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Foreword - The 'Truth in Criminal Justice' Series

Stephen J. Markman
United States Department of Justice

FOREWORD: THE 'TRUTH IN CRIMINAL JUSTICE' SERIES

Stephen J. Markman*

This special issue of the University of Michigan Journal of Law Reform contains a series of reports—the 'Truth in Criminal Justice' series—that reexamine a variety of basic issues in the law of criminal procedure and evidence. In publishing this series, the editors of the Journal have made an important and timely contribution to the national debate over the character and future development of criminal justice in the United States. There is an abundance of legal writing on criminal justice issues, but relatively little of it concerns increasing the system's effectiveness in bringing criminals to justice, or doing justice for the actual and potential victims of crime. At a time when the criminal jurisprudence of the courts and academic writing on criminal procedure are largely devoted to elaborating a judicially created system of restrictions on law enforcement that has emerged since the 1960s, these Reports reflect a commitment to the ideal of criminal investigation and adjudication as a serious search for the truth. From this perspective, they challenge a number of basic features of contemporary procedure that conflict with the achievement of accurate verdicts and substantive justice.

Some preliminary discussion of the magnitude of the crime problem in the United States today, the fundamental responsibility of government to deal with this problem, and the importance of the search for truth to government's ability to do so, will help explain the motivation and viewpoint of these Reports. Current statistics concerning the volume of criminal offenses provide one indication of the magnitude of the human and social costs of crime. The crimes committed in an average half hour in the United States today include 1 murder, 8 rapes, 59 robberies, 256 assaults, and 321 household burglaries. One quarter of the households in the United States are victimized by crimes of rape, robbery, burglary, assault, or theft each year. Although the

* Assistant Attorney General for Legal Policy, United States Department of Justice, 1985-89. B.A., Duke University; J.D., University of Cincinnati College of Law. The views expressed herein are those of the author and do not necessarily reflect those of the Department of Justice.

roughly 5.6 million violent crimes, 5.5 million household burglaries, and 23 million thefts of personal property that occur annually are not confined to any particular segment of the population, the impact of many serious crimes falls with particular severity on the poor and members of minority groups. For example, the black population is victimized by crimes of rape and robbery at close to double the rate of the white population, and includes nearly one-half of all murder victims.[1]

Estimates of the overall probability of criminal victimization in the course of a person's life, developed from the crime rates of recent years, also suggest the enormity of the human toll of crime. These estimates indicate that extremely few individuals in the United States will escape some type of criminal victimization, and only a small number will escape victimization by some type of *violent* crime. In relation to particular offenses, they project, roughly, that the class of assault victims will include three-quarters of the population, the class of robbery victims will include a third of the population, and the class of rape victims will include one out of twelve women. Further, 83% of twelve-year-old children will be victims or intended victims of violent crimes at least once in their lifetimes and 52% will be repeat victims.[2]

Devastation on this scale is not an inevitable consequence of the necessary limitations of the state's police functions in a free society, or of anything inherent in American character or culture. Within the memory of most Americans, serious offenses were committed in the United States with only a fraction of their current frequency. For example, the statistics on reported crime for 1981 show a more than doubling of the murder rate, a quadrupling of the rate for rape, and a quintupling of the robbery rate as compared to those of 1961. Though there was some apparent statistical progress in dealing with crime in the early years of the current decade, the incidence of reported violent crimes has hit a series of record highs in more recent years and remains several times greater than that of a few decades ago,

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1. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION 1987, at 2 (1988); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, HOUSEHOLDS TOUCHED BY CRIME 1987 (1988); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES 1986, at 18-19, 46 (1988); FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1987, at 8-9 (1988). The figures given in the text include both completed and attempted offenses in some crime categories. They do not include a number of important types of crime that would enter into a complete description of the crime problem, such as thefts from business establishments, fraud offenses, drug offenses, and child abuse offenses.

2. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, LIFETIME LIKELIHOOD OF VICTIMIZATION, at 2-3 (1987) (including both completed and attempted offenses).

and several times greater than that typically found in other Western democracies.[3]

Today the threat of crime affects our decisions about where to live, where to travel, where to send our children to school, where to let them play, and how to teach them to relate to strangers. According to one poll of Florida residents, more than half of all respondents are afraid to walk outside their home in the evening.[4] This rampant criminality seriously undermines the "blessings of liberty" that the Constitution was meant to secure, and may sometimes make them wholly illusory. The elderly resident of an urban ghetto may virtually be imprisoned in his own home by the fear of crime.[5] The general threat and reality of crime in poor minority communities exact a heavy toll on the economic, educational, and social conditions required for realizing the American promise of upward mobility and advancement through personal effort.[6] If government in the United States fails to correct this situation, it fails in discharging its most basic function—protecting the individual in the enjoyment of his life, liberty, and property, and maintaining the stability and order necessary for the pursuit of happiness and a meaningful existence.[7] The freedom from criminal activity is the most basic of all civil rights.

The criminal justice system is the government's primary tool in vindicating the individual's right to security and domestic tranquility at the most fundamental level. The system prevents criminals from committing additional crimes by incarcerating them or subjecting them to other forms of restraint (the function of "incapacitation"). The system may also reduce the criminal's disposition to commit further offenses by subjecting him to

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3. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, INTERNATIONAL CRIME RATES (1988); FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1981 at 36 (1982); FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1961 at 3 (1962). Serious crime has risen for the past four years, through 1988, according to the annual FBI reports. FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES (1988).

4. Survey sponsored by Miami Herald and Florida Times-Union, conducted by Florida International University Florida Poll, August 28-September 21, 1989 [on file with U. MICH J. L. REF.]. That such fear is not irrational is evidenced not merely by violent crime rates but increasingly by the numbers of bystander shootings occurring in the Nation's urban areas. *See* N.Y. Times, July 26, 1989, §A, at 22, col. 1.

5. *See* Sinclair, *Homes Becoming Prisons for Fearful D.C. Elderly*, Wash. Post, May 31, 1988, at A1, col. 5.

6. *See* Stewart, *The Urban Strangler: How Crime Causes Poverty in the Inner City*, POL'Y REV., Summer 1986, at 6.

7. *See generally* The Declaration of Independence (U.S. 1776); J. LOCKE, THE SECOND TREATISE OF GOVERNMENT ch. IX (J. Gough ed. 1947).

sanctions ("specific deterrence"). At the broader societal level, the criminal justice system reduces the incidence of crime by presenting offenders and potential offenders with a credible threat of apprehension and punishment ("general deterrence"), and by reinforcing the average person's abhorrence of criminality by condemning and punishing those who engage in crime. Finally, for the individual victim of crime, the knowledge that justice has been done to the offender may be a critical factor in the process of healing and restoring the sense of personal security and a predictable moral universe that has been lost through the experience of victimization.[8]

The discovery of the truth is essential to the successful operation of the system's mechanisms for controlling crime and mitigating its consequences. To bring the incapacitative and specific deterrent effects of the system into play against a criminal, the authorities must have the ability to identify him as the perpetrator of an offense and to obtain and use evidence establishing his guilt. Compromises of the truth-seeking function are also inimical to the general deterrent and value-defining functions of the system. If criminals perceive that the system is full of loopholes and arbitrary advantages in their favor, they are emboldened in their criminality. If the public perceives that the objective of reliably apprehending, convicting, and punishing criminals is readily subordinated to other interests, it clouds the system's basic moral message that criminality is abhorrent and must be condemned. When the system suppresses clear evidence of guilt and frees an offender, the victim of a serious crime may perceive this as an expression of indifference or contempt for his life, his security, and his deepest sensibilities. If truth cannot be discovered and acted upon, the system can only fail in its basic mission.

Given the extraordinary incidence of crime in the contemporary United States—unprecedented in the history of our Nation and unprecedented among modern democracies—and the critical role of the search for truth in government's response to the problem, one might expect that the current procedural rules would accord the highest priority to accurate fact-finding, and would demand the strongest and clearest justification for any departure from this objective. What one finds instead is a sys-

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8. *See generally* NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, RESEARCH IN BRIEF—MAKING CONFINEMENT DECISIONS (1987); PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT (1982); N. SHOVER, AGING CRIMINALS 25, 83-86, 89-92, 97-99, 100-01, 113-17, 121, 137-38 (1985); Zedlewski, *Research in Action—The Economics of Disincarceration*, in NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, NIJ REPORTS 4-8 (1984).

tem of rules that reflects a pervasive willingness to subordinate the truth-seeking function to other interests.

There may, of course, be circumstances in which this is unavoidable. The Constitution imposes sound constraints that sometimes make successful investigation and accurate adjudication more difficult, and compromises of the truth-seeking function may also be necessary to vindicate alternative policy interests of overriding importance. The limitations of these points, however, are implicit in their statement. If it is alleged that the Constitution imposes strictures that sometimes facilitate the efforts of criminals to defeat justice, careful scrutiny is required to ascertain whether the restrictions reflect the actual dictates of the Constitution or recent judicial innovations that are dubiously portrayed as being of "constitutional" dimensions. If it is alleged that considerations of policy require the same result, equal care is called for in verifying that a restriction actually furthers a legitimate policy objective that is even more important than the discovery of the truth, and that the objective cannot be realized by less costly means. Similarly, if it is alleged that measures that facilitate the apprehension and conviction of the guilty would carry an unacceptable risk of unjustly accusing or convicting the innocent, careful inquiry is required whether the claimed balance of advantage in promoting truth and substantive justice is actually borne out by reason and experience.

Fundamental issues at this level will rarely engage the attention of the prosecutor or legal practitioner, or affect the discharge of his day-to-day responsibilities. Whether he serves in a governmental office or pursues a private practice, it is his duty to abide by all the rules and norms enacted by legislative authorities or adopted by the courts, whatever his personal view may be concerning their wisdom or soundness. In his role as a responsible citizen, however, it is also his duty to reflect from time to time on whether the existing rules are best designed to further the legitimate interests of society and the individual, and to advocate changes through lawful processes that will enable the system to vindicate those interests most effectively.

From this broader perspective, my personal interest in the subjects addressed in this Special Issue reflects the concern that a number of features of the contemporary criminal justice process are found to be wanting when examined under the criteria noted above.[9] This is particularly true of many of the judicial

9. *See* Markman, *The Search for Truth in Criminal Justice*, 41 RUTGERS L. REV. 871 (1989).

innovations that have taken place since the 1960s, which involved debatable representations of the values and historical understandings that underlie the procedural provisions of the Constitution. Thus, early in my tenure as Assistant Attorney General in charge of the Office of Legal Policy of the United States Department of Justice, I considered it worthwhile to reexamine the basic features of the law of criminal procedure and evidence that impede the search for truth in the criminal justice process.

The eight reports in this Special Issue are the results of that effort.[10] The reports were prepared under my supervision over a period of a little more than three years, running from late 1985 to early 1989.[11] They represent advice and information presented to the Attorney General by my office, and should not be taken as reflecting the official position of the Department of Justice, of any Attorney General, or of any other departmental component or entity. The topics they address, however, are potentially of interest to all persons concerned with government's responsibility to provide for the security of its citizens, the role of the criminal justice system in promoting that end, and the importance of the search for truth in making the system effective. It is my hope that they will stimulate discussion and debate concerning basic features of contemporary procedure that are

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10. The reports were generally prepared in the following manner: following planning early in the project concerning the topics to be addressed and the general approach to be taken, the subjects were assigned for drafting to attorneys in the Office of Legal Policy, the principal policy development office in the Department of Justice. The attorney assigned to write a particular report would prepare an initial draft, which would be reviewed by me, by my deputies, and by other attorneys involved in the project. The report would then be returned to the author for revision and completion in light of the reviewers' comments. The completed report would be submitted to the Attorney General and circulated within the Justice Department. The first seven reports have been circulated outside the Justice Department as monographs printed by the Government Printing Office. The present publication by the University of Michigan Journal of Law Reform is the first publication of all of the reports in a consolidated form.

11. I wish to acknowledge the contributions of the attorneys who were principally responsible for drafting the individual reports in the series. David J. Karp wrote the first (law of pretrial interrogation), fourth (admission of criminal histories), seventh (habeas corpus), and eighth (adverse inferences from silence) reports. Peter F. Rient wrote the third (*Massiah* right to counsel) and fifth (supervisory power) reports. Peter F. Rient and Dwight G. Rabuse wrote the second (search and seizure exclusionary rule) report. Alden F. Abbott wrote the sixth (double jeopardy and government appeals) report. My thanks and admiration are extended to the individual authors, who were primarily responsible for carrying out the extensive research, study, and reflection required in the preparation of these reports. Special thanks are also due to Deputy Assistants Attorney General Kevin R. Jones, Frederic Nelson and Patricia Bryan, who reviewed and made helpful comments concerning the reports in the series.

too often taken for granted. The specific topics addressed in the reports are as follows:

1. *The Law of Pretrial Interrogation.* This Report, the first in the series, analyzes the criminal justice system's basic approach to the suspect as a source of evidence. The topic is highly important to the system's effectiveness in bringing offenders to justice because, in many cases, a confession or other information from the suspect is essential to successful prosecution.[12] The Supreme Court, in *Miranda v. Arizona*[13] and related decisions, created the current ground rules in this area by adopting a system of procedural restrictions on the questioning of suspects in custody. The first Report substantiates the Supreme Court's current view that the *Miranda* procedures are only judicially created "prophylactic" procedures, which are not required by the Constitution, through a historical review of the law of pretrial interrogation and the constitutional prohibition of compelled self-incrimination, and through an analysis of *Miranda v. Arizona* and other pertinent decisions. The Report also finds that the continued application of the *Miranda* rules in federal proceedings is inconsistent with a statute[14] that Congress enacted in 1968 for the purpose of overruling the *Miranda* decision, and that the nationwide imposition by judicial directive of a particular system of interrogation procedures has impeded effective law enforcement and inhibited the development of better procedures for ensuring fair treatment of suspects in police questioning. The Report concludes with specific recommendations for seeking changes in the law and for developing alternative procedures that would avoid the *Miranda* system's shortcomings.

2. *The Search and Seizure Exclusionary Rule.* The second Report undertakes a similar analysis of the rule excluding illegally seized evidence, which the Supreme Court imposed as a uniform requirement on the states in *Mapp v. Ohio.*[15] This rule excludes physical evidence of unquestioned reliability and probative value because of mistakes or misconduct by officers carry-

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12. *See* Seeburger & Wettick, *Miranda in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1, 15-16 (1967).

13. 384 U.S. 436 (1966). I respectfully disagree with Professor Grano's statement in his Introduction at n.5 that this Report "criti[cized]" *Johnson* and *Gideon* as "unwarranted departures" from the original understanding of the Constitution. Rather, the relevant discussion was descriptive, not judgmental; it merely noted that the sixth amendment right to counsel was historically understood as encompassing only a right to retained counsel and that a contrary interpretation was adopted in these cases. There is no criticism in the Report of these cases.

14. 18 U.S.C. § 3501 (1982).

15. 367 U.S. 643 (1961).

ing out a search or seizure. As with the *Miranda* procedures, the Supreme Court now holds that the *Mapp* exclusionary rule is not a constitutional requirement, but a judicially fashioned remedy whose purpose is to deter violations of the fourth amendment. The Report shows that the Court's view that the exclusionary rule is not required by the Constitution is historically correct. It argues that the continued application of the exclusionary rule is unjustifiable as a matter of policy because alternative means are available for preventing and redressing unlawful searches and seizures that would not carry comparable costs to the truth-seeking process and to public confidence in the criminal justice system. The Report analyzes such alternatives in detail and makes specific recommendations for seeking reforms through legislative, judicial, and administrative action.

3. The Sixth Amendment Right to Counsel Under the Massiah *Line of Cases.* The third Report addresses an ostensibly constitutional restriction on police investigation derived from *Massiah v. United States.*[16] In general, undercover and informant methods of investigation—where the suspect does not know that he is dealing with government agents—are legally unobjectionable and play an important role in the investigation of many types of crime. However, the *Massiah* rule holds that attempting to elicit incriminating statements from a defendant who has been formally charged with a crime violates the sixth amendment right to counsel, unless the defendant has counsel present or waives the right to counsel. In practical effect, this amounts to a general rule against using undercover and informant methods of investigation once a suspect has been formally charged, because a covert investigation is, by its nature, incompatible with telling the suspect what is going on and giving him an opportunity to decide whether he wants to have a lawyer present. The Report argues that the *Massiah* restriction is erroneous as a matter of constitutional interpretation and unjustified as a matter of policy. It sets out practical recommendations for securing the limitation and eventual reconsideration of the *Massiah* doctrine.

4. The Admission of Criminal Histories at Trial. The fourth Report addresses the disclosure at trial of a criminal defendant's prior crimes. In common sense terms, knowledge of the defendant's prior criminal conduct is often highly relevant in assessing the probability of guilt or innocence of a currently charged offense, and disclosure of this information facilitates the success-

16. 377 U.S. 201 (1964).

ful prosecution of recidivists.[17] Effective prosecution in this area is, moreover, of particular importance to the public's safety because a large proportion of crimes is committed by a relatively small class of chronic offenders.[18] The Report argues that the current rules that sometimes admit and sometimes exclude the defendant's prior offenses reflect a haphazard and inconsistent approach, and that the Constitution does not impede broader disclosure at trial of the defendant's criminal history. The Report further argues that there are strong policy justifications for such a reform and that claims that such disclosure would involve an overriding risk of "prejudice" to the defendant or result in other unfairness are unconvincing. It recommends the adoption of a general rule of admission for the conviction records of defendants and other persons whose conduct or credibility are at issue in a criminal case.

5. *The Judiciary's Use of Supervisory Power to Control Federal Law Enforcement Activity.* The fifth Report addresses the assumed power of the federal courts to exclude evidence and effectively terminate prosecutions for the purpose of regulating executive law enforcement functions, in areas where there is no apparent constitutional or statutory authority for doing so. The Report notes that this type of de facto supervision of law enforcement functions by the courts is a relatively recent development. It argues that there is no adequate theoretical justification for the judicial prohibition of law enforcement practices that are consistent with constitutional and statutory norms, or for the judicial adoption of rules that impede the truth-seeking function by excluding reliable evidence in order to control the extrajudicial behavior of executive officers. The Report recommends that an effort be made to draw attention to the absence of a legal basis for the judicial exercise of supervisory power over executive law enforcement functions and to secure a return to a more restrained judicial role in this area consistent with the Constitution's allocation of responsibilities among the various branches of government.

6. *Double Jeopardy and Government Appeal of Acquittals.* The sixth Report addresses the scope of government appeals of adverse determinations in criminal cases. The Report concludes

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17. *See* Marshall v. Lonberger, 459 U.S. 422, 438-39 n.6 (1983); CRIMINAL LAW REVISION COMMITTEE, ELEVENTH REPORT—EVIDENCE (GENERAL), CMND. No. 4991, at 47-49 (1972) (English law reform report).

18. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE 34 (1983); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE 44-45 (2d ed. 1988).

that the Double Jeopardy Clause of the fifth amendment precludes government appeals in felony cases where reversal would result in a new trial, but that expanding the government's appeal rights is generally desirable in other contexts where the constitutional limitation does not preclude such reforms.

7. *Federal Habeas Corpus Review of State Judgments.* The seventh Report addresses the jurisdiction of the lower federal courts to review state criminal judgments in habeas corpus proceedings. While the government is generally barred from seeking correction by an appellate court where the public has been endangered through the erroneous acquittal of a criminal, the opportunities for the defendant to seek to overturn his conviction or sentence are, in comparison, essentially open-ended. Following exhaustion of state remedies, a state convict is free to relitigate, in federal habeas corpus proceedings, claims that have been fully considered and rejected by the state courts. Applications for this type of review occur in about 10,000 cases each year. There is no rule against repetitive applications and no particular limit on how long the prisoner may wait before seeking such review. New trials generated by habeas applications, occurring long after memories may have faded and witnesses disappeared, would not normally seem conducive to the search for truth in the criminal justice system. The Report shows that the contemporary "habeas corpus" remedy by which the lower federal courts review state judgments is distinct from, and essentially unrelated to, the traditional writ of habeas corpus whose suspension is prohibited by the Constitution. The Report also argues that this type of review is inconsistent with American federalism and unjustifiable as a matter of policy. It recommends that federal habeas corpus review of state judgments be limited as far as possible.

8. *Adverse Inferences from Silence.* The eighth Report addresses the consideration of a defendant's silence as part of the evidence in a criminal case. The existing rules in this area are largely determined by *Griffin v. California*[19] and related decisions, which have held that permitting adverse comment and inferences concerning a defendant's failure to testify violates the fifth amendment's prohibition of compelled self-incrimination, and by *Doyle v. Ohio*[20] and related decisions, which limit disclosure and consideration at trial of the defendant's silence before trial. The Report argues that the *Griffin* decision reflects

19. 380 U.S. 609 (1965).
20. 426 U.S. 610 (1976).

an erroneous interpretation of the fifth amendment, both on historical grounds and on grounds of inconsistency with the Supreme Court's decisions in other areas. *Griffin*'s rule barring comment on the defendant's failure to testify is also unjustified as a matter of policy, mostly providing a shield for the guilty without any offsetting value in protecting the innocent. The Report reaches similar conclusions concerning the rules restricting disclosure of the defendant's silence before trial. It concludes that a defendant's failure to respond to the accusations and evidence against him should generally be subject to comment and consideration on the same basis as other aspects of his conduct, and sets out specific recommendations for attempting to secure this type of reform.

In general, these Reports suggest a significant relationship between the jurisprudential revolution in criminal justice during the past twenty-five years and the sharp increase in violent crime. Although other factors have contributed to the problem, the impact of the legal revolution cannot be denied. Alterations of the rules of a system do have consequences.

In closing, it may be helpful to portray more concretely how the criminal justice system would be changed if all of the recommendations in these Reports were implemented. Suspects would enjoy protections superior to the *Miranda* rules in guarding against abuse and overreaching in interrogations, and in ensuring that their statements are accurately reported. The police would, however, regularly be permitted to engage in noncoercive questioning of suspects in custody, and voluntary confessions and admissions by the defendant would be admitted consistently at trial. Physical evidence obtained through searches and seizures would also consistently be admitted; the necessary means of ensuring compliance with the fourth amendment would be provided with greater effectiveness by administrative and civil mechanisms that do not interfere with the truth-seeking function in criminal prosecutions. The utilization of legitimate undercover and informant methods of investigation would be allowed, without artificial restrictions based on formalistically defined stages in the development of a criminal case. The trier of fact would more regularly be informed of the defendant's history of prior criminal conduct and would generally be free to accord that information its natural probative value under the facts of the case. The executive branch would be free to discharge its responsibility for enforcing the criminal laws, subject only to the constraints imposed by the Constitution and by the enactments of legislative authorities. Defendants would retain

their existing rights to present a defense at trial, to appeal their convictions, to pursue state collateral remedies, and to seek review by the Supreme Court, but would no longer be permitted to prolong the litigation of their cases indefinitely in federal habeas corpus proceedings. The defendant's right not to be compelled to be a witness against himself would be fully respected, but the jury would no longer be barred from considering the defendant's silence in the face of the evidence and accusations against him as part of the relevant circumstances in the case.

As the reports in the series document, these reforms generally find substantial support in American practice prior to the enlargement of federal judicial power over criminal justice policy that has taken place over the past two-and-a-half decades. Moreover, as the Reports discuss, similar measures are widely accepted in the criminal procedure of other democracies. If these reforms would involve basic changes in some features of contemporary practice in the United States, it is only because the current system has, in a number of respects, lost sight of its duty to discover the truth and achieve substantive justice. The enactment of these reforms would produce a more rational and just criminal justice system; enhance government's effectiveness in protecting the public from crime without impairing any legitimate right or interest of the accused; and, in some important respects, more effectively protect the rights of the accused. The fulfillment of government's most basic responsibilities to the individual calls for no less.