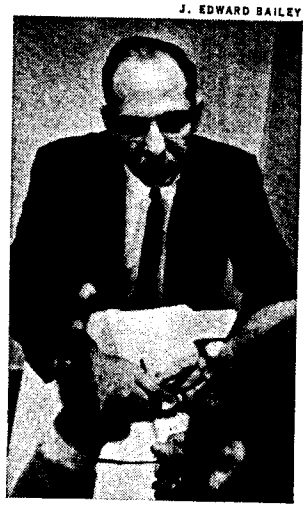

LEVITON—ATLANTA

JONES


BURK UZZLE

CRUMP & MOORE


J. EDWARD BAILEY

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ART SH

ESCOBEDO & KROLL

Unafraid to defend unpopular people or unpopular causes.

THE LAW

LAWYERS

Colleagues in Conscience

Who will speak for the 60% of U.S. criminal defendants who cannot afford lawyers? Will it be the courthouse hack who goes through the motions of defending indigents for piddling government fees because he has no other clients? Or will it be the able advocate who makes the U.S. adversary system of justice what it is supposed to be—a truth-seeking contest between equal rivals?

Such questions used to be a staple of law-school graduation oratory. And as such, they were all too often brushed aside. But U.S. lawyers can no longer ignore them, for the constitutional right to counsel is no longer limited to accused Americans who have the necessary cash. In its great decision of 1963, *Gideon* v. *Wainwright*, a no-fee triumph by Washington Lawyer Abe Fortas, the Supreme Court ordered all state courts to provide lawyers for indigent defendants in all felony cases—and *Gideon* may apply to misdemeanor cases as well. As the court simultaneously expands constitutional rights in other areas, the nation's lawyers may well be forced to live up to their commencement speeches—to serve rich and poor alike with no thought of anything but impartial justice.

Happily, some U.S. lawyers have never been afraid to defend unpopular people or unpopular causes—even if their efforts cost them dearly in money and community standing. In Birmingham, for example, Lawyer Paul Johnston last week began to pay the price of voluntarily representing FBI Informer Gary Rowe (by indirect request of U.S. Attorney General Nicholas Katzenbach) in a lawsuit filed by Ku Klux Klan Lawyer Matt Murphy Jr. "It's not too popular to be involved in such matters around here," said one lawyer. Johnston was voted out of his eminent law firm by his prosperous partners—including his father and brother—thereby joining a hardy band of colleagues in conscience across the country. Among them:

▶ Albany, Ga.'s Walter Jones, 51, used to be a thriving tax lawyer with a big office, an English secretary and a new suburban house. His Albany forebears go back five generations. In 1959 a local judge asked Jones to defend an illiterate Negro named Phil Whitus who was charged with murdering a white farmer. At first, Jones tried to refuse. Then he became so convinced of Whitus' innocence that he has since dedicated himself to keeping his client alive. Last winter, on his second try, Jones persuaded the Supreme Court to reverse Whitus' death sentence. Georgia may well reconvict, but Lawyer Jones intends to fight on—despite such white hostility that he has lost 50% of his practice, his house, his office and his secretary, whose salary he could no longer pay. So far, the Whitus case has cost Jones $8,000 of his own money, and he is threatened by anonymous phone callers ("You goddam nigger-loving shyster. We'll get you"). A local weekly recently ran a story about him under the headline: IS SCION OF ALBANY FAMILY A TRAITOR TO HIS CLASS? To all of which Jones replies: "If I hadn't done this, I couldn't have slept. And if I die before Phil Whitus is a free man, I'm going to will his case to another attorney."

▶ Chicago's Barry Kroll, 30, is a 1960 Michigan Law graduate who got his first legal experience in the Army, arguing 300 military appeals cases. Out of the Army in 1962, Kroll joined a Chicago law firm and found himself picked off a bar list to handle one of the most important confession cases in U.S. legal history—*Escobedo* v. *Illinois*. Last June the Supreme Court upheld Kroll's argument, ruling that the right to counsel begins when police start grilling a suspect (*see following story*). Kroll got no fee, agreed to work entirely apart from his law-firm job. "Do it again?" he says. "I'll do one a week. It was the greatest experience I've ever had."

▶ Chicago's Donald P. Moore, 35, was a top-of-his-class (Illinois, '56) candidate for Wall Street, but chose to work for local indigents instead. In 1957 he took on Emil Reck, a feeble-minded murder defendant serving 99 years on the basis of a coerced confession. Moore spent four no-fee years fighting to a Supreme Court victory that freed Reck. In 1961 he won another Supreme Court decision permitting a Chicago Negro family to sue in federal court for unlawful police invasion of their home. The family collected enough to pay Moore 60¢ an hour for his four years' work. Meanwhile, he and his law partner had gone broke. Undaunted, Moore next worked round the clock for Paul Crump, the remarkably rehabilitated murderer in Cook County jail's death row. In 1962 Moore got Crump's sentence commuted to 199 years. Still in debt, he has switched to lawyering for the Justice Department's Criminal Division in Washington. Says he: "I feel lucky, going broke on the things I did."

▶ Chicago's Walter Fisher, 73, a patrician partner in a patrician law firm, was asked by the Supreme Court in 1956 to represent Illinois Indigent Alphonse Bartkus in a classic double-jeopardy case. Charged with bank robbery, Bartkus had been acquitted in a federal court—then convicted of the same crime in a state court. Fisher soon produced a highly impressive brief for Life Prisoner Bartkus. Reluctantly, the Supreme Court twice rejected his arguments on the grounds that Americans must obey both state and federal courts, but the Illinois legislature was so impressed that it passed laws preventing any repeat of the Bartkus case. In 1960 Fisher got the now wholly rehabilitated Bartkus a pardon—completing roughly

$75,000 worth of free legal service. "This case," Fisher insisted, "is important for freedom in this country."

▶ Detroit's Albert Best, 39, is a former Sunday editor of the Detroit News who switched to law largely because of fascination with constitutional rights. Best spends about one-quarter of his time defending indigents—for example, Lee Walker, a Detroit Negro who in 1954 walked into a police station to report his car stolen. Walker was promptly locked up for "routine investigation" of a month-old murder, eventually signed a confession that he says was beaten out of him. He was sentenced to life. After four years' devotion to what he calls "this vicious case," Best recently persuaded the Michigan Supreme Court to order a precedent-setting hearing on the voluntariness of Walker's confession. Walker lost. "Appalled," Best is now honing a new appeal that may set another Michigan precedent. Already he has done at least $10,000 worth of free work for Walker. Says he: "It's a matter of conscience—mine."

▶ Washington's William B. Bryant, 53, a former U.S. prosecutor, is one of the capital's ablest criminal lawyers and its best-known volunteer defender. In 1957, Bryant saved Confessed Rapist Andrew Mallory from death by winning a unanimous Supreme Court decision that federal prisoners must be arraigned without delay. Mallory, probably insane, had been grilled for 7½ hours. After *Mallory*, capital police changed tactics. If a prisoner confessed during long detention, he was asked to repeat himself next day as if confessing for the first time. Lawyer Bryant tackled that one in the 1960 case of James Killough, a confessed wife killer who had been grilled in stages of 13 and two hours. Last year Bryant finally won a U.S. Court of Appeals decision that tossed out Killough's confession and freed him for lack of other evidence. "It's not our obligation to get people acquitted," says Bryant, "but to see that the rules mean something."

▶ Los Angeles' Al Matthews, 58, finished law school determined to become a rich corporation lawyer, but in one of his first cases he sprang a life prisoner falsely accused of a series of sex offenses. Soon besieged by hopeful cons, Matthews recalls that "hundreds of people lied to me like dogs. Usually they were guilty." But in 1945 he spent $3,000 of his own to save an accused murderer from death, continued toiling for such other indigents as Caryl Chessman, whom he still believes innocent of the sex attack that sent him to the gas chamber. For a while, Matthews' "aversion to the innocent being convicted" left him hardly more affluent than his indigent clients. He now makes $50,000 a year in private criminal practice, gives away great chunks of it, takes many cases without fee. Says he: "What good is money anyway? I believe, like Daniel Webster, that a lawyer should work hard, live well and die poor."

THE SUPREME COURT

Still Waiting on Confessions

Why do many Supreme Court decisions breed more confusion than clarification? Because the court, unlike a legislature, is charged with laying down broad principles based on the narrow facts of particular cases. And as Mr. Justice Holmes put it, "Hard cases make bad law." Last week they made confusing law in the court's flurry of reapportionment decisions (*see* THE NATION), and in its silent refusal to review a crucial California case involving the inadmissibility of voluntary confessions—currently the most confusing issue in U.S. criminal law.

New Principle. The confession problem stems from the court's own decision last June in *Escobedo* v. *Illinois*,

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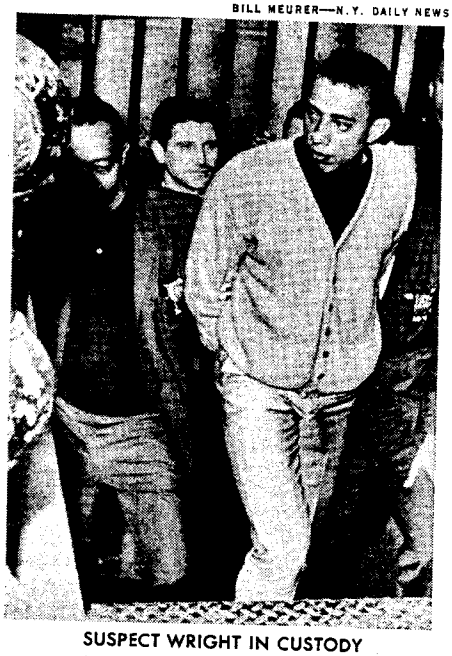

SUSPECT WRIGHT IN CUSTODY
Hard cases make bad law.

which voided a Chicago murder confession because the police had refused to let the suspect see his lawyer. *Escobedo* seemed to establish a new principle: that a grilled suspect has a constitutional right to see his lawyer—and by inference, to be told he has a right to silence. But did the court's ruling mean that police must now advise all suspects of their rights to counsel and silence (a standard FBI rule), lest all voluntary confessions be automatically tossed out of court? No, said Illinois' highest court in *People* v. *Hartgreaves*, a decision that the Supreme Court recently refused to review. Yes, said California's highest court in *People* v. *Dorado*, a decision that expanded *Escobedo* by tossing out a murder confession that had been made without a lawyer present—even though the suspect had not asked for counsel.

Last week the Supreme Court refused to review *Dorado*, despite California Attorney General Thomas C. Lynch's urgent appeal that "the convictions of thousands of dangerous criminals may be in jeopardy under this ruling." The court's refusal may well mean that it wants to see more evidence of *Escobedo's* effects before it makes a final decision, but it leaves police across the country unable to tell whether they should follow the "hard" approach of *Hartgreaves* or the "soft" approach of *Dorado*.

New Caution. As a result, conscientious law-enforcement officers are beginning to go out of their way to abide by the rules, while they wait for clarification from the court. In Manhattan, for example, police have been under heavy pressure for months to solve the grisly murders of two women who were stabbed to death in self-service elevators with a total of 52 knife thrusts. Last week the police arrested Charles E. Wright, 21, a Columbia University kitchen helper. But in sharp contrast to previous cases, the cops made no effort to trumpet their triumph. They refused to say whether Suspect Wright confessed, or even whether he has a police record.

A tight-lipped police spokesman attributed this new caution to "the many precedent-making decisions of the higher courts, which resulted in reversals of decisions and the granting of new trials. This arrest is such an instance, where the releasing of information could prejudice a defendant's right to a fair trial." In short, why run the risk of violating constitutional rights, thus giving unwitting aid to guilty men?

CRIMINAL JUSTICE

New York Abolishes Death

In its 74 years at Sing Sing Prison, New York State's 2,000-volt electric chair has efficiently ended 614 lives. Last month opponents of capital punishment persuaded the state legislature to pass a bill abolishing execution for all but two classes of murderers—cop killers and life prisoners who kill guards or inmates while in jail or while trying to escape. Governor Nelson Rockefeller sharply criticized those exceptions as morally indefensible. "If the proponents admit that the death penalty is a deterrent in some cases," he asked, "then why not in others?"

Last week Rockefeller, who had been expected to veto the bill, joined a worldwide trend (TIME, April 2) by signing it into law with no further comment. At the same time, he planned to commute to life imprisonment the sentences of 17 of the 20 men now on Sing Sing's death row (three are convicted police killers). The death penalty already has been abolished in whole or in part in twelve other states—Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, North Dakota, Oregon, Rhode Island, Vermont, Wisconsin, West Virginia. With the addition of New York, abolitionists have won over the most populous state thus far—and the one that developed the electric chair in the first place.