

police specifically advise an arrested person of this opportunity must certainly incur a new handicap on police investigations. I believe that the testimony of witnesses before your committee has been unanimous that any attorney will immediately advise his client to make no statement whatever to the police, and to require the police to actively solicit this probability would operate to effectively preclude any in-custody questioning of a defendant.

(3) A maximum of 6 hours elapsed time between arrest and completion of the confession:

As I informed your committee, I believe that imposition of a specific time period, especially one as short as 6 hours, for obtaining an admissible confession would be harmful to police investigations in some cases. I know that there are those persons who argue that criminals, by and large, are not sophisticated and knowledgeable in matters of law and their basic rights and that they consequently fail to take advantage of legal limitations imposed on the police. I cannot agree with this position. Even though it may be demonstrated that some criminals are either simple, uneducated thugs, or are previously law-abiding citizens, naive in law enforcement procedures which never before applied directly to them, there remains a considerable proportion of the criminals who do have a rudimentary knowledge of these limitations obtained through their contacts with other criminal elements and, in fact, through their own experiences with the police and during confinements for previous offenses. During my own testimony before the committee, I explained how one of our criminal repeaters had learned of the need to avoid leaving fingerprints at the scenes of his crimes.

I am certain that the habitual criminal would quickly learn of any time limitation on police interrogations and would take advantage of it.

(4) A responsible witness, other than a law enforcement officer, observing the questioning, or a verbatim transcript or recording of the interrogation:

I testified that I would not have any serious objection to this fourth safeguard as presented by Mr. Katzenbach. However, when I compare this proposal by him with the full language of the proposal in H.R. 5726, I am reminded of several very important points on which I should comment.

It is worth mentioning the problem, which was brought out in your hearing, of obtaining a responsible witness other than a law enforcement officer for observing the questioning of arrested persons at late and unusual hours of the night. This problem would arise even during daytime questionings if this provision were required in all cases handled by this Department. One of the problems of law enforcement today is the reluctance of witnesses, even complaining witnesses, to become involved in the criminal processes and the resulting repeated appearances at hearings and trials, which impose on the time and even the livelihood of the innocent witness. I feel that we would encounter similar problems in seeking responsible persons to witness confessions and to thereby involve themselves in prolonged criminal processes.

As I stated to the committee on this point, our current practice is to try to arrange for reenactment of a crime before a disinterested party such as an apartment house manager or an apartment janitor and we try, when possible, to have the accused repeat a confession before the complaining witness. However, we have not heretofore made a concerted effort to have the entire questioning of the subject witnessed by a disinterested person. One problem which would arise under a "responsible person" requirement is the need for insuring, before the questioning begins, that the witness selected will fully withstand a definition and test of his "responsibility" by a defense attorney later attacking the validity of the confession.

However, it is likely that we can avoid these foregoing problems by resorting to the alternative transcribing or recording of questioning. These factors are mentioned here, therefore, for information of the committee and to demonstrate the real need for the alternative procedures.

Having compared the fourth safeguard as briefly worded by Mr. Katzenbach with the more detailed wording of H.R. 5726, I believe it worthwhile to recommend that any provision of this sort be written along the lines of the latter to specifically allow recording by a wire, tape, or other sound recording, or a questioning conducted subject to other comparable means of verification.

As you can well imagine, verbatim transcription of the questioning of all persons arrested could become quite expensive and, with present shortages of shorthand personnel, would very likely be difficult to obtain for hurried proceedings at late and unusual hours of the night. By comparison, electronic recording is inexpensive (after the purchase of original equipment) and can be made available at all hours without unreasonable problem.