BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON THE JUDICIARY

PUBLIC HEARING:

NOMINATION OF JANET DIFIORE

FOR CHIEF JUDGE OF THE COURT OF APPEALS

New York State Capitol Building
172 State Street - Room 124 CAP
Albany, New York 12247

January 20, 2016
1:00 p.m. to 1:30 p.m.

PRESIDING:

Senator John J. Bonacic
Chairman

COMMITTEE MEMBERS PRESENT:

Senator George A. Amedore, Jr.

Senator Philip M. Boyle

Senator Neil D. Breslin

Senator Leroy Comrie

Senator Thomas D. Croci

Senator John A. DeFrancisco

Senator Ruben Diaz

Senator Adriano Espaillat

Senator Kemp Hannon

COMMITTEE MEMBERS PRESENT (Continued):

Senator Ruth Hassell-Thompson (RM)

Senator Brad M. Hoylman

Senator Andrew J. Lanza

Senator Kenneth P. LaValle

Senator Michael F. Nozzolio

Senator Thomas F. O'Mara

Senator Diane J. Savino

Senator Susan J. Serino

Senator Michael Venditto

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SENATOR BONACIC: I'm calling the Judiciary Committee meeting to order.

My name is Senator Bonacic. I chair the Senate Judiciary.

It is now five minutes after one. I'd like to get started.

Following a public-hearing notice issued on January 8, 2016, pursuant to Section 104 of the Public Officers Law, we are here today for a public hearing for Governor Cuomo's Court of Appeals nominee, Janet DiFiore.

The purpose of the hearing is to fill the vacancy for the chief judge of the Court of Appeals.

And before I continue, I see her two sons are here, Michael, Joseph; and her husband, Dennis Glazer.

Welcome.

At this time, this hearing is the fifth vacancy on the Court of Appeals that the Judiciary's Committee has considered since 2013.

And I think in the not too distant future, Susan Read will be leaving the bench, and we will have to convene again for a sixth Court of Appeals judge.

But getting back to the chief judge, that's

the utmost importance, since that chief judge serves as the leader of the entire judiciary system in the state of New York.

As you all know, Judge Jonathan Lippman served as the chief judge of the Court of Appeals for the past nine years.

His commitment to the bench is undeniable. His experience in the court system and his judicial temperament were an asset to our state's highest court.

We thank Judge Lippman for his years on his service to bench.

We're going to have two witnesses provide oral testimony, but before I do that, I would like to acknowledge the Senators that are here, present, for the Judiciary Committee:

Senator Nozzolio, Senator Boyle, Senator Amedore, Senator Serino, Senator O'Mara, Senator Croci, Senator Venditti (sic), Senator Diaz, Senator Leroy Comrie, Senator Breslin, Senator Savino, Senator Hoylman, and Senator DeFrancisco.

All right.

SENATOR DIAZ: And the boss.

SENATOR BONACIC: Now, different Senators

will be coming in periodically.

I see our -- our good leader there, Senator John Flanagan.

Welcome.

SENATOR FLANAGAN: Thank you.

SENATOR BONACIC: Have a seat, you're welcome to stay.

[Laughter.]

SENATOR BONACIC: And as Senators come in on the Judiciary Committee, we will introduce them.

At this time, the first witness appearing will be David Miranda, president of the New York State Bar Association.

David, have a seat right there.

Welcome.

DAVID P. MIRANDA: Thank you, Senator Bonacic.

Honorable Members of the Senate Judiciary Committee, ladies and gentlemen, my name is David Miranda. I'm president of the New York State Bar Association.

And it is my privilege to appear before you today in support of the appointment of Janet DiFiore as chief judge of the state of New York.

On behalf of our New York State Bar

Association, I thank you for the opportunity to testify concerning Ms. DiFiore's qualifications for the Court of Appeals.

The New York State Bar Association is comprised of over 74,000 attorneys, including attorneys in every part of New York State, from every other state in our union, and from over 100 countries around the world.

We are a voice for over a quarter-million attorneys licensed to practice in New York State.

Since 1967, our association has evaluated candidates for the Court of Appeals.

Since New York amended its Constitution in 1973, to provide for the appointment of Court of Appeals judges, we have provided the governor with our ratings of the candidates whose names have been submitted to the governor by the State Commission on Judicial Nomination.

Following the governor's selection of one of the candidates for appointment, we have also communicated our rating of that nominee to this Committee to assist in the confirmation process.

With respect to this nomination, we have found Ms. DiFiore to be qualified to serve as chief judge of the state of New York, and I strongly

urge you to confirm her nomination.

New York's Court of Appeals is one of the most well-respected and influential state courts in our nation.

Our evaluation of candidates to sit on that important court is one of the most important functions our bar association provides.

I would like to have the opportunity to outline for you the process by which our association evaluates Court of Appeals candidates.

Our committee to review judicial nominations is appointed by the association's president, and made up of 17 members and 4 alternate members from across New York State. Every judicial district is represented on the committee.

Consistent with the overall policies of our association, the committee appointments reflect the diversity of our membership, and society as a whole: a diversity of race, gender, geography, and thought.

Members are also selected so that a wide variety of practice areas are represented, with a special emphasis on appellate practice.

Upon the announcement of the Commission on Judicial Nomination of its list of candidates for appointment to the Court of Appeal, our committee

chair appoints subcommittees to investigate the qualifications of each candidate.

These subcommittees review biographical material provided by the candidates and read samples of the candidates' writing, interview persons familiar with the candidates' work, background, and character.

In the case of judges who have been nominated, the subcommittees include in their interviews lawyers who have appeared before the judge.

Finally, the subcommittees meet with the candidates, and based on the information gathered during the investigation process, the subcommittees prepare reports and recommendations concerning the candidates, to present to the full committee.

After completion of the investigations, the committee meets as a whole to review the subcommittee reports concerning the qualifications of each candidate, and to personally interview the candidates.

The committee then votes to determine the candidate's rating.

In making their evaluations, the committee members are asked to consider the candidate's

professional ability and experience, character, temperament, and the possession of the special qualities necessary or desirable for the judicial office sought.

Under the committee's guidelines, a qualified candidate is one who affirmatively demonstrates qualifications the committee regards as necessary for judicial office.

After being selected as a candidate by the Commission on Judicial Nomination, Ms. DiFiore's qualifications were evaluated by our committee in accordance with these procedures.

She met with our full committee on November 9, 2015.

As a result of this investigation, and interview, it was the opinion of our committee that Ms. DiFiore is qualified for the position of chief judge.

Ms. DiFiore has a long and distinguished career as a public servant.

She has been the district attorney of Westchester County from 2006 to the present, and in this position she has been instrumental in problem-solving, and has created a number of initiatives, including the child-fatality review

team, the Westchester Intelligence Center, the violent-felony screening protocol, the Westchester County Re-Entry Task Force, and the Multi-Disciplinary Team for Elder Abuse.

Prior to becoming district attorney, Ms. DiFiore served as a Supreme Court justice in the Ninth Judicial District, where she was supervising judge of the criminal courts for over two years.

She has served on countless commissions regarding the administration of justice, including former-Chief Judge Kaye's commission on the future of indigent legal services, and as co-chair of former-Chief Judge Lippman's task force on wrongful convictions.

Based upon her experience, we conclude that Ms. DiFiore is an excellent choice for chief judge.

Accordingly, on behalf of the New York State Bar Association, I am pleased to endorse Ms. DiFiore's appointment as chief judge, and urge the confirmation of her appointment.

I thank you for your attention, and for inviting participation by the New York State Bar Association on this important process.

SENATOR BONACIC: Thank you, Mr. Miranda.

We're joined by Senator Ruth Hassell-Thompson, the Ranking Member of the Senate Judiciary; Senator LaValle, Senator Espaillat.

I had one question for you.

Oh, he's hiding over there.

Senator Hannon at the end of the table.

I have a question for you.

I noticed that a lot of the organizations ranked this nominee as "highly qualified."

But the State Bar Association ranked her as "qualified."

Do you care to comment?

DAVID P. MIRANDA: The standard for "qualified" showed that she had the qualifications necessary to be chief judge.

I do not know how the other bar associations look at candidates, but our association found her qualified, and I fully support and urge her appointment.

SENATOR BONACIC: Okay. I have no other questions of Mr. Miranda.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Do you have such a designation at the bar association, "highly

qualified"?

DAVID P. MIRANDA: We do not have that qualification.

SENATOR BONACIC: Thank you.

Does anyone else have any questions?

Senator Diaz.

SENATOR DIAZ: What's -- is -- the bar association says that she's "qualified."

I take it any which way: Qualified. Qualified.

So I don't know what to the question to the (unintelligible) between "highly" and "qualified."

SENATOR BONACIC: I respect your question.

It's just that this is the chief judge of the Court of Appeals.

This is the top judiciary person in the state of New York, that will have influence and control of the entire judicial system.

That's why I asked the difference, why she wasn't ranked "highly qualified."

Are you prepared to tell us the difference between the rankings, between "highly qualified" and "qualified," so Senator Diaz would know the difference?

DAVID P. MIRANDA: We don't -- we don't have

a rank -- a rating that's called "highly qualified."

SENATOR BONACIC: Okay.

SENATOR DIAZ: Thank you.

SENATOR BONACIC: Anybody else have any questions?

Okay.

Mr. Miranda, thank you very much.

DAVID P. MIRANDA: Thank you.

SENATOR BONACIC: And our next speaker -- let's see -- will be Evan Goldberg, of the New York State Trial Lawyers Association.

EVAN M. GOLDBERG: Good afternoon, all.

SENATOR BONACIC: Good afternoon.

EVAN M. GOLDBERG: My name is Evan Goldberg. I'm the president of the New York State Trial Lawyers Association, and I appear here today on behalf of the NYSTLA Board of Directors and our 3500 attorney members who practice in trial and appellate courts throughout the state of New York.

Thank you, Chairman Bonacic, for inviting NYSTLA to participate today, and for this opportunity to speak in support of Governor Cuomo's nomination of the Honorable Janet DiFiore for chief judge of the New York State Court of Appeals.

For 60 years, NYSTLA has fought to protect

equal access to the civil justice system for all New Yorkers.

The constitutional right to a trial by jury is the foundation of that equal access, and NYSTLA vigorously opposes any compromise of this critical rights, whether by legislation, or through the misapplication of judicial doctrines and procedures, that can deny a worthy litigant their day in court.

The appointment of a new chief judge to the Court of Appeals is, therefore, of great significance to NYSTLA.

The legal rights of hundreds of thousands of ordinary New Yorkers that NYSTLA members represents depend upon judicial restraints, and careful application of the law, by each member of the courts.

The chief judge is not just the presiding jurist over New York's highest court, but is responsible for New York's entire court system.

NYSTLA applauds judges who demonstrate a preference for allowing cases to be presented to a jury, and who apply great caution in the use of summary judgment, and doctrines, such as collateral estoppel, that can sometimes prevent jury decisions from being made on the merits.

For the position of chief judge, NYSTLA recognizes that a strong administrative background and a record of results is also needed.

NYSTLA's Judiciary Committee had the honor of interviewing all the candidates recommended by the New York State Commission on Judicial Nomination to fill the vacancy created by the retirement of Chief Judge Jonathan Lippman.

Among such an impressively-credentialed panel of candidates, the Honorable Janet DiFiore stood out for her judicial experience, her commitment to justice, and her pragmatic approach to running the judicial system.

The committee rated her as "highly qualified" and "highly recommended," our highest rating.

The Honorable Janet DiFiore is rightfully respected for her years of experience as a judge, prosecutor, and public servant.

Her CV is too full of noteworthy acts and accomplishments to go through in my testimony, but I would like to focus on a few important aspects.

The executive experience that the Honorable Janet DiFiore has demonstrated over the course of her career is obvious.

As an assistant district attorney, she served

as chief of the narcotics bureau, overseeing all narcotics prosecutions in Westchester County, and she demonstrated her commitment to diversity, serving as the office's equal employment opportunity counselor.

As a district attorney for Westchester County, she spearheaded many task forces and initiatives to combat crime, and to expand access to justice throughout the community.

As a supervising judge for the criminal courts of the Ninth Judicial District, she eliminated substantial backlog in the courts through her innovative approach, while maintaining legitimacy in the system and respect for litigants.

As a constituent of hers in Westchester County, and a fellow member of the Westchester legal community, I know, firsthand, that Ms. DiFiore is a committed, ethical, and intelligent attorney.

She and I have discussed the similarities between civil litigants and those involved in the criminal justice system. Fundamental fairness and respect of law are the common denominators, and in that regard, the math adds up.

Aside from being a supervisory judge,

Judge DiFiore's role as a judge of the Westchester County Court, and later as a justice of the Supreme Court, have equipped her with the experience needed for appellate work, having handled hundreds of criminal and civil cases.

Her legal knowledge in these cases is clear, as is her reputation for fair and evenhanded interpretation of the law.

She's also demonstrated her commitment to the law outside the courtroom, serving on multiple judicial commissions, working towards important reforms, and ensuring the proper operation of the courts.

She demonstrated leadership and creativity in helping to establish special procedures to combat juvenile delinquency and drug addiction.

Janet DiFiore's commitment to public service has always extended beyond the boundaries of her community, and her occupation.

She's served New Yorkers statewide, as the first chair of JCOPE, as president of the District Attorney Association of the State of New York, and as co-chair of the New York State Justice Task Force.

As chief judge, she will continue to approach

the challenges of New York's court system in the same innovative and dedicated fashion.

In conclusion, Governor Cuomo has made an excellent choice in his nomination for chief judge.

We welcome the Honorable Janet DiFiore's commitment to justice and ethics, and look forward to her pragmatic and results-driven administration of New York's courts.

And thank you once again, Senator Bonacic, for the opportunity to testify today.

SENATOR BONACIC: Thank you, Mr. Goldberg.

I think, when I read your report, your organization rated Ms. DiFiore "highly qualified." Am I correct?

EVAN M. GOLDBERG: We rated her "highly qualified" and "highly recommended."

DAVID P. MIRANDA: Okay.

SENATOR BONACIC: I have no questions of Mr. Goldberg.

Does any member of the Committee have any questions of Mr. Goldberg?

Okay.

You're done.

Thank you.

EVAN M. GOLDBERG: Thank you, Chairman.

SENATOR BONACIC: I'm now going to ask Senator Ruth Hassell-Thompson if she would like to make any preliminary remarks.

SENATOR HASSELL-THOMPSON: Thank you, Mr. Chairman.

He rejected my opportunity to speak for 20 or 30 minutes, so --

[Laughter.]

SENATOR HASSELL-THOMPSON: -- I would just take a few moments to say, Happy New Year, to all of you, and to welcome those of you who have never been in these chambers before, to this procedure.

And, it gives me great pleasure to be here, in the position to help to determine the next Court of Appeals top judge for the state of New York.

This is my second opportunity, and the first opportunity to appoint a woman.

Everyone who knows me knows well that I lean toward the feminine side of me as often as I can, without being accused of social engineering.

But, certainly, it is extremely important that we recognize the role that a chief justice would play in this state, setting the tone for what will happen, as we come off of the weekend of

Dr. King who talks about the arc of justice.

It is so critically important that, in this appointment, we choose someone who will lead the courts in that direction.

Justice has to be the hallmark of what we do here in the state of New York.

And, I am very proud to have served, for the last 12 of my 16 years in the Senate, on the Judiciary Committee, and have seen a lot of judges come and go in that process.

But I commend the Governor, again, on his choice of a fine, upstanding person.

I don't say that just because she went to high school with my sister and lived in city of Mount Vernon.

I say that because she and I have tussled in the county of Westchester, and we've not always agreed, but we have never been disagreeable in that process. And, we're two very strong women who debate our issues, and -- but we have always come to the conclusion of justice.

So I am very pleased to be a part of this august body today, as we make the selection for who will lead the courts for the state of New York.

Thank you, Mr. Chairman.

SENATOR BONACIC: Thank you, Senator.

I have circulated the resume of Mrs. DiFiore to the Judiciary Committee, on January 13th, to provide an overview of the nominee.

Based on my own review of the candidate prior to the hearing, I think Governor Cuomo has nominated an impressive judicial nominee, with extensive experience in criminal justice.

You've heard two of the witnesses talk about that background, real quick:

Ten years as an assistant DA, Westchester County;

Westchester County judge, four years;

Supreme Court judge, three years;

As a supervising judge of the criminal courts for the Ninth Judicial District;

And serving, from 2006, the DA of Westchester County, till the present time;

She has served on gubernatorial commissions, as chair of the joint commission on public ethics, and the commission on juvenile justice.

I'm also going to put in the record, writings, concerning this nominee.

And then we'll take a five-minute recess, and then we'll ask the nominee to come forward, tell us

about herself, and then we can ask her some questions.

But let me put into the record extensive writings that we have received.

Written submission from Jeffrey Deskovic. He's a criminal-justice reform advocate, and director of the Jeffrey Deskovic Foundation for Justice.

This gentleman had served 17 years -- not served -- he was in jail for 17 years, and he was exonerated, as of the efforts of Janet DiFiore, through DNA evidence, where he was then never guilty -- should never have been found guilty of the original crime. And he was exonerated as a result of the efforts of this nominee.

Written submission by Samuel Abdobe (ph.), an attorney, on behalf of Jeffrey Deskovic; 12 pages.

The District Attorneys Association of the State of New York; two pages, very positive concerning this nominee.

Submission from Carole Nowe (ph.), of the Judicial Corruption Enforcement Task Force; seven pages, negative, generally, of the court system.

Written submissions from Tiana Noroni (ph.); 11 pages, just negative about the judicial arena.

Submissions from the Center for Judicial Accountability; 38 pages, negative about judges' pay raises.

And, submission from James Brady (ph.); 10 pages, negative of the Court of Appeals, in general.

So, they are all of the writings; they have been furnished to each member of the Committee.

And when we have the nominee here, you're welcome to get into any area you deem suitable.

At this time, we will conclude the public hearing.

We'll take a brief recess, which I've said, for five minutes, and then we'll convene a meeting of the Judicial Committee, and hear personally from the nominee.

Thank you very.

We're adjourned.

(Whereupon, at approximately 1:29 p.m., the public hearing held before the New York State Senate Standing Committee on the Judiciary concluded, and adjourned.)

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