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Op-ed column: State needs better system of legal aid for poor

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On any given day in New York state's criminal courts, the forlorn line of those arrested – for burglary, robbery, car theft, domestic battery and most often, for illegal drug use and/or sale – shuffles in its chains into the courtroom for a bond hearing. Those fortunate enough to afford the 10 percent deposit on their bail, or have no previous felony convictions or violations of parole, will most likely be given a future court date and allowed to leave.

The more unfortunate – usually the majority – will also be given a court date and returned to jail. Prior to the bond hearing, those unable to afford a private attorney – again the majority, for offenses against our laws are most often committed by the poor – will briefly be seen by a public defender. This is a quick conversation, often through the bars of the holding pen, lasting a few minutes.

The public defenders, hired and paid by the counties in our state and assigned far too many cases to give any one defendant the strict attention his or her case demands, will do what they can. This effort too often will consist of arranging a plea for the accused, an agreement among the presiding judge, the prosecutor and the defense attorney, and accepted by the defendant: a guilty plea in return for a sentence reduced from what the maximum would be under the law if the defendant were convicted at trial.

Harsh reality

In principle, since the U.S. Supreme Court ruled in 1963 in *Gideon vs. Wainright*, no one accused of a crime in the United States is denied legal representation. In reality, the poor are assigned a public lawyer with a heavy case load and limited resources compared to those of our courts and prosecutors. In New York state, as cited in a 2006 report to Chief Judge Judith Kaye of the New York State Court of Appeals by the Commission on the Future of Indigent Defense Services, our state's public defense system is "severely dysfunctional" and "structurally incapable of providing . . . effective legal representation."

The commission recommended an adequately funded, state-administered public defense system governed by an independent Public Defense Commission. New York's current public defense system has been administered on a county-wide basis since 1965 with varying degrees of financial support, resources and enthusiasm.

The Innocence Project, based at the Benjamin Cardozo School of Law at Yeshiva University, has found that New York outpaces almost every other state in the number of wrongful convictions overturned by DNA evidence and is one of only six states that have no state responsibility for public defense. Following this report issued to Judge Kaye in 2006, a Campaign for an Independent Commission for Public Defense was established to work toward legislation establishing a statewide body of oversight of justice for the indigent.

Arbitrary system

Under our present system of delegating this financial responsibility to the counties, it is not too wide a claim to maintain that, in light of convictions eventually overturned, there may be many more unjustly convicted and now serving unwarranted sentences in our prisons. This county-funded, and administered, means of providing defense for those unable to afford a private lawyer has proven, according to Judge Kaye's commission, to be arbitrary, dependent upon the wealth and resources of a particular venue.

Legislation to establish a statewide vehicle ensuring a uniformly funded and administered indigent defense has been introduced, but unfortunately remains stalled in the state Legislature. And in this year of projected shortfalls in state revenue its progress is uncertain. Unfortunately, providing adequate legal representation for the poor has not, in the past, been an A-list priority.

As we in this country pride ourselves on living equitably under a rule of law, we need remind ourselves that the health of our democracy depends upon justice for all. As Justice Hugo Black once remarked, "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

Our concept of justice is blind, but the scales she holds are balanced.

Barbara Demille lives in Rensselaerville. The Gazette encourages readers to submit material on local issues for the Sunday Opinion section.