CRIMINAL

SECOND DEPARTMENT

People v Price, 9/18/19 – **BELATED PEREMPTORY / REVERSED**
The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 2nd degree murder and other crimes. The Second Department reversed and ordered a new trial. The trial court should have granted the defendant's belated peremptory challenge. The decision to entertain such a challenge is left to the trial court's discretion. Where a belated challenge would delay or interfere with jury selection, it may be denied. But here the delay was de minimis; the momentary oversight caused no discernable interference; and voir dire of the next subgroup of jurors was still to be done. A new trial was ordered. Appellate Advocates (De Nice Powell, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2019/2019_06629.htm

People v Nobles, 9/18/19 –
PEOPLE'S APPEAL / CPL 210.40 DISMISSAL REVERSED
The People appealed from an order of Kings County Supreme Court, which granted the defendant's CPL 210.40 motion to dismiss. The Second Department reversed. The power to dismiss an indictment in the furtherance of justice is to be exercised sparingly—only where a compelling factor or circumstance clearly demonstrates that prosecution or conviction would result in injustice to the defendant. Given this defendant's criminal history and the serious charges, this was not one of those rare cases.
http://nycourts.gov/reporter/3dseries/2019/2019_06625.htm

People v Gonzales, 9/18/19 – ***ANDERS* BRIEF / NEW COUNSEL**
The Second Department granted counsel's motion to withdraw, but assigned new counsel to represent the defendant in his appeal from a Nassau County Supreme Court judgment, convicting him of aggravated criminal contempt and other charges. Non-frivolous issues included whether: (1) the trial court should have suppressed the defendant's statements; (2) proof of prior bad acts was improperly admitted; (3) the defendant received meaningful representation; and (4) the verdict was supported by the weight of the evidence.
http://nycourts.gov/reporter/3dseries/2019/2019_06616.htm

SECOND CIRCUIT

USA v Feldman, 9/17/19 – **PLEA PROMISES / HEARING NEEDED**
The defendant, who pleaded guilty to having conspired with others to defraud a university, appealed from District Court–WDNY orders, which the Second Circuit vacated, remanding for fact-finding and reconsideration. At issue was whether, due to Government promises during plea negotiations, the defendant's forfeited funds should be credited toward restitution. An AUSA had recommended that, through "restoration," forfeiture proceeds be paid to victims. But District Court found that the defendant was not entitled to rely on such representations, because the written agreement included no such promise. That was error. The lower court applied incorrect standards to interpret the

agreement. In plea agreements—as opposed to commercial contracts—the Government must adhere to the highest standard of fairness. When a promise helped to induce a plea, it must be fulfilled; and a promise by any prosecutor is attributed to the Government. To retract and nullify prior promises, the Government cannot necessarily rely on omissions in the written agreement.
http://www.ca2.uscourts.gov/decisions/isysquery/85b53b23-a9cb-4f1e-9b92-9174ac44be90/2/doc/17-2868_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/85b53b23-a9cb-4f1e-9b92-9174ac44be90/2/hilite/

Luis Hernandez v USA and NYC, 9/17/19 –
WRONGFUL DETENTION / CLAIMS REINSTATED
The plaintiff—a U.S. citizen born in Brooklyn—was arrested in Manhattan for a misdemeanor. While he was being processed, DHS lodged against him an immigration detainer for another man, Honduran Luis Enrique Hernandez-Martinez. Upon realizing its error, DHS withdrew the detainer. In the meantime, the plaintiff had been in custody for four days. He initiated an action for money damages against the U.S. and NYC. District Court–SDNY dismissed the suit for failure to state a claim, but the Second Circuit reinstated false arrest and false imprisonment claims against the U.S. Since the names of the defendant and the person listed on the detainer did not match, ICE should have made an inquiry. A similarity in Latin surnames does not establish probable cause. The reviewing court also reinstated a 42 USC § 1983 claim against the City based on its policy of blindly honoring federal detainers. The City was not required to detain a person in custody where probable cause appeared to be lacking and verification would require minimal effort.
http://www.ca2.uscourts.gov/decisions/isysquery/4d1204ae-9f3d-4587-81ce-e11de14e8346/1/doc/18-1103_amd_opn2.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/4d1204ae-9f3d-4587-81ce-e11de14e8346/1/hilite/

RAISE THE AGE

People v J.R., posted 9/18/19 –
HIPAA / LAW ENFORCEMENT EXCEPTION
The JO was charged in Nassau County with 2nd degree attempted murder and other crimes in connection with a shootout. The People, who had information that the JO was injured in the incident, served a so-ordered subpoena on a hospital, seeking production of his medical records, including X-rays, photographs, and any scans pertaining to his treatment around the time of the shooting. The hospital produced the medical records. The JO moved to quash the subpoena, asserting that the records contained HIPAA-protected confidential information. The court denied the application. Disclosure for law enforcement purposes was permitted; there was no constitutional right to the physician-patient privilege; and Penal Law § 265.25 required physicians and hospitals to report to police every case of a wound caused by discharge of a firearm.
http://nycourts.gov/reporter/3dseries/2019/2019_29284.htm