Mr. MITCHELL. Well, the story was also published in a local newspaper in Arizona, and that story sets forth essentially the same things.

But it seemed to me that as long as we had people who were making the assertion, I would give their names.

I would like at this point, if you will indulge me, Senator, to call attention to another technicality.

Senator Cambell, whose name I mentioned, provided us with an affidavit. At the luncheon break Senator Cook indicated that he had seen a copy of that affidavit which I submitted, and that it did not have a seal on it; it was not a notarized document. It becomes important for me to do this because Senator Campbell has volunteered to come up to testify in person. I have asked him to send to you and Senator Cook, Senator Hart and all the others who were present, telegrams saying that he is willing to come up, he is willing to testify. But, in the interim, I would like to offer you the notarized copy of his statement which I submitted this morning, and as you can see by feeling the seal, there is a bona fide notary seal on that document; and I think it is important to do that because I would not want this committee to think that I would try to come up here in a spirit of duplicity and allege that something is a notarized document which is not in fact a notarized document.

Senator MATHIAS. I will say, speaking for this member of the committee, he wouldn't entertain such a thought.

Mr. MITCHELL. And if it pleases the Chairman, I would like to submit the original for the record.

Senator HART. The original will be received. I have seen it and it does have the seal and it is in fact a notarized document; and any committee member who has any remaining doubts is free to look at it.

(The affidavit referred to follows:)

AFFIDAVIT

ARIZONA STATE SENATE,
Phoenix, Ariz., November 4, 1971.

I, Senator Cloves Campbell, do hereby testify that on or about June 16, 1964, a city council meeting was held in the city of Phoenix for discussion of an ordinance dealing with public accomodations for all citizens in the city.

At that council meeting Mr. William Rehnquist, the present nominee for the United States Supreme Court spoke in opposition to the proposed ordinance.

After the meeting I approached Mr. Rehnquist and asked him why he was opposed to the public accommodations ordinance. He replied, "I am opposed to all civil rights laws."

(Signed) Senator CLOVES CAMPBELL.

[SEAL]

THELMA HENSEN,
Notary Public, my commission expires Jan. 8, 1974.
City of Phoenix, Maricopa County, Ariz.

Senator MATHIAS. I would like to ask Mr. Mitchell one further question.

You say this incident was covered by the press at the time. Was there any complaint made to any election official or any other appropriate official at the time?

Mr. MITCHELL. Apparently the complaints were made to election officials and, as I understood it, in some way this was brought to the attention of the U.S. district judge in Arizona who asked for or in some way caused to be made an investigation by the FBI.

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Senator MATHIAS. Is this a matter of record in the U.S. court there?

Mr. MITCHELL. I do not know. I asked Senator Campbell if he would check that out, and when he comes up, if the committee is willing to hear him, that he be prepared to testify on that point.

But as you know, Senator Mathias, it has for some time been a policy of the Justice Department on election day to have members of the judiciary in their offices available to give almost instant decisions in voting rights disputes. I don't believe that those are necessarily matters of record; but I do know it is an extensive practice. I believe that the judge would certainly verify that he was aware of such a matter; and I respectfully urge that the committee, at least, write him a letter. I didn't think it was proper for me to ask a Federal judge to make a statement for the benefit of this committee, but I would earnestly hope that the committee would address such a letter to him to seek a reply.

Senator MATHIAS. Mr. Rauh, did you want to comment?

Mr. RAUH. I was going to make a comment in support of our position. It seems to me we now have a prima facie case on the voting rights matter and it would be unthinkable that the committee would leave it rest at this point. Without overstating what happened, there are at least charges that are not wholly answered that Mr. Rehnquist did himself deal with voting rights in an illegal way.

You have at least five people who have given information about this: Mr. Campbell, Mr. Tate, the official who doesn't want to be revealed, the State judge and the Federal judge. In other words, with this many people to go to, it would seem to me that some investigation would clearly be in order.

Now, we are in a funny position. The staff of the committee is largely, I suppose, working for a Senator who has already said he has made up his mind and is going to vote for the nominee. I think, nevertheless, that some staff member who is totally independent of one who has made up his mind, ought to be assigned to get this information. So I would hope you would treat our testimony not as an effort to say we know all the facts, but as a sufficient statement of facts that the committee would itself go and make certain what the true situation really is.

Senator MATHIAS. Mr. Rauh, if that air of complacency ascended to such a degree on this committee that it was impeding our effort to find the right answers, I would never bother to make the inquiry of Mr. Mitchell in the first place.

Mr. RAUH. I want to make clear that you have certainly done yeoman service on the civil rights front and I accept that exactly as it was said.

Mr. MITCHELL. Senator Mathias, I would just like to say I have had a lot of trouble with my conscience in deciding whether to give another bit of information that I know because it was a question about whether I should, but I think now that I have got even someone from Arizona to indicate that he knows this individual, I would like to say that I am advised that the gentleman who was with Mr. Rehnquist at the time Mr. Rehnquist said that he and a Democrat were working together, is a State judge in the superior court in the State of Arizona, in the city of Phoenix. His name is Judge Charles

Hardy. I didn't give his name before but I feel, after my conversation with people in Arizona, that I have—I am free to do that and I would respectfully urge that Judge Hardy also be included in the inquiry to determine what his version is of the things that were going on at that time.

Senator MATHIAS. Thank you very much.

The CHAIRMAN (presiding). Senator Bayh?

Senator BAYH. Thank you very much, Mr. Chairman.

Mr. Mitchell and Mr. Rauh, I listened with a great deal of interest to your testimony this morning. It covered a great deal of the territory that I had covered or tried to cover with Mr. Rehnquist, much of which was to no avail.

I interrupted your thoughts, Mr. Rauh, this morning to ask you to further explain the reason given for Mr. Rehnquist's change of position on that one particular matter of the equal accommodations, the access of minority groups to the drugstores of Phoenix. I was disturbed at the thrust of his testimony both in opposition before the council and particularly in the letter to the editor in which he stressed the fact that we dare not violate property rights and seemed to weigh the property rights and come out ahead of personal and individual rights.

Would it be fair to say that at least as far as the testimony that is now before us, as you read the response to my question from Mr. Rehnquist, he has not said really that he is willing to make a different determination on the merits of the issue, that he now feels that it was wrong to keep black people out of drugstores but that he feels that from a technical standpoint he was sort of surprised to see that it worked so well and there wasn't a great deal of disturbance? Is that a fair summary of what he has said?

Mr. RAUH. I think that is exactly right, Senator. It is what I was trying to point out—that he hadn't changed his views that property rights stand above human rights; he simply found out in this case that the ordinance worked so there wasn't any real clash between the two.

I think Mr. Rehnquist still holds firmly to a scale of values which most people reject. I think everything was corroborated by Mr. Mitchell's affidavit which he just showed Senator Mathias. I think that sentence that, "I am against all civil rights legislation" is really the key to the whole thing. He just doesn't feel that the rights of minorities ought to be protected. "I am against all civil rights legislation." Well, I deduced he was against all civil rights legislation by logic. If you are against the Phoenix ordinance, which is the simplest of all civil rights legislation, you would be against all others. But Mr. Mitchell has an affidavit that he actually said he was against all civil rights legislation.

Senator BAYH. That is the affidavit from Senator Campbell?

Mr. MITCHELL. That is true, Senator Bayh and, as I indicated, I had submitted a xerox copy which didn't show the notary seal. When the committee reconvened I gave the original and the committee now has it. I also have talked with Senator Campbell and told him that Senator Cook had indicated to the television people that Senator Campbell ought to be here himself. Senator Campbell said he would be delighted to come and is sending telegrams asking for an opportunity to be heard, to say in person what he has stated in his affidavit.

Senator BAYH. He has heard the nominee say he is against all civil rights legislation?

Mr. MITCHELL. His statement is that following the nominee's presentation to the city council in 1964 he, Senator Campbell, approached the nominee, talked with him, face to face, and the nominee made the flat assertion that he was against all civil rights legislation.

Senator BAYH. One of the other items that concerned me in the nominee's past record in the whole human rights area was the letter to the editor and the position he had taken vis-a-vis the superintendent of schools in Phoenix with respect to the effort that was being made to integrate the Phoenix school system.

In your study, has your organization tried to decide whether to be for or against or neutral on the nominee? Did you investigate the issue? What was the thrust? What was the issue at that time? And could you give us a further interpretation of what you feel Mr. Rehnquist's position was vis-a-vis that issue?

Mr. MITCHELL. I can, Senator Bayh.

All the information on Mr. Rehnquist that we have presented has come from our people in Arizona. They indicate that at that time, which was in the early days of the school desegregation effort, there were school officials who were trying to find ways to comply with the 1954 decision and to eliminate conditions of segregation which are popularly described as de facto conditions. This, of course, sprang out of the good will of the people of that community who were apparently trying to make an honest effort to be ahead of the courts, not to wait until somebody served a subpena on them; but, as a matter of good will and civic responsibility, to attempt a good faith effort to desegregate the schools. This is what prompted Mr. Rehnquist's attack. So it was a purely gratuitous attack on people who, as responsible officials, were seeking to act in good faith and with good will.

Senator BAYH. Now, in trying to get Mr. Rehnquist's present thoughts on the importance of quality education, and the importance of desegregating schools and an effort to get quality education for all of our children, the best I could get from him on two occasions was that he was opposed to busing children long distances. I suppose if you took a poll of this committee you might get a unanimous vote on that—although, as a kid I was bused long distances to get from the farm to our township school and maybe that is the reason I am like I am—but was that the only issue involved in the Phoenix school battle at that time, busing children long distances?

Mr. MITCHELL. No; as a matter of fact, busing was not an issue of any importance, as I understood it. This was an effort to achieve a condition of desegregation which would not have involved any great degree of busing; and so far as I know, Mr. Rehnquist, in his letter, addressed himself to some of the recommendations which had been made by the Civil Rights Commission.

As Mr. Rauh pointed out this morning, busing was only a minor aspect of the desegregation attempt, that it really was like the old question, you know, do you want your daughter to marry a Negro or do you believe in social equality and that kind of stuff which is not addressing itself to the issue.

But it is clear that if you raise a question of busing, you immediately get the emotions going and get everybody upset; so this was a contrived attempt to divert attention from the real issue which was

orderly desegregation and to make it appear that it was an issue of busing children.

Senator BAYH. I don't want to put words in your mouth, but inasmuch as my question was directed at why the nominee would oppose the efforts to desegregate the Phoenix school system, and the only response I received on two occasions was that the nominee was opposed to busing children long distances, you would suggest that perhaps that answer was not responsive to the question?

Mr. MITCHELL. I would go further, Senator, and say——

Senator BAYH. Please do.

Mr. MITCHELL. I think it was deliberately evasive and the reason I say that is I have read a law review article that Mr. Rehnquist wrote in discussing changes of policies in the Justice Department. The clear thrust of that article with respect to school desegregation is concurrence with the present administration's policy. That policy was best evidenced when the NAACP was attempting to get immediate implementation of desegregation before the Burger court, and the Justice Department, for the first time, was in there opposing us.

I am happy to say that the Burger court unanimously upheld the position of the NAACP.

Mr. RAUH. Senator Bayh, I would like to say I gave 10 examples of evasion this morning, and I left that one out. I think that was a mistake.

Senator BAYH. We will revise the record and let you add an 11th one.

Mr. RAUH. So I guess there are 11.

I would like to make the additional point that the desegregation answer was so tremendously evasive because what you were asking was something that had to do with the goal. Why was he opposed to the goal of desegregation, and he comes back and says he was against one of literally a plethora of means. As Mr. Mitchell says, a man this smart could only have been deliberately evasive.

Senator BAYH. May I proceed a bit further on the voting practices. I think I raised that question in talking to Mr. Rehnquist. On page 149 [of the typewritten transcript] in response to a series of questions that I posed, he said, and I quote:

> My right and responsibilities, as I recall them, were never those of challenger.

In the previous sentence he said, "My recollection is I had absolutely nothing to do with any sort of poll watching."

Now, as I understand the affidavit from Senator Campbell, it relates to hearing him say he was against any kind of civil rights legislation. Did he go further to say—or was that—someplace in your testimony, Mr. Mitchell, I think you referred to someone who witnessed the nominee in the process of challenging at the polling place?

Mr. MITCHELL. That is correct.

Senator BAYH. As I recall, you said you were unable to provide us with the man's name because of fear of retribution or something. Is there any way that we can have tangible evidence? This is sort of a hearsay situation.

Mr. MITCHELL. I am aware of that. As I said——

Senator BAYH. It doesn't at all diminish your credibility but certainly I would feel more comfortable about this if I could look the man in the eye and be able to judge for myself his credibility. I have no concern about yours.

Mr. MITCHELL. I thank you, Senator Bayh. I was acutely aware of it. It is a question of the balancing of an individual's fear, which may be justified, that he would lose his job if he comes forward, and furnishing the committee with information. So, being concerned about that, I called down to Arizona in the lunch break, talked with Senator Campbell who gave me the name of a Mr. Robert Tate, and he said that Mr. Robert Tate did witness Mr. Rehnquist at work, and he expects that Mr. Tate would be willing to come forward and make a statement.

Now, I think that this is bigger though than just the incident which involves Mr. Rehnquist because Senator Campbell says this is a consistent practice in that area of Arizona, where they try to keep the Negroes from voting. And, accordingly, I suggested—I guess you might have been out of the room at the time—that I would hope the committee would check with the U.S. district judge in the city of Phoenix who, as I understand it, had this matter reported to him and did ask for a Federal Bureau of Investigation inquiry.

I also suggested that Judge Charles Hardy, who is in the Superior Court in Phoenix, Maricopa County——

Senator BAYH. Has anybody in your organization talked to him down there? Do you know what his thoughts are?

Mr. MITCHELL. I would stop at saying that I know that our people have talked with the Federal judge. I wouldn't think it would be quite fair for me to say what he would be prepared to testify or give information on, but I think it would be enlightening and probative if he had a communication from the committee.

Senator HRUSKA. Mr. Chairman, may I ask the Senator from Indiana if he would yield briefly for the purpose of inserting a letter in the record?

Senator BAYH. Please.

Senator HRUSKA. Mr. Chairman, this morning my attention was called to an incident which occurred during a jury trial held in the Federal district court in Phoenix, Ariz., some 12 years ago. Judge Boldt of Tacoma, Wash., Federal district judge from that State, was presiding over this particular trial as a visiting judge in Phoenix and one of the attorneys in the case was Mr. Rehnquist.

There were comments made by Judge Boldt during the course of that trial directed to Mr. Rehnquist in regard to some of his conduct during the trial which reflected unfavorably on Mr. Rehnquist. This morning I telephoned Judge Boldt, who happens to be in Washington, and asked him if he recalled the incident. He did, and he proceeded to give me an account of it.

At the conclusion of that verbal account, Mr. Chairman, I asked the judge if he would be willing to set down that account in a written form that could be submitted to the committee and released to the press and to the public.

He agreed to do so and about an hour ago there was delivered to us this letter which is addressed to me, Mr. Chairman, and dated November 9, 1971, and it reads as follows:

Dear Senator Hruska: I do recall the incident in court involving Mr. Rehnquist and myself. It occurred about 12 years ago when I was holding court on a temporary assignment at Phoenix, Arizona. I remember that it occurred during a proceeding in a civil case in which a stockholder of an insolvent Arizona insurance company was suing officers to recover for the company substantial amounts of company assets allegedly misused or misappropriated to the loss of the company.

My recollection is that, as a result of my own misunderstanding of what Mr. Rehnquist said or did during the proceeding, I sharply reprimanded him for what I considered disrespect to the court or something of that kind. After adjournment of the proceeding, other lawyers in the case came to my chambers and told me they thought I had misunderstood Mr. Rehnquist and that he was not chargeable with any impropriety. After their explanation, I was satisfied that the incident arose entirely through my misunderstanding or that of Mr. Rehnquist, or both, and I so informed the lawyers and asked them to extend my apology to Mr. Rehnquist, and if anything more were required to correct the situation I would be glad to do it. From that day until now I have heard nothing further about the incident from either Mr. Rehnquist or anyone else.

In my judgment, it would not be accurate or fair to draw any unfavorable inference whatever concerning Mr. Rehnquist's professional integrity or ability from that incident. Signed Geo. H. Boldt.

Mr. Chairman, I ask consent that this letter be placed in the body of the record at this point.

The CHAIRMAN. Yes.

(Letter from Judge Boldt follows:)

U.S. COURTHOUSE,
Tacoma, Wash., November 9, 1971.

HON. ROMAN L. HRUSKA,
U.S. Senator,
Washington, D.C.

DEAR SENATOR HRUSKA: I do recall the incident in court involving Mr. Rehnquist and myself. It occurred about 12 years ago when I was holding court on a temporary assignment at Phoenix, Arizona. I remember that it occurred during a proceeding in a civil case in which a stockholder of an insolvent Arizona insurance company was suing officers to recover for the company substantial amounts of company assets allegedly misused or misappropriated to the loss of the company.

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In my judgment, it would not be accurate or fair to draw any unfavorable inference whatever concerning Mr. Rehnquist's professional integrity or ability from that incident.

GEO. H. BOLDT.

Senator BAYH. Mr. Chairman, I appreciate the fact that the Senator from Nebraska made this insert. I want the record to be unequivocally clear that so far as I am concerned nobody has made an issue of this. I don't know where the information came from. I don't know why the Senator from Nebraska considered it pertinent to the questioning because nobody had raised that one issue.

I may say that specific issue had been brought to the Senator from Indiana and I thought it was so irrelevant that I hadn't even brought it up, had no intention of bringing it up, because it involved a specific case, the nuances of which I was not appraised, and thought this would be very unfair to the nominee to bring it up.

Senator HRUSKA. The Senator from Indiana is one of the most steadfast and persistent advocates of having all the facts brought before this committee. I had it on reliable information that on issue