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Right to Counsel for Misdemeanants: A Post-Gideon View

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IV. Conclusion

Although in *Hebel* the decision was not limited to automobile accident situations in which the parent is insured, the rationale of the court is persuasive only where insurance is in fact present. The court appeared to assume that no suit will be brought unless insurance is present.[38] However, if in a case similar to *Hebel* the record revealed the absence of liability insurance, the court's reasoning, that the general availability and wide prevalence of automobile insurance negates the principal arguments for barring the action, would be both unconvincing and contradictory. If the reasons for barring an action by the child are valid, the general availability of insurance is no argument for the abrogation of parental immunity. Unless the parent is insured, a recovery by the child would deplete the family finances. When the burden of the suit falls on the parent rather than on the insurance company, there is likely to be disruption of domestic harmony and parental discipline. The better view of insurance in such cases seems to be that the "existence or non-existence of insurance must be considered irrelevant . . . ."[39] Although *Hebel* is one more authority in the trend away from family immunities, it is not likely to have a significant influence in other jurisdictions.[40]

The courts should make a frontal attack on the reasons given for barring an action by the minor against the parent. Domestic harmony is not a valid consideration where the parent has falsely imprisoned,[41] raped,[42] or used cruel and inhuman treatment[43] against the child. A minor who receives injuries due to the negligence of a parent should not be denied recovery for injuries which may last beyond minority. The reasons which underlie parental immunity shoud be re-examined, and more emphasis should be placed on the need to protect the personal security of the minor child.

Glen A. Majure

Right to Counsel for Misdemeanants: A Post-Gideon View

Borst, a candidate for sheriff in Minnesota, issued a circular regarding the qualifications of his opponent and was charged with violating a Minnesota statute[1] which makes it a misdemeanor knowingly to publish a false statement about a candidate for public office. Borst was arraigned and requested a continuance to enable him to retain counsel. Later he appeared without counsel and requested appointment of one, claiming he was finan-

[38] *Id.* at 12.

[39] Barlow v. Iblings, 156 N.W.2d 105, 110 (Iowa 1968).

[40] Barlow v. Iblings, 156 N.W.2d 105 (Iowa 1968), in which the Supreme Court of Iowa barred a negligence action by a minor against his father, rejecting reasoning similar to that in *Hebel.*

[41] Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891).

[42] Roller v. Roller, 37 Wash. 242, 79 P. 788 (1905).

[43] McKelvey v. McKelvey, 111 Tenn. 388, 77 S.W. 664 (1903).

[1] MINN. STAT. ANN. § 211.08 (1962).

cially unable to secure his own. This request was denied, and Borst was convicted at a trial in which he made no statements, offered no testimony, introduced no exhibits, and conducted no cross examinations. Borst petitioned to the Minnesota Supreme Court for a writ of mandamus to direct the lower court to appoint counsel. *Held, reversed and remanded*: The fair administration of justice requires that counsel be appointed for indigents when incarceration in a penal institution can result from conviction. *State v. Borst,* 154 N.W.2d 888 (Minn. 1967).

I. DEVELOPMENT OF RIGHT TO COUNSEL AT TRIAL

Federal Developments. Right to counsel in federal courts is governed by the sixth amendment to the United States Constitution.[2] This amendment does not indicate on its face whether this right is limited only to retained counsel or is broad enough to encompass a right to appointed counsel if an accused is financially unable to afford his own. However, this question was resolved in the felony case of *Johnson v. Zerbst*,[3] where the Supreme Court held that, absent a competent and intelligent waiver of right to counsel, convictions obtained without the presence of counsel violate the sixth amendment and are therefore void.[4] *Zerbst* was later extended to include misdemeanors in *Evans v. Rives*,[5] where the defendant received a one-year sentence for failure to provide for the support and maintenance of a minor child. The *Evans* court found no distinction between a deprivation of liberty for a long period of time and a short while. The reasoning of *Zerbst* was codified in the Criminal Justice Act of 1964,[6] and the right to counsel in federal courts is now governed by the Act. The Act provides that the federal district courts shall have plans for furnishing counsel to indigents charged with felonies and misdemeanors other than petty offenses.[7] A petty offense is defined as one carrying a maximum penalty of six months imprisonment and/or a $500 fine.[8]

State Courts. Right to counsel in state courts is primarily derived from state constitutions, which provide the right in varying degrees.[9] Any right to counsel arising from the United States Constitution comes from the due process clause of the fourteenth amendment, and not directly from the sixth amendment.[10] In *Powell v. Alabama*[11] the due process clause was ap-

[2] U.S. CONST. amend. VI: "In all criminal prosecutions the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."; Bute v. Illinois, 333 U.S. 640, 666 (1947).

[3] 304 U.S. 458 (1938).

[4] *Id.* at 468.

[5] 126 F.2d 633 (D.C. Cir. 1942).

[6] 18 U.S.C. § 3006A (1964).

[7] It must be noted that by excluding petty offenses Congress has concluded counsel need not be furnished in *all* criminal cases.

[8] 18 U.S.C. § 1 (1964).

[9] Representative examples are CAL. CONST. art. I, § 8; FLA. CONST. decl. of rts. § 11; MICH. CONST. art. I, § 10; N.Y. CONST. art. I, § 6; TEX. CONST. art. I, § 10. In Virginia, right to counsel is provided by an interpretation of a general rights of the accused section of the Virginia Constitution. *See* Watkins v. Commonwealth, 174 Va. 518, 6 S.E.2d 670 (1940).

[10] There is some opinion to the contrary. State v. Anderson, 96 Ariz. 123, 392 P.2d 784 (1964); Kamisar & Choper, *The Right to Counsel in Minnesota: Some Field Findings and Legal-Policy Observations*, 48 MINN. L. REV. 1 (1963).

[11] 287 U.S. 45 (1932).

plied to a state criminal prosecution. Powell and two others, all Negroes, were charged with the rape of a white girl. All three were held under close military guard because of the hostile community sentiment. The conviction was appealed on the basis of an ineffective appointment of counsel,[12] and the Supreme Court reversed, holding that "in a capital case, where the defendant is unable to employ counsel, and is incapable of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law."[13] However, the Court's language hinted at a potentially broader holding.[14] The ruling of *Powell* was extended in *Betts v. Brady*.[15] Noting that due process is a concept "more fluid" than the rest of the Constitution, the Court held that counsel must be appointed where "certain circumstances" existed.[16] These "certain circumstances" must "constitute a denial of fundamental fairness" and be "shocking to the universal sense of justice." The Court concluded that "denial is to be tested by an appraisal of the totality of the facts in a given case."[17] The inherent vagueness of *Betts* was a built-in expansion factor, and case after case demonstrated the willingness of the Court to find the required special circumstances.[18] By the time of *Gideon v. Wainwright*,[19] *Betts* had "revealed itself as overruled by its manifest erosion."[20] In *Gideon* Mr. Justice Black commented that "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[21] Disturbed by this sweeping language, Mr. Justice Harlan emphasized that the decision was limited to serious cases and that the sixth amendment was not carried full sweep to the states, but that the mere existence of a serious charge constitutes, in itself, a special circumstance.[22]

II. Post-Gideon Developments

There has been some consistency in the few decisions attempting to set a lower limit to the serious offense rule. Generally, the possibility of a one-

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[12] The trial court had appointed the bar as a whole to represent the defendants, and at the trial a lawyer volunteered his services and participated in a non-official capacity.

[13] 287 U.S. at 71.

[14] *Id.* at 68-69: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law."

[15] 316 U.S. 455 (1942).

[16] *Id.* at 462. But for an unknown reason this became known as the "special" circumstances test.

[17] *Id.*

[18] Chewning v. Cunningham, 368 U.S. 443 (1962) (complex recidivist statute); Uveges v. Pennsylvania, 335 U.S. 437 (1948) (frightened youth); Wade v. Mayo, 334 U.S. 672 (1948) (inexperienced youth); Rice v. Olson, 324 U.S. 786 (1945) (tricky legal point and an ignorant Indian defendant).

[19] 372 U.S. 335 (1963).

[20] Traynor, *Comment on Courts and Lawmaking*, in LEGAL INSTITUTIONS TODAY AND TOMORROW 48, 54 (M. Paulsen ed. 1959).

[21] 372 U.S. at 344.

[22] *Id.* at 351-52. A serious charge is one that carries the possibility of a substantial prison sentence. *See* note 23 *infra*.

year prison sentence seems to be the lower limit.[23] This limitation of the right to appointed counsel to serious offenses only, a limitation not even mentioned in the opinion of the full court, has created much controversy over the extension of right to counsel to misdemeanants, as American courts and judicial critics have become increasingly concerned with the legal disadvantages created by poverty.[24]

One problem that has confronted the courts is that there is a lack of a standard definition of a misdemeanor. While generally a misdemeanor is viewed as an offense of a non-serious nature, some misdemeanors carry sizeable penalties.[25] At the same time some felonies carry only relatively mild punishments. Compounding this problem is the fact that a particular offense may be classified a felony in one state and a misdemeanor in another.[26] Moreover, even if the offense is a misdemeanor from state to state, the punishment for the crime may vary widely.[27] The punishment for some misdemeanors may be so severe as to place them within the *Gideon* serious offense rule.[28]

For those offenses not clearly within the *Gideon* rule, decisions have varied.[29] The leading case requiring counsel is *Harvey v. Mississippi.*[30] *Harvey* arose in the Fifth Circuit under the federal habeas corpus powers[31] and involved a Negro who had been charged with possession of whiskey and assessed a $500 fine and a ninety-day jail sentence.[32] The court emphasized that an accused needs counsel before making a plea because of the legal complexities involved in deciding whether a guilty plea is advisable and because of the serious consequences which may result even in a misde-

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[23] Brinson v. State, 273 F. Supp. 840 (S.D. Fla. 1967); Arbo v. Hegstrom, 261 F. Supp. 397 (D. Conn. 1966); Irvin v. State, 203 So. 2d 283 (Ala. Ct. App. 1967). Since these decisions have all concerned sentences of more than one year, they are dicta. Some doubt about the one-year rule may have been created by dicta in the recent decision of Duncan v. Louisiana, 391 U.S. 145 (1968), in which sixth amendment jury trial rights were applied to an offense for which a sentence up to two years could be given. Dicta strongly suggested a preference for a six-months rule, although some leeway was given for states to explore. It must be remembered that all provisions of the sixth amendment do not necessarily apply with equal force to the states through the fourteenth amendment. Thus a right to counsel will not necessarily exist for offenses for which a right to a jury trial exists.

[24] ABA, LAWYERS AND THE POOR (1965); ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE, REPORT (1965); FORD FOUNDATION, . . . AND JUSTICE FOR ALL (1967); 1964-65 Committee of the State Bar of Georgia on Compensated Counsel, *Assistance to the Indigent Person Charged with Crime*, 2 GA. ST. B.J. 197 (1965); Note, *Effective Assistance of Counsel for the Indigent Defendant*, 78 HARV. L. REV. 1434 (1965); Comment, *The Indigent's Right to Counsel in Misdemeanor Cases*, 19 SW. L.J. 593 (1965); Note, *Legal Aid for Indigent Criminal Defendants*, 18 VAND. L. REV. 837 (1965).

[25] N.J. REV. STAT. § 2A:118-1 (1952) (life for kidnapping, a high misdemeanor).

[26] An example is adultery, a misdemeanor in Kansas, KAN. STAT. ANN. § 21-908 (1964), and a felony in Florida, FLA. STAT. ANN. § 798.01 (1965), and in most states.

[27] Illustrative is the offense of ordinary promotion of gambling. MISS. CODE ANN. § 2190 (1942) (twenty days); N.Y. PEN. LAW § 225.05 (McKinney 1967) (one year).

[28] Brinson v. State, 273 F. Supp. 840 (S.D. Fla. 1967); Arbo v. Hegstrom, 261 F. Supp. 397 (Conn. 1966); Irvin v. State, 203 So. 2d 283 (Ala. Ct. App. 1967); State v. Anderson, 96 Ariz. 123, 392 P.2d 784 (1964). This is probably true generally of what are known as high misdemeanors.

[29] *See* notes 30 through 49 *infra.*

[30] 340 F.2d 263 (5th Cir. 1965).

[31] 28 U.S.C. § 2241 (Supp. II, 1965-66).

[32] The *Harvey* case had some peculiar facets. The entire process took place on the front lawn of a Justice of the Peace. Furthermore, since Harvey housed civil rights workers there were some racial overtones to the conviction.

meanor case.[33] The reasoning of *Harvey* was followed in *McDonald v. Moore*.[34] McDonald was arrested and convicted of the illegal sale and possession of liquor. She sought a new trial on the grounds that she was not advised of her right to counsel. On appeal, the Fifth Circuit held that a right to counsel did exist and that the defendant should have been so advised. Although the court emphasized that the right to counsel was not unlimited, it failed to enunciate any definite standards.[35] Thus, the right to counsel is definitely established in the Fifth Circuit, but its limits are not clearly defined.[36]

The *Harvey* standard generally has not been followed in other jurisdictions. Most courts have relied upon the serious offense standards of *Gideon*,[37] but another approach applies the right only to non-petty offenses, thereby incorporating the federal standard as prescribed by the Criminal Justice Act.[38] Other courts have returned to the federally rejected *Betts* standard, applying a case-by-case judgment based upon consideration of all the circumstances.[39]

Recent Developments. In *Cableton v. State*[40] a defendant was convicted of several misdemeanors and assessed fines totalling $521.50 and jail sentences totalling nine months. On appeal, the Arkansas Supreme Court held that an accused misdemeanant need not be provided counsel if he is unable to afford his own.[41] The court rejected the contention that the federal standards for providing counsel applied directly to the states through the due process clause of the fourteenth amendment. It concluded that the fourteenth amendment required only what was necessary for "ordered liberty."[42] Thus, a state need not provide counsel in all the circumstances that would require it if the sixth amendment applied directly, but only in those circumstances that "are fundamental and essential to a fair trial."[43] Great emphasis was placed on the practical considerations involved, in that there are so many cases of this type that appointment of counsel would be a "practical impossibility."[44]

Although most courts have applied right to counsel to at least some de-

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[33] 340 F.2d at 269.

[34] 353 F.2d 106 (5th Cir. 1965).

[35] *Id.* at 108.

[36] Petition of Thomas, 361 F. Supp. 263 (W.D. La. 1966).

[37] *See* footnote 28 *supra*.

[38] People v. Letterio, 16 N.Y.2d 307, 213 N.E.2d 670, 266 N.Y.S.2d 368 (1965) (speeding).

[39] Creighton v. North Carolina, 257 F. Supp. 806 (E.D.N.C. 1966). It is usually then left to the trial judge to decide when to appoint, and an appellate court will give his judgment considerable weight. *See* State v. DeJoseph, 3 Conn. 624, 222 A.2d 752, *cert. denied*, 385 U.S. 982 (1966); State v. Sherron, 268 N.C. 694, 151 S.E.2d 599 (1966); State v. Bennett, 266 N.C. 755, 147 S.E.2d 237 (1966).

[40] 243 Ark. 351, 420 S.W.2d 534 (1967).

[41] *Id.* at 537-38.

[42] *Id.* at 537. It must be noted that Arkansas law requires appointment of counsel only in felony cases. ARK. STAT. ANN. § 43-1203 (1964).

[43] *Id.*

[44] *Id.* at 538. The court pointed out that the sixty-one municipal courts of the state had 108,040 criminal and 201,867 traffic charges filed in 1966. There are some 2,267 justices of the peace in Arkansas.

fendants in misdemeanor cases,[45] there is considerable opinion denying the right altogether.[46] In the North Carolina case of *State v. Sherron*[47] the defendant appealed a ninety-day jail sentence, claiming that counsel should have been appointed. The Supreme Court of North Carolina held that counsel need be appointed only if the trial court felt it was necessary.[48] As is true of most cases denying the right to counsel altogether, the court went no further in its explanation than to say that the Supreme Court had refused to apply *Gideon* to misdemeanors.[49] Thus the courts have found a variety of answers to the problem of right to counsel, ranging from a seemingly unlimited right to counsel to total denial.

III. State v. Borst

In *Borst* the Minnesota Supreme Court attempted to avoid the federal constitutional issue of right to counsel. The court surveyed the various decisions and concluded that the holdings dealing with right to counsel could not be reconciled.[50] As a result, the court was free to create its own rule.[51] The court first specifically rejected the belief that its rule could be based on the name given an offense.[52] It also rejected the serious offense rule of *Gideon*. The court recognized that there is something inherently more serious in a loss of liberty than the payment of a fine and that a defendant is as helpless to defend himself against a non-serious charge as a serious one. While a ninety-day jail sentence, the maximum for a misdemeanor under Minnesota law, might be considered a petty offense by many courts, it would still be of considerable consequence to the defendant himself.[53] Thus, the court apparently concluded that *Gideon* did not go far enough and held that counsel must be provided where incarceration is possible.[54] Furthermore, whenever the statute[55] providing for incarceration when a fine is not paid is to be invoked, right to counsel attaches.[56]

In his concurring opinion, Mr. Justice Peterson sought to exclude traffic offenses from the majority rule.[57] This was based on two considerations. First, traffic offenses rarely involve jail sentences, are usually simple to try, and carry little social stigma.[58] Thus, the consequences of denying counsel in traffic cases would be minimal. Second, the indigent would actually be in

[45] Of recent origin are a few cases that have taken an interesting approach in holding that violations of municipal ordinances do not require appointment of counsel. *See* City of New Orleans v. Cook, 249 La. 820, 191 So. 2d 634 (1966); People v. Mallory, 378 Mich. 538, 147 N.W.2d 66 (1967) (dictum).

[46] Fish v. State, 159 So. 2d 866 (Fla. 1964); State v. Brown, 250 La. 1023, 201 So. 2d 277 (1967); Cortinez v. Flournoy, 249 La. 741, 190 So. 2d 909, *cert. denied*, 372 U.S. 335 (1962); State v. Sherron, 268 N.C. 694, 151 S.E.2d 599 (1966); Commonwealth v. Keenan, 185 Pa. Super. 49, 138 A.2d 259 (1958); Sosa v. State, 168 Tex. Crim. 575, 330 S.W.2d 621 (1960).

[47] 268 N.C. 694, 151 S.E.2d 599 (1966).

[48] This is allowed under state law. N.C. Gen. Stat. 15-4.1 (1965).

[49] *See* Winters v. Beck, 239 Ark. 1151, 397 S.W.2d 364, *cert. denied*, 385 U.S. 907 (1966).

[50] 154 N.W.2d at 889-94.

[51] This was especially true since the court based its decision on its inherent supervisory powers over its lower courts.

[52] 154 N.W.2d at 893.

[53] *Id.* at 893-94.

[54] *Id.* at 894.

[55] Minn. Stat. Ann. § 574.35 (1947).

[56] 154 N.W.2d at 894.

[57] *Id.* at 896.

[58] The major exception is usually driving while intoxicated.

a better position than a person who could afford to procure counsel of his own. Most people, although able to afford an attorney to fight a traffic charge, do not do so, because it is less expensive to pay the ticket. Thus the indigent, who would be able to demand counsel, as a practical matter would be afforded more than equal protection of the laws. Moreover, the indigent would be in an advantageous position to bargain for a reduced charge to save the state the considerable expense of an attorney-assisted trial.[59]

The *Borst* majority opinion can be directly contrasted with the recommendations of the American Bar Association.[60] Under the ABA plan, the determination of the need for counsel would not be based on the facts of a particular case, but the line would be drawn "at those *types* of offenses for which incarceration as a punishment is a practical possibility."[61] What is meant by the term "practical possibility" is not explained, although the term would seem to exclude most traffic offenses.[62]

IV. Conclusion

Proposals as to when right to counsel should attach are not lacking.[63] The inherently vague serious offense rule probably will be abandoned. The felony-misdemeanor line is unwise since it is not a standard at all,[64] allowing a constitutional right to depend on the name a legislature gives an offense.[65] It has been proposed that a right to counsel apply only when the offense contains a social stigma, even if jail is not likely.[66] Three other possibilities suggested are to provide counsel only when the defendant requests, when conviction would expose the defendant to substantial public ridicule, and when conviction would mean substantial economic loss.[67]

The answer to the right to counsel question is crucial, not only because of its effect on the conduct of the trial, but because logically if counsel must be provided at trial, it must be provided at the pre-trial stages under *Escobedo v. Illinois*.[68] It would also seem that any additional rights implied by the *Griffin v. Illinois*[69] and *Douglas v. California*[70] holdings may have to

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[59] 154 N.W.2d at 898.

[60] "Counsel should be provided in all criminal proceedings for offenses punishable by loss of liberty, except those types of offenses for which such punishment is not likely to be imposed, regardless of their denomination as felonies, misdemeanors, or otherwise." ABA Advisory Committee on the Prosecution and Defense Functions, Providing Defense Services 37-38 (1967).

[61] *Id.* at 40 (emphasis in original).

[62] Will courts have to use statistical analysis of what has happened previously in cases of a similar type? Does a 50% incarceration rate for convictions for a certain offense equal a "practical possibility"? 60%? 70%?

[63] Siegal, *Gideon and Beyond: Achieving an Adequate Defense for the Indigent*, 59 J. Crim. L., C. & P.S. 73, 84 (1968); Comment, *Right to Counsel for Misdemeanants in State Courts*, 20 Ark. L. Rev. 156 (1966); Comment, *Right to Counsel in Civil Litigation*, 66 Colum. L. Rev. 1322 (1966); Comment, *The Indigent's Right to Counsel in Civil Cases*, 76 Yale L.J. 545 (1967).

[64] *See* notes 25 through 27 *supra*, and accompanying text.

[65] Kamisar & Choper, *The Right to Counsel in Minnesota: Some Field Findings and Legal-Policy Observations*, 48 Minn. L. Rev. 1, 65-66 (1963).

[66] An example that is often used is driving while intoxicated.

[67] Comment, *Right to Counsel for Misdemeanants in State Courts*, 20 Ark. L. Rev. 156 (1966).

[68] 378 U.S. 478 (1963).

[69] 351 U.S. 12 (1956) (transcript for use on appeal must be furnished without cost to indigent when the transcript is necessary to make an appeal).

[70] 372 U.S. 353 (1963) (counsel must be supplied for appeal following conviction).

be extended to misdemeanants.[71]

Seemingly, right to counsel should be expanded. A defendant faces before, during, and after trial a bewildering variety of rules. He is ill-equipped to face, on equal terms, his well-trained adversaries. These factors arise in important cases as well as in not so important ones. Providing the needed counsel presents a serious challenge to American legal resources and ingenuity. Shall the needed counsel be provided through private defender systems, public defender system, legal clinics staffed by law school students, or some combination of the three? The answer will lie in some balance of the desirability of providing counsel for all and the practicality of a limited number of competent practitioners. The answer can be a flexible standard which inherently is vague or a fixed standard which may seem arbitrary. The Minnesota Supreme Court has opted for a fixed standard, which in view of the problems created by the vague *Betts* holding, is probably for the best. The *Borst* approach, especially if modified along the lines suggested by Mr. Justice Peterson, is a logical approach. It has the advantage of affording a clear-cut rule which can be applied by even the usually non-legally-educated local magistrates. It is not the best of all answers, but, given the state of legal services in the United States, it represents a logical compromise. But though *Borst* represents a logical, justifiable resting place, only the United States Supreme Court can decide just how permanent this resting place will be.

Gary R. Rice

Statutory Merger Involves a Purchase or Sale of Securities for Purposes of Rule 10b-5

The defendants, a group of officers and directors of the Susquehanna Corporation (the "Lannan Group"), conspired with one Korholz to defraud Susquehanna. Initially, the Lannan Group sold 435,000 shares of Susquehana to Korholz at a price $1,740,000 in excess of fair market value. The group then resigned, vesting control of Susquehanna in Korholz and his nominees. Korholz, who was also chairman of the board of another corporation, American Gypsum, sold the Susquehanna shares to Gypsum, which obtained a bank loan for substantially all of the purchase price. Finally, Korholz caused the boards of directors of Gypsum and Susquehanna to recommend to their stockholders a statutory merger[1] of Gypsum into Susquehanna. The terms of the merger provided for an exchange of 1.9 shares of Gypsum for one share of Susquehanna, a ratio which represented a gross over-valuation of Gypsum. These fraudulent manipulations prompted a derivative suit by several minority shareholders of Susquehan-

[71] On this subject in general, *see* Note, *Right to Aid in Addition to Counsel for Indigent Criminal Defendants*, 47 MINN. L. REV. 1054 (1963).

[1] INT. REV. CODE of 1954, § 368(a)(1)(A).