

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Messages from the Governor.  
Reports of standing committees.  
The Secretary will read.

THE SECRETARY: Senator  
DeFrancisco, from the Committee on Judiciary,  
reports the following nomination:

As Associate Judge of the Court of  
Appeals, Robert S. Smith, of New York.

THE PRESIDENT: Senator  
DeFrancisco.

SENATOR DeFRANCISCO: I would  
like to report to the full Senate that Robert  
S. Smith appeared before the Judiciary  
Committee this morning. There was quite a  
lengthy discussion and review of his  
credentials, he was found to be qualified, and  
there was a unanimous vote on his behalf to  
recommend Mr. Smith as an associate justice of  
the Court of Appeals.

I'd like to defer my comments until  
after Senator Bruno speaks.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam  
President.

Thank you, Senator DeFrancisco.

1 Thank you to you, as chair of Judiciary, for  
2 your deliberations, and to the committee, on  
3 behalf of the Senate, in having very  
4 thoroughly examined the qualifications of Bob  
5 Smith.

6 And I think we're indebted to the  
7 Governor for having made the selection of Bob  
8 Smith to be an associate of the highest courts  
9 here in the state.

10 And when you take a look at his  
11 background, you can see how he is one of the  
12 most accomplished legal experts in this state,  
13 graduating, I believe, first from Columbia,  
14 which is quite an honor and distinction, being  
15 editor-in-chief of the very prestigious  
16 Columbia Law Review. And I believe the  
17 New York State Bar Association gives Mr. Smith  
18 an unqualified highest rating.

19 Trial lawyer by background, has  
20 tried fifty-plus major cases, has appeared  
21 before every court, including the U.S. Supreme  
22 Court, where he, by his thorough background  
23 knowledge, research, distinguishes himself.

24 We're proud that we in this house  
25 can confirm Mr. Smith to be Judge Smith and

1 represent us here in this state.

2 And again, I want to commend the  
3 Governor for this very wise selection, one of  
4 the most qualified individuals that we could  
5 confirm here in the Senate for this very high  
6 office.

7 Thank you, Madam President.

8 Thank you, Senator DeFrancisco.

9 THE PRESIDENT: Senator  
10 DeFrancisco.

11 SENATOR DeFRANCISCO: Yes, I rise  
12 to move the nomination of Robert S. Smith to  
13 become an associate justice of the Court of  
14 Appeals of the State of New York.

15 You know, prior to this particular  
16 committee meeting there's been a lot of  
17 discussion in the press about various issues.  
18 And obviously all of us are concerned about  
19 certain issues and certain cases that have  
20 been handed down.

21 There never, ever was, nor could  
22 there be, any dispute about the qualifications  
23 of this man to the position that he's been  
24 nominated to. Senator Bruno mentioned some of  
25 them. But to be a member of Phi Beta Kappa

1 and graduate from Stafford with highest  
2 honors, be first in his class at Columbia Law  
3 School and editor-in-chief of the Law Review,  
4 a partner in one of the most prestigious firms  
5 in the country -- Paul, Weiss -- visiting  
6 professor at Columbia Law School, cochair of  
7 the New York State Bar Association Commission  
8 on Judicial Administration. And he's written  
9 many, many articles on very complex issues and  
10 has tried very complex pieces of litigation.

11 I was pleased to hear Senator Bruno  
12 say something good about trial lawyers,  
13 because that's a very good thing. Because  
14 being a trial lawyer, especially assuming the  
15 bench, is extremely important. Having that  
16 background, knowing what it is like to be in  
17 the trenches and to understand the  
18 complexities and the practicalities of  
19 litigation is extremely important.

20 As I mentioned, there was a lot of  
21 discussion before the committee meeting. And  
22 I'm very pleased to say that the committee  
23 meeting was not a lot of fireworks, as was  
24 anticipated, but true, serious discussion,  
25 honest answers on very difficult issues. And

1 Mr. Smith certainly held his own in that  
2 meeting and made comments that comforted most  
3 of us on some of these issues -- I'd say all  
4 of us in the committee, since we all voted in  
5 his favor.

6 Senator Velella had a great  
7 argument, a great point, and I'll repeat it.  
8 And the point was maybe each year you might  
9 want to read what you said to the committee,  
10 just to remind yourself. Because that's what  
11 we're relying on, what you said to the  
12 committee. And I think that was a good  
13 suggestion for everyone to do, whether you're  
14 a judge or a legislator.

15 So I'm very pleased to rise in  
16 support of this nominee and to move his  
17 nomination.

18 THE PRESIDENT: Senator Malcolm  
19 Smith.

20 SENATOR MALCOLM SMITH: Thank you  
21 very much, Madam President.

22 I rise to second the nomination of  
23 Mr. Smith, not only because of his impeccable  
24 credentials but also because he obviously is  
25 someone who understands the importance of the

1 position which he will soon be undertaking.

2 The Governor has once again  
3 recommended someone with tremendous  
4 credentials. Senator Bruno talked about him  
5 being first in his class at Columbia Law  
6 School. And I'm not sure people recognize how  
7 tremendous of a feat that is. It is by no  
8 means something that is simple or easy to  
9 accomplish.

10 He also has done a tremendous  
11 amount of pro bono work in the area of  
12 defending the death penalty and is in private  
13 practice for 35 years.

14 But more importantly than any of  
15 his credentials, Madam President, there is one  
16 thing that I have not completed my analysis  
17 on, but based on his last name, I think we do  
18 have a relationship somewhere. And it will be  
19 quite, frankly, very nice to have a cousin or  
20 a relative on the Court of Appeals bench.

21 Thank you.

22 (Laughter.)

23 THE PRESIDENT: Thank you,  
24 Senator Smith.

25 Senator Brown.

1                   SENATOR BROWN:     Thank you.

2                   I want to congratulate Mr. Smith on  
3 his nomination to the Court of Appeals.

4                   But I do feel it's important to  
5 raise a concern. This concern in no way is  
6 being raised to distract from Mr. Smith's  
7 credentials. But I am concerned about  
8 geographic diversity on the Court of Appeals.  
9 And it saddens me that as we look at our Court  
10 of Appeals for the State of New York, there  
11 are no members from west of Albany on the  
12 Court of Appeals.

13                   I just feel it's important to  
14 highlight that. And I'm hopeful that in the  
15 near future, as other appointment  
16 opportunities come available, that this  
17 discrepancy in terms of geographic diversity  
18 on the Court of Appeals will be recognized.

19                   Thank you.

20                   THE PRESIDENT:     Senator Balboni.

21                   SENATOR BALBONI:     Madam  
22 President, I think it's important at this  
23 point in time not only to look at the  
24 qualifications and credentials of this  
25 particular nominee but also to recognize that

1 the vote in favor for this particular  
2 candidate will signal the completion of a  
3 Pataki mark on this court.

4 And when you take a look at the  
5 experience, the expertise, the intellectual  
6 firepower that the Governor has assembled on  
7 this court, I think that what it says is that  
8 you have the ability to shape opinions and to  
9 really change the way that the Legislature  
10 interacts with the highest court of the state.

11 And I think with hopefully soon to  
12 be Judge Smith, what you have here is someone  
13 that, when you look at his resume, you realize  
14 that it doesn't necessarily matter that you've  
15 had a judicial post beforehand, it doesn't  
16 necessarily matter that you may have had  
17 opinions in the numerous trials that you've  
18 had beforehand, what matters is that you are  
19 qualified, competent, capable.

20 And frankly, I dare anyone to look  
21 at this resume and not say "show off." I  
22 mean, it's an amazing resume. And I think  
23 that this is a mark for this court and for  
24 this state that leads the way in this nation.

25 I'm going to support the nominee,



1 Madam President.

2 THE PRESIDENT: Senator Maziarz.

3 SENATOR MAZIARZ: Thank you very  
4 much, Madam President.

5 Mr. Smith, I attended the Judiciary  
6 Committee meeting today at the invitation of  
7 the chair. I am not a member of that  
8 committee. And I have to tell you that I was  
9 truly undecided as to how I was going to vote  
10 on this nomination today.

11 Because, quite frankly, I was  
12 inclined at the time to probably vote in  
13 opposition to your nomination, if only for no  
14 other reason than to send a message to  
15 Judge Kaye and Judge Bundy Smith and Judge  
16 Ciparick and Judge Rosenblatt, send them a  
17 message that this legislative body was  
18 extremely disappointed in their decision that  
19 they recently made in December in overturning  
20 the death penalty case of one James Cahill of  
21 Syracuse.

22 Mr. Smith -- soon to be Judge  
23 Smith, I'm sure -- sitting to your right is a  
24 woman by the name of Debra Jaeger. And Debra  
25 testified today before that committee. And

1 Debra's sister, Jill Cahill, was murdered by  
2 her husband.

3 And the district attorney of  
4 Onondaga County made a very difficult  
5 decision, after a prolonged process, to seek  
6 the death penalty against Mr. Cahill.

7 And a jury of his peers, twelve  
8 people, in Onondaga County, struggled a great  
9 deal through the deliberative process, through  
10 the trial, through the penalty phase,  
11 struggled a great deal with the death penalty  
12 decision. One juror, in fact, was so  
13 emotionally distraught that she had to be  
14 taken to a hospital.

15 But in the end, that jury  
16 unanimously agreed with the death penalty  
17 verdict as it was constituted by this  
18 Legislature -- this Senate, this Assembly --  
19 and signed into law by this Governor.

20 But four individuals, four  
21 colleagues whom you are going to be serving  
22 with very soon, sought, I think for their own  
23 personal beliefs in opposition to capital  
24 punishment, sought to throw aside the feelings  
25 of the Senate, of the Assembly, of the

1 Governor, and most importantly, I think, of  
2 twelve independently chosen individuals who  
3 did their job, who did their job in Onondaga  
4 County.

5 You said two things this morning,  
6 Mr. Smith, that quite frankly changed my mind.  
7 You said that parties before a judge or a  
8 court are not the only ones affected by a  
9 decision of a court. And you said that you  
10 would remember that as you served on the Court  
11 of Appeals. That decision by those four  
12 justices clearly impacted Debra Jaeger and her  
13 family.

14 The second thing you said is that a  
15 court is not supposed to overrule the  
16 Legislature. Because I truly believe,  
17 listening to you this morning, Mr. Smith, that  
18 you will keep that promise that you made  
19 today.

20 I intend, Madam President, on  
21 voting in the affirmative. Thank you very  
22 much.

23 THE PRESIDENT: Senator Nozzolio.

24 SENATOR NOZZOLIO: Thank you,  
25 Madam President.

1 I wish to rise and endorse the  
2 candidacy of Judge Smith to the Court of  
3 Appeals. In echoing the comments of my good  
4 friend and colleague Senator Maziarz, that the  
5 wonderful resume presented to this body by Bob  
6 Smith is exemplary and, I am sure, throughout  
7 his academic and legal training, developed a  
8 keen sense of not just knowledge of the law  
9 but respect for the law and love of the law.

10 And that law is made here. I need  
11 remind all those who practice in our courts  
12 that this is the legislative body, this is the  
13 voice of the people. And that this body,  
14 within the framework of the federal and state  
15 constitution, does make the law.

16 I'd be remiss if I didn't say why  
17 we were here today, and that's to fill a  
18 vacancy left by the elevation of our dear  
19 friend Judge Dick Wesley, who has left the  
20 Court of Appeals to serve, under the  
21 nomination of President George Bush, to serve  
22 as a member of the federal District Court of  
23 Appeals for the Second Circuit, an honor of  
24 great note.

25 And that I know those of us in the

1           Legislature who served at one time with former  
2           Assemblyman Dick Wesley are extremely pleased  
3           that he has taken up this responsibility to  
4           serve in one of the highest courts of this  
5           nation.

6                         This vacancy presents an  
7           opportunity for us to review the  
8           qualifications of Robert S. Smith. And  
9           certainly those qualifications are very well  
10          noted. We respect his accomplishment. And I  
11          for one believe that he is very well qualified  
12          to serve as judge.

13                        I think it's mindful that the seat  
14          which he is to take is a seat that was held by  
15          a former legislator, one who had a great  
16          respect for the process that we engage in each  
17          and every day in these halls of this floor of  
18          the State Capitol. Judge Wesley respected the  
19          legislative process a great deal. It is my  
20          hope that Judge Smith will do the same.

21                        I wish him well, congratulate him  
22          on this, and I certainly will support his  
23          nomination.

24                        Thank you, Madam President.

25                        THE PRESIDENT:         Senator

1 Schneiderman.

2 SENATOR SCHNEIDERMAN: Thank you,  
3 Madam President.

4 I rise also in support of the  
5 nomination of Mr. Smith to the court. And I  
6 think -- I have conferred with some of his  
7 former partners about him and have been  
8 advised that this is in fact a very heroic  
9 individual who managed to survive for many,  
10 many years as the lone Republican at Paul,  
11 Weiss, Rifkind, Wharton & Garrison. Which is  
12 something of an accomplishment, given the fact  
13 that most of the rest of them were my friends  
14 in the National Lawyers Guild.

15 I understand from people who do .  
16 disagree with Mr. Smith politically that even  
17 among people who disagree with him -- and I  
18 call this to the attention of my colleagues  
19 who may disagree with him on one or another  
20 issue -- he is someone who's regarded as a  
21 person of tremendous integrity, of great  
22 independence, and of someone who has really  
23 established the fact that he is what we crave  
24 in judges: he is an independent thinker who  
25 will evaluate cases on the merits.

1                   He is, I gather from his partners,  
2                   an extraordinary lawyer. And it sounds as  
3                   though we are very, very fortunate to have him  
4                   as a nominee.

5                   And whether or not we agree with  
6                   the judge on every issue -- and I've been in  
7                   court in front of many judges who I disagreed  
8                   with vehemently -- what you want is a fair  
9                   hearing, an independent judgment, and a fine  
10                  mind. And Judge Smith, soon to be, has all of  
11                  those.

12                  Thank you.

13                  THE PRESIDENT:        Senator Diaz.

14                  SENATOR DIAZ:        Thank you, Madam  
15                  President.

16                  A few weeks ago, when I heard of  
17                  the nomination of Mr. Smith by Governor  
18                  Pataki, I was troubled and I wrote an  
19                  educational piece on the -- in one of the  
20                  New York City newspapers that was responded by  
21                  Herman Badillo.

22                  And I expressed my concern not  
23                  based on Mr. Smith's qualifications, I  
24                  expressed my concern, Madam President, on the  
25                  political contributions that Mr. Smith made to

1 Governor Pataki and to the members of the  
2 Republican Party.

3 Why did I -- why does that concern  
4 me, and what was my worry? In New York City,  
5 there was a time when politics was usual and  
6 normal, and the way judges had been chosen for  
7 years was the same way. And we, black and  
8 Hispanic, we never used to have the  
9 opportunity to choose judges and to appoint  
10 them. Until we got the opportunity to get  
11 some of our members to become county  
12 Democratic chairmen.

13 Once that happened and we, black  
14 and Hispanic, had the opportunity of choosing  
15 and appointing judges, someone decided that  
16 the rules of the game was wrong and that we  
17 have to change the system of appointing  
18 judges.

19 And they used the county chairman  
20 of Brooklyn, Mr. Norman, as an example of  
21 that, because of political contributions and  
22 all of those things.

23 And then I got worried because I  
24 read in somewhere that for the past five  
25 years, Mr. Smith -- for example, in 1999, he



1           donated \$10,000 to the Republican Committee,  
2           \$10,000 to Friends of Pataki, \$500 to the  
3           New York State Senate Republican Campaign  
4           Committee.

5                         In 2000, he donated \$10,000 to the  
6           New York State Republican Committee and \$1,000  
7           to the Committee for Goodman.

8                         In 2001, he donated \$20,700 to  
9           Friends of Pataki and \$6,000 to the New York  
10          State Republican Committee.

11                        In 2002, he donated \$500 to People  
12          for Ravitz, \$25,000 to the New York State  
13          Republican Committee, \$500 to Eristoff for  
14          State Senate, \$2,000 to Friends of John Faso,  
15          and \$5,000 to the State Conservative Campaign  
16          Committee.

17                        And in 2003, he donated \$30,000 to  
18          the Republican Committee and \$1,000 to  
19          New Yorkers for Randy Daniels.

20                        So that concerned me, the way that  
21          he was chosen, but not based on his  
22          qualifications. I was concerned on the way  
23          that it was pointed by the news that if in  
24          Brooklyn it's wrong to elect judges that way,  
25          how come it's okay for the Governor too to do

1           it.

2                         But this morning, after meeting in  
3 my Democratic conference and listening to my  
4 Democratic leader and listening to his advice,  
5 Senator Paterson, on the whole situation, I  
6 got cleared up. And I'm ready to support the  
7 nomination of Senator [sic] Smith like  
8 everybody is doing.

9                         Thank you very much.

10                        THE PRESIDENT:        Senator Paterson.

11                        SENATOR PATERSON:      Thank you.

12 I've never been recognized so quickly in this  
13 chamber.

14                        I want to thank Mr. Smith for his  
15 attention that he paid to the Senate Minority,  
16 speaking to the ranker on the Judiciary  
17 Committee -- also Senator Smith, no  
18 relation -- and speaking to me about some of  
19 his ideas. He's quite well prepared. He's  
20 quite -- one who responds very quickly to  
21 issues.

22                        It's rare that a person goes  
23 directly to the bench at this high a level,  
24 but it's also rare that we have a candidate of  
25 his caliber that comes before us.

1                   So I want to congratulate the  
2 Governor for his suggestion and his  
3 appointment, and certainly aver that we  
4 confirm this appointment, and thank Senator  
5 Bruno for his help in the process as well.

6                   THE PRESIDENT:     Does any other  
7 Senator wish to be heard?

8                   The question, then, is on the  
9 confirmation of Robert S. Smith as Associate  
10 Judge of the Court of Appeals. All in favor  
11 please signify by saying aye.

12                   (Response of "Aye.")

13                   THE PRESIDENT:     Opposed, nay.

14                   (No response.)

15                   THE PRESIDENT:     Robert S. Smith  
16 is hereby confirmed as an Associate Judge of  
17 the New York State Court of Appeals.

18                   Congratulations, Judge Smith.

19                   (Applause.)

20                   THE PRESIDENT:     Judge Smith is  
21 accompanied this afternoon by his wife, Dian,  
22 and his daughter, Rosie.

23                   And on behalf of the Senate and as  
24 President of the Senate, Judge Smith, I want  
25 to echo what has been said in this chamber.

1 New York State is indeed fortunate that  
2 someone of your intelligence, integrity,  
3 scholarship, and wide-ranging experience is  
4 willing to assume the awesome responsibility  
5 of being a judge in our Court of Appeals.

6 Best wishes to you, and thank you.

7 Senator Skelos.

8 SENATOR SKELOS: Madam President,  
9 there will be an immediate meeting of the  
10 Local Government Committee in the Majority  
11 Conference Room, followed by -- and we'll  
12 announce it -- a Higher Education Committee  
13 meeting and then a Transportation Committee  
14 meeting.

15 THE PRESIDENT: There will be an  
16 immediate meeting of the Local Government  
17 Committee in the Majority Conference Room,  
18 followed by a Higher Education Committee  
19 meeting and a Transportation Committee  
20 meeting.

21 The Secretary will read.

22 THE SECRETARY: Senator Spano,  
23 from the Committee on Investigations and  
24 Government Operations, reports:

25 Senate Print 1144, by Senator