

**Subject: RE: Robert Smith's Confirmation to the NY Court of Appeals**

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VICTIM'S SISTER URGES DEATH PENALTY REVISIONS

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Illustration: Associated Press

Debra Jaeger of North Tonawanda, shown Monday in the State Capitol in Albany, says the state should fix the statute "or get rid of it."

ALBANY

A North Tonawanda woman has made an impassioned plea to state lawmakers to revise the capital punishment law after the death sentence her former brother-in-law received in the 1998 murder of her sister was overturned.

"The emotional toll this has taken on our family is immeasurable," Debra Jaeger said Monday of the slaying of her sister, Jill Cahill, whose estranged husband, James Cahill III, beat her with a baseball bat and then, six months later, poisoned her while she was recuperating in a Syracuse hospital.

Jaeger made the appeal during an unusual address she was allowed to make to the State Senate Judiciary Committee, which was weighing the confirmation of Robert S. Smith, a Manhattan lawyer, to the Court of Appeals, the state's highest court.

Smith, who has represented defendants in several high-profile death penalty cases, later was unanimously confirmed by the State Senate.

Jaeger, invited to speak to the committee by State Sen. George Maziarz, R-North Tonawanda, blasted a Court of Appeals ruling last month that reduced Cahill's sentence, arguing that the court had overstepped its legal authority with judges imposing their political and personal opinions in the case. Without specifics, she called for new provisions to prevent the courts from overruling legislative intent of the death penalty statute.

"This law has been nothing more than a money pit for New York State taxpayers," said Jaeger, who said she is considering a lobbying effort to change the law. "Fix it or get rid of it."

Cahill is expected to get a prison term of 128 years to life when he is resentenced Wednesday. Jaeger argued that the law needs to be written in

black and white so judges and lawyers no longer can misread it or bend and twist it to fit their personal views.

Jaeger did not address Smith's nomination directly. In the afternoon vote by the full Senate, all Democratic lawmakers joined the Republicans in confirming Smith.

Privately, some Democrats said they did not want to pick a fight on the first day of the legislative session over a confirmation that already was assured.

Gov. George E. Pataki, a Republican, had angered upstate lawmakers by naming Smith, another downstater, to the high court; the Court of Appeals now has no member residing west of Albany.

Pataki selected Smith, 59, over Eugene F. Pigott Jr., presiding justice of the Appellate Division of State Supreme Court in Western New York, who had been assumed to be the front-runner because of his judicial experience and geographic politics.

Smith has been a major contributor to Republican causes, especially Pataki's political war chest.

An analysis by The Buffalo News on the day Smith was nominated showed he had donated at least \$219,000 to Pataki and state Republican committees since 1995. That does not include tens of thousands of dollars in additional contributions to federal GOP officials.

Monday, State Sen. Dale M. Volker, R-Depew, who initially questioned the nomination because of Smith's defense of death row inmates, said that, over the past decade, Smith had donated closer to \$500,000.

In his appearance before lawmakers, Smith said he has long contributed to politicians but had not received anything in return. "I have never expected it or, to my belief, never got anything except courtesy in exchange for contributions," he said.

Smith also sought to allay concerns that he would take an activist role on the court, which critics say has become increasingly bold in ignoring the will of the Legislature.

"I am not going on the court . . . with an agenda," he said. Of the court's role, he said, "It's not supposed to overrule the Legislature." He said he would decide cases by the law and not "rewrite the law the way I think it ought to be."

Such words were comforting to some lawmakers who initially had questioned Smith's abilities to rule fairly in death penalty cases. The court, which will hear another death penalty case this week, has overturned the two death penalties it has reviewed, on technical rather than constitutional grounds.

"All I ask of you is that you follow the law without emotion," Volker told Smith.

The lawmakers were not moved by Elena Ruth Sassower of the Center for Judicial Accountability, who urged Smith's confirmation be delayed until questions about his campaign contributions could be answered. She accused Smith of showing "insensitivity" to questions that his contributions helped him "buy his nomination." She lashed out at what she called a closed-door judicial nomination process "rife with conflict of interest."