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Criminal Law—Coram Nobis: Defendant Deprived of Counsel of His Choice

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proven, they would not afford basis for relief by coram nobis. This is so, because, as previously indicated, it must be the court that denied the defendant the right to effective counsel, and not some dereliction by counsel himself.[81] Under any reasonable interpretation of the petitioners' claims, it was their own counsels and no state agency that allegedly caused the harm. Nor were the trials "a farce and a mockery of justice," so that the Court was on notice that inadequate representation had been afforded the defendants.[82]

CORAM NOBIS — DEFENDANT DEPRIVED OF COUNSEL OF HIS CHOICE.

The general rule is that *coram nobis* will not lie to correct errors of law or fact apparent on the face of the record.[83] There is an exception,[84] however, where a defendant has been deprived of the right to counsel of his choice as guaranteed by the New York State Constitution.[85] In this instance the writ is available even though an ordinary appeal is possible.

Thus, in *People v. Hannigan,*[86] the Court of Appeals overruled an order of the Appellate Division[87] affirming the denial of an application for a writ of error *coram nobis* by the Bronx County Court, holding that petitioner is entitled to a hearing upon his allegations of denial of due process in that he was deprived of counsel of his choice at the time of sentencing.

The petitioner here, alleged, that at the time of sentencing the County Judge substituted an Assistant District Attorney in place of petitioner's attorney who was then present in the courtroom. Since the State was unable to produce the minutes of sentencing or other evidence to rebut the petitioner's contention, questions of fact and credibility remained for the County Court's disposition, and thus defendant was entitled to a hearing.

The three-man dissent took the position that the County Court, in denying the application, had before it all the evidence that either side would be able to present, and was therefore justified in exercising its discretion as it did.

The present case, while following the *Silverman* case in its expansion of the uses of *coram nobis,* does not constitute a further expansion of the doctrine, but is merely another application of the rule announced in *Silverman* where the court said, ". . . the scope of *coram nobis* will not be expanded unless the injury done to the defendant would deprive him of due process of law." [88]

81. Supra note 71 at 354, 197 N.Y.S.2d 701 (1960).
82. Supra note 77.
83. People v. Sullivan, 3 N.Y.2d 196, 165 N.Y.S.2d 6 (1957).
84. People v. Silverman, 3 N.Y.2d 200, 165 N.Y.S.2d 11 (1957).
85. N.Y. Const. Art. I, § 6.
86. 7 N.Y.2d 317, 197 N.Y.S.2d 152 (1960).
87. 8 A.D.2d 612, 185 N.Y.S.2d 743 (1st Dep't 1960).
88. Supra note 84 at 202, 203, 165 N.Y.S.2d 13 (1957).