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Pretrial Mental Commitment of the Accused

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hopefully will abandon *Richey* and its progeny[41] and adopt the position set forth in *Crittle*.

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PRETRIAL MENTAL COMMITMENT OF THE ACCUSED

Defendant, a twenty-seven year old, mentally deficient deaf mute, blind in one eye and unable to read, write or otherwise communicate, was charged with two separate robberies.[1] Upon receipt of not-guilty pleas, the trial court initiated competency procedures.[2] At a subsequent hearing, the court found the accused incapable of standing trial and ordered commitment to a state mental institution until he attained competency. Defendant moved for new trial, challenging Indiana's commitment criteria as violating due process and equal protection of the law and subjecting him to cruel and unusual punishment. The trial court denied the motion, and the Indiana supreme court affirmed.[3] The United States Supreme Court granted certiorari, reversed and unanimously *held* that by subjecting the accused to more liberal commitment standards and more stringent criteria for release than applied in civil commitment proceedings, the state had deprived defendant of equal protection of the law; and that the indefinite commitment of an accused solely because of his incapacity to stand trial violated due process of law. *Jackson v. Indiana*, 92 S. Ct. 1845 (1972).

The concept of mental capacity to stand trial was of early common law origin,[4] where a sound mind was said to be needed

41. Specifically, State v. Bell, 268 So.2d 610 (La. 1972); State v. Sheppard, 268 So.2d 590 (La. 1972).

1. "The first involved property (a purse and its contents) of the value of four dollars. The second concerned five dollars in money." Jackson v. State, 92 S. Ct. 1845, 1848 (1972).

2. The procedures were pursuant to BURNS' IND. STAT. ANN. § 9-1706a (now IND. CODE § 35-5-3-2 (Supp. 1971)).

3. Jackson v. State, 253 Ind. 487, 255 N.E.2d 515 (1970).

4. W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 1723-78, at 24 (Dawsons ed. 1966): "Al[s]o, if a man in his [s]ound memory commits a capital offense, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; becau[s]e he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the pri[s]oner becomes mad, he shall not be tried; for how can he make his defense?" For an early history of incompetency proceedings, see Youtsey v. United States, 97 F. 937 (6th Cir. 1899). *See generally* the *Foreword* to T. SZASZ, THE MANUFACTURE OF MADNESS at xix (1970).

by the accused to grasp the reprehensible nature of his conduct.[5] Later, the basis of trial competency shifted to the procedural fairness of due process which guaranteed the accused an opportunity to assist in his own defense.[6]

Mental incapacity to proceed to trial may be raised at any time,[7] by any party to the action or by the court,[8] without formal requirements.[9] The court's order of a mental examination is based upon the finding of a reasonable doubt[10] as to the defendant's mental capacity. The determination is made at a contradictory hearing, and the question of trial capacity is ultimately decided by the judge alone.[11]

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5. *But see* Foote, *A Comment on Pre-Trial Commitment of Criminal Defendants*, 108 U. PA. L. REV. 834 (1960): "The competency rule did not evolve from philosophical notions of punishability, but rather has deep roots in the common law as a by-product of the ban against trials *in absentia*; the mentally incompetent defendant, though physically present in the courtroom, is in reality afforded no opportunity to defend himself."

6. *See* Bishop v. United States, 350 U.S. 961 (1956); Youtsey v. United States, 97 F. 937 (6th Cir. 1899); State v. Yaun, 237 La. 186, 110 So.2d 573 (1959).

7. *See, e.g.*, LA. CODE CRIM. P. art. 642: "The defendant's mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court. When the question of the defendant's mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution, except the institution of prosecution, until the defendant is found to have the mental capacity to proceed." State v. Gunter, 208 La. 694, 23 So.2d 305 (1945). *But see* State v. Sinclair, 258 La. 84, 245 So.2d 365 (1971) (not rearraignment).

8. *See, e.g.*, LA. CODE CRIM. P. art. 642; State v. Hebert, 186 La. 308, 172 So. 167 (1937).

9. "[G]enerally, in most jurisdictions the courts are not inclined to stand on formality when the issue is fitness to proceed." Slough & Wilson, *Mental Capacity to Stand Trial*, 21 U. PITT. L. REV. 593, 605 (1960). *See also* State v. Detar, 125 Kan. 218, 219, 263 P. 1071, 1072 (1928): "The manner in which the necessity for an inquiry is raised as to present insanity is not of much importance." *See generally* State v. Gunter, 208 La. 694, 23 So.2d 305 (1945); State v. Reed, 41 La. Ann. 581, 7 So. 132 (1890).

10. Pate v. Robinson, 383 U.S. 375 (1966). *See, e.g.*, LA. CODE CRIM P. art. 643: "The court may order a mental examination of the defendant when it has reasonable ground to doubt the defendant's mental capacity to proceed. If the defendant does not have counsel when a mental examination is ordered, the court shall appoint counsel to represent him prior to and at the hearing on the question of present capacity to proceed." *But see* State v. Johnson, 249 La. 950, 192 So.2d 135, *cert. denied*, 388 U.S. 923 (1966) (no absolute right).

11. "The modern trend . . . is for the judge alone to decide the matter on the basis of evidence derived from a psychiatric examination of the accused.' A. MATTHEWS, JR., MENTAL DISABILITY & THE CRIMINAL LAW 74 (1970). *See, e.g.*, LA. CODE CRIM. P. art. 647: "The issue of the defendant's mental capacity to proceed shall be determined by the court in a contradictory hearing. The report of the sanity commission is admissible in evidence at the hearing, and members of the sanity commission may be called as witnesses by the court, the defense, or the district attorney. Regardless of who calls them as witnesses, the members of the commission are subject to cross-examination by the defense, by the district attorney, and by the

The test presently applied,[12] by a majority of states as well as the federal government,[13] is that the accused must lack the capacity to understand the proceedings against him and to assist in his own defense. But "mere weakness of mentality or subnormal intelligence does not, of itself, constitute legal insanity."[14] Upon adjudication of mental incapacity, criminal proceedings are halted.[15] Subject to appellate review, the defendant is usually committed to a mental institution for care and treatment.[16] Unfortunately, this treatment often consists of mere custody.[17]

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court. Other evidence pertaining to the defendant's mental capacity to proceed may be introduced at the hearing by the defense and by the district attorney."

12. The terms "present insanity, lack of fitness to proceed, insanity at time of trial, mental incapacity to proceed" are used interchangeably by the courts. *See* Dusky v. United States, 362 U.S. 402 (1960): "[T]he 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" *Accord,* State v. Hampton, 253 La. 399, 218 So.2d 311 (1969); State v. Augustine, 252 La. 983, 215 So.2d 634 (1968); State v. Collins, 242 La. 704, 138 So.2d 546, *cert. denied,* 371 U.S. 843 (1962).

13. "Many states, as well as the federal government, have merely codified the common law test of incompetency, under which the focus is upon the defendant's capacity to understand the nature and object of the proceedings against him and to make a rational defense." Note, 81 HARV. L. REV. 454, 457 (1967). *See, e.g.,* LA. CODE CRIM. P. art. 641: "Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense."

14. State v. Square, 257 La. 743, 772, 244 So.2d 200, 210 (1971). *See* State v. Edwards, 257 La. 707, 243 So.2d 806 (1971); State v. Augustine, 252 La. 983, 996-97, 215 So.2d 634, 638-39 (1968): "A conclusion that one is mentally retarded or defective or diseased does not of itself establish present insanity. However, when mental retardation or defect or disease, alone or in combination, is so severe that a defendant is unable to understand the object, nature, and consequences of the proceedings against him, to communicate with counsel in a meaningful manner, to recall and relate the circumstances connected with the offense, to testify in his own behalf, and to assist reasonably and rationally in a defense of the charge against him, that defendant is, within the contemplation of our law, presently insane and unable to stand trial." However, the exactness of this test has been soundly criticized. *See* F. LINDMAN & D. MCINTYRE, JR., THE MENTALLY DISABLED & THE LAW 359 (1961).

15. *See, e.g.,* LA. CODE CRIM. P. art. 648: "The criminal prosecution shall be resumed if the court determines that the defendant has the mental capacity to proceed. If the court determines that the defendant lacks mental capacity to proceed, the proceedings shall be suspended and the court shall commit the defendant to a proper state mental institution for custody, care, and treatment as long as the lack of capacity continues."

16. "In at least thirty-nine jurisdictions hospitalization of persons adjudged incapable of standing trial or being sentenced is mandatory." F. LINDMAN & D. MCINTYRE, JR., THE MENTALLY DISABLED & THE LAW 361 (1961). *See also* ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MENTAL ILLNESS, DUE PROCESS & THE CRIMINAL DEFENDANT 123 (1968) [hereinafter cited as N.Y. BAR REPORT]: "Courts should be granted discretion, where appropriate

Since *Baxstrom v. Herold*,[18] the United States Supreme Court has required that state prisoners, in order to be committed to mental institutions at the completion of sentence, must be afforded the same procedural rights to jury review of commitment as all citizens committed civilly.[19] Reasoning from *Baxstrom*,[20] the Court in the instant case was unable to reconcile the different Indiana procedures used for criminal and civil commitment:

> "If criminal conviction and imposition of sentence are insufficient to justify less procedural and substantive protection against indefinite commitment than that generally available to all others, the mere filing of criminal charges surely cannot suffice."[21]

While Indiana procedures for civil commitment[22] required either dangerousness or inability to properly care for one's self, those for criminal commitment required only incapacity to stand trial. To be eligible for release, the accused patient had to regain competency to stand trial; whereas the civil patient could be released when his condition "justified"[23] it. The Court concluded that the existence of these procedural discrepancies merely because of pending criminal charges denied petitioner equal protection of the law.

Respondent argued that the Indiana procedures were essen-

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to order suitable alternatives to hospitalization of defendants mentally unfit to be tried."

17. Morris, *"Criminality" and the Right of Treatment*, 36 U. CHI. L. REV. 784 (1969). Patients institutionalized through criminal channels are incarcerated on an average *ten times* longer than those through civil commitment.

18. 383 U.S. 107 (1966). *See also* United States *ex rel.* Schuster v. Herold, 410 F.2d 1071, 1081 (2d Cir.), *cert. denied*, 396 U.S. 847 (1969): *"Baxtrom v. Herold* . . . sparked an awareness that we cannot tolerate two classes of insane persons—criminal and non-criminal—where we are asked to examine commitment procedures available to both."

19. Prior to this ruling, state prisoners who, after conviction, had become insane during their prison term, were denied a jury review of their civil commitment, contrary to the general provision of said jury review for all civil commitments.

20. The *Baxstrom* principle has been applied to commitment following insanity acquittal. Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968); Cameron v. Mullen, 387 F.2d 193 (D.C. Cir. 1967); People v. Lally, 19 N.Y.2d 27, 224 N.E.2d 87 (1966).

21. Jackson v. Indiana, 92 S. Ct. 1845, 1851 (1972).

22. BURNS' IND. STAT. ANN. § 22-1209 (now IND. CODE § 16-14-9-9 (Supp. 1971)); *id.* § 22-1907 (now IND. CODE § 16-15-1-3 (Supp. 1971)).

23. *Id.* § 22-1814 (now IND. CODE § 16-15-4-12 (Supp. 1971)).

tially the same as the federal and, therefore, should be upheld. In *Greenwood v. United States*,[24] the accused challenged his commitment due to present incapacity because his condition was not temporary and unlikely to respond to treatment. The Court upheld the constitutionality of the federal statute pertaining to the commitment of persons charged with federal crime who are mentally incompetent to stand trial,[25] since in addition to being unable to understand the proceedings against him or properly to assist in his own defense, a showing of the dangerousness of the accused was also required. The Court in *Jackson* distinguished *Greenwood* on the basis of the federal requirement of a dangerous propensity of the accused and ruled that Indiana could not constitutionally commit under its existing criminal standard.

Beyond considering the criteria for commitment and release, the Court also examined the duration of confinement and directed

> "that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future."[26]

Consequently, the Court decided that after such reasonable period of time, the accused must be either civilly committed or released. Because Indiana's statute did not make the prospect of defendant's regaining capacity to stand trial a relevant factor, an accused with little chance of ever improving would be condemned for life to a mental institution merely because of pending criminal charges.[27]

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24. 350 U.S. 366 (1956). Following *Greenwood*, federal courts have required that the accused be dangerous to support indefinite commitment. *Accord*, United States v. Curry, 410 F.2d 1372 (4th Cir. 1969); United States *ex rel.* Daniels v. Johnson, 328 F. Supp. 100 (S.D.N.Y. 1971); Cook v. Ciccone, 312 F. Supp. 822 (W.D. Mo. 1970); United States v. Jackson, 306 F. Supp. 4 (N.D. Cal. 1969); Maurietta v. Ciccone, 305 F. Supp. 775 (W.D. Mo. 1969).

25. 18 U.S.C. §§ 4244-48 (1970).

26. 92 S. Ct. at 1858.

27. A step in this direction was taken by LA. CODE CRIM. P. art. 648 which provides that "[a]t any time after commitment, on recommendation of the superintendent of the institution that the defendant will not be helped by being held in custody and may be released without danger to himself and to others, the court may order the defendant released on probation." However, effective utilization of this provision requires understanding application by the courts.

Justice Blackmun's opinion reflects deep concern by the Supreme Court with the role of mental commitment in the criminal justice system. Recognizing the need for alternative procedures[28] to allow progress in the disposition of charges against an incompetent defendant, the *Jackson* decision vests the initiative with the states.[29] If the states fail to respond to this problem, a more explicit mandate by the Court should be forthcoming, consistent with the implications of the instant case.[30]

The unanimous decision in *Jackson* can best be explained by the Court's "substantial doubts about whether the rationale for pretrial commitment—that care or treatment will aid the accused in attaining competency—is empirically valid given the state of most of our mental institutions."[31] Coupled with this suspicion is the expanding role of legal counsel[32] in the criminal justice system. Procedures for determination of trial capacity evolved prior to wide availability of legal representation to the criminally accused. Today, "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."[33]

The procedure of declaring trial incapacity requires a reanalysis of its actual effectiveness in protecting the accused from unjust punishment, its ostensible purpose. Commitment to a mental institution is often as onerous and debilitating as incarceration in prison. Furthermore, collateral effects of commitment on the defendant's ability to prove his innocence are evident.[34]

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28. *See also* People *ex rel.* Myers v. Briggs, 46 Ill. 2d 281, 263 N.E.2d 109 (1970); Neely v. Hogan, 62 Misc. 2d 1056, 310 N.Y.S.2d 63 (1970); MODEL PENAL CODE § 4.06 (3) (Official Proposed Draft, 1962).

29. "We do not know if Indiana would approve procedures such as those mentioned here, but these possibilities will be open on remand." 92 S. Ct. at 1859.

30. "In light of differing state facilities and procedures and a lack of evidence in this record, we do not think it appropriate for us to attempt to prescribe arbitrary time limits." *Id.* at 1858.

31. *Id.* at 1856. *See* DeGrazia, *The Distinction of Being Mad*, 22 U. CHI. L. REV. 339 (1955).

32. *See* Argersinger v. Hamlin, 92 S. Ct. 2006 (1972); Gideon v. Wainwright, 372 U.S. 335 (1963).

33. Argersinger v. Hamlin, 92 S. Ct. 2006, 2012 (1972).

34. Commenting on competency of a tranquilized defendant: "For the innocent defendant it means an opportunity to establish his innocence, rather than to spend the remainder of his life as a 'forgotten man' in the criminally insane ward of a mental hospital." *The Work of the Louisiana Appellate Courts for the 1968-1969 Term—Criminal Procedure*, 30 LA. L. REV. 309, 316 (1969); *see* State v. Hampton, 253 La. 399, 218 So.2d 311 (1969); State v. Plaisance, 252 La. 212, 210 So.2d 323 (1968).

Long suspension of the criminal trial[35] could result in loss of evidence and jeopardize the constitutional guarantees[36] of speedy trial, right to bail, due process, and protection against cruel and unusual punishment.

In immediate response to the instant case, trial courts must greatly reduce both the imposition and duration of pretrial incapacity commitment.[37] Effective implementation of *Jackson* also necessitates a revision of existing state procedures. It is suggested that because of the resulting loss of liberty[38] to the defendant, the prosecution ought not be allowed to raise the issue of incapacity to stand trial.[39] Furthermore, the accused, despite his incapacity, has a right to raise affirmative defenses to exculpate himself from guilt.[40] Once committed, the patient should be integrated[41] into the general hospital population, guaranteed the

35. "A blanket suspension of all further proceedings against the indicted defendant is more burden than a blessing in this age of universal representation of counsel." N.Y. BAR REPORT 108; *see* Foote, *A Comment on Pre-Trial Commitment of Criminal Defendants*, 108 U. PA. L. REV. 832, 842 (1960): "There is no doubt that production of an affirmative defense may be seriously jeopardized by delay . . . ." *See also* United States v. Ewell, 383 U.S. 116, 120 (1966); People v. Prosser, 309 N.Y. 353, 356, 130 N.E.2d 891, 894 (1955).

36. "There is now almost unanimous questioning of the constitutionality of so confining any mentally ill persons other than (1) convicted prisoners under sentence, or (2) non-prisoners found too dangerous for a civil hospital by judicial procedure with all the due process and procedural safeguards to which any person is entitled." N.Y. BAR REPORT 228.

37. Many forensic medical authorities recommend that pretrial commitment be used only for temporary gross behavioral incapacity of the defendant. *See* T. SZASZ, LAW, LIBERTY & PSYCHIATRY 159-68 (1963).

38. "[C]onfinement in a mental hospital is as full and effective a deprivation of personal liberty as is confinement in jail." Barry v. Hall, 98 F.2d 222, 225 (D.C. Cir. 1938). *See generally* Comment, 81 HARV. L. REV. 454 (1962); Vann, *Pretrial Detention and Judicial Decision Making*, 43 U. DET. L.J. 13, 24 (1965): "I believe the facts indicate that commitment to a mental hospital is often considered a satisfactory substitute for . . . the punishment of the accused."

39. As a strategic consideration of the prosecution, establishing incapacity may become an easier method of securing "imprisonment" than by proving the guilt of the charges. "It is unusual for a defendant to plead mental incompetency to stand trial, and for good reason: doing so would be more likely to harm him than to help him. . . . In the vast majority of these cases, it is not the defendant or his agent, who raises this issue, but the prosecution or the court." T. SZASZ, PSYCHIATRIC JUSTICE 21 (1965). *But see* LA. CODE CRIM. P. art. 642, comment (a): "Although present incapacity to stand trial is ordinarily urged by the defense, it may be raised by the district attorney or on the court's own motion."

40. *See* note 30 *supra*.

41. "[S]egregated treatment of any class of mental patient . . . is inherently unequal, inherently discriminatory, and inherently unjust." Morris, *The Confusion of Confinement Syndrome Extended: The Treatment of Mentally Ill "Non-Criminal Criminals" in New York*, 18 BUFFALO L. REV. 393, 428-29 (1969). *See also* an earlier portion of the Morris article at 17 BUFFALO

"right to treatment,"[42] afforded the full range of treatment modalities,[43] and re-evaluated at least monthly.[44] Finally, the period of defendant's institutionalization should be credited toward sentence should a subsequent conviction result.[45]

At this writing, most mental institutions are custodial asylums, not hospitals.[46] Rectification of this situation can only be accomplished by major re-evaluation of existing attitude coupled with considerable outlay of funds. State legislatures should give

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L. REV. 651 (1968); Brown v. Board of Educ., 347 U.S. 483, 495 (1954). Integration of all patients would eliminate the "good" sick man, "bad" sick man dichotomy. *See* Goldstein & Katz, *Abolish the "Insanity Defense"—Why Not?*, 72 YALE L.J. 853 (1963); Morris, *"Criminality" and the Right of Treatment*, 36 U. CHI. L. REV. 784, 787 (1969).

42. Absent treatment, the institution is transformed into a penitentiary. *See* Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Nason v. Superintendent, 353 Mass. 604, 233 N.E.2d 908 (1968) (constitutional right to treatment).

43. Contemporary psychiatric techniques emphasize therapeutic benefit to the patient of remaining incorporated into society, even if only on a minimal basis. Many formerly uncontrollable patients are now able to function with therapy and medication.

44. Longer periods between re-evaluation of patient's capacity to stand trial would seem to violate due process of law. *But cf.* LA. CODE CRIM. P. art. 649 which provides no time requirement for the recurring evaluation of a committed accused by medical authorities: "At any time after a defendant's commitment, if the superintendent of the mental institution reports to the committing court that the defendant presently has the mental capacity to proceed, the court shall hold a contradictory hearing within thirty days on that issue. Prior to such hearing, the court shall appoint counsel to represent the defendant if the defendant does not have counsel, and may order a mental examination by a sanity commission appointed in conformity with Article 644.

"If the committing court does not hold a hearing within the thirty days, the superintendent of the mental institution shall forthwith return the defendant to the sheriff of the parish from which the defendant was committed, and the sheriff shall receive and hold the defendant in custody pending further orders of the committing court.

"The district attorney or the defense may apply to the court to have the proceedings resumed, on the ground that the defendant presently has the mental capacity to proceed. Upon receipt of such application the court shall hold a contradictory hearing if there is reasonable ground to believe that the defendant presently has the mental capacity to proceed. The court may direct the superintendent of the mental institution where the defendant is committed to make a report and recommendation, prior to such hearing, as to whether the defendant presently has capacity to proceed, or may order an independent mental examination by a sanity commission appointed in conformity with Article 644.

"Reports as to present mental capacity to proceed shall be filed in conformity with Article 645, and the court's determination of present mental capacity to proceed shall be made in conformity with the appropriate provisions of Articles 646 and 647.

"If the court determines that the defendant has the mental capacity to proceed, the proceedings shall be promptly resumed."

45. Under existing conditions, time-committed credit would prevent dual punishment.

46. *See* Comment, 81 HARV. L. REV. 454, 472-73 (1967); N.Y. BAR REPORT 72-77, 102-05, 186-90.

sympathetic consideration to the solutions of the many problems concerning the plight of the sometimes "forgotten man" in the criminally insane wards of our mental institutions.

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UNTAXED RETENTION OF BROAD MANAGERIAL CONTROL

Decedent gratuitously transferred the voting common stock of three closely-held family corporations to an inter-vivos trust, the stock constituting the principal trust property. He retained the powers (1) to vote the stock held by the trust, (2) to appoint a successor corporate trustee, and (3) to veto the transfer of any trust assets by the trustee. The Commissioner determined that the stock was includable in decedent's gross estate;[1] the estate paid the alleged deficiency and sued for refund. The United States Supreme Court *held* that decedent's retained right to vote the common stock of a small corporation held in trust, which, combined with decedent's own stock, gave him voting control of the corporation, and the retained right to veto any transfers of that stock constituted neither retention of (a) the enjoyment of or right to income from the stock, nor (b) the right to determine the persons who may enjoy the property in the trust, either of which would make the stock includable in the gross estate of decedent for estate tax computation. *United States v. Byrum*, 92 S. Ct. 2382 (1972).

The Internal Revenue Code includes in a gross estate the value of transfers made during the lifetime of the transferor, either when such transfers are not complete at the time they are made, or when they are deemed essentially testamentary.[2] Prior to 1931, some such incomplete transfers were considered taxable as transfers intended to take effect (in possession or enjoyment) at or after death.[3] However, in that year the Supreme Court in *May v. Heiner*,[4] emphasizing the technical pass-

1. INT. REV. CODE of 1954, § 2036(a)(1), (2).
2. Section 2037 taxes certain transfers where the decedent reserved a "reversionary interest," and § 2038 taxes transfers in which he maintained the power to alter, amend, revoke, or terminate interests in the property transferred. Transfers made in contemplation of death are regulated by § 2035.
3. Revenue Act of 1926, ch. 27, § 302, 44 Stat. 70.
4. 281 U.S. 238 (1930).