

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

3 PUBLIC HEARING:

4 NOMINATION OF JANET DIFIORE

5 FOR CHIEF JUDGE OF THE COURT OF APPEALS  
6 -----

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 1:30 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

23 Senator Adriano Espaillat

24 Senator Kemp Hannon  
25

## 1 COMMITTEE MEMBERS PRESENT (Continued):

2 Senator Ruth Hassell-Thompson (RM)

3 Senator Brad M. Hoylman

4 Senator Andrew J. Lanza

5 Senator Kenneth P. LaValle

6 Senator Michael F. Nozzolio

7 Senator Thomas F. O'Mara

8 Senator Diane J. Savino

9 Senator Susan J. Serino

10 Senator Michael Venditto

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SPEAKERS:	PAGE	QUESTIONS
David P. Miranda President New York State Bar Association	6	12
Evan M. Goldberg President NYS Trial Lawyers Association	14	19

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

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

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

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

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

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

17           Welcome.

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

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

25           But getting back to the chief judge, that's

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

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

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

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

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

17 Senator Nozzolio, Senator Boyle,  
18 Senator Amedore, Senator Serino, Senator O'Mara,  
19 Senator Croci, Senator Venditti (sic), Senator Diaz,  
20 Senator Leroy Comrie, Senator Breslin,  
21 Senator Savino, Senator Hoylman, and  
22 Senator DeFrancisco.

23 All right.

24 SENATOR DIAZ: And the boss.

25 SENATOR BONACIC: Now, different Senators

1 will be coming in periodically.

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

4 Welcome.

5 SENATOR FLANAGAN: Thank you.

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

8 [Laughter.]

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

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

14 David, have a seat right there.

15 Welcome.

16 DAVID P. MIRANDA: Thank you,  
17 Senator Bonacic.

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

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

25 On behalf of our New York State Bar

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

4 The New York State Bar Association is  
5 comprised of over 74,000 attorneys, including  
6 attorneys in every part of New York State, from  
7 every other state in our union, and from over  
8 100 countries around the world.

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

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

13 Since New York amended its Constitution in  
14 1973, to provide for the appointment of Court of  
15 Appeals judges, we have provided the governor with  
16 our ratings of the candidates whose names have been  
17 submitted to the governor by the State Commission on  
18 Judicial Nomination.

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

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

1           urge you to confirm her nomination.

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

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

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

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

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

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

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

1 chair appoints subcommittees to investigate the  
2 qualifications of each candidate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 SENATOR BONACIC: Thank you, Mr. Miranda.

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

5           I had one question for you.

6           Oh, he's hiding over there.

7           Senator Hannon at the end of the table.

8           I have a question for you.

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

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

13          Do you care to comment?

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

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

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

23          Senator DeFrancisco.

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

1 qualified"?

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

4 SENATOR BONACIC: Thank you.

5 Does anyone else have any questions?

6 Senator Diaz.

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

9 I take it any which way: Qualified.  
10 Qualified.

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

13 SENATOR BONACIC: I respect your question.

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

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

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

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

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

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

2 SENATOR BONACIC: Okay.

3 SENATOR DIAZ: Thank you.

4 SENATOR BONACIC: Anybody else have any  
5 questions?

6 Okay.

7 Mr. Miranda, thank you very much.

8 DAVID P. MIRANDA: Thank you.

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

12 EVAN M. GOLDBERG: Good afternoon, all.

13 SENATOR BONACIC: Good afternoon.

14 EVAN M. GOLDBERG: My name is Evan Goldberg.  
15 I'm the president of the New York State Trial  
16 Lawyers Association, and I appear here today on  
17 behalf of the NYSTLA Board of Directors and our  
18 3500 attorney members who practice in trial and  
19 appellate courts throughout the state of New York.

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

25 For 60 years, NYSTLA has fought to protect

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

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

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

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

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

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

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

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

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

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

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

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

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

25           As an assistant district attorney, she served

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

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

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

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

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

25 Aside from being a supervisory judge,

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

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

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

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

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

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

25 As chief judge, she will continue to approach

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

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

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

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

11 SENATOR BONACIC: Thank you, Mr. Goldberg.

12 I think, when I read your report, your  
13 organization rated Ms. DiFiore "highly qualified."

14 Am I correct?

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

17 DAVID P. MIRANDA: Okay.

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

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

22 Okay.

23 You're done.

24 Thank you.

25 EVAN M. GOLDBERG: Thank you, Chairman.

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

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

6           He rejected my opportunity to speak for 20 or  
7           30 minutes, so --

8                           [Laughter.]

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

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

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

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

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

1 Dr. King who talks about the arc of justice.

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

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

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

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

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

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

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

25 Thank you, Mr. Chairman.

1           SENATOR BONACIC: Thank you, Senator.

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

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

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

11           Ten years as an assistant DA,  
12 Westchester County;

13           Westchester County judge, four years;

14           Supreme Court judge, three years;

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

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

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

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

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

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

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

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

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

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

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

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

24 Written submissions from Tiana Noroni (ph.);  
25 11 pages, just negative about the judicial arena.

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

4           And, submission from James Brady (ph.);  
5           10 pages, negative of the Court of Appeals, in  
6           general.

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

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

11          At this time, we will conclude the public  
12          hearing.

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

17          Thank you very.

18          We're adjourned.

19  
20                   (Whereupon, at approximately 1:29 p.m.,  
21           the public hearing held before the New York State  
22           Senate Standing Committee on the Judiciary  
23           concluded, and adjourned.)

24                               ---oOo---

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