



**NYSACDL**  
NEW YORK STATE ASSOCIATION  
OF CRIMINAL DEFENSE LAWYERS



August 13, 2021

Commission on Judicial Nomination  
c/o Henry M. Greenberg, Counsel  
Greenberg Traurig LLP  
54 State Street, 6th Floor  
Albany, New York 12207

RE: *Slate of Nominees for the Judge Eugene M. Fahey Vacancy*

Dear Members of the Commission:

We, as leaders of the Chief Defenders Association of New York, the New York State Association of Criminal Defense Lawyers and the New York State Defenders Association, write in connection with the nominations you will soon make for the seat on the Court of Appeals that will be created by the retirement of Judge Fahey. In particular, we write to emphasize the importance of the life experience that judges bring with them to their judicial role, and to emphasize our request that the commission very seriously consider nominating candidates with criminal defense experience. Notably, many of the other currently sitting Court of Appeals Judges are former prosecutors, but no judge on the Court of Appeals has ever devoted their legal practice to criminal defense.

The importance of life experience is undeniable. How any judge approaches a case is necessarily informed by her or his life experience- including professional experience prior to judicial appointment. Presently, the Court of Appeals has three judges who were former prosecutors, but lacks a single judge with any significant criminal defense experience.

New York's legislators have recently enacted meaningful criminal justice reform. But the fate of these reforms may ultimately rest with the Court of Appeals.

As noted above, the only criminal justice experience that any judge on that Court has currently is as a former prosecutor. The criminal legal system inextricably intertwines the police and prosecutors and makes them see each other as allies. Even if a former career prosecutor has a self-image of fairness and neutrality, she cannot

bring to her judicial role the perspective and experience that a judge with significant criminal defense experience brings. Without the presence of a single judge with any defense experience, the Court of Appeals will continue to see criminal cases exclusively through the lens of career prosecutors and civil practitioners. Respectfully, adding a judge to the court with criminal defense experience and a commitment to communities impacted by injustice can only improve the Court's jurisprudence and standing for all New Yorkers.

In evaluating the potential candidates for appointment to the Court of Appeals, the Commission has the authority and obligation to ensure that the Court of Appeals is comprised of judges whose judicial philosophy and experience represents all New Yorkers. As noted in the Commission's brochure, the Commission is committed to considering nominees for the Court of Appeals with outstanding personal and professional qualifications who reflect the diversity of New York including diversity in the nature of legal practice or professional background.

The New York State Association of Criminal Defense Lawyers, the Chief Defenders Association of New York, and the New York State Defenders Association ask the Commission to exercise this authority to ensure that the slate of nominees it proposes is comprised of persons who will bring a much needed perspective – attorneys with criminal defense experience and a demonstrated commitment to historically disenfranchised and impacted communities of color and a deep understanding of the systemic disparities that have long plagued poor people ensnared in the criminal legal system.

Sincerely yours,



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of New York



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President,  
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