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## Criminal Law—Coram Nobis—Presumption of Regularity

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Coram Nobis—Presumption of Regularity

A writ of error coram nobis will be granted upon a showing that a conviction was obtained by fraud, misrepresentation, coercion or in any situation where a defendant has been convicted without a preservation of his constitutional rights defendant has been convinced without a preservation of his constitutional rights and this does not appear upon the record.<sup>75</sup>

*People v. Boehm*<sup>76</sup> involved a motion for such a writ upon the grounds that petitioners had been convicted without notification of their right to counsel. There seems to be no question but that such notification was given; however petitioners based their motion upon the claim that at the time of the trial they had been unable to understand the English language and had been generally uneducated. There was evidence that petitioners, at the time of the trial, had had mental capacities equivalent to that of a five year old child.

The Court held, affirming the Appellate Division,<sup>77</sup> that petitioners had not sufficiently overcome the presumption of regularity which attaches to a judicial proceeding<sup>78</sup> and that therefore the motion should have been denied.

Failure to inform a person of his right to counsel is of course a denial of a constitutional right<sup>79</sup> and therefore a basis for coram nobis. However, in the absence of a showing otherwise, there is always a presumption that a judicial proceeding was without error.<sup>80</sup> The question therefore becomes whether the petitioners presented sufficient proof to overcome this presumption. The Court felt it was reasonable to presume that if petitioners had sufficient knowledge to carry out a crime they had sufficient intelligence to realize why they were in court and what their basic rights were. The fact that no interpreter was deemed necessary is an indication that petitioners were sufficiently versed in the English language to grasp the significance of their right to counsel.

Since a court will not base its decision upon issues which were not raised in the court below,<sup>81</sup> the Court was correct in refusing to consider the report of petitioners' mental incapacity. It may be noted that the Court did not preclude another motion upon these grounds.

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75. *People v. Sadness*, 300 N. Y. 69, 89 N.E. 2d 188 (1949).

76. 309 N. Y. 362, 130 N.E. 2d 897 (1955).

77. 285 App. Div. 245, 137 N.Y.S. 2d 400 (4th Dep't 1955).

78. *People v. Richetti*, 302 N. Y. 290, 97 N.E. 2d 908 (1951).

79. N. Y. CONST. art. I, §6.

80. See note 78 *supra*.

81. *Persky v. Bank of America Nat. Ass'n.*, 261 N. Y. 212, 185 N.E. 77 (1933).

The dissent took the view that the evidence of petitioners' mental incapacity should have been considered in that it was uncontradicted and a matter of record. The dissent effectively pointed out that there is very much doubt as to whether petitioners' conviction should be upheld but has ignored the fact that mental incapacity was not properly in issue here. The dismissal of the writ without prejudice has saved this from being a hard decision.