



Association of Legal Aid Attorneys
UAW 2325 (AFL-CIO)

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NACDL Federal Indigent Task Force

Dear Ms. Hoffman and Professor Schumm:

I was delighted to learn at the federal defenders conference in Cleveland in May that the NACDL has established a Federal Indigent Task Force. I am writing to set forth reasons why the representation of federal criminal defendants would benefit from the unionization of attorneys in federal defender offices. I base my reasons in part on my experience at Federal Defenders of New York, Inc. ("FDNY"), which is the community defender office covering the Southern and Eastern Districts of New York and is the only unionized office in the country. We are a unit of the Association of Legal Aid Attorneys ("ALAA"), which is a local chapter of the United Auto Workers Union ("UAW"), which represented federal defenders when we were part of the Legal Aid Society

of New York (“LAS”), and which has continued to do so since FDNY became an independent non-profit organization in 2005.

The original goal in forming the ALAA was improved representation for criminal defendants, not just the economic security of the attorneys. The first issue was vertical representation, *i.e.*, the assignment of one defense lawyer for a defendant from the beginning until the end of a case. Such vertical representation advances the twin goals of treating clients as individuals and of helping them learn to trust their lawyers. It lessens the risk of assembly-line justice. In its first collective bargaining agreement, the ALAA was able to assure such vertical representation. Defendants benefitted. Those benefits continue to this day for federal criminal defendants that FDNY represents.

Today the ALAA continues to assure that FDNY lawyers can represent their clients as effectively as possible.

An important issue for criminal defense lawyers in general and lawyers employed by federal defender offices in particular is their independence. They must be able to represent clients who are unpopular and to pursue strategies that are unorthodox. At the federal defenders conference in Cleveland, lawyers discussed what institutional structures render defense lawyers vulnerable to intimidation. Fortunately, many judges appreciate vigorous defense and would never knowingly intimidate lawyers. Unfortunately, other judges would. Some have. One institutional protection against judicial intimidation is the establishment of community defender organizations, which are private and independent, rather than public federal defender offices, which exist within the federal judiciary itself. Another institutional protection is a union. Lawyers in a unionized office, such as FDNY, need not fear that zealous representation of their clients might jeopardize their jobs. Rather, they can concentrate on representing clients zealously.

I hasten to add two important corollaries. First, our unionization has hardly stirred up disruption or animosity within the courthouse. In fact, most people have no idea that FDNY lawyers belong to a union. The benefits work silently but effectively. In both the Southern and Eastern Districts of New York, our lawyers have earned the respect of judges and deal cooperatively with prosecutors, Pretrial Services and Probation. Union protections enhance our ability to present vigorous legal arguments, generating the type of conflict that is healthy – and critical for the proper functioning of the adversarial system. Second, our unionization hardly promotes lethargy. Most ALAA lawyers could have landed much higher salaries in the private sector. Instead, they selflessly devote themselves to their jobs, and all the hard work their jobs entail, out of dedication to their clients and constitutional principles. While the collective bargaining agreement (“CBA”) between FDNY and ALAA still allows dismissal for cause, no dedicated defense lawyer in our office needs fear dismissal for reasons that are political, unfair or arbitrary.

Federal defender offices, which nation-wide represent most federal criminal defendants, make a critical contribution to federal criminal justice. While the federal agency for prosecutors has appropriated the word “justice” by calling itself the “Department of Justice,” I like to think of federal defender offices as a mosaic of institutions for justice. True enough, their names are more modest.

But federal criminal defense lawyers provide the caution, thoroughness and analysis necessary to check the prosecutor. They put a brake on self-righteousness and add a voice of conscience. And they provide experience. The management of federal defender offices helps to channel this experience into a wider national discussion about federal criminal justice. So can unionization. In FDNY, many lawyers are senior, have worked there for years (often decades), and are among the best criminal defense lawyers in New York City. The ALAA provides an organized way for reaping the fruits of their experience to sustain a stronger office and to benefit the local criminal defense bar. Other federal defender offices employ equally seasoned lawyers who have devoted their careers to criminal defense. Unionization could help to take better advantage of their knowledge, insights and wisdom.

Last year criminal defense in federal courts faced a crisis during the U.S. government sequester. As many know, the heads of federal defender offices organized themselves and fought to save the program. What fewer people know is that the ALAA joined in the fight. It was able to draw on the lobbying expertise of the UAW and to meet members of Congress or their staffs both locally and in Washington, D.C. It prepared a comprehensive package of information, which set forth a history of official communications and newspaper articles that documented the devastating impact of the sequester on federal defender offices. When I asked one Senator's staff member whether the package was helpful, she responded immediately, "Yes. It's open on my desk, isn't it? I've been using it for the last two days." If other offices had been unionized, those unions could have redoubled such lobbying efforts in the battle to save federal criminal defense.

While the sequester itself is over, federal defender offices are still reeling from its aftermath. We cannot be certain that another sequester, or like event, will not recur. In fact, many in the federal defender program around the country already fear trouble on the horizon. The Harvey Jones study on the staffing of federal defender offices seems aimed at budget-chopping. Unionization can help to stave off such blows.

What I have set forth so far shows the benefits that unionization has brought, and can bring, to federal criminal defense nation-wide and to effective defendant representation. Needless to say, unionization also provides direct benefits to its union members, including job security. For example, during the sequester, the ALAA, by negotiating alternatives to layoffs that were accepted by both union members and management, helped assure that no lawyers in FDNY lost their jobs. Furthermore, the ALAA has negotiated improved working conditions (with, for example, at-home work and parental leave) and improved employment benefits (with, for example, better health insurance and pension benefits). It has provided this input without anyone fearing a strike, since the CBA includes a no-strike clause (and our members would not dream of striking anyway). Ultimately the union has input, not control; management continues to run the show. But all in all, the relationship between the ALAA and FDNY has been friendly, cooperative and extraordinarily productive.

The direct benefits of unionization for lawyers ultimately redounds to the clients' benefit. The lawyers can focus on representation with fewer distractions. In addition, by enhancing office-

wide collegiality, the union has helped create an atmosphere in which lawyers support each other, teach each other, and improve each other's advocacy.

Despite the successes of the one case of a unionized federal defenders office, there is hardly any discussion about unionizing other offices. As matters now stand, the unionization through the AALA of FDNY is an anomaly. I hope that others begin to think about how unionization elsewhere can help protect the integrity of the nation-wide federal defender program to assure that the representation of federal criminal defendants can be even more effective, vigorous and zealous than ever.

Thank you for considering these thoughts. I would look forward to discussing these matters with you and the Federal Indigent Task Force further.

Sincerely



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