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COMMENTS

***GRIFFIN v. CALIFORNIA:* STILL VIABLE AFTER ALL THESE YEARS**

*Craig M. Bradley**

In *Griffin v. California*¹ the Supreme Court held that a provision of the California Constitution allowing adverse comment by the judge and the prosecutor on a criminal defendant's failure to testify violated the fifth amendment of the United States Constitution.² The essence of the Court's brief opinion was expressed in a few lines:

[C]omment on the refusal to testify is a remnant of the "inquisitorial system of criminal justice" . . . which the Fifth Amendment outlaws. It is a penalty imposed by courts for exercising a constitutional privilege. It cuts down on the privilege by making its assertion costly.³

Griffin was a response to prosecutorial argument of the sort made in *Linebarger v. Oklahoma*.⁴ In that burglary case where the defendant, who had a prior burglary conviction, did not testify, witnesses reported that the prosecutor's (unrecorded) argument involved pointing his finger at the defendant and exclaiming, "Larry Gail Linebarger, why don't you take the stand in your own defense? Because you know you are guilty."⁵

In a recent article in the *Michigan Law Review*, Donald Ayer levels a series of attacks on the *Griffin* decision.⁶ Specifically, he maintains that the decision is at once too broad, because it requires "almost automatic reversal where there are any remarks explicitly focused on the defendant's silence and the inference of guilt to be

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The author wishes to express his appreciation to Professors Stanley Fickle and Alex Tanford for their extremely helpful advice in the preparation of this Comment.

1. 380 U.S. 609 (1965).

2. 380 U.S. at 613.

3. 380 U.S. at 614 (footnotes omitted).

4. 404 F.2d 1092 (10th Cir. 1968), *cert. denied*, 394 U.S. 938 (1969).

5. 404 F.2d at 1094. The court in *Linebarger* conceded that such an argument was barred by *Griffin* but, because of conflicting reports of witnesses, could not be sure whether the argument had actually occurred as the witnesses had reported.

6. Ayer, *The Fifth Amendment and the Inference of Guilt from Silence: Griffin v. California After Fifteen Years*, 78 MICH. L. REV. 841 (1980).

drawn from it”⁷ regardless of the strength of the prosecution’s case, and too narrow, because it fails to prevent the natural prejudice against the nontestifying defendant that may arise in the minds of the jurors without any encouragement from prosecutor or judge.⁸ Ayer also contends that prosecutors should be permitted to argue that a defendant’s failure to testify is evidence that he is guilty because such an argument is “rational” and advances the search for truth.⁹ Finally, he urges that the *Griffin* rule finds no basis in the fifth amendment and its historic purposes.¹⁰

This Comment challenges all three of Mr. Ayer’s arguments. It takes the position that the limitations on prosecutorial conduct established in *Griffin* remain an important and logically defensible protection of the defendant’s fifth amendment right not to testify. Moreover, it argues that Ayer’s attacks on the *Griffin* doctrine are based upon a fundamental misconception about the reasons criminal defendants choose not to testify at trial.

Ayer’s opening attack on *Griffin* is to maintain that the opinion is both too broad and too narrow. His broadness attack — that the opinion mandates reversal for almost any violation of the “no comment” rule — is curious in light of *Griffin*’s successor case, *Chapman v. California*,¹¹ which was decided two years later. *Chapman* held that a violation of the *Griffin* rule did not require “virtually automatic” reversal, as Ayer charges,¹² but rather only shifted the burden to the government to prove “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.”¹³ As Ayer recognizes in another part of his article, federal courts are “commonly” able to conclude that improper prosecutorial comment in a particular case does not require reversal, usually because the prosecution’s case was so strong that the offending comment was thought to have had no impact on the guilty verdict.¹⁴

7. *Id.* at 844.

8. *Id.* at 845.

9. *Id.* at 855.

10. *Id.* at 848-52.

11. 386 U.S. 18 (1967).

12. Ayer, *supra* note 6, at 844.

13. *Chapman v. California*, 386 U.S. 18, 24 (1967).

14. See Ayer, *supra* note 6, at 846 & nn.22 & 23. Ayer concludes that these cases show that the lower federal courts have given *Griffin* a “grudging reception,” and that this attitude by the lower courts “offers another, empirical ground for reevaluation.” *Id.* at 846.

To conclude that application of the *Chapman* doctrine to *Griffin* violations precisely as mandated by the Supreme Court indicates that the lower courts disapprove of *Griffin* is an exercise of judicial psychoanalysis that I cannot follow. A reading of the cases cited by Ayer discloses no criticism of the *Griffin* rule, either express or implied, but simply a common-sense application of *Chapman*, in which the Supreme Court itself limited *Griffin*. If popularity were

Ayer's "narrowness" attack also misses the mark. It is certainly true, as the Court recognized in *Griffin*, that no ruling by the Court could stop a jury from inferring guilt from silence if it were so inclined.¹⁵ While this is accurate, it does not follow that the Court should abandon rules that increase fairness solely because they cannot ensure an absolutely fair trial in every single case. *Griffin* adds to the protections afforded the defendant. To abolish the no comment rule, as Ayer urges, would diminish those protections.¹⁶ Consequently, while *Griffin* may be "narrow" in that it fails to completely solve the problem of prejudice toward a nontestifying defendant, it is far less "narrow" than Ayer's proposed solution.¹⁷

Ayer's second argument makes a basic assumption which under-

the test of the validity of Supreme Court pronouncements, it is hard to imagine a decision that would have been more readily accepted than *Griffin*, since its "no comment" rule was already the law in 44 states and, by statute, in federal jurisdictions. See *Griffin v. California*, 380 U.S. 609, 611-12 nn. 3 & 4 (1965); 18 U.S.C. § 3481 (1976).

In any event, Ayer's "empirical" data, Ayer, *supra* note 6, at 846, is incorrect. See Annot., 14 A.L.R.3d 730-46 (1967), for a discussion of the many state and federal cases, both before and after *Griffin*, where convictions were reversed due to the violation of the "no comment" rule. See, e.g., *United States v. Flannery*, 451 F.2d 880 (1st Cir. 1971); *United States v. Handman*, 447 F.2d 853 (7th Cir. 1971). Many other courts have found harmless error in particular cases. See Ayer, *supra* note 6, at 846 n.23.

15. It is said . . . that the inference of guilt for failure to testify . . . is in any event natural and irresistible, and that comment on the failure does not magnify that inference into a penalty for asserting a constitutional right. . . . What the jury may infer, given no help from the Court, is one thing. What it may infer when the Court solemnizes the silence of the accused into evidence against him is quite another. *Griffin v. California*, 380 U.S. 609, 614 (1965) (citation omitted).

16. Ayer implies that he disagrees with the Court's conclusion in *Griffin* that prosecutorial comment upon failure to testify is a "penalty," 380 U.S. at 614, by saying that "undue prejudice cannot be assumed." Ayer, *supra* note 6, at 846. While the question of what is "due" or "undue" is where I take issue with Ayer, there should be no misunderstanding that such comment is *harmful* to the defendant. See *Johnson v. United States*, 318 U.S. 189, 196-97 (1943). The jury will undoubtedly speculate as to why the defendant fails to testify, but the damage is considerably greater when prosecutors like the one in *Griffin* list all of the matters as to which the defendant had exclusive knowledge "but has not seen fit . . . to explain." 380 U.S. at 611 (1965).

17. Another general criticism that Ayer levels at the opinion is that it was the product of an excess of zeal on the part of the Warren Court, decided "at the peak of its enthusiasm to expand the constitutional protection of criminal defendants." Ayer, *supra* note 6, at 841. *Griffin* was, he says, "the first Supreme Court decision to hold comment on a defendant's failure to testify offensive to the constitutional right of silence." *Id.* at 842 n.7. This is technically true but misleading. A federal statute, 18 U.S.C. § 3481 (1976) (enacted in 1948) forbade prosecutorial comment on the defendant's failure to testify and for this reason, a constitutional *holding* was not required until the fifth amendment was applied to the states in *Malloy v. Hagan*, 378 U.S. 1 (1964), decided shortly before *Griffin*. See *Griffin v. California*, 380 U.S. 609, 619-20 (1965) (Stewart, J., dissenting). Nevertheless, the Supreme Court had specifically recognized that the purpose of the statute was "to protect this [fifth amendment] right." *Stewart v. United States*, 366 U.S. 1, 2 (1961). See also *Johnson v. United States*, 318 U.S. 189, 196-97 (1943) (quoting a holding of the Supreme Court of Pennsylvania that "no inferences whatever can be legitimately drawn . . . from the legal assertion by the [defendant] of his constitutional right" for to do so would be a "mockery of justice"). The *Griffin* Court was hardly writing on a clean slate in terms of recognizing the "no comment" rule as part of the fifth amendment right to silence.

lies his entire article and with which I strongly disagree. He assumes that the inference of guilt from silence is "rational" because "a wrongfully accused person will want to speak up and present his story."¹⁸ Because of that assumed rationality, Ayer concludes that the burden imposed by prosecutorial comment on the defendant's silence is indistinguishable from other burdens upon the exercise of constitutional rights that the Court has permitted. It is the position of this Comment that such a prosecutorial argument is impermissible because it asks the jury to draw an unjustifiable inference from the exercise of a constitutional right.

It is true that it is a basic human impulse to deny a charge of criminal wrongdoing, but it is an impulse that is common to guilty and innocent defendants alike. The appropriate inference to be drawn from the failure to deny is simply this: *a person, guilty or innocent, will deny guilt unless he perceives that the denial will be more costly than silence.*

The arrested defendant's natural impulse when dealing with the police is to try to exculpate himself, regardless of whether he is in fact guilty or innocent. In *Miranda v. Arizona*¹⁹ the Court, recognizing this tendency, held that the defendant must be warned of the rights to silence and counsel before being encouraged by police to give in to that impulse. *Miranda* was followed by *Doyle v. Ohio*,²⁰ which held that an assertion of the right to silence by an arrestee could not be used against him at trial because such an assertion was "insolubly ambiguous."²¹ One simply could not know what had impelled the arrestee to refuse to speak, and no inference of guilt could therefore be drawn from that refusal.²²

At trial the assertion of the right to silence is even more ambiguous because it is inevitably a decision of counsel (or with counsel's advice) rather than of the accused alone. Counsel weighs the costs of

18. Ayer, *supra* note 6, at 855. Ayer recognizes, as did the Court in *Griffin*, that there are other possible explanations for silence besides guilt, such as excessive timidity or nervousness or the fear of impeachment with prior convictions. *Id.* at 855 n.57. However, he brushes these aside by observing that "[c]ommon sense would indicate that neither of these concerns would deter an innocent defendant from having his say in court, except in the most extraordinary of circumstances," *Id.* at 855-56 n.57, and that it is "contrary to human nature" for an innocent person who fears impeachment with prior convictions not to testify. *Id.* at 868 n.121. In any case, he argues that even if such factors do motivate defendants "a significant fraction of the time," the inference of guilt from silence is still rational because "the inferred fact (guilt) [is] 'more likely than not to flow from' the established fact (silence). County Court of Ulster County v. Allen, 442 U.S. 140, 165 (1979)." *Id.* at 856 n.57.

19. 384 U.S. 436 (1966).

20. 426 U.S. 610 (1976).

21. 426 U.S. at 617.

22. 426 U.S. at 617-18.

not testifying (the fear that the jury will hold it against the defendant, the inability to tell his full story, etc.) against the costs of testifying. The latter may include the defendant's unconvincing demeanor, confusion, or faulty memory as to details of his story, and especially, the fear that he will be impeached with prior convictions.²³

A leading trial manual has listed various reasons why defense counsel may decide whether or not to have his client testify. They include:

- (A) *The desirability of having the defendant appear to "come clean."*
. . . .
- (B) *Whether the defendant has something to say that is legally and factually supportive of the theory of the defense.* . . .
- (C) *Whether what he has to say can be shown by other witnesses.*
- (D) *Whether what he has to say, and the way he says it, are credible.* Both the inherent plausibility of his story and his demeanor are important. . . .
- (E) *Whether the defendant is likeable or distasteful, sympathetic or obnoxious, etc.* . . . Does he make a better impression with his mouth shut, or open?
- (F) *Whether the defendant has a prior record.* . . .
- (G)-(I) [Whether there is potentially damaging evidence or impeachment matter to which defendant's testimony will open the door.]
- (J) *Whether cross-examination of the defendant is likely to supply deficiencies or bolster weaknesses in the prosecution's case in chief.*²⁴

Nowhere among the factors to be considered is the question of whether the defendant is, or whether his attorney believes that he is, actually guilty. While that fact will influence such matters as the credibility of his story or the existence of impeachment evidence, the question of actual guilt is essentially irrelevant. Rather, *appearances* are what are important. It is easy to conceive of a guilty defendant who is able to make such a good impression that his counsel will want him to testify. It is equally easy to conceive of an innocent defendant who is so ugly, or stupid, or who has such a poor memory of the facts surrounding the events in question that his counsel will not want him to testify.²⁵

23. See Bradley, *Havens, Jenkins, and Salvucci, and the Defendant's "Right" to Testify*, 18 AM. CRIM. L. REV. 419, 431 n.121 (1981) (criticizing such impeachment — at least when it involves a crime similar to the one at bar — as being inconsistent with the defendant's due process right to testify).

24. A. AMSTERDAM, B. SEGAL & M. MILLER, TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES § 390 (1967) (emphasis original).

25. Consider an innocent defendant who was at home alone and asleep at the time of the robbery he is alleged to have committed. Such an uncorroborated alibi would almost certainly not be presented if a single other negative feature (prior conviction, poor demeanor, etc.) is present. Even though the defendant is *actually innocent*, his testimony will not create that appearance and he will be held off the stand. Similarly, consider an innocent defendant who is charged with having participated in a conspiracy that took place some seven years before trial,

While my conclusion that the inference of guilt from silence is irrational may be considered as simply my view of "common sense" versus that of Ayer,²⁶ there is doctrinal support for the position that I take. Ayer analyzes the historic purposes of the fifth amendment and concludes that the *Griffin* rule finds no basis in them.²⁷ The purpose advanced by Ayer that is most pertinent to this discussion is "the enhancement of human dignity by sparing *guilty* defendants the unhappy choice between harmful disclosure, contempt, or perjury."²⁸ If this is the purpose of the amendment, it follows that it is rational to infer that one who asserts it is likely to be guilty. But the Supreme Court has identified an additional purpose that the fifth amendment serves, beyond those stated by Ayer:

Recent re-examination of the history and meaning of the Fifth Amendment has emphasized anew that one of the basic functions of the privilege is to protect *innocent* men. . . . "Too many, even those of us who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege."²⁹

Of course, Ayer is on firm ground when he quotes the pertinent language of the fifth amendment that no one "shall be compelled

and who simply has no recollection of the events charged. Again, such a defendant will almost surely not testify, despite his innocence. See also H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* 146 (1966). Kalven & Zeisel discovered that defendants without a criminal record elect to testify 37% more often than defendants with a record of past convictions.

26. However, Ayer's view that the innocent are more likely to deny guilt than the guilty has been debunked by no less a friend of law enforcement than Chief Justice Burger. In disagreeing with the assertion of the Court in *Grunewald v. United States*, 353 U.S. 391 (1957) that "the innocent are more likely to [remain silent] in secret proceedings . . . than in open court proceedings," he averred:

[T]here is not a scintilla of empirical data to support [this] generalization. . . . It is no more accurate than to say, for example, that the innocent rather than the guilty, are the first to protest their innocence. There is simply no basis for declaring a generalized probability one way or the other.

United States v. Hale, 422 U.S. 171, 181 (1975) (Burger, C.J., concurring).

27. Ayer, *supra* note 6, at 848-52.

28. *Id.* at 849 (emphasis in original). The other purposes cited by Ayer are (1) "the deterrence of torture and other forms of outright coercion"; (2) "the assurance of fairness in criminal procedure by cultivating a proper relationship between citizens and their government — or more precisely, by requiring the prosecution to develop and prove a criminal case without help from the defendant"; and (3) "the protection of free expression and association." *Id.* at 848-49. See note 31 *infra* for a discussion of how Ayer's proposal would also run afoul of the second stated purpose of the amendment.

29. *Grunewald v. United States*, 353 U.S. 391, 421 (1957) (quoting *Ulman v. United States*, 350 U.S. 422, 426 (1956))(emphasis original).

In *Grunewald* the Court held that a defendant who testifies at trial cannot be cross-examined as to his assertion of the right to silence in the grand jury for the reasons stated in the text. The holding in *Griffin* would, it seems, follow inevitably from the reasoning, if not the holding, of *Grunewald* (*Grunewald* was a supervisory, not a constitutional, decision). Cf. *United States v. Hale*, 422 U.S. 171 (1975) (defendant who offered alibi on the witness stand was improperly questioned about his earlier silence during a police interrogation). But see *Jenkins v. Anderson*, 447 U.S. 231 (1980).

. . . to be a witness against himself," and notes that the practice condemned in *Griffin* did not "compel" testimony in the strict sense of the word, but rather merely imposed a burden on nontestimony.³⁰ And Ayer is surely correct in observing that, according to recent decisions of the Court, the finding of a burden "is where the analysis begins, not where it ends."³¹ But given that there are a variety of reasons, totally consistent with innocence, that may impel one to exercise his fifth amendment right to silence, it follows that to allow the judge or prosecutor to tell the jury that such an exercise is evidence of guilt is not "rational" and should not be permitted. The drawing of an "irrational" inference from the exercise of a constitutional right is clearly an impermissible burden.³²

Even if I were to agree with Ayer as to the rationality of the inference of guilt, I would still contend that the burden imposed by that inference upon the exercise of a constitutional right is impermissible. It is true, as Ayer points out, that there are many burdens associated with the exercise of constitutional rights. For instance, pressure to testify "arises from the evidence in the case and the defendant's fear that the jury will draw the adverse inference on its own."³³ Obviously, as the Court recognized in *Griffin*, it is one thing for the defendant to be faced with a difficult choice because of the nature of a criminal trial.³⁴ It is quite another for the *government* to impose a specific penalty (as such comment surely is) upon the exercise of a constitutional right.³⁵

30. See *Carter v. Kentucky*, 101 S. Ct. 1112, 1122 (1981) (Powell, J., concurring) ("A defendant who *chooses not to testify* hardly can claim that he was *compelled to testify*") (emphasis original).

31. Ayer, *supra* note 6, at 855.

While prosecutorial comment arguably does not "compel" testimony, it may be said to compel self-incrimination. The prosecutor's argument is that the defendant's silence should be considered as evidence against him — that is, that the silence is incriminating. Thus, incrimination is compulsory by being unavoidable. By allowing the prosecutor to use the defendant's silence as evidence, Ayer's proposal would also violate his third historic purpose of the fifth amendment — "requiring the prosecution to develop and prove a criminal case without help from the defendant." *Id.* at 849. If the no comment rule is abolished the defendant can't avoid "helping" the prosecution, for either silence or testimony will be used against him. Ayer concedes that "the defendant's decision to remain silent is not a testimonial or communicative act," *id.* at 868, and then proposes to turn it into such an act by letting the prosecutor argue that it is evidence of guilt.

32. See *Barnes v. United States*, 412 U.S. 837, 841-43 (1973) and cases cited therein.

33. Ayer, *supra* note 6, at 858.

34. See *McGautha v. California*, 402 U.S. 133, 211-13 (1971).

35. *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979), upon which Ayer relies, Ayer, *supra* note 6, at 859-61, can thus be distinguished. The inference of possession of firearms from the fact that the defendants were found in an automobile where such firearms were present is, the Court found, "rational," 442 U.S. at 165, unlike the inference of guilt from silence. Moreover, the presumption in *Ulster County* was simply a factual presumption arising out of a series of events, not out of the defendant's exercise of a constitutional right. It bur-

There is one line of cases that seems to lend some support to Ayer's view that, though prosecutorial comment may burden the right to silence, it is not an *impermissible* burden. In *Corbitt v. New Jersey*³⁶ the Court upheld a statute that imposed a mandatory life term upon conviction by a jury but gave the judge discretion to impose a lesser penalty upon conviction by a plea of "non vult." The petitioner argued that such a scheme placed an impermissible burden upon his assertion of a right to a jury trial. The Court held that encouraging guilty pleas "by offering substantial benefits in return for the plea" was permissible.

Even assuming that these sixth amendment cases may be analogized to the exercise of a fifth amendment right, they may be readily distinguished. In contrast to plea negotiations, in which the defendant may bargain for certain benefits in exchange for waiving the right to a jury trial, the defendant in the *Griffin* situation is faced with a Hobson's choice. If, for instance, he will be impeached with prior convictions if he takes the stand, then to testify will cause him a serious detriment. If he chooses not to testify, and the prosecutor and the judge instruct the jury that his failure to do so is evidence of guilt, then he suffers a different detriment by being, in effect, "incriminated" by his silence. He does not, as in *Corbitt*, exchange a right for a benefit — no matter what he does, he suffers a detriment. A comparable case, in the jury trial context, would be one in which the judge instructs the jury that people who choose jury trials are likely to be guilty. This, I trust, Ayer does not advocate.³⁷

dened only the defendant's exercise of his right to silence in the sense that it strengthened the prosecution's case. It was in no sense a "penalty" for exercise of a constitutional right. In *Barnes v. United States*, 412 U.S. 837 (1973), which involved the presumption of guilty knowledge from the unexplained possession of stolen property, the Court rejected such a "penalty" claim out of hand:

Introduction of any evidence, direct or circumstantial, tending to implicate the defendant in the alleged crime increases the pressure on him to testify. The mere massing of evidence against a defendant cannot be regarded as a violation of the privilege against self-incrimination.

412 U.S. at 847.

By contrast, the comment forbidden by *Griffin* is not simply a logical evidentiary inference, but is a penalty that the defendant would have to pay for exercising his right to silence. Even if it were true that defendants who fail to testify are more likely to be guilty, none of the cases cited by Ayer support the proposition that the exercise of a constitutional right may permissibly give rise to such an argument. *Doyle v. Ohio*, 426 U.S. 610 (1976), is precisely to the contrary. Cf. *Simmons v. United States*, 390 U.S. 377, 394 (1968) (Court held that it was "intolerable that one constitutional right should have to be surrendered to assert another").

36. 439 U.S. 212 (1978).

37. Actually this inference may be more "rational" than the inference of guilt from silence. It was a well known maxim among defense attorneys in the criminal courts of the District of Columbia that you never waived a jury trial unless you believed that your client was innocent. In cases where the weight of the evidence was against the defendant there was always the possibility that the jury, due to sympathy, confusion, prejudice or some other unexpected rea-

The abolition of the *Griffin* rule would indeed be a substantial boon to prosecutors. To the extent that one feels that prosecutors have been unduly hamstrung by the Supreme Court's view of the Constitution, arguments that the rule should be abandoned are appealing. Indeed, any prosecutor would be cheered by the possibilities for accusatorial histrionics that adoption of Ayer's proposal would afford. Unfortunately for prosecutors, the *Griffin* rule is not so thin a reed as Ayer portrays it. Rather, the rule is firmly rooted in a basic truism: There are many reasons apart from guilt — particularly fear of impeachment with prior convictions — that may cause a defendant, upon advice of counsel, to choose not to testify. To allow the prosecutor to argue that failure to testify is evidence of guilt is thus irrational and inconsistent with our traditional understanding of the fifth amendment privilege.³⁸ Such argument is therefore an impermissible burden on the right of silence.

son, might find him not guilty or at least hang. By contrast, the defendant's decision not to testify is, in most cases, totally unrelated to his guilt or innocence.

38. Beyond the express reasoning of the Court in *Griffin*, a due process rationale can be advanced to support the "no comment rule." That is, that what the government gives with one hand it cannot take away with the other. In *Doyle v. Ohio*, 426 U.S. 610 (1976), the Court held that it was "fundamentally unfair and a deprivation of due process" for the authorities to advise a suspect of his right to silence and then use that exercise of silence against him at trial. 426 U.S. at 618. *Accord*, *Johnson v. United States*, 318 U.S. 189 (1943). Certainly advice of counsel as to one's rights in the courtroom should be accorded as much deference as such advice by the police.

This unfairness problem could be solved by simply advising the defendant that, while he has a right to silence, its exercise may be the subject of adverse comment, as is done in Germany. See Langbein, *Land Without Plea Bargaining: How the Germans Do It*, 78 MICH. L. REV. 204, 208 (1979). While such a procedure would solve this problem, it would not solve the more fundamental problem discussed in this Comment: that such prosecutorial argument is *not rational*.