

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON THE JUDICIARY

3 JUDICIAL HEARING FOR

4 CHIEF JUSTICE OF THE COURT OF APPEALS NOMINEE:

5 DISTRICT ATTORNEY JANET DiFIORE

7 New York State Capitol Building
8 172 State Street - Room 124 CAP
9 Albany, New York 12247

10 January 20, 2016
11 1:00 p.m. to 2:00 p.m.

12 PRESIDING:

13 Senator John J. Bonacic
14 Chairman

15 COMMITTEE MEMBERS PRESENT:

16 Senator George A. Amedore, Jr.

17 Senator Philip M. Boyle

18 Senator Neil D. Breslin

19 Senator Leroy Comrie

20 Senator Thomas D. Croci

21 Senator John A. DeFrancisco

22 Senator Ruben Diaz, Sr.

23 Senator Ruth Hassell-Thompson (RM)

24 Senator Brad M. Hoylman
25

1 COMMITTEE MEMBERS PRESENT (Continued):

2 Senator Andrew J. Lanza

3 Senator Michael F. Nozzolio

4 Senator Thomas F. O'Mara

5 Senator Bill Perkins

6 Senator Michael H. Ranzenhofer

7 Senator Diane J. Savino

8 Senator Susan J. Serino

9 Senator Toby Anne Stavisky

10
11
12 ALSO PRESENT, AND PARTICIPATING:

13 Senator George S. Latimer

14
15 ---oOo---

16

17

18

19

20

21

22

23

24

25

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

SPEAKERS:	PAGE	QUESTIONS
Janet DiFiore District Attorney, Westchester County Nominee for Chief Judge of New York State Court of Appeals	4	
Begin Committee Interview/Questions of the Nominee		10

1 SENATOR BONACIC: The Judiciary Committee
2 meeting, I'm going to call it to order.

3 Now, the purpose of the meeting, we're going
4 to hear from Miss Janet DiFiore, who has been
5 nominated for the position of Chief Judge of the
6 Court of Appeals.

7 But before we continue, we've been joined by
8 two other members, Senator Ranzenhofer,
9 Senator Stavisky.

10 Welcome.

11 I would like to have you talk to the
12 Committee; give us a little bit about your
13 background, your qualifications, and any information
14 you would like to share with us concerning your
15 abilities, and why you would be a good fit for the
16 chief judge of the Court of Appeals.

17 JANET DiFIORE: Thank you, Senator.

18 Mr. Chair, Senator Hassell-Thompson, members
19 of the Committee, please allow me to begin today by
20 introducing my family, who has traveled here with me
21 today in support of today's events:

22 My husband, Dennis Glazer, who is a retired
23 partner and former chair of the litigation
24 department at Davis, Polk & Wardwell;

25 My son Joseph Glazer, who is a

1 Columbia Business School graduate, and is running
2 his own tech start-up in New York City;

3 My son Michael Glazer, who is a
4 wealth-management adviser at Morgan Stanley.

5 And thank you being here.

6 My daughter, Alexandra Murphy, who is a
7 prosecutor in the Manhattan District Attorney's
8 Office, and her husband, Matthew Murphy, who,
9 another lawyer in our family, is an associate at
10 O'Melveny & Myers, had work and family obligations
11 that prevented them from traveling here today.

12 And, of course, the absolute love of my life,
13 my two-year-old granddaughter, Charlotte Murphy, was
14 unable to travel without her parents today, so she's
15 not here as well.

16 [Laughter.]

17 JANET DiFIORE: Thank you for that point of
18 personal privilege, Senator.

19 So I am absolutely honored to appear before
20 you today, having been nominated by Governor Cuomo
21 to serve as the Chief Judge of the Court of Appeals
22 and of the State of New York, and to seek your
23 recommendation for Senate confirmation of that
24 nomination.

25 I want to take the opportunity at the outset

1 of my remarks to assure each and every member of
2 this body, as well as the Governor and the people of
3 the State of New York, that, if confirmed, I will
4 work hard every day, to the best of my ability, to
5 serve with independence and integrity.

6 Over the past 35 years, I have dedicated my
7 professional career to public service and the fair
8 administration of justice; starting with my very
9 first job out of college in the City Court of
10 Mount Vernon, New York, where I was born, raised,
11 and educated in my city's public schools.

12 I went to law school to become a prosecutor
13 in the Westchester County District Attorney's
14 Office, and to serve the safety-public needs of the
15 people in my home county.

16 And over the years I spent in that office,
17 I came to a deep understanding and appreciation of
18 the incredible, positive impact public service can
19 have on the communities that we, collectively, as
20 public servants are privileged to serve.

21 And over the course of my career, I have been
22 fortunate to serve in positions of increasing
23 importance; first, as an assistant district
24 attorney, then as a trial judge, as a supervising
25 judge of the criminal courts for the 9th Judicial

1 District, and most recently, as the elected district
2 attorney in my county.

3 I have also been privileged to serve as the
4 co-chair of the statewide justice task force, and
5 the joint commission on public ethics, as well as
6 numerous other commissions and bodies dealing with
7 issues of fair, even, and ethical administration of
8 justice.

9 With each new position and challenge I have
10 accepted, I have been keenly aware of the growing
11 impact of my responsibilities and the consequential
12 nature of the work that I led.

13 With each new opportunity and challenge
14 I accepted, I have employed the same formula to help
15 me master my new responsibilities; and it is the
16 very same formula I intend to use if I am fortunate
17 enough to be confirmed by the Senate:

18 It always begins and ends with hard work and
19 a relentless pursuit of excellence.

20 It involves a consistently-applied,
21 non-partisan respect for my colleagues and for my
22 partners in government, while always being mindful
23 of the importance of maintaining independence in my
24 decision-making.

25 In addition, I strive to bring a fair and

1 balanced approach to every case or issue that comes
2 before me.

3 And, finally, I bring a total, unwaivering
4 loyalty and devotion to the government institutions
5 that I have been privileged to serve.

6 I understand that members of this Committee
7 are fully informed and familiar with my background,
8 experiences, and accomplishments, as well as my
9 professional and personal reputation.

10 And I say to you all, very humbly, that I am
11 extremely proud of the work I have done and the
12 contributions I have made to the fair and effective
13 administration of justice in our state, as a trial
14 judge presiding over hundreds of civil and criminal
15 matters; as a supervising judge of the criminal
16 courts for the 9th Judicial District, leading
17 important court initiatives to improve the provision
18 of justice services to litigants and lawyers in our
19 courts; and as the district attorney leading a large
20 prosecutor's office, where, together with an
21 outstanding staff of committed attorneys,
22 investigators, and administrative personnel, I have
23 built a prosecutor's office that is a model with a
24 well-earned reputation for being fair, effective,
25 and balanced in our work.

1 Finally, I respectfully submit that my
2 training and my professional experiences have made
3 me a careful lawyer, respectful of stare decisis and
4 the rule of law; an effective administrator and
5 manager; and a careful steward of taxpayer dollars;
6 all important predictors and indicators of my
7 ability to serve effectively as the chief judge of
8 the Court of Appeals and of the State of New York.

9 And I am proud to place my record of
10 achievement before you for your consideration.

11 Thank you for your attention, for the
12 opportunity to appear before all of you today, and
13 I am happy to answer any questions that you have of
14 me.

15 SENATOR BONACIC: Thank you very much,
16 Mrs. DiFiore.

17 JANET DiFIORE: You're welcome.

18 SENATOR BONACIC: Very impressive, your
19 background, and doing it all as a mother of three;
20 raising three children in your private life.

21 JANET DiFIORE: And a granddaughter.

22 [Laughter.]

23 SENATOR BONACIC: And Charlotte.

24 We're joined by Senator Lanza.

25 Good afternoon, Senator.

1 SENATOR LANZA: Good afternoon.

2 SENATOR BONACIC: I have a series of
3 questions that I would like to ask you.

4 JANET DiFIORE: Yes, sir.

5 SENATOR BONACIC: When I heard your name
6 being -- as the Governor putting your name forward
7 as the nominee, the first thing I thought of, is she
8 going to be independent?

9 And as I spoke to many of my colleagues,
10 that, too, was on their mind, because of the close
11 relationship you've had with the Governor, you've
12 served on two commissions.

13 And it's important to all of us that the
14 judiciary branch always be independent.

15 So, let me ask you specific questions.

16 The role of chief judge, to me, it seems to
17 evolve over the years into a policy-director role
18 for the judiciary.

19 Given your policymaking relationship with the
20 Governor, how would you go about separating the
21 interests of the judiciary from the interests of the
22 executor, to maintain judicial independence?

23 Could you talk to that?

24 JANET DiFIORE: Yes, of course.

25 And first let me say that I share your

1 interest in judicial independence, and I care deeply
2 about the credibility and the integrity of the
3 judiciary and the judicial system.

4 And I know and understand the primacy and the
5 necessity of judicial independence; and not only
6 judicial independence in fact, but the appearance of
7 judicial independence at every level of the system,
8 in order to inspire the people's confidence in our
9 ability to be fair and just without regard to
10 outside agendas or outside forces.

11 And to your point, Senator, the chief judge
12 does, indeed, have many different roles and
13 responsibilities.

14 And on the adjudicative side of the
15 chief judge's obligations, the cases are the cases,
16 and they are absolutely inviolate.

17 On the administrative and management side, as
18 the executive of the judicial branch of government,
19 it is my full intention, that if I am fortunate
20 enough to be confirmed by this body, to make certain
21 that I am working hard every day to advance my
22 relationships with my partners in government, here
23 in the legislative branch of government, as well as
24 the executive branch of government.

25 And specifically to your point on policy, my

1 view is this:

2 If I am fortunate enough to be confirmed and
3 I lead the judiciary, it is my responsibility to
4 make certain we are doing everything we can to honor
5 our core mission at the courts; and that is, the
6 speedy, fair, and just resolution of cases.

7 And whether it's a policy issue or an
8 operational issue, you have my word that I will be
9 working closely with my partners here in the
10 Legislature, as well as in the executive branch,
11 always, always mindful, and I believe that I have a
12 record to support this, of my role representing the
13 judicial branch of government, and always promoting
14 independence in fact and appearance.

15 SENATOR BONACIC: Thank you.

16 JANET DiFIORE: You're welcome.

17 SENATOR BONACIC: You know, I did a little
18 checking, historically, on Supreme Court chief
19 judges, the chief judges of the Court of Appeals,
20 and I saw that Judge Rosenblatt and Governor Pataki
21 often -- they disagreed on the death penalty.
22 Judge Wachtler and Governor Mario Cuomo disagreed on
23 most things in general.

24 [Laughter.]

25 SENATOR BONACIC: At the Supreme Court level,

1 President Eisenhower was in constant disagreement
2 with Chief Judge Earl Warren, particularly on civil
3 rights.

4 So, the governors and presidents, perhaps,
5 were frustrated with their choice, but no matter
6 what the outcome, whether you agree or disagree,
7 these judges were committed to the rule of law, not
8 the rule of their appointor.

9 And I think you've made it clear that you
10 would embrace that philosophy and not be committed
11 to the rule of the appointor.

12 Let me just continue on a couple other
13 things, if I may.

14 I noticed you've done some publications, and
15 "My View" pieces, on trying to raise the age of
16 criminal responsibility, from 16, to 18.

17 You favor that, and you've said so in your
18 capacity as a district attorney.

19 Let's assume for the sake of discussion, a
20 hypothetical.

21 Governor Cuomo uses his executive authority
22 and says, "This is the law," and bypasses the
23 Legislature, and this Constitution-authority
24 question between the Governor and the State
25 Legislature falls before you.

1 What do you do, having given publications of
2 your personal preference of what you would like to
3 see happen?

4 JANET DiFIORE: Well, when you ascend the
5 bench, your personal views are your personal views,
6 and your work will speak for itself.

7 I understand executive authority,
8 I understand the limitations of executive authority,
9 but I also understand my role, if I am fortunate
10 enough to be confirmed, to make certain that each
11 and every case that comes before me is decided on
12 the merits, without regard to any outside forces or
13 influences.

14 You have my word on that.

15 SENATOR BONACIC: Okay. Just another
16 question.

17 In criminal responsibility, ages 16 to 18, if
18 someone is a drug user, in your opinion, would you
19 deem them non-violent, as opposed to capability of
20 violence, and maybe -- how do you separate whether
21 they would go to a juvenile-delinquent court system
22 and being segregated from adult prison population?

23 Just a drug user, how --

24 JANET DiFIORE: Well, if you're suggest --

25 SENATOR BONACIC: -- as opposed to acts of

1 violence?

2 I guess my question is: Do you think all
3 drug users are not prone to violence?

4 JANET DiFIORE: Well, I wouldn't form that
5 opinion or advance that opinion; I don't know.

6 Each case is taken on its individual merits.

7 Every individual is assessed for the acts
8 that he or she is accused of, and their history and
9 background.

10 And I've had a great deal of experience over
11 the course of my career doing just that.

12 SENATOR BONACIC: Okay. You know, the budget
13 that's been presented to us by the Judiciary is in
14 excess of 2 percent of a state-imposed limit that we
15 do voluntarily.

16 Is this judiciary budget going to be your
17 budget, or is it going to be your predecessor's?

18 JANET DiFIORE: Well, I didn't, obviously,
19 prepare the judiciary budget.

20 But if I am confirmed, I -- you can bet that
21 that will be one of the first things that's on my
22 agenda to speak with the staff with, and we'll go
23 forward from there.

24 SENATOR BONACIC: Do you have a favorite
25 Court of Appeals judge?

1 [Laughter.]

2 JANET DiFIORE: Actually, I do.

3 SENATOR BONACIC: Who would that be?

4 JANET DiFIORE: It would be Stanley Fuld.

5 SENATOR BONACIC: Okay. In the past, chief
6 judges of the Court of Appeals could be split into
7 two categories: consensus builders, acting as a whip
8 to get the bench to think as one mind or opinions;
9 or allow sports in the court's reasoning and many
10 different opinions, in the majority of cases.

11 What will be your style as a chief judge?

12 JANET DiFIORE: Well, I believe that it's
13 important for the Court of Appeals of our state, the
14 highest court, to speak with one authoritative voice
15 when that is possible, and to produce a strong
16 authoritative decisional body of law.

17 And I think that unanimity, or near
18 unanimity, is worth the effort to attempt to
19 achieve.

20 But on occasion, there will be foundational
21 disagreements in cases in which you can't use --
22 reach unanimity.

23 SENATOR BONACIC: I don't know how familiar
24 you are with some of the concerns expressed by the
25 public with the courts: staffing issues, technology

1 issues, access to the courts.

2 Is this something you see yourself getting
3 involved in and trying to address some of these
4 concerns by the public?

5 JANET DiFIORE: Absolutely. I am very
6 interested in making certain that people have access
7 to the courts and the justice services that the
8 judges and the non-judicial personnel across the
9 state provide.

10 And, of course, I do have an interest in
11 technology, and finding ways that technology can
12 help us improve and do and service our core mission
13 in the way that the people across the state would
14 expect us to.

15 So, yes; the answer is yes.

16 SENATOR BONACIC: My last question is: Would
17 you consider yourself a judicial activist, or would
18 you consider yourself a traditional judge that would
19 interpret the law and not make law through judicial
20 decisions?

21 JANET DiFIORE: I don't consider myself a
22 judicial activist. I have a record to support that
23 my approach has always been, each individual case on
24 its own merits, sir.

25 SENATOR BONACIC: Thank you very much,

1 Mrs. DiFiore.

2 JANET DiFIORE: You're very welcome.

3 SENATOR BONACIC: Senator DeFrancisco.

4 SENATOR DeFRANCISCO: Thank you.

5 Thanks for calling me in advance of the
6 meeting to discuss some of these issues.

7 But, I noticed in the outline that you
8 submitted to everyone, that you're -- and you
9 mention it, New York State Justice Task Force
10 Co-Chair; and one of the things that is being
11 discussed is wrongful convictions.

12 In fact, there was a letter that
13 Senator Bonacic just referred to, from an individual
14 who was wrongfully, not only accused, convicted and
15 incarcerated.

16 Now, there's no question that the chief judge
17 of the Court of Appeals has, for many, many years,
18 no matter who it was, gotten involved in policy
19 issues, advocating for legislation, advocating for
20 fairness in the judicial system.

21 And you're well aware that there is a
22 commission on judicial conduct.

23 I've got a bill in, dealing with a commission
24 on prosecutorial conduct.

25 Now, have you weighed in on that concept at

1 all, as a DA?

2 I know I was inundated by DAs, showing how
3 unwise that was to ever even consider that there
4 would be wrongful conduct on behalf of a district
5 attorney.

6 Have you ever weighed in on that issue to
7 this point in time?

8 JANET DiFIORE: No, not to this point in
9 time. That was a separate group.

10 SENATOR DeFRANCISCO: Okay. That's number
11 one.

12 Number two is, you indicated in your resume
13 here, that after this wrongful conviction, you got
14 actively involved. You saw -- you did an
15 investigation as to what the problems were.

16 And I'm not looking to find out who the DA
17 was involved in the conviction, but did you
18 determine that there was more than simply errors in
19 the process; that maybe there was something that
20 should have been done either the non-disclosure of
21 exculpatory evidence, or something which implicated
22 whoever handled the case, or any other cases you
23 reviewed as a member of that group, that caused you
24 concern?

25 JANET DiFIORE: In the particular case,

1 Senator?

2 SENATOR DeFRANCISCO: Yes.

3 JANET DiFIORE: No. In fact, in that case,
4 the exculpatory evidence was weighed before the
5 jury, and the jury found the man guilty of the
6 crimes that we later learned he did not actually
7 commit.

8 SENATOR DeFRANCISCO: All right, but as a
9 member, as co-chair of the New York State Justice
10 Task Force, you've discussed wrongful convictions,
11 from time to time, with your members, I assume?

12 JANET DiFIORE: Oh, absolutely.

13 SENATOR DeFRANCISCO: All right. In that
14 study or in your work, have you found any examples
15 of questionable conduct on behalf of prosecutors?

16 JANET DiFIORE: The New York State Justice
17 Task Force has examined cases in New York State.

18 We have not uncovered a case, to the best of
19 my knowledge, similar to the cases we've read about
20 in Texas and other places.

21 What we have focused on are issues, such as
22 the video recording of custodial interrogations,
23 improving the practice around eyewitness
24 identifications, to make certain that we are
25 creating the best atmosphere in which a witness is

1 called upon to identify a perpetrator.

2 We are -- we've spoken about and examined the
3 issues around increased and accelerated discovery,
4 forensic sciences, the DNA data bank, the expansion
5 of the DNA data bank, and post-conviction access to
6 DNA; the legislation that was passed.

7 SENATOR DeFRANCISCO: Okay. And as a judge,
8 have you ever run into situations where you've had
9 to admonish prosecutors for conduct that was
10 inappropriate with respect to a criminal
11 prosecution?

12 JANET DiFIORE: I personally have not.

13 SENATOR DeFRANCISCO: Okay. And have you --
14 do you know of any, such that you --

15 JANET DiFIORE: Well, I read about them.

16 SENATOR DeFRANCISCO: Okay, but my -- what is
17 the remedy, in your understanding right now, if
18 there is withholding evidence, or if there is some
19 misconduct on behalf of a prosecutor?

20 What's your understanding of the remedy?

21 JANET DiFIORE: Right now, the remedy lies
22 with the leader in that office, the elected district
23 attorney, with the grievance committee.

24 SENATOR DeFRANCISCO: Okay. And what are the
25 possible rem -- what are the possible results of

1 someone who has been found to have done something
2 that is inappropriate in the court?

3 JANET DiFIORE: Well, it could be -- if it's
4 an internal proceeding in the district attorney's
5 office, the discipline could be anything from
6 private admonishment, additional training, docking
7 of pay, to, the ultimate censure, would be a firing
8 and public disclosure and a referral to the
9 grievance committee.

10 SENATOR DeFRANCISCO: And the grievance
11 committee is the local grievance committee, whatever
12 district --

13 JANET DiFIORE: It would be the Appellate
14 Division Grievance Committee.

15 SENATOR DeFRANCISCO: Okay. And since you
16 were a judge, since you were under this umbrella,
17 you had to be -- your conduct had to comply with
18 what conduct is prescribed with judges.

19 Do you think that system has worked, from
20 your experience as a judge, a prosecutor, or
21 whatever?

22 JANET DiFIORE: In my personal experience,
23 I certainly do. There has never been an occasion
24 where I had been (inaudible).

25 SENATOR BONACIC: Senator, I think we're

1 going to have to move on. I have so many other
2 members that want to ask questions.

3 SENATOR DeFRANCISCO: Okay. Last --

4 SENATOR BONACIC: Do you want to wrap up?

5 SENATOR DeFRANCISCO: -- I just want to wrap
6 up with this point:

7 I'm not going to ask you whether you would
8 support the bill. I don't think that's fair.

9 [Laughter.]

10 SENATOR DeFRANCISCO: But, I just -- all I'm
11 suggesting is, to bring this bill out, because
12 you -- I guess the question is: Would you keep an
13 open mind, as the chief administrative officer of
14 the courts of the State of New York, as you review
15 cases, as you hear of situations before you,
16 presentations, that a similar remedy or similar
17 process that's for judges would be advisable or not
18 advisable, would you consider that with respect to
19 the prosecutor in a criminal case?

20 JANET DiFIORE: Of course I would.

21 SENATOR DeFRANCISCO: Okay. Would you
22 consider it well?

23 [Laughter.]

24 SENATOR DeFRANCISCO: Thank you.

25 SENATOR BONACIC: Judge Hassell-Thompson.

1 She wanted me to call her "judge."

2 SENATOR HASSELL-THOMPSON: Thank you,

3 Mr. Chairman.

4 Honorable DiFiore, Chief Judge Kaye made
5 reform of our indigent defense system a major part
6 of her legacy.

7 Likewise, Chief Judge Lippman made reform of
8 our civil legal service system a major part of his
9 legacy.

10 Last year, New York State settled the Haring
11 case, which calls for case caps, lawyers at
12 arraignment, investigators, and expert witnesses, to
13 provide effective legal criminal representation to
14 poor people.

15 The next couple of series of questions will
16 be somewhat under that heading, starting with: Do
17 you support the extension of Haring to the other
18 upstate counties and Long Island, who, as of this
19 moment, do not fall under the jurisdiction of that
20 legislation?

21 JANET DiFIORE: I do, Senator.

22 SENATOR HASSELL-THOMPSON: Do you think that
23 there should be a civil right to counsel?

24 JANET DiFIORE: A civil right? A civil --

25 SENATOR HASSELL-THOMPSON: Gideon.

1 JANET DiFIORE: I can't answer that question
2 because I think the litigation is likely to come, if
3 there is litigation, before me.

4 SENATOR HASSELL-THOMPSON: Will you be giving
5 any thought to creating a mandatory pro bono program
6 for the needs of the indigent that -- to ensure that
7 they are adequately addressed, particularly in civil
8 matters?

9 JANET DiFIORE: Well, certainly, I'm
10 committed to that, and I would give some thought.

11 And, particularly, if you have something on
12 your mind, I would hope, given our long history and
13 our interest in good government and the mission of
14 the courts, that you would share that with me --

15 SENATOR HASSELL-THOMPSON: Oh, I got lot on
16 my mind, truly.

17 [Laughter.]

18 SENATOR HASSELL-THOMPSON: There had been
19 some discussion, you know, prior to this hearing,
20 I convened a briefing of the staff of our
21 conference, and so that there was some discussion
22 about, everyone is in agreement that there should be
23 a pro bono program.

24 I was speaking more to the mandatory.

25 And there was some discussion about whether

1 that would be in keeping, or whether we would get
2 push-back.

3 So that was the nature, really, of that
4 particular question.

5 Would you be in favor of switching the
6 responsibility for public defense in criminal cases
7 from the counties to the state?

8 JANET DiFIORE: I don't know enough about the
9 financial aspects of that to answer that question
10 intelligently, but, certainly, that is something
11 that I would review and come to a conclusion on.

12 SENATOR HASSELL-THOMPSON: And you will share
13 with me at that time, your conclusion?

14 JANET DiFIORE: Most certainly.

15 SENATOR HASSELL-THOMPSON: Thank you.

16 Would you be in favor of establishing
17 statewide standards, as the number of felony and
18 misdemeanors that the public defender can handle in
19 a year outside of New York City?

20 JANET DiFIORE: Yes.

21 SENATOR HASSELL-THOMPSON: Bail reform:

22 Would you be in favor of revising the current
23 system for setting bail in New York so that it's
24 used more sparingly, such as for violent felonies
25 only?

1 JANET DiFIORE: Well, that's a very difficult
2 question to ask, because bail -- I do believe that
3 there are fixes that we need to consider, to make
4 certain that people's freedom isn't tied to their
5 ability to pay bail.

6 I don't know that I would whole-scale
7 eliminate bail in any category of cases.

8 Every case requires an independent and
9 responsible review of the individual standing before
10 that judge.

11 SENATOR HASSELL-THOMPSON: How would this
12 proposal affect -- sorry.

13 Would you continue with the bail reform for
14 the city of New York which was ordered by
15 Judge Lippman last year?

16 JANET DiFIORE: If you're referring to the
17 court part that had -- yes, I -- absolutely.

18 And I think it will be interesting to see if
19 the -- if that formulation is effective, and is
20 serving the needs that it was set out to serve.

21 So, yes, of course, I will look at that.

22 SENATOR HASSELL-THOMPSON: Under children's
23 rights, I heard your discussion with Senator Bonacic
24 on Raise the Age, but I just have a couple of just
25 quick questions.

1 Do you support the Governor's current
2 proposal to raise the age of criminal
3 responsibility?

4 And how would this affect the family court,
5 particularly with those cases involving 16- and
6 17-year olds?

7 JANET DiFIORE: Well, one of the reasons that
8 I agreed to sit on the commission on youth public
9 safety and justice is because I am interested in
10 juvenile justice, and I have an expertise on both
11 the criminal side and the family court side, given
12 my long assignment to the family court.

13 And I think that we have to be very careful
14 as we go forward.

15 If it is determined that we should raise the
16 age in New York State, we're going to have to
17 support our family courts, which are courts that
18 are, under ordinary circumstances, very challenged.

19 And in order to receive that new grouping of
20 cases, we have to make certain that our judges on
21 the front lines in the family court and the court
22 staff are prepared to do that and meet their
23 challenges responsibly and effectively.

24 SENATOR HASSELL-THOMPSON: We have put 25 new
25 judges on the family court in the last two years.

1 You also heard it alluded to that the budget
2 that has preliminarily been submitted is 1. --
3 I think it's 1.4 percent over.

4 Would you be pushing for more judges for the
5 family court, even understanding those
6 considerations and concerns?

7 JANET DiFIORE: As I sit here today, I can't
8 answer that question.

9 What I will do, if I am lucky enough to be
10 confirmed by this body, is take a long, hard look at
11 that, and make sure that we do have enough in terms
12 of resources, whether they are judicial resources or
13 non-judicial resources.

14 And I will be -- if I think and conclude at
15 the end of that review and analysis that we do need
16 additional staffing in terms of new judgeships, you
17 can bet I will be advocating for that.

18 SENATOR HASSELL-THOMPSON: I thought of three
19 other questions, but I won't -- I won't belabor
20 that.

21 Thank you.

22 The court system itself -- sorry -- the
23 commission has just recommended an increase in pay
24 for Supreme Court justices, almost to the level paid
25 to federal court judge-- district court judges.

1 How will the court system pay for this
2 increase?

3 And will there be any impact on the
4 operations of the courts?

5 JANET DiFIORE: First let me say, I applaud
6 the work of the commission on judicial compensation,
7 and I think that it -- they did a responsible job,
8 that judges, our hard-working judges across the
9 state, should be reasonably and fairly compensated
10 for the important work that they do.

11 As to your question about the budget, if I am
12 fortunate enough to be confirmed, that is going to
13 be my top priority; to help our staff, and work with
14 our partners in government, to figure out how we are
15 going to, indeed, fund that.

16 SENATOR HASSELL-THOMPSON: My final question:
17 Would you favor a constitutional amendment,
18 requiring that all village and town justices in this
19 state be attorneys?

20 JANET DiFIORE: I'm being careful, because
21 I don't want to answer any questions in which it
22 would be in violation of my ethical guidelines.

23 I don't have a position.

24 I don't know enough about the political
25 ramifications, the local ramifications, to answer

1 that question.

2 But if you would like, I will study that
3 issue and I promise to be back to you.

4 SENATOR HASSELL-THOMPSON: Thank you.

5 SENATOR BONACIC: We have been joined by
6 Senator Perkins.

7 And I see Senator Latimer is here, who
8 happens to represent Janet DiFiore as a constituent.
9 I think he went to school with her.

10 And we welcome him here today.

11 Welcome, George.

12 The next speaker -- we have many, many
13 speakers, by the way, and we are going to stay here
14 for as long as it takes, so every committee member's
15 concerns are addressed, because this is a very
16 important position.

17 Senator Nozzolio.

18 SENATOR NOZZOLIO: Thank you, Mr. Chairman.

19 Welcome to the Committee.

20 You've answered many of our questions with
21 grace and aplomb, and I congratulate you for that.

22 JANET DiFIORE: Thank you.

23 SENATOR NOZZOLIO: We do have a major
24 disagreement, though.

25 JANET DiFIORE: Yes.

1 SENATOR NOZZOLIO: Your favorite judge is
2 Judge Fuld?

3 JANET DiFIORE: Yes.

4 SENATOR NOZZOLIO: Mine is Judge Pigott, who
5 happens to be here.

6 Welcome, Judge.

7 [Laughter.]

8 JANET DiFIORE: Oh, I didn't see Judge Pigott
9 here.

10 SENATOR NOZZOLIO: Welcome, Judge.

11 JANET DiFIORE: My favorite judge in the room
12 is Judge Pigott.

13 [Laughter.]

14 SENATOR NOZZOLIO: The temptation; the
15 question of independence raised by Senator Bonacic,
16 is one that's essential.

17 But the question of independence is not
18 necessarily independence from an individual as it is
19 independence from the State Constitution, and, of
20 course, the United States Constitution.

21 I, for one, believe the worst opinion, ever,
22 in the Court of Appeals' recent history, was a
23 decision that totally ignored Article 4 of the
24 New York State Constitution, regarding the
25 succession of governor, lieutenant governor; and

1 particularly when a unanimous decision by the
2 Appellate Division went to indicate that the court
3 said clearly at that time, that the Constitution
4 should prevail; the succession plan is enumerated in
5 the Constitution.

6 What the Court of Appeals did is totally wipe
7 out that constitutional provision.

8 You've seen by -- you've heard, by questions
9 of Senator DeFrancisco, Senator's from my good --
10 and questions from my good friend
11 Senator Hassell-Thompson, that you're asked all
12 questions about legislative activity.

13 That shouldn't be a prerogative of the
14 courts.

15 It's the job of the Legislature to decide
16 these issues -- to decide Raise the Age, to decide
17 bail procedures, to decide questions relative to the
18 criminal justice system, the number of judges -- the
19 types of criminal justice measures are all
20 prerogatives of the Legislature, as based by the
21 Constitution.

22 So my question is, and, really, more of a
23 comment: Don't believe you have to take an opinion
24 on any of these questions. It's not your job.
25 You're going to be very busy running the court

1 system of this state as chief judge.

2 And that I fear that you're going to be
3 tempted too much, to voice an opinion, to get
4 involved in this issue, to be, in a way, dictating
5 from the bench, when it should be the elective
6 responsibility, as stated in our Constitution, by
7 elected representatives of this body and the
8 Assembly.

9 So, don't feel you have to have an opinion
10 just because a legislator may ask you of one,
11 including myself; that we have the job to do.

12 We certainly want to do it in respect to the
13 Constitution.

14 And I guess I'd ask you, as you take on these
15 responsibilities, never be independent of the
16 Constitution of the State of New York.

17 That's what you -- you cannot separate.

18 And never believe that these responsibilities
19 are the judges or the executives.

20 You know, we have concerns of the fact that
21 the minimum-wage laws of our state were changed by
22 executive order; that the types of prerogatives that
23 should be part of the Legislature, voting in open
24 forum, debating it on the floor of the Legislature,
25 as opposed to through the stroke of a pen or a

1 judicial-regulation change.

2 And, you, the beauty of your candidacy, is
3 that you have been involved in the executive, as a
4 prosecutor; you've been involved as a judge; that
5 those experiences will be extremely valuable for you
6 to advise us.

7 But, we hope that you'll restrain the
8 temptation to dictate from the bench.

9 JANET DiFIORE: You have my word, Senator.

10 SENATOR NOZZOLIO: Thank you very much,
11 Mr. Chairman.

12 SENATOR BONACIC: Thank you,
13 Senator Nozzolio.

14 Senator Comre.

15 SENATOR COMRIE: Thank you, Senator Bonacic.

16 Your Honor, I wanted to ask you a couple of
17 questions; but, first, I wanted to thank you for
18 wanting to continue your public service.

19 And in looking at your record of service, it
20 has been highly impressive and vast, and as
21 Senator Nozzolio has said, you have had a great
22 array of both executive and judicial experience.

23 I just wanted to ask you two questions before
24 I congratulate you.

25 And, first, I want to say that, in working in

1 public service, there's always a temptation to
2 involve and interject yourself, as Senator Nozzolio
3 just so passionately stated, in issues.

4 I would hope that you would inject yourself
5 on issues of to Raise the Age; but, also, in
6 creating the opportunities for people to get relief
7 from civil disabilities on those small issues that
8 they get caught up with, that they're not aware of,
9 so that we could have a statewide opportunity for
10 people that are involved with issues, the small
11 issues, that they could get relief from those civil
12 disabilities, so that we don't have so many young
13 people that are not eligible for civil-service jobs,
14 are not eligible for opportunities, or not even
15 aware that they've received a summons, and they wind
16 up going to court for something that they weren't
17 even aware of.

18 So I would hope that you champion those
19 issues as well on the Court of Appeals.

20 And I -- again, I want to emphasize that, you
21 know, as your -- in your opportunity, I would hope
22 that you also try to mentor and bring as many people
23 into the judicial system as possible, so that they
24 can be unafraid of interaction with the judicial
25 system; that you can have more young people that are

1 interested in becoming lawyers or prosecutors, and
2 so that we can make sure that there's a continuum of
3 care of people that are interested in doing justice
4 and service to our system as well.

5 So I would hope that, in your opportunity,
6 because I believe you will be nominated, I believe
7 that your record has been exemplary, and I think
8 that you will be a great chief Court of Appeals
9 judge.

10 And I finally want to say, you look much
11 better than your pictures.

12 [Laughter.]

13 SENATOR BONACIC: Thank you, Senator Comrie.

14 I just want to go through the lineup, if
15 I may.

16 We're going to have Senator Boyle,
17 Senator Diaz, Senator Savino, Senator Breslin,
18 Senator Hoylman, Senator O'Mara, Senator Croci.

19 Next is Senator Boyle.

20 SENATOR BOYLE: Thank you, Mr. Chairman.

21 Welcome.

22 Prosecutor, this is my first hearing as a
23 member of the Judiciary Committee.

24 JANET DiFIORE: Mine, too.

25 SENATOR BOYLE: Such a historic day.

1 Just a quick question, to piggyback on
2 Senator DeFrancisco's earlier comments about law
3 enforcement and prosecutorial misconduct.

4 Obviously, we see across the country, there
5 are some communities of color who have grave
6 concerns about our judicial system.

7 I don't know if you've seen "Making a
8 Murderer" on Netflix, the story of Stephen Avery.

9 Thankfully, it didn't happen in New York, but
10 it happened in Wisconsin.

11 In Suffolk County, where I live, we have our
12 former police chief just arrested by the FBI.

13 Serious concerns.

14 And I've been a law-and-order guy, "throw the
15 book at them" type, for a long time, but I myself am
16 experiencing some concerns about our judicial
17 system.

18 I just ask you, that you make this a priority
19 in your new position. I'm sure you're going to
20 achieve it.

21 And one question: Do you feel that experts
22 should be allowed into court to testify about false
23 confessions?

24 JANET DiFIORE: Well, Senator, that matter is
25 currently before the court, an issue around that

1 matter; and so, of course, it would not be
2 appropriate for me.

3 SENATOR BOYLE: I understand.

4 Well, please take into consideration how
5 people are feeling. Prosecutorial misconduct is a
6 huge, potential problem and concern among
7 New Yorkers, and Americans.

8 JANET DiFIORE: Thank you, Senator.

9 SENATOR BONACIC: Thank you, Senator Boyle.
10 Senator Diaz.

11 SENATOR DIAZ: Thank you, Mr. Chairman.

12 Thank you for taking the time to be with us
13 today.

14 Mr. Chairman, ladies and gentlemen, you know,
15 we are just -- we are just celebrated
16 Martin Luther King holiday, and there is some --
17 some people that always talk about a war -- the war
18 against the woman -- against women.

19 But I'm honored to say, today, I'm -- I'm --
20 I have the great honor in supporting a woman, not
21 only because she's a woman, but because she's
22 qualified.

23 But, I'm honored to say that I'm supporting a
24 woman; and I congratulate you.

25 And I'm also honored to say that, this past

1 weekend, in Bronx County, when we were celebrating
2 Martin Luther King, the Bronx County swore in the
3 first district attorney -- the first woman district
4 attorney in Bronx County, and the first female
5 district attorney, Black/Afro-American (sic), in the
6 whole state.

7 So, you know, for those of you that talk
8 about the war on woman, the women are beating us.

9 [Laughter.]

10 So, Mr. Chairman, I'm going to vote yes, and
11 to -- to -- to express my support for
12 Judge DiFlorio (sic).

13 And, I wish you the best, Judge, and I will
14 pray for you --

15 JANET DiFIORE: Thank you.

16 SENATOR DIAZ: -- so God will lead to you do
17 the best thing, and to keep leading you the way you
18 have been leading your life.

19 So thank you very much, and, congratulations.

20 JANET DiFIORE: Thank you, sir.

21 SENATOR BONACIC: Thank you, Senator Diaz.

22 Senator Savino.

23 SENATOR SAVINO: Thank you.

24 Thank you, Senator Bonacic.

25 Welcome, Janet -- Miss DiFiore, to the

1 Judiciary Committee hearing.

2 I'm fully confident that you will be
3 confirmed and you will be our next chief judge.

4 And, I'm not an attorney, so I'm not going to
5 ask you questions about particular cases and your
6 opinions on it.

7 I'm more concerned about the other role that
8 you're about to take on, which is the head of a
9 massive agency, with thousands of employees, some of
10 whom you have bargaining units that haven't had a
11 contract in years. So there's -- I'm not sure how
12 you're going to figure out how to meet that
13 obligation.

14 But, you're going to take on a massive agency
15 that has, in many respects, been starved for
16 resources for a few years now.

17 Your -- the former administrative judge,
18 Gail Prudenti, when she would come to testify, she
19 was very good at trying to give us some sense that
20 the court system was able to absorb all of the
21 reductions and the administration of justice was
22 continuing without any interruption.

23 We all know that that is not the case.

24 You are about to take on a massive agency, as
25 I said, that is suffering, not just from budget

1 cuts, but you've said in your testimony that your
2 main concern is the speedy and fair administration
3 of justice.

4 You can't do that when you have courts that
5 have to close at 4:00 every day because you don't
6 have resources.

7 You can't do that when you don't have enough
8 courtrooms.

9 You know, Senator Hassell-Thompson talked
10 about the number of family court judges that have
11 been appointed in the past few years.

12 That's nowhere near the number of family
13 court judges that we need.

14 But for every family court judge we do
15 appoint, you need a courtroom, you need court
16 officers, you need court clerks, you need court
17 stenographers; you need all of these things.

18 So these are the problems that you're going
19 to have to face, and I'll just leave you with a
20 final problem.

21 Everybody complains in their own county, we
22 all think we're being short-changed.

23 But for Staten Island, we really are.

24 A few years ago, former-Governor Spitzer
25 signed legislation to finally create a separate

1 judicial district for Richmond County.

2 Forever, we were connected to Brooklyn, and
3 as a result of that, we did not have sufficient
4 resources.

5 So Governor Spitzer signed the law, we have
6 the 13th Judicial District. We were only given
7 three Supreme Court judges. We were told, at some
8 point in the future, we would get the rest of them.

9 So Staten Island is entitled to seven more
10 Supreme Court justices.

11 Brooklyn wants their three back.

12 And as you can imagine, the administration of
13 justice on Staten Island is not speedy. While it
14 may be fair, because I have full faith and support
15 in all of the judges on Staten Island, as well as
16 the court system, it certainly isn't speedy.

17 We also just completed and opened a brand-new
18 courthouse. It's nice, but we outgrew it months
19 before it was opened.

20 So, we have real needs there, and I'm sure
21 every county does.

22 And so I raise this, to make you aware of
23 that, and you really need to take a good, long look
24 at the budget. Don't be afraid to ask for more
25 money.

1 Really, don't be afraid to.

2 We want to help you, because the
3 administration of speedy and fair justice to our
4 constituents is the most important thing to all of
5 us.

6 So, congratulations; I'm sure you will be
7 confirmed.

8 And I hope that you will delve in, as you
9 said you will, into the minutia of running this
10 massive agency.

11 JANET DiFIORE: Thank you, Senator.

12 SENATOR BONACIC: Thank you, Senator Savino.
13 Senator Breslin.

14 SENATOR BRESLIN: Thank you, Mr. Chairman.

15 First, let me congratulate the candidate on
16 the expectation you'll be shortly affirmed.

17 And to affirm what Senator Savino just said,
18 and others in the Senate have said here, and
19 elsewhere, that as I read your decisions, and look
20 at your academic background, I have no question that
21 you will be an exemplary Court of Appeals chief
22 judge.

23 But there's so much more.

24 And your two predecessors, Judge Kaye and
25 Judge Lippman, who have gone into areas, to make

1 sure that young defendants, poor defendants,
2 defendants in different counties, who have unequal
3 representation, and no representation, in many
4 cases, at arraignments.

5 And there's so much more to your job, and
6 making sure that you balance that constitutionally,
7 so that Senator Nozzolio is satisfied.

8 But I also think it's -- as the chief judge
9 of the Court of Appeals, you have a tremendous
10 responsibility to make sure that New York continues
11 to administer justice in a fair and appropriate way,
12 from our children who appear in the criminal justice
13 system, through the poor, through the various
14 62 counties.

15 And I know many of us are depending upon you
16 to continue that trail to full justice.

17 JANET DiFIORE: Thank you, Senator.

18 SENATOR BONACIC: Thank you, Senator Breslin.
19 Senator Hoylman.

20 SENATOR HOYLMAN: Thank you, Mr. Chair.

21 Thank you, Ms. DiFiore. It's a pleasure to
22 see you, and, congratulations.

23 And congratulations to the Governor for
24 nominating such an outstanding individual.

25 I represent the west side of Manhattan and

1 part of the east side.

2 And I think I harken back to my colleague's
3 comments about the resource issue; and in particular
4 concern for me, is housing.

5 And while we don't have a constitutional
6 6th Amendment right to counsel in civil cases,
7 I would argue that, in many instances, for my
8 constituents, losing your home is nearly as horrific
9 as losing your freedom.

10 These are individuals who have lived in their
11 homes for decades. Many of them are in apartments
12 that are rent-regulated.

13 And I think you probably know that there's
14 quite an imbalance in housing court, between
15 landlords and tenants, and between landlords and
16 small businesses.

17 So what's happening in Manhattan are -- is a
18 case study of the vulnerable being picked off, by
19 the tens of thousands, by those in a better position
20 to afford high-priced attorneys; and, essentially,
21 paper defendants to eviction.

22 And something, like, 11,000 rent-controlled
23 tenants were evicted and lost their apartments in
24 the last several years.

25 200,000 rent-stabilized apartments were moved

1 off the books illegally by landlords.

2 So, this goes to that legal maxima of
3 "justice delayed is justice denied."

4 When you can't get into housing court because
5 of the backlog, and you can't afford to get a
6 lawyer, so you have to go and represent yourself,
7 and you don't know what you're doing there or know
8 the law, how do we solve that problem?

9 And what are we going to do about it?

10 JANET DiFIORE: Well, Senator, the issue of
11 foreclosure issues, and people and the access to
12 civil legal services that people need to assist
13 themselves on those very necessities and basics of
14 life, are certainly something that is very high on
15 my agenda, should I be fortunate enough to be
16 confirmed by this body.

17 And you can be certain that that will be a
18 priority on my list to look at and examine, and
19 figure out how we're doing on these cases.

20 And where there are issues and problematic
21 operational barriers to justice for people, you can
22 bet I will be looking at those as part of my
23 mission.

24 SENATOR HOYLMAN: Thank you.

25 You're going to be the CEO our court system.

1 JANET DiFIORE: Correct.

2 SENATOR HOYLMAN: And I really would urge you
3 to look to us as an important ally in your efforts
4 to dispense justice fairly, and look at alternative
5 models, including community courts that have worked
6 so well in different parts of the state, including
7 my district, to make certain that both plaintiffs
8 and defendants have speedy justice.

9 Thank you.

10 JANET DiFIORE: I will.

11 Thank you.

12 SENATOR BONACIC: Thank you Senator Hoylman.
13 Senator O'Mara.

14 SENATOR O'MARA: Yes, Madam District
15 Attorney, over in the corner.

16 Thank you for being here, and candidly
17 asking -- or, answering our questions today.

18 As a former district attorney, I want to
19 commend you on your service to your communities
20 where you have lived and worked for so long.

21 I represent a district in the Southern Tier
22 of the Finger Lakes region of New York State, where
23 many of my constituents have grave concerns over the
24 losing of their personal liberties, their individual
25 rights and freedoms; and, in particular, with

1 regards to the Second Amendment, which has been at
2 the forefront with the significant gun violence
3 we've had in our country, and in our state.

4 And I commend you for your work in law
5 enforcement, and the prosecution for gun violence.

6 And I, certainly, strongly support increased
7 penalties for those that misuse guns and use them in
8 violent ways.

9 However, there are so many law-abiding gun
10 owners that are very concerned about this.

11 And I know that when you were president of
12 the DA's Association in September 2011, you wrote a
13 letter to Congress, lobbying against the national
14 Right to Carry Act at that time.

15 And not to get into the specifics of that
16 issue, or any specific issue, but, would lead me to
17 believe that you may lean more towards gun control,
18 as opposed to supporting Second Amendment rights.

19 And I would like to hear your views and
20 perspectives on how you would approach a case, under
21 the Second Amendment, both under the New York State
22 Constitution and the U.S. Constitution.

23 JANET DiFIORE: Well, I think the Second
24 Amendment is clear. The law on the Second Amendment
25 is clear.

1 And I appreciate that, as a responsible,
2 law-abiding gun-owner myself.

3 That said, as to any particular case, I'm not
4 in a position, obviously, to comment specifically,
5 except to say to you that I will handle any of those
6 matters the way I handle every other case: on its
7 merits, based on the procedural history of the case,
8 based on the laws that apply, and I will interpret
9 the law fairly, honestly, justly, without regard to
10 any outside influence or agenda, Senator.

11 SENATOR O'MARA: Do you have a
12 concealed-carry permit?

13 JANET DiFIORE: I'm sorry?

14 SENATOR O'MARA: Do you have a
15 concealed-carry permit?

16 JANET DiFIORE: Yes, I do, sir.

17 SENATOR O'MARA: Thank you.

18 Again, along the lines of Bonacic's
19 indepen -- Senator Bonacic's questions about
20 independence at the beginning, presuming you're
21 going to be confirmed here by the Senate, the -- at
22 the end of this year, my current favorite Court of
23 Appeals Judge, Pigott, will be leaving the bench,
24 and he will be -- he will be the last justice to
25 leave the Court of Appeals that has not been

1 appointed by Governor Cuomo.

2 In effect, Governor Cuomo took the step a
3 year ago to not reappoint a sitting justice of the
4 Court of Appeals who was a prior governor's
5 appointment, to appoint one of his own appointees.

6 So, assuming you're the chief justice of the
7 Court of Appeals, with a full bench of Cuomo
8 appointees, how are you going to manage that in a
9 way that is truly independent from what the
10 Governor -- Governor's agenda may be?

11 JANET DiFIORE: Well, I believe that every
12 one of my future, hopefully, colleagues on the bench
13 come to every case the same way that I have been
14 talking about here during this process; and that we
15 come at every case in an honest way, looking at
16 every case on -- based on the individual merits,
17 without regard to who the appointing authority was
18 or was not, without regard to any outside influence.

19 And I have full confidence that my colleagues
20 on the bench share that view, and have acted
21 honorably on that as well.

22 SENATOR HOYLMAN: Thank you very much.

23 JANET DiFIORE: You're welcome, sir.

24 SENATOR BONACIC: Okay. I'm going to now go
25 to Senator Croci.

1 SENATOR CROCI: Thank you, Mr. Chairman.

2 And, Madam District Attorney, thank you for
3 joining us today.

4 And thank you, too, to you and your team of
5 career prosecutors at the Westchester County DA's
6 Office who do the very real work of keeping us safe
7 in our communities, and I appreciate your fine work
8 there.

9 I was anchored to two of your comments during
10 your opening. Two of the words used were
11 "independence" and "integrity."

12 And as a former chair of JCOPE, and
13 Mr. Goldberg alluded to that chairwomanship during
14 his testimony, so much of what we're being asked to
15 consider this year in this legislative session, with
16 regard to ethics reform, we're being asked to look
17 at the federal model, and some of the things that
18 they do at the federal level as best practices.

19 And to that end, at the federal level, there
20 are safeguards within the departments and agencies
21 throughout the federal government that ensure,
22 through inspectors general and other mechanisms,
23 that the bidding process, request for proposals,
24 requests for qualifications, and the independent
25 expenditures by those agencies are done with

1 watchful oversight to ensure the integrity of the
2 departments and agencies of the executive branch.

3 Do you believe that, at the state level, as
4 we seek to mirror some of these best practices, that
5 that would be a welcome addition on -- and those
6 types of safeguards should be mirrored in the
7 executive branch at the state level?

8 JANET DiFIORE: Well, I leave that to your
9 deliberations and your body to determine what would
10 be best.

11 I will say this, though:

12 I feel very strongly about training and
13 education, and teaching people about the rules that
14 guide their conduct.

15 I think that most people want to comply with
16 the rules.

17 I think that many people don't know, or
18 haven't had an opportunity to learn, exactly what
19 the rules mean and require.

20 And to my mind, that's where the focus and
21 emphasis should be: teaching people what the rules
22 are, and how to stay in compliance with the rules.

23 SENATOR CROCI: And those should apply both
24 to the Legislature and the executive branch?

25 JANET DiFIORE: Oh, absolutely, without

1 question. Judges as well.

2 SENATOR CROCI: Very good.

3 Second question: With regard to Raise the
4 Age, I understand this is a very emotional topic for
5 so many of us.

6 If a 16-year-old or 17-year-old were to kill
7 a cop or first responder; if they were to commit the
8 act of rape; if they're 16 or 17, and they're
9 radicalized and commit a terrorist act; does that
10 fall in the same category as some of the other
11 groupings that we seek to take out of the
12 population, of those who are -- have reached the age
13 of majority?

14 JANET DiFIORE: No.

15 If you read the commission's recommendations,
16 those classifications and categories are dealt with
17 in the adult criminal court.

18 SENATOR CROCI: Very good.

19 And just to follow up on what Senator O'Mara
20 was asking: Does the Second Amendment, in your
21 opinion, confer an individual right?

22 JANET DiFIORE: Yes.

23 SENATOR CROCI: Very good.

24 Thank you, ma'am.

25 And, again, thank you for your appearance

1 here today.

2 JANET DiFIORE: You're welcome.

3 SENATOR BONACIC: Thank you, Senator Croci.
4 Senator Amedore.

5 SENATOR AMEDORE: Nice to see you,
6 Madam District Attorney; and thank you, also, for
7 the call ahead of time to introduce yourself, and
8 having me get a chance to know you.

9 I do applaud your efforts and your hard work,
10 being a wife, a mom, now a grandmother.

11 It is quite admirable for all of your
12 efforts, as well as to serve and to do the work
13 that -- for this great state.

14 One question that I have is, with the rise of
15 heroin use throughout the state, do you have a plan
16 to address this epidemic through the local court
17 systems?

18 JANET DiFIORE: Well, the answer is no.

19 But what I am committed to is drug-treatment
20 courts.

21 I helped to establish -- I first -- back when
22 Chief Judge Kaye was the chief judge, I sat on the
23 commission on drugs; and, of course, where we made
24 recommendations for institutionalizing
25 drug-treatment courts, so that offenders whose

1 drug-related crimes, that were truly motivated by
2 their addiction to substances, are dealt with in a
3 way that addresses the underlying issue rather than
4 rotating people through.

5 So if you are -- if your question goes to my
6 support of treatment alternatives to incarceration?
7 Yes, certainly, I am most supportive and committed
8 to that.

9 SENATOR AMEDORE: Thank you.

10 JANET DiFIORE: You're welcome.

11 SENATOR BONACIC: Thank you.

12 Senator Ranzenhofer.

13 SENATOR RANZENHOFER: Thank you,
14 Mr. Chairman.

15 Over here.

16 Welcome.

17 First of all, thank you for being here today.

18 I've had an opportunity to read the resume,
19 and, obviously, with your experience as DA and as
20 judge, you certainly have the training and the
21 background to be considered for this position.

22 And I've sat here and listened to a number of
23 the questions dealing with advocacy, and, you know,
24 what your take is on the Constitution.

25 So I would just like to ask you, maybe this

1 has been addressed, but I'm going to ask in a
2 slightly different way: How do you, as a sitting
3 justice, knowing the positions you've taken,
4 advocating for or against certain things, and then
5 you're dealing with issues that are addressing
6 either those identical issues or very similar
7 issues, how do you separate the two hats, and make a
8 decision, keeping in mind what the Constitution
9 says, what the facts of the case are, and your prior
10 advocacy one way or the other?

11 JANET DiFIORE: Well, I have a fair amount of
12 experience across the criminal justice system and
13 the justice system. I've served as a prosecutor.
14 I've served as defense counsel. I've served as a
15 judge. I've been the district attorney.

16 I know and understand the roles and the
17 responsibilities and the ethical rules that guide
18 each one of those categories of professional
19 responsibilities, and I have always abided by them,
20 and I will continue to.

21 SENATOR RANZENHOFER: But in terms of each of
22 those roles, their -- the advocacy -- you know, if
23 you're a DA and you're advocating for something --

24 JANET DiFIORE: Correct.

25 SENATOR RANZENHOFER: -- that's one thing.

1 If you're a defense attorney and you're
2 advocating for something, that's another.

3 As chief judge, if you've advocated for
4 something, is that a little bit different than the--

5 JANET DiFIORE: Is that...? I'm sorry?

6 SENATOR RANZENHOFER: -- is that a little bit
7 different, because you have now a different role?

8 You're not a DA anymore. You're not a
9 defense attorney.

10 You're now the chief judge of a court system.

11 So how does that advocacy come into play;
12 whereas, it might have been a little bit different
13 when you had a prosecutorial role or defense-counsel
14 role?

15 JANET DiFIORE: Well, you correctly point out
16 the different roles of the chief judge.

17 And on the adjudicative side, as I said, the
18 cases are the cases and they are inviolate.

19 On the advocacy side, to my mind, is that the
20 chief judge advocates on issues that affect court
21 process, and the ways in which we service and honor
22 our court mission, and our promise to deliver on
23 that mission, which is about operational issues and
24 access issues that move the business of the courts
25 to honor our responsibility to fairly, justly, and

1 speedily resolve all of the cases and controversies
2 that come to our courthouses throughout the state.

3 SENATOR RANZENHOFER: And another question
4 I wanted to ask you is, as a fourth-generation
5 lawyer, and my family has been in the legal business
6 for a number of years, through the generations:

7 You had mentioned a comment before, when you
8 were asked about a -- it was some questions about
9 tenants rights, and civil rights, in a non-criminal
10 manner.

11 Do you believe, under the Constitution, that
12 there is a constitutional right to an attorney in a
13 civil manner?

14 JANET DiFIORE: Well, Senator, that is an
15 issue that will likely come before the court, and
16 I am not in a position to opine on that. It
17 wouldn't be appropriate.

18 SENATOR RANZENHOFER: One more question
19 I wanted to ask you.

20 If the court does move in the direction of
21 transferring cases for 16-, 17-year olds from
22 justice courts, town courts, village courts, would
23 that then necessitate changing the role of those
24 courts, because they would be having to hear cases,
25 to move to a district-court model?

1 JANET DiFIORE: Well, we don't know what the
2 model is going to be. There are many variations of
3 the model.

4 We will wait and see what the Legislature --
5 if the Legislature determines that that's
6 appropriate.

7 And whatever it is, we will make certain
8 that, within the bounds of the law and the
9 constitutional parameters, we will staff -- meet the
10 staffing needs to accommodate those cases.

11 SENATOR RANZENHOFER: Thank you very much.

12 JANET DiFIORE: Thank you.

13 SENATOR RANZENHOFER: Thank you,
14 Mr. Chairman.

15 SENATOR BONACIC: You're welcome,
16 Senator Ranzenhofer.

17 Senator Serino.

18 SENATOR SERINO: Thank you, Mr. Chairman.
19 And it's very nice to meet you and --
20 Your Honor.

21 And I have to say, I enjoyed my -- questions
22 that my colleagues have asked you, and your answers.

23 And I'm very happy to hear about your
24 independence, regardless of being a
25 Governor-appointee. It's very important to me.

1 And I -- also, Judge Brands said to say
2 "Hello." He spoke very highly of you.

3 JANET DiFIORE: Thank you.

4 SENATOR BONACIC: Thank you, Senator Serino.

5 I just would like to conclude quickly.

6 Oh, excuse me.

7 Senator Latimer, who is not a member of the
8 Judiciary, but we will give him the privilege of the
9 floor.

10 SENATOR LATIMER: Thank you, Mr. Chairman.

11 Judge, it's good to see you again.

12 And, Mr. Chairman, thank you for the
13 privilege.

14 I just wanted to chat briefly with my
15 colleagues.

16 I've had the good fortune of knowing this
17 candidate, dare I date it, for 40 years.

18 And more importantly than the length of time,
19 many of the questions that came up to this table are
20 terrific and very timely questions.

21 Senator Ranzenhofer's questions, in the last
22 couple of minutes: Can you make the transition from
23 a district attorney's role of advocacy and
24 prosecutorial role, to a judicial position?

25 And this candidate has had that exact

1 experience already, when she served as an ADA in
2 Westchester County, the head of narcotics bureau,
3 and then was elected to both the county court with
4 criminal cases, and then later to the State Supreme
5 Court on civil matters.

6 So, I've had the good fortune, living in
7 Westchester, to see this candidate make that
8 transition once already in her career, which I think
9 is important.

10 Senator Nozzolio and Senator Bonacic have
11 both raised the question of independence, and a very
12 important question to ask, a very timely question.

13 I've served, in my past experience as
14 chairman of our county legislature, and for two
15 brief years as chairman of my political party; and
16 in both cases, I had reason to interact with the
17 judge.

18 And in both cases, I can tell you that no
19 influence, either from the county governmental side
20 or political side, mattered to her in the decisions
21 that she made.

22 And so I am perfectly comfortable being able
23 to feel that my experience with her over the years
24 made the answers to your questions legitimate and
25 honest responses.

1 And, Mr. Chairman, just from my standpoint,
2 we even both served, as very young people, inside
3 city government of Mount Vernon. She was a summer
4 intern with a very well-respected city judge. And
5 I was a rookie in the planning department. We were
6 both in our 20s.

7 And hard to believe we're sitting here today,
8 Your Honor.

9 JANET DiFIORE: Yes, it is.

10 SENATOR LATIMER: Thank you, Mr. Chairman.

11 SENATOR BONACIC: Senator Latimer.

12 But I would say that you're still both very
13 young.

14 In conclusion, I would just -- before I call
15 the question, obviously, you have the intelligence,
16 you have the varied experience, you have terrific
17 communication skills, you have personality, and
18 I think you're a human being of deep substance.

19 I think you're going to make an excellent
20 Court of Appeals judge.

21 JANET DiFIORE: Oh, thank you.

22 SENATOR BONACIC: And at this time, I would
23 like to move the nomination to the floor for
24 consideration, and call a vote.

25 SENATOR HASSELL-THOMPSON: So moved.

1 SENATOR BONACIC: Second by
2 Senator Hassell-Thompson.

3 All those in favor, raise their hand.

4 (All members in favor raise their
5 hands.)

6 SENATOR BONACIC: George, you can raise your
7 hand twice.

8 [Laughter.]

9 SENATOR BONACIC: Anybody opposed?

10 It's unanimous.

11 Congratulations.

12 Meeting adjourned.

13 JANET DiFIORE: Thank you, sir.

14
15 (Whereupon, at approximately 2:09 p.m.,
16 the hearing held before the New York State Senate
17 Standing Committee on the Judiciary concluded, and
18 adjourned.)

19
20 ---oOo---

21
22
23
24
25