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Due Process

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holding that the defendants' due process rights were not violated by the *in camera* consultation.²⁸⁵ Citing *Snyder v. Massachusetts*,²⁸⁶ the Court stated that the absence of the defendants at the *in camera* discussion was "not required to ensure fundamental fairness or a 'reasonably substantial . . . opportunity to defend against the charge.'"²⁸⁷ The Court reasoned that the defendants' presence at the *in camera* discussion would not have aided them in their defense, and possibly might have been counterproductive in light of the juror's concerns about the defendant's sketching of the jurors. Thus, when a defendant raises a due process claim under either the federal or state constitutions as a result of being absent when the judge communicates with the jury, it appears that courts will rely upon *Snyder* in analyzing the claim.

People v. Scalza²⁸⁸
(decided October 18, 1990)

See discussion of this case under JURISDICTION OF THE COUNTY COURT.²⁸⁹ The New York Court of Appeals held that the statute, authorizing the use of a judicial hearing officer to hear pre-trial suppression arguments and prepare findings for the suppression judge, did not violate the New York State due process clause because defendant's "right to be heard" was adequately protected.²⁹⁰

People v. Ohrenstein²⁹¹
(decided November 27, 1990)

See discussion of this case under SPEECH OR DEBATE CLAUSE.²⁹² The New York Court of Appeals affirmed the

285. *Id.*

286. 291 U.S. 97 (1934).

287. *Gagnon*, 470 U.S. at 527 (quoting *Snyder*, 291 U.S. at 105-06.).

288. 76 N.Y.2d 604, 563 N.E.2d 705, 562 N.Y.S.2d 14 (1990).

289. See *infra* notes 798-830 and accompanying text.

290. *Scalza*, 76 N.Y.2d at 610, 563 N.E.2d at 708, 562 N.Y.S.2d at 17.

291. 77 N.Y.2d 38, 565 N.E.2d 493, 563 N.Y.S.2d 744 (1990).

292. See *infra* notes 1177-266 and accompanying text.

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.