

THEIR INCONSTITUTIONALITY AND DUE PROCESS DEFICIENCIES IN THE ALLEGED PROSECUTION

By Raymond J. O'Neil, Jr.

Introduction

In many recent decisions we have suggested a framework for assessing whether constitutional challenges to criminal trials should be predicated on due process grounds, supported by constitutional rules.

At the outset it must be noted that these suggestions concern questions of law because they were prompted by the application of constitutional rules to criminal trials. They do not concern constitutional challenges to other trials where there is no question of law.

At the very minimum these constitutional issues are dependent upon a finding of either unconstitutional practices that offend due process, such as a trial that violates the Constitution's equal protection guarantee, or conduct that is so wanton and callous that it offends the Constitution's prohibition against cruel and unusual punishment. These constitutional violations are not limited to the criminal justice system, but "arise" with respect to other criminal and non-criminal proceedings as well. The most difficult problem may be whether the personal constitutional requirements applicable to criminal trials also apply to other proceedings, such as administrative hearings or other disciplinary proceedings, given the fact that many of these proceedings provide less formal hearings than does a criminal trial.

Definitions

- a. "Trial" shall mean the trial of "offenses." Offenses are:
 - a. those responsibilities and obligations which the law requires a person to observe and which he violates when he fails to observe them or when he does not observe them in accordance with the law;
 - b. those responsibilities and obligations which the law requires a person to observe and which he violates when he fails to observe them or when he does not observe them in accordance with the law;
- b. "Court" means any court, tribunal, commission, board, commission, committee, panel, or other body or group of persons which has been invested with authority to hear and determine cases, controversies, or disputes.

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