

LAW

to his \$50,000 house in Puerto Rico to his wife's aunt and uncle. Twice, Powell ignored fact-finding trials. Last week, forced to assume that the charge was true, Justice Wahl ordered Powell to pay Mrs. James \$75,000 in compensatory and \$500,000 in punitive damages. Summing up his opinion of Powell, Justice Wahl indignantly paraphrased a famous insult attributed to Virginia's 19th century Senator John Randolph: "He is a man of splendid abilities, but he shines and stinks like rotten mackerel by moonlight."

CRIMINAL JUSTICE

Another Confession Problem:

Unjoining the Joint Trial

As if the continuing U.S. confession controversy were not complicated enough, now the custom of joint trials has surfaced to compound the confusion. When a crime involves more than one defendant, most prosecutors aim to try them together; indeed, joint trials have occurred in many of the most famous U.S. criminal cases. But what if one defendant's confession implicates another? Is the use of such evidence so unfair to a man who has not confessed that it must be excluded?

The question arises because of a jewelry-store holdup in Los Angeles, after which the police arrested Henry Martinez and his alleged accomplice, John Aranda. At their joint trial, a policeman testified that Martinez had confessed, implicating Aranda. The judge followed a common practice: he ruled Martinez's confession admissible, but warned the jury not to consider it as evidence against Aranda. Not surprisingly, however, the jury found both men guilty of first-degree robbery.

Acting under its broad new confession doctrine (*People v. Dorado*), the California Supreme Court has voided Martinez's confession on the ground that the police failed to warn him of his rights to silence and to counsel as soon as they had other solid evidence against him—his fingerprints at the scene of the crime. In effect, that reversal also destroyed the case against Aranda—and spurred the court to confront the whole problem of how confessions should be handled in joint trials.

Brainwiping. In 1957 the U.S. Supreme Court ruled by a vote of 5 to 4 that federal juries could be trusted to follow judges' instructions and compartmentalize the evidence against codefendants, because otherwise "the jury system does not make sense." But in that decision (*Delli Paoli v. U.S.*), the four dissenters argued, in the words of Justice Felix Frankfurter, that whatever is said in joint trials "cannot be wiped from the brains of the jurors." And this year the court seemed to lean toward the Frankfurter attitude as it struck down a similar kind of mental

gymnastics: the old custom of asking the same jury to determine both the validity of a confession and the confessor's guilt or innocence. Even if the confession proves to have been coerced, how can a jury ignore what it says? In *Jackson v. Denno*, the court ruled that the judge must determine a confession's voluntariness before the jury may hear it (TIME, Jan. 22).

Speaking for the California court in the Martinez-Aranda case, Chief Justice Roger Traynor took his cue from *Jackson* and reversed Aranda's conviction on the ground that a jury cannot "segregate evidence into separate intellectual boxes." In short, said Traynor, if A confesses that he committed criminal acts with B, the jury cannot "effectively ignore the inevitable conclusion



MARTINEZ



ARANDA



TRAYNOR

Down with mental gymnastics.

that B has committed those same criminal acts with A." From now on, ruled Traynor, California courts must handle codefendant confessions according to new procedures:

► Confessions are permissible in joint trials if all incriminating references to other defendants are "effectively deleted" from the confession in question. In Aranda's case, it would have sufficed merely to delete his name from Martinez's confession because the confession contained no other clue to his identity.

► When one defendant's confession so completely involves another defendant that "effective" deletion is impossible, the judge may grant a defense motion for separate trials. If the defense motion is not granted, the confession must be excluded at the joint trial.

California's decisive attack on joint trials is sure to alarm those prosecutors for whom the practice has been a standard tactic. But Chief Justice Traynor says that rules similar to California's have already proved workable in Ohio, Illinois and Connecticut. Whether the U.S. Constitution requires them for all states is a question for the U.S. Supreme Court.