



November 17, 2021

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

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

Dear Governor Hochul:

We, as leaders of the Chief Defenders Association of New York and the New York State Defenders Association, write in connection with the nomination 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 you select a candidate with criminal defense experience. Notably, three of the current Court of Appeals Judges are former prosecutors, but no judge on the Court of Appeals has ever devoted their legal practice to criminal defense.

We would agree with the Commission of Judicial Nomination's characterization that all of the candidates they have recommended "are well qualified, by virtue of their character, temperament, professional aptitude, experience, qualifications and fitness for office, to fulfill the duties of that high office." However, only two of the recommended candidates have the professional and life experiences that are currently lacking on the Court of Appeals – professional experience as a criminal defense attorney representing the indigent.

The importance of life experience is undeniable. How any judge approaches a case is necessarily informed by their life experience- including professional experience prior to judicial appointment. Indeed, it is part of the Commission's mandate to select candidates who reflect the "diversity of New York's citizenry including, but not limited to, diversity in... [the] nature of legal practice or professional background." As noted in the Rules of the Commission of Judicial Nomination "[a] diverse Judiciary ensures that a broad array of perspectives and experiences are brought to the bench; reinforces public trust and confidence in the fairness of the justice system and the administration of justice; and ultimately enhances the delivery of justice and the Judiciary's credibility and moral authority."

The only criminal justice experience that any Court of Appeals judge currently has 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, they cannot bring to their 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.

Undoubtedly, the three current Court of Appeals Judges with significant experience as prosecutors have informed the current philosophy of the Court of Appeals in its judicial oversight of the criminal justice system. As a result, the number of appeals considered by the Court of Appeals brought by defendants in the last several years is at a historic low. Legal scholars and the legal media have observed that the Court of Appeals has gravitated towards a “pro-prosecution” philosophy in deciding criminal appeals.

In the last several years, New York has begun to address systemic injustices in our criminal justice system. These injustices have led to over-incarceration of the poor, negatively impacted communities of color, and perpetuated racial injustices that occur from over-policing. In an attempt to reform this unfair system, New York’s legislators have recently enacted, and you have signed, meaningful criminal justice reform. But the fate of these reforms may ultimately rest with the Court of Appeals.

Given the significance of judicial oversight, especially from the Court of Appeals, to reforming this unjust system, the Court of Appeals needs a perspective that is sorely lacking- an understanding of these injustices from the lens of a professional career defending poor people accused of committing crimes. Presently, the Court of Appeals has three judges who were former prosecutors, but lacks a single judge with any significant criminal defense experience.

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. Adding this balance to the Court of Appeals will “reinforce[] public trust and confidence in the fairness of the justice system and the administration of justice”.

The Chief Defenders Association of New York and the New York State Defenders Association respectfully ask you to select a candidate that has 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,



Leanne Lapp, Esq.  
President,  
Chief Defenders Association  
of New York



Susan Bryant, Esq.  
Executive Director,  
New York State  
Defenders Association