

New York State Senate
The Judiciary Committee
State Capital of New York

My name is Jeffrey Deskovic. I served sixteen years in prison-from age 17 to 32- for rape and murder until proven innocent nine years ago. Westchester District Attorney DiFiore rightfully did not object to a request for DNA discovery and upon identification of the actual perpetrator, dismissed my indictment. When Janet DiFiore's nomination is discussed, my case is frequently mentioned. It is in that context, I believe my views on her candidacy for Chief Judge are relevant.

I am an advocate whose back story involves wrongful conviction. I wish to share the highlights of my CV. I hold a Masters Degree from John Jay College of Criminal Justice, having produced a thesis on wrongful conviction causes and the reforms needed. In my capacity as anti-wrongful conviction advocate, I have delivered more than 100 presentations throughout the country; authored more than 200 articles in some seven different publications; and made more than 600 media appearances. Additionally, I have lobbied elected officials in New York, Connecticut, as well as Congress. I have co-taught a wrongful conviction college course as an adjunct professor. I have also given seminars before criminal justice professionals: the police and correction academy; judges; prosecutorial groups; and defense bars.

My appreciating DA DiFiore doing the right thing in my case does not mean that I turn away from or remain silent in the face of her overall abysmal record on wrongful conviction and prosecutorial misconduct. Please do not get caught up in the hype surrounding her actions in my case. I will now illustrate that my case was a very rare exception under her administration.

Kian Khatibi- DiFiore fought against exoneration despite confession of actual perpetrator; and, prosecutorial misconduct. Exonerated.

In the Khatibi case, in which he was exonerated following 9 ½ years of wrongful imprisonment for assault with a deadly weapon, her office wrongfully discouraged the actual perpetrator from testifying at the evidentiary hearing by falsely threatening him with prosecution for the crime even though the statute of limitations had run- frightening him into not testifying. Despite that prosecutorial misconduct the presiding judge exonerated him, and he was later compensated

Selwyn Days- brain damaged defendant convicted despite obvious false confession and plethora of forensic testing all of which came up negative. Remains wrongfully imprisoned.

DiFiore has fought the exoneration of Selwyn Days, retrying him a third and fourth time, with the sole evidence a demonstrably false confession, obtained after hours of interrogation. He said he broke in the side-door, there was no side door. He said he killed the victims dog. A veterinarian said the dog died of dehydration. He said he left a bloody knife in the sink. There was no blood on the knife. He said that after committing the crime he drove his girlfriend to get an abortion. Medical records show she went to the clinic a decade earlier. He said he abandoned a car in Delaware. No car was ever found. Despite voluminous forensic testing, nothing ever matched Days. Medical examiner, Dr. Roh, who admitted under oath in my case testified in the case, gave patently incredible testimony straining to support a

double murder theory rather than acknowledge this was a murder-suicide, as the defense had previously argued. Lastly, DiFiore opposed an attempt by defense to have DNA submitted to the DNA databank. Mr. Days has been through 4 trials thus far: 2 mistrials, including one that ended 9-3 toward acquittal, and two convictions. He continues to serve a 50 year prison sentence.

Edward Whitney- "The identification trumps The DNA" Despite her office's familiarity with DNA, in the Edward Whitney case DiFiore's office argued to the jury that, "identification evidence trumps DNA", in an attempt to explain how it was that the DNA found on the trigger guard of a gun didn't match the defendant, despite a police officer with personal motives claiming he saw Whitney throw it. This despite the fact that the officer said Whitney had not been wearing gloves, and that Whitney had previously filed a complaint against the office.

Richard DiGuglielmo- despite the discovery that witnesses had been intimidated by police, DiFiore appeals reversal and gets conviction reinstated Officer DiGuglielmo's conviction for murder was reversed after 11 years imprisonment, due to the defense discovery that three witnesses had been hauled into the police station four nights in a row by Dobbs Ferry Police, treating them like suspects, until they eventually changed their story from having witnessed a self defense, defense of others, justifiable homicide, to a depraved indifference murder. DiFiore appealed the reversal, got the conviction reinstated, resulting in DiGuglielmo being reincarcerated after being free for twenty months. All in contradiction of Rule 35.

DiFiore's Silence On Wrongful Conviction Prevention Legislative Measures DiFiore had a panel of four experts study went wrong in my case, in an effort to determine what could be done differently. Amongst preventive measures that study recommended was videotaping interrogations. Yet year after year, as bills have been introduced in the NY State Legislature calling for mandatory videotaping of interrogations, DiFiore offered no support. As a sitting DA, her voice would have been significant. That failure to demonstrate leadership is inconsistent with an appointment as Chief Judge. In some states, video-taping of interrogations, along with identification reform, is judicially ordered. It's apparent that DiFiore could not be counted on to do the right thing.

There is a reason why the average length of wrongful incarceration is 14 years, with exonerees frequently having had their appeals exhausted by the time of exoneration- the appeals process is not good at catching and correcting wrongful convictions in the usual course of the appellate process. DiFiore's addition to the bench will not help that, nor can we count on her as the chief judge to elevate substantive justice over proceduralism.

How can we in light of her actions in re former Westchester Medical Examiner Dr. Roh. Through my civil rights attorney, I reached out to DiFiore to either audit former Westchester County Medical Examiner Dr. Rhoh, appoint a special prosecutor to do so, or request federal authorities to do it, in light of Roh's admitted fabrications and perjury in order to fit prosecution theory in my original criminal case; 3 other criminal cases we found; and fraud in neighboring counties where authorities were complaining about him for his fraud as a moonlighting defense expert. My concern was that he committed fraud in other cases, and that this may have led to other wrongful convictions. She refused. Perhaps she did so,

wanting to cover his actions up because for approximately 14 months of her administration her office continued to use him as an expert and to do so would threaten those convictions and expose her prosecutors who used him as an expert. Apparently there was no concern for other cases he may have affected.

For all the above reasons, I therefore strongly urge you to deny DiFiore's appointment as Chief Judge of the Court of Appeals. I also ask for the opportunity to testify in person at her hearing. Given how much of my life was wrongfully taken as the result of prosecutorial misconduct in a flawed criminal justice judiciary, I now ask that I be afforded a brief opportunity to be heard in person, particularly given that my name and case continues to be raised in support of a candidate whom I oppose.