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the state law insofar as the property interests of the widow created by state law are concerned.¹³

The district court in *Bray* held *Viatchos* to be controlling and that the transfer of the bonds was in violation of California Civil Code Section 172. The son was ordered to account for the funds improperly transferred.

CONCLUSION

Federal law will govern the ownership of United States Savings Bonds, except when such a determination of ownership will act to deprive the widow of a property right which is granted to her by state law. To defeat the survivorship provisions of United States Bonds, fraud, measured by Federal standards, but guided by state property law, must be present. *Bray* could not have disposed of these funds during his life without his wife's permission, nor may he do so at death under the protection of the Supremacy Clause of the Federal Constitution.

Frank Mills

CONSTITUTIONAL LAW: RIGHT TO COUNSEL IN MISDEMEANOR CASES: *IN RE JOHNSON* (CAL. 1965)

In recent years there has been considerable judicial expansion of the right to counsel, particularly with the decision in *Gideon v. Wainwright*¹ making the Sixth Amendment counsel provision applicable to the states through the due process clause of the Fourteenth Amendment. One aspect of the problem that remains unclear is whether the Fourteenth Amendment requires a state to appoint counsel to defend an indigent charged with a misdemeanor.

The California Constitution and Penal Code also provide for the right to counsel. Article 1, Section 13, of the state constitution provides that "In criminal prosecutions, in any court whatever, the party accused shall have the right . . . to appear and defend, in person and with counsel." In addition Sections 859 and 987 of the Penal Code provide for court appointment of counsel:

¹³ 376 U.S. 306, 309 (1964).

¹ 372 U.S. 335 (1963).

When the defendant is charged with commission of a public offense, over which the superior court has original jurisdiction . . . if the defendant desires and is unable to employ counsel, the court must assign counsel to defend him.²

If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.³

Despite the seemingly clear language of these statutes, the California cases present a confusing picture of the basis and scope of the right to appointed counsel in misdemeanor cases.

In *People v. Agnew*,⁴ the defendant's request for appointed counsel was denied and the defendant was subsequently convicted. The appellate court reversed the conviction on the ground that the defendant had been unconstitutionally denied the right to counsel. The basis of the court's decision is somewhat ambiguous. The court speaks of Article 1, Section 13, of the California Constitution as granting the right to counsel, but also discusses at length the due process requirements of the Fourteenth Amendment. It is not clear from the decision whether the court relied on the federal or state constitution in reversing the conviction.⁵

In *Re Newbern*,⁶ another misdemeanor case, dealt primarily with the courts' duty to advise a criminal defendant of its right to counsel and the requirement that counsel be allowed sufficient time to effectively prepare the case. The court in *Newbern* cited Penal Code Section 859 as requiring counsel to be appointed in all cases where the accused is financially unable to employ counsel. The court's interpretation of section 859 disregards the express language limiting its applicability to cases within the jurisdiction of the superior courts.

The recent case of *In Re Johnson*⁷ effectively resolves the ambiguity of the *Agnew* decision and clarifies the interpretation of Penal Code Section 859. Johnson was convicted of multiple traffic offenses and sentenced to serve consecutive terms of 180 days on each of five complaints. The facts indicate that Johnson appeared at the trial court with numerous other individuals charged with traffic offenses. Johnson was unrepresented by counsel. The assembled de-

² CAL. PEN. CODE § 859.

³ CAL. PEN. CODE § 987.

⁴ 114 Cal. App. 2d 841, 250 P.2d 369 (1952).

⁵ See Note, *The Right to Counsel in Misdemeanor Cases*, 48 CALIF. L. REV. 501 (1960).

⁶ 53 Cal. 2d 786, 350 P.2d 116, 3 Cal. Rptr. 364 (1960).

⁷ 62 A.C. 336, 398 P.2d 420, 42 Cal. Rptr. 228 (1965).

fendants were collectively advised of their constitutional rights and then individually arraigned. Johnson entered pleas of guilty to all five complaints; he was then held in the court room until the conclusion of the remaining cases at which time sentence was imposed.

Johnson petitioned for a writ of habeas corpus contending that he was not adequately advised of his constitutional rights and that he had made no valid waiver of his right to counsel. His petition was sustained by the Supreme Court on the ground that he had not waived his right to counsel. The court held that his plea of guilty was not conclusive of waiver; and that the fact of waiver should be determined before the court accepts any plea.

The court relied on Article 1, Section 13 of the state constitution as the basis of Johnson's right to counsel:

Under this provision there can be no doubt that the fundamental constitutional right to counsel at all stages of the proceedings is, in California at least, not limited to felony cases but is equally guaranteed to persons charged with misdemeanors in a municipal or other inferior court.⁸

In a note to the court's decision in the *Johnson* case, the court explains the interpretation of Penal Code Section 859 as applied earlier in *Newbern* and following in *Johnson*.

Although on its face section 859 applies only to cases "over which the superior court has original jurisdiction" it is declaratory in this respect of the several duties of the magistrate which give meaning and effect to the constitutional guarantee of counsel "in any court whatever."⁹

In summary, the clear import of the *Johnson* case is that there is a right to a court appointed counsel in misdemeanor cases, which right arises under Article 1, Section 13 of the state constitution and exists independent of the federal Constitution. In addition Penal Code Sections 859 and 987 are not to be construed as limiting the scope of the constitutional policy in any way; their purpose is to define the duties of the court in implementing the constitutional provision.

Frank Clohan

⁸ *Id.* at 340, 398 P.2d at 422.

⁹ *Id.* at 341, n.2, 398 P.2d at 423, n.2.