

From: Tatiana Neroni <tatiana.neroni@gmail.com>
Sent: Wednesday, January 13, 2016 11:41 AM
To: JUDICIARY@NYSENATE.GOV
Subject: confirmation hearing of Janet DiFiore for NYS Court of Appeals/application to testify/FOIL request

Dear Sirs:

I called the contact number of Jessica Cherry shown on the public notice as to the Confirmation hearing of Janet DiFiore for the position of Chief Judge of NYS Court of Appeals.

I have evidence to present that Janet DiFiore, as a District Attorney of Westchester County, committed and promoted prosecutorial misconduct in prosecution of felonies and other crimes, collusion with judges and public defenders in order to violate a criminal defendant's constitutional rights.

I represented, as a criminal defense attorney, one of the felony cases prosecuted by DA DiFiore's office in 2014, and I am a witness to those dishonest policies being implemented by her office that put in question her ability to be transformed from a dishonest prosecutor into an honest judge ruling over all state courts.

In the case where I represented a criminal defendant prosecuted by DA DiFiore's office for an A felony in 2014, DA DiFiore and/or her office which is under her control:

- 1) attempted to prevent my timely substitution into the case as counsel;
- 2) colluded with the public defender to get my young client to waive a grand jury indictment before I got substituted into the case (efforts to coerce him to waive grand jury indictment started as soon as the defendant's father showed up in jail with a substitution of counsel form that he was not allowed to give to defendant - indicating that the jail informed DA DiFiore's office, and DiFiore's office informed the public defender's office); the coercion efforts were undertaken while DA DiFiore knew that she did not have ANY evidence to indict him - or to prosecute him for ANY crime;
- 3) DA DiFiore routinely violates constitutional rights of criminal defendants against self-incrimination by, in collusion with local judges of justice courts, sending criminal defendants during the pendency of criminal proceedings into the so-called "TASC" programs where criminal defendants, under the threat of contempt of court, revocation of bail and incarceration, must make self-incriminating statements that then become available to the prosecution, and must pay for participation in such programs; such TASC forms are pre-printed typographically, with pre-printed signatures of judges on them.

This statement is easily ascertainable by investigating records of justice courts in Westchester County as to "TASC" orders, such orders are public records.

- 4) DA DiFiore routinely acts as a part of the court handling plea allocutions and advising criminal defendants of their rights in plea allocutions, as well as obtaining from criminal defendants waivers of their constitutional rights instead of the judge, and thus discharging the judges' function.

Such actions disqualify and put in disrepute justice courts as impartial adjudicators, and disqualifies DA DiFiore's office in all cases where she or her employees, obviously with her knowledge and consent, act as plea allocutors and representatives of the court.

This is not only disservice to the public, but also a waste of public money.

I had a young client charged with an A felony for alleged possession of psychedelic mushrooms.

The evidence (the alleged mushrooms) did not exist (which was revealed only after my repeated efforts to obtain that evidence), and DA DiFiore knew it.

Yet, my client was - coincidentally, at the time when defendant's father delivered to jail a drafted affidavit of substitution of counsel:

- 1) threatened with a violent act by a jail insider, so he was frantic to get out of there;
- 2) prohibited to get from his father a drafted affidavit for change of counsel; and at the same time,
- 3) approached by a corrupt public defender (who obviously in collusion with DA DiFiore) and after talking to me on the phone and acknowledging that I am getting into the case and the public defender is getting out of the case, the public defender rushed to jail and tried to coerce my young client in order to get him to waive his right to indictment by a grand jury while my substitution as counsel was held off by the local jail, obviously in collusion with DA DiFiore.

It took extraordinary courage and intelligence of my young client to reject the coercion efforts of his own counsel who was selling him out to DA DiFiore, corrupt efforts to drum up a wrongful conviction through a waiver of grand jury proceedings, so that the threshold of a valid grand jury indictment (which DA DiFiore could not obtain, not having any evidence against my client) would be unnecessary.

When I got my client released without bail since I requested a felony hearing, and it was denied, DA DiFiore's office started to play financial-drain game, in collusion with the presiding judge of the justice court, by requesting multiple adjournments of the felony hearing with one-week increments, knowing full well that my client and I lived over 3 hours' drive away from the court. The point of requests was to make me waive my client's speedy trial rights, which I refused to do, and to make my client financially drained and unable to finance a private counsel when trial time comes.

We came to court over 5 times based on such adjournments, with my client running legal fees for all those appearances.

Each time Janet DiFiore's office claimed that it did not have the evidence necessary for the hearing.

Each time Janet DiFiore's office did not have the elementary courtesy to call me and the court ahead of time, tell us that they did not have the necessary evidence and request further adjournment.

All adjournments were granted over my vigorous objections and requests for dismissal of the charges since DA DiFiore's office failed to produce the claimed evidence.

Felony proceedings in New York are not handled in justice courts. Justice courts can only arraign on felony charges, set initial bail, initially detain the defendant (as the justice court did), and, if a felony hearing is requested, provide the felony hearing, or release the defendant without bail if such a felony hearing was not provided.

The court, on request of DA DiFiore's office, de facto amended statutory procedure and continued to drag me and my client back to the justice court, under the threat of my client's incarceration and my own attorney discipline, despite DA DiFiore's knowledge that they do not have any evidence to indict my client.

Since in felony proceedings, I could not make discovery demands, DA DiFiore had her employee continue to harass my client and myself by having us dragged hours away from home to illegal justice court proceedings, each time claiming that do not "yet" have the evidence (which they never had).

After DA DiFiore's office drained my client enough through five appearances in justice court, after a felony hearing was denied and my client was released without bail, DA DiFiore's office substituted felony charges with misdemeanor charges, for which DA DiFiore similarly did not have evidence.

I must note that throughout all the time when the A felony charges were pending, I was repeatedly pushed by the judge of the justice court, with Janet DiFiore's Assistant DA standing by with a smile on her face, to "talk" to DA DiFiore's office because of how serious were the charges.

When misdemeanor charges were substituted, I filed discovery demands, including access to physical evidence.

DA DiFiore's office refused to comply with discovery demands. It only provided to me a lab report that did not indicate that there were ever any psychedelic mushrooms involved. I was not allowed access to physical evidence in the case, which was against the law.

I had to make a motion to compel discovery and for sanctions against DA DiFiore's office.

THEN it came out that DA DiFiore's office does not have any evidence of my client's involvement in the crime of possession of psychedelic mushrooms, for which DA DiFiore prosecuted him for an A felony, put him in jail and exposed him to the risk of violence in that jail.

It is obvious that DA DiFiore's and her office's handling of that case alone necessitates severe discipline of DA DiFiore, to the point of disbarment.

It is obvious that DA DiFiore's disdain to the rule of law does not qualify her as an attorney, much less as a judge.

I am sure that DA DiFiore is engaged in the same unlawful policies as she is being nominated and confirmed for the position of the Chief Judge of the NYS Court of Appeals, and that an investigation of her misconduct is necessary before she can be put in charge of the entire state court system.

It is obvious that, for DA DiFiore's office a conviction, even a wrongful conviction without evidence, was more important than doing justice.

It is obvious that a dishonest prosecutor will not make an honest judge.

Moreover, if DA DiFiore was unaware of the atrocious prosecutorial misconduct committed by her ADAs and allowed her employees, Assistant District Attorneys, to engage in unconstitutional conduct in felony cases which Janet DiFiore must prosecute herself, Janet DiFiore is a poor administrator of the DA's office and is unfit to be the administrator of the entire NYS court system.

I wanted to testify against DA DiFiore at the confirmation hearing on January 20, 2016 hearing and to publicly impart my knowledge about DA DiFiore in a live-streamed hearing.

I checked the public notice that the NYS Senate posted.

The public notice indicated that oral testimony is by invitation only. To verify how that invitation can be obtained and based on what criteria, I called the telephone number on the notice to speak with Jessica Cherry, the contact indicated on the public notice for the confirmation hearing of Janet DiFiore. I saved the public notice and I have it on file.

A female answered the phone as "Senator Boracic' office" and told me that Jessica Cherry is speaking on the other line.

I explained the purpose of my call, to get invited to orally testify AGAINST confirmation of Janet DiFiore.

The female immediately told me that at the time of my call Jessica Cherry accepted only written submissions regarding confirmation of Janet DiFiore. I wonder if the reason for such answer was that I wanted to testify against confirmation of Janet DiFiore.

The secretary rudely talked over me and tried to prevent me from asking questions as to why the public notice did not reflect the restriction that Jessica Cherry is only considering written submissions as of today (at least), a week before the hearing, and not for oral testimony.

In view of the above, I request the following as a FOIL request, within 5 business days, as required by law, to this e-mail address:

- (1) copies of all applications for oral testimony at the confirmation hearing of Janet DiFiore on January 20, 2016;
- (2) copies of all applications for videotaping that confirmation hearing;
- (3) all notices to the public regarding possibilities of private videotaping of that hearing;
- (4) all invitations sent out for oral testimony at that hearing;
- (5) all acceptances of such invitations;
- (6) the list of witnesses who will testify at the confirmation hearing of Janet DiFiore on January 20, 2015;
- (7) all preliminary written submissions from individuals who are invited to testify at the confirmation hearing of DiFiore;
- (8) all written submissions from the public for that confirmation hearing;
- (9) all written policies regarding screening witnesses to be invited to testify at that hearing or at any other public hearings before the NYS Senate or its committees, including, but not limited policies regarding preferences of certain types of witnesses to be invited or not invited to testify based on their identity, background, affiliation with certain organizations or position as to the purpose of the hearing;
- (10) all decisions, resolutions or rulings of NY Senate and its Committees regarding disqualification of interested witnesses from testifying, regarding this confirmation hearing and prior confirmation hearings of judges of NYS Court of Appeals going back 10 years;
- (11) all decisions, resolutions or rulings of NY Senate and its Committees on the issue of disqualification of senators who are licensed attorneys to vote on legislation or at confirmation hearings that pertain to court proceedings, or provide benefits to the legal profession;
- (12) all disclosures of employment and clients outside the NYS Senate submitted by NYS Senators who are licensed attorneys for the last 10 years;
- (13) documents indicating authority of Jessica Cherry to set policy decisions as to how many people to invite to the confirmation hearing of Janet DiFiore;
- (14) copies of policies or other public documents of New York Senate, Judiciary Committee, Senator Boracic or any other legislative officer or employee as to duration of confirmation hearings of Court of Appeals judges, number or type of witnesses to be invited to testify at such hearings, and allotted time for testimony;

(15) copies of any and all written correspondence between NYS Senate or any of its officers and employees with Governor Cuomo and Janet DiFiore in connection with her nomination and confirmation hearing;
(16) copies of any and all invitations to the confirmation hearing sent out to the press.

I expect you to comply with my FOIL request within 5 business days, as required by law.

Please, forward the copies of documents I requested, in a scanned format, to this e-mail address.

Sincerely,

Tatiana Neroni
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