

THE LAW

THE SUPREME COURT

Winner Take Nothing

One of the loudest complaints against the Supreme Court is that it "frees criminals" almost every time it tightens state criminal procedures. But what actually happens when the court rules in favor of criminal appellants? A remarkable number are later reconvicted in state courts, winning only the honor of having their names pinned to historic decisions that establish rights for others.

For three decades, the court has slowly extended the right to counsel in a series of decisions that were often Pyrrhic victories for the appellants involved. Items:

► *Powell v. Alabama* (1932) ordered states for the first time to provide lawyers for indigent defendants in capital

present in order to cross-examine prosecution witnesses, but Appellant Bob Pointer, a hardened criminal, gained little himself from the reversal of his life sentence for robbery by assault. Texas will now prosecute him for five similar robberies, making him eligible for five more life sentences.

Search & Seizure. In equally historic decisions, the court has forced all states to observe the full meaning of the Fourth Amendment ban against unreasonable search and seizure. Items:

► *Mapp v. Ohio* (1961) ordered state courts to exclude evidence seized in violation of the Fourth Amendment. With no warrant, Cleveland police, hunting policy slips and a bombing suspect, had invaded the home of a woman named Dollree Mapp. The most the cops could uncover was "obscene materials," for

deau was reconvicted and now faces another death sentence.

► *Jackson v. Denno* (1964) reversed the Brooklyn cop-killing conviction of Nathan Jackson, who claimed that he had been drugged when he confessed. The court said that judges must now determine the voluntariness of disputed confessions before allowing juries to weigh them as evidence. But this month, having lost in a voluntariness hearing, Jackson was again sentenced to death. By last week trial judges had rebuffed four other New York murder defendants under the new procedure.

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RIDEAU

J. EDWARD RICE



POWELL

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MAPP

Where does a Pyrrhic victory get you?

cases. Although Ozie Powell, 16, and six other Negro youths, who came to be known as the "Scottsboro Boys," had no legal aid, they had been sentenced to death for allegedly raping two white girl hoboos. Though one of the girls totally recanted her testimony, Alabama later reconvicted the boys as many as four times, eventually meting out sentences of up to 99 years. Ozie Powell was paroled at age 31.

► *Betts v. Brady* (1942) said that "shocking" circumstances would require court-appointed lawyers for indigents in noncapital cases. But the court ruled that Smith Betts, a jobless Maryland farm hand, did not meet the test and upheld his eight-year rap for robbery.

► *Gideon v. Wainwright* (1963) overruled *Betts* and fully extended the right to counsel in all felony trials. A rare winner, Florida indigent Clarence Gideon was later retried and found innocent of attempted burglary.

► *Escobedo v. Illinois* (1964) decided that the right to have counsel present begins when police start grilling a prime suspect. The court ruled that Chicago laborer Danny Escobedo had been forced to confess to a murder without legal aid. After Danny had spent 4½ years in jail, Illinois dropped the charges.

► *Pointer v. Texas* (1965) upheld the right of defendants to have lawyers

possession of which Dollree was convicted. Upheld by the Supreme Court, she escaped further prosecution.

► *Ker v. California* (1963) provided *Mapp's* first test amid charges that the court had "handcuffed police." But *Mapp* forbade only "unreasonable" search and seizure: *Ker* upheld the right of Los Angeles police to make an arrest and seizure after they entered a narcotics-peddling couple's apartment without a warrant. The cops had "probable cause" to suspect what they would find. Appellants George and Diane Ker stayed in prison for possession of marijuana.

Disputed Confessions. Nothing concerns the court more than illegally obtained confessions, yet even such cases by no means assure freedom for successful appellants. Items:

► *Mallory v. U.S.* (1957) forbade federal (but not state) police to use statements produced during prolonged precommitment interrogation. That rule saved Andrew Mallory from a death sentence for rape in Washington, D.C. In 1960, Mallory raped a woman in Philadelphia, was convicted, and is now serving a state rap of 1½ to 23 years.

► *Rideau v. Louisiana* (1963) reversed Bank Robber Wilbert Rideau's murder conviction because a Louisiana sheriff had Rideau "confess" on television before thousands of potential jurors. Ri-

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