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Equal justice for all in New York

By GEORGE BUNDY SMITH

I graduated from Yale Law School in 1962. In addition to the solid legal education that the school provided then and still provides today, Yale instilled a keen appreciation of the obligations of lawyers in our society. In 1962, the case of Gideon vs. Wainwright was wending its way to the U.S. Supreme Court. In 1963, as was expected when the case was heard, the Supreme Court ruled that a person accused of a felony was entitled to a lawyer whether or not he or she could afford one.

At the time of Gideon, I mistakenly believed that a major issue of our time, adequate defense for those accused of crime, had been settled for all time. For years now, complaints have been raised that criminal defendants have not been receiving the minimally adequate representation guaranteed by the federal constitution. The states of Illinois and Maryland halted executions for a time, partially because of inadequate representation of defendants. In New York, a committee of the New York State Bar Association, headed by former New York City Bar President Barry Kamins, is looking into the reasons why more than 50 people were wrongly convicted in New York courts.

The adequate representation of criminal defendants is not limited to New York. In 2002, the House of Delegates of the American Bar Association approved the Ten Principles of a Public Defense Delivery System, principles that included representation by one attorney from the initial stages of a criminal case to its conclusion and a manageable case load. In 2006, the Commission on the Future of Indigent Defense Services, appointed by the stellar chief judge of New York state, Judith Kaye, advocated a statewide delivery of defense services with reasonable and adequate standards.

The New York Civil Liberties Union has begun a lawsuit challenging the present system of defense representation. The political leaders of New York state — Gov. David Paterson, Attorney General Andrew Cuomo, Senate Majority Leader Dean Skelos and Assembly Speaker Sheldon Silver — are all law school graduates knowledgeable about the requirements of the federal and state constitutions.

There is no reason why this case, brought with clear justification, should be determined by New York's judges rather than through good faith discussion and negotiation by all sides. Efforts to reform the defense delivery system have been brought in Montana, Utah, Louisiana, Michigan, North Dakota and Kentucky. New York state, through its leaders, should be in the forefront of this ongoing effort.

In New York, the path to fixing the public defense crisis has been laid out by the Kaye Commission. Those efforts are supported by every major legal, civic, religious and community group that has looked at the issue. The New York State Bar Association and the legislature's Black, Puerto Rican, Hispanic and Asian Caucus have made implementation of the Kaye Commission's recommendations a priority.

Albany's decision makers should look at the lawsuit filed against them as an opportunity to do what they already know to be the right thing — honor our state's commitment to equal justice by creating an Independent Public Defense Commission.

George Bundy Smith is a retired Court of Appeals judge.