

President's powers of command could not be tolerated. Then conservative Democratic Sen. Robert Byrd of West Virginia offered an amendment that would permit the President to send troops back into Cambodia if he found this was necessary to protect American lives or safeguard the troop-withdrawal program. These, of course, were the very grounds that Mr. Nixon had given for the April 30 invasion, and last week he sent Scott a "Dear Hugh" letter saying that "the Byrd amendment reaffirms the constitutional duty of the Commander in Chief" and "goes a long way toward eliminating my more serious objections to the Cooper-Church amendment."

Thus, the stage seemed to be set for a showdown this week over the Byrd amendment. Before getting the Presi-



dent's letter, Scott had counted 45 votes for the Byrd amendment and ten "possibles." Now, armed with White House support, he felt he could swing a majority. Both sides seemed to be wheeling up heavy artillery: the Administration suddenly threw together a "fact-finding" panel of congressmen and governors to visit Indochina; its membership, appointed largely by the hawkish chairmen of the armed services committees, virtually ensured a favorable report. A rival, on-the-spot study, sponsored by the dovish Foreign Relations Committee, contended that the invasion, while reaping some short-term military benefits, had spread the war and reduced the chances of a negotiated peace. The President's TV talk, far from wrapping up the Cambodian affair, seemed to be only the beginning of a long series of postmortems.

BLACK PANTHERS: 'Free Huey'

For two and a half years, "Free Huey" has been a steady chant in the litany of American radicalism. Huey Newton, 28, possibly the brainiest and probably the ablest of the Black Panther Party's leaders, was convicted in September 1968 of the "voluntary manslaughter" of an Oakland, Calif., policeman, and since then has passed his time in a cell at the California Men's Colony at San Luis Obispo, serving a sentence of two to fifteen years. His chances of parole have always seemed slight, but now it is likely that Huey Newton will soon be free.

A fortnight ago, the California Court of Appeal, to the surprise and consternation of state prosecutors, reversed his conviction. Newton contended at his trial that he had been shot in the stomach and had lost consciousness before the policeman was killed, and the appeals panel found the trial judge guilty of "prejudi-



Newton in poster and in prison:
Would the slogan come true?

cial error" in neglecting to instruct the jury that unconsciousness was a complete defense. What's more, the appeals judges ruled, the court had "abused its discretion" in failing to reopen the case to notify the jury of a key mistake discovered in a document that had been used as evidence. Coming on the heels of the Chicago grand jury report (NEWSWEEK, May 25) that found gross inaccuracies in the authorities' account of the Chicago police raid in which two Panther leaders were killed last year, the errors lent credence to the charge that the Panthers receive something less than perfect justice from the forces of law and order.

But despite his reversed conviction, Huey Newton, the Panthers' Minister of Defense, was still not a free man. The state may appeal the ruling to the California Supreme Court, or he may be tried again on the same or a lesser charge. The state must act within 60 days, after which the Court of Appeal ruling becomes official. And though Newton was refused bail last week, his law-

yers are confident bail will be set after the 60 days are up, provided the appeals court judgment is not overruled.

Newton's bail will doubtless be very high, in view of recent bail jumping by other revolutionaries such as Eldridge Cleaver (page 54), H. Rap Brown and Mark Rudd. But the money will almost certainly be forthcoming, because the charismatic Newton's hand is much needed at the Panthers' helm at a time when most of the party's other leaders are in jail, in self-imposed exile or dead. David Hilliard, 28, one of the few remaining chieftains, rejoiced at the prospect of Newton's liberation "because then we will definitely have the kind of leadership that Huey is capable of giving our party and the black community." And a Federal authority agrees that with Newton's release, "I would expect the Panthers to pull themselves up. The national organization should become stronger and may pick up some members."

'Why,' 'How': But for now, Newton remains locked in his 8- by 6-foot cell at San Luis Obispo, sleeping most of the day, reading most of the night. He regards himself a political prisoner, and has refused to participate in the prison "rehabilitation" program ("the ultimate in exploitation," he calls it—inmates are paid what he says is the equivalent of 3 cents an hour for producing clothing and shoes). The only reading matter he is allowed consists of the daily San Francisco Chronicle, a few books and three letters a week. Somehow, through that and his quota of visitors three times a week, he has managed to keep in touch with the Panthers on the outside and even to maintain control of the party's ideological development, in which he has stressed alliances with white radicals instead of strict black nationalism. Leading the Black Panther Party from behind bars has not been easy, but as he says, "If you have a 'why,' you can always find a 'how'." And now, if the appeals court ruling stands, Newton may have a handier "how" than ever.

AMERICANA: New Glory

"When I place my right hand over my heart as that glorious American flag passes by," says Mrs. Mary Lou Kieswetter, an Indiana lady who heads the National Council for the Encouragement of Patriotism, Inc., "I feel very near to God." She is not alone in that feeling. In the midst of the age of dissent, millions of Americans have been caught up in a patriotic fervor unmatched since World War II. And on Flag Day next Sunday, citizens from sea to shining sea will be showing their colors as never before.

Cranking up for the big day, some 12,000 people turned out last weekend for a dairy festival in Enosburg, Vt., to celebrate the theme, "The American Flag and Agriculture: Partners for Freedom." On Flag Day itself, a 55-man crew



WAYNE IN "CHISUM"



MANSON



NEWTON (BARE-CHESTED) AFTER RELEASE

Bad Week for the Good Guys

the most bizarre affront to justice in a long time. Jonathon Jackson, 17, brother of a black accused of racial killings in a Soledad, Calif. prison, walked into the Marin County Hall of Justice in San Rafael, 15 miles north of San Francisco. Judge Harold Haley, 65, was presiding over the trial of James McClain, accused of stabbing a San Quentin prison guard while serving a sentence for burglary. Other San Quentin inmates were on hand as witnesses. Ruchell Magee, 31, was inside the courtroom; William Christmas, 27, was under guard in the corridor outside.

Toped Shotgun. Jackson sat down among the spectators for a few minutes. Then suddenly he opened a satchel, drew out a pistol and tossed it to McClain. He pulled a carbine out from under his raincoat and ordered: "Freeze!" McClain held the pistol against Judge Haley's head. Magee slipped outside and freed Christmas, bringing him into the courtroom. While a bailiff sneaked outside to alert police, one of the men picked up a telephone in the courtroom and forced Judge Haley to call the sheriff's office. McClain reportedly demanded: "Call off your pigs or we'll kill everyone in the room." To keep Judge Haley in tow as their principal hostage, one gunman fastened a sawed-off shotgun to his neck with adhesive tape so that the muzzle hung a few inches from Haley's chin. They tied together with piano wire four other hostages, Deputy District Attorney Gary Thomas and three women jurors.

As police set up a roadblock just outside the civic center, Jim Kean, 47, a photographer for the San Rafael *Independent-Journal*, who had heard the alarm on a police radio in his car, arrived in the building and practically collided with the escaping gunmen. "You take all the pictures you want," said one. "We are the revolutionaries." As they briefly dis-

cussed whether or not to take Kean hostage as well, he and his *Independent-Journal* colleague Roger Bockrath caught an astonishing series of photographs (see following page). The gunmen decided to leave Kean behind. They walked out into the warm sunshine wielding guns and highway flares disguised to look like dynamite, then loaded themselves and their five captives into a rented Ford panel truck.

Incredibly, the police, though they knew there were five hostages inside, by most eyewitness accounts opened fire on the truck as it approached the roadblock. They exchanged gunfire with the men in the truck for one mad minute of hell. When it was over, Judge Haley was dead, his jaw and part of his face blown off by a blast from the shotgun taped to him. James McClain, William Christmas and the young intruder lay dead as well. Magee, Deputy District Attorney Thomas and one of the jurors were wounded.

Verbal Fencing. It was in Denver's Federal Building that President Nixon committed the startling gaffe of prejudging the case of Charles Manson. While complaining that the press had made Manson a glamorous hero, Nixon said: "Here was a man who was guilty, directly or indirectly, of eight murders without reason." For a lawyer who occasionally delivers homilies on legal propriety, this was a serious breach.

Attorney General John Mitchell, who was standing at Nixon's side, instantly recognized Nixon's error. "This has got to be clarified," he told Presidential Aide John Ehrlichman immediately afterward. Unhappily, what ensued was a series of errors compounded by instant communications. Startled reporters dashed to the pressroom, and within minutes, the bulletins were moving across the land. The statement was filmed and

broadcast later on network television, with a clarification appended.

But the damage was already done. It was not until half an hour after Nixon spoke that Press Secretary Ron Ziegler reappeared before the newsmen. After some minutes of verbal fencing, Ziegler agreed that Nixon's words about Manson should be retracted. When Ziegler told Nixon what had happened, the President was surprised: "I said 'charged,'" he replied. During the 3½-hour flight back to Washington, Mitchell persuaded Nixon to put out a statement backing Ziegler up. It read in part: "The last thing I would do is prejudice the legal rights of any person in any circumstances. I do not know and did not intend to speculate as to whether or not the Tate defendants are guilty, in fact, or not."

Bon Ami. The President's *faux pas* came in the middle of another attack on his frequent foe, the press. Nixon

MITCHELL & NIXON IN DENVER
Too late to correct the gaffe.

had just come from a ten-day working holiday in San Clemente, where he found himself angered by the coverage given the Manson case in the local media. Many of the young, Nixon said in Denver, "tend to glorify and to make heroes out of those who engage in criminal activities." Was it the fault of the press? Yes and no, said Nixon. Yes: "It is done perhaps because people want to read or see that kind of story." No: "This is not done intentionally by the press." In fact, the Los Angeles papers have played the story at length, but they have done so dispassionately.



CHRISTMAS WITH HOSTAGES IN CORRIDOR

In Los Angeles, the effect of Nixon's remarks on the Manson trial was instant and dramatic. While the Los Angeles *Times* came out the same afternoon with a four-inch headline reading MANSON GUILTY, NIXON DECLARES, Judge Charles Older went to great lengths to ensure that the jury, which has been sequestered since the trial began, would not learn of Nixon's remarks. The windows of the jury bus were whited over with Bon Ami so that no juror could glimpse the headline on street newsstands. If the jury discovered Nixon's verdict, the defense might have grounds for a mistrial. His efforts were to no avail. Next day Manson himself displayed a copy of the *Times* to the jury for some ten seconds before a bailiff grabbed the newspaper from his hands. Judge Older called a recess, then questioned the jurors one by one to satisfy himself that their judgment would not be affected. An alternate juror convulsed the courtroom when he announced his disclaimer: "I didn't vote for Nixon in the first place." The judge denied a motion for a mistrial, and the defense lawyers proceeded with cross-examination of the state's star witness, Linda Kasabian, a former member of the Manson "family."



McCLAIN & MAGEE LEAD JUDGE HALEY & HOSTAGES OUTSIDE

The ghastly gunplay in San Rafael in a curious way pointed up the hazards of the President as film critic. In praising the new John Wayne film *Chisum*, he seems to have overlooked the fact that in it the good guys prevail over the bad guys only by taking the law into their own hands. That, of course, is what the "revolutionaries" of Marin County were attempting with such bloody results. Vigilantism appeals not only to conservatives; it is no accident that S.D.S. members, too, loved the John Wayne of *True Grit*, last year's western in which Marshal Cogburn observes that "ya can't serve papers on a rat." Perhaps the President's interpretation of *Chisum* ought to be balanced by the message of an earlier western. No film has understood itself or its kind better than Sam Peckinpah's classic, *Ride the High Country* (1962), where youth meets frontier man rendered obsolete by the encroaching century. Says one character: "My father says there's only right and wrong, good and evil, nothing in between. It isn't that simple, is it?—No, it isn't; it should be, but it isn't."



GROUP HEADS FOR GETAWAY VAN IN PARKING LOT

OFFICERS CLOSE IN ON VAN

THEY FIND HALEY DEAD INSIDE





HOSTAGE THOMAS LIES WOUNDED



WOUNDED WOMAN JUROR



BODIES OF McCLAIN & JACKSON



MAGEE LIES WOUNDED IN PARKING LOT



JUDGE HALEY'S BODY ON TRUCK FLOOR

THE SENATE Fulbright's Firing Line

For a man who constantly complains that the U.S. Senate is being ignored, Arkansas Senator J.W. Fulbright consistently manages to grab a remarkable amount of national attention. He was at his testy best again last week. He took on the Administration, charging that it had "tailored and even changed facts" in rushing a renewal agreement with Spain concerning the use of U.S. military bases there. He also assailed the television industry for doing as much to expand the powers of the presidency "as would a constitutional amendment formally abolishing the [other two] branches of Government." Both attacks were in line with Fulbright's contention that the Executive Branch dangerously dominates the Government and has usurped powers assigned by the Constitution to the Congress.

Spain. Fulbright said that he had no basic quarrel with the contents of the five-year agreement signed last week by Secretary of State William Rogers and Spain's Minister of Foreign Affairs Gregorio López Bravo; in fact, he added, he would probably vote for it if it were submitted to the Senate as a treaty to be ratified. But that had not been done, and that is what irked Fulbright.

In a Senate speech, he argued that the agreement should have been examined publicly by the Senate instead of being worked out in secret, and he noted that it will be submitted for approval to Spain's legislative body, the Cortes. He found it ironic that on this topic "there is more open discussion" in the restrictive Franco regime than in the U.S. Fulbright wondered why the Administration routinely handles such trivial matters as a cooperative effort with Mexico to help recover and return "stolen archaeological, historical and cultural properties" by Senate-ratified treaty, but makes a consequential deal with Franco by executive stipulation. Fulbright threatened to seek a congressional ban on the use of U.S. military funds in Spain unless they are authorized by treaty. There is little likelihood that he could muster a Senate majority for such a measure.

The State Department contends that the agreement does not constitute any commitment by the U.S. to defend Spain if it is attacked by another nation, and thus is not similar to a mutual-defense treaty requiring ratification. The highly ambiguous language of the agreement includes a promise that each government "will support the defense system of the other" and "will make compatible their respective defense policies in areas of mutual interest." No one seems sure just what that means—which is probably the intent. The agreement will allow the U.S. to continue to use three airbases in Spain (at Saragossa, Morón and Torrejón) and a Polaris submarine and Mediterranean fleet-support base at Rota. The bases are manned by 10,000 U.S.