

**THE BRAZEN LIES OF WESTCHESTER DISTRICT ATTORNEY JANET DiFIORE**  
**at the Senate Judiciary Committee's January 20, 2016 "Meeting"**  
**on her Confirmation as New York's Chief Judge**

1. As to evidence of wrongful convictions & prosecutorial misconduct in her *own* district attorney's office
2. As to the statutorily-violative, fraudulent, and unconstitutional judicial pay raises recommended by the Commission on Legislative, Judicial & Executive Compensation – & the slush-fund Judiciary budget

**PROVEN by the Senate Judiciary Committee's *own* record of "written testimony"**  
**from witnesses whose requests to orally testify, it had denied**

<http://www.nysenate.gov/newsroom/press-releases/john-j-bonacic/current-written-testimony-submitted-court-appeals-nominee>

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**1.**

**As to evidence of wrongful convictions & prosecutorial misconduct**  
**in her *own* district attorney's office**

[particularized by the requests to testify & statements of Jeffrey Deskovic<sup>1</sup>  
& Tatiana Neroni, Esq., appearing at pp. 1-15 and pp. 25-35 of  
the Senate Judiciary Committee's record of "written testimony"]

**The extent of the questioning at the "meeting" was as follows:**

**VIDEO at 17:37 mins:**

<http://www.nysenate.gov/calendar/meetings/judiciary/january-20-2016/judiciary-meeting>

DeFrancisco: Thank you. Thanks for calling me in advance of the meeting to discuss some of these issues, but, um – I noticed in the outline that you submitted to everyone, that, and you mention it New York State Justice Task Force, co-chair and one of the things that is being discussed are wrongful convictions. In fact, there was a letter, which Senator Bonacic just referred to, from an individual who was wrongfully, not only accused, but convicted and incarcerated. Um, now, there is no question that the chief judge of the Court of Appeals has, for many, many, years, no matter who it was, got involved in policy issues, advocating for legislation, advocating for fairness in the judicial system. And you are well aware that there is a commission on judicial conduct. I've got a bill in, dealing with a commission on prosecutorial conduct. Now, have you weighed in on that concept at all, as a D.A? I know I was inundated by D.A.s

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<sup>1</sup> This includes the written statement of Sam Abady, Esq., on Jeffrey Deskovic's behalf, and encompassing D.A. DiFiore's knowledge, as judge (SJC record, at pp. 7-9).

showing how unwise that was to ever even consider that there would be wrongful conduct on the part of a district attorney. Have you weighed in on that issue up to this point in time?

DiFiore: No not at this point in time. That was a separate group.

DeFrancisco: Okay. That's Number 1. Number 2 you indicated in your resume here, that after this wrongful conviction, you got actively involved, you saw, you did an investigation as to what the problems were. And I'm not looking to find out who the D.A. was that was involved in the conviction, but did you determine that there was more than simply errors in the process, that maybe there was something that should have been done, either non-disclosure of exculpatory evidence, or something which implicated whoever handled the case, or any other cases you reviewed as a member of that group that caused you concern?

DiFiore: In the particular case, Senator?

DeFrancisco: Yeah.

DiFiore: No. In fact, in that case the exculpatory evidence was laid before the jury and the jury found the man guilty of the crimes that we later learned he did not actually commit.

DeFrancisco: Alright, but as a member, as co-chair of the New York State Justice Task Force, you've discuss wrongful convictions from time to time with your members, I assume.

DiFiore: Oh, absolutely.

DeFrancisco: Alright. In that study or in your work have you found any examples of questionable conduct on behalf of prosecutors?

DiFiore: The New York State Justice Task Force has examined cases in New York State. We have not uncovered a case to the best of my knowledge similar to the cases we've read about in Texas and other places. What we have focused on are issues such as the video recording of custodial interrogations, improving the practice around eye-witness identifications to make certain that we are creating the best atmosphere in which a witness is called upon to identify a perpetrator. We are, we've spoken about, and examined, the issues around increased and accelerated discovery, forensic sciences, the DNA data bank, the expansion of the DNA data bank, and post-conviction access to DNA, the legislation that was passed.

DeFrancisco: Okay. And as a judge have you ever run into situations where you've had to admonish prosecutors for conduct that was inappropriate with respect to a criminal prosecution?

DiFiore: I personally have not.

DeFrancisco: And have you, do you know of any, such that –

DiFiore: Well, I read about them.

DeFrancisco: Okay. But what is the remedy, what is your understanding, right now. If there is withholding evidence or if there is some misconduct on behalf of a prosecutor. What is your understanding of the remedy?

DiFiore: Right now the remedy lies with the leader of that office, the elected district attorney, with the grievance committee.

DeFrancisco: Okay. And what are the possible results of someone who has been found to have done something that is inappropriate in the court?

DiFiore: Well, it could be, if it is an internal proceeding in the district attorney's office, the discipline can be anything from a private admonishment, additional training, docking of pay, to the ultimate censure would be a firing and a public disclosure and a referral to the grievance committee.

DeFrancisco: And the grievance committee is the local grievance committee, whatever district –

DiFiore: The Appellate Division grievance committee.

DeFrancisco: Okay. And since you were a judge and since you were under this umbrella you had to be, your conduct had to comply with what conduct is prescribed of judges. Do you think that system has worked from your experience as a judge, a prosecutor, or whatever?

DiFiore: In my personal experience, I certainly do. There's never been an occasion where I have –

Bonacic: Senator, I think we are going to have to move on. I have so many other members that want to ask questions. You want to wrap it up?

DeFrancisco: I just want to wrap up with this point. I don't want to ask you if you will support the bill. I don't think that's fair. But, I just, to bring this bill out because. I guess the question is would you keep an open mind as the chief administrative officer of the courts of the State of New York? As you review cases, as you hear of situations before you on presentations that a similar remedy or similar process that's for judges would be advisable or not advisable, will you consider that with respect to the prosecutor in a criminal case?

DiFiore: Of course I would.

DeFrancisco: Okay. Would you consider it well?

Laughter

DeFrancisco: Thank you.

**VIDEO at 40:00 mins:**

<http://www.nysenate.gov/calendar/meetings/judiciary/january-20-2016/judiciary-meeting>

Boyle: Thank you, Mr. Chairman. Welcome. This is my first hearing as a member of the Judiciary Committee and I...

DiFiore: Mine, too.

Boyle: Thank you for such a historic day. Just a quick question, to piggy-back on Senator DeFrancisco's earlier comments about law enforcement and prosecutorial misconduct. Obviously we see across the country there are some communities of color who have grave concerns about our judicial system. I don't know if you've seen "Making a Murder" on NetFlix, the story of Steven Avery. Thankfully, it didn't happen in New York, but it happened in Wisconsin. In Suffolk County, where I live, we have our former police chief just arrested by the FBI. Serious concerns. And I have been a law-and-order guy, throw-the-book-at-them type for a long time, but I myself am experiencing some concerns about our judicial system. Just ask you that you make this a priority in your new position, I'm sure you are going to achieve it. And one question. Do you feel that experts should be allowed into court to testify about false confessions?

DiFiore: Well, Senator, that matter is currently before the court, an issue around that matter and so, of course, it would not be appropriate for me.

Boyle: I understand. Please take into consideration how people are feeling about judicial, prosecutorial misconduct. There is a huge potential problem and concern among New Yorkers and Americans.

DiFiore: Thank you.

**As to the statutorily-violative, fraudulent, and unconstitutional judicial pay raises recommended by the Commission on Legislative, Judicial and Executive Compensation -- & the slush-fund Judiciary Budget**

[particularized by the requests to testify & statements of Center for Judicial Accountability Director Elena Sassower, appearing at pp. 36-70 of the Senate Judiciary Committee's record of "written testimony"]

**The extent of questioning at the "meeting" was as follows:**

**VIDEO at 31:00 mins:**

<http://www.nysenate.gov/calendar/meetings/judiciary/january-20-2016/judiciary-meeting>

Hassell-Thompson: The Commission has just recommended an increase in pay of Supreme Court justices almost to the level paid to federal court, district court, judges. How will the court system pay for this increase? And will there be any impact on the operations of the courts?

DiFiore: First let me say, I applaud the work of the Commission on Judicial Compensation and I think that it, they did a responsible job, that judges, our hard-working judges across the state, should be reasonably and fairly compensated for the important work that they do. As to your question about the budget, if I am fortunate enough to be confirmed, that is going to be my top priority: to help our staff and work with our partners in government and to figure out how we are indeed going to fund that.

**VIDEO at 14:33 mins:**

<http://www.nysenate.gov/calendar/meetings/judiciary/january-20-2016/judiciary-meeting>

Bonacic: The budget that has been presented to us by the Judiciary is in excess of our 2% state imposed limit that we do voluntarily. Is this Judiciary budget going to be your budget or is it going to be your predecessor's.

DiFiore: Well, I didn't obviously prepare the Judiciary budget, but if I am confirmed you can bet that will be one of the first things that's on my agenda to speak with the staff with and we'll go forward from there."

**VIDEO at 29:50 mins:**

<http://www.nysenate.gov/calendar/meetings/judiciary/january-20-2016/judiciary-meeting>

Hassell-Thompson: We have put 25 new judges on the Family Court in the last two years. You also heard it alluded to that the budget that has been preliminary submitted is, I think is, 1.4% over. Would you be pushing for more judges for the Family

Court, even understanding those considerations and concerns?

DiFiore:

As I sit here today, I can't answer that question. What I will do, if I am lucky enough to be confirmed by this body, is take a long hard look at that and make sure that we do have enough in terms of resources, whether they are judicial resources or non-judicial resources. And I will be, if I think and conclude at the end of that review and analysis, that we do need additional staffing in terms of new judgeships, you can be that I will be sure that I will be advocating for that.