What Did The Supreme Court Say?

By GILBERT CRANBERG

THE COUNTRY's most provocative and widely quoted journal of opinion is, paradoxically, one of the least read. Published irregularly from November through June for a small, exclusive readership, it has a table of contents that covers a few more than 100 subjects a year but is consistently as varied as the problems that afflict the country. The staff, recruited with care, is a publisher's envy. It is presided over by a former governor who was a candidate for high national office, and members of the editorial board have impressive backgrounds in public affairs. Their editorial output, which scarcely anybody really reads, is officially published as the journals of the Supreme Court of the United States.

The total circulation of Supreme Court opinions is probably no more than 20,000. Most of the texts are located in forbidding legal libraries and inaccessible private law offices. Because there are no more than 300,000 lawyers in the United States, it's apparent that even many of the nation's attorneys do not actually read the Court's opinions.

I was introduced to the texts of Supreme Court opinions a number of years ago out of the professional necessity to comment on the Court's rulings. The time-honored method of editorializing on a Supreme Court opinion is to study the wire service stories and whatever other newspaper versions of the ruling can be located, then to sit down and write. The variations in the stories, however—the gaps and unanswered questions—made it seem risky business to praise or blame the Court from these sources alone. Yet the alternative of poring over Supreme Court texts seemed about as inviting as an evening of wading through a technical manual. Indeed, the deadly, all-but-indigestible legalese I expected to find was there in abundance, but to my delighted surprise there was also a gold mine of information and often exciting, absorbing reading.

The issues taken to the Court cover the gamut of controversy in American business, social, and political life. The Court chooses the cases it reviews, selecting about 150 of the more than 2,500 cases presented to it for decision each term. A major criterion for granting review is the importance of the disputed issue in terms of the numbers of persons affected. The Supreme Court, as Archibald Cox, the former U.S. solicitor general, has observed, plays a central role in the life of the country precisely because the disputes it reviews and writes about often involve the central issues in American life—"those which divide us most deeply, those which arouse our deepest emotions and whose resolution writes our future as a people."

The wholesale shunning of what the Court says about these issues in the original written opinions leaves most of the country dependent on second-hand reports. And it would be difficult to devise handicaps more devastating to an understanding of the Court than those that hobble news reporting of its rulings. The Court's fear of leaks places a curtain of secrecy between the writers of its opinions and the outside world. No hint is allowed of when a case is to be decided. Where Congressmen, subordinate administrators, and Presidents are frequently eager to explain and defend their policies, Justices of the Supreme Court emerge from isolation only to read their opinions. No court public information officer "backgrounds" a ruling; no Justice is available to discuss or clarify the opinion he has written.

About a dozen reporters cover the Supreme Court regularly and in depth.

Reporters not tied to early deadlines may have several hours to prepare stories on opinion days and are able to spare the time to sit in the Court to hear oral delivery of the opinions, with the sometimes illuminating summaries and signs of inner court conflict this reveals. But the competitive pressure to get the news out quickly requires the wire service reporters—the source of news for most Americans—to prepare stories in advance of the issuance of opinions from briefs and other available information on pending cases. While the Justices perform in the courtroom, the wire service men are in the press room below preparing to make necessary insertions and alterations in the pre-written stories based on texts received from assistants who are hurriedly stuffing opinions into pneumatic tubes in the Court. Should a story manage to leave the Supreme Court building both complete and accurate, even under these conditions, it then is subject to rewriting, trimming, and headline treatment by news people far removed from the Court and from familiarity with the issues in the case.

Another problem is that Supreme Court opinions may be issued in bunches, especially following the return from a recess or as the Court approaches the end of its term in June. The celebrated ruling in the Miranda confession case was one of eight issued on June 13, 1965. The significance of *Miranda*'s forerunner, the 1964 *Escobedo* ruling, slipped by almost unnoticed when it was released along with fifteen other opinions on a Monday in June.

The Court was not so fortunate with its 1962 ruling on prayers in public schools, one of fifteen rulings handed down the same June day. The quickly dispatched reports telling of the Supreme Court's striking down of prayer in

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the schools touched off headlines, interviews, and a torrent of abuse. The Court's actual holding that a state composed prayer—in this case, a prayer formulated by the New York State Board of Regents—may not constitutionally be made a part of the public school curriculum was obscured in the early coverage. When the point of the ruling was understood and the significance of keeping public officials out of the business of writing prayers for school children was appreciated, religious groups backed off from earlier denunciations and Congress lost its appetite for a Constitutional amendment to undo the Court ruling.

The hostile reaction to the prayer ruling produced one of the rare public displays of irritation at press coverage from a member of the Court. Justice Tom Clark, in San Francisco a couple of months after the decision, complained, "The newspaperman is pushed to even get the result, much less the reasoning, back of each judgment. . . . The news media announcements . . . were not complete . . . As one commentator said, 'The trouble is that the Court—like the old complaint of the wife—is never understood.'"

Reporting of opinions is apt to be least satisfactory in the cases that most sharply divide the Court. The natural reporting tendency in a 5 to 4 ruling, which may have two or three dissents and as many concurrences, is to cull from the opinions the quotes that most colorfully and forcefully express disagreeing views. The stress on court conflict creates an impression of judicial bickering that inevitably raises uneasy doubts about the wisdom of the majority position.

THE fact is that court suits have their origin in disagreement. When a dispute reaches the level of the Supreme Court for resolution, the choices available to the court can tax the wisdom of a Solomon. The fully-developed opinions of the Justices explaining their positions—as opposed to fragmentary quotes—make it eloquently clear that disagreement, rather than being a sign of uncertainty and weakness, is often a healthy and natural consequence of the intricate, many-sided conflicts that reach the Court.

Even the most comprehensive news reporting may fail to do justice to a Supreme Court opinion. No newspaper devoted more space to the *Miranda* decision than *The New York Times*. The news story in the *Times*'s city edition summarizing the ruling ran two full columns. More than a page was devoted to 6,500 words of excerpts from the majority and dissenting opinions. Interpretation and comment filled nearly two more columns. In all, some 9,200 words were used to convey the Court's ruling to the reading public, substantially more space than was given to any news development that day. But, in explaining their positions, the Court's members used more than 37,000 words in a majority, one concurring, and three dissenting opinions. This was an important case with far-reaching impact on law enforcement, and the Justices carefully and forcefully stated and defended their views, going out of their way to marshall history, references to practices in the FBI, England, Ceylon, India, and Scotland, and the facts in the cases before the Court to buttress and justify their conclusions.

An important facet of Chief Justice Earl Warren's opinion for the majority was extensive quotation from the manuals which had been used to instruct the police in the techniques of interrogation. The opinion pointed out that the manuals cited by the Court had had wide use among law enforcement agencies and students of police science, with total sales and circulation of over 44,000. In introducing this segment of the opinion, Justice Warren emphasized, "An understanding of the nature and setting of . . . in-custody interrogation is essential to our decisions today."

In one manual referred to by the Court, police were advised to offer legal excuses to the suspect to obtain an initial admission of guilt. The majority opinion reproduced this portion of the manual:

> Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him and that's why you carried a gun—for your own protection. You knew him for what he was—no good. Then when you met him he probably started using foul, abusive language and he gave some indication that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe?

Another manual suggested the Mutt and Jeff technique, described in the majority ruling by the following verbatim excerpt from the manual:

> In this technique, two agents are employed, Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room.

The court quoted a lecturer in police science as offering this further advice in his textbook:

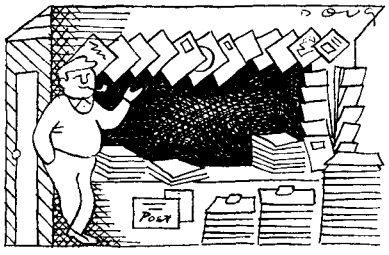
> In the preceding paragraphs, emphasis has been placed on kindness and strategems. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor. Where emotional appeals and tricks are employed to no avail, he must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours pausing only for the subject's necessities in acknowledgement of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination. It is possible in this way to induce the subject to talk without resorting to duress or coercion. This method should be used only when the guilt of the subject appears highly probable.

None of the police manual material reproduced in the majority opinion appeared or was referred to in *The New York Times* coverage of the Court's ruling. The *Times* dealt comprehensively and accurately with *what* the Court decided in regard to the police warnings that must be given to suspects, but its usually well-informed readers were less adequately informed about *why* the

Court concluded that warnings are essential. The outcry that followed the Court's *Miranda* ruling might have been less piercing if there had been more general public awareness of the nature of the interrogation evils the Court sought to combat and took the trouble to cite at length.

A decade ago the columnist Max Freedman called the Supreme Court "the worst reported and worst judged institution in the American system of government." Reflecting on his fifteen years on the bench, Chief Justice Earl Warren used more circumspect language during a recent interview with me but left little doubt of his feeling that the Court is inadequately served by the communications media. The Chief Justice is appreciative of the efforts of a few major newspapers to assign specialists to report the Court as an institution, but he regards much of the reporting of the Court to be hampered by the traditional interest in treating the Court as a source of spot news and headlines without relevance to the principles at issue in cases it decides. He rates public understanding of the Supreme Court far below the level of public understanding of the Executive and Legislative branches of government, and he has urged that news media act to narrow the understanding gap by hiring law clerks to assist in covering the Court—a suggestion that no news organization has moved to implement.

The Court in 1961 took a small step that facilitated improved coverage by



advancing release of opinions from the traditional noon hour to 10 a.m. In 1965 it moved to give reporters more time to digest opinions by agreeing to relax the tradition of releasing opinions on Mondays only and instead to release opinions throughout the week. Fear of leaks that might involve the Court in a national scandal has kept the Justices from allowing reporters to study opinions in advance of the official public release.

The groundswell of anti-Court feeling growing out of the misunderstanding of the prayer ruling led the Association of American Law Schools in 1964 to issue background papers on pending cases and to station law professors in the Supreme Court building on opinion days to help interpret court rulings. Rumblings of dissatisfaction from the Court and the small number of reporters reached by the briefings induced the law professors to discontinue them in favor of concentrating on distributing memoranda about cases before the Court in advance of the decisions.

More than eighty law school professors prepare three- or four-page digests of the facts, issues, significance, and possible dispositions of cases about to be decided by the Court. The Association reproduces the memoranda and sends them free to about 200 press, radio, and TV people who have shown an interest in receiving them. The law professors' project is probably the most constructive single contribution to advancing public understanding of the Court in recent years and has earned praise both from reporters who cover the Court and from editorial writers who deal with the decisions.

Once the Supreme Court has issued an opinion, however, there is no substitute for reading the original text. A Supreme Court opinion is essentially an essay, an attempt to explain, to justify, and to persuade in the course of deciding. The Court's opinion writers are free of space limitations as they elaborate on the reasoning behind their conclusions. A skillful paraphrase can sometimes illuminate an issue more clearly than the original language. But the cost of compression is almost certain to be loss of much of the impact that comes from the careful, piece-by-piece development of an argument.

FOR these reasons, he who would responsibly interpret Supreme Court opinions to the public must obtain complete texts of the rulings. They are available for $12 a year from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. As great a subscription bargain as this is, however, service still is too slow to suit the needs of most members of the press—unbound "slip opinions" are delivered ten days to two weeks after release by the Court. Consequently, most publications which want complete texts of opinions subscribe to a commercial service such as *U.S. Law Week*, published by the Bureau of National Affairs, or *Supreme Court Bulletin*, compiled by the Commerce Clearing House. These services make opinions available the same week they are issued by the Court.

Exposure to the texts of Supreme Court opinions will not convince the reader of the "correctness" of a ruling—some of the Court's closest followers are its severest critics. But the thoughtful American who puts the Supreme Court on his reading list will be persuaded that exposure to the authentic voice of the Court has given him unique insight into this remote and least understood of institutions that speaks to the people only through its opinions.

Closing the TV Gap

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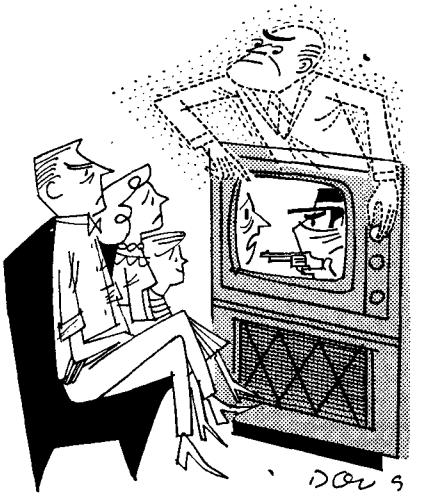
programs of value and quality. NET's coverage of the recent State of the Union Message, for example, went far beyond anything the commercial stations were able to provide. It would be wasteful in the extreme not to make the fullest use of NET in any public expansion and support of noncommercial TV.

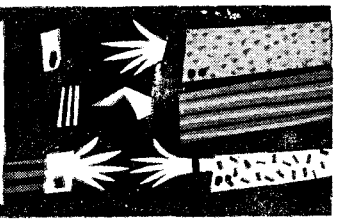
It is very much in the public interest for educational television stations to be modernized, multiplied in number, interconnected, and equipped for color to give the intelligent viewer national coverage and the medium a more professional aspect. But any money given the Corporation for Public Television by Congress is subject also to pressure from Congress. Political influences seem inevitable—a central weakness of the Carnegie Commission's plan. Perhaps the function of the Corporation for Public Television should not extend beyond receiving and disbursing funds, with National Educational Television the chief operating and programing agency, and certainly there should be a separation of the operating functions from Congressional-political strings.

We can foresee extreme difficulties in programing at a national level on such controversial subjects as civil rights, sex education, even the choice of those more sophisticated programs that the affluent-intelligent viewer wants and doesn't get now on commercial TV. If a reactionary Congressman is to have a say in what gets broadcast over this exciting new network, then we'd better leave the idea alone. If, however, the federal government is forbidden to act as an operating institution and is only a source of badly needed income for this challenging project, then the closing of the quality gap in American TV is indeed in sight and the Carnegie Commission's recommendations are well worth immediate implementation by Congress.

—R.L.T.



Public Relations



For the Birds?

FOR THE BETTER part of a year, some corporate public relations directors have been in a minor flap. They have beaten their breasts, tailored speeches, and written articles for their chief executives for publication in university business reviews—just because some college students believe that business is for the birds. Why is it, they want to know, that brighter college graduates do not choose business as a career? Why do they fail to appreciate the corporate life and choose teaching, government, or the professions over jobs in corporations?

For some reason hard to fathom, the hand-wringers seem to feel that unless the majority of college graduates want to spend their working lives in business, there is something basically wrong, if not with the undergraduates then with their professors. Or at least there is serious lack of communication and new campaigns must be launched at once to explain business better so that all those who are at the top of their class will hurry, hurry to their nearest corporate headquarters and sign up for life.

The simple fact is that business is not for everyone, any more than is medicine, law, teaching, politics, or trade union organizing. Business is a hard taskmaster. Not everyone is fit for it. Business takes special qualities and a kind of talent that not all possess. Vital as business is for the economic health of the nation, important as it is to increase the sales of a corporation, develop new products, make better profits for the stockholders, and provide more jobs, not everyone with a high IQ is cut out for a career in a corporation.

Often businessmen and their public relations directors, conditioned by the days when corporations were the favorite whipping boys of Presidents and intellectuals at the universities, take fright at any study or poll which points up unfavorable student attitudes toward corporate life. They forget that times have changed, as business has changed; that antagonism to business is not universal; that the contribution business makes to the general welfare is widely recognized; that business is not in a popularity contest; that many who fully realize the social as well as economic values of business just prefer working elsewhere.

On April 21, 1966, Louis Harris presented the result of a *Newsweek*-sponsored survey among college seniors to the Public Affairs Conference of the National Industrial Conference Board. The report dealt with opinions held about American business, and it triggered dismay in quarters which should have known better. (Cries of distress are still reverberating in business publications—though, it is hoped, not in board rooms of corporations whose chief executives are not quite the frightened fawns insecure PR directors picture them to be.)

Harris's study showed that the college seniors rated doctors at the top among those in whom they had "a great deal of confidence." Next were scientists and, in descending order, bankers, U.S. Supreme Court Justices, educators, corporate heads, psychiatrists, military leaders, federal government leaders, clergy, Congressmen, arts figures, local retailers, reporters and publishers, advertising men, television heads, and labor leaders. If corporate heads wail because they are not at the top of the list, what about reporters and advertising men, not to mention labor leaders?

The survey further showed that if the students had a free choice of career, 23 per cent of the males would choose a profession, 16 per cent teaching, 14 per cent business, 13 per cent science and engineering, 12 per cent the arts, 9 per cent government and politics, 4 per cent social work, 4 per cent psychology, and the rest other careers. Harris's study also showed that, reckoning with reality, the same students thought they would end up as follows: 36 per cent of the males in a profession, 28 per cent in business, 27 per cent teaching, 7 per cent in government, and the rest in other fields.

Considering that students have a wide choice today, business comes through the poll with high marks, far above those of government and politics or social work. Does this mean that today's college students are not interested in public service, that they are not concerned with good government, or that they lack feeling for those in greatest need? If the choice were entirely free, only 4 per cent of the men and 9 per cent of the women would work with the disadvantaged; these are the figures of college students who would go into social work. Of course, some college seniors join the Peace Corps, and some become clergymen. That more do not enter these two fields does not mean that young college people are not idealists. Just as most would not fit in the Peace Corps or clergy, so great numbers would better serve in the professions or teaching.

For U.S. business managers to reach the conclusion that the poll indicates there are disastrous days ahead shows either a lack of sophistication or that they have taken too seriously the word of their public relations heads that now is the time to sound the gong of alarm. Businessmen never, not even in a society as oriented to commerce as ours, can expect that a majority prefer it to other fields. And why should they?

Corporate heads face many serious problems. But that only 28 per cent of male college seniors think they will end up working in business is certainly not one of them. —L. L. L. GOLDEN.