THE LAW

CRIMINAL JUSTICE

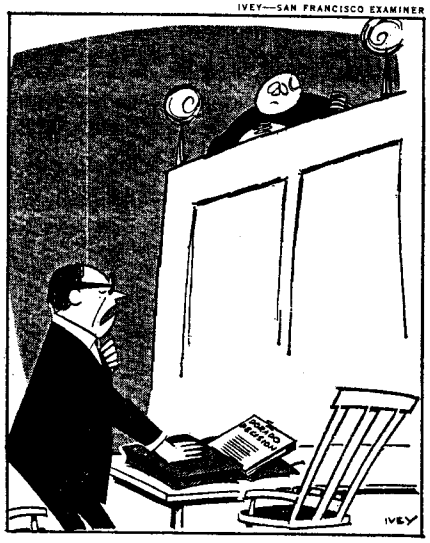
The Unspoken Confession

The three checks were made out to a San Francisco real estate salesman named Frank H. Graves Jr. Soon after Graves cashed them, police asked him to demonstrate his handwriting. Then he was arrested for forging all three checks in the names of fictitious persons. He was not advised of his rights to counsel and silence; nor was he told of his rights later when the police requested nine more samples of his writing—the clinching evidence that convicted him in 1963.

Until last fall, Graves's conviction would have stood like Gibraltar. But in *Escobedo* v. *Illinois*, the Supreme Court ruled that the right to counsel begins when police shift from investigation to accusation. And in *People* v. *Dorado*, which the Supreme Court recently refused to review, California's highest state court went even further. It ruled that police failure to advise a suspect of his rights to counsel and silence invalidates his confession even if he does not ask for a lawyer.

Graves never "confessed" to anything; nevertheless his conviction has just been reversed under *Dorado*. In ruling for Graves, a state district appellate court said that he should have been protected from further self-incrimination as soon as he was arrested. Instead, he was pressed to make what the court considered to be the equivalent of a confession—more telltale handwriting. "The defendant could not have made a more incriminating statement," said the court. In short, the police should have either delayed Graves's arrest to build their case, or they should have given him his *Dorado* rights when they did arrest him.

IVEY—SAN FRANCISCO EXAMINER



"YOUR HONOR, I CONTEND MY CLIENT'S VERY PRESENCE IN COURT WOULD TEND TO BE SELF-INCRIMINATING"

California prosecutors are hotly attacking the Graves decision. To rule out handwriting as evidence, they say, implies a threat to the legality of fingerprints, photographs and police line-ups. The *Graves* decision will be appealed to the California Supreme Court, which handed down the *Dorado* decision that started all the commotion. Along with an editorial blast at *Dorado*, the San Francisco Examiner last week ran a cartoon reducing the decision to its ultimate absurdity: a lawyer's claim that his client should be shielded even from the incriminating implications of a court appearance.

JUDGES

A Slight Case of Contempt

As his part in a statewide crackdown aimed at Indiana's mounting traffic problem, Hamilton County Circuit Court Judge Edward F. New Jr. decreed last month that speeders and other "moving violators" in his jurisdiction will no longer get off with mere fines paid to a local justice of the peace. New will personally try them in his higher court—and motorists found guilty even of first-offense speeding will go straight to the state penal farm or the state women's prison.

"An excellent example of shotgun justice," wrote Editor James Neal of Hamilton County's Noblesville (pop. 7,600) Daily Ledger. "If the past provides a good example, what will happen is that some kindly little old lady will spend the night in jail for driving too slow while some mad motorist charged with manslaughter will stall his trial right out of court."

In an angry court order last week, Judge New blasted Editor Neal's comments as "disdainful, despicable, scurrilous and contemptuous." Nor did the order stop there: it sent the sheriff hustling to Neal's office to arrest him for criminal contempt of court—punishable in Indiana by up to three months' imprisonment and a $500 fine. Haling Neal to his courtroom, where four mounted animal heads gaze down impassively on the accused, Judge New set bail at a whopping $50,000.

Ridiculous. Elected to a six-year term last fall, Judge New has been feeling Editor Neal's needle ever since he took office. The judge demanded publication of the names and addresses of all juvenile offenders and their parents. The Ledger (circ. 7,500) went along at first, then decided the idea was unwise. The judge also decreed that all arrested juveniles be held in the city jail without bond for as long as two weeks pending a hearing. The Ledger called that policy "terrible." Indeed, it led one 17-year-old boy to file a federal writ of habeas corpus with U.S. District Judge S. Hugh Dillin in nearby Indianapolis. For technical reasons, Dillin could not spring the boy, but he ordered New to set bond at $100 and called New's rules "ridiculous." They may be, but they are still in effect.

LARRY R. GOETTEL

EDWARD NEW IN ACTION
Feeling the needle.

Editor Neal, a 1945 West Point graduate who later resigned his commission to run the family newspaper, says that he is all for a traffic crackdown, but he insists that New's method will simply clog the court with jury trials, while cops who must testify on their days off will merely stop making arrests. Judge New, who has disqualified himself for Neal's forthcoming non-jury trial, argues that, nonetheless, Neal has no right to predict future court actions. "If, in fact, I had sent a little old lady to jail for driving too slow, he could editorialize till Christmas comes, and I'd uphold his rights. I'd back him forever, 1,000%. But the point is, slurring the court as to what it will do is crystal-balling which creates disrespect for law and order."

Prized Privilege. In defining the contempt power of U.S. judges, the Supreme Court has been considerably more incisive. Outright disorder in a courtroom or its environs is undeniably contemptuous and may be summarily punished. But a judge cannot hold mere criticism in contempt, ruled the Supreme Court in 1947, unless it presents a clear and present danger to the administration of justice. "The danger must not be remote or even probable; it must immediately imperil." As the court put it in another case: "The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises American public opinion. It is a prized American privilege to speak one's mind on all public institutions."