturally
8 depend upon a particular analysis, without
9 forecasting how it's to be done in this state.

10 SENATOR LEICHTER: I would not
11 ask you to forecast. When you say you would
12 agree that it's telling, there is no question
13 about that. I was sort of interested in how
14 you feel, what you think about the work of the
15 Court of Appeals and how you might act
16 differently.

17 JUDGE ROSENBLATT: Well, not to
18 be critical of the present Court of Appeals, I
19 don't think that it's appropriate for me now
20 to discuss how I would view a particular
21 constitutional issue until the case came up
22 and whether or not the state Constitution
23 would be an appropriate vehicle for decision,
24 whether in a criminal case or in a civil
25 matter. They would also decide if this is a

1 case in which the state Constitution would
2 require going further than, for example, First
3 Amendment rights; all of these questions would
4 depend upon, I think, a case-by-case analysis,
5 and I would not feel at all comfortable in
6 rendering a determination at this point in
7 what can be a very complex question of law.

8 SENATOR LEICHTER: I understand
9 you're not saying to us that your demeanor
10 with the Court of Appeals would be the
11 rendering of a decision necessarily in accord
12 with the State Constitution. That may be true
13 in some instances and may not --

14 JUDGE ROSENBLATT: I'm not in
15 disagreement that the state Constitution does
16 afford that wider avenue, but I'm not here to
17 say now that I would or would not in any
18 particular case travel one road or the other.
19 That would have to depend on what the case is
20 and what the facts are and whether or not it's
21 appropriate to take the state constitutional
22 path, or whether the state Constitution will
23 be considered, as it has been, to more fully
24 protect those rights and to apply them to the
25 case.

1 SENATOR LEICHTER: How do you
2 see the right of privacy under the state
3 Constitution?

4 JUDGE ROSENBLATT: Well, when
5 you say "right of privacy," we hear the term
6 "right of privacy," but that is a doctrine
7 that incorporates a number of amendments --
8 the Fourth Amendment, the Fifth Amendment, the
9 Sixth Amendment -- (as interpreted, for
10 example, in Griswold v. Connecticut.) The
11 phrase does not appear anywhere in the
12 Constitution, at least not to me, in the very
13 sections of the bill of rights or the language
14 of the Constitution itself. For the right to
15 privacy to be considered in a court context,
16 the right to privacy cases expressed here, we
17 set the limits of privacy to fit with the
18 needs and desires of the citizenry, so that,
19 for example, the police also have an
20 opportunity to investigate within the
21 constitutional limits, with appropriate
22 procedures, with proper safeguards, so that
23 they can do their job in bringing to justice
24 criminals without abridging the rights of the
25 people, and we think, of course, that is an

1 important balance.

2 SENATOR LEICHTER: One more
3 question. I appreciate the balance of
4 interest that you bring from law school and I
5 guess my question is, one of the things that
6 we balance is this right of privacy in a
7 political context, and do you agree that an
8 action under the state Constitution is a
9 course that would be credible?

10 JUDGE ROSENBLATT: I can't
11 recall a case in any jurisdiction -- I would
12 be surprised if any existed -- and I would be
13 surprised if any existed that engaged the
14 state Constitution as a vehicle for the "right
15 of privacy." I would have to agree that -- I
16 would think the state Constitution could be
17 such a vehicle, but I'm not aware of any
18 instance where the right of privacy, per se,
19 was cited in a New York State constitutional
20 context. I don't know if it's necessary; the
21 federal Constitution affords that form of
22 relief and speaks to it, but truly I know of
23 no case under the state Constitution.

24 SENATOR LEICHTER: And just to
25 conclude here, there are two events that went

1 through my mind. One colleague when we asked,
2 one former Appellate Division colleague, said
3 "He's terrific" and that was Justice Friedman
4 I asked and he said, "Oh, you better confirm
5 him. Please give him my best regards."

6 SENATOR LACK: Matter of fact,
7 I spoke to Justice Friedman last week and he
8 gave me the same message.

9 Thank you, Senator Leichter.

10 I'll impose on Senator Saland
11 to move the nomination.

12 SENATOR LEICHTER: I would like
13 to say for the record --

14 SENATOR LACK: You know, we are
15 under time constraints here.

16 SENATOR LEICHTER: I understand
17 you are on a tight schedule, but I think it's
18 very important, and that is, I wonder, have
19 you heard from any of the bar associations?

20 SENATOR LACK: Yes. I said
21 when I started, the State Bar Association has
22 found Judge Rosenblatt well qualified. We
23 have it right here. Your staff already has
24 that.

25 SENATOR LEICHTER: Good, and

1 have we heard from the Association of the Bar
2 of the City of New York or any other?

3 SENATOR LACK: I don't think
4 so, and they don't necessarily normally
5 contact us.

6 SENATOR VOLKER: I did hear
7 from a Supreme Court judge of the United
8 States who thought Al was overqualified to be
9 an associate judge of the Supreme Court of the
10 United States.

11 SENATOR LACK: The State Bar
12 has found him very worthy of confirmation.

13 SENATOR LEICHTER: I just
14 wondered about that.

15 SENATOR LACK: Yes, I made it
16 part of the record and it is part of the
17 record again.

18 Senator DeFrancisco.

19 SENATOR DeFRANCISCO: Looking
20 at the journal of publications, I really would
21 like to know, April 2nd, 1991, "Pleaded or
22 Pled." What was that about?

23 JUDGE ROSENBLATT: Well, if I
24 may say, that prompted me to get an opinion --
25 in the context of Shakespeare's writings. It

1 was a very close question, so I called Ms.
2 Shirley Maul, who is the Vassar College
3 librarian, and I asked her to search through
4 the literature and on CD-ROM, to see -- and I
5 asked her to tell me -- whether the word
6 "pled" ever appears in any of the
7 Shakespearian writings and whether the word
8 "pleaded" appears anywhere within
9 Shakespeare's writings. It turns out "pled"
10 did not appear at all; "pleaded" appears three
11 times. Now, to me that's significant.
12 Shakespeare used the "pleaded" in Henry VI and
13 in Henry VIII. (Laughter)

14 SENATOR LACK: Thank you,
15 Senator DeFrancisco, and there is a member of
16 the Assembly Miller who is a historian, is
17 also here, and so is Senator Leibell, I guess
18 it was. Senator Spano was here, and now I'm
19 going to impose on Senator Saland to move the
20 nominee to the floor.

21 SENATOR SALAND: And I so move.

22 SENATOR LACK: All those in
23 favor aye.

24 (Response of "aye.")

25 Opposed, nay?

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(There was no response.)

Judge Rosenblatt, we'll see you
on the floor. Thank you very much.

(Whereupon, at 4:25 p.m., the
meeting was concluded.)

New York State Bar Association

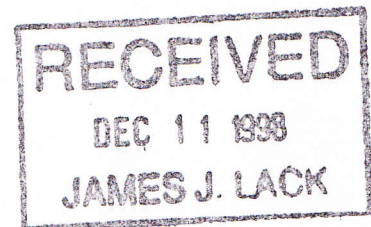
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December 10, 1998

Honorable James J. Lack
Chairman, Senate Judiciary Committee
Room 413, Legislative Office Building
Albany, New York 12247



Re: Confirmation of Appointment of
Hon. Albert M. Rosenblatt

Dear Senator Lack:

With respect to the appointment by Governor George E. Pataki of Hon. Albert M. Rosenblatt as Associate Judge of the Court of Appeals, I wanted to advise you that the New York State Bar Association's Committee on Judicial Selection evaluated the qualifications of Justice Rosenblatt.

Acting in accordance with the "Guidelines for Evaluating Qualifications of Judicial Candidates," adopted by our Association's House of Delegates, the Committee on Judicial Selection found Justice Rosenblatt "Well Qualified" for the office of Associate Judge. This finding was communicated to the Governor in advance of the appointment. For your information and convenience, I am enclosing a copy of the Guidelines that govern our Committee on Judicial Selection.

I trust you will find this information useful regarding the confirmation of the appointment of Justice Rosenblatt.

Respectfully yours,

James C. Moore

December 17, 1998

Hon. James J. Lack, Chairman
Senate Judiciary Committee
The Capitol - Room 413
Albany, NY 12247

By Fax: 518/426-6904

RE: Hon. Albert M. Rosenblatt's Nomination to Court of Appeals

Dear Senator Lack:

I appreciate very much your allowing me to submit a statement in support of Governor Pataki's nomination of Hon. Albert M. Rosenblatt to the position of Associate Judge of the New York State Court of Appeals. Because of a scheduling conflict over which I have no control, I am unable to be in attendance today however much I would have preferred.

I have known Judge Rosenblatt for thirty years or more. He came to Poughkeepsie to practice law with a local attorney who was then a senior member of the local bar. After several years of private practice, Judge Rosenblatt obtained a position as an Assistant District Attorney for Dutchess County, and from that moment until this, he has distinguished himself professionally, publicly and personally far beyond anyone I have known from this community or most any other. My regard for him at all levels of human experience is virtually boundless.

As an Assistant District Attorney, Judge Rosenblatt was a thorough, thoughtful, efficient and successful practitioner, and after a number of years, when the opportunity arose, he sought and was elected to the Senior position in that office. He reorganized the office into a smoothly operating, highly competent and effective one. Looking back at that period, I have often been reminded of a pre-television radio program entitled "Mr. District Attorney," which began each episode with the monologue, "It shall be my duty as District Attorney not only to prosecute to the limit of the law all persons accused of crime perpetrated within this county, but to defend with equal vigor the rights and privileges of all its citizens." Judge Rosenblatt's approach to the criminal justice system during that period epitomized the high principles contained in both parts of that statement, and were he never to have left the office, I suspect he would regularly have been re-elected to it, probably without opposition and probably with active bi-partisan support as well.

Judge Rosenblatt's career as a jurist is nothing less than exemplary. One need only read any randomly selected number of his opinions at any judicial level to observe the depth and quality of his thought processes, his approach to problems, his concern for all parties to litigation, and lately, given his opportunity to write appellate opinions, his concern for public policy and the far reaching affect of his opinions not only upon litigants, but upon the public at large as well. His ability to convey those principles by written word consistently exceeds that of most others whose opinions I have read over the years. That rare ability, of course, is extremely important when applied to judicial pronouncements emanating from the highest court of this state which deal almost exclusively with issues of law that affect all of us as citizens.

I know Judge Rosenblatt to be a tireless worker, not only in response to his professional calling, but also as to the many community projects he has undertaken over the years, particularly in the context of its history. I wish you would ask him what he knows about Melancton (sp.?) Smith and his relation to New York's adoption of our federal constitution. I know the question will elicit a smile and an inquiry as to why you have asked the question, together with a short discourse that I know your committee will find interesting. I should also report that Judge Rosenblatt is personally well liked and most highly regarded throughout this community, and within our local bar there is no one I know or of whom I am aware - no one - who does not so regard him.

I am not of Judge Rosenblatt's political persuasion, but I am thoroughly delighted that this state, subject to the Senate's approval, will have the benefit of his very unique, even handed and highly capable contribution to its body of law. I am a former president of the New York State Bar Association, and as such have for many years been concerned

with the manner by which we in New York select our judges. We don't do that very well. But sometimes we luck out. We have in this instance, in spades, and I am tickled to death to be able to support Judge Rosenblatt's candidacy unequivocally and without even a suggestion of reservation.

Thanks so much.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert L. Osterlag". The signature is written in dark ink and is positioned above the printed name.

Robert L. Osterlag

RLO/cb

Statement on Behalf of
The Honorable Albert M. Rosenblatt
Nominated to the New York State Court of Appeals

December 17, 1998

My name is Stephen L. Schechter and I reside in Niskayuna, NY. I am a Professor of Political Science at Russell Sage College in Troy, NY, where I also direct the Council for Citizenship Education. I confess that I teach Constitutional Law and occasionally write in the field of constitutional history. But I appear before this august body as a layperson and will limit my declaration to a personal story which conveys something of the personal character of Judge Albert M. Rosenblatt.

From 1986 to 1990, I served as Executive Director of the New York State Commission on the Bicentennial of the U.S. Constitution. It was in this capacity that I first met Judge Rosenblatt who was appointed in 1987 as Chief Administrative Judge of New York State. Since the Commission was assigned to the Office of Court Administration, technically we fell under Judge Rosenblatt's administrative jurisdiction.

The plot thickened when I realized that Judge Rosenblatt's home county, Dutchess County, was then under consideration as the primary site for our state's bicentennial celebration in 1988. Back in 1788, Dutchess County's seat, Poughkeepsie, was the state capital where New York State ratified the U.S. Constitution. I say that Poughkeepsie was "under consideration" because powerful state interests were in favor of locating the official celebrations in New York City because it would be more conducive to national media coverage.

The plot thickened further when I realized that Judge Rosenblatt was an avid local and constitutional historian with a keen research interest in the ratification period. In particular, he

was interested in the place of Dutchess County in the ratification process and the role of two Dutchess county delegates (Antifederalist Melancton Smith and Federalist Egbert Benson) at the state's ratifying convention.

With all these connections of position and place, Judge Rosenblatt could have easily assumed a prominent role in the Commission's deliberations—on the selection of our bicentennial site, on the identification of local dignitaries for those celebrations, or in the crafting of political and historical themes for emphasis at those celebrations. Alternatively, Judge Rosenblatt could have simply removed himself from the whole business, since this was, after all, a rather small corner of life filled with many potential landmines.

Judge Rosenblatt pursued neither alternative. He neither intruded himself into nor removed himself from any of these micro-domains. Instead, he would become involved in each as the situation warranted. When we had an administrative problem to solve, he was always there for us in his capacity as Chief Administrative Judge. When he became involved in the local celebrations in Poughkeepsie and Dutchess County, he did so through the various local and county groups on which he served as a prominent resident and community leader. When he and I discussed issues of historical research and interpretation, he unobtrusively steered that conversation to a place where historians talk with one another as individual scholars removed from the administrative and political considerations of the moment.

Not once did he allow the domains or responsibilities of public administration, local politics, or historical scholarship to become confused. It was as if he had an inner compass which naturally guided him through the shoals of indecision and miscalculation. When he arrived at each domain, he was welcomed with the kind of warm regard and respect of someone who earned their reputation honestly and naturally. When he worked in each domain, he exhibited a thoughtful and

deliberative regard for the issue at hand. He never rushed to a hasty decision or a prominent position in those deliberations. Rather, he engaged himself and others in a search for the nub of the matter and the most reasonable way of addressing it.

Now, one might find nothing particularly earth shattering in these remarks about a nominee to the highest court of the State of New York. In fact, I remember reading a recent comment on this nomination by Professor Norman A. Olson of John Jay College of Criminal Justice in Manhattan who remarked that the current justices of the State Court of Appeals "generally speak with one voice. . . . It's rare that one judge can make a difference" (*The New York Times*, December 10, 1998, p. D1). Professor Olson was speaking of course about the Court as an institution that could be tipped one way or the other along the so-called liberal-conservative spectrum of judicial thought.

But, with all due respect for those who are concerned about the Court of Appeals as an institution which can be tipped in a conservative or liberal direction, I am more concerned with the Court of Appeals as an institution which can be elevated or lowered in the calibre of its deliberations and decisions. And in this regard, it is my opinion that Judge Rosenblatt will make a major contribution by joining the cumulative force of those colleagues now on that Court who seek to raise its calibre not so much by turning up the temperature of its bench but by engaging its occupants in what Chief Judge John Jay termed the "certain & speedy" search for justice that all expect from it.