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Editors' Page

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THE EDITOR'S PAGE

The recent United States Supreme Court decisions of *Gideon v. Wainwright*, 372 U.S. 335 (1963) and *Escobedo v. Illinois*, 378 U.S. 478 (1964), have focused increased attention on a criminal defendant's right to have the "Assistance of Counsel for his defence." The long, legal struggle to make presence of counsel a part of constitutional due process has met with success. What remains is to provide effective, compensated representation in all its various aspects. The trek toward this goal is just beginning. Congress has recently taken a step forward by passage of the Criminal Justice Act which provides limited compensation for attorneys representing indigents in federal criminal prosecutions.

It is indeed appropriate that the *Nebraska Law Review* has the opportunity to publish the first definitive article on the Criminal Justice Act, since its enactment has resulted, in large part, from the dedication of fellow Nebraskans. Senator Roman L. Hruska has been directly involved in attempts to enact similar legislation in the Senate for many years, and was the chief sponsor of the bill that finally became public law. Former Chief Judge Harvey M. Johnsen of the Eighth Circuit Court of Appeals has taken a leading role in the bill's implementation.

Mr. Robert J. Kutak was administrative assistant to Senator Hruska through much of the struggle for enactment of the Criminal Justice Act. He is, thus, particularly qualified to present not only the history and eventual scope of the act, but the spirit behind its enactment. His article deals not only with the precepts embodied in the act but also with the practical politics involved in its passage. It is beneficial reading not only for an understanding of the Criminal Justice Act, but also for an understanding of the federal legislative process.

The Criminal Justice Act of course applies only to federal proceedings. Thus, Nebraska, as well as most other states, faces the task of implementing the right to effective counsel in its state courts. Professor James A. Lake, Sr., of the University of Nebraska law faculty presents a critical analysis of present Nebraska practice and thought on this subject. Commissioned as reporter for Nebraska in the American Bar Foundation's national survey of representation of indigent defendants in state courts, Professor Lake draws on the results of this survey to show the current attitude of Nebraska judges and attorneys on representation of indigents. He also examines Nebraska's "curious patchwork of state

policy" with respect to both the actual appointment and compensation of counsel in criminal proceedings. Throughout the article, suggestions are made to improve the Nebraska system.

Both Mr. Kutak's and Professor Lake's articles could serve as a foundation for state action on the problems of indigent representation and attorney compensation. It is our hope that these articles will provide the incentive for further legislative review of present Nebraska practice.

Dean David Dow of the Nebraska College of Law examines the recent decision of *Malloy v. Hogan*, 378 U.S. 1 (1964) which applied the fifth amendment's privilege of self-incrimination to state criminal proceedings. With particular emphasis on Nebraska decisions, Dean Dow analyzes *Malloy* and its effect on existing state practices and on the many aspects of the privilege itself. As a result, his article provides the practicing attorney not only basic source material but also some prophecies as to the future scope and application of the fifth amendment privilege.

John M. Gradwohl, also of the Nebraska law faculty, and Mr. Hans J. Holtorf, Jr., a practicing Nebraska attorney, contemplate the problems posed by a hypothetical situation involving issues of workmen's compensation recovery for heart attacks. As the authors point out there is no death case in Nebraska where recovery for heart attacks has been allowed under the Workmen's Compensation Act. The article purposely does not reach a conclusion as to whether recovery can or cannot be obtained, but centers largely on illustrating and attacking the critical issues, not only of a substantive but also of an evidenciary character.

This issue's student articles deal with two areas of importance to Nebraska attorneys: (1) An analysis of constitutional notice requirements in probate proceedings and (2) an extension of the reapportionment controversy to the county level.

The most difficult part of being a law review editor and the thing that sets it apart from being any other kind of editor is that just as you are learning how to do your job you are cut down by a peculiar and inevitable occupational hazard—graduation. Not that law review editors have anything against graduation. To the contrary, let the record show that we are unequivocally for it. But still, there are probably few of us who do not allow ourselves a wistful moment now and then, especially as the year draws to a close, in which we dream dreams of what the *Review* might have been if we could have had it back another year.

In the present case, those dreams are likely to come true even without us. For we are succeeded by a group of juniors with a solid nucleus of competent and aggressive review men. They have contributed much already this year. Much of the administrative responsibility for publishing this fourth issue has fallen upon them. It is understandable, then, that we of the out-going editorial board should introduce the editorial board of 1965-66:

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