

Smith's approval exposes flaws in the review process

The appointment of a new judge to New York's highest court this week exposed how anemic our system of checks and balances can be.

Here's how it's supposed to go: A Court of Appeals candidate appears before the Senate to see if he is right for the job. And on Monday, Gov. George Pataki's nominee, Robert S. Smith, a private Manhattan lawyer, was reviewed. But the inspection of his background, abilities and character came up short. Instead, here's what we got:

■ **Rubber-stamping:** The outcome was never in doubt despite declarations from some senators that they were on the fence about Smith. The Senate never rejects a Court of Appeals nomination from the governor. That especially wasn't going to happen in this instance, with a Republican-led Senate weighing an appointment by a Republican governor.

If Smith's 90-minute question-and-answer session before the Judiciary Committee was lengthy by New York standards, it remained perfunctory.

"If Governor Pataki thinks you're the man for the job, then you have my vote," said Sen. John Bonacic, R-Mt. Hope, capturing the essence of the hearing.

Compare that to the scrutiny given to nominees to the U.S. Supreme Court. Remember Clarence Thomas? In New York, polite questions and testimonials get characterized as a prolonged review.

■ **Soapboxing:** Several senators turned the forum into a gripe session about the Court of Appeals. It's taken the law into its own hands and away from the state Legislature, they claimed.

How dare judges trump legislators, some said. How dare they come to their own conclusions? When legislators questioned Smith about the "separation of powers" among branches of government, they implied that not all branches, especially the judiciary, are equal.

The court is "not supposed to overrule the Legislature," Sen. George Maziarz, R-North Tonawanda, said when the full Senate voted on Smith.

Maziarz's beef? A recent death-penalty case.



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Last fall, the court voted 4-2 to overturn the death sentence of a Syracuse man who sneaked into his wife's hospital room to poison her with cyanide. The court said that legally, the case didn't meet the conditions necessary to trigger capital punishment — conditions laid down by the Legislature.

Maziarz said the four judges who overturned the Syracuse death-penalty case did so because of "their own personal beliefs" about capital punishment. Never mind that the author of the decision, Judge Albert Rosenblatt, once sentenced a man to death.

Upping the politics, Maziarz said he considered voting thumbs-down on Smith to send a message to the court "that this legislative body was extremely disappointed in their decision." But no one would really vote no.

■ **Turning a blind eye to money and politics.** Democrats have long complained about having no role in the appointment of judges. So what did they say about the \$155,000 Smith and his wife have given Pataki and other Republican campaign committees over the last five years? Zip. Nada.

Democrats flinched. They failed to ask Smith one question. About anything.

Sen. Malcolm Smith, D-Queens, the ranking Democrat on the Judiciary Committee, cut short a trip to India to return to New York to say the nominee had "tremendous credentials." How helpful.

Another, Sen. Reuben Diaz Sr., D-Bronx, read aloud the nominee's campaign donations and said he had concerns about them. But Diaz said he met with Democratic leaders and "I got cleared

up." Huh?

In the end, the Senate unanimously confirmed Smith, 59, who has a prolific record. He graduated No. 1 from Columbia University Law School. He has worked extensively on commercial and civil cases and on death-penalty cases. Folks all agreed he's well-qualified for the job.

But if he weren't, you have to wonder if the hearings would have uncovered that.

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