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Criminal Law—Personal Summation By Defendant Not Allowed When Represented By Attorney

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COURT OF APPEALS, 1957 TERM

further provided that violators could be prosecuted as disorderly persons. *Held*: the defendant charged with violation was validly convicted. The fact that end of speed zone signs were not up was not material since fair notice was given as to what the limit was within the village. Whether or not the "disorderly persons" portion of the ordinance was valid, defendant was not prosecuted thereunder and this provision was severable; hence, defendant could not complain.¹¹²

Personal Summation By Defendant Not Allowed When Represented By Attorney

In *People v. Richardson*,¹¹³ the defendant sought a reversal of a first degree murder conviction upon the ground that although represented by counsel, he had an absolute right to personally sum up to the jury. The Court held that no such right existed. The Court equated the constitutional right that an accused "shall be allowed to appear and defend in person and with counsel as in civil actions"¹¹⁴ to that right given a party in a civil suit. In a civil suit, a party has a right to appear personally but if the party has an attorney his participation will be allowed only at the discretion of the court.¹¹⁵ The Court, in the *Richardson* case found no abuse of the trial court's discretion in disallowing the defendant's participation and accordingly affirmed the judgment for conviction. To take a defendant's privilege to interfere out of the trial court's discretion would be disruptive of orderly court procedure and the proper administration of justice.¹¹⁶

Right to Counsel — Burden of Proof of Deprivation

In *People v. Prior*,¹¹⁷ the defendant was convicted and fined in a Police Justice Court upon a plea of guilty to driving while intoxicated.¹¹⁸ On appeal to County Court, the defendant stated in his affidavit of errors that "he did not have the benefit of counsel" and alleged generally that "he was not fully advised of his rights in the situation."

The Court of Appeals held that the defendant's allegation of "not having benefit of counsel" did not constitute matter to which the Police Justice need respond in his return.¹¹⁹ An allegation of "not having opportunity to secure counsel," however, would suggest that benefit of counsel was not waived¹²⁰ but deprived, thus requiring a specific response in the return of the police justice.

112. *People v. Lathrop*, 3 N.Y.2d 551, 170 N.Y.S.2d 326 (1958).

113. 4 N.Y.2d 224, 173 N.Y.S.2d 587 (1958).

114. N. Y. CONST., Art. I, §6.

115. N. Y. CIV. PRAC. ACT §236.

116. *Compare Webb v. Dill*, 18 Abb. Prac. 264 (1865).

117. 4 N.Y.2d 70, 172 N.Y.S.2d 155 (1958).

118. N. Y. VEHICLE AND TRAFFIC LAW §70(5).

119. N. Y. CODE CRIM. PROC. §756. Also see *People v. Marincic*, 2 N.Y.2d 181, 158 N.Y.S.2d 569 (1957); 7 BUFFALO L. REV. 122 (1957).

120. N. Y. CODE CRIM. PROC. §§335(2), 699(4).