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Q&A: Janet DiFiore

Jeff Storey

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Westchester County District Attorney Janet DiFiore, who went to law school determined to become a prosecutor, recently was installed as president of an association that speaks for all of New York's 62 district attorneys on criminal justice policy issues.

Ms. DiFiore, 55, was hired by the Westchester County District Attorney's Office right after graduating from St. John's University School of Law in 1981. She worked for a private firm from 1987 to 1994 but returned to the district attorney's office.

She was elected to County Court in 1998 and to Supreme Court in 2002. She served as supervising judge of criminal courts in the mid-Hudson region's Ninth Judicial District.

A life-long resident of Westchester County, she was elected district attorney in 2005 and re-elected in 2009. According to state statistics, the office prosecuted more than 5,000 felonies and 11,000 misdemeanors last year.

Ms. DiFiore also serves as co-chair to Chief Judge Jonathan Lippman's Justice Task Force, which was established to determine why innocent people were convicted and to recommend ways to prevent future mistakes.

As district attorney, Ms. DiFiore in 2006 moved for the dismissal of charges against Jeffrey Deskovic, who was convicted of the 1989 rape and strangulation of a classmate. Ms. DiFiore apologized to Mr. Deskovic and commissioned [a special report](#) on "what went wrong" in the case.

Q: What are the major priorities of the District Attorneys Association of the State of New York (DAASNY)? Has the organization been effective in getting a hearing for its positions in Albany?

A: For more than 100 years, the district attorneys association has worked to improve our criminal justice system and enhance public safety in New York state, and these remain our most important priorities. DAASNY provides an important voice for New York's 62 district attorneys, advocating on legislative proposals, litigating in state and federal courts on matters of importance to prosecutors and the public, and participating in the public debates that affect criminal justice policy and practice. My predecessors have worked successfully to expand our presence in Albany, so that when legislators consider proposals affecting public safety and criminal practice, they have the benefit of the experience and perspective of prosecutors throughout the state. Working with my very able colleagues in DAASNY, I plan to build on the work they have done to ensure that our voice is heard in Albany on all matters of public safety.

Q: Do the district attorneys favor a bill to expand the state's DNA database to include samples from people convicted of all felonies and misdemeanors? Why is the proposal important?

A: DAASNY supports the expansion of the crimes that require a DNA sample upon conviction to include all felonies and misdemeanors. Our reason is simple but compelling: By requiring every individual who is convicted of any felony or misdemeanor to supply a DNA sample, we will significantly increase the number of outstanding crimes that we will be able

to solve. The history of DNA expansion illustrates this. When the list of DNA eligible crimes was expanded in 2006, the number of CODIS [Combined DNA Index System] hits, or matches of crime scene DNA with the DNA of an individual on file, rose dramatically, particularly for burglaries. In Westchester County, for example, the number of CODIS hits has risen more than fourfold, from 22 hits in 2006 to 93 in 2010. Expanding the DNA database can provide timely, accurate identification of criminals whose DNA is recovered at crime scenes, thereby preventing additional crimes and further victimization.

In my office, we have had the frustrating experience of a delay of years in identifying a suspect in multiple homicides who had been sitting in state prison on a felony conviction that was not a CODIS designated crime, and who had therefore not been required to give a DNA sample. There are many examples in New York of suspects being identified by DNA evidence in violent crimes whose prior criminal history consists simply of nonviolent petty offenses. Experience has shown that there is no logical reason to continue to discriminate among the crimes of conviction in requiring DNA samples. Nor is there any real privacy concern, as state law protects the privacy of individuals who submit DNA samples by making it a crime to disclose a DNA record or the results of a DNA analysis. Expansion of the DNA eligible crimes will not only enhance public safety, but, equally important, it will allow law enforcement to rule out innocent individuals as suspects in unsolved crimes.

Q: How do you respond to concerns expressed by opponents to expanded DNA testing about testing errors and irregularities?

A: DAASNY believes that all laboratories, public and private, that test any evidence for criminal prosecutions, including those that analyze DNA evidence, must maintain the highest scientific and professional standards in every aspect of their work. With respect to DNA samples and comparisons, there are strict protocols that must be followed with respect to any DNA sample in order for it to be submitted to CODIS. There is no serious question as to the scientific validity and reliability of DNA evidence. In the years since DNA evidence was introduced into criminal investigations, it has become, for prosecutors and defense attorneys alike, one of the most reliable sources of evidence for the just conviction of the guilty and the exoneration of the innocent. This reliability is the reason for DAASNY's support for expanding DNA eligible crimes to include all felonies and misdemeanors.

Q: Over the past few years, many law enforcement agencies have begun videotaping interrogations on their own initiative. A bill in the Assembly would mandate videotaped interrogations and apply the exclusionary rule to any statements obtained without a recording. Is that a good idea?

A: DAASNY in conjunction with the police associations last year endorsed statewide protocols for the video recording of custodial interrogations. We believe this practice has important potential both for enhancing investigations and prosecutions, and for providing reliable evidence as to the voluntariness of the statements and the guilt or innocence of the accused. Statements that are made by suspects in custody occur in the controlled environment of a police station, and this will allow for established procedures and available equipment to produce the video recordings. Training for police and pilot programs are already taking place, enabling police departments to develop procedures for videotaping and to learn what equipment and procedures are best for this purpose.

New York has over 550 police departments of widely varying size and resources, and hundreds of thousands of prosecutions every year, and this raises the issue of expense if video recording is mandated for all offenses. DAASNY's guidelines promote video recording of custodial interrogations while offering flexibility in developing the systems to do so. Defendants' statements constitute important evidence that is already subject to challenge by defense attorneys and scrutiny by courts on a number of grounds. Defense attorneys regularly challenge the reliability of statements both at suppression hearings and at trial, and our sophisticated juries, who are very aware of the occurrence of wrongful convictions, have expressed their concerns as to reliability of statements that are not recorded.

In practice, the reliability issue is a critical part of the jury's deliberations in the context of all the evidence presented at a trial. Legislation that eschews the traditional powers of the courts and the jury by creating an inflexible exclusionary rule for any statements obtained without a video recording without regard to the truthfulness of the evidence at issue will never be favored by a prosecutor.

Q: Many prosecutors objected to the Drug Law Reform Act of 2009, which eliminated the last vestiges of the Rockefeller Drug Laws, largely because the reforms allowed judges to divert offenders to treatment without the consent of the district attorney. How are the district attorneys dealing with the drug law reform? Has it made their job more difficult?

A: DAASNY did not support the 2009 reforms because of its concern that judicial diversion of defendants, which can be appropriate and effective in cases of addicted non-violent drug offenders, could be extended to drug dealers who pose a real threat to public safety in our communities. I am among a number of district attorneys who supported reforms to the harsh sentences of the Rockefeller Drug Laws, and worked to provide treatment alternatives to incarceration in cases we prosecute. The concern with the 2009 law is not that it provides appropriate defendants with a drug treatment alternative, but rather that prosecutors and police, who often possess relevant information about the defendant and his/her role in the drug trade are not the decision makers regarding the dispositions of these particular cases. Prosecutors are now seeking

hearings prior to sentence to provide courts with such evidence and to oppose judicial diversion when that is appropriate and serves the public safety needs of the community. It is too soon to say whether the overall impact of the 2009 law is positive or negative in terms of public safety. Drug-related violence is a harsh reality of the illegal drug trade and DAASNY will continue to monitor outcomes around the state.

Q: State aid to prosecutors has been cut considerably in recent years, and support for upstate and Long Island counties through Operation IMPACT also has declined dramatically. What is the impact of those cuts on local district attorney offices?

A: Operation IMPACT has provided aid to 17 upstate and Long Island counties to support strategic resources that have been used wisely to develop collaborative law enforcement efforts targeting crime in areas where it is most needed. Reductions in this aid across the IMPACT jurisdictions have unfortunately limited our previously successful enforcement efforts. In Westchester County, for example, there are fewer police departments receiving IMPACT aid than was the case two years ago, and the departments receiving aid are now being funded at lower levels. At the same time, there has been a reduction in the state's Aid to Prosecution funding provided to all district attorneys' offices. This aid has been critically important to our work as the cost of trying cases, with the demand for expert witnesses and video and computer technology, has risen. That said, prosecutors have maintained a strategic focus, monitoring crime statistics and working with police departments to direct resources on a prioritized basis. DAASNY appreciates that these reductions in funds are a reality of the current fiscal climate, and our hope is that funding will be restored to support these valuable efforts in the near future.

Q: What can district attorneys do to help Governor Andrew M. Cuomo achieve his criminal justice agenda, which centers on three elements: reducing statewide violent crime, reducing the rate of re-offending and improving juvenile justice?

A: Reducing statewide violent crime has been a primary concern of the district attorneys for many years. An important focus in this fight is crime analysis, undertaken in partnership with our police departments, to identify for prosecutors and police the highest priorities in combating violent crime. Efforts to reduce the rate of recidivism in New York are based on strategies to influence and assist individuals with criminal histories to redirect their lives toward a law abiding course.

I chair the Westchester County Re-entry Task Force, one of 18 re-entry task forces funded by the state. Several other district attorneys serve as chair of their county's re-entry task force as well. The goals are to reduce recidivism and facilitate successful re-entry by improving access to needed services and removing barriers to re-entry. An important aspect of this effort is identifying what policies and interventions are associated with successful outcomes so that ultimately, this information will enable communities to adopt strategies and provide resources that have the greatest likelihood of reducing recidivism.

With respect to juvenile justice, DAASNY is well aware of the issues under discussion as to offenders under the age of 16, particularly those related to the institutions to which these young offenders have been sent. We are interested in the promising approaches that keep young offenders close to home, with effective supervision and needed services such as drug treatment and education. We will be actively engaged with the governor and Legislature in the policy conversations on juvenile justice as they develop.

Q: You co-chair the Chief Judge's Justice Task Force, which was established to examine cases of wrongful convictions and propose reforms to prevent them from occurring. Did the Jeffrey Deskovic case play any role in your decision to participate? What has the initiative accomplished?

A: Any time an innocent person is convicted, all of us in the criminal justice system should pause and carefully consider how this injustice happened. As a prosecutor, I believe that convicting the guilty and seeing that the innocent go free are equally important parts of my job. In 2006, when Mr. Deskovic's claim of innocence was brought to me, I had already focused on the rapidly growing importance of DNA in all aspects of prosecutions, past and present. At Mr. Deskovic's trial in 1990, DNA evidence consistent with the sexual assault of the victim but which excluded him was admitted into evidence, and the jury nevertheless convicted him. I undertook to have this DNA evidence retested so that it could be submitted to CODIS and compared to the database on the chance it would be linked to a possible suspect. The DNA hit identified the actual murderer. This led to the immediate exoneration of Mr. Deskovic and the prosecution and conviction of the real killer.

The Deskovic case illustrates the importance of a broad CODIS database in establishing either guilt or innocence. Following that exoneration, I felt it was important to go a step further, and I appointed an independent panel to examine the entire case to see what my office could learn from it. I am committed to systematically reviewing the causes that contribute to wrongful convictions, and crafting appropriate reforms to correct them. When Chief Judge Lippman asked me to co-chair the Justice Task Force, along with Judge Theodore Jones, I did not hesitate. Our work to date has dealt with the issues of identification, forensic science, and statements of the accused, and we will continue to consider other issues and appropriate reforms ([NYLJ, Feb. 16](#)).

Q: Personally, what do you consider your most significant or far-reaching case as a prosecutor?

A: Rather than in any single case, I think prosecutors achieve far-reaching results in the approaches and innovations they develop working as a team over many cases. I am particularly gratified by the improvements that my office made in the handling of cases involving child victims of abuse and homicide. Working with our partners in law enforcement, forensic medicine and child protection, we formed two important and innovative entities, the Child Fatality Review Team (CFRT) and the Multi-Disciplinary Team (MDT) to investigate child abuse. The CFRT has examined the facts and circumstances of every suspicious death of a child in Westchester County since shortly after I took office in 2006. The MDT conducts effective criminal investigations in all cases of child abuse with the goal of reducing the trauma to child victims. This is done by conducting interviews and medical examinations with specially trained professionals in a child-friendly environment.

These innovations were developed by my office in collaboration with our partners, out of a shared commitment to improve child safety. This model of collaboration is one we have followed in a number of new initiatives in areas such as domestic violence and gang-related violence, developing proactive strategies with community, professional and law enforcement partners that have enhanced public safety.

Using this model, in 2008 I created the Westchester Intelligence Center (WIC), something I am exceedingly proud of. The WIC is a state-of-the-art intelligence center where Westchester County's multiple local law enforcement agencies meet and collaborate in the pursuit of information to solve crimes and address all public safety concerns throughout the county. Our focus is to assist police agencies in intelligence-led initiatives aimed at reducing crime.

Q: You are among only 11 women who serve as chief prosecutor in New York. What unique challenges does a woman face in serving as district attorney?

A: The days are long gone when women were an unusual presence in our profession. I have had the privilege of working with a very capable and dedicated group of women and men for my entire professional life, both during my service as an assistant district attorney and during the years I served on the bench. My fellow district attorneys, women and men, are as smart and dedicated a group of public servants as you will find anywhere. I will always bring to my work the personal experience and perspective of a woman and a mother, but the professional experience and perspective of district attorneys are more alike than not. We are all concerned about public safety, difficult cases, legislation and budgets, and we all share a commitment to doing our best to serve our communities.



The image shows a screenshot of a web page for 'CORPORATE COUNSEL', which is identified as 'An ALM Web site'. Below the header is a red banner with the text 'TOP STORIES'. The main content area features a white box with a blue border containing the following text: 'From the Experts: Corporate Compliance Twenty Years Later'. Below this title is a short paragraph: 'A former U.S. Deputy Attorney General and author of the McNulty Memo, Paul McNulty revisits the corporate compliance guidelines released by the U.S. Sentencing Commission in 1991.' At the bottom of the white box is a red button with the text 'READ MORE NOW >>'.