

beginning to be squeezed away. Now as far as the four elements here are concerned, the safeguards proposed in the bill H.R. 5726, the police at the present time do warn the defendant that he need not make a statement.

Senator McINTYRE. This is just the practice?

Mr. ACHESON. That is a standard practice.

Senator McINTYRE. Not required?

Mr. ACHESON. I won't say it is not required, Senator. I think if they stop doing it, and if they elicited confessions, the courts would probably exclude them. It is an absolutely uniform practice. It is done in every case, so far as I know.

The CHAIRMAN. Might I interrupt at that point for a question?

Senator McINTYRE. Surely.

The CHAIRMAN. On this first safeguard that you are testifying to, do you run into problems when you actually get to court in accurately ascertaining whether a warning was or was not given to the defendant? It occurs to me that this first safeguard that you suggest might lead to considerable areas of controversy. I have always thought it is a fairly standard practice everywhere in the United States to give this warning about any statement being used against you. But don't you run into the problem of the police saying, "Yes, we gave the warning," and the defendant saying, "No, you didn't tell me a thing about it"?

Mr. ACHESON. Not very frequently, Mr. Chairman. I think it is known to the courts that this is such a standard practice that unless there is some solid evidence that the warning was not given, they assume it is. Now in the case of a written confession, the warning is right there in print on the statement which is subscribed by the defendant, and almost in no case is there any rebutting evidence that it was not given in that situation.

I do not feel it is a device. I think the warning is given. The police do comply with this condition in a bona fide way. And as far as I am aware, and I think I would know if it were otherwise, it is standard practice.

Senator McINTYRE. You were going to talk about the second element.

Mr. ACHESON. As to the second element, occasionally a relative of the defendant does come down to the police station when they are notified that the defendant is being held there. Occasionally they will retain counsel for the defendant and counsel will come down to the police station. When that happens, it is commonplace for the counsel or the relative to be allowed to speak to the defendant at some point during the proceedings. But there is no fixed practice, of course, that the interrogation must be suspended until a lawyer or a relative arrives.

Senator McINTYRE. Let me interject this question. If a lawyer arrives, is there any attempt by the police to keep this lawyer from the suspected criminal until they have had a chance to get this threshold confession of which you speak?

Mr. ACHESON. I think there are situations where the lawyer arrives at a time when the interrogation is actually going on. Under those circumstances, I doubt very much if the interrogation would be interrupted. I hesitate to generalize there, Senator, there is such a variety of facts in the situations that come up here.