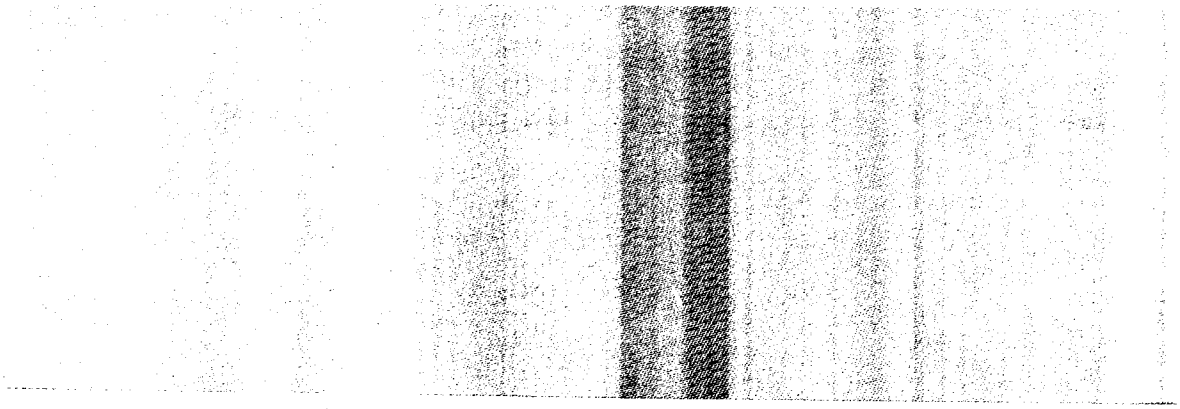


Supreme Ct decision on police practices

Life 10/21/66

THE VIEW FROM HERE

Loudon Wainwright

No second helping of life

There's a new movie around called *Seconds* which is concerned with the strange adventures of a man who has an opportunity to do something drastic about the dissatisfaction he feels toward his own life. But more than the entertainment value of the picture, which is fairly high, the central idea of the story grabs me. The notion that a man might really have "seconds," an extra helping of life, is at once so farfetched and so attractive as to be irresistible. It nudges in most of us the dozing urge for flight from reality and then—horribly, hollowly—laughs at man's trapped stirrings in the dreary prison of himself.

The non-hero of this story, based on a good little novel by David Ely, is a middle-aged banker who lives with his wife in thoroughly comfortable surroundings in a New York suburb. If he suffers from anything, it is a surfeit of success. He has every material thing he needs or wants, and he is slated to become president of the bank. But he is bored with his luxuries, his job and his wife; and more than that, he is infected with a growing despair that he has not used well his limited portion of life. So, when the operatives of a mysterious company offer to provide him with a false death that will not arouse the suspicions of the police, the insurance companies or his family, complete surgical alteration of his sagging face, and a fresh start as an artist in California, he takes the package. When the bandages are removed, he discovers that he will partake of his seconds looking just like Rock Hudson, a transfiguration which in itself should be nearly enough for most jowly types. This, it turns out, is the best thing that's going to happen to him, for his new life lurches sickeningly downhill almost from the moment of its beginning. Without giving anything away, it seems fair to say that the man's difficulties in making a successful change are caused by the fact that *he*—the person who lurks inside that resplendent Rock—remains the same.

Of course, that's the problem. If I were going to take the same sort of weird journey myself, I might choose to start out looking like, say, Arnold Palmer. Good crinkles around the eyes, boyish grin, and a marvelous collection of sweaters. Perhaps I could be a golfer, too. Yet the moment I picked up a club, the fraud would overwhelm me. And when I swung it, the ball would not get Palmer's soaring ride but would instead peel soggily off the tee in a slice all too recognizably my own. That would be terribly depressing; so depressing, in fact, that I would be driven to wishing I were back in a place where my imperfections are at least expected.

All of this leads me to wonder how much people would really be interested in seconds if the chance were offered. Naturally there are those who are so deprived in one way or another that any change of roles would be an enormous relief. And there are seconds, without a change of name and face, for some lucky men like those freed by the Supreme Court's Escobedo and Miranda decisions (*p. 34*). Yet I doubt that most of us would be any more than titillated by the idea of a new life. Give up being *I*? Ridiculous. If the self is a prison, it is still a familiar one, and it is always home.

This is not to say that most people haven't some noticeable tinglings of the pre-Rock despair felt by the man in the movie. Surely just about everyone is dismayed at one time or another by the drab or painful course of life, by the repetition of old and ludicrous mistakes, by the growing catalogue of missed opportunities. The inevitable approach of death, too, makes complacency absurd, and regrets for failed promise are raised. But I think the most commonplace reaction to such anxiety and regret is a sort of self-forgiveness for one's past and a hope—unwarranted on the facts in many cases—for the future. It is possible that men's optimism about themselves exceeds good sense, but I think most would prefer improvement to total renovation. Even when things are very bad indeed, the strong ego sets the highest value on the first helping.

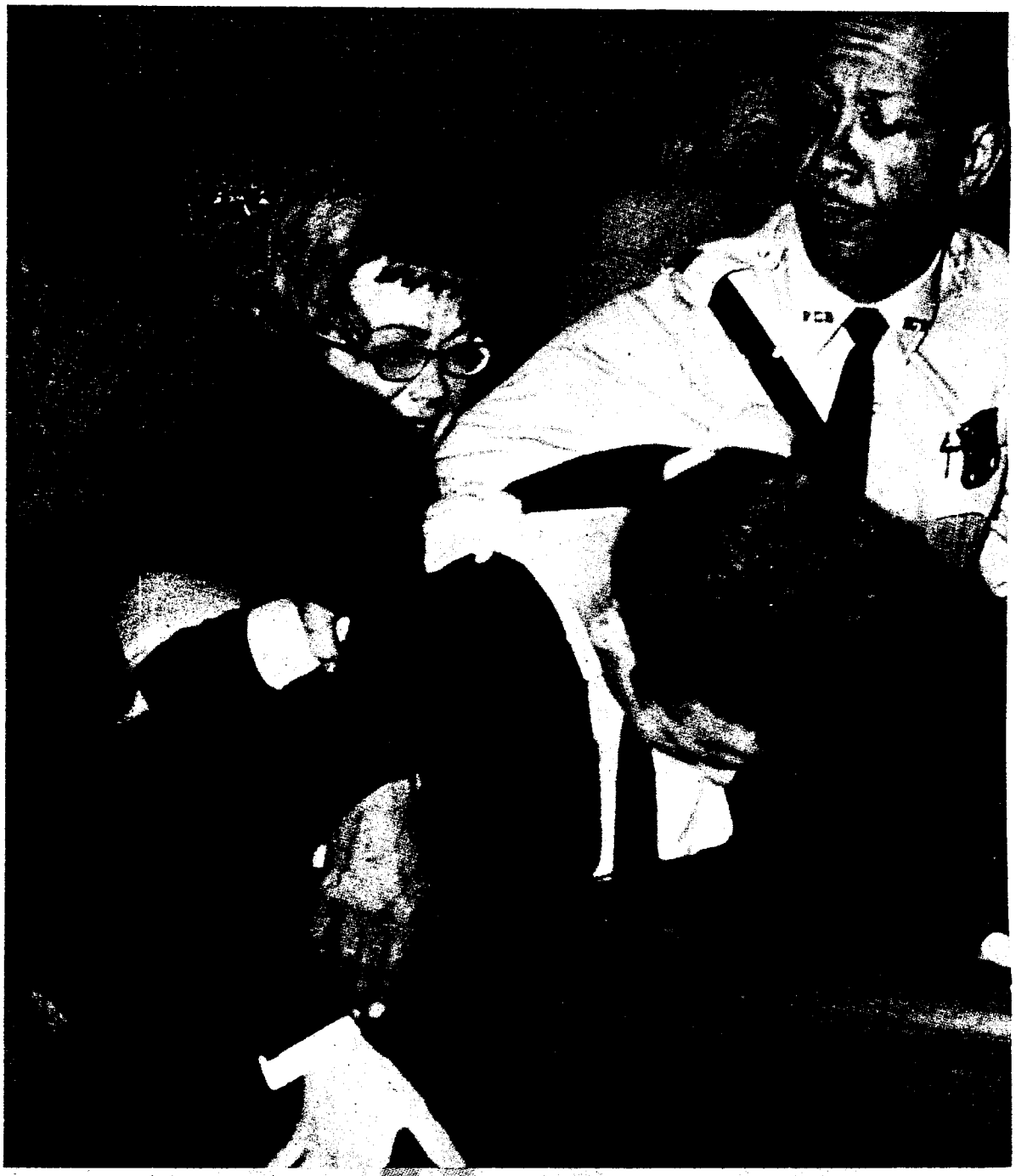
Recently, during the same period in which I saw *Seconds*, I spent several days attending a criminal trial. The accusation against the defendant was a serious one, and I found myself thinking that if ever a man might have wanted quite another life it could be this fellow. Far more than a chance to escape the boring routine of a comfortable and successful existence, such a flight for him would mean the end of very bad trouble, possibly an escape from imprisonment. Day after day he sat numbly in court and listened as prosecution witnesses gave testimony to the alleged flaws of his conduct, and he finally suffered a long cross examination which sought chiefly to reveal him as a total liar. Surely, one might think, he would have preferred in those moments to be anyone but himself.

The jury got its charge from the judge and began deliberations late one morning. While the jurors discussed the case, the defendant paced the corridor outside the courtroom, smoked incessantly and talked now and then to his lawyer or to one or another of the small group of friends who had come to court in his silent support. Hours passed, and he must have spent them in an agony of wondering what the jurors were saying about him. Would they find him guilty or would they acquit him? Suddenly there was a flurry. The jury was coming back, and the defendant kissed his wife quickly and went into the courtroom. But the jury had no verdict this time, only a question for the judge, and the dull pattern of waiting began again.

Late in the day the jury returned, and the white-faced defendant tried to read the jurors' verdict from their set features as they passed him on the way to the box. This time the foreman advised the judge his colleagues were hopelessly split and could reach no agreement on a verdict. The judge pressed them to try further, but there was no change.

The defendant faced now the prospect of still another trial and more hideous uncertainty. Nothing was really decided about his guilt, his innocence or his future. Yet he left the courtroom looking oddly elated, a man whose first and only helping of life was warmed up by a hung jury.

UPROAR AS 'CONFESSED' RAPISTS



AND MURDERERS GO FREE

LIFE
Vol. 61, No. 17 Oct. 21, 1966

Impact of Supreme Court rulings hits courts, police and the public

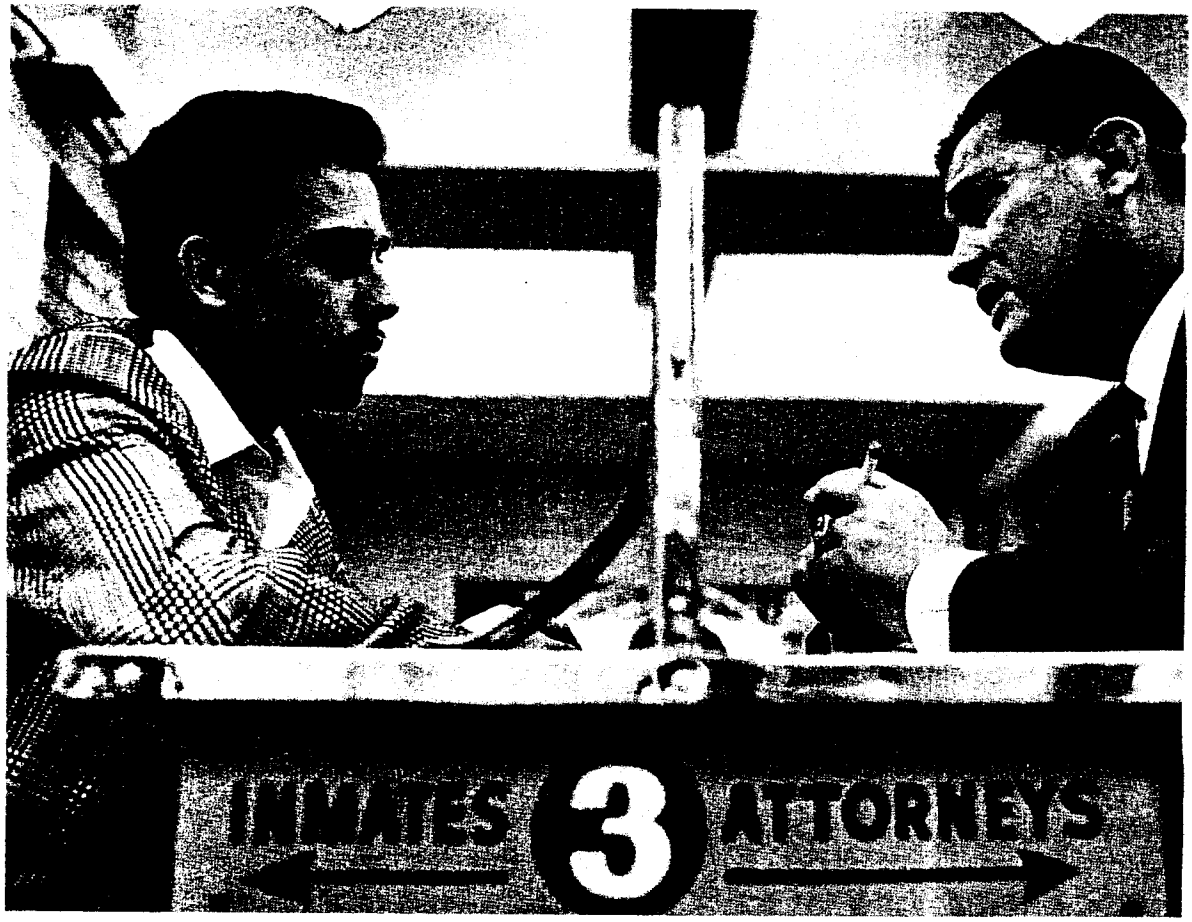
The slight, somber young man at right is Danny Escobedo, whose release in 1964 from an Illinois murder conviction plucked him from obscurity and made him famous in the annals of criminal law. George Flatter, the man at left under attack by a distraught woman, is a by-product of the legal upheaval triggered by the U.S. Supreme Court's monumental Escobedo decision. Earlier, Flatter had been convicted of the murder of the woman's mother, to which he had confessed. Now, at a retrial, the confession had been ruled inadmissible, and Flatter had been acquitted.

Flatter is just one in a parade of prisoners who, on the basis of similar confessions, are petitioning for, and in many cases gaining, their freedom as the courts adjust to the Supreme Court's sweeping interpretations of the Fifth Amendment, and six of them are shown on the following pages. These interpretations add up to the fact that confessions are invalid unless the police can prove that the accused waived his right to remain silent or have a lawyer's advice. The Escobedo decision flatly stated that the right of the accused to refuse to testify extends not just to the courtroom but to the moment a person becomes a suspect in a criminal case. Last June, in reversing the Arizona rape conviction of Ernesto Miranda, the Court spelled out further: a suspect must be *warned by police*, immediately and explicitly, of his right to silence and to free counsel.

The impact of the rulings on the police corps—almost universally appalled by them—has been strong and immediate. And seldom in history have Supreme Court interpretations created sharper divisions of opinion (*p. 40*), even among members of the judiciary itself.

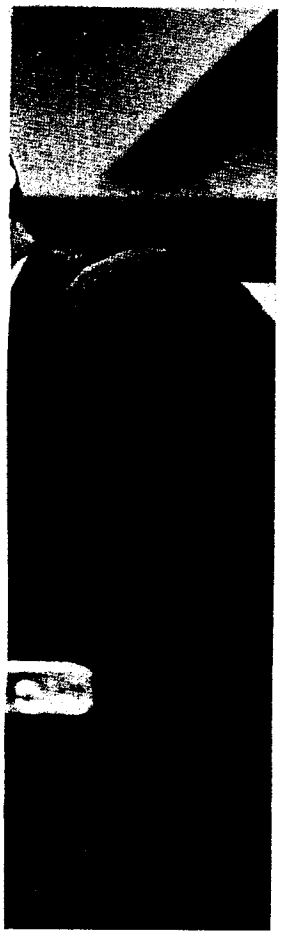
FAMILY'S WRATH. Mrs. Joann Dayton, daughter of the woman whom George Flatter, now free, confessed killing, suddenly attacks him in a Detroit courtroom upon his acquittal and shouts, "Liar, murderer, that's what the jurors put back on the street."

HISTORIC DEFENDANT. Danny Escobedo, now with a Chicago trucking firm, confessed murder while police kept his attorney away. In prison four years, he appealed through a public defender who specialized in civil liberties and finally won freedom.



HIS CELLMATE WAS A COP, HIS CELL BUGGED

Fausto Flores was arrested on Aug. 20, 1963 in Los Angeles and charged with the murder of Socorro Palomares (*left*), a crime that had haunting overtones of Dreiser's *An American Tragedy*. He had fallen in love with Socorro when she was 15, and she had borne his child. But Flores—hungry, the state claimed, for a sort of status he could not get on his own—married a woman of comparatively higher position. He couldn't stay away from Socorro. He confided to his cellmate that when Socorro had become pregnant again and pressured him to marry her, he had strangled her in Elysian Park. The cellmate was an undercover policeman, and the cell was bugged. The resulting tapes convicted Flores of Socorro's murder. Under the Supreme Court decisions, this "confession" was inadmissible. Attorney Nick Mrakich (above, talking to Flores), appealed, and charges were dropped upon order of a new trial. In a daze, Flores was welcomed home (*right*) by his sister, Mrs. Helen Martinez, and his brother, Walter.



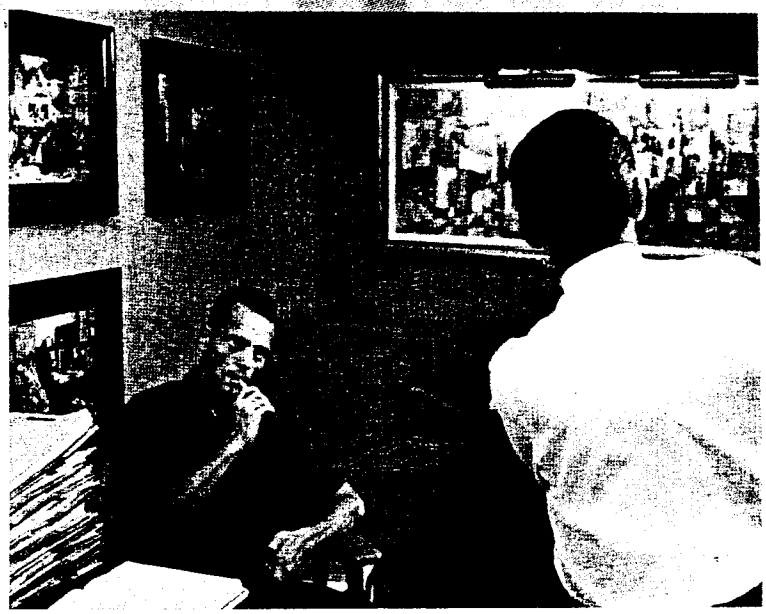
HE WAS NOT TOLD HE RATED A FREE LAWYER

When Charles Kenney, 17, was arrested with two companions (above, being transferred from the courthouse to the county jail), Los Angeles police carefully warned him that he was not required to talk and that he had the right to an attorney. The three were charged with robbing and shooting a Los Angeles filling station attendant, William Somerville (shown above at his daughter's wedding in 1957). Somerville had asked in wonder as he died, "Why did they shoot me?" Kenney denied his guilt, but after listening to part of a taped confession by one of the others, he confessed too. Before he came to trial, however, the Miranda decision was handed down with its specification that the accused must be told that the state will provide an attorney if he cannot pay for one. Kenney had not been told. On that basis alone, he was acquitted by a ruling of a California court on September 28. He went home to his mother's house, played with his sister Janet, 4 (*below*), and made plans to re-enter high school.

CONTINUED 37

HE CONFESSED SEVEN TIMES, BUT WASN'T WARNED

After police arrested his wife for the murder of their 21-month-old daughter, Charles Wesley Furnish (*right*), a Downey, Calif. machinist, confessed seven separate times that *he* had suffocated the infant. On the strength of two of those confessions he was convicted and served four years of a five-to-life term. But police had failed to inform him of his right to counsel or to remain silent and, after a successful appeal based on the Escobedo decision, he recently was freed by a California court. But because he was never formally acquitted by a jury, Furnish, now 33, remains in jeopardy of being tried again should any new evidence be found.



HE WAS REFUSED PERMISSION TO CALL A LAWYER

Dan Clifton Robinson (*left*) took up painting to help fill the four years he spent in prison—including one stretch in San Quentin's Death Row—for the fatal shooting of a Los Angeles bartender. After being arrested, Robinson testified, he was refused food or permission to phone his lawyer or his family. He finally signed a confession and was convicted at the age of 19. He won a new trial and was acquitted last August under a California court ruling stemming from the Escobedo decision. The judge told the jury, "You have been induced to let a killer go."

HE BLURTED OUT EVIDENCE RULED INADMISSIBLE

The charge was merely suspicion of burglary when authorities in Franklin County, Ohio arrested Arthur Lee Davis (*left*) in 1964. But no sooner had they started questioning the 17-year-old than he blurted a confession to a far more serious crime—an unsolved eight-month-old murder. Davis was not advised of his rights. In his statement, he told how he had overheard the victim, one James Taylor, make a derogatory remark about Davis's deceased mother. Davis said he decided to shoot Taylor and did so a week later with a borrowed shotgun. Sheriff's deputies promptly picked up the shotgun and their examination indicated it was the same one that fired a shell (*at right*) found next to Taylor's body. For two years Davis was bounced from juvenile authority to psychiatrist to the state hospital for the criminally insane. He was pronounced competent to stand trial. But last August a panel of three judges ruled that not only was his confession inadmissible but also any evidence obtained as a result of the confession—in this case the murder weapon. Freed, Davis has gone to live with a sister.

CONTINUED

CONSTITUTIONAL RIGHTS BREAK

by DONALD JACKSON

The judge was furious. Before him in his Brooklyn court stood a young mother who had confessed to killing her 4-year-old son. Under police questioning she had admitted taping the boy's mouth and wrists and beating him with a rubber hose and a broomstick. Now she was about to go free, and Justice Michael Kern was enraged. On a motion from the prosecution he dismissed the murder indictment against her. "Thank you, Your Honor, from all my heart," she said.

"Don't thank *me*," roared the judge. "Thank the United States Supreme Court. Don't thank me at all. You killed the child and you ought to go to jail. The trouble is there is insufficient evidence because of the Supreme Court decision, so that is that." He banged his gavel and the case was closed.

Like most of the confessed criminals shown on the preceding pages, the woman was a beneficiary of the fiercely controversial decision bearing the name of the young man whose police mug shots appear at right, Ernesto A. Miranda. Because she was not fully and immediately advised of her rights as stipulated in the Miranda decision, the woman's confession was ruled invalid. Because the prosecution could offer no evidence other than her confession, the indictment was quashed. Justice, Miranda-style, was done.

The precise nature, meaning and quality of that style of justice has been argued continuously since Chief Justice Earl Warren read the majority opinion in the 5-4 decision on June 13. The arguments have dozens of tangents but center in a crucial cluster of related questions: Do the guaranteed safeguards set forth by the Court impede the police in the routine exercise of their responsibility to society? Which is the greater good—the protection of individual liberties or the protection of the society as a whole? Which is the greater evil—the possibility that an innocent man might confess, under pressure, to a crime he did not commit, or the possibility that a guilty man might be freed to harm another person? The Court, citing the constitutional privilege against self-incrimination, came down on the side of individual liberty. And the Court's opinion, as many policemen now point out with the kind of rueful sneer once ascribed chiefly to segregationists, is the "law of the land."

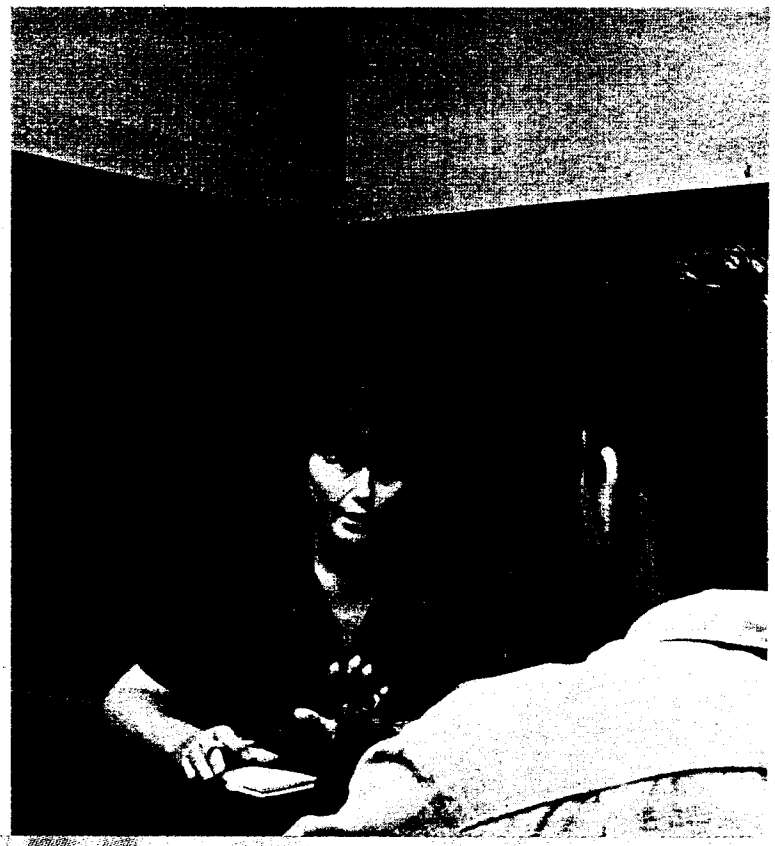
In the majority opinion the Chief Justice quoted police manuals with explicit instructions on the proper technique in the "squeal room," where suspects are interrogated. Psychological browbeating, he suggested, can be every bit as persuasive as thumbscrews. "Such an interrogation environment," Warren wrote, "is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. . . . Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."

In a bitter dissent, Justice Byron White predicted that "in some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him. . . . As a consequence there will not be a gain, but a loss, in human dignity. . . . There is, of course, a saving factor: the next victims are uncertain, unnamed and unrepresented in this case."

Thus the lines were drawn. With few exceptions the nation's lawmen lined up behind White. Assistant District Attorney Michael McMorrow of Buffalo put his views in a poem he called "Danny-Boy," after Danny Escobedo, which concludes:

To the golden day a-dawning
Sing your praises loud and strong,
In this lovely Age of License
Nothing's naughty, nothing's wrong.
Danny-Boy, the thing you started
Must constrain the courts in time
To the logical conclusion
That there just isn't any crime.
May you live with love and laughter!
You can wager all you're worth
That your gangster pals will bless you
For this heaven here on earth.

The decision unquestionably complicated the lives of most ordinary cops, but some are bearing up. "Say there's been a burglary," says New York Detective Joseph Calhoun, "and we find out that there's a guy who was seen in the neighborhood, who has a burglary record, and doesn't belong in this part of town. Before this ruling we would just pick him up and take him in for questioning. Now we check for fingerprints and



PUBLIC DEFENDER. Attorney Anna Drayer, who works in Los Angeles County, keeps a youth charged with assault from discussing his case before Deputy Sheriff Frank Hartog.

if we don't come up with anything we put him under surveillance. So while we might not get him for that particular burglary, we catch him on the next one. In some ways I favor the decision, because at least it gives the poor, unfortunate suspect, the guy you have to protect, the same rights as the hardened criminal who has money for a lawyer and would never talk anyway."

On that point there is a remarkable absence of debate. "The rights are all up there," says U.S. Court of Appeals Judge David Bazelon of Washington. "Some people, because they have money and intelligence, are tall enough to reach them. Others, because they're poor or ignorant, are too short. Do you say that is just too damned bad? Or do you give the short guys a box to stand on? The box is information about their rights." The indigent and ignorant, the shabby men who drift from crime to crime because they want or can cope with no other life, are now equal, before the desk sergeant, to the Sheppards, Leopolds and Loebs or to the syndicate hoodlums backed by syndicate attorneys.

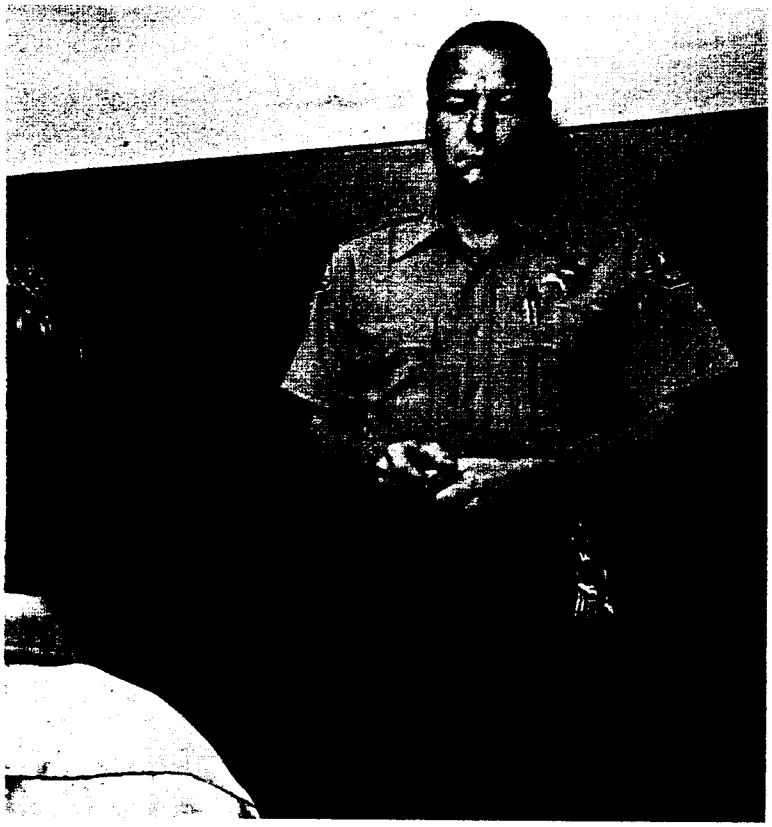
LANDMARK CASE. In reversing rape conviction of Ernesto Miranda, the Court enunciated controversial interpretation of Fifth Amendment. Miranda is still in jail on other charges.

But what about the policemen? How do they solve a crime where there are neither witnesses nor physical evidence? "It's pathetic," says Los Angeles Assistant District Attorney Richard Pachtman. "It's said that all this makes police work better and sharper, but it's ruining the cases that mean the most to the average citizen: armed robbery, auto theft, the whole basketful of bread-and-butter cases."

Many policemen have long contended that confessions were essential to conviction in 80% of their cases, and that stressing to suspects their right to counsel would effectively eliminate confessions as a police tool. But surveys by law enforcement officers fail to bear them out on either point. In Los Angeles, District Attorney Evelle Younger reported that confessions were necessary in less than 10% of criminal cases. "I'm amazed," he said. "Like most prosecutors I had assumed that confessions were of the utmost necessity in the majority of cases." And Detective Chief Vincent Piersante of Detroit found that the number of confessions in murder cases actually *increased* after officers began warning suspects of their rights.

Perhaps what lawmen need most is the nimbleness to stay on their toes while procedural ground rules are forever shifting beneath them. "If the Supreme Court wants police officers to sing *Yankee Doodle Dandy* to a suspect before taking a confession," says Younger, "we will do our best to see that every [man] learns the words and tune and sings at the appropriate time. But we can't anticipate the requirement."

DOWN THE 'SQUEAL ROOM' DOOR



The Miranda decision, though it settled the conjecture that followed the Escobedo ruling, still left a few gaps unplugged. It insists that a suspect must "voluntarily, knowingly and intelligently" waive his rights to an attorney and to silence in order for a confession to be valid. But if a signed confession can be conned out of a weak-kneed suspect, why not a signed waiver? And what standards are policemen to use in determining a man's comprehension?

The explosive impact of the Miranda ruling assuredly does not stem from disagreement over the validity of the Fifth Amendment itself, but only over the Court's extension of its protective umbrella. It transports the individual's rights against self-incrimination to the point where he is most vulnerable—the police station's "squeal room," which had been effectively off-limits to the Fifth, for reasons most enforcement officials deemed justifiable. And surely the efficacy of the squeal room confessional is attested by the number of men now petitioning for their freedom. Responsible dissenters, like Justice White, feel that police have been disarmed of a major and necessary weapon for keeping law and order. Yet even among these dissenters there are confessions of ambivalence. "Most of us may not like it," says Piersante, "but the Court is forcing us, giant step by giant step, to become real pros."

Inevitably, the new decisions should also produce a more sophisticated body of criminal suspects. Inevitably, but not invariably. Police in Denver, responding recently to a bank alarm, picked up a man four blocks from the bank carrying a gun and $12,000, which happened to be the amount stolen. After informing him of his rights, officers asked him his name, age and address, all of which he offered promptly and cheerfully, just as he did the answer to the next question:

"Occupation?"

"Bank robber."