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Justice is not served by poor public defense system

By STEWART F. HANCOCK, JR.

Nobody likes lawsuits, but sometimes lawsuits achieve good ends. A class action filed against the state of New York seeking to declare unconstitutional our public legal defense system for clients unable to afford a private lawyer can be viewed as an opportunity to repair, at long last, our woefully failing county-based system.

Filed by the New York Civil Liberties Union and naming five counties, including Onondaga, the lawsuit echoes findings of a report by the Commission on the Future of Indigent Defense Services to Chief Judge Judith S. Kaye.

That report calls our current county-based public defense system "an ongoing crisis" and graphically describes a system of overworked and underpaid lawyers, carrying unmanageable caseloads and lacking investigatory personnel and resources.

Public defense is a massive, state-mandated cost imposed on counties without significant financial contribution from the state. Hard-pressed county leaders too often must cut appropriations for public defense, a service that is rarely popular among voters. The human costs of this under-funding are immeasurable.

They are borne by broken families of impoverished persons who face prison sentences because of incompetent legal representation, and families of unnecessarily jailed defendants whose assigned lawyers fail to return phone calls or to appear at court hearings.

The Kaye Commission report calls for creating an Independent Public Defense Commission as a first step in an ultimate state takeover of the operation and funding of the county-based system. With the state facing severe financial constraints, the initial expenses for the study of the ultimate costs and the promulgation of standards can be quite modest, and can be defrayed by a special comptroller's fund.

I have enormous respect for the able and dedicated men and women who devote their careers to providing what our constitution mandates -- proper legal representation in criminal cases for those who cannot pay for it.

But they are severely limited in their ability to do their jobs adequately by financial constraints and other impediments so compellingly outlined in the Kaye Commission report.

In 1963, in one of its most significant decisions in the last

century, the United States Supreme Court held, in *Gideon v. Wainwright*, that in all criminal prosecutions, the defendant has a constitutional right to the effective assistance of counsel, and that a state must provide counsel for defendants who cannot afford to retain one.

It is totally unacceptable that 45 years after *Gideon*, New York remains so far out of compliance with the letter and spirit of its constitutional obligations.

We must, at a minimum, bring our state into compliance with the constitutional standards. In other states facing similar lawsuits, such as Montana, elected officials have moved to create an independent commission to oversee and upgrade public defense services.

With the NYCLU lawsuit moving forward and the state and counties facing the prospect of judicial sanction, our elected decision-makers should be true to New York's long and proud history of protecting individual rights by moving to create the Independent Public Defense Commission recommended by Judge Kaye's commission. Justice delayed is justice denied.

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