THE SUPREME COURT

Free Mail & Free Speech

The use of the mails is almost as much a part of free speech as the right to use our tongues.

—Mr. Justice Holmes

Do Americans have a right to the unimpeded mail delivery of foreign Communist publications? Yes, said the Supreme Court last week in the first decision voiding an Act of Congress on the ground that it violated the First Amendment right of free speech.

In 1961 the Government discontinued its 13-year censorship of such mail. "It serves no useful intelligence function,"

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APPELLANT LAMONT
Red Chinese Esperanto?

said President Kennedy. Congress, however, was not convinced. In 1962 it passed a law requiring the Post Office to hold all incoming "Communist political propaganda" for 20 days, then destroy it unless the addressee returned a card saying he wanted it. Respectable critics began to note an obvious danger: Post Office lists of "approved" addressees might well result in the hounding of innocent individuals, such as scholars and journalists.

New York City's Leftist Publisher Corliss Lamont challenged the law when the Post Office detained a copy of the *Peking Review* addressed to him in 1963. To the Post Office, Lamont's suit showed that he wanted his Communist propaganda, and the stuff was forwarded. As a result, a three-judge U.S. District Court held Lamont's case to be moot. In San Francisco last fall, however, a Danish journalist named Leif Heilberg won his case hands down in the same kind of court when he sued for unimpeded delivery of a Chinese Communist magazine printed in Esperanto.

By a vote of 8 to 0, the Supreme Court last week upheld both Lamont and Heilberg. "We rest on the narrow ground that the addressee in order to receive his mail must request in writing that it be delivered," said Justice William O. Douglas. "This amounts in our judgment to an unconstitutional abridgment of the addressee's First Amendment rights." In short, he may be embarrassed or harassed, just because he likes to read things that upset other people. The deficit-ridden Post Office is hardly dismayed. By quitting the censorship business, it can now save $250,000 a year.

End of an Ordeal

Civil rights have come so far in Atlanta that no one bats an eye any more when Negroes are served side by side with whites at Krystal restaurants, a chain that sells 10¢ hamburgers all over town. Yet only 17 months ago, Connecticut College Coed Mardon Walker, 18, was considered such a menace when she joined a sit-in at a Krystal counter that she was arrested for trespass and hauled before Fulton County's terrible-tempered Judge Durward T. Pye.

For Mardon, the white daughter of a U.S. Navy captain, Pye meted out the absolute maximum sentence—a $1,000 fine, six months in jail and twelve months' hard labor in a county work camp. Pye set Mardon's appeal bond at a whopping $15,000, to be secured by unencumbered property only. She appealed to Georgia's highest court—and lost.

Last week the U.S. Supreme Court reversed Mardon's conviction with a brief order explaining that all such sit-in cases have been rendered moot by the 1964 Civil Rights Act. "We are glad Miss Walker's long ordeal is over," rejoiced the Atlanta Constitution in an editorial slap at Segregationist Judge Pye. "We only wish she had not had to go to Washington to get justice."

CRIMINAL JUSTICE

Confusion on Confessions

"The greatest thing since the Magna Carta," cheered a New Jersey defense lawyer. "A black-letter day for law enforcement," mourned a Philadelphia prosecutor. Tossing out two New Jersey murder confessions, the U.S. Court of Appeals in Philadelphia had just ruled that even voluntary confessions are inadmissible whenever police fail to tell suspects that they have a right to counsel and to remain silent when questioned.

The new decision came from the highest federal court thus far to expand last June's now famous U.S. Supreme Court decision in *Escobedo* v. *Illinois*. In that case the Supreme Court reversed Chicago Laborer Danny Escobedo's murder conviction because he had confessed after the police refused to let him see his lawyer, who was waiting at the station house. Rather vaguely, the court held that the right to counsel begins when police start grilling a prime suspect.

Because 75% to 80% of all convictions for serious crimes are based on presumably voluntary confessions, police and prosecutors have been in a tail spin ever since. And because the Supreme Court has yet to clarify *Escobedo* with any new decision, some 27 lower courts have groped for the right interpretation. Last year the Illinois Supreme Court took the "hard" approach in *People* v. *Hartgraves*. It said that a confession is admissible even though the police do not advise a suspect of his rights to counsel and silence. Last January the California Supreme Court took the "soft" approach in *People* v. *Dorado*. It said that police failure to advise the suspect of those rights invalidates his confession even though he made no formal request for counsel.

AP

CONVICTED SPY DRUMMOND
Hard or soft Escobedo?

The U.S. appeals court in Philadelphia unanimously backed the "soft" approach in a decision binding on all courts in Delaware, New Jersey and Pennsylvania. The decision is apparently retroactive: convicted prisoners may now appeal on the ground that their rights were denied even though they confessed voluntarily. The court left police only one loophole: the suspect may "intelligently waive" his rights. Does this mean that he needs a lawyer to tell him what he is waiving? And if grilling now requires the physical presence of a lawyer, will he not obviously advise his client to remain silent? Possible result: no more valid confessions.

In another search for answers, the U.S. Court of Appeals for the Second Circuit (New York, Vermont, Connecticut) last week ordered a review of seven confession cases* by its entire nine-man bench. The Supreme Court itself is likely to wait until next year—when more lower-court decisions will be in—before it rules on how *Escobedo* should be interpreted throughout the country.

* Including that of ex-Navy Yeoman Nelson C. Drummond, sentenced to life in 1963 for selling U.S. secrets to the Russians.