



1991

Due Process

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Recommended Citation

(1991) "Due Process," *Touro Law Review*. Vol. 8 : No. 1 , Article 26.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol8/iss1/26>

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decision of the appellate division and concluded that because the defendants could not be held criminally liable for using staff employees on political campaigns under the law as it existed prior to 1987, it was unnecessary to address the defendants' due process claim.²⁹³

People v. Carter²⁹⁴
(decided November 29, 1990)

Defendants appealed their convictions on the grounds that they were deprived "of a fair trial in contravention of their right to due process under the Federal²⁹⁵ and State²⁹⁶ Constitutions."²⁹⁷ The court held that the defendant's due process rights were not violated.²⁹⁸

Defendants were convicted of drug related crimes. On appeal, they claimed that their "convictions should be set aside as invalid because the Assistant District Attorney who handled the prosecution -- both in presenting evidence to the Grand Jury which returned the indictments and later in conducting the actual trial -- was not licensed as an attorney."²⁹⁹ They argued that there is a fundamental right to be prosecuted by a lawyer, which is protected by the due process clauses of the federal and state constitutions. They cited no specific prejudice, but claimed that specific prejudice is unnecessary where a fundamental right is violated.³⁰⁰

293. *Ohrenstein*, 77 N.Y.2d at 45, 565 N.E.2d at 496, 563 N.Y.S.2d at 747.

294. 77 N.Y.2d 95, 566 N.E.2d 119, 564 N.Y.S.2d 992 (1990), *cert. denied*, 111 S. Ct. 1599 (1991).

295. U.S. CONST. amend XIV, § 1.

296. N.Y. CONST. art. I, § 6.

297. *Carter*, 77 N.Y.2d at 100, 566 N.E.2d at 119-20, 564 N.Y.S.2d at 992-93 (footnotes added). Defendants' primary argument was that the assistant district attorney's actions violated Criminal Procedure Law section 190.25(3), which prohibits unauthorized persons from appearing before the grand jury. *Id.* at 103, 566 N.E.2d at 121, 564 N.Y.S.2d at 994.

298. *Id.* at 107, 566 N.E.2d at 124, 564 N.Y.S.2d at 997.

299. *Id.* at 99, 566 N.E.2d at 119, 564 N.Y.S.2d at 992.

300. *Id.* at 106, 566 N.E.2d at 123, 564 N.Y.S.2d at 996.

The court of appeals held that the fact that the prosecuting assistant district attorney was not a licensed attorney did not result in any deprivation of the defendants' constitutional due process rights.³⁰¹ The court stated that the defendants had not cited any authority, nor was the court aware of any, which stood for the proposition "that a defendant has a due process right to be prosecuted by a duly admitted attorney."³⁰² Further, the court noted that defendants cited cases which dealt with a defendant's sixth amendment right to be "*represented* by a lawyer — not *prosecuted* by a lawyer."³⁰³

Judge Titone, joined by Judge Alexander, dissented, but did not address the constitutional claim raised by defendants. Rather, the dissent was based on the fact that the assistant district attorney, who was an unlicensed attorney, appeared before the grand jury in violation of New York Criminal Procedure Law section 190.25(3), which prohibits unauthorized persons from appearing before the grand jury.³⁰⁴

Savastano v. Nurnberg³⁰⁵
(decided December 27, 1990)

Plaintiffs, three involuntarily committed mentally ill patients, alleged that section 29.11 of the Mental Hygiene Law (MHL)³⁰⁶ and title 14, section 517.4, of the New York Code of Rules and Regulations (NYCRR)³⁰⁷ violated their procedural due process rights under the federal³⁰⁸ and state³⁰⁹ constitutions. These sections authorized transfer of plaintiffs' from a municipal acute care facility to an intermediate or long term state mental health

301. *Id.* at 107, 566 N.E.2d at 124, 564 N.Y.S.2d at 997.

302. *Id.* at 106, 566 N.E.2d at 124, 564 N.Y.S.2d at 997.

303. *Id.* at 107, 566 N.E.2d at 124, 564 N.Y.S.2d at 997 (footnote omitted) (emphasis in original).

304. *Id.* at 107-12, 566 N.E.2d at 124-28; 564 N.Y.S.2d at 997-1001 (Titone, J., dissenting).

305. 77 N.Y.2d 300, 569 N.E.2d 421, 567 N.Y.S.2d 618 (1990).

306. N.Y. MENTAL HYG. LAW § 29.11 (McKinney 1988).

307. N.Y. COMP. CODES R. & REGS. tit. 14, § 517.4 (1990).

308. U.S. CONST. amend. XIV.

309. N.Y. CONST. art. I, § 6.