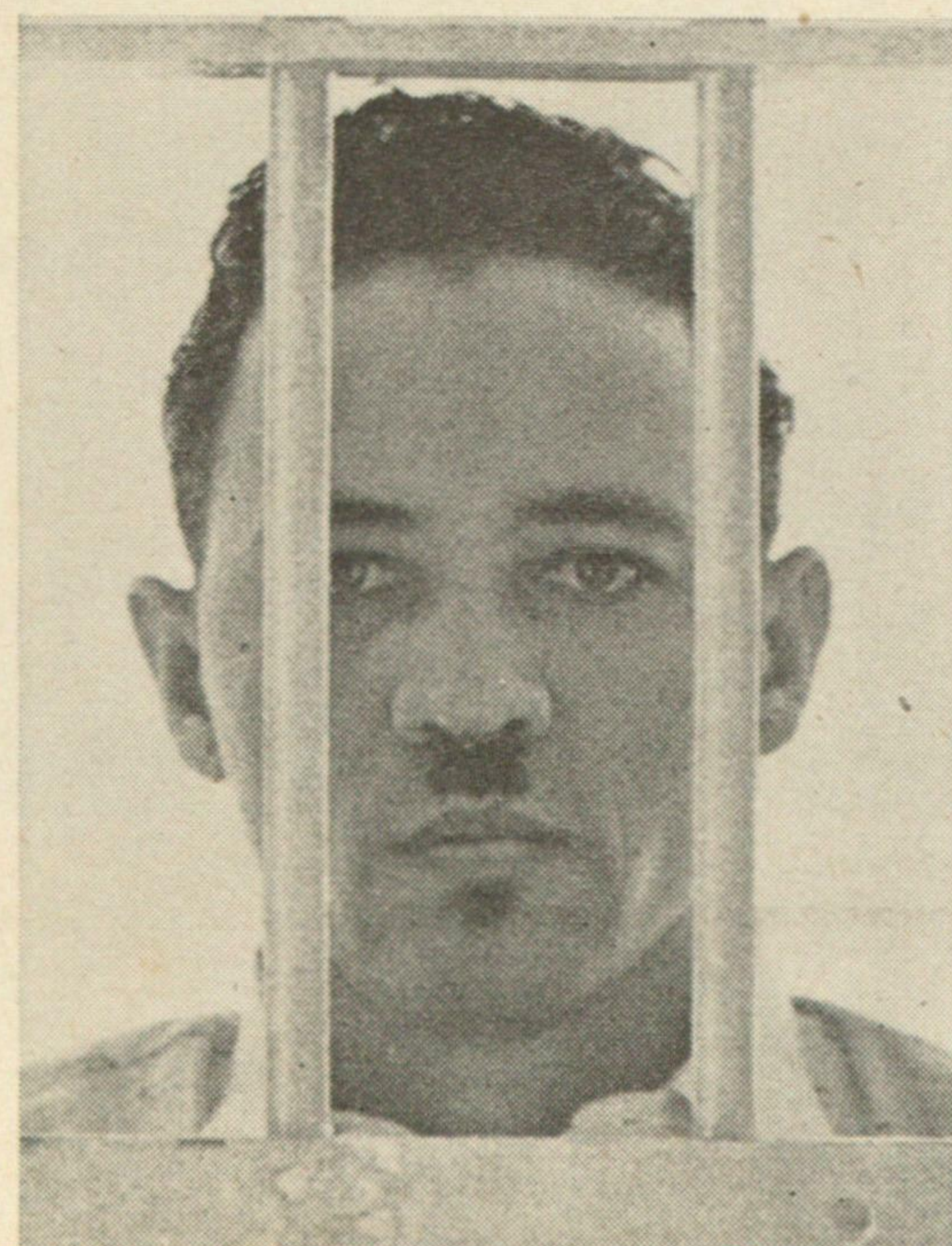


# THE MAN WHO MAY BREAK CHESSMAN'S DEATH-CELL RECORD

Unknown, unpublicized, Edgar Labat has been in prison for nearly ten years, over seven on Death Row with his co-defendant. The case is riddled with contradictions.

By PETER MAAS LOOK STAFF WRITER



MILLIONS OF PEOPLE the world over kept vigil with the late Caryl Chessman as he sought to stave off execution. But only a handful know or care about the long, grim struggle of a 37-year-old Negro named Edgar Labat—or of his co-defendant, Clifton Alton Poret—still on Death Row at the Louisiana State Penitentiary.

Chessman was articulate, a best-selling author who had vast press coverage to make him an international cause. Labat, born in Mississippi, has an eighth-grade education, is penniless and, until last month, had not had a visitor in nearly

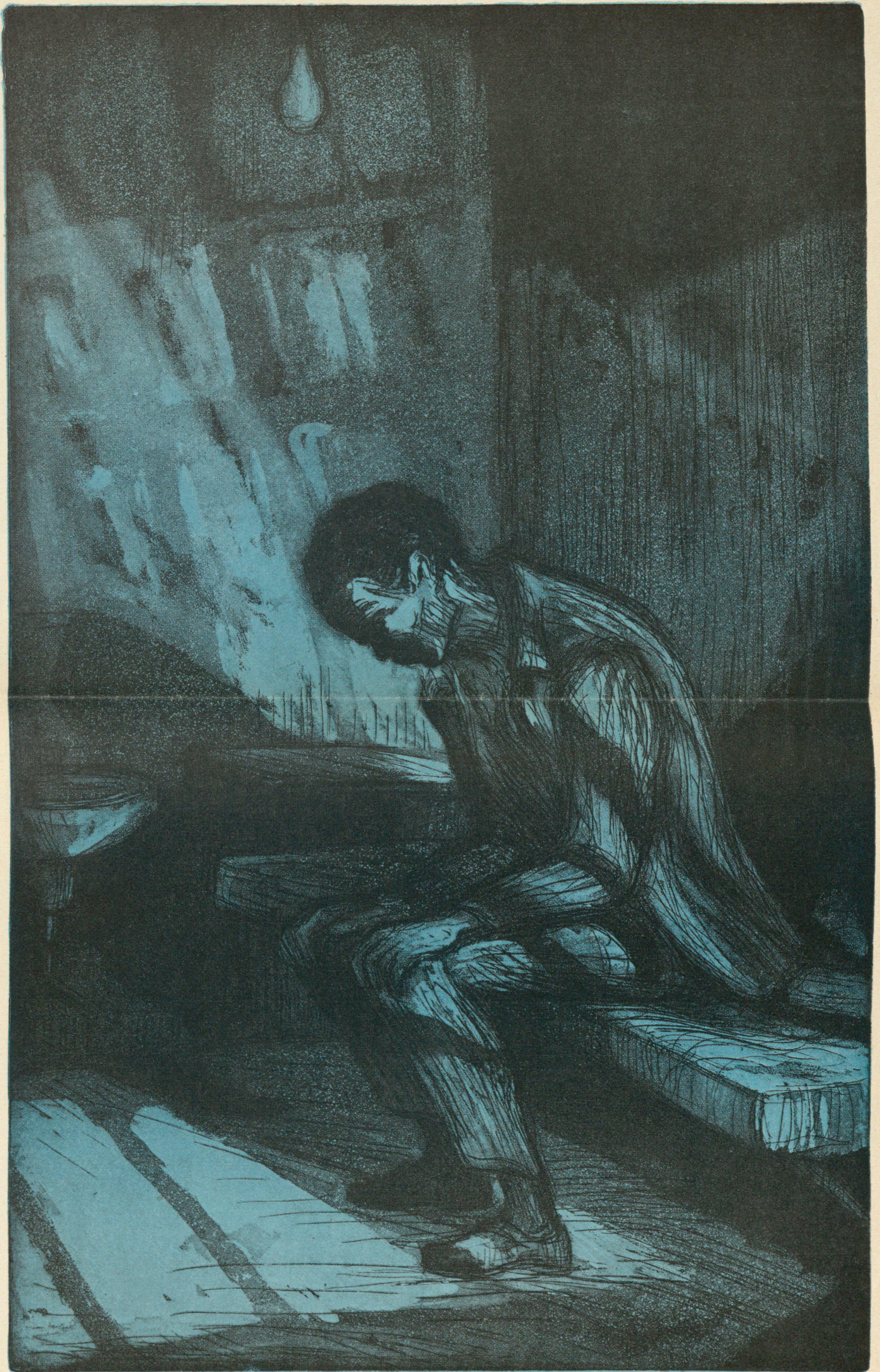
a year. Yet lawyers familiar with the case say that the obscure battle now being waged for Labat—and Poret—may well break the Chessman record.

Labat was arrested at his home in New Orleans at 11 o'clock on Sunday morning, November 12, 1950. He was charged with assisting in a crime most of the South considers worse than murder—the rape of a white woman. He was also booked for the armed robbery of her male escort.

Since his arrest almost a decade ago, Labat has been continuously in custody. For over seven years, he has been in a death cell six feet wide and

continued

*Behind prison bars, Labat awaits results of his latest appeal.*



*Labat's world today is a death cell, six feet by ten. Before that, he was in a windowless solitary dungeon. He got his food on a tray pushed through an opening in the door.*

*"They said that it was just temporary . . . I was in there for fourteen months."*

AQUATINT ETCHING BY JOHN GROTH

*John Groth*

# The victims could not agree on what Labat was wearing

ten feet long. For 14 months, he was in solitary confinement. He has received eight stays of execution, one of them less than three hours before he was to be strapped in the electric chair. His case has moved through the courts a dozen times.

Within this legal framework, there is a tangled web of strange contradictions, allegations of coercion of witnesses and suppression of evidence, the dramatic emergence of new testimony and the specter of double-standard justice.

Ironically, Labat in all likelihood would be a free man today had he accepted a proposal over eight years ago to plead guilty to armed robbery alone. His lawyer frankly admits that he advised Labat to take it if he were guilty of any phase of the crime. Labat replied, "I'm not guilty."

Instead, Labat went on trial for his life on February 24, 1953, along with Poret, the man accused of the actual rape. Poret, also a Negro, was then 24. He had left New Orleans the same day Labat was arrested. He was located in Tennessee, serving a sentence for theft, and was brought back to Louisiana in late 1952.

Labat, at the time of his arrest, was regularly employed as an orderly in a New Orleans hospital. Just under six feet tall, he weighed 175 pounds. He has extremely light skin. People particularly recall his neat dress and polite manner. The police carry no previous record for him.

Poret is short and quite dark. In New Orleans, before his 1947 enlistment in the Army, he was charged with auto theft. In Los Angeles, after his discharge, he was involved in a holdup. His New Orleans police file notes that he returned to the city on September 7, 1950. Poret, who was attending a carpentry school, says he left again because of police harassment. Labat and Poret insist they never met until they were in jail awaiting trial.

## "A third-rate rape case."

The state demanded that they be tried together, despite objections from counsel for both men. The trial lasted four days. It was barely mentioned in the local press. As a former New Orleans police reporter told me, "It was just a third-rate rape case."

According to their trial testimony, the victim, Helen Rajek, and her escort, a man named Robert Penedo, made the rounds of various bars, a strip joint and an all-night snack bar in downtown New Orleans between 10 o'clock Saturday night, November 11, and about 4 o'clock Sunday morning.

Miss Rajek and Penedo then took a cab to the home of her married sister. The home was above a grocery in a dimly lit, predominantly Negro slum section. Miss Rajek testified that she was unable to get in and could not arouse anyone. She said Earl Lee Howard—a Negro known to her as Crip—happened by and tried to help them awaken someone. This failed, and Crip left.

Later, Penedo suggested that they walk several blocks to a main street to catch a cab downtown to her room at the Y.W.C.A. They testified that, on the way, they encountered Crip Howard again, talking to two other Negroes. As Miss Rajek and Penedo reached the end of the second block on their route, the two other Negroes suddenly seized them from behind.

According to Helen Rajek, one of them dragged her down a side street. Penedo said the other one relieved him of ten dollars and then

went down the same side street. Penedo ran back to the grocery, succeeded this time in waking the occupants upstairs and called the police.

On the stand, Miss Rajek said that she was dragged halfway down the street and up an alley. She gave a graphic description of her assault by one Negro while the other held her down. Afterwards, she declared, they took her out of the alley and on down the street to the next corner, where she spied a police car, and her attackers fled.

Helen Rajek said she told the police about Crip's talking to the two men. The police picked up Crip. His identification of Labat led directly to his arrest. Miss Rajek then identified Labat as the man who helped assault her. Penedo said that Labat robbed him. The district attorney implied to the jury that both Miss Rajek and Penedo identified a photograph of Poret as the second attacker after Labat himself had singled it out.

The state's case rested almost entirely on the testimony of Crip Howard, Helen Rajek and Robert Penedo. No evidence of fingerprints was offered, even though Miss Rajek told the police that Poret had taken her bag, removed the money and handed the bag back.

The area where the crime was said to have taken place had been leveled for a housing project by the time of the trial. This made it impossible for the defense to re-enact lighting conditions exactly as they were at the scene of the attack.

Neither defendant testified. The jury returned a verdict of guilty the afternoon it got the case. Labat and Poret were sentenced to death on March 23, 1953.

The matter seemed closed. But rumors began to circulate that there had been a grave miscarriage of justice. They have persisted ever since. One such rumor recently came to the attention of the editors of LOOK, who assigned me to investigate the case. I found it to be riddled throughout with contradictions, inaccuracies and curious variances of fact.

At the trial, Miss Rajek and Penedo repeatedly said that a street lamp, hanging from a pole over the intersection where they were attacked, afforded sufficient identification of Labat to send him to the electric chair. At the same time, they could not agree on what Labat was wearing.

They could not agree, either, on their physical surroundings at the spot they were seized. Miss Rajek twice said that there was a building on the corner where she was first accosted. Penedo, in his turn on the stand, testified that there was no building "where we were attacked."

Nor could they agree on a simple fact concerning Crip, whose role in the case would loom increasingly large. The defense attempted to show that Crip's initial identification of Labat influenced Miss Rajek. But she asserted that at no point had she seen or spoken to Crip at the police station on Sunday morning prior to the time Labat was brought before her. However, Penedo's version was totally different when he was questioned by Labat's counsel:

Q: You see Crip that morning?

A: Saw him at the police station, yes.

Q: What time?

A: Possibly six or seven in the morning. . . .

Q: Was she [Miss Rajek] there when Crip was brought in before you?

A: Yes, she was.

Q: She was with you when you both saw Crip together, is that correct?

A: That's right. . . .

Q: Who questioned Crip?

A: Police.

Q: You were there when he was questioned?

A: Yes.

Q: And Miss Rajek was there?

A: We weren't there for the full questioning. While we were there, they did question him some.

None of this was hammered home to the jury. Why? A Louisiana lawyer, familiar with the case, says, "It wouldn't have done any good going after her that way. The decisive moment came when Helen Rajek pointed to Poret and said he told her, 'I haven't had a white woman since I left California.' The law says you have to prove a man guilty beyond a reasonable doubt. But the plain fact down here is that if a white lady accuses a Negro of raping her, *he* has to prove he is innocent beyond any doubt."

(Statistics bear out the explosive nature of what court circles in New Orleans call "black-on-white" cases. In Louisiana during the half-century before Labat and Poret stood trial, 41 Negroes paid the death penalty for rape, while only two whites did. The last such execution of a white man—for assaulting a six-year-old white girl—took place in 1907.)

## Crip changes his story

A dramatic turn in the case came after Labat and Poret had been put on Death Row to await electrocution. Crip started changing his story. He first declared that he was home in bed at the time the rape occurred. He repudiated this after being questioned by the district attorney. Then he swore in an affidavit that he falsely placed Labat and Poret at the scene of the crime because of police pressure. He followed this with a similar statement taped by a New Orleans attorney.

Subpoenaed by the defense to explain the contradictions before a 1957 Federal hearing, he fell apart as a competent witness. The transcript reveals a noteworthy exchange. Crip, in his trial testimony, had said that he knew Labat only as Red. Red is a nickname in New Orleans commonly given to any light-skinned Negro. Asked by the presiding Federal judge if Red and Labat were the same person, Crip replied, "No."

Crip's role is even more suspect after an examination of the police reports on the case. These reports were not available for trial use by the defense. I saw them recently in New Orleans, however. They are described here for the first time.

The police were notified of the rape at 4:37 a.m. The detailed police report about the offense, dated two days after Labat was arrested, states that both Robert Penedo and Helen Rajek, immediately upon arriving at the station, referred to Crip's talking to the two Negroes, who then attacked them. But the first *signed* statement of a witness has an amazing omission. It was taken from Penedo at 5:35 a.m., about an hour after the crime was reported. It makes no mention of seeing Crip on the street, either alone or talking to two Negroes, prior to the time he and Helen Rajek were seized from behind. It thus left out what supposedly was the most important piece of information he could have given the police.

Crip Howard was taken from his bed at 6:10

continued

## Statements in the police report differ from the trial testimony

a.m. I learned that a man named Lee Domino, who used Crip for odd jobs, brought the police to Crip's house. Domino, who is related by marriage to Miss Rajek, is the owner of the grocery store in the house she said she had tried to enter earlier that Sunday morning. Domino told me that the police never explained to him why they wanted to question Crip. He presumes it was because Crip was known to be "always hanging around the street and might have seen something." Domino also said, "I don't understand how the law could have taken his word. If I was an officer, I wouldn't have believed him. He was a boy who would say he was somewhere even if he wasn't, just to be important."

The first signed statement about Crip and "two colored men" was not made to the police by Helen Rajek until 9:05 a.m. This was some three hours after Crip had been picked up. According to Penedo's trial testimony, it was also after Miss Rajek was present at least part of the time when the police were questioning Crip.

Crip's own statement to the police has no time tag. According to it, he saw a "white man and white woman" being followed by two Negroes, one of whom he knew as Red. He said he knew it was about 4 a.m. because he was working at a cab stand as a dispatcher and had just given a fare to a driver named Reuben Reed. But Reed told me that he was home asleep when Crip claimed to have given him the fare. Reed ran the cab stand where Crip said he was working. He said that he had never employed Crip because he considered him "off his rocker."

To add to the puzzling aspects of the case, the district attorney at the trial led Miss Rajek through a description of how both Labat and Poret repeatedly "hit" her, treated her "rough" and "threw" her to the ground. In his opening statement to the jury, he also summarized the medical report that Miss Rajek had recently experienced intercourse. The district attorney, however, did not include the last sentence of the report, which stated that there "was no evidence of violence or bruises" on her body.

The mystery around the entire case is further deepened by the police report. It states that Penedo was one of those who identified Poret's photograph. A reading of the trial transcript reveals that nobody ever actually asked Penedo whether he had recognized or identified Poret. The district attorney implied that he did, but did not actually say so. I asked Penedo directly if he had recognized Poret. He replied, "No, I didn't get a good look at him."

The police report states that Labat "readily" admitted his guilt and picked out Poret's picture as that of his accomplice. Labat says that he was so badly beaten that he didn't know what he was saying or looking at. According to New Orleans police reporters, the fact that Labat was not photographed until five days after his arrest and "confession" indicates he was "under duress."

Helen Rajek did not identify Poret until two days after Labat was booked. On the witness stand, she testified that she selected Poret's photograph out of a group of five. Her police statement, however, dated Tuesday, November 14,

1950, reads that she was shown "a picture" of Poret—whom she then identified as the man who raped her. Poret's family, meanwhile, maintains that he was home that night from 11 o'clock on.

Since the trial, an alibi witness has been uncovered for Labat. As far back as 1953, Labat mentioned that there was one—a girl—in a letter to his home-town parish priest, Father Carlos Lewis, in Bay St. Louis, Miss. He had also written about her to others, but no real effort had been made to locate her.

A middle-aged Negro woman, Mrs. Audley Moore, who had unofficially adopted Labat after both his mother and father died of heart attacks while he was in prison, set out to find the girl. She did. Her name was Elenora Henderson. In 1950, she had worked on and off as a waitress at a bar in New Orleans called the Little Harlem, which Labat used to frequent.

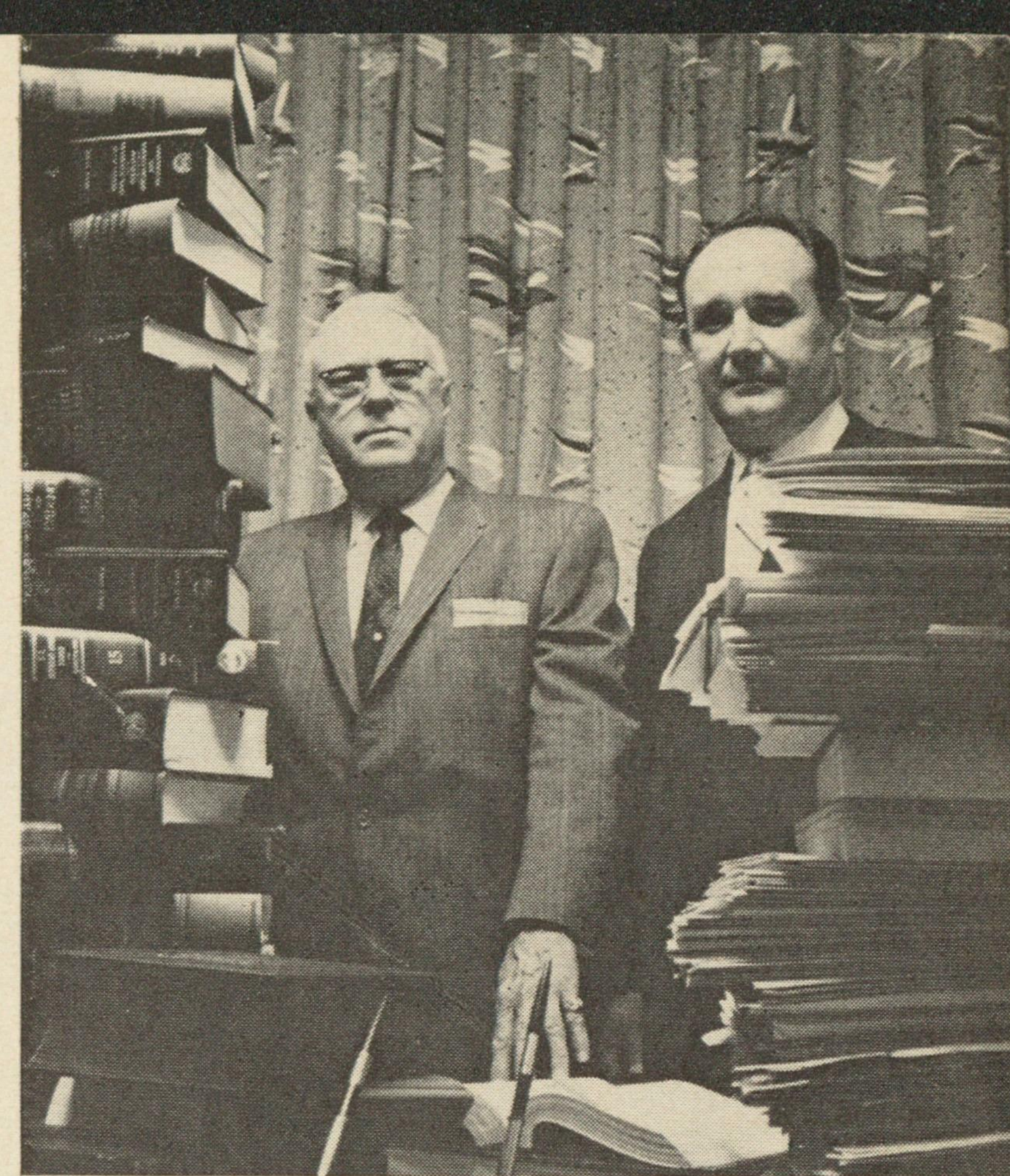
She testified in a Federal hearing in 1957 that she was there the night of November 11. She said Labat came in around 11 o'clock and stayed for about two hours. He was drinking heavily, and she finally told him to go home. She promised to join him later and did so about 2:30 a.m. She said that she found him in bed "dead drunk" and was unable to rouse him even though she rubbed ice cubes over his body. She swore that she remained at Labat's until around 7 o'clock in the morning. After she returned home, she was thrashed by her husband for staying out all night. Sunday evening, at the Little Harlem, she was picked up by the police for questioning. She said she told them that she had been with Labat the entire night. Then she was forced to watch while he was beaten, including kicks in his groin. Later, she was told that if she insisted on her story, her children would be taken away from her on the ground that she was an unfit mother. Fear of her husband also had kept her from coming forward. Now, she said, she was separated from him and no longer cared what happened.

*"You ought to see what they did. . . ."*

I located Elenora Henderson in a small town outside New Orleans. She hadn't seen Labat since the hearing, and didn't know if he were alive. She repeated the same story that she had told almost three years before. Mac Hansberry, who was, and still is, the owner of Little Harlem, recalls Elenora's returning from the police station on Sunday night after seeing Labat and crying, "Poppa, you ought to see what they did to him!"

Hansberry substantiates a second part of her story. He says Labat came into the bar that night—November 11—and stayed for "at least a couple of hours." He recalls that Labat drank so heavily that he stopped serving him. Says Hansberry, "He was weaving around and all that and could have bumped into somebody. Him being such a nice, clean-looking boy, I was afraid he would be roughed up by one of the other fellows."

Penedo, when I saw him not long ago, told me that the man who seized him gave no evidence of being drunk. Penedo said, "As far as I'm concerned, he didn't have a drink all night." Miss Rajek told me that she would "stand on the record."



Defense counsel for Labat and Poret are G. Wray Gill, a top trial lawyer, left, and brief expert Gerald Schreiber, shown here surrounded by precedents and pleas in case.

Blotches mark Poret's face, right center. At court hearing to transfer men to another prison, he testified that he was disfigured by trustees as penitentiary guards stood by.

Curiously, Helen Rajek and Penedo never gave any description of their assailants to the police, except that both were Negroes, one tall and light, the other short and dark. No physical features of any kind were recorded, even such a prominent one as Labat's mustache.

One of the still unsettled questions is what Labat was wearing that night. At the trial, Miss Rajek testified that he was wearing a "brown pin-stripe" suit. Penedo said it was "dark blue." When I spoke to Elenora Henderson recently, she told me, "I believe it was gray. Light gray with something in it."

Through his lawyer, I asked Labat himself what he was wearing. He replied, "A light gray suit with a red thread running through it."

As bits and pieces of evidence mount in their favor, an extraordinary legal battle has swirled around Labat and Poret in their death cells.

Their first appeal—to the Louisiana Supreme Court—was primarily on the ground of "systematic exclusion" of Negroes from the grand jury that indicted them. This was turned down because a time proviso in a statute of the state criminal code had not been met. In 1954, they got their first stay of execution as the same "systematic exclusion" plea was carried to the U.S. Supreme Court. In December, 1955, however, the Supreme Court voted six to three against them.

Two more stays and three hearings before the state pardon board brought them through to the summer of 1957. They now were scheduled to die right after midnight on September 20. After the third pardon attempt had failed, their lawyers withdrew from the case with the defendants' consent. There didn't seem to be any hope left.

But Poret had previously smuggled an ad out of Death Row, pleading for help. The ad ran in a Los Angeles newspaper. As a result of the interest created by the ad, the paper carried a story when the execution date was set. A doctor there, Hans Fehling, responded and retained G. Wray Gill, Labat's trial counsel, to try to help Poret.

Mrs. Moore, Labat's "adopted" mother,



meanwhile managed to raise \$1,000 to hire a young lawyer, Simmie Monroe, to represent him.

Time, however, was running out. It was already well into September, and all Gill and Monroe had in hand was Crip Howard's latest—albeit favorable—affidavit. At that point, Mrs. Moore finally turned up Elenora Henderson.

Armed with this knowledge, Monroe concentrated on rounding up whatever other witnesses he could find. Meanwhile, Gill's partner, Gerald Schreiber, normally a corporation lawyer, but also a former assistant district attorney and brief expert, began planning his pleas.

On September 18, Schreiber asked the Federal district court for a stay of execution based on new evidence. It was denied on the ground that the state courts had to be approached first. Fearful that he would not have enough time for this, Schreiber dug up a precedent that enabled him to go directly to the Federal court of appeals without waiting for the state courts to act.

On the evening of September 19, 1957—with only hours of life left for Labat and Poret—Schreiber and Monroe argued for a stay from Judge John Minor Wisdom. Wisdom granted a ten-day stay. The news was flashed to the warden on a line held open for the call.

Edgar Labat described the scene on Death Row to one of his former lawyers, Felicien Y. Lozes, who had represented him before the pardon board: "It was pretty close. We got the word only a couple of hours before. They were just fixing to shave our heads. Mr. Gorret, the man who pulls the switch, was waiting. They had started the motor which charges the chair, and it was all ready. My cousin Emile Labat, the undertaker, was waiting for my body. The warden had read the death warrant. But as I always told you, my hope is in Almighty God. He knows I am not guilty of this, and I feel He will make a way for me or give me strength to take what comes."

On September 25, Louisiana's attorney general attempted to have the stay revoked. He was turned down. But neither was the stay lengthened.

On the same day, the defense pleaded before the Louisiana Supreme Court that the full story had not been told during the trial. The court ruled that since "there had been evidence adduced upon which a conviction could be based . . . this court cannot pass on the sufficiency of the evidence."

Labat and Poret now had until 12:01 a.m. on September 30, 1957.

Schreiber and Monroe flew to Washington for a special meeting with U.S. Supreme Court Justice Hugo L. Black on Saturday, September 28. Upon arriving, they learned that Black was attending a funeral. They were told to leave their pleas and to return in three hours. When they did, they were greeted by a deputy clerk who said, "Gentlemen, I have good news for you."

#### *New hearings are held*

Justice Black's stay was extended by the entire Supreme Court in November, 1957. The case was sent back for hearings before the Federal District Court for Eastern Louisiana. The state took the unusual step of bringing back Helen Rajek and Robert Penedo to testify. Here, for the first time, Elenora Henderson told her story.

As for Crip Howard, Judge J. Skelley Wright noted that his "credibility leaves much to be desired." However, in his opinion, the testimony of Miss Rajek and Penedo, "whose credibility is unchallenged," was as important as that of Crip. As a result, he ruled that there had been no denial of due process of law.

Gill, who handled most of the defense work at the hearings, contested the decision on two points: First, Elenora Henderson's testimony apparently had been ignored. Second, it was Crip's identification that initially led the police to Labat and confirmed the identification made by the victims.

The legal battle rages on. Gill, recognized as one of Louisiana's top criminal lawyers, and brief expert Gerald Schreiber represent both Labat and Poret now. Hampered by lack of funds to fight the case or to hire investigators, they nonetheless appealed successfully to the U.S. Supreme Court

once again last year, obtaining three more stays of execution along the way.

Crip, meanwhile, has dropped out of sight. Miss Rajek continues to believe that Labat and Poret were her attackers. Penedo remains convinced that Labat was the man who robbed him.

Labat and Poret still are on Death Row at the Louisiana State Penitentiary. Recently, another prisoner, charged with an attack on a white woman, was put into the cell next to Labat. The guards expressed fear that an outsider might try to get the prisoner with "a shot from the hill," through the windows opposite the cell block. Now, Labat has cloaked the bars of his cell with blankets, sheets and towels. At night, he turns out the single overhead light and sits in darkness. He says, "The thing that keeps me from going crazy is the knowledge I'm innocent."

Poret's face is now disfigured. A series of white blotches run over one eye and down his cheek, with the skin pigment destroyed. At a hearing last month, Gill and Schreiber moved to have the two men sent to the parish prison in New Orleans, both for consultation and for their own protection. Poret testified that, because a broken toilet in his cell overflowed, trustees held him and sprayed something in his face, while prison guards stood by. A guard had told him that they were going to make a "two-toned nigger" out of him. The state offered no rebuttal to this charge.

The U.S. Supreme Court, meanwhile, has again remanded the case to the Federal District Court for Eastern Louisiana. The constitutional issue currently involved is "systematic exclusion" of Negroes from the petit or trial jury. What Gill is really after is a new trial.

For those familiar with the case, there seem to be two views today.

One is that of a Louisiana state official, who said, "This is just a question of two niggers against the integrity of a white lady." The other is in the comment of an expert on U.S. Supreme Court actions: "For a capital case, this is one of the shakiest I've seen." END