

# Insight and Outlook . . . *By Joseph Kraft*

## Crime Out of Focus *Post-Clarke*

THE LATEST Supreme Court decisions on confessions and the fuss they have aroused underline a single point. They suggest that the country thinks about crime in a way that is badly out of focus.



Implicit in all the arguments is the notion that confession is a central element in the process of criminal justice. But in fact confession has not been raised to the surface by systematic analysis of criminal justice. It has become a central point of contention mainly thanks to the efforts of a small group of lawyers and jurists led by Judge David Bazelon of the United States Court of Appeals here.

In fact, no one really knows how important confession is in the total scheme of things that happen to criminals and suspects in this country. One crude measure, the measure of time, suggests that confession is relatively small potatoes — a mere moment in the eternity of criminal law.

For example, confession has little or nothing to do with parole after convicts have been released. It has little or nothing to do with the way they are treated in penal institutions. It has little or nothing to do with what happens in the courtroom. It has little or nothing to do with the range of alternatives open to a judge in

sentencing a convicted prisoner.

IN WEIGHING the importance of confessions, all the other elements in the system of criminal justice need to be weighed also. But have they? I do not think so. And the tone running through both the majority and minority opinions of the Court makes me even less inclined to think so.

Chief Justice Warren, speaking for the majority in setting new bounds to the admissibility of confessions, said: "The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement."

And Justice Byron White, in a dissent that was largely echoed by Justice John Marshall Harlan, asserted that "a good many criminal defendants who otherwise would have been convicted . . . will now . . . either not be tried at all or acquitted."

Perhaps the Chief Justice really knows how limits on interrogation affect law enforcement. It may be that Justice White can demonstrate that the latest ruling will allow criminals to go free.

But there is reason to doubt it. For the most striking feature of any survey of the criminal justice system is how little is known, how much is shrouded in darkness and uncertainty, how difficult it is to make sure judgments.

FOR A STARTER, nobody knows how much crime is actually committed in the United States. Police reports of arrests and complaints,

while available, are notoriously unsystematic. Much crime—particularly property crimes committed against poor people—is evidently never reported to the police at all.

Neither is there any national measure of how many people go to trial. That means, given the knowledge that does exist on the number of arrests made, that there is no clear national picture of how many cases are dropped after arrest or why.

Even on such an elementary matter as the number of people actually behind bars there are no reliable national figures. While the statistics for people in Federal and state penal institutions are on hand, there is no uniform reporting on persons in local jails.

Given those gaping holes, there is no way of telling how many criminals are second-time offenders. There is no way of measuring the impact of parole or probation. There is not even a way of being clear as to whether crime is going up or down.

THE POINT of course is not that the recent Court decision was right or wrong, or unimportant. Still less is it that there should not be proper procedures for confession. The point is that nobody knows enough to make positive assertions about particular points in the criminal system or sweeping deductions about the system as a whole. As James Vorenberg, the Executive Director of the President's Crime Commission, put it in a talk at the Harvard Law School Wednesday night: "We know very little—much less than most people think and the newspaper stories would suggest—about the volume, kinds, and effects of crime and who the perpetrators and victims are."

Perhaps, if the Crime Commission is successful, there may soon be available a reliable body of systematic information on crime in this country. Until then, it makes sense to be cautious and hesitant in drawing conclusions.