So, I hate to be too brief, but I'm afraid that's all I can recall now, other than to eminently commend Bill Rehnquist and urge you to please confirm him, as he is one of the finest lawyers that I have ever had the good fortune to have anything to do with.

Thank you.

The CHAIRMAN. Mr. Gordon Marshall.

## STATEMENT OF GORDON MARSHALL

Mr. MARSHALL. Yes, sir.

Mr. Chairman and members of the committee, you have heard the statement read by Mr. William Turner relative to our activities as cochairmen. We were the other side of the coin, if you will, in that we recruited and placed challengers, following their instructions. During election day we traveled from poll to poll to see that they were in place and to see if we were able to lend them any sort of assistance.

I have lived in Phoenix since 1956, as a corporate officer of a corporate business there. I have since retired, or semiretired, as Ralph and I prefer to say.

I would like to just take my few remaining minutes to again commend to this committee a man I have known for 25 years, as a friend, companion, a devoted father, a partner of mine and Mr. Turner's, a man without malice or animosity, a gentle person full of consideration for his fellow man.

It seems to me utterly inconsistent, with the man that I have known, and his character, that he has committed some of the acts I have heard ascribed to him in the last few days. He is not a man who intimidates, threatens, or harasses.

Thank you very much.

The CHAIRMAN. Mr. George Randolph.

## STATEMENT OF GEORGE RANDOLPH

Mr. RANDOLPH. My name is George F. Randolph, Mr. Chairman and members of the committee. I'm a native Arizonan, I've been an Arizona lawyer for 33 years. I have been licensed to practice before the U.S. Supreme Court for 29 years. I was Senator Goldwater's legislative assistant and counsel to the Senate Labor Committee from the years 1957 to 1960, so I have a little knowledge of your procedure here.

I was involved in the Republican challenging program in the years 1960, 1962, and 1964. I was one of the lawyers that participated in the advising of the poll watchers and of the challengers in those years. I have known Justice Bill Rehnquist since 1952, when he came to Phoenix.

In 1960 it wasn't clear that we prohibited the challengers from using paragraph 7, of ARS § 16-921, and we did permit the challengers, upon occasion, if a voter couldn't read or write the Constitution, to ask the board to challenge the voter on that basis. That's my best recollection. I don't think we favored it at all, and it was rarely done.

But in 1962 and 1964, the night or so before the election, Bill Rehnquist and Jim Bush conducted a school for challengers—at which there were probably 25 or 30 of us at least, and we were

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given a kit and a copy of the statute and told how to challenge the voters. And we were also, the challengers in this group were given boxes of envelopes which had been sent to registered voters on the day after the registration had closed. These letters were sent through the post office with orders to the postmaster: Do not forward. And there were a great many of them that came back. We sent them to selected precincts, to all of the registered Democrats in those precincts.

At the challenge school we designated the challengers who were going to be in the various precincts—and I brought an official Maricopa roster of all the precincts with us, so if you have specific questions about specific things, which I will discuss in a minute or two, I can just discuss pretty much any precinct because I know them all pretty well.

Now, the challengers were given those envelopes—from 1962 and 1964—these were the years that we have had the greatest deal of testimony on—and told that they were to take the credentials that they were given, where they were certified challengers, to the various polls and try to get there at 6 o'clock in the morning and locate a telephone. The reason for that is that we knew there would be some problems, and we wanted to be sure that they knew how to get in touch with us as quickly as possible. Also by use of the telephone, of course, they would be able to call Justice Rehnquist and Jim Bush at headquarters to take appropriate action for any problems that might arise.

On each election day in 1960, 1962, 1964, I arrived at the Republican headquarters and was assigned as a member of two pairs of lawyers—there might have been more, but there were two pairs of lawyers that were furnished automobiles with telephones. And our duties were to go to the polling places where there were problems and resolve them without creating delays or harassment or any interference with the voting process.

On election day morning in 1962, the election board refused to allow Republican challengers to challenge voters in Monroe precinct. That's one you haven't heard about. My partner and I were dispatched to resolve the issue. While we were explaining the law to the board, a Democrat lawyer by the name of Herb Finn came in and stated in a loud voice that I was disturbing the election—I was delaying it a little bit because I was talking to the board and explaining what the statute said and——

Senator HEFLIN. You say you were talking to the what?

Mr. RANDOLPH. The election board, Senator, the election board consisting of the chairman and the two other parties on the board who would certify the voters as they came in and allow them to vote. And those people had to make a decision at any time a challenge was made as to whether the voter had moved from the precinct or was otherwise an unqualified voter. I think you went into that a little bit in the——

Senator HEFLIN. Was one of those what you would call a polling judge?

Mr. RANDOLPH. Yes, sir, the chairman would be the judge. There was also other parties called the marshal and the inspector. The marshal was supposed to take note of any illegal activity and cause

it to be discontinued by either calling the police or getting it to be corrected.

But, at any rate, our instructions were—all of us at that school—were to address any problems to the board; we were not to, under any circumstances, interfere with any voter. And that was true from 1960 through 1964.

So some of this testimony that has come in is kind of surprising to me, because it was directly against the instructions given by Jim Bush and Bill Rehnquist.

OK, on this day, Herb Finn came in and said that I was interfering, and he said he was calling the police and was going to have me arrested for interfering with the election, for a felony. I got to the phone and I called the deputy county attorney for the elections, whose name was Jane Greer—and that name is in that article that you have, Senator Hatch, that you read. In 1962 we had the good fortune that she came right down—and she's a very level-headed attorney, and she made the decision at that time, because it was a little unclear as to who should be seated—but she said there is only going to be one here, and we'll seat one challenger from each party and the rest of you all get out. And then Herb Finn and I and Jane left the polling place and things all quieted down and everybody voted.

Now, Jane—I asked her then, would you join us for the rest of the day—which she did. So we thereafter took off and we went down to a precinct by the name of Skiff, where a report had come in on the telephone that there was a problem: they refused to seat our challenger and various other things. I'll go into this just a little bit from now, but to help you identify it—this was about 10:30 in the morning—this polling place was in a school that had a large common area out there, and they were voting in the cafeteria, and from as nearly as I can tell this is the polling place that Mr. Brosnahan was describing earlier today. It was definitely not Bethune. And they did have problems at Skiff, and it's my belief that that is where he went.

Now, why he had to go there and interfere with that election was beyond me, because at 10:30 a.m. Jane Greer had it all straightened out, and she'd taken anybody else that——

Senator BIDEN. Do you know for a fact that this is the polling place he was referring to?

Mr. RANDOLPH. I was there.

Senator BIDEN. No, no, I'm asking the question: Do you know for a fact that this was the polling place that Mr. Brosnahan was talking about?

Mr. RANDOLPH. Well, Senator, I have done this for so many years, and as a roving member of this committee I have been to every precinct down there, and this is the only one that I can figure that fit the problem that (*a*) it had a problem, (*b*) it had a large common area where they entered, and (*c*) that they had a large cafeteria where they were voting.

Senator BIDEN. I don't remember him saying that; I was the one that said that. I was the one talking about—that's what I'm trying to get at: I was the one describing what polling places in Delaware looked like. I said cafeteria, table, large place in the back—was it like that, and he said he didn't know.

Mr. RANDOLPH. Well, sir, I was watching this—and I echo your remarks, that's what is commonly a place of voting. But this is the only one that Mr. Brosnahan, I believe—he either subscribed to your remarks or he described this polling place as I have described it. And that is my opinion that that is where he——

Senator BIDEN. Your opinion.

Mr. RANDOLPH [continuing].—And the FBI man went after we got it all straightened out early in the morning. They didn't always stay straightened out, please believe me—there is that possibility.

From there we went to Bethune, the famous Bethune, and there they were having trouble—this was 1962, and it was Mr. Bentson—B-e-n-t-s-o-n—and as we entered there, there was a milling crowd and it was ugly, and they didn't like Mr. Bentson at all and they were trying to get him out of there one way or the other. And Jane, with the help of the police, got it straightened out.

Mr. Cassidy, I don't know whether you were there or not at that point. You probably were.

[Mr. Cassidy nods in the affirmative.]

And so I was glad to get out of there.

In 1964, John Stiteler was the challenger in Bethune, and he called and said that they wouldn't seat him. So I again had a partner and a telephone car, and down we went to Bethune, and we had proper credentials as the party representatives to enter the polls. And so it was crowded and there were several very unfriendly black men that attempted to keep us from entering. We called the police, order was restored, John was seated and successfully challenged statutorily unqualified voters that day—and there may have been some blacks, there may have been some Hispanics, and there may have been some whites. But they were treated equally. If they had moved from the precinct and the envelope had been returned, John challenged them, and the judges, for the most part, operated within the law and disqualified unqualified voters.

So as I left somebody said: "you and your partner may be lucky to get out of here alive, but your friend may not be so lucky."

So I stopped, I went back in the polls and I said, "John——

Senator BIDEN. Excuse me one second, Mr. Chairman.

The CHAIRMAN. The ranking member has to leave, would you mind if he——

Senator BIDEN. If I can ask one question, because I am confused. Mr. Staggs, I'd like to ask you a question, if I may.

Did I understand your testimony to say that you were the one that sent Justice Rehnquist to the Bethune polling place to straighten things out?

Mr. STAGGS. Yes; I was in county headquarters most of the day that day, and Bill Rehnquist was in county headquarters most of the day. And when the call came in, he was the only one, as I recall, there, and he was chairman of the legal committee, so he was dispatched down there.

Senator BIDEN. Now I am confused, because on November 17, 1971, you in a sworn affidavit said the following:

> I further hereby certify, to the best of my knowledge, that Mr. Bill Rehnquist, on general election day, 1962, was nowhere in the vicinity of the Bethune precinct when this activity occurred, nor any time during general election day.

Mr. STAGGS. Yes, sir, Senator, if I may clear that up.

Senator BIDEN. I'd like you to.

Mr. STAGGS. This memo was dictated within one hour from the time I talked with Bill Rehnquist in Washington, DC, on November 17.

Senator BIDEN. November 17, 1971?

Mr. STAGGS. 1971, in reference to an article in the newspaper where he was being criticized or challenged on his original appointment as Justice on the Supreme Court.

Senator BIDEN. This is a sworn affidavit.

Mr. STAGGS. Wait a minute—may I finish?

The CHAIRMAN. He's explaining.

Senator BIDEN. Oh, I'm sorry.

The CHAIRMAN. Go ahead and explain it.

Mr. STAGGS. This was dictated within 1 hour because a U.S. Marshal was coming to pick it up, and I dictated this from a newspaper article that I have turned in here of November 7, the day after the 1962 general election, which indicated no presence at the Bethune precinct of Bill Rehnquist, only Wayne Bentson.

And I dictated this from that newspaper article.

In checking our files, 2 or 3 days later I corrected this and mailed a corrected statement that apparently did not get into the file because the hearing was over.

Now, when the FBI interviewed me on this last occasion, I was in San Diego; they called me and they said they had this statement; I said that is incorrect. And I gave them a corrected statement again last Monday morning July 28, 1986, in San Diego, and that is in the record.

Senator BIDEN. Now, did Mr. Rehnquist in 1971 call you and ask you to swear to this statement?

Mr. STAGGS. No. I saw the article in the newspaper.

Senator BIDEN. I thought you said you got a call from Bill Rehnquist.

Mr. STAGGS. No, I said during a call with Bill Rehnquist. I read the article in the Arizona Republic.

Senator BIDEN. I just want to get the facts straight now. During a call from Bill Rehnquist—so Bill Rehnquist called you?

Mr. STAGGS. No, I called him. After reading an article in the Arizona Republic in Phoenix that he was being accused of this—and at the time he was also being accused of being a member of the John Birch Society, which I knew he was not, but this Wayne Bentson who was done there was——

Senator BIDEN. I'm just trying to establish who called who, that's all.

Mr. STAGGS. I called him and gave him that information; he says will you dictate a memo.

Senator BIDEN. So you gave him this information.

Mr. STAGGS. And this is the information that I dictated, because a U.S. Marshal was going to pick this up within an hour.

Senator BIDEN. But did you tell him before you hung up the phone that this is what you were going to dictate?

Mr. STAGGS. I didn't tell him what I was going to dictate; I just told him I was going to make a dictated memo.

Senator BIDEN. About what?

Mr. STAGGS. About the situation that I knew, in reference to the Bethune precinct in the November 6, 1962, election. And from the information that I had in the article, this is what I dictated.

Senator BIDEN. Do you recall whether he told you he was at Bethune or not at that time?

Mr. STAGGS. No, I called him.

Senator BIDEN. No, when you were speaking to him on the phone, did he tell you, do you recall?

Mr. STAGGS. On November the 17?

Senator BIDEN. Yes; back when you dictated this sworn affidavit.

Mr. STAGGS. Based on the article that I had looked at, I told him that it was my knowledge that he was not there; that's why I dictated this.

Senator BIDEN. And what did he say to that?

Mr. STAGGS. He didn't say anything; he said would you please dictate a memo and we'll have the U.S. Marshal come by and pick it up. And this was dictated based on the information I had at the time; 2 or 3 days later, 2 or 3 days later——

Senator BIDEN. I got that part.

Mr. STAGGS [continuing]. I learned, from the information we had in the file; that file then was sent back there, and this was corrected.

Senator BIDEN Let me see if I got this straight now—and I won't take any more time, Mr. Chairman.

You called Mr. Rehnquist apparently before his hearing in 1971 on November 17, and during that conversation with Bill Rehnquist you said: Bill, you weren't anywhere near that precinct in Bethune.

Mr. STAGGS. No; I told him that the accusations that he was being accused of——

Senator BIDEN. Which were what?

Mr. STAGGS. Which was that he was down there at Bethune precinct and that he was a member of the John Birch Society.

Senator BIDEN. Yes.

Mr. STAGGS. I said that I do not think that is correct, I have a file on it, I will get the information; and he said will you please dictate a memo.

I originated the call because of the article in the Arizona Republic.

Senator BIDEN. I will come back to Bethune in a second.

The CHAIRMAN. I want to ask two or three questions of all of you real quickly. I've got to catch a plane, and Senator Hatch will carry on this hearing after I've gone.

And this is the question I'd like to ask all of you: Do you know of any act on the part of Justice Rehnquist to harass, threaten or intimidate voters? If you do know of any act, raise your hand.

I see no hands raised.

Do you believe that he is the type of person that would harass, threaten or intimidate voters? If you do, raise your hand.

Mr. STAGGS. No way.

The CHAIRMAN. Do you know of any improper or unethical conduct on his part in connection with elections that have occurred in Arizona? If so, raise your hand.

Mr. STAGGS. No way.

Mr. RANDOLPH. Never.

The CHAIRMAN. Do you feel that he has the character and integrity, the ability, the professional qualifications, the compassion, the judicial temperament, and the keen knowledge of the law to make a good Chief Justice of the United States?

Mr. RANDOLPH. Unquestionably.

The CHAIRMAN. If you do, raise your hand on that. All hands raised?

[Voice]. All but one.

Mr. CASSIDY. I'm sorry, but I don't know the Justice at all.

The CHAIRMAN. You don't know him at all. All the other people have raised their hands, and you don't know him, so therefore you couldn't express yourself.

Now, would you recommend to this Senate committee, knowing him as you have over the years—would you recommend that we confirm him as Chief Justice of the United States?

Mr. STAGGS. Without qualification.

The CHAIRMAN. If you would recommend him as Chief Justice, recommend that this committee approve him—if you would, raise your hand.

That's all eight of you who knew him.

Senator BIDEN. That's seven out of eight, that's pretty good.

Senator METZENBAUM. Six out of seven. Do you want to ask the audience? [Laughter.]

The CHAIRMAN. Let's get quiet. The other six, as I understood, did. Is that correct? Raise your hands again if there is any question.

Senator BIDEN. Is this a true-or-false test?

Senator METZENBAUM. Doesn't the audience vote, too?

The CHAIRMAN. So that's all of you who knew him; in other words, all but one did not know him.

Now, those are the questions that I wanted to ask, and I'm going to turn this hearing over to Senator Mathias, and he or Senator Hatch, one, will conclude the hearing.

Senator METZENBAUM. Not conclude the hearing; we have questions.

Senator BIDEN. I know you have a plane to catch, but is Senator Laxalt certified to work out the agreement on this document?

The CHAIRMAN. Yes, he is; Senator Laxalt is delegated to work to see if we can reach an agreement on the document. If no agreement can be reached, then we will take this matter up just before the Scalia hearing on Tuesday of next week.

Senator LEAHY. Mr. Chairman, I'm sorry to interrupt here, but are we talking about the executive privilege question?

Senator BIDEN. Yes, we are talking about the executive privilege question and the document.

The CHAIRMAN. And negotiations are underway to see if it can be worked out. If not, we will take it up again before the Scalia hearing on Tuesday of next week.

I want to thank all of you gentlemen for your appearance, and you will please stay until questions can be propounded to you about this matter.

Senator HEFLIN. Mr. Chairman, we've got a vote on.

Senator BIDEN. I will come back, and, with the chairman's permission, continue my questioning of Mr. Staggs. As a matter of fact, I will miss the boat and continue my questioning right now.

Senator MATHIAS [presiding]. Senator Biden is recognized.

Senator BIDEN. Mr. Staggs, I want to make sure I got this straight——

[VOICE]. Yes, we can vote?

Senator BIDEN. Well, I'm afraid if I don't do it, I'll lose my train of thought and he'll gain a new train of thought.

All right, I'll come back, then. I will be back in a minute, Mr. Staggs.

Senator MATHIAS. Then, under these circumstances, the committee will take a 5-minute recess.

[Brief recess.]

Senator HATCH [presiding]. We might as well get going again. Let's see if we can bring this to close.

Mr. RANDOLPH. George F. Randolph. I do not know whether you are through with Mr. Staggs, or not. So it will be examination of Ralph——

Senator HATCH. Senator Biden was asking Mr. Staggs a question. As soon as he comes back we will turn the floor back to him.

Mr. RANDOLPH. I was not quite through with 1964 at Bethune precinct, when they told us, as we left our challenger in place in the morning, whose name is John Stiteler, that we were lucky to get out of there alive, but our partner might not be so fortunate.

I went back in, and told John, "Don't leave the polling place until the ballots are secured after the polls are closed and we'll come get you."

So we sent the police down, and our escort, and the rescue was carried out, but I was not present.

I want to say, that during the years 1964—my recollection in 1960 is just not very good, but 1962 and 1964, every time that we were called in these telephone cars, or that we called in on the telephone, that I can recall, Justice Rehnquist was there. And he was not appointed as a challenger in either year, so it is highly unlikely that he ever went out of headquarters to do anything but just advise, and he was much more valuable in the office on the telephone, because he could reach so many more of us.

And they had to leave Jim Bush or Bill Rehnquist there in the office, so that we could counsel and advise about the problems.

Senator HATCH. I agree with you. Everybody here today has been sincere, but there is a case of mistaken identity.

Mr. RANDOLPH. Frankly, it just is a matter of logistics, Senator Hatch. He did not have time to get out there and do any challenging. So all I can say, that he is a meticulously polite and courteous gentleman, and always has been, and for him to ever have harassed anyone is totally out of character.

Senator HATCH. Yes. I agree with you.

Mr. RANDOLPH. I would like to address the remarks—I have talked enough about Mr. Brosnahan. I think his recollection is just flat incorrect.

That is—we will sum up with that. You were not here, Senator Hatch, but that is—we will just leave it at that.

I think it was a slip of the tongue, but it is in the record. Mr. Pine, said that Mr. Rehnquist challenged voters in 1954. In 1954, we did not challenge voters. We did not have a program.

Senator DECONCINI. Mr. Chairman, I caught that, too, but he corrected that later in the record. He made a mistake. He meant 1964.

Mr. RANDOLPH. I think that is correct.

Senator DECONCINI. And I happened to ask him, after he testified and——

Senator HATCH. I think that is correct.

Senator DECONCINI [continuing]. And he had 1964 on his mind, but it was a slip of the tongue.

Mr. RANDOLPH. I think that is probably right. OK.

Senator HATCH. He did go 1958, 1960, 1962, and 1964 in his statement.

Mr. RANDOLPH. True. He seems to recollect that in 1962, that Mr. Rehnquist went to Bethune--or 1962, I think he was confined to 1962. Isn't that right, Senator DeConcini?

Senator DECONCINI. That is my recollection.

Mr. RANDOLPH. And that was the year that we really got organized on this smooth out program, where we tried to have it organized so that the voting would run smoothly. And I know that Mr. Rehnquist would not have gone to any precinct, and challenged in a manner in which he was instructing us otherwise——

Senator HATCH. Mr. Randolph, let me interrupt you.

Mr. RANDOLPH. Yes, sir.

Senator HATCH. Let me ask a few questions before Senator Biden comes back.

Mr. RANDOLPH. Yes, sir.

Senator HATCH. Let me turn to you, Mr. Maggiore.

Mr. RANDOLPH. As a matter of fact, the Chairman said when you got back, to continue with Mr. Maggiore.

Senator HATCH. Yes. If I could, I would just like to say this to you. We appreciate your being here. As I understand it you were the Democratic Party county chairman in 1962. Is that right? Am I pronouncing your name right, Mr. Maggiore?

Mr. MAGGIORE. Yes. It is Maggiore.

Senator HATCH. Did you receive a call at the Democratic county headquarters from Mr. Charlie Pine in that year about any incident at Bethune School?

Mr. MAGGIORE. No. I did not.

Senator HATCH. Did any of your associates, or lieutenants in the party, or anyone else, from any source, ever mention that Mr. Rehnquist challenged voters, or behaved improperly in any fashion?

Mr. MAGGIORE. No.

Senator HATCH. Not one.

Mr. MAGGIORE. May I say something for Mr. Pine?

Senator HATCH. Yes.

Mr. MAGGIORE. I think that since he was talking about the headquarters in Roosevelt, I think he was in 1964 and not in 1962, and we have got to remember that that was 25 years ago. So I think it was in a different frame than in the sixties——

Senator HATCH. He is a very sincere man, but if anybody tries to remember what happened back in 1964 and 1962—I do not care who you are—you are going to have a rough time.

Senator DECONCINI. Would the Chairman yield? Just for the record, can Mr. Maggiore tell us, where was the Democratic headquarters in 1962?

Mr. MAGGIORE. Dr. Ragsdale, the very prominent black man——

Senator DECONCINI. Lincoln Ragsdale, yes.

Mr. MAGGIORE [continuing]. Had given us headquarters on Washington.

Senator DECONCINI. And then in 1964 it was on Roosevelt?

Mr. MAGGIORE. In 1964 it went to Roosevelt, yes.

Senator DECONCINI. I was just a little Pima County boy, then. I did not understand where those were. So in 1962 it was on Washington and in 1964 it was on Roosevelt.

Mr. MAGGIORE. 1962 was—and what we, we—I think you remember Senator Smith. He was—he had given us some offices during the campaign, and he was side by side with me, as looking to see whether the Republicans were doing the right thing.

Senator DECONCINI. Thank you. Thank you, Mr. Chairman.

Senator HATCH. As a Democratic leader, isn't it fair to say that you probably would have heard, of any person intimidating, or attempting to intimidate minority voters?

Mr. MAGGIORE. I would think so.

Senator HATCH. As a matter of fact, that was something you were watching for very carefully?

Mr. MAGGIORE. Yes. That's—I think, if you look at the paper—I think you have got a record of the paper—I did write a letter to the State chairman, and there was a copy to the Chairman Staggs, telling him about my opinion of what occurred, and that I thought that there should be some accomodation to improve things so that we could challenge—but that we could challenge in a way where nobody would be injured and no rights would be lost.

Senator HATCH. Did you know Mr. Rehnquist at the time? Did you know who he was?

Mr. MAGGIORE. Yes. I am an attorney and I am also a retired U.S. bankruptcy judge. So I did know him, yes.

Senator HATCH. Did you know him personally?

Mr. MAGGIORE. Yes.

Senator HATCH. What did you think of him?

Mr. MAGGIORE. I think he is a very fine man, and I think he is probably as unassuming as any person I have ever seen, and that is why I understand his law clerks love him because of the fact that down deep, he does not take himself too important. He sticks to his opinions, I do not agree with all of his opinions, but I think he loves the law like a lot of us love the law.

Senator HATCH. I agree. If his name had been mentioned in any way would that have triggered something in your mind? Would you have remembered that? Is that correct?

Mr. MAGGIORE. I certainly would.

Senator HATCH. It would not have been something you would have forgotten.

Mr. MAGGIORE. That is correct.

Senator HATCH. He was well known by Democratic Party leaders. If he had done some of the things he has been accused of doing, there is no way that that would not have come to your attention.

Mr. MAGGIORE. That is correct. I think that was shown by Judge Hardy's statement and Judge Mickey's statement.

Senator HATCH. Judge Hardy is a Democrat. Is that correct?

Mr. MAGGIORE. Yes; he is a very good Democrat.

Senator HATCH. Very fine Democrat. Do you know Mr. Pine or Mr. Pena?

Mr. MAGGIORE. I know both of them, yes.

Senator HATCH. Did you know them in 1962 or 1964?

Mr. MAGGIORE. I knew Senator Pena in 1962. I cannot recollect when I first met Mr. Pine. It may have been after——

Senator HATCH. You could have known him then?

Mr. MAGGIORE. It could have been. Yes.

Senator HATCH. Do you recall hearing any complaints from them, at that time, that might bear on this matter?

Mr. MAGGIORE. No.

Senator HATCH. Would it not have been likely, had they complained, that you would have heard about it?

Mr. MAGGIORE. I would assume that somebody would tell the leader what is happening since we were interested at that time.

Senator HATCH. Especially on challenges like this?

Mr. MAGGIORE. Challenges. Certainly.

Senator HATCH. You knew that Mr. Benson had been removed from that polling place. Is that right?

Mr. MAGGIORE. Yes. Mr. Benson was removed.

Senator HATCH. That came to your attention, did it not?

Mr. MAGGIORE. Very effectively, yes. You had mentioned two of the people that were my assistants at that time, and I think that that was taken care of.

Senator DECONCINI. Will the Senator yield on Mr. Benson?

Senator HATCH. I will be happy to.

Senator DECONCINI. I got the feeling that when Officer Cassidy testified, that Benson was a real problem in the Bethune precinct at that time. Do you concur with that observation?

Mr. MAGGIORE. I concur, yes.

Senator DECONCINI. Do you think he broke the law?

Mr. MAGGIORE. I think he may have. I think he went a little too far. Again, it is such an archaic law, that one of these days we are going to have to approach it, because it is a question of fact——

Senator DECONCINI. Yes. Did you send anybody down there, Judge?

Mr. MAGGIORE. Yes. I did. I sent——

Senator DECONCINI. You sent those two?

Mr. MAGGIORE. Two.

Senator DECONCINI. Two men reported there?

Mr. MAGGIORE. Yes.

Senator DECONCINI. I have some other questions for the witness.

Senator HATCH. Mr. Maggiore, I will come back to you later. I want to allow some time for my colleagues and I just want to chat with Mr. Cassidy for a minute. I want to tell you how much I respect you, as a Democratic Party leader, for being here and speak-

ing up for Mr. Justice Rehnquist as you have, even though you disagree with him philosophically.

That is not untypical of a number of people who may disagree with him philosophically, but realize the quality of the individual, and have spoken up for him all over the country.

Mr. Cassidy, we appreciate having you here as well. Is it correct, that you spent the whole day in the Bethune precinct in the 1962 election?

Mr. CASSIDY. Yes, sir. From about 6 o'clock in the morning until 3 or 4 in the afternoon.

Senator HATCH. You were there that whole day?

Mr. CASSIDY. Yes.

Senator HATCH. In what capacity?

Mr. CASSIDY. I was the sergeant in that particular squad area.

Senator HATCH. You were a policeman there?

Mr. CESSIDY. Yes.

Senator HATCH. You were assigned to make sure that the laws were upheld?

Mr. CASSIDY. Yeah. There had been rumors the day before, Senator, that there was possibly going to be trouble over the challenges, and so on going on shift in the morning I went directly to the school.

Senator HATCH. Can you give me a physical description of Mr. Benson who was the Republican challenger in 1962?

Mr. CASSIDY. Probably 6 foot, 6 foot, 1, 200 pounds, roughly.

Senator HATCH. Some say he is about 6 foot, 3. Pretty much the same size as Mr. Justice Rehnquist then?

Mr. CASSIDY. Fairly close I would guess, yes.

Senator HATCH. Did you hear a single complaint about Mr. Rehnquist that whole day that you were there?

Mr. CASSIDY. No, sir. I never heard his name.

Senator HATCH. Never heard his name mentioned?

Mr. CASSIDY. No, sir.

Senator HATCH. And had he been challenging people in a vociferous way, you would have known that, wouldn't you?

Mr. CASSIDY. I am certain that I would have. When I got there in the morning, which was about 6:30, 6:30 or 7 o'clock, when we had the first disturbance, I advised the marshal, and both sides, Republican and Democrat, if they had any problems I was going to be in the immediate area and to call. And I do not think we had any more serious problems after that for 4 or 5 hours. So I do not think anything could have happened in there at all.

Senator HATCH. So basically there were no complaints about Mr. Rehnquist personally?

Mr. CASSIDY. None.

Senator HATCH. If there were complaints, they would have certainly been brought to your attention because you were there?

Mr. CASSIDY. I would think so. Yes, sir.

Senator HATCH. Were there complaints throughout the day about anyone other than Mr. Benson?

Mr. CASSIDY. Only Mr. Benson's complaints about, the Democratic Party members.

Senator HATCH. Mr. Pine and Mr. Smith said they saw Mr. Rehnquist challenging voters at the Bethune precinct in 1962. Mr. Pine has said that he was there earlier in the day.

You have indicated you were at the Bethune precinct from the beginning.

Mr. CASSIDY. Yes, sir.

Senator HATCH. You were there at that time?

Mr. CASSIDY. Yes.

Senator HATCH. Did you see anyone other than Mr. Benson challenging voters at that precinct?

Mr. CASSIDY. I am positive in my own mind, that no one else could have challenged any other voters there. I made it very clear when I first got there, that I was going to be immediately available; if there were any violations to the law, that I was going to solve that problem by putting somebody in jail; and advised each side to be sure and notify me immediately if there was any more problems.

They settled at that time among themselves, that they would continue with the challenges, and the problems ended. No one else came to challenge. The only individual that I know of there, as a challenger, was Bentson all day long.

Senator HATCH. Did you make any record about the Bethune incidents?

Mr. CASSIDY. A police report was made on the alleged assault in the afternoon. Yes, sir.

Senator HATCH. That is the police report that I placed into the record earlier this day?

Mr. CASSIDY. Yes. It is.

Senator HATCH. The only one. Are you active in either political party?

Mr. CASSIDY. No, sir; not at all.

Senator HATCH. Do you participate in politics at all?

Mr. CASSIDY. Not whatever.

Senator HATCH. Are you a Republican or a Democrat? I hate to ask you these questions, but I think they are relevant.

Mr. CASSIDY. I wish you had not. My Dad, if he sees me sitting with all of these Republicans, I am in trouble. But I did register as——

Senator DECONCINI. That is quite all right, Mr. Cassidy. You just stand up for your convictions.

Senator HATCH. He is sitting with us Republicans and we appreciate him. [Laughter.]

Mr. CASSIDY. I did register Republican back about 3 or 4 years ago, though.

Senator HATCH. Did you? That is good.

Senator HEFLIN. A wayward son.

Senator HATCH. A real live Senator. We do appreciate your being here. You do not have any axes to grind, do you? Or do you?

Mr. CASSIDY. No, sir; none whatever.

Senator HATCH. Everything you have told us here is true. I can see why some people could be mixed on what happened there. Mr. Rehnquist and Mr. Benson were about the same size. Both had brown hair.

There could have been a real mix-up here. I do not want to find fault with anybody. But we are talking about a man who was a respected Assistant Attorney General of the United States for a number of years, and has been on the Supreme Court for 15 years.

It makes you wonder, even if what some of the prior five panelists said was true, and there is plenty of reason to doubt that it was, or at least question it.

But even if it was, it seems to me that Mr. Justice Rehnquist deserves the benefit of the doubt on all of these issues. Mr. Justice Rehnquist certainly has better than 15 solid years of public service. That speaks for itself.

It speaks more loudly than what may or may not have happened 24 years ago. But you speak very loudly since you were there. You have no axes to grind. Mr. Maggiore speaks loudly. All of your testimony is important, but in particular, I found both of your rewards to be extremely important. And that is not finding fault with any of the Democratic witnesses.

There is lots of room for mistaken identity; lots of room for failure to recollect; lots of room for compounding things in your mind over a 24-year period, and not remembering everything that happened back in 1962.

Who is next on this side? Senator DeConcini, let me turn to you.

Senator DECONCINI. Thank you, Mr. Chairman. Mr. Cassidy, while we have you here, you said you were there from 6 in the morning at the Bethune precinct, in 1962, until about 4 o'clock?

Mr. CASSIDY. Roughly, yes.

Senator DECONCINI. And when did you escort Mr. Bentson away?

Mr. CASSIDY. I wish it would have been earlier, but I think it was probably somewhere around 2:30, and it was not my idea to escort him away. He asked for protection. He felt—he said he felt that he was in danger, and said he wanted to go home, and asked would I walk him to the car and get him out of the area.

Senator DECONCINI. Did you have to advise him that he might be arrested during that day?

Mr. CASSIDY. No. When he claimed the assault, which had happened probably about an hour before he left, we had mixed stories as to exactly what happened; whether he threw the first punch, whether they threw the first punch. So a report was made to be submitted to the county attorney. So no one was going to jail at that time.

Senator DECONCINI. And what about before the so-called assault? Was Mr. Bentson a problem?

Mr. CASSIDY. He—like I said earlier, he was less than tactful. He did not handle the challenges as well as he might have.

Senator DECONCINI. Did you have to say something to him?

Mr. CASSIDY. Yeah, but I am not sure it improved him, Senator.

Senator DECONCINI. Pardon?

Mr. CASSIDY. I am not sure it improved him.

Senator DECONCINI. Do you remember what you said to him, or——

Mr. CASSIDY. Well, when I originally got there, it was very loud and very noisy in there, a lot of shouting going on, and that is when I told them that on the election laws or on the violations, that would be up to the marshal, but any violations of the city

code, or State code, I was going to make an immediate arrest and see if we could not make the problem go away that way.

Senator DECONCINI. And you told him that?

Mr. CASSIDY. Yes. He was——

Senator DECONCINI. Were there any other troublemakers there?

Mr. CASSIDY. Not at that time, no. No, sir.

Senator DECONCINI. Now did you get a chance to see Mr. Brosnahan?

Mr. CASSIDY. Yes; I saw part of his testimony. Yes, sir.

Senator DECONCINI. Did you ever see him at Bethune precinct on that day?

Mr. CASSIDY. I do not recall him, but everybody and their brother came. We had everybody at one time or another during the day.

Senator DECONCINI. Do you think you would have remembered a U.S. attorney and an FBI agent, had they come?

Mr. CASSIDY. I knew they were on the way, but they were involved with the voting violation type thing, and I with the crowd, or the people.

Senator DECONCINI. A Mr. Mickey was the U.S. District Attorney there, and his statement says that, in 1962, that he went to Bethune precinct. Do you know Judge——

Mr. CASSIDY. No, sir. I have heard the name of course, but I do not know him personally.

Senator DECONCINI. Judge Mickey. You do not remember him coming to that Bethune precinct that day?

Mr. CASSIDY. No, sir, but he well could have.

Senator DECONCINI. When you left around 4 o'clock, did you hear of any other problems at Bethune precinct, when voting closed?

Mr. CASSIDY. No; as I understand it, from the sergeant, when we talked the next day, the sergeant that relieved me, there were not any further problems after Bentson left.

Senator DECONCINI. I think you answered this question. Did you see Mr. Rehnquist at the polling place while you were there?

Mr. CASSIDY. No, sir. I do not know him at all.

Senator DECONCINI. You do not know him?

Mr. CASSIDY. No.

Senator DECONCINI. Would you know him, had you saw him or would you be able to identify him?

Mr. CASSIDY. No, sir. I would not have.

Senator DECONCINI. You do not know what he looks like now?

Mr. CASSIDY. I do, yes.

Senator DECONCINI. Can you recall if he was there?

Mr. CASSIDY. No, sir. Not at all.

Senator DECONCINI. What?

Mr. CASSIDY. No. I cannot.

Senator DECONCINI. You cannot recall whether or not he was there, is that right?

Mr. CASSIDY. No.

Senator DECONCINI. I mean, you do not know whether he was there or was not, is that correct?

Mr. CASSIDY. Correct.

Senator DECONCINI. He could have been there?

Mr. CASSIDY. Yes. He could have.

Senator DECONCINI. Yes. And you would not have known that?

Mr. CASSIDY. Yes, sir.

Senator DECONCINI. And there were a lot of people there during the day?

Mr. CASSIDY. Yes.

Senator DECONCINI. OK. If your testimony is that only Bentson was doing the so-called challenging, then it is safe to say that if Mr. Rehnquist was there, he did not do any challenging during the hours that you were there?

Mr. CASSIDY. Yes; I would be certain that he did not do any challenging.

Senator DECONCINI. Thank you. Judge Maggiore, Judge Charlie Hardy, what position did he hold, or play, during 1962 or 1964?

Mr. MAGGIORE. I assume he was in the same position as Justice Rehnquist was.

Senator DECONCINI. Well, in 1962, was he——

Mr. MAGGIORE. Sixty-two is——

Senator DECONCINI. Was he appointed by you or asked by you?

Mr. MAGGIORE. I may have. I do not recollect it from my own recollection, but I—he was a big help all the time, and I remember that he was around for, doing—because of his—a very bright man.

Senator DECONCINI. I mean, did you ask him to serve in any legal capacity?

Mr. MAGGIORE. I probably did.

Senator DECONCINI. You do not remember?

Mr. MAGGIORE. I cannot recollect.

Senator DECONCINI. Was there a group of lawyers, do you know?

Mr. MAGGIORE. Yes; we had some lawyers. I remember Art Ross and I remember Jane—Jane Greer, and we had—I would assume that we had about 10 or 12 lawyers working there. But I do not remember anything that Mister—Mister——

Senator DECONCINI. Brosnahan.

Mr. MAGGIORE. What is the present pronunciation? I——

Senator DECONCINI. Brosnahan.

Mr. MAGGIORE. Brosnahan. I do not remember Mr. Brosnahan in 1962, but that may be my lack of recollection, Senator.

Senator DECONCINI. At that time, do you remember who was U.S. district attorney?

Mr. MAGGIORE. Yes; Judge Mickey was the U.S. district attorney. He was the one that told us that there was not any action he could take.

Senator DECONCINI. He says in his statement that he visited Bethune precinct.

Mr. MAGGIORE. He may have because I was not there at the time. I did, I did visit Bethune, I think two or three times, and I was there——

Senator DECONCINI. That day?

Mr. MAGGIORE. That day.

Senator DECONCINI. That voting day. Did you ever see Mr. Rehnquist there?

Mr. MAGGIORE. No.

Senator DECONCINI. When you were there, did anyone ever tell you he dropped in or dropped by?

Mr. MAGGIORE. No. This is the first time I have ever heard that Justice Rehnquist was mixed up in the way that everybody said

that he was. I thought—I remember some of the organization of the Republican Party. I used to, used to compete with Chairman Staggs. We used to have some good times arguing about things. And I knew some of the attorneys who had worked, and in my thought, Justice Rehnquist was the attorney for the party. That is why I went to him that day, because I did not get much accomplished with the then State chairman.

Senator DECONCINI. Were you working for the county attorney in 1962 or were you a judge then?

Mr. MAGGIORE. No, I was—in 1962 I was just—I was in practice of law.

Senator DECONCINI. You were in private practice of law?

Mr. MAGGIORE. I was in private practice of law, as much time as I had for that job.

Senator DECONCINI. Mr. Staggs, if I could just ask you a question or two. Mr. Bentson—was he assigned there by you to that precinct?

Mr. STAGGS. Well, in my November 17, 1971, letter, I stated in there that I had assigned him to that, but that again is——

Senator DECONCINI. OK. I am sorry. I just had forgotten.

Mr. STAGGS. Well, when I said I assigned him, I signed the affidavit authorizing him to be a challenger.

Senator DECONCINI. Right.

Mr. STAGGS. But he was actually assigned to that precinct by Bill Turner and/or Gordon Marshall. They were the ones that did the assigning. But I, when I said here that I assigned him, I signed the affidavit.

Senator DECONCINI. You signed, authorizing him to represent the party?

Mr. STAGGS. Yes, as county chairman.

Senator DECONCINI. Did you know him?

Mr. STAGGS. I knew him remotely. I mean, he was a precinct committeeman in Maricopa County.

Senator DECONCINI. Now when he was escorted out, at his request, were you advised of that?

Mr. STAGGS. I said in here also that I, in my FBI report, that when Bill Rehnquist came back, I do not know whether I was advised of anything, activity that took down—that took place down at the Bethune precinct or not, and I still do not recall whether——

Senator DECONCINI. Well, yes, your FBI report says that you do not remember Mr. Rehnquist telling you anything about what happened.

Mr. STAGGS. Right.

Senator DECONCINI. But did you know that Mr. Bentson had left?

Mr. STAGGS. I do not recall meeting with Bill Rehnquist after he came back, so I do not recall if I had any report that afternoon.

Senator DECONCINI. Did you send someone else down there to take——

Mr. STAGGS. Yeah. We had instructed a Harold Musgrave to go down there. Someone in the committee——

Senator DECONCINI. So you must have known that Mr. Bentson had left?

Mr. STAGGS. Well, we figured that he would probably get replaced, get kicked out, or something.

Senator DECONCINI. You just do not remember the sequence of how that happened?

Mr. STAGGS. No.

Senator DECONCINI. Mr. Marshall, Mr. Turner, can you help me? How did Mr. Bentson get there in the first place and what happened when he got booted out, or left? Did you choose him, and did you choose Musgrove, or did Mr. Staggs?

Mr. TURNER. Senator, I do not recall Mr. Bentson at all, and I cannot recall, really, how the assignment process was made. We had a number of volunteers. Many of them were precinct committeemen, and there was some process by which they were assigned to various precincts.

So I would not know Mr. Bentson——

Senator DECONCINI. Mr. Marshall, how about you?

Mr. MARSHALL. No, Senator. As Mr. Turner said, we received volunteers; many of them we did not know by sight. They appeared at the instructional meeting and got their instructions, and we assigned them to the precincts as they signed, or volunteered to serve.

Senator DECONCINI. So you do not remember sending Mr. Musgrove there?

Mr. MARSHALL. No, sir.

Senator DECONCINI. Mr. Staggs, you stated in your opening statement, that there was a lot of voter fraud, and "tombstone" voting. What proof do you have to offer the committee, that that was happening in Arizona?

Mr. STAGGS. Well, I do not have any proof with me. There was historically rumors and comments that more votes were being cast down in there, and the basis of setting up the challenger committee, as I stated, was that basically, the voter registration list contained names that did not exist. I call that fraud.

Senator HEFLIN. I wonder if the Senator would yield to me while you are on this subject.

Senator DECONCINI. I will be glad to yield.

Senator HEFLIN. I just wonder, Mr. Staggs, if you are familiar with the old Western Republican prayer, that goes like this: That when I die, if I die, I want to be buried in Phoenix, AZ, in order that I may remain active politically?

Mr. STAGGS. I thought that was the Democrat. I think they got that from Cook County.

Senator DECONCINI. Mr. Staggs, the reason I raise it is serious, because I think that——

Senator HATCH. You are a very disruptive Senator, Senator Heflin.

Senator DECONCINI [continuing]. Perhaps poor Cook County and the people of Chicago have to live with that history, and I hate to see whoever might be viewing this, a charge laying on the table here that there was massive voter fraud, "tombstone" voting going on in Maricopa County during that time, without some allegations that can be brought forward to justify it, because I think it is an embarrassment to our State and our history. Maybe you have some proof.

Mr. STAGGS. Well, I do not think we——

Senator DECONCINI. If you do, I would be glad to have it.

Mr. STAGGS. I do not think we could go back now and get the voter registration lists back in those early years, Senator.

Senator DECONCINI. You do not have anything to offer us, that there was tombstone voting?

Mr. STAGGS. Not at this late date.

Senator DECONCINI. OK. Mr. Staggs, were you——

Mr. STAGGS. I would say this, though: that we had proof that there was illegal names on the voter registration lists, Senator——

Senator DECONCINI. What proof did you have?

Mr. STAGGS [continuing]. That was proved by the returned first class mailings that we sent out to all the registered Democrats on that list, that came back, and when——

Senator DECONCINI. How many did you have?

Mr. STAGGS [continuing]. They were checked out, there was names at vacant lots, and there was people that had died. There were people that, the names registered to vacant houses, and that type of thing. I refer to that as, if they would try to vote those names, as being fraudulent.

Senator DECONCINI. But you do not have any proof that they tried to vote those names. All you have proof is it came back that nobody lived there, or there was nobody there, right?

Mr. STAGGS Yes, we had, we had proof, because——

Senator DECONCINI. You did?

Mr. STAGGS [continuing]. Some of those—that is why those envelopes were there at the precinct. Some people tried to vote those names, and that is when they were challenged.

Senator DECONCINI. And do you have proof that some people tried to vote those——

Mr. STAGGS. We had that, back then. We do not have it now.

Senator DECONCINI. Does the party have any of that now?

Mr. STAGGS. No; this was 24 years ago.

Senator DECONCINI. I understand. Do you remember how many numbers you might have had?

Mr. STAGGS. I do not recall. I mean——

Senator DECONCINI. Was it dozens, or——

Mr. STAGGS. The letters that came back, I would say probably in all of Maricopa County, may have totaled 300 or 400.

Senator DECONCINI. Did you mail all of Maricopa County? All Democrats?

Mr. STAGGS. No; we mailed basically everything I think south of McDowell Road.

Senator DECONCINI. Why was that?

Mr. STAGGS. Well, that seemed to be where the problems were.

Senator DECONCINI. You did not have any evidence of problems up North Central Avenue, or in Sunny Slope or——

Mr. STAGGS. Well, not at that time.

Senator DECONCINI. OK. Mr. Staggs, were you aware of what the instructions were by the lawyers' committee that Mr. Rehnquist headed up——

Mr. STAGGS. No, sir.

Senator DECONCINI. On what the challenging criteria were?

Mr. STAGGS. No; they were in charge of the legal committee and the others were in charge of the challenging committee. That responsibility was delegated to them.

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Senator DECONCINI. Mr. Randolph, maybe you can help me, then. Thank you, Mr. Staggs. The instructions that you gave to the challenging committee. Mr. Bush, if I recall his testimony here, said that you never talked about the potential challenge of whether or not a voter could speak English. Is that your recollection?

Mr. RANDOLPH. We did address that problem, Senator, and that is the reason we gave a copy of the statute to each of the challengers.

Senator DECONCINI. Mr. Bush must have forgotten about that or was not there maybe?

Mr. RANDOLPH. No; Mr. Bush did not forget about it, Senator, I do not believe. We were told in the school—Bill Rehnquist and Jim Bush said: "If you have somebody that comes forth and it is just painfully obvious"—this is in 1960, mind you; we did not do this after 1960—"that you are to address a challenge to the board; you are not to address the voter in any way. We do not want to be accused of harassing voters." That was the instruction that was given in school.

Senator DECONCINI. In school. Did you give them any cards or any information as to how to question someone, whether or not they could read in the English language?

Mr. RANDOLPH. I just told you. We told them not to question anyone.

Senator DECONCINI. Told them not to.

Mr. RANDOLPH. We told the challengers—in 1960 and before—we told them to make a challenge to the board saying we think that this person does not qualify to vote because of ARS 16–921, paragraph 7. Would you please give them a test.

Senator DECONCINI. Let me quote to you from Mr. Bentson's statement. He—this being Mr. Bentson—pointed out that he, himself, did not turn anybody away, this being the duty of the inspector and the two judges. He, Bentson, did ask perhaps 1 out of every 10 persons in the voting line to read from the card, and if they seemed unable to do so, he would then, working through the inspector, formally challenge them.

Was that contrary to the instructions given by your committee?

Mr. RANDOLPH. That is to the best of my recollection.

Senator DECONCINI. So there was no card, or anything given out in this kit, that was so-called, given to the——

Mr. RANDOLPH. No, sir. I do not think so. I am quite sure not.

Senator DECONCINI. How many lawyers were on the committee?

Mr. RANDOLPH. Oh, there were at least a dozen.

Senator DECONCINI. A dozen?

Mr. Chairman, I have no further questions.

Senator HATCH. Thank you so much, Senator.

Senator Heflin, do you have any further questions?

Senator HEFLIN. Yes, I would like to—Mr Cassidy, there have been some questions here about Mr. Wayne Bentson's size. You identified him being about 6 feet 1. And there is some inference that he could have been—someone could have mistaken him for Bill Rehnquist.

And I believe later on you said that you did not know Bill Rehnquist at that time when you were there at that precinct.

Now, have you seen this Wayne Bentson since that time, on occasion?

Mr. CASSIDY. No, sir, I have not.

Senator HEFLIN. Do you know whether there is any similarity of appearance between Justice Rehnquist and Mr. Wayne Bentson?

Mr. CASSIDY. No, sir, I would not be able to guess.

Senator HEFLIN. You will not be able to guess one way or the other.

Do you remember whether one of them was brown haired, or blond haired, or red haired.

Mr. CASSIDY. Well, I have only seen pictures of the Justice. And I only saw Bentson 1 day for 7 hours And there is no way to compare them.

Senator HEFLIN. All right. So now——

Senator MATHIAS. Senator Heflin, would you yield to me just briefly? Not to be taken out of any time of yours.

Senator HEFLIN. Be delighted to.

Senator MATHIAS. As you know, there has been some question with respect to the committee's obtaining documents prepared while Justice Rehnquist was Assistant Attorney General. Some members of the committee have been meeting to try to resolve this in the last hour. I just wanted the rest of the committee to know that there is an agreement with the administration to try to work out this documents problem over the weekend, in an attempt to resolve the difficulty. We will meet on that subject on Tuesday.

Senator HATCH. Is that agreed to?

Senator BIDEN. That is correct.

Senator KENNEDY. I want to say, Mr. Chairman, this is an issue as I know that the Senator from Maryland understands that is very intensely felt. We know both those within the administration, in terms of the application of executive privilege, and those of us on the committee who were desirous to obtain documents, in some very specific areas.

And we do feel that in terms of our requirements, our assignment, our responsibility to the Senate and to the American people, that to fulfill our responsibility in the area of advise and consent, that that material is essential.

But we are aware that these efforts are going to take place over the course of the weekend, and that seems to me to be a reasonable request, and hopefully they will be able to respond in a satisfactory way to these requests. And I think that that is a process which at this time we would support and look forward to a positive result.

I want to thank the Senator from Maryland and the other members of the committee for working on this area. And I wish that we will be successful. I do not want to characterize whether I am hopeful or not hopeful on it. Because it is complicated; it is difficult. And the positions are strongly held by those who want the documents and evidently by the administration who has been reluctant making them available.

But it does seem to me a procedure which is worthy of the best efforts of those who are seriously committed in trying to deal with these two viewpoints.

And I, for one, would be glad to see that effort take place. And hopefully, we may get positive results.

Senator HATCH. Thank you.

With that, then, Senator Mathias, anything further?

Senator MATHIAS. Nothing further. I think a good faith effort is underway, and we will see how it works out on Tuesday.

Senator HATCH. Let us hope that it does.

Senator Heflin, we will get back to you.

Senator HEFLIN. Well, let me say that I am personally delighted to know that there is progress being made in this regard. I was seriously concerned about the invoking of the right of executive privilege here over these documents.

I think there is a serious danger that the future of the Supreme Court could be affected. Claiming executive privilege could leave a lot of dark clouds of mystery and uncertainty pertaining to the Supreme Court.

The mind of man really has no bounds in regards to suspicion when there is uncertainty and mystery. And I think that since Justice Rehnquist has himself said he had no objection, he waived it, the documents ought to be cleared. Everybody knows, if a state of doubt is left that the dark cloud of suspicion hangs not only over his head, but may hang over the Supreme Court of the United States.

And I think that we certainly do need to clear it up.

Senator MATHIAS. I thank the Senator from Alabama for yielding

Senator HATCH. Have you finished, Senator Heflin?

Senator HEFLIN. No; I want some questions. I was just making a statement.

All right, so now, Mr. Cassidy, did you know Senator Pena at that time?

Mr. CASSIDY. I am sorry, I missed the name.

Senator HEFLIN. Did you know Senator Pena at that particular time?

Mr. CASSIDY. No, I did not.

Senator HEFLIN. Well, at this particular place that you were, was it a school?

Mr. CASSIDY. Yes, it is.

Senator HEFLIN. Was there a principal's office that was located somewhere away from the activity where people went to use a telephone?

Mr. CASSIDY. As you approach the front of the school and took a few steps into the entrance of the school, the hall, and I think there was a nurse's office that everybody was using for the telephone.

All right, sir. Now—gentleman here on the end?

Mr. RANDOLPH. Senator Pena testified about a challenge in Butler precinct. Officer Cassidy was at Bethune.

Senator HEFLIN. All right. Thank you for clearing it up.

All right, now let me ask you this: Did you have kits that you prepared for challengers?

Mr. RANDOLPH. Are you asking that question of me, your honor?

Yes, we did have kits that were simple things. We provided the statutes. We provided some instructions on what to do if various things happened, phone numbers to call; if they needed to call the county attorney directly, they had that number. Simple things that

helped them in the process of processing the election in an orderly fashion.

The kit also had the attorney general's opinion in 1962 that related to the credentials of, a, the pollwatchers. Pollwatchers were to help count the votes; they were not challengers. The second one is the challenger, who was the person from the party on duty who had a credential and was either certified in 1962 by Mr. Staggs or the precinct committeeman, or a party representative. There must be a distinction between those three people. We were entitled, we felt, to have both a challenger and a party representative on the premises. We did not want to push our luck, so we settled for the challenger

In those kits, we set forth the duties of each, and generally were trying to help them in the conduct of the election.

Senator HEFLIN. Were there any instructions in the kit as to how to determine whether they could speak the English language?

Mr. RANDOLPH. Not to my recollection.

Senator HEFLIN. Any printed cards or anything in the kit?

Mr. RANDOLPH. Not to my recollection.

Senator HEFLIN. At this time—and this sort of surprised me, this far back in the sixties—you had, in order to work through a very systematic program of challenges, taken the voters list in certain areas and had, from that, sent registered letters, or letters where you could at least know that they would be returned to you, if addresses were not accurate; is that correct?

Mr. RANDOLPH. Not quite, Senator. We took the addresses off the voter list of all the registered Democrats, as of the date after the time for the registration for voting had occurred. Any of those—and those envelopes, as I testified, were marked: Do not forward; return to sender if it is not deliverable to addressee.

And on the night that we had the class for the challengers, we had all those sorted in boxes, even alphabetized. If they were not alphabetized by us, it was the challengers' responsibility to get them alphabetized in the boxes; they were shoeboxes.

Those were carried, and sealed, into the premises were the voting was taking place. And the voter came in whose name was on an envelope, the challenger was instructed to ask the board to challenge this man. I challenge this man, Mr. Board Member. And then the board was obligated to ask questions and decide whether he was a qualified voter or not.

If they decided—I had it happen, it was reported to me that there were several instances in which the voter was able to explain away to the board's satisfaction the reason for the returned envelope, and they let them vote.

Senator HEFLIN. Well, this was before the days of computers, was it not?

Mr. RANDOLPH. Yes, sir.

Senator HEFLIN. Pretty expensive back in those days, was it not?

Mr. RANDOLPH. Yes, sir.

Senator HEFLIN. I imagine it is much more expensive today, is it not?

Mr. RANDOLPH. Yes, sir.

Senator HEFLIN. Now, in addition to that, you had the kits, and—how many challengers would you have had in the city of Phoenix during those elections in the sixties?

Mr. RANDOLPH. Well, sir, I would say there were about 30 or 40 precincts, at the very outside.

Senator HEFLIN. Thirty or 40 precincts that you targeted for challenges. And you would have sent how many challengers to each precinct?

Mr. RANDOLPH. Just one.

Senator HEFLIN. Would you have had a second shift during the day, or would the same challengers have stayed there during the whole day?

Mr. RANDOLPH. That is right, sir, we did in many of those—some of them they had to work very hard, like Bethune. And so we often had either a very durable challenger such as John Stidler and Mr. Bentson, or we had to have them—well, they often worked, you know, and they had quit at noon and be replaced. But we tried to have someone there all the time.

Senator HEFLIN. So you might have had, what, two or three shifts during the day?

Mr. RANDOLPH. Most of them were just two.

Senator HEFLIN. All right.

Now, Mr. STAGGS. let me ask you this: You had this conversation with Mr. Rehnquist, and you told him that you knew that he had not been—now what did you tell us in this conversation? I believe you said it was November of—what was the date of that? You phoned him, and you had this conversation with him, and he asked you to make this memorandum. Now when was that?

Mr. STAGGS. It was November 17, 1971.

Senator HEFLIN. All right.

At that time, you said you told him two things. What were the two things that you told him that you knew positively?

Mr. STAGGS. Well, the two things that I discussed with him on that phone call that I originated was in response to the article in the Arizona Republic that day that was accusing him of being in that precinct, and it even said in 1964. And also, as I stated awhile ago, of being a member of the John Birch Society. Which neither one was accurate.

Senator HEFLIN. Well, how would you know whether he was or was not a member of the John Birch——

Mr. STAGGS. Well, I happened to know that he was not. And I happened to know that Wayne Bentson was.

Senator BIDEN. Were you, sir?

Mr. STAGGS. No, sir.

Senator HEFLIN. I believe that is all.

Senator BIDEN. Mr. Chairman—he is not here.

Let me follow up on that. So the two things that you told Justice Rehnquist, then Bill Rehnquist, were, that you knew he was not at Bethune School, or Bethune precinct, and secondly, that you knew he was not a John Bircher. And that you were told then that you had an hour within which to work up an affidavit to that effect, because someone was going to come by and pick it up; it was obvious it was needed quickly.

Now, when you said to Bill Rehnquist, I know you were not at Bethune precinct, did he say to you, oh, no, I was?

Mr. STAGGS. No. In 1964, the article said.

Senator BIDEN. 1964; I see.

Mr. STAGGS. But I also did not feel that he was there on November the 6, 1962, which I stated to him.

However, as I said, Senator, 2 or 3 days later—and I prepared this memo from the knowledge that I had that day because of the newspaper article of November 7, which did not refer to him being there at all. And that was what this memo was drafted from.

Senator BIDEN. The only point I am trying to make is, did you tell Bill Rehnquist that you did not believe he was at the Bethune precinct on election day, 1962? That is what you swore in your affidavit, mistakenly you now say?

Mr. STAGGS. Right.

Senator BIDEN. But that is what you swore in your affidavit at the moment, at the time. You had gotten off the phone with Bill Rehnquist only 1 hour earlier, by your own testimony

Now, did you tell him on the telephone that you did not believe he was at the Bethune precinct in 1962?

Mr. STAGGS. Yes.

Senator BIDEN. All right. Now, did he say to you at that moment, you are mistaken, Mr. Chairman?

Mr. STAGGS. No, he did not say anything further. He asked me please, to just dictate a statement and send it. Which I did.

Senator BIDEN. I see. Now, and the statement dictated was: I further hereby certify to the best of my knowledge that Mr. Bill Rehnquist, on general election day, 1962, was nowhere in the vicinity of the Bethune precinct where this activity occurred, nor any time during the general election day?

Mr. STAGGS. Yes.

Senator BIDEN. And then you later——

Mr. STAGGS. Which, that day and that hour turned out to be incorrect, which I corrected 2 or 3 days later.

Senator BIDEN. Obviously, both of you thought it was correct, because he did not object to it.

Mr. STAGGS. Right.

Senator BIDEN. So he thought it was correct at the time, you thought it was correct at the time. Later, upon getting other information, you said, I made a mistake. You then swore out a second affidavit——

Mr. STAGGS. I sent a corrected letter along with the total file.

Senator BIDEN. To whom?

Mr. STAGGS. Which went to the same—to Senator Eastland.

Senator BIDEN. Senator Eastland.

Mr. STAGGS. The same as this letter here.

Senator BIDEN. Now, this was after the hearing was over?

Mr. STAGGS. Apparently the hearing was over after that.

Senator BIDEN. Right. And OK, now——

Mr. STAGGS. Now if you refer to my FBI statement on July 28, 1986, you will note that that is stated that way.

Senator BIDEN. Correct.

Mr. STAGGS. That I stated that he was—that I did send him down there.

Senator BIDEN. Now, the Democratic Chair at the time said, has allegedly said, in the Arizona Republic, dated Wednesday, November 7, 1962, on page—I cannot read it—I assume it is—I do not know what page it is on, it is on an interior page—it does not say—page 11, column 1, thank you.

But Vince Maggiore, County Democratic Chairman, asserted that some Republican challengers were assuming authority reserved to election board officials.

The tactics being used by Republican challengers in minority areas reflects discredit on a great national party.

There should be no place in America for deliberate attempts to impede the voting of groups that have fought so hard for their rights.

Now, does that—was that statement true then?

Mr. STAGGS. That is correct.

Senator BIDEN. That is correct. So you think in fact, on the election in question, there were attempts to impede the rights of minorities to vote in your county, by the Republican party?

Mr. STAGGS. Yes; if they were illegal votes.

Senator BIDEN. Now, sir—and I have been at this so long, I better get your names right here. Mr. Robert Shaw. Is it Robertshaw?

Mr. ROBERTSHAW. It is all one word.

Senator BIDEN. Oh, I beg your pardon; I am sorry.

Frederick O. Robertshaw, thank you.

Mr. ROBERTSHAW. Right.

Senator BIDEN. I hope I have not referred to you as Mr. Shaw before; if I did, I apologize.

Mr. ROBERTSHAW. That is all right.

Senator BIDEN. Mr. Robertshaw, you apparently have stated—let me ask you to restate for me whether or not in your recollection it was likely that Mr. Rehnquist at the time would have been a challenger at any polling place in 1962; is that likely?

Mr. ROBERTSHAW. I do not think he would have been. I think he has a legal adviser, like everybody on the Lawyers' Committee was.

Senator BIDEN. OK. Now, further, I believe you have testified or stated to other authorities that not only do you not recall the fact that he would be a particular adviser on a—challenger on a particular election day, but that he would not even go in the field to settle disputes; is that your impression?

Mr. ROBERTSHAW. No, I think that we lawyers would go occasionally to the precincts, and as I say, read the code and advise the Republican officials at the particlar precinct what the law was, when they had a question. I think that is what Mr. Randolph said, also.

Senator BIDEN. I know that. But according to a transcript of a meeting you had with the FBI, that is not what you said?

Mr ROBERTSHAW. What did they—I never saw the transcript that they put down.

Senator BIDEN. Oh, I see.

Mr. ROBERTSHAW. I got in late, and they did not have it typed.

Senator BIDEN. Referring to you: He stated that he did not even recall seeing Mr. Rehnquist on this particular election day and added that, as chairman of the committee, it would not have been his role to go into the field and settle disputes, much less challenge voters, end of quote.

Mr. ROBERTSHAW. I do not recall seeing Bill Rehnquist, today, sitting now, on that election day. I remember going over to the county headquarters. But I cannot sit here and testify under oath I saw him.

Senator BIDEN. You do not recall seeing him at the county headquarters?

Mr. ROBERTSHAW. No, I do not.

Senator BIDEN. And you do not recall, Mr. Staggs, him leaving the headquarters, except when you sent him to Bethune precinct; is that correct?

Mr. STAGGS. Are you talking to me, sir?

Senator BIDEN. Yeah, I am sorry.

Mr. STAGGS. I am sorry.

Senator BIDEN. You do not recall Bill Rehnquist—called him Bill in that context at the time—Bill Rehnquist leaving—you say you were at the party headquarters all day?

Mr. STAGGS. Most of the day, in and out, yes, sir. 2314 N. 32d Street.

Senator BIDEN. Great address.

Mr. STAGGS. I know, because I owned the building.

Senator BIDEN. Do you still own it?

Mr. STAGGS. Nope.

Senator BIDEN. Did you get a good price for it?

Mr. STAGGS. Nope.

Senator BIDEN. You state that you were there most of the day. And it is your recollection that Bill Rehnquist was also there most of the day.

Mr. STAGGS. Most of the day, that is correct. He also was in and out with his regular committee. And most of the day, we were both there.

Senator BIDEN. How many times would you guess he was in and out? Some 2, 5, 10, 20, 50 times?

Mr. STAGGS. Twenty-four years later, I could not say.

Senator BIDEN. OK, fair enough.

Now, let me ask you: You have all——

Mr. STAGGS. Senator, may I add one point to what he said?

Senator BIDEN. Yes.

Mr. STAGGS. I can almost categorically state that Bill Rehnquist did not do any challenging as such. Because we had the—the challengers had to have a signed affidavit that they were a legally appointed challenger. And it had to be signed by the county chairman, which I was.

And I do not recall ever signing an affidavit for Bill Rehnquist to be a challenger, because he was chairman of our legal committee.

Senator BIDEN. You had the authority to make him a challenger? I mean, it was your decision to decide who the challengers were?

Mr. STAGGS. No, it was my authority to sign an affidavit that they were a legal challenger.

Senator BIDEN. Well, that is what I mean.

Mr. STAGGS. The committee, and even our district chairmen and others possibly——

Senator BIDEN. The Republican Party chose the challengers?

Mr. STAGGS. What?

Senator BIDEN. The Republican Party chose the Republican challengers; correct?

Mr. STAGGS. OK. Now, there has been extensive testimony about how well respected and how well known Bill Rehnquist was.

I mean, do you doubt whether anybody—would any Democrat—let me ask you, Mr. Chairman: Would any Democrat have challenged Bill Rehnquist's right to be a challenger?

Mr. MAGGIORE. I would say that they would because of the fact that he was not as renowned then as he is now.

Senator BIDEN. Oh, I know that.

Mr. MAGGIORE. And I do not think a lot of people in the Democratic Party would have known him.

Mr. STAGGS. Senator, if I may, I would like to answer that, too.

Senator BIDEN. Sure.

Mr. STAGGS. Because the judge and inspector, the judge, marshall, and inspector, the three—and clerk—the officers of the election board would require the presentation of this affidavit. So they would not let anyone else challenge in that precinct——

Senator BIDEN. But can you swear under oath you know for certain Bill Rehnquist did not have such a signed affidavit?

Mr. STAGGS. I would say to the best of my knowledge that he did not have one, because I know I did not sign one. I will put it that way.

Senator BIDEN. Recollection is difficult this far out, I acknowledge. Obviously, the recollection was difficult nine years out——

Mr. STAGGS. That is right.

Senator BIDEN [continuing]. When you signed a sworn affidavit that was incorrect.

Let me ask one last question. Can any one of you state categorically that you know for a fact that Bill Rehnquist did not challenge any voters on election day, 1962? Not what you think about him, what you feel about him, what you know about him.

Can you state categorically that he did not challenge anyone on that election day?

Mr. RANDOLPH. How could you answer that categorically when not one of us was with him all day?

Senator BIDEN. Valid point. Valid point. Very valid point. Thank you very much.

None of you were with him all day, correct?

Mr. RANDOLPH. Right.

Senator BIDEN. None of you were with him even most of the day, correct?

Mr. STAGGS. I was probably with him most of the day, but I was not with him all day.

Senator BIDEN. Probably or were?

Mr. STAGGS. I was with him most of the day, but I was not with him all day.

Senator BIDEN. Were any of the rest of you with him most of the day? Were any of the rest of you with him even an hour that day?

For what, an hour that day?

Mr. TURNER. As I recall, Senator, we visited several precincts with Justice Rehnquist during the course of a day, precincts who were having problems. And he did, as I indicated in my testimony, what he was expected to do. He tried to address the problem. Some-

times it was a question of credentials, sometimes it was a question of rights of Republican election officials or challengers. And we saw nothing that even bordered on that type of activity.

So I would guess that we were probably with him as much in the field as anyone that day. And as I indicated previously, there was no indication that he had the slightest proclivity to challenge?

Senator BIDEN. No; I understand that and I acknowledge that. You all believe very strongly that he did not have the proclivity, and you stated the reasons why. I just want to make sure I got the record straight here, that in fact, none of you can categorically state that he did not. Not that I expect it. You should not be able to unless you were with him all day, as you point out

That is the only point I want to make, and I will yield to my colleague from Ohio.

Senator HATCH. Senator Metzenbaum.

Senator METZENBAUM. I just have a few questions.

First of all, we all agree, as I understand, that Staggs sent Mr. Rehnquist to the precinct on the day in question; Is that correct? Do any one of you take issue with that?

Mr. STAGGS. If the day in question is November 6, 1962?

Senator METZENBAUM. That is correct.

And is it also agreed that none of you in this room were with him on that occasion, when he went to the booth—when he went to the voting place on November 6, 1962, dispatched there by Mr. Staggs?

Senator HATCH. Well, Mr. Cassidy was there.

Senator METZENBAUM. Well, just a moment

Mr. CASSIDY. I was there. I was not with him.

Senator HATCH. You were in the same room with him

Senator METZENBAUM. Now, Mr. Cassidy, did you see Mr. Rehnquist?

Mr. CASSIDY. I do not know Mr. Rehnquist.

Senator METZENBAUM. You would not have recognized him if you saw him?

Mr. CASSIDY. No, sir.

Senator METZENBAUM. And you actually were at the polling place from early morning—the polling area from early morning until about 3 o'clock; is that correct?

Mr. CASSIDY. Yes, sir.

Senator METZENBAUM. But you were not always in the polling booth itself, or was there a booth—you were not actually where the votes were being cast?

Mr. CASSIDY. No; I was outside other than probably a total of an hour, a little over an hour, on the two calls that I went inside.

Senator METZENBAUM. In other words, actually, after the Bentson incident, you walked outside the school by yourself. And it appeared the trouble had ended. You then left the school grounds, pursuant to the Phoenix Police Department policy, that other than intervening in disturbances or to vote, uniformed officers were to avoid the voting areas of polling locations. That you then continued with your normal duties, remaining in the area of Bethune School, due to the fact that the individuals involved in the initial incident stayed at the school.

Then a few hours later, you received another dispatch to respond to Bethune School regarding an assault. Upon your arrival, you saw Bentson yelling back and forth in what appeared to be the same group of individuals as before, with the exception of two white males who were not present earlier.

Do you know who those two white males were earlier?

Mr. STAGGS. No, sir.

Senator METZENBAUM. And one of them might have been Mr. William Rehnquist?

Mr. CASSIDY. I doubt it from the description, but I have no idea. I heard their names; I just do not remember what they are. And I did not know the two individuals. I believe they are in the police report, listed.

Senator METZENBAUM. But you do not know whether it was or was not——

Mr. CASSIDY. I did not make out the report, no, sir.

Senator METZENBAUM. Now, we know that at one point in the day——

Senator HATCH. Would you yield for just one second.

Senator METZENBAUM. No, no.

Senator HATCH. Mr. Maggiore can clarify that. He can tell you who they were.

Senator METZENBAUM. No; I do not want——

Senator HATCH. Let us get the truth.

Senator METZENBAUM. Now, you just stay out of it when I am inquiring.

Senator HATCH. Wait.

Senator METZENBAUM. Just a moment. You stay out of it while I am inquiring. You have a tendency to want to interrupt.

Senator HATCH. I may not be Senator Thurmond, but I am the chairman.

Senator METZENBAUM. I know you are the chairman, but you are not going to interrupt me.

Senator HATCH. Wait a second, Howard. Let us be fair. You have asked him for names that were there. Mr. Maggiore can identify them for you.

Senator METZENBAUM. Mr. Maggiore was not there.

Senator HATCH. He knows who they were. Why don't you let him answer? He is a Democrat.

Senator METZENBAUM. Mr. Maggiore was not there. I will get to Mr. Maggiore in due time.

Senator HATCH. We will let you have your way.

Senator METZENBAUM. Now, you just hold your cool, Mr. Chairman. We will get along just fine.

So that you were in and out, and in fact Mr. Rehnquist might have been one of those two white males, or he also might have been there at a time different when you were away from the precinct entirely; is that correct?

Mr. CASSIDY. Yes.

Senator METZENBAUM. I do not think that I have any further—yes, I do. I want to repeat Senator Biden's question, because I do not think all of you answered. There was sort of a silence. And I like the way Senator Thurmond did it.

Do any of you know for certain that William Rehnquist was not involved in challenging voters on November 6, 1962, in the Bethune Precinct or any other? Do any of you know for certain that he was not involved?

Mr. RANDOLPH. Senator, I am going to take a crack at that.

We lawyers have to operate sometimes on the law of probabilities. And I am just telling you, the law of probabilities is so overwhelming that he was not there challenging, with that angry mob in there, and with the trouble we had had straightening it out in the morning with the deputy county attorney who had set the ground rules we were anxious to have set so we could operate in there, that he would have been an absolute fool to have gone in there and try to challenge any time that day.

And I would say the overwhelming probability is so compelling that he did not go there that I can say categorically that he was not there.

Senator METZENBAUM. We know that he was there for an hour and a half, do we not?

Mr. STAGGS. Not necessarily, no.

Senator METZENBAUM. No? Well, the reason I said that is because Mr. Staggs stated that Rehnquist returned about an hour and a half later to Republican county headquarters——

Mr. STAGGS. I said that he was gone from county headquarters about an hour and a half. It is a half—hour drive from Bethune from my—from 2314 N. 32d to Bethune's precinct.

Senator METZENBAUM. I will not quibble about the minutes.

Mr. STAGGS. So he could not have been there more than half an hour at the maximum.

Senator METZENBAUM. I am sorry, I do not remember——

Mr. RANDOLPH. George Randolph. Randolph's my name.

Senator METZENBAUM. Mr Randolph. Mr. Randolph, the law of probability, according to you, was that he would not do that. Because that was not what you had planned to do; that is not the way it worked out.

But you were here today when you heard five witnesses under oath, and we have other statements as well from other individuals; there were five witnesses under oath, one a very prominent lawyer, one a doctor of psychology, one another lawyer in Arizona, one a State Senator, and one—and I forgot the other one. But they all said they saw him making the challenges.

Now, does that bother you about your law of probability?

Mr. RANDOLPH. Yes, sir. I'm glad you addressed that, because I didn't get to finish my testimony. Dr. Sydney Smith, I think, was mistaken, because, first of all, Bill Rehnquist was not a certified challenger in 1960——

Senator METZENBAUM. Did you have to——

Mr. RANDOLPH [continuing]. Or in 1962.

Senator METZENBAUM. Let me just ask you a question.

Senator HATCH. Well, let him answer the question.

Senator METZENBAUM. All right, I'm going to. But Mr. Staggs made much about being a certified challenger. And let's just put Mr. Rehnquist out there, put you out there, put anybody out there—you go up to some black person or some Mexican, Mexican-

American, and you hand them a card and you say: "Have you got a right to vote?"

That person isn't going to say: "Where's your challenger certificate, have you got the affidavit?"

Mr. RANDOLPH. May I answer your question?

Senator METZENBAUM. You don't have to do that; he's a big man, he says: "I challenge you, I don't think you have a right to vote."

Mr. RANDOLPH. May I answer your question? It's about a five-part question.

No. 1, Mr. Staggs said that he sent him down there, but that he was there less than half an hour. I told you that in the morning——

Senator METZENBAUM. He doesn't say that, he didn't say that.

Mr. RANDOLPH. In the morning we went and took the county attorney in there and we set the ground rules, and we got peace in the community and we all left. We left a competent police officer there who kept the peace all day, at least until it erupted at 2 o'clock in the afternoon.

OK, to go on, Smith, I think, was mistaken. I know that Brosnahan—in my own mind, Brosnahan was mistaken. I think that Mr. Pena was certainly mistaken, because he's talking about Butler precinct and you're talking about Bethune precinct, and if Mr. Rehnquist was directing the program from headquarters, he certainly would not have called headquarters for instruction as to how to do the challenging, when he's the one that knows the law and who everybody else is calling.

Furthermore, we couldn't have spared him from headquarters for as long as Mr. Pena says it took down there to go in there and challenge the voters and go in the principal's office and come back out and double up his fist—I've never known Mr. Rehnquist to be pugilistic.

I just think his testimony, with the law of probability, is just incredible. And so I just don't think you can believe him.

Senator METZENBAUM. All right, they are all unbelievable or they are mistaken; is that your point?

Mr. RANDOLPH. That's my point.

Mr. STAGGS. Senator, I would like to answer your question, if I may.

I cannot either categorically state that I know Bill Rehnquist did not challenge anybody in the Bethune precinct, but I can say that it is highly unlikely. If he did, the Democrat election board officials in that precinct were highly negligent, because he would have had to show that signed authorization affidavit in order to be able to challenge anybody, any voter, in that precinct.

So based on that I would say that it's highly unlikely that he did.

Senator METZENBAUM. Well, you heard Mr. Mirkin say that he got into a dispute with Mr. Rehnquist; you heard Senator Pena indicate that he had a confrontation with Mr. Rehnquist.

Mr. STAGGS. Mr. Pena also stated that was in 1964, not 1962.

Senator METZENBAUM. He could be mistaken about that.

Mr. STAGGS. Yes.

Senator HATCH. I do not recall Mr. Mirkin saying that.

Senator METZENBAUM. He certainly knew who Mr. Rehnquist was.

Senator HATCH. I do not recall Mr. Mirkin saying anything like that. Am I wrong in that?

Senator METZENBAUM. No; Mirkin said he got into a dispute and that he was going to call the sheriff, and I think he said to them that the sheriff is not a Republican or something of the kind—I don't think that was particularly relevant, but the point that I'm making is that he was concerned enough about it that he couldn't handle it.

Mr. STAGGS. Well, I heard Mr. Mirkin's testimony this afternoon, too, and I highly question that he knew what the hell he was talking about at all.

Senator METZENBAUM. Now, as I get it, Staggs doesn't think Mr. Mirkin knows what the hell he's talking about, and this gentleman over here doesn't think that any of these people told the truth when they came before us today. And so I have no further questions, I guess, Mr. Chairman.

Senator DECONCINI. Mr. Chairman.

Senator HATCH. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I have one further question.

Senator HATCH. Will you question the two witnesses or the two people that Senator Biden——

Senator DECONCINI. No; I just have a question for Mr. Cassidy.

Mr. Cassidy, I just delivered to you what appears to be the Phoenix Police Department report of November 6, 1962.

Mr. CASSIDY. Yes, sir.

Senator DECONCINI. Can you just tell me if that is the police report from that particular day that you were on duty there?

Mr. CASSIDY. Yes; it is the report, made out by the officer that was the first one at the school.

Senator DECONCINI. And have you read that report?

Mr. CASSIDY. Yes; I have.

Senator DECONCINI. Does that make reference to the two white males that you saw there?

Mr. CASSIDY. Yes; it does.

Senator DECONCINI. And is Mr. Rehnquist's name listed in that report anyplace?

Mr. CASSIDY. It's nowhere in the report, no, sir.

Senator DECONCINI. Are the two white males identified in that report?

Mr. CASSIDY. Yes; they are.

Senator DECONCINI. I thank you. I have no further questions.

Senator HATCH. Mr. Maggiore, do you know who they are?

Mr. MAGGIORE. Yes; I think I do.

Senator HATCH. We could have saved a lot of time if we had let you just talk a few minutes ago.

Mr. MAGGIORE. Yes; they were both—I hate to say, they were both associates of mine, about equal to Mr. Bentson on the other side. [Laughter.]

Senator HATCH. I am not sure that I have any more questions.

What we have here are a lot of sincere people trying to reconstruct what happened 24 years ago. That is in and of itself a very difficult thing to do. The Democratic panel reconstructed it in such a way as to be, they thought, detrimental to Mr. Rehnquist. You

have testified here today that is very positive to Mr. Rehnquist, all of you.

A number of you are Republicans. They were all Democrats. They were all very active Democrats. Some of you are very active Republicans, or most all of you are—except for Mr. Maggiore and Mr. Cassidy, whose testimony I find not only credible but very important.

Anybody who looks at this reasonably must conclude there have been some massive cases of mistaken identity, mix up of facts and misunderstandings.

The one thing that bothered me about Mr. Brosnahan's testimony was that with all the evidence about the Bethune School incident one FBI report, one police report, his own statements in the Washington Post that it was Bethune, the Nation article, he kept on denying that it was there.

Senator METZENBAUM. To keep denying what?

Senator HATCH. That it was at the Bethune School, and to admit that that was a real potential. That really bothered me.

It isn't important what bothers me. What's important here is that we have a marvelous individual who has served this country well for the last 17 years. I almost do not care what happened 24 years ago, even if the allegations of the five Democrats were true—and they are not. It is pretty apparent that they are not.

The fact is—and I am not accusing them of trying to distort or mistake—that it is tough to remember what happened 24 years ago. We have people here who are very creditable. Maybe we ought to get down to what the real issues are. Is Mr. Justice Rehnquist capable, able, and worthy to be the Chief Justice of the United States Supreme Court? The answer to that is clearly an unequivocal yes, at least from the standpoint of the Bar Association. They gave him the highest qualified rating that they can give anybody.

Let me ask a couple of other questions to all of you.

Did you or any one of you ever suggest that then Mr. Rehnquist challenged any voter? Did any of you ever suggest that? Just say yes or no.

Mr. RANDOLPH. No.

Mr. MAGGIORE. No.

Mr. TURNER. No, sir.

Mr. STAGGS. Definitely not.

Mr. MARSHALL. No.

Mr. ROBERTSHAW. No.

Senator HATCH. You were the principal people at the time involved, at least on the Republican side, and you, Mr. Maggiore, on the Democrat side, and you, Mr. Cassidy, on the law enforcement side. Did any of you ever hear anybody suggest that Mr. Rehnquist challenged any voter?

Mr. RANDOLPH. Not until this afternoon, your honor, at this committee hearing.

Senator HATCH. Mr. Maggiore.

Mr. MAGGIORE. No.

Senator HATCH. Your answer is no?

Mr. MAGGIORE. No.

Senator HATCH. And that's unequivocal, isn't it, Mr. Maggiore?

Mr. MAGGIORE. That's unequivocal.

Senator HATCH. OK. Mr. Cassidy.

Mr. CASSIDY. No, sir.

Mr. TURNER. No.

Mr. STAGGS. No, sir; not until the allegations I heard today.

Mr. MARSHALL. No.

Mr. ROBERTSHAW. No.

Senator HATCH. I find it a little incredible that those allegations suddenly come up in the middle of something like this, when they could have come up in 1971. There are answers to that, I suppose, but I think they are pretty feeble answers.

Mr. STAGGS. They could have come up in 1962.

Senator HATCH. They could have, but they did not.

Mr. STAGGS. After the election.

Senator HATCH. Mr. Maggiore, you were there. Let me ask each of you. We will just go from one side to the other again—yes or no. Did Mr. Rehnquist, in 1962, or any other time that you know of, ever act improperly or outside his duty as a legal advisor.

Mr. RANDOLPH. No.

Mr. MAGGIORE. No.

Mr. TURNER. No.

Mr. STAGGS. As the legal counsel of the Republican Party of Maricopa County, he was highly ethical. I never knew him to be otherwise.

Mr. MARSHALL. No.

Mr. ROBERTSHAW. No.

Senator HATCH. We have asked the FBI to attempt to locate the alleged FBI agent who called Senator Biden's office. The call came from a bar in New York City. [Laughter.]

The FBI says they have no record of an FBI agent named McCurdy, but they will continue to look. You may remember that Mr. Brosnahan thought that he knew the name, and that should be pointed out.

Senator HEFLIN. Mr. Chairman, I have a couple of questions I'd like to get cleared up.

Senator HATCH. Senator Heflin.

Senator HEFLIN. Mr. Staggs, was there anybody else other than you that could certify challengers or officials to represent your party at polling places?

Mr. STAGGS. When you say "certify," are you referring to signing the authorization?

Senator HEFLIN. Whatever you signed, I don't know. An affidavit, you keep talking about this affidavit.

Mr. STAGGS. Well, every challenger had to have in his possession a signed authorization, affidavit authorization, to present to the judge in the voting precinct. So, to answer your question, no—no one else had any authority.

Senator HEFLIN. So this affidavit of challengers, was it on a card?

Mr. STAGGS. No; it was on an 8½ by 11 mimeograph sheet.

Senator HEFLIN. Was there any other authorization that you signed?

Mr. STAGGS. Senator, it also was on the Republican County Committee letterhead. I wish I had kept one of them.

Senator HEFLIN. Was there any other document that you would have signed that could have authorized anyone to be an attorney to

assist challengers? In other words, if you sent an attorney to a precinct and the precinct judge didn't know him, what credentials would he have presented to the judge to show that he was a representative of the Republican Party?

Mr. STAGGS. Well, the legal committee had no affidavit or authorization. It was not required. But he would not be able to challenge, unless that person had a signed affidavit. If he went there as a lawyer, he would not have any identification other than his own personal identification.

Senator HEFLIN. Well, Mr. Cassidy, let me ask you, if you remember during the time that you were at this polling place, whether anybody came, and identified himself as an FBI agent, or whether anyone else identified himself to you as an assistant U.S. attorney?

Mr. CASSIDY. No, sir; they didn't identify themselves to me, but, as I said, there were numerous people coming all day long, representatives of both parties. Mr. Bentson told me he called the FBI, he told me he called the attorney general. So it wouldn't surprise me that they showed up, but I don't know which ones they were.

Senator HEFLIN. You mentioned something about you expected the FBI to come, but that was left a little bit up in the air. What did you mean? You seemed to have some recollection about an FBI agent that was coming to this polling place.

Mr. CASSIDY. I don't recall mentioning anything like that.

Senator HEFLIN. Well, maybe I misunderstood what you said. But you don't recall anything about an FBI agent coming or going to be there or anything else at this polling place?

Mr. CASSIDY. I recall Bentson saying that he was going to call an FBI agent. Whether one came or not, I don't know.

Senator HEFLIN. I believe that's all.

Senator METZENBAUM. Mr. Chairman.

Senator HATCH. Let us turn to Senator Metzenbaum. Let us try and wrap this up. We have one more witness to go.

Senator METZENBAUM. I will. I wasn't going to say anything more until you went into your soliloquy.

Senator HATCH. That is fine. We will have a soliloquy from you.

Senator METZENBAUM. I think maybe we should, because I think, Mr. Chairman, you have attempted to compare the five witnesses under oath who testified that they saw Mr. Rehnquist at the voting booth and described for this committee what they saw, and then attempted, in the instance of Mr. Brosnahan, to suggest that, well, he didn't even know where he was, he didn't know what precinct—and he said Brosnahan and an unknown special agent of the Phoenix office of the FBI went to south Phoenix to a school, possibly Bethune School——

Senator HATCH. I tried to get him to say that about a half hour here today, and he would not admit it.

Senator METZENBAUM. But that's what he said to the FBI.

Senator HATCH. I agree. That is what he said to the Washington Post, that is what he said to all kinds of other people. That is what everybody else says.

Senator METZENBAUM. And he said that here, too.

Senator HATCH. I do not think he did.

Senator METZENBAUM. He said that here, too. Now you bring in eight witnesses, no one of them in a position to say that Rehnquist didn't challenge the voters, except this one gentleman says, based on the law of probability, he doesn't think he would have done that, this gentleman over here saying he didn't think he would do that, and others saying they don't think he's that kind of a man.

But the facts are that five people—Brosnahan is a member of a major law firm on the west coast, I don't know him at all. But the fact is, 250 lawyers—and he comes all the way across country, nothing to gain, nothing to gain in coming this far—and an awful lot to lose, because you can't be in a law firm of 250 lawyers representing major corporations without probably 220 of them at least being Republicans, and pretty conservative people, and not very happy about his coming over here to testify. [Laughter.]

Senator HATCH. Not in Berkeley, CA. There are not 220 Republicans in the whole city.

Senator METZENBAUM. That's not so; that's a corporate law firm.

Senator HATCH. There might be.

Senator METZENBAUM. Then you have Mr. Smith, the professor or doctor, who says I came here because my children said I couldn't do otherwise. No big privilege to come before the Senate Judiciary Committee and have a bunch of Senators pick on you from one side to the other. The man is quite timid, as a matter of fact, and came here because he felt it was a public duty—he had to come here.

You have Mr. Pine, who is a Democratic political leader, business person, well respected in the community, his wife is just going to be a lawyer, testify unequivocally—unequivocally—about Mr. Rehnquist being there as a challenger.

You have Mr. Mirkin testifying—saying, indicating his support; he would vote to confirm him—he would vote to confirm him. But he made it clear, he saw what was going on there with Mr. Rehnquist. Here is a man who said I would vote to confirm him; he wasn't an unfriendly witness.

And then you had Senator Pena, who tells us about the confrontation and the difficulties and how the tempers rose on that occasion.

Did all five of these people just dream up this kind of thing? Mr. Chairman, you would like to make the issue what happened 30 years ago. I say to you today—I said it to you before—the issue is, Did Justice Rehnquist tell the truth to this committee in 1971? Did he tell it to this committee in 1986 with reference to these incidents? Did he do so with respect to the Jackson memo? Did he do so with respect to his being surprised when he learned that there were restrictive covenants in his Vermont property as well as his Arizona property?

Mr. Chairman, now I am ready to adjourn.

Senator HATCH. That is great. I knew I should not have given my soliloquy.

Senator HEFLIN. Well, I believe, since both of you have given them, call them all closing arguments, and I'm the only member of the jury still here. [Laughter.]

Mr. STAGGS. Mr. Chairman, may I make one short statement?

Senator HATCH. Yes.

Mr. STAGGS. I don't think Justice Rehnquist, my knowledge of him over the years—I don't think he is capable of saying anything except the honest truth.

Senator HATCH. I do not think anybody who has watched him really believes otherwise, except one or two members of this committee. I do not see how anybody can watch Mr. Justice Rehnquist, look at the reputation, the public service he's given——

Mr. STAGGS. People may not agree with him, but I think he has told the honest truth.

Senator HATCH. There is a man who stood all alone on a number of occasions and has had the courage to take on a lot of things. I do not think anybody really believes that he would deliberately lie.

You don't, do you Mr. Maggiore?

Mr. MAGGIORE. I think that the big argument that I would put is the fact that here I was the leader of the party and nobody told me anything. And they haven't denied it either today—that's what bothered me.

Senator HATCH. That bothers you about your own party members.

Mr. MAGGIORE. Yes.

Senator HATCH. It bothers me, too. A lot of inconsistencies in their testimony bother me, too. But I have to admit that I believe that everybody sincerely told what they thought to be true.

There is clearly a question here. It has to be resolved by any reasonable decent person in favor of the Associate Justice of the Supreme Court, even if you do give credibility to those who testified before.

And most of them were sincere.

Let me thank each of you. Mr. Maggiore, you are a former chairman of the Democratic Party in Maricopa County. If you were a sitting U.S. Senator, would you vote to confirm Mr. Justice Rehnquist as Chief Justice of the U.S. Supreme Court?

Mr. MAGGIORE. Yes; I would.

Senator HATCH. You have been practicing law for a long time. You have been a bankruptcy judge.

Mr. MAGGIORE. Yes; I have been a bankruptcy judge for 20 years.

Senator HATCH. I think you have been, outside of Mr. Justice Rehnquist, the single best witness in this whole hearing. I do not think anybody can doubt your sincerity or your integrity. There is nothing for you to gain here. You have traveled all across the country, too. I want to compliment you, Mr. Cassidy, and all my Republican friends. I want to compliment all of you for making the sacrifice to come.

Let's be decent about it; let's be fair about it. Let's look at the record of this man and the reputation he has.

We will take a 1-minute recess and then we are going to finish with our last witness. His name is Baly G. Thaper. We are going to give him 3 minutes.

[Brief recess.]

Senator HATCH. Our last witness is Mr. Baly G. Thaper. Welcome, Mr. Thaper. If you will proceed.