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LOCAL NEWS  
CAPITOL/STATE

7-DAY ARCHIVE  
CAPITOL  
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NATION/WORLD  
BUSINESS  
OPINION  
SPORTS

ENTERTAINMENT  
LIFE

COMMUNITIES  
SPECIAL REPORTS  
WEATHER  
LEGISLATION  
DESTINARIES  
ARCHIVES

MARKETPLACE

COMPANIES  
JOBS  
FINANCIAL  
AUTOS  
RECREATION  
SHOPPING  
FELLOW TRAVELERS  
TRAVEL & SPENDING AIDS  
ONLINE STORE

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### Lawmakers sign off on Pataki's pick

Albany-- Robert Smith named to Court of Appeals despite attention on donations

Court of Appeals nominee Robert Smith, who said he broke his wrist when he slipped on a patch of ice, answers questions Monday from the Senate Judiciary Committee. (Jim McKnight / AP)

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back 

## Lawmakers sign off on Pataki's pick

Albany-- Robert Smith named to Court of Appeals despite attention on donations

By **JAMES M. ODATO**, Capitol bureau  
First published: Tuesday, January 13, 2004

A Manhattan lawyer who has fought against the death penalty and gave generously to Republicans, including Gov. George Pataki, was named to the state's highest court Monday.

Robert Smith, 59, who was nominated last year by Pataki, was unanimously recommended to the Court of Appeals after a remarkably lively and prolonged confirmation hearing of the Senate Judicial Committee.

Smith received ringing endorsements from a diverse group testifying at the hearing, including former Cuomo administration counsel Evan Davis and former Sen. John Dunn.

About three hours later, the full Senate voted in favor of Smith with no opposition.

"I am not going to the court with an agenda," Smith said. "I do not intend to be an activist judge."

The nomination of Smith, who graduated first in his class at Columbia Law School, drew substantial attention because of his substantial political contributions and his pro-bono work for people challenging the state's death penalty. Pataki's first-term priority was to establish capital punishment. Pataki chose Smith over six other finalists.

Smith acknowledged his contributions and said his views on the death penalty have moved toward ambivalence in recent years.

The biggest critic of his nomination at the hearing, Elena Ruth Sassower, complained the Senate was confirming Smith before getting full disclosure on his political contributions. She said records show he gave more than \$219,000 to Pataki and Republican campaigns during the past decade but the Legislature needs to get an accounting from him.

She also said someone should investigate the "special counsel" relationship Smith's law firm had with the Pataki administration, which has resulted in at least \$236,000 in state work.

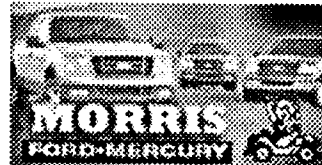
None of the Senate Committee agreed. Sen. Neil Breslin, D-Bethlehem, joined a chorus of minority conference members and Republicans who said Smith holds impeccable credentials. "I feel, quite frankly, Mr. Smith will be independent," Breslin said.

Smith said he had no "expectation of any quid pro quo" and "to my belief, never got anything except courtesy in exchange for contributions."

He didn't itemize his donations but said he has been giving to causes and people he believes in for years. They included failed 1990 GOP gubernatorial candidate Pierre Rinfret, who wanted to abolish

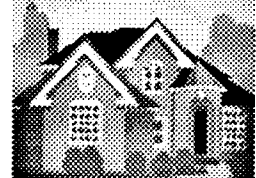
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the Court of Appeals.

Also speaking during Smith's hearing, Debra Jaeger of North Tonawanda urged the Legislature to tighten the death penalty law. Jaeger's sister, Jill Russell-Cahill, was murdered by her husband, James Cahill. The Court of Appeals overturned his death sentence because aggravating factors could not be proven despite proof that he poisoned his wife as she recovered in a hospital from a beating he had inflicted upon her.

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