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Criminal Law—Coram Nobis: Defendant Must Be Apprised of Rights

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and Clerk's minutes created a question of fact as to compliance with Section 480.[58] The stenographic minutes in William's case, however, contained a notation that the defendant was asked "the usual formal question" and the Clerk's minutes stated that the defendant's, of whom relator was one, were duly arraigned for sentence, pursuant to Section 480, Code of Criminal Procedure. The Court held that this established, as a matter of law, that Section 480 was complied with, and reversed the order.[59]

It is clear from these decisions that *habeas corpus* is the proper remedy under these circumstances. The rule of evidence announced by the Court makes the presumption of regularity irrebuttable if compliance appears in the stenographic or Clerk's minutes. The fact that the minutes do not show that the question was asked, however, is not conclusive upon the question of compliance with Section 480,[60] though it is sufficient evidence to overcome the presumption of regularity.

CORAM NOBIS: DEFENDANT MUST BE APPRISED OF RIGHTS

A writ of *coram nobis* will be granted dismissing a conviction of a criminal charge when the defendant was not adequately informed of his rights. The granting of such a writ was overruled in *People v. Freundenberg*[61] for lack of proof that the Trial Court failed to advise the defendant of the charges against him and of his right to counsel. Petitioner brought proceedings for a writ of *coram nobis* in the Court of Special Sessions, Bronx County,[62] twenty years after being convicted of driving while intoxicated, and the writ granted there was upheld by the Appellate Division.[63] A dissenting minority of the Court of Appeals differed with the majority as to the effect of the findings of the Court of Special Sessions, and felt that the defendant had not been sufficiently apprised of his rights.

On the original trial of this case there was a one week delay between the arraignment and the trial. At the trial the Magistrate informed the defendant of the charges against him and asked if he wanted a postponement, "to get a lawyer." Defendant replied, "I want it for today." After the trial and verdict, but prior to the sentencing, the Court denied defendant's request for an adjournment to get an attorney.

During the proceedings for this writ the minutes of the original trial were amended to include the Magistrate's question as to whether defendant desired an adjournment of the proceedings in order to obtain an attorney. This amendment during the hearing may have made the dissenting minority suspicious, as to whether the defendant was actually apprised of his rights.

Judicial interference with the defendant's right to counsel has been held

58. People v. Murphy, 6 N.Y.2d 238, 240, 189 N.Y.S.2d 185, 187 (1959).
59. People v. Murphy, 6 N.Y.2d 234, 189 N.Y.S.2d 182 (1959).
60. People v. Sheehan, 4 A.D.2d 143, 163 N.Y.S.2d 313 (1st Dep't 1957) (dictum).
61. 5 N.Y.2d 209, 182 N.Y.S.2d 814 (1959).
62. 10 Misc. 2d 1091, 172 N.Y.S.2d 585 (City Ct. 1958).
63. 6 A.D.2d 8, 174 N.Y.S.2d 319 (1st Dep't 1958).

to warrant the extraordinary remedy of *coram nobis* even though the defect appears on the face of the record and an appeal would have raised the question of the deprivation of his rights.[64] However, in the absence of clear and convincing evidence to the contrary, the court is bound to presume that the lower court performed its duty.[65] In reviewing a case such as this the court is bound by the findings of the lower court, but may view the entire record and evaluate, as a matter of law, the situation existing at the time of the alleged deprivation.[66] In *People v. Marincic*[67] the court held, granting a writ of *coram nobis,* that the mere advising of the defendant of his right to counsel was not sufficient where the defendant did not fully understand his rights and thus did not have a fair opportunity to exercise them within the meaning of Section 699 of the New York Code of Criminal Procedure.

In viewing the record as a whole the majority and minority differed as to whether there was sufficient evidence that the defendant fully understood his rights.

FAILURE OF JUDGE TO ANSWER JURY'S REQUEST FOR FURTHER INSTRUCTIONS

Section 427 of the New York Code of Criminal Procedure provides that after the jury have retired for deliberation, "if they desire to be informed of a point of law arising in the cause, . . . the information required must be given . . ." The mandate of this statute "leaves to the trial court no discretion whatever as to whether or not to answer a proper question from the jury, even though the original charge contains a correct answer to that same question."[68] It is settled law that a judge may not decline to answer a jury's request for further instructions.[69] However, a failure by the court to categorically answer any question propounded by a jury need not be reversible error. In each case the reviewing court must decide whether there was serious prejudice to the defendant's rights.[70] Naturally, where the failure to answer involves a vital point, it may not be disregarded as harmless.

In the case of *People v. Miller*[71] the trial court failed to answer questions of law as to possible verdicts to be arrived at. The court, instead, offered to reread "the entire charge on the crime" if the jury wanted it. Although the foreman replied: "I don't think it is necessary," the Court of Appeals, in a 5-1 decision, said that the failure to answer the question constituted reversible error and a new trial was ordered for the defendant, who had been found guilty of felony murder. The high court, relying heavily on the lucid decision by Judge Desmond in *People v. Gonzalez,*[72] said that since the confusion of the

64. People v. Silverman, 3 N.Y.2d 200, 165 N.Y.S.2d 11 (1957); People v. McLaughlin, 291 N.Y. 480, 53 N.E.2d 356 (1944); People v. Snyder, 297 N.Y. 81, 79 N.E.2d 657 (1947).
65. People v. Morhous, 268 App. Div. 1016, 53 N.Y.S.2d 210 (3d Dep't 1949).
66. People v. Marincic, 2 N.Y.2d 181, 158 N.Y.S.2d 569 (1957).
67. *Ibid.*
68. People v. Gonzalez, 293 N.Y. 259 at 262, 56 N.E.2d 574, 576 (1944).
69. People v. Gezzo, 307 N.Y. 385 at 396, 121 N.E.2d 380, 385 (1954).
70. People v. Cooke, 292 N.Y. 185 at 188, 54 N.E.2d 357, 359 (1944).
71. 6 N.Y.2d 152, 188 N.Y.S.2d 534 (1959).
72. *Supra* note 68.