than the other Justices. Rather, what is at the heart of his view is a far more fundamental principle that questions the role of the the Supreme Court itself in preserving federal constitutional rights.

If this is a fair characterization of Justice Rehnquist's view, the question arises whether the Senate should elevate to the position of Chief Justice of the United States a member of the Supreme Court so out of sympathy with the basic role and function of the Court. We believe that the answer is no. Never in our history has a Chief Justice so undermined and demeaned the Supreme Court as an institution. As one who rejects the Supreme Court's central constitutional task, Justice Rehnquist is clearly an inappropriate choice to lead and represent our highest Court.

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Senator HATCH. Thank you Mr. Silard.

Senator BIDEN. Thank you I apologize for the rush.

Senator HATCH. Thank you. We appreciate having you here.

And at this particular point we will take just a short recess, but let me say that the Democrats on the committee have asked for 10 witnesses at this point and we have 5 of them who are here. There are five more that we do not know where they are.

Senator METZENBAUM. Mr. Chairman, I want to say that I have been asked to read into the record the FBI affidavits in connection with some of those who could not make it. I hope you will permit me.

Senator HATCH. Those who are here are Mr. James Brosnahan, Melvin Mirkin, Charles Pine, Sidney Smity, and Manuel Pena.

Those who are not here are Quincy Hopper, Nelson McGriff, Fred LaDene, Michael Shapiro, and Arthur Ross.

Who has asked you to read out of the FBI affidavits?

Senator METZENBAUM. We have the LaDene affidavit, we have the Arthur Ross—these were given to the FBI.

Senator HATCH. Do we have copies of those affidavits?

Senator METZENBAUM. Oh, yes.

Senator HATCH. Do we have copies?

Senator METZENBAUM. Mr. Chairman, if you would rather have Duke Short read them, I have no particular——

Senator HATCH. No. We would be happy to let you read them. Which affidavits are you going to read?

Senator METZENBAUM. LaDene, Ross, McGriff——

Senator HATCH. Is there any reason why they are not here?

Senator METZENBAUM. Yes. I think Mr. LaDene says in his, I just was reading that myself, that by the nature of the interview, LaDene advised that, due to time constraints, he would prefer to be interviewed over the telephone, as he was very busy and was not going to go to Washington to testify because of his time schedule.

Now, there is one saving grace about Mr. LaDene that you should know, and that is that he was chairman of the Republican Party for Maricopa County in 1962, and I thought that would impress you.

Senator HATCH. Is he the only Republican?

Senator METZENBAUM. Well, I am not certain about that. I have not checked the politics of the others.

Senator HATCH. I have a feeling that he may be.

Is he presently a Republican?

Senator METZENBAUM. I think that he is the chairman of National——

Senator LEAHY. Can we get a blood test?

Senator HATCH. You do not have to go into that data.

Senator LEAHY. Can we get a blood test, Mr. Chairman?

Senator HATCH. That is what I was wondering!

You have got Mr. McGriff, Mr. LaDene, and Mr. Ross. Are there any others?

Senator METZENBAUM. Yes; there is Mr. Shapiro who had a death in his family. He may not be able to come.

We have requested the FBI interview him, and he should be able to testify. His father-in-law died, and we understand his mother-in-law is ill as well, his mother, I guess it is.

Senator HATCH. The only 1 remaining of the 10 witnesses is Quincy Hopper. Do you know if Quincy Hopper is here?

Senator METZENBAUM. We do not know his status yet.

Senator HATCH. All right. We have five witnesses present, one who might be present, and Quincy Hopper who may also appear.

Senator METZENBAUM. Mr. Chairman, in the interest of time, if you will, I would be willing to start reading these. But I gather you and Senator Biden are going to go into a conference, is that right?

Senator HATCH. No, I do not think so.

Let us just have a short recess.

Senator METZENBAUM. Mr. Chairman, I am not being smart, but since we are so close in time, and I think we should, but can we extend the hour, this 15-minute period?

Senator HATCH. Senator Thurmond has told me not to do that, but I feel you are going to have enough time. Let us just see what we can do to shorten the time. We will certainly do everything we can to accommodate you. However, a lot of it depends on how long you are going to interrogate.

Let me ask the other two panels that the committee has called to come to the back, if they would. Simpson Cox, Vincent Maggiore, Edward Cassidy, William Turner, Ralph Staggs, Jim Bush, Fred Robert Shaw, Gordon Marshall, and George Randolph.

If these people are here, would you come into the area behind the hearing room.

Senator LEAHY. Sir, just a moment.

Before we go, what I think was—well, Senator Biden is still here. We had, the Senator knows, because we had an agricultural matter on the floor late last night. I was bouncing back and forth between the floor and here, and had this question of what we were going to do on the material that originally had been—we were to receive from the Justice Department, and then executive privilege was invoked.

Then back on that same agricultural matter on the floor this morning, I am just curious, where do we stand now? What is the situation?

Senator HATCH. Let us just take a short recess.

[Recess].

The CHAIRMAN. I have just been informed that our negotiators on textiles in Geneva have caved in. It is a terrible situation. And I am going now to find out some more details about the facts.

I am going to ask Senator Hatch to take over in just a minute.

The commitment I had from the President in 1980, and confirmed in 1982, is that the import growth will be kept in line with the domestic growth. The import growth is 33 percent; domestic growth is 3 percent. In the last year, our exports of textiles have amounted to $3 billion; imports of textiles coming into this country and taking the jobs from our own people have amounted to $20 billion, an $18 billion differential. That is completely unreasonable. It is closing down the textile mills in this country, and it is throwing thousands of people out of jobs. There is just no excuse in this.

Now I want to say that in view of this situation, I see nothing left but to override the President's veto on this textile bill. We were hoping this arrangement they were going to work out over

there would bring some relief. Instead of that I am informed that our negotiators caved in.

Senator Hatch, I am going to ask you take the chair in just a minute.

The distinguished Senator from Alabama I believe wanted to comment.

Senator HEFLIN. I have gained seniority today on textiles, because I am vitally interested in this issue. It affects thousands and thousands of jobs in my State. We have had disaster there in terms of drought, and caving in on these multifiber agreements is another great disaster to us. I do want to join Senator Thurmond in doing some investigation on it, but I will return. I have been here, and I will leave a staffperson who will hear every bit of the evidence

Senator KENNEDY. Mr. Chairman.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Will you be back at the hearing later in the course of the day?

The CHAIRMAN. Yes, I will be back

Senator KENNEDY. Because when you return, I would hope that we would have an opportunity to inquire of you whether we will have the chance to convene the full Judiciary Committee to make a judgment and a determination as to how we are going to proceed on the position that has been taken by the legal counsel's office on the willingness to deny this committee certain information, certain memoranda, certain documents.

I know you stated your position on this last evening I had not intended to raise it at this particular moment. We have had an opportunity to talk to other members of the committee. But I do feel that we have sufficient members 142 of this committee, Republican and Democrat alike, to meet the requirement of the rules of the committee, to convene the committee and find out what way we might proceed We would like to do this as a point of accommodation. I am very much aware of your strongly-held views. But we do under the committee rules have the right to request a meeting of the committee.

I want to indicate at this time, Mr. Chairman, that the extent that there was any understanding and agreement about the way our committee was going to proceed is based upon the understanding of the calling of various witnesses and the availability of various information that was going to be essential to our being able to make a judgment and make decision.

I for one would feel that stonewalling on this request by the administration and denying us the opportunity to gain this kind of information effectively vitiates my own understanding of the nature of the agreement. It may not in others, but it does mine. And I would no longer feel bound by any previous agreement. That is an independent judgment and an independent decision, but one strongly held.

But I do want to indicate as you are going off now to other meetings, that I do feel that there is very substantial support among the members of the committee not only on this side but on your side to try to find a way and a means to address the request for information. I have characterized, and I think it is myself intolerable, that

there has been a denial to this committee of selected information. But I do want to indicate that I would hope when you return to be able to raise this in a more formal way if we are not able to resolve it in a more informal way to permit the committee to meet and to also work out some kind of mechanism for the obtaining of these documents.

I wanted to indicate that to the chairman now since it appears that the chairman is going to have to, for the reasons he has outlined, absent himself from chairing these particular hearings.

Senator BIDEN. Mr. Chairman, if I may for just a moment, to put it a slightly different way, we have a problem and a division on the committee. After the witnesses are finished, all the witnesses, not to bring back new witnesses, but after that is done, we really think it would be a good idea if the committee were convened for the purpose of us settling the issue of access to documents and requests for subpoena. And I would join in asking that, that we meet after the witnesses are completed.

The CHAIRMAN. Well, I cannot say that we can meet today. The administration has declared executive privilege, which they have a right to do, and so far as I am concerned, that is closed. Now, our agreement was to provide prompt production of all reasonable requests for information pertaining to the nominee. And this request, as I just said, is not reasonable. And I have already cooperated in helping to obtain all other documents that have been requested, so I see no reason to pursue this particular matter further at this time. We can consider it further——

Senator BIDEN. Mr. Chairman, let me just give you one reason. It may be that 10 members of the committee want to pursue it. That is sufficient reason. [Laughter].

And I am not being smart when I say that, I truly am not. But I think at least, before we break out of this agreement, and Senator Kennedy may or may not feel obliged to break out of the agreement that we had overall with both Justices, that before this breaks down, which we took so long to set up, why don't we at least as a committee meet, any way you want to do it, to decide whether or not under the committee rules, there are 10 people who want to subpoena. If not, then in fact, we have finished——

The CHAIRMAN. I will be back for the hearing later.

Right now, Senator Hatch will take the Chair.

Are you all ready to go ahead?

Senator BIDEN. We are all ready to go ahead. I hope we are going to add at least a half an hour onto our time for these witnesses.

The CHAIRMAN. We have not cut your time.

Senator HATCH. We have.

Senator BIDEN. Oh. Well, we recessed for about half an hour. Well, we will fight about that when the time comes. I am sure that the distinguished chairman from Utah will, as he always does, give every witness ample and fair time to testify. [Laughter].

And in fact he usually does that.

Senator HATCH [presiding]. As a matter of fact, I usually do.

Senator KENNEDY. Yes; I would hope we would. I for one, whatever process or procedures that are necessary, would be quite prepared to stay here, even if this official forum is closed, to find a room and invite members of the public as well as members of the

press to listen to any of the others who do not feel that they have had sufficient time. And we are quite capable and able of doing that.

Senator HATCH [presiding]. Let us move ahead. We have important witnesses on both sides here.

As I understand it, there are five witnesses here. I am going to read the first five names. Those of us on this side of the table would have preferred to have had all these witnesses here so that they could be interrogated by both sides. It is a better thing to do, especially when we are talking about a Supreme Court Justice. The witnesses should respect this panel enough to be here. And some of them cannot. There is one who has a death in the family. We certainly understand that.

But the others, I think, could have been here. To accommodate the minority on this matter, we will call to the table the ones who are here. I will go down through the list of 10. When I reach one who is not here, I will ask the minority if they have a statement by that person, even though there will be no cross-examination. Let us also understand that. Let us all understand the weight that should be given to that. My personal feeling is that if people feel strongly about the confirmation of Justice Rehnquist they should be here, especially since the Committee would pay their expenses. They should be here. To accommodate the minority, we are going to allow Senator Metzenbaum to read a statement by some of these.

So we will call at this time to the table Mr. James Brosnahan, from Berkeley, CA; Mr. Melvin Mirkin, from Phoenix, AZ. As I understand it, Quincy Hopper has not shown up yet. Senator Metzenbaum does not have a statement for him.

Senator METZENBAUM. That is correct, Mr. Chairman.

Senator HATCH. We will strike Quincy Hopper.

Do you have a statement by Mr. Snelson McGriff from Phoenix, AZ?

Senator MATHIAS. I would hope we would not strike anybody.

Senator HATCH. All we are saying is they are not here.

Senator MATHIAS. They could turn up.

Senator HATCH. If he turns up during this time frame, of course. That is all I meant.

Do you have a statement by Mr. Snelson McGriff? Why don't you read that into the record?

Senator METZENBAUM. Well, I think, Mr. Chairman—you are very kind, and I appreciate it—I think if we hear the actual witnesses first—I have talked to some of my colleagues, and I think they would prefer that, then we could go back to those who are not present.

Senator HATCH. All right. Since Mr. Charles Pine, Mr. Sydney Smith, and Mr. Manuel Pena are here, we will call them to the stand. Mr Pine is from Phoenix, AZ, Mr. Sydney Smith is from La Jolla, CA; and Mr. Manuel Pena, from Phoenix.

We are happy to welcome all of you here

As I understand it, Senator Metzenbaum has statements from Snelson McGriff, Fred LaDene, Michael Shapiro, and Arthur Ross.

Senator METZENBAUM. Not from Michael Shapiro. We are asking the FBI to get one. He is the one who had the death in his family. But you do have statements from the other three, Mr. Chairman.

Senator HATCH. We have agreed that we will not read from FBI reports. You can read statements and give the dates of those statements.

Senator DECONCINI. Mr. Chairman, Mr. Chairman, I have not participated in any such—to proceed as I did yesterday and make statements in the record as to the source of those things—my sources——

Senator HATCH. All we have agreed to is that we will not cite the FBI reports. We can certainly read statements. The Senator knows what we are doing here. We will go through these five witnesses starting with Mr. Brosnahan and then we will move on to the affidavits or statements afterward.

We welcome all of you here. If you will stand, we will swear you all in.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you, God?

Mr. BROSNAHAN. I do.

Mr. PINE. I do.

Mr. MIRKIN. I do.

Mr. SMITH. I do.

Mr. PENA. I do.

Senator HATCH. Thank you.

We welcome you to the committee, and we look forward to taking your testimony. We will give each of you 3 minutes. I will have to cut it off then.

Mr. Brosnahan.

**TESTIMONY OF A PANEL, INCLUDING: JAMES BROSNAHAN, BERKELEY, CA; MELVIN MERKIN, PHOENIX, AZ; CHARLES PINE, PHOENIX, AZ; SYDNEY SMITH, LA JOLLA, CA; AND MANUEL PENA, PHOENIX, AZ**

Mr. BROSNAHAN. Mr. Chairman, thank you very much.

My name is Jim Brosnahan. I was born and raised in Massachusetts, graduating from Boston College in 1956; and after my wife and I graduated from the Harvard Law School in 1959, we moved to Arizona, on April 10, 1961, and between that date and February 1963, I was an assistant U.S. attorney, prosecuting criminal cases in Phoenix.

In 1963, I left Arizona and moved to San Francisco, where I also served as an assistant U.S. attorney prosecuting criminal cases. I am now in private practice in that city.

I am appearing today at the request, as I understand it, of the Democratic members of this committee. I have never volunteered any information about the events of 1962

Mr. Chairman, I am here today for one reason, having practiced in the law courts for 27 years, and that is this committee is entitled to evidence if you want it, and it should be as accurate as it can possibly be.

On election day in November 1962 in Phoenix, AZ, several assistant U.S. attorneys were assigned the task of receiving complaints alleging illegal interference with the voting process. As complaints came in, an assistant U.S. attorney, accompanied by an FBI agent would be dispatched to the precinct involved.

On that day, the U.S. attorney's office in Phoenix received numerous complaints from persons attempting to vote in precincts in south Phoenix. The most common complaint we received on that day was that the challenges at the various precincts were aggressive and were without foundation. Here, I am distinguishing between a situation where someone knows that there is no house at a certain address; that would be a legitimate challenge.

We received numerous complaints on that day as did the office of Senator Hayden, who was then senior Senator from Arizona. Based upon my understanding at that time, it was legitimate to challenge a person if they could not read. It was not legitimate to challenge a person if you had no basis to believe that your challenge was appropriate.

We were advised on numerous occasions that the lines were long. In south Phoenix at that time, the population was predominantly Hispanic and black. There were charges of harassment. It was a serious situation. Based on interviews with voters, polling officials, and my fellow assistant U.S. attorneys, it was my opinion in 1962 that the challenging effort was designed to reduce the number of black and Hispanic voters by confrontation and intimidation.

I received a complaint on election day and went with an agent of the Federal Bureau of Investigation to a polling place in south Phoenix. The polling place had a long line of voters, several tables at which sat challengers from both parties, and an official whose job it was to preside over allowing people to vote.

There may have been one or two other officials or clerks. When we arrived, the situation was tense. And I recall that situation, Mr. Chairman, because in particular, as that line stood there, when we showed our credentials and I showed that I was an assistant U.S. attorney from the Department of Justice, and the FBI agent showed that he was from the Federal Bureau of Investigation, members of the line made it clear to us by words and gestures that they were glad that we were there.

After we showed our identification, we talked to persons involved, and the FBI agent interviewed anyone having information about what had occurred at the polling place.

At that polling place, I saw William Rehnquist, who was known to me as an attorney practicing in the city of Phoenix. He was serving on that day as a challenger of voters; that is to say, the conduct and the complaints had to do with his conduct.

I have, as you can imagine and appreciate due to the passage of years since I first was asked about this a few days ago, searched my memory as to the nature of those complaints. It is my belief that if I were to try to be accurate and detailed with regard to those complaints, it might well be that I would be unfair to Justice Rehnquist, which is not my desire. That is not the reason that I am here. But I do recall that the complaints had to do with him. And on one point, I am very clear. I showed him my identification coming from the Department of Justice. On that day, we were investigating under the then existing law, which included 18 U.S.C. section 594, which made it a misdemeanor to intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote.

In addition, we were investigating 18 U.S.C. section 241, which is a felony to conspire to deny people of their civil rights.

I have read the testimony and letters supplied by Justice-Designate William Rehnquist to this committee in 1971. On pages 71 and 72 of his testimony, he describes his role in the early 1960's as trying to arbitrate disputes at polling places. This was not what Mr. Rehnquist was doing when I saw him on election day in 1962.

At page 491 of the 1971 record, in his letter, William Rehnquist stated, "In none of these years did I personally engage in challenging the qualifications of any voters." This does not comport with my recollection of the events I witnessed in 1962, when Mr. Rehnquist did serve as a challenger.

William Rehnquist was well-known to me in 1962. As I say, the legal community at that time was a lot smaller than it is today, and Mr. Rehnquist had served as a clerk on the U.S. Supreme Court, which was a distinction, I think, that not too many lawyers in Phoenix had at that particular time.

There is no question in my mind, and I have searched my recollection having in mind the important function of this Committee. I am a lawyer, and I do understand how important this is. There is no question but that the person I talked to in 1962 was William Rehnquist.

In 1971, when Mr. Rehnquist was nominated to be a Justice of the Supreme Court, I recall the 1962 incident. No one contacted me about it at that time. I did not know until recently that this committee had actually inquired into the voting problems of those years, and I found that out only recently.

The only other point, Mr. Chairman, that might or might not be of assistance to this committee is my recollection is that these incidents were covered by the press in 1962, and I know that the evidence I have, Mr. Chairman, involves 1962 because that is the only year I was an assistant U.S. attorney in Phoenix, and it was covered by the press, and in fact there was an article in The Arizona Republic the day after which quoted Carl Michie, who is now the Federal judge—he was then the U.S. Attorney—as saying: "We were obtaining the FBI reports, and when those were received, then a decision would be made as to any criminal prosecution."

In fairness, it should be said that no criminal prosecution was pursued, and in our judgment at that time, this did not make a criminal case against any of the people about whom there had been complaints.

Thank you, Mr. Chairman.

[Statement follows:]

STATEMENT OF JAMES J. BROSNAHAN

TO THE UNITED STATES SENATE JUDICIARY COMMITTEE

August 1, 1986

My name is James J. Brosnahan. I was born and raised in Massachusetts, graduating from Boston College in 1956. After my wife and I graduated from the Harvard Law School in 1959, we moved to Phoenix, Arizona. Between April 10, 1961, and February of 1963, I served as an assistant United States attorney, prosecuting federal criminal cases in Phoenix. In 1963 I left Arizona and moved to San Francisco, California, where I also served as an assistant United States attorney prosecuting criminal cases. I am now in private practice in San Francisco.

I am appearing today at the request of the Committee. I have never volunteered any information about the events of 1962. My position is that those who are interested in those events are entitled to accurate answers from me as to what I know and specifically the members of this Committee are entitled to the testimony of any witness if they request it.



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On Election Day in November 1962, in Phoenix, Arizona, several assistant U.S. attorneys were assigned the task of receiving complaints alleging illegal interference with the voting process. As complaints came in, an assistant U.S. attorney accompanied by an FBI agent would be dispatched to the precinct involved. On that day the United States Attorney's Office in Phoenix received numerous complaints from persons attempting to vote in precincts in south Phoenix. At that time the population of south Phoenix was predominantly black and Hispanic and voted overwhelmingly Democratic. The Office of United States Senator Hayden also received complaints on that day. The complaints we received alleged in various forms that the Republican challengers were aggressively challenging many voters without having a basis for the challenges. One of the complaints frequently voiced on that day was that Republican challengers would point out a black or Hispanic person in the voting line and question whether he or she could read. (At this time it was my understanding that Arizona law required that a voter be able to read English.) According to the complaints received at the U.S. Attorney's Office, these challenges were confrontational and made without a factual basis to believe the person challenged had any problems reading. The U.S. Attorney's Office was advised that because the challenges were so numerous, the line of voters in several precincts grew long and some black and Hispanic voters were discouraged from joining or staying in the voters' line. It was also reported that at one of

the precincts there was a fist fight as a result of a confrontation between a Republican challenger and another person.

Based on interviews with voters, polling officials, and my fellow assistant U.S. attorneys, it was my opinion in 1962 that the challenging effort was designed to reduce the number of black and Hispanic voters by confrontation and intimidation.

I received a complaint on Election Day and went with an agent of the Federal Bureau of Investigation to a polling place in south Phoenix. The polling place had a long line of voters, several tables at which sat challengers from both parties, and an official whose job it was to preside over allowing people to vote. There may have been one or two other officials or clerks. When we arrived, the situation was tense. At that precinct I saw William Rehnquist, who was serving as the only Republican challenger. The FBI agent and I both showed our identifications to those concerned, including Mr. Rehnquist. We both talked to persons involved and the FBI agent interviewed anyone having information about what had occurred at the polling place. In fairness to Justice Rehnquist, I cannot tell the Committee in detail what specific complaints there were or how Mr. Rehnquist responded to them. The complaints did involve Mr. Rehnquist's conduct. Our arrival and the showing of our

identifications had a quieting effect on the situation and after interviewing several witnesses, we left. Criminal prosecution was declined as to all participants in the incidents at various precincts that day. Prosecution was declined as a matter of prosecutorial discretion. Our investigation was pursuant to the following criminal statutes:

18 U.S.C. § 594, which made it a misdemeanor to intimidate, threaten, coerce . . . or attempt to intimidate, threaten, or coerce . . . any other person for the purpose of interfering with the right of such other person to vote.

18 U.S.C. § 241, which made it a felony for two or more persons to conspire to injure, oppress, threaten, or intimidate any citizen for exercising his civil rights.

I have read the testimony and letter supplied by Justice Designate William Rehnquist to this Committee in 1971. On pages 71 and 72 of his testimony, he describes his role in the early 1960's as trying to arbitrate disputes at polling places. That is not what Mr. Rehnquist was doing when I saw him on Election Day in 1962. At page 491 of the 1971 Record in his letter, William Rehnquist stated: "In none of these years did I personally engage in challenging the qualifications of any voters." This does not comport with my recollection of the events I witnessed in 1962 when Mr. Rehnquist did serve as a challenger.

William Rehnquist was well-known to me in 1962. The Phoenix legal community was a lot smaller than it is now. Mr. Rehnquist had clerked on the United States Supreme Court, which was a distinction that few Phoenix lawyers had at that time. There is no question that the person to whom I spoke at the polling place was William Rehnquist.

In 1971 when Mr. Rehnquist was nominated to be a Justice of the Supreme Court, I recalled the 1962 incident. No one contacted me about it. I did not know until recently that this Committee had actually inquired into the voting problems of those years.

Senator HATCH. Thank you, Mr. Brosnahan.

As you know, I have let you go longer than usual.

Mr. BROSNAHAN. I appreciate that.

Senator HATCH. I wanted you to state the matter as you saw it.

According to Martindale-Hubbard, you graduated from law school in 1959?

Mr. BROSNAHAN. Yes, sir.

Senator HATCH. The first job you list was in 1961 when you were appointed assistant U.S. attorney in Arizona. Is that correct?

Mr. BROSNAHAN. Well, I had other jobs before that. I will be glad to give them to you if you want me to.

Senator HATCH. What did you do before that?

Mr. BROSNAHAN. I went to work for the firm of Langerman and Begam—first, I clerked for Judge Stevens in the Superior Court in Phoenix for about 5½ months. I then went to the law firm of Langerman and Begam, which was a plaintiffs' personal injury firm, and I was there, except when I served in the Air Force, protecting the State of Texas only, for about 6 months—except for that, I was with them for about a year and a half.

Senator HATCH. So you practiced law, then, approximately 2 years before becoming assistant U.S. attorney.

Mr. BROSNAHAN. That is true.

Senator HATCH. About 2 years. According to one of your interviews with the press, I believe it was with the Washington Post on July 25 of this year, you stated that you, with an FBI agent, investigated the so-called GOP challenges at the Bethune Precinct in 1962.

Mr. BROSNAHAN. The name of the precinct is not that clear to me. The stories talk about Bethune. But I understand what you are saying.

Senator HATCH. It was at the Bethune School.

Mr. BROSNAHAN. That is what you are saying. What I am saying is that it was at a polling place.

Senator HATCH. So you do not really know where it was, then.

Mr. BROSNAHAN. I cannot and I left—and you will understand, I left Arizona in 1963, and these are not my neighborhood areas. But it could have been Bethune, but I am not sure about that.

Senator HATCH. As we all know, Mr. Rehnquist first appeared before this committee as a nominee for the Supreme Court of the United States in 1971. Now, the Post account says that you were not a witness in 1971 against the Justice?

Mr. BROSNAHAN. No, no.

Senator HATCH. Is there any reason why you did not speak up at that particular time?

Mr. BROSNAHAN. No, there is not. I had observed that Bill Rehnquist, as he was then called, had gone to work for the Department of Justice in approximately 1969 after President Nixon was elected. And I remember thinking at the time about this incident, and I remember thinking, well, the times they are a-changing, and Mr. Rehnquist is in the Department. When he was nominated, I of course knew that. And I did again think about this incident. But nobody contacted me. I was in a different city, and I did not come forward or volunteer at that time.

Senator HATCH. I understand. In the July 25, 1986, Washington Post interview, you are quoted as saying: "'My best recollection is that he"—meaning Rehnquist—"was challenging voters, Brosnahan said. 'But that was 1962, and this is 1986. I know he has denied that, but I have asked myself in fairness what I can remember."' Is that a fairly accurate quote?

Mr. BROSNAHAN. It is. And I hope the committee—and you have to decide these matters, and they are not easy matters. Friday is not the day, Mr. Chairman, you understand, that I usually testify against a Justice of the Supreme Court. And so I hope you have some feeling that I did not come here on a "wing and a prayer." I have tried to—and I think I have done it—be as accurate and as fair to Justice Rehnquist as I could possibly be. At least I have made that effort.

Senator HATCH. I notice that in the Los Angeles Times on July 29, 1986, you were quoted as saying: "I saw Rehnquist there among a group that were challenging voters, but I cannot recall any specific actions I saw Rehnquist taking personally."

Is that an accurate statement?

Mr. BROSNAHAN. That is an accurate statement, and I think that is what I said a moment ago, Mr. Chairman, that I know he was a challenger. But one thing I would like to explain to you—and I am sure you can appreciate it—when we arrived and announced that I was an assistant U.S. attorney, and I was accompanied by the FBI, that had a very calming effect on the situation. You can imagine what it was like. It slowed it down.

While we were there, not too much happened. I think some voters went ahead. But for example, there was no challenging going on while we were there to conduct our investigation.

Senator HATCH. The important thing is that you could not recall any specific action that you saw him take in person. In other words, you did not see him do anything personally.

Mr. BROSNAHAN. Only to this extent, and this I am sure about, that there were complaints about his conduct. And that is as far as I can go.

Senator HATCH. Do you remember specifically his conduct, or somebody else's conduct?

Mr. BROSNAHAN. His conduct. There were other complaints on that day about other people's conduct, but there were complaints about his conduct.

Senator HATCH. The important thing is you did not personally observe anything that they were complaining about?

Senator BIDEN. You think that is the important thing.

Senator HATCH. Yes; I think it is important.

Let me restate the question so we understand it.

Mr. BROSNAHAN. Surely, surely.

Senator HATCH. You said you saw him doing nothing personally.

Mr. BROSNAHAN. When I arrived——

Senator HATCH. You say there were those who accused him, but your personally saw him do nothing offensive. Is that correct?

Mr. BROSNAHAN. The only thing, Mr. Chairman, that I saw him do was he was acting as a challenger in this precinct. When we arrived, as I say, it stopped. And we received complaints, as you say, which is not what I would observe, but received complaints. And I

might say also to you that the FBI agent was dispatched, as I recall it, to check out some other voters who had left.

But no, I did not see him, for example, go down the line and challenge a black voter or an Hispanic voter on the grounds they could not read. I did not see that.

Senator HATCH. How did you know he was a challenger? Did he walk up and say, "Hi, Mr. Brosnahan. I am a challenger"?

Senator MATHIAS. Well, is "challenger" an adjective or is it a title? Under the Arizona law, is there an official role for challengers, people who are certified as challengers by the parties?

Mr. BROSNAHAN. I can tell you my understanding, Senator, which was that a challenger is allowed for in some form under the law, or was at that time, and the challenger is designated by the party—in this case, it happened to be the Republican Party—and he would be a challenger. Then his job or her job, as the case may be, as somebody comes along about which there is a legitimate question, some basis to believe they should not vote, they can interpose that challenge, and then the officials who are there think that through and decide what they are going to do

Senator MATHIAS. Must one have a written certification to be a challenger?

Mr. BROSNAHAN. I do not know that.

Senator HATCH. Don't they have to have credentials to be a challenger at that time?

Mr. PINE. They do; yes.

Mr. BROSNAHAN. I do not know that. Some of the other witnesses may be able to tell you that

Senator HATCH. All right. The important thing is that they had to have credentials. You indicated that your name is——

Mr. PINE. Charles Pine.

Senator HATCH. You are Mr. Pine.

They had to have credentials. Did you check Mr. Rehnquist's credentials at the time?

Mr. BROSNAHAN. I do not recall whether I did. But I do recall, Senator, there was not any question he was a challenger. I mean, he did not—if I may tell you what I think I saw——

Senator HATCH. How did you know he was a challenger if you did not look at his credentials?

Mr. BROSNAHAN. Two bases for this. People told me he was challenging, and he did not deny he was a challenger. At that time in 1962, he did not raise any question about credentials or any of that. He did not deny that.

Senator HATCH. But you did not ask him as an officer of the law and neither did the FBI. Is that right?

Mr. BROSNAHAN. We might have, but I have no recollection of it.

Senator METZENBAUM. As a matter of fact didn't you say in a statement recently: "Rehnquist stated to Brosnahan that Rehnquist was a challenger"?

Mr. BROSNAHAN. I am sure that he did. I am sure that he did. In other words, my recollection is, contrary to perhaps where we are now, on that day there was not any question but that he was challenging voters. And I might say to you I——

Senator HATCH. Wait a minute.

Mr. BROSNAHAN. Yes?

Senator HATCH. You cannot say there was not any question there because you do not recall seeing him challenge voters. The point is that he admits he was there. He admits he was a poll-watcher at the time.

Mr. BROSNAHAN. No; a poll-watcher is something completely different. He was not watching polls when I saw him.

Senator HATCH. He admits that he was a legal adviser who was supposed to be there to settle disputes. Let me go back to the Los Angeles Times article. In that, you said: "I saw Rehnquist there among a group who were challenging voters, but I cannot recall any specific action I saw Rehnquist taking personally, Brosnahan, now a San Francisco attorney said."

You also said, "We saw nothing illegal taking place." Is that a correct quote?

Mr. BROSNAHAN. If you are asking—yes, in fairness—and I am prepared to answer your question—if you asked me did I see, for example, a challenge, the answer really, based on my recollection, is no, I did not.

Senator HATCH. Is this a correct quote in the Los Angeles Times: "We saw nothing illegal taking place"?

Mr. BROSNAHAN. Well, no.

Senator HATCH. That is not a correct quote?

Mr. BROSNAHAN. When you use the word "see," Senator—and I do not want to get down to this—but what we did see were complaints from people; what we received were complaints, and that was our job, to gather that evidence. So that to the extent that that quote implies that we did not find anything wrong there, that would not be correct.

Senator HATCH. Let me be fair to you on this. Let me read the whole paragraph, because I think the front sentence might help you a little bit.

> I saw Rehnquist there among a group who were challenging voters, but I cannot recall any specific action I saw Rehnquist taking personally, Brosnahan, now a San Francisco attorney, said.

Then it reads:

> The group as a whole, however, were very aggressively insisting that black and Hispanic voters read a small card with part of the Constitution printed on it. We saw nothing illegal taking place.

Is that basically a correct quote?

Mr. BROSNAHAN. I think the last part is sort of added on in a way that I would not say it.

Senator HATCH. You do not recall saying that at all?

Mr. BROSNAHAN. I do not recall saying it in that order; that is the only thing.

Senator HATCH. Did you or did you not say, "We do not recall seeing anything illegal taking place"?

Mr. BROSNAHAN. No; and Senator, let me tell you that when we went there, what happened was the evidence was gathered, and we then returned to the office to determine the question of whether anything illegal had occurred, and as I say, Mr. Michie announced in public that he was going to consider that to determine what action should be taken.

Senator HATCH. Was an FBI report made by the agent who was with you of this matter?

Mr. BROSNAHAN. I would assume that reports were made with regard to all of the activity in all of the precincts. And I should mention to you, because it has not come up, there was not just one precinct or one challenger on that day. There were many, numerous—whatever fair word you can use—there were a lot of challengers. For example, the Republican chairman for the State announced that there were 300 Republican challengers in both Maricopa and Pima County. So there were a lot of challengers there, and from some of those precincts, Mr. Chairman, came very strong complaints. The FBI gathered information with regard to some of those situations and put that together.

Senator HATCH. All right. According to an account that we have, the statement was that, "Brosnahan said that Rehnquist was definitely in the position of a challenger, but Brosnahan had 'no accurate recollection of Rehnquist actually challenging'." Is that correct?

Mr. BROSNAHAN. His—I did not witness——

Senator HATCH. You did not see him challenge

Mr. BROSNAHAN. As far as I can recall, Senator, while I was there he did not challenge a voter. But the reason for that was that when we arrived, it got very quiet. I mean, it was a serious situation. And sometimes—I know the committee is trying to sift all this out—but you kind of lose the feeling of the moment. And the feeling of the moment at that polling place was, and the reason I remember it was, that the line of people was concerned, troubled, upset. And when we showed our identification, then it all calmed down, and as I say, it became a quieter situation.

Senator HATCH. In the Washington Post article of July 25, 1986, it basically describes you as a former prosecutor, now senior partner in a San Francisco law firm. Then it quotes you as saying: "My best recollection is that he," meaning Rehnquist, "was challenging voters, but that was 1962, and this is 1986. I know he has denied that, but I have asked myself in fairness what I can remember."

Concerning these interviews, did the reporters contact you, or did you contact them?

Mr. BROSNAHAN. The first call I received—no, I have not contacted any reporters; this is not a situation that I particularly sought out——

Senator HATCH. That is all I wanted to know.

Mr. BROSNAHAN. Yes; so that you understand that. I received a call from someone working for the Nation Institute, and I think the call was about 10 days ago. And it was a person who knew that I had been a prosecutor in Arizona and asked me what I remembered and I told her, and she asked me at that time whether I would be willing to testify before this committee if I was asked to do so. And I thought about it for a second, trying to determine what I should do, and I said, "Yes, if I am asked to do it, I will testify." That is how I was contacted.

Then, when this committee began its function, as I am sure you all know, every day the world shakes, you know, when you move a paper, and pretty soon, there were reporters in our office, and I did talk with them, and I was as accurate as I could be.

Senator HATCH. Did you contact the FBI or Justice Department back in 1971 on this occasion, or is the account accurate where you said, "We just did not bother"?

Mr. BROSNAHAN. No; I never said I did not bother. What I said was no one contacted me from this committee, and I did not know—I think it might have been different, but I am second-guessing myself—if I had known that this committee in 1971 was passing on Justice Rehnquist, and you were trying to decide whether it was a bad situation in south Phoenix and whether he had a part in it, I like to think I probably would have called somebody up and told them what I knew. But I do not know—I did not know at the time.

Senator HATCH. Now——

Senator KENNEDY. Neither did the committee until after the end of the hearing.

Mr. BROSNAHAN. I understand that, Senator.

Senator HATCH. In your interview with the Nation Institute, you were quoted as saying:

James J. Brosnahan was assistant U.S. attorney in Phoenix in 1962 and is currently a partner at Morrison & Forrester in San Francisco. Brosnahan was called to the Bethune polling place in November 1962 to investigate allegations that Republican poll challengers were obstructing minority voters.

We received complaints, Brosnahan said in a July 15, 1986 telephone interview from his San Francisco office, about young Republican workers, poll workers, challenging Hispanic voters. By doing so, they had built up long lines at the polling booths. Rehnquist was at one of them. He was one of the people challenging.

They would challenge voters that they did not think could speak English, people who had any Spanish accent.

I am having a little bit of trouble here because you give interviews saying that you really did not observe him doing anything. You observed that he was a challenger, but you did not see him do anything.

Mr. BROSNAHAN. No, no. That is almost exactly, I think, what I just said, Senator. I think it is. I would leave it to the committee as to whether it is or not. But to me, it is.

Senator HATCH. Let me go on and read. I am not trying to give you a rough time. I am just trying to ascertain what your statements are. Let me go on and read it.

Mr. BROSNAHAN. I understand.

Senator HATCH [reading].

Brosnahan, accompanied by an FBI agent to the precinct, said he did not find sufficient evidence for prosecution on civil rights violations. Vigorous challenging short of harassment was legal in Arizona in 1962. What is important here is not any new evidence of voter harassment beyond what was brought out in Rehnquist's 1971 confirmation hearings.

Rather, what is important is Brosnahan's eyewitness account that Rehnquist himself engaged in voter challenges, a direct contradiction of Rehnquist's letter to the Judiciary Committee.

Brosnahan stated that, "In 1962, there was a group of Republicans that were challenging black and Hispanic voters in ways designed to slow down the voting process and reduce the number of Democratic voters in these precincts. The only thing I can say about William Rehnquist is that he was part of that effort. I cannot say exactly what he did.

Is that a fair comment?

Mr. BROSNAHAN That he was one of the challengers. But what he did with regard to being a challenger, that is the point at which my recollection reaches, as far as I am concerned, something that I

would not care to say. I could make an approximation of it, but I do not think that would be——

Senator HATCH. Is that correct, or isn't it?

Mr. BROSNAHAN. It is correct that I know that he was——

Senator HATCH [continuing]. I cannot say exactly what he did.

Mr. BROSNAHAN. Excuse me. I am sorry.

Senator HATCH. Is the statement correct where you are quoted as saying: "I cannot say exactly what he did"?

Mr. BROSNAHAN. That he was a challenger, yes, but that what he did as a challenger, I cannot say. I could make an approximation of it but I could not give you the details.

Senator HATCH. All right.

Senator BIDEN. At some point, I am going to ask you to make an approximation. [Laughter.]

Senator METZENBAUM. Mr. Chairman, I think we ought not to lose sight. The issue has to do with whether or not the Chief Justice has represented, in 1971, when he said he was not a challenger. And the issue has to do with his answers to this Senator 2 days ago, when he indicated he had nothing to do with these activities.

So let us not confuse what the issue is if you are trying to make a little detail of what he did and how he did it——

Senator SIMON. Point of inquiry, Mr. Chairman.

Senator HATCH. I want to get these accounts so that they mean something.

Senator SIMON. Mr. Chairman, point of inquiry.

Just what is our process here? The Chair has now used about 15 or 20 minutes——

Senator METZENBAUM. About 40 minutes.

Senator DECONCINI. About 40 minutes.

Senator BIDEN. I think we will just extend the time, won't we, Mr. Chairman?

Senator HATCH. Yes. [Laughter.]

Mr. Brosnahan, how many minutes were you there?

Mr. BROSNAHAN. How many total minutes was I at the polling place? About 15 or 20, something like that.

Senator HATCH. Fifteen or 20 minutes.

You did state in the National Public Radio broadcast back on July 25 of this year: "The only thing that I know about William Rehnquist was that in November 1962, he was one of the challengers," which is consistent with what you have said here——

Mr. BROSNAHAN. That is true.

Senator HATCH [continuing]. Except you say, "the only thing I know * * *."

Then you say, "Well, my best recollection is that Mr. Rehnquist, as he was then known, was serving as a challenger in that precinct."

Then you say, "The thing that I remember that I am sure about is that Bill Rehnquist was at the precinct. My best recollection is that he was serving as a challenger of voters. And the third thing that I should say in absolute fairness is that I did not see him do anything, and I cannot testify or say what it is that he was doing as a challenger."

Mr. BROSNAHAN. Well, that is right.

Senator HATCH. What is it?

Mr. BROSNAHAN. Senator, Senator, it is exactly what I said—I think in fairness also to me—just a lawyer—but to me, three times this morning, while I was there, he did not aggressively challenge anybody. But I do not find that surprising. And so that is why—I mean, you can understand the situation with the two of us standing there, representing what we represented. He did not challenge while we were there, or go down the line and say, "Can you read?" or anything like that. He did not do that while I was there.

Senator HATCH. All right.

Mr. BROSNAHAN. So that is a true statement.

Senator HATCH. You arrived in the company of the FBI in 1962. Why, then, does the FBI, report not even mention Rehnquist as being present?

Mr. METZENBAUM. Well, Mr. Chairman, just a moment. I object. Mr. Chairman, you just gave the statement about not using the FBI report, and then you just said the FBI report says something. I just want you to know you have let down the bars.

Senator HATCH. No, I have not. Here is a man who was assistant U.S. attorney, who was with an FBI agent, who undoubtedly read the report, and frankly, in 1962——

Mr. BROSNAHAN. "The report," Senator? Are you talking about one report?

Senator HATCH. I am talking about any report made on this by the FBI. There is nothing in the record——

Mr. BROSNAHAN. I can tell you first of all, I have never seen—whatever I saw in 1962, I have never been shown by any member of this committee or staff or anybody any FBI reports. So I do not know what you are referring to. But you may have one of the reports.

I am sure that there were a number at that time.

Senator METZENBAUM. He is referring to the FBI report when they talked with you, Mr. Brosnahan.

Mr. BROSNAHAN. Yes, Senator.

Senator HATCH. Let me go further. Are you aware that there was a Republican challenger involved in a scuffle at the Bethune precinct in 1962?

Mr. BROSNAHAN Yes.

Senator HATCH. Contemporaneous FBI and newspaper reports identified this challenger as Wayne Benson.

Mr. BROSNAHAN. Yes.

Senator HATCH. Are you aware of that now?

Mr. BROSNAHAN. Yes. I knew that then.

Senator HATCH. As I understand it, Mr. Michie, your supervisor at the time, the FBI report in 1962, and the Arizona Republic, say that Benson was the challenger who was causing the problem.

Mr. BROSNAHAN. To the extent that the question assumes that there was one problem and one precinct in November 1961, that is not what happened. There were numerous problems. There were numerous complaints that we all received in the office——

Senator HATCH. From that precinct?

Mr. BROSNAHAN. From that one and others. That one became famous, because in that one, somebody got mad, and somebody—there was a fist-fight—and somebody did not care for being challenged in the way they were being challenged. But what I am

saying to you, Senator, is that there were complaints from a number of precincts in south Phoenix on that day, and that we investigated some number of them. I cannot tell you how many precincts there were investigated, but there were a number.

Senator BIDEN. Mr. Chairman, point of clarification in fairness to the witness. Obviously, the chairman is under the impression that the precinct in which the scuffle took place was the same precinct, at that the same time, that in fact, you confronted, spoke to, Justice Rehnquist. Is that true?

Mr. BROSNAHAN. I do not know that, no.

Senator HATCH. Let me reserve some time and come back.

Let us turn to you Senator Biden.

Senator BIDEN. I thank the Chair, and I thank you, Mr. Brosnahan, for coming.

Let me try to make sure I understand here, Mr. Brosnahan. Do you practice law now.

Mr. BROSNAHAN. Yes, sir.

Senator BIDEN. Are you a partner in the law firm with which you practice?

Mr. BROSNAHAN. Yes, sir.

Senator BIDEN. In what status as partner? Are you a junior partner, a senior partner?

Mr. BROSNAHAN. I am a senior partner.

Senator BIDEN. You are a senior partner. And is it a small law firm, large—how many members in your law firm.

Mr. BROSNAHAN. 230.

Senator BIDEN. 230?

Mr. BROSNAHAN. Yes, sir.

Senator BIDEN. I guess compared to a corporation, that may be small. [Laughter.].

Has your law firm, since you have been a partner in that firm—what is the name of that firm?

Mr. BROSNAHAN. The name of the firm is Morrison & Forrester.

Senator BIDEN. Has that law firm ever taken cases to and argued them before the Supreme Court of the United States of America?

Mr. BROSNAHAN. Yes.

Senator BIDEN. Do you expect that may happen again?

Mr. BROSNAHAN. I know that it is going to happen again. It is going to happen in September.

Senator BIDEN. It is going to happen in September. Good luck. [Laughter.]

Let me——

Mr. BROSNAHAN. Senator, you asked me what my status was in my firm. That depends on when I return. I do not know.

Senator BIDEN. Let me ask you this. There seemed to be several salient points, and in his usual thorough way, the chairman has attempted to bring out the truth here. Is the truth that you are absolutely certain that at some point during election day 1962, that William Rehnquist was in a polling place in the position of a challenger?

Mr. BROSNAHAN. Yes.

Senator BIDEN. The second question: Is it true that you had received complaints from that polling place that there was challenging and harassing taking place in that polling place?

Mr. BROSNAHAN. Yes.

Senator BIDEN. Is it true that at the moment you arrived, you arrived not undercover, but you arrived in effect by identifying yourself, announcing who you represented, that is, the Federal Government?

Mr. BROSNAHAN. That is true. That is the first thing we did.

Senator BIDEN. Now, did you at any time during that election day appear at any other precinct polling place?

Mr. BROSNAHAN. I think I did.

Senator BIDEN. Was it the habit—have you ever, once having identified yourself as being a representative of the Federal Government in the U.S. Attorney's Office, was there ever an occasion after having been identified that someone asked a voter or a person waiting in line whether or not they could read a card, read English?

Mr. BROSNAHAN. No, and for the reason that I have given, our arrival would have a very quieting effect on the proceedings.

Senator BIDEN. Well, you and I and the chairman know that, but it is important that the record reflect it precisely.

Mr. BROSNAHAN. I understand.

Senator BIDEN. Now back to the precinct—well, one other question. Is it your testimony that you are not certain as to the name of the precinct in which you encountered William Rehnquist?

Mr. BROSNAHAN. That is true.

Senator BIDEN. Is it your testimony that once having encountered William Rehnquist, you were able to at that time and now identify the person who was challenging as William Rehnquist?

Mr. BROSNAHAN. Yes, and I do not have any question about it, because I knew who he was. I even want to say I was surprised, actually, to find him there. But I knew who he was. He was a lawyer in town, and he had a distinction, he was known, as you have been hearing from the witnesses, as a very bright lawyer, and I knew him, and I knew who he was.

Senator BIDEN. So there is absolutely no doubt in your mind that on election day, William Rehnquist was present in a polling place in the role of challenger?

Mr. BROSNAHAN. There is no doubt in my mind, Senator, and I have recalled it in that form since that time. In other words, it has been one thing in my mind that I have remembered, and I think particularly because he went on to serve with the Department and then served in the Supreme Court.

Senator BIDEN. Now let us go to the second issue—in my mind; it may not be in anyone else's. Having established in your mind and testifying under oath that William Rehnquist was a challenger in a Phoenix polling place on election day, that same polling place at the same time he was challenger, having complained or received complaints from it, to your office and the FBI that there were tactics that were being employed that at least upset people, without characterizing them as harassment or anything—people were upset——

Mr. BROSNAHAN. That is correct.

Senator BIDEN [continuing]. Asking you, a U.S. attorney, to come to that polling place to "straighten things out."

Mr. BROSNAHAN. That is true. And as I recall it, we did not necessarily go to every precinct where there were complaints. We went to some of them on a basis that the level of complaint was such that it made sense to use our resources in that way.

Senator BIDEN. Now, to the best of your knowledge, did you identify at that time, the time you encountered Mr. Rehnquist, did you identify anyone else as being a challenger?

Mr. BROSNAHAN. Not at that precinct, and not at that time.

Senator BIDEN. So to the best of your knowledge, the only challenger at that precinct at that time was William Rehnquist—the only Republican challenger.

Mr. BROSNAHAN. That is correct.

Senator BIDEN. Now, did you at the time, from the moment you walked indoors—I assume it was indoors——

Mr. BROSNAHAN. My recollection is that it was in an open area. I am pretty sure it was a school. And there was an open area with tables and sort of—it might have been under a roof, but it might have been an open area of some kind. That is my best recollection.

Senator BIDEN. Well, at the time you walked into the area designated as the polling place, from the moment you walked into that designated area until the time you left, did any person in that polling place, whether an election official, a Democratic challenger and/or someone who had just voted or someone who was waiting in line to vote, did anyone in that polling area say to you at that time: "There is in fact challenging going on that should not go on"?

Mr. BROSNAHAN. Yes; in some form, they said that.

Senator BIDEN. Now, could they have reasonably been talking about anyone else other than the man who you have established to the best of your recollection under oath was the only Republican challenger in the place?

Mr. BROSNAHAN. No; and the reason that I remember that is, I must say, that from that day on, I thought about William Rehnquist in a different way. And as has been expressed by this committee, I knew a lot of Republicans, and we had our differences. I am a Democrat, in fairness to the chairman. I am a Democrat.

Senator HATCH. We knew that, Mr. Brosnahan.

Mr. BROSNAHAN. I know you do. [Laughter.]

Senator HATCH. I have received that impression.

Mr. BROSNAHAN. It is true. But I must tell you, I suppose, in aid of my efforts to recollect, that from that day forward, I felt a little differently about Mr. Rehnquist, and it is for the reason of your question, Senator.

Senator BIDEN. Let me recap this so I understand it, because it is very important to me. You as U.S. attorney in 1962 on election day in Arizona were either directed and/or made a judgment based upon complaints from a polling place. You arrived at said polling place. There was tenseness. You were told to the best of your recollection by people in line or within the polling area that unfair things were going on——

Mr. BROSNAHAN. In some form they said that.

Senator BIDEN [continuing]. In some form they said that—and that you made your way to identify the only person at that moment you could identify, and that is the Republican challenger.

You knew of no other challenger on the Republican side at that time. That Republican challenger was one said William Rehnquist.

Mr. BROSNAHAN. That is true.

Senator BIDEN. Who you have identified that you knew before——

Mr. BROSNAHAN. Yes.

Senator BIDEN [continuing]. And that once having arrived, things settled down.

What happened to the best of your knowledge, if you have any knowledge, after—or, let me back up. What do you recall having said to this challenger you have identified as William Rehnquist?

Mr. BROSNAHAN. We said to him in some form, "What is going on here?" In other words, "We have received certain complaints at the office. That is why we have arrived, to determine what is going on." We received—and I do not have the order—but, we received complaints by people in the line and were told by someone that others had left, either because they were discouraged, or whatever.

We talked with him about what was going on there, what was the basis for his challenges. This is the area that it is hard to do, but I think there was a dispute, and I think the dispute would be in the general area of whether there was a basis for the challenge or not. And that is about as clear as I can be on it.

Senator BIDEN. Now describe for me what you recall having seen upon arriving at the polling place. What is your recollection?

Mr. BROSNAHAN. The first thing we saw was a long line of voters. We saw the polling place; some tables; some people there, officials of one kind or another. And we walked in—the two of us went immediately—I am sure of this—to the table to identify ourselves, to say who we were. And I guess we saw a line, we saw some people sitting behind tables and functioning one way or the other, and that is what we saw when we first arrived.

Senator BIDEN. Would you—and I only have a few more questions, Mr. Chairman, and I appreciate it because I, as you, believe that this is a pivotal witness—can you describe for me, if you know, what happened in that precinct after you left?

It seems like a strange question, but did you have complaints, to the best of your knowledge, after you departed from that precinct?

Mr. BROSNAHAN. No; I have no recollection of any subsequent complaint that day from that particular precinct, and I have no recollection of anything else that day with regard to Mr. Rehnquist.

Senator BIDEN. Do you understand the significance of your testimony, that is, that——

Mr. BROSNAHAN. Fully, fully.

Senator BIDEN [continuing]. Here, we have a man who, notwithstanding what may happen here, still may end up being the Chief Justice of the Supreme Court of the United States of America; having—and I will go back and read in detail Justice Rehnquist's statements at the first hearing and his statements made before this committee, with precision—but here we have a man of your stature, you are not someone who has just walked off the street. You are a senior partner in a powerful law firm. You have a reputation that is well-known and well-respected in a significant city in a major State. And you are coming before this committee under oath,

testifying that you saw William Rehnquist in a polling place where you had received complaints, and that in fact, he was fulfilling the role of a challenger in that polling place.

Mr. BROSNAHAN. That is correct.

Senator BIDEN. I have no further questions.

Senator HATCH. The fact is, Mr. Brosnahan, that you did not volunteer to testify back in 1971, which is much closer to the event, even though you had a changed opinion of Mr. Bill Rehnquist.

Senator BIDEN. In fairness, I believe the witness has testified that in fact he was unaware of the importance of it at the moment, at the time, and further, Senator Kennedy stated that in fact it was not before the committee in that form at that time.

Senator HATCH. So the 15 years have made you aware of the importance of this testimony.

Mr. BROSNAHAN. No, no, Senator, I do not agree with that.

Senator METZENBAUM. Mr. Chairman, I think that each of us has an opportunity to inquire. I do not believe that the Chairman has any special prerogative to add some editorial comment after each of the Senator's concludes his inquiry.

Senator HATCH. Wait a minute. As I understand it, we go back and forth. We are not going to let five or six Democrats go to work here.

Senator METZENBAUM. Well, you went for 40 minutes, and we did not interrupt you.

Senator DECONCINI. Well, wait a minute, Mr. Chairman——

Senator KENNEDY. Don't we usually get a first round before someone gets a second round?

Senator HATCH. I had the understanding that I would have enough time to ask basic questions. Gave him triple the time that he was supposed to have.

Senator KENNEDY. Don't we usually go a first round?

Senator HATCH. Let us just be fair about it.

This is an important matter.

Senator METZENBAUM. Mr. Chairman, I want to just say that I think it has been the precedent here as long as I have been here—and I realize, only a short 10 years—that we always get a first round before we start a second round.

Senator KENNEDY. That is right.

Senator HATCH. We do not go back and forth?

Senator DECONCINI. Certainly, if there is somebody there, they get their first round.

Senator KENNEDY. If they are interested enough.

Senator HATCH. Let me do that. I will wait until the end of the round. We will go to Senator Kennedy.

Senator DECONCINI. I thank the Chair.

Senator KENNEDY. Thank you.

Mr. Brosnahan, I want to also join in thanking you and the other members of the panel.

One of the questions I asked Mr. Rehnquist when I inquired of him about this whole program is whether he knew any one of you or the others that had been inquired of by the FBI. And I think, Mr. Brosnahan, he did mention that he had met you; but he did not know any of the others, and he did not know why you would take the time out of your lives to travel across the country, to come

here to testify. I asked him about what is the possible motivation for any of you to do it, and he could not give a good reason. And I think the fact is that the witnesses that we have here today who have such compelling and impressive testimony as we have just heard from this witness speak very loud and clear as to what the activities of Mr. Rehnquist were at that particular time. And I think the record has been made clear.

Unfortunately, I was a member of the Judiciary Committee when we gave consideration to Mr. Rehnquist in the past, it was only after the conclusion of the hearings that this information became available to the committee, and we were denied the opportunity at that time to reopen the hearings, denied that opportunity to have the FBI to go on out and do the kind of thorough investigation that quite frankly should have been done. And the committee, I think, failed in its responsibility to be able to provide that kind of information to the U.S. Senate.

But nonetheless, Mr. Brosnahan, I will mention first of all Mr. Rehnquist's own comments that he had with regard to his activities. This was in relationship to Dr. Smith. But he later, in his response to my question, described his activities. It is in the record on page 108:

Mr. REHNQUIST. "I am sure he is mistaken." Now, he is talking about Dr. Smith. "It is perfectly possible that I could have arrived at a southwest Phoenix polling place." Now, Smith is talking about either 1960 or 1962, in a southwest Phoenix polling place.

REHNQUIST. "It is perfectly possible that I could have arrived at a southwest Phoenix polling place with a couple of other people, and again, I gather he is not definite as to the years, because one of my jobs as notice reading what I said in 1971, and recalling as best I can now, was to go to polling places where our challenger was not allowed into the polling place or if a dispute came up as to something similar to that, either I or along with my Democratic counterpart would go.

"So it is not at all inconceivable that I would have been with a group of two or three other people going to a southwest Phoenix polling place in whatever year that was."

The clear impression that Mr. Rehnquist is trying to give—not his impression; that is his testimony—that that was his kind of function. He was whatever you call a "notice reader." I do not know whether there is such a function.

Mr. BROSNAHAN. I do not know.

Senator KENNEDY. But one would gather from that kind of statement and that kind of commentary, a completely different kind of function than what you have described here today. Now, which is more accurate? Does this direct testimony of Mr. Rehnquist refresh your recollection? Does that more clearly describe what he was doing in a polling place, either in 1960 or 1962 in the southwest part of Phoenix?

Mr. BROSNAHAN. You see, that kind of function, Senator, I think we would have welcomed, that is to say, the arrival of someone—and I can only testify to what I saw on that day in the precinct I was present at—but we would have welcomed the assistance of anyone who would have come to try to bring order out of it.

At no time, as far as what I saw and where I was, did we have the benefit of any assistance like that. And what I have said this morning, of course, is that he was acting as a challenger and not in the capacity as you describe it, based upon the events that I saw.

Senator KENNEDY. In our inquiries after this whole question came up in 1971, we had an opportunity to inquire—and this was Senator Hart, Senator Biden, and myself—we did not have all of the information at that time available at the close of the hearings, but one of the questions that we asked was, "Did you personally engage in challenging the qualifications of any voters?"

"Did you personally engage in challenging the qualifications of any voter, and if so, please describe the nature and the extent of challenging you did and the basis from which the challenges were made."

And his response was, as has been indicated, that he had—I will just read the exact response—"In none of those years did I personally engage in challenging the qualification of any voter." That was the written response.

And I read to him the statement that you had made, and which you reviewed here for the committee. The latter part of the statement I said—this is you—"He said"—which is Brosnahan said—"You went to a precinct with an FBI agent, and you were sitting there at a table where the voter challenger sits, and a number of people complained to Brosnahan that you had been challenging voters."

"Rehnquist. 'No.' " He said, "No, I do not think that is correct."

Well, is it correct or isn't it correct? What is your sworn testimony?

Mr. BROSNAHAN. My testimony is that he was acting as a challenger at that particular time when I saw him in 1962.

May I add one thing, Senator?

Senator KENNEDY. Certainly.

Mr. BROSNAHAN. I think it is clear, but had it been anything else, I do not know that I would ever remember it or think about it or think about now Justice Rehnquist in the way that I have over the years, and I think in my mind that supports my recollection of what occurred.

Senator KENNEDY. Do you remember any other similar circumstances, other people that come to mind; did you run into this kind of——

Mr. BROSNAHAN. On that day, do you mean?

Senator KENNEDY. Yes.

Mr. BROSNAHAN. There were other incidents.

Senator KENNEDY. Fine, OK. If someone else wants to follow that up, that is fine, but let me just come back to this.

Mr. BROSNAHAN. OK.

Senator KENNEDY. Are you certain that the complaints you heard when you arrived at the polling place involved Mr. Rehnquist's conduct?

Mr. BROSNAHAN. Yes.

Senator KENNEDY. And what do you think were the goals of the voter challenges on that day in that precinct?

Mr. BROSNAHAN. I am now talking about the program as a whole, and I am basing my response on the complaints we received, the number of them, and the intensity of them, on the interviews that were made by the FBI, and upon conversations I had with persons on that day

The thrust of the effort was to confront voters, to challenge them, in hope that they would be intimidated, that they would not stand in line, that they would be fearful that maybe they would be embarrassed.

Senator KENNEDY. Intimidated from doing what?

Mr. BROSNAHAN. From voting.

Senator KENNEDY. And you are certain that Mr. Rehnquist participated.

Mr. BROSNAHAN. He participated as a challenger in one of the precincts.

Senator KENNEDY. No further questions.

Senator HATCH. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Brosnahan, I understand the difficulty of going back so far in time. You are an experienced trial lawyer and have demonstrated that in the responses you have made here today. There are a couple of lines I would like to pursue with you.

You did not come forward in 1971, and I can understand the reasons you have given for not doing so. Did you have a feeling that what Justice Rehnquist had done in 1962 was questionable?

Mr. BROSNAHAN. Yes, I did. I had that feeling at that time, in 1962, and I have retained that, I think, through the years.

Senator SPECTER. I am asking whether you thought it was questionable as opposed to wrong.

Did you think it was wrong?

Mr. BROSNAHAN. Well, I thought it was wrong; I did.

Senator SPECTER. Well, thinking that, why didn't you volunteer to come forward in 1971?

Mr. BROSNAHAN. I guess the main reason was I did not know—I suppose, as you say, I try cases, like one witness of many—I did not know there were lots of other pieces of testimony or whatever, and I did not have any idea that this committee was considering the issue of south Phoenix—in various years, not just 1962, but in various years.

Why I did not know that, I do not know if I was in trial, or where I was, I do not know. But I know that it astounded me—I am talking about my personal reaction—when somebody sent me the testimony, say, a week ago, Senator, and I read all the discussion about south Phoenix. That was after I had given my statement to the Nation Institute. And then I received the transcript. Then I knew for the first time that in 1971, when being confirmed for the United States Supreme Court, the question had been inquired into and that then Justice-designate Rehnquist had given a long letter after the hearing.

Senator SPECTER. I understand your position and why you are coming forward now. But I was probing—I know it is hard to recollect or reconstruct—but in 1971, you were an experienced lawyer, and were very much concerned with the Supreme Court of the United States. I am trying to get straight in my own mind the degree to which you thought his conduct was questionable or wrongful, based on the information that you have.

You know as an experienced trial lawyer that one, tiny fact sometimes leads to another, and it is the smallest matter which

can somehow lead to the most important conclusions as an investigator.

Mr. BROSNAHAN. I guess I thought it was questionable and I thought it was wrong. It would be hard for me to say exactly why I did not come forward. It may have been the same atmosphere in 1971 that caused this committee perhaps not to go deeply into the matter of south Phoenix. For example, the office of the U.S. attorney in Phoenix then was happily a very small one; there were three assistants and the U.S. attorney whose names were known, and yet nobody ever came to me and said, "Well, what happened in south Phoenix in the years that you were there or the year that you were there?"

So——

Senator SPECTER. I think that is because the committee never focused the issue. I was not here.

Mr. BROSNAHAN. Well, that may be, that may be.

Senator SPECTER. But you have focused on the issue. You were there.

Mr. BROSNAHAN. I had focused on it to this extent, that when somebody would mention Justice Rehnquist, or when I would see him, which I have done four or five times over the last 15 years, one place or another, I would remember this incident, but not in the sense that I had any knowledge that your committee was going into it or that I should volunteer or come forward. And as a matter of fact, whether this is good or bad, I did not volunteer this time. I did not. Maybe I should have. But somebody called me and asked me and I told them what I remembered, and that is the way it happened this time.

Senator SPECTER. Well, if you had evidence in 1971, which would have been disqualifying, would you not have volunteered and come forward?

Mr. BROSNAHAN. I think that there is some level at which I would get the feeling that I should come to the committee and I should volunteer. And I suppose that could have occurred. It did not occur in 1971, for the reasons that I have given you.

Senator SPECTER. Do you recall why you went to the polling place, and what specific complaints you had?

Mr. BROSNAHAN. I remember that we went there because there were complaints. As to what the specific complaints were, I cannot say. It had to do—and this is the question of recollection—it had to do with the aggressiveness of the challenging. And at some level of my consciousness, I am sure that it had something to do with that kind of a thing. And we went out there to determine what was going on and who was involved, and so forth.

Senator SPECTER. Were there other challengers there in addition to Justice Rehnquist?

Mr. BROSNAHAN. To my recollection, no. He was the challenger.

Senator SPECTER. Was there customarily one challenger to each polling place?

Mr. BROSNAHAN. That is my recollection, from each party.

Senator SPECTER. You testified, Mr. Brosnahan, that there were words and gestures of members in the line that signified to you that that they were glad you were there. Can you be more specific as to what words, what gestures?

Mr. BROSNAHAN. The words were: "All right, that is good. You should be here. I am glad you are here. Maybe we can tell you what is going on," or whatever—words along that line. And Senator, you understand I am not trying to give you a verbatim account of the words used. But the reaction on the line was one of they were pleased that we had arrived. That is the best way I can say it.

Senator SPECTER. Mr. Brosnahan, I do not think the record is clear on the evidenciary or factual basis for your conclusion that he was a challenger. At one point, you said he did not deny he was a challenger, and I believe Senator Hatch quoted from a newspaper clip where you said that be told you he was a challenger.

Do you recall which, if either?

Mr. BROSNAHAN. The basis for knowing that he was a challenger was first of all, he was in that position, as I recall it—that is to say, the physical position, behind the table and acting as such, No. 1.

No. 2, we were told by people who were there that he had been acting as a challenger.

No. 3, my recollection is that there was no denial by him of that, and the answer——

Senator SPECTER. When you say "no denial," was he confronted with it? Was it an adoptive admission?

Mr. BROSNAHAN. I know that we talked to him about it. I know that.

Senator SPECTER. You talked to him about it.

Mr. BROSNAHAN. Yes.

Senator SPECTER. And the issue came up in your conversation of his categorization as a challenger, and he did not deny it?

Mr. BROSNAHAN. No; the issue precisely was what is going on here. We have complaints, some of which came from people who were there; others, which were recounted about people who had left. And the question was, "What have you been doing?" It was that kind of situation. And I showed him identification; so did the FBI agent—as we always do, by the way; that is just routine, you just show your identification. The question is, "What have you been doing here at this precinct, and what is going on?"

Well, he made a response. I could guess at what it was. I am sure that it had to do with the right to have challenges there, which is true—challengers, that is true—something along those lines. And we listened to that; we listened to the other people. The FBI agent did a more formal interview of people, going around, talking to people, trying to find out what was going on in the precinct.

We gathered that information. We were there 15 or 20 minutes, something like that, and it was very calm when we left. And we withrew and went back and resumed other duties.

Senator SPECTER. Mr. Brosnahan, I think you described the role of a challenger as one who confronts prospective voters, and I think you said that, hopefully they would be intimidated?

Mr. BROSNAHAN. Well, first of all, there is a legitimate function for a challenger.

Senator SPECTER. Well, that is precisely what I was about to ask you.

Mr. BROSNAHAN. OK.

Senator SPECTER. Let me try to expedite this by asking a series of questions.

Mr. BROSNAHAN. Sure.

Senator SPECTER. The role of the challenger is to challenge the voters to see if they are qualified. Now, how do you do that properly, short of inappropriate intimidation, without some evidence of criminal wrongdoing.

Mr. BROSNAHAN. Here is the point. You go out and check ahead of time, and you go down the voting list, and you find someone, Mr. Jones, is listed as living at a certain address, and you go there and you look, and there is no house there. And you go back, and you wait. And then when a man comes up and says, "I am Mr. Jones, and I live at this house," you as the challenger for either party—it does not matter—say, "I challenge this person. I have checked. There is no house." That is a legitimate function.

What is not a legitimate function is to look at a line of black and Hispanic people and, in a loud voice, go down that line and say, "I do not think this one and this one and this one and this one and this one can read," when you have no basis, no basis factually, to think that that is true. That to me at some level is an illegitimate series of challenges. That is not provided for, or was not provided for, past tense, by the law in Arizona as I understood it, and it was not a proper way to do it. And that is the distinction that I think I am trying to explain.

Senator SPECTER. All right. That is the hypothetical distinction. But as you say, there was no evidence that Justice Rehnquist did that.

Mr. BROSNAHAN. As I have said, for me to try to recall the specifics would not be fair.

Senator SPECTER. Well, is it a fair and accurate conclusion that there was not that evidence because there was no criminal charge filed?

Mr. BROSNAHAN. No. The reason there was no criminal charge filed as to any of the challengers was that as a matter of prosecutorial discretion, it was declined. It did not make a good criminal case. The various situations were situations in which there were contests and disputes and it simply did not make a good criminal case.

Senator SPECTER. Thank you very much, Mr. Brosnahan.

Thank you, Mr. Chairman.

Mr. BROSNAHAN. Thank you.

Senator HATCH. Senator Metzenbaum.

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. Brosnahan, I first want to say to you that I have sat through many hearings in the U.S. Senate, many different committees, and in all of them, I have never seen a more courageous, or finer American than you. There is not one of us sitting up here at the table who does not appreciate the kind of sensitivity of a member of a large law firm, undoubtedly a corporate law firm, undoubtedly a firm that has many members of the Justice's party in it—it would be normal—knowing full well that you could indicate you could not make the hearing, that you were too tied up, that you were not under subpoena, that you did not want to come or were unwilling to come.

And I just have to say to you that I as one American appreciate that which is obvious about your appearance, and that is that you

just felt that to do anything other than to appear would have probably been irresponsible, and would have made it very difficult for you to live with yourself.

Is that a pretty fair statement?

Mr. Brosnahan. Thank you. That is a fair statement. Thank you.

Senator METZENBAUM. Because you come before this committee in the most important issue of this hearing, the issue of the veracity, the truthfulness of a nominee Chief Justice of the Supreme Court who, by all published accounts, is expected to be confirmed.

Your testimony relates directly to the Justice's statement in 1971: "In none of those years did I personally engage in challenging the qualifications of any voters," and then his responses under oath to me yesterday or the day before.

Senator METZENBAUM. Did you ever approach any voters during this period about which we are speaking in the polling booths and speak to them regarding their qualifications to vote?

No, I do not believe I did.

Did you ever ask a voter any questions regarding his or her qualifications to vote?

JUSTICE. In the process of challenging them?

SENATOR. In the matter of being in a voting booth, in a voting booth, around a voting booth.

No, certainly not in a voting booth.

Did you do it at any time?

Not that I can recall.

I subsequently clarified that it did not have to be a voting booth; it was a voting place.

And then, back to the same issue.

SENATOR. Did you ever personally confront voters at Bethune Precinct?

JUSTICE. Confront them in the sense of harassment, harassing or intimidating?

SENATOR. No, in the sense of questioning them, asking them about their right to vote, asking them about the Constitution, asking them to read something, asking them questions having to do with their voter eligibility.

JUSTICE. And does this cover Bethune Precinct for all years?

SENATOR. Yes, yes. Did you ever personally confront?

JUSTICE. I do not believe I did.

Would you categorically say you did not?

If it covers 1953 to 1969, I do not think I could really categorically say about anything.

SENATOR. Do you think at some time, some point, you did personally confront voters at Bethune Precinct?

No. No, I do not.

Then, the Justice stated in 1971 at the hearing:

My responsibilities as I recall them were never those of a challenger, but as one of a group of lawyers working for the Republican Party in Maricopa County who attempted to supply legal advice to persons who were challengers. We had situations where our challengers were excluded from precincts, where we felt by law they were entitled to get into, and I might say our challenging efforts were directed not to black precincts as such—not to black precincts as such—but to any precinct where there was a heavy preponderance of Democratic voting.

And as the matter was worked out, what we finally developed was kind of a system of arbitration whereby my counterpart, who was for a couple elections Chairman of the Democratic Lawyers and I, the Chairman of the Republican Lawyers, tried to arbitrate disputes that arose. And frequently, the both of us would go together to a polling place and try to decide on the basis of a very hurried view of the facts who was in the right and who was in the wrong.

And I can remember an occasion in which I felt that a couple of our challengers were being vehement and overbearing in a manner that was neither proper nor permitted by law, and of telling them so.

Did Justice Rehnquist—who was not a Justice at that time—did he admit to you that he was challenging voters?

Mr. BROSNAHAN. Yes.

Senator METZENBAUM. I think in a statement you made—I will ask you if these are accurate reflections of your views:

Thus, in resonse to complaints, Brosnahan and an unknown special agent of the Phoenix office of the FBI went to south Phoenix, to a school, possibly Bethune School, to determine the validity of the complaints and/or violations of Federal law.

You have already said that is correct.

Mr. BROSNAHAN. Yes.

Senator METZENBAUM [reading]:

Brosnahan saw William Rehnquist, whom he knew as "Bill Rehnquist", at a table with voting officials. Brosnahan explained that he had met Rehnquist previously and was aware he was a Phoenix attorney who had been a United States Supreme Court Justice's clerk. Brosnahan had said hello to Rehnquist in the past and had seen him on social occasions.

Brosnahan explained he was not a friend or"——.

Mr. BROSNAHAN. Senator, can I interrupt you? I am sorry. I do not know that I have ever seen him on social occasions. I probably saw him at a Bar Association or something like that, but we never socialized that I can remember.

Senator METZENBAUM. Did you on one occasion introduce your wife to Mr. Rehnquist at a random meeting outside the Phoenix Federal Building?

Mr. BROSNAHAN. In front of the Federal building one evening, my wife picked me up, and then as he was called "Bill" Rehnquist was walking along, and I introduced her to him, and we exchanged pleasantries, and he left.

Senator METZENBAUM. I think in the same statement you indicated that the voters at that location were mostly black and Hispanic; is that correct?

Mr. BROSNAHAN. That is true.

Senator METZENBAUM. The statement further says:

Upon Brosnahan's arrival, he observed the delays and confrontational-type challengers. He opined the challengers were blanket challenging the black and Hispanic voters. He estimated possibly 75 percent of the voters present in line were being challenged.

Is that your——.

Mr. BROSNAHAN. That is as to the general complaints we received that day from a number of precincts, not necessarily the one at which Mr. Rehnquist was present.

Senator METZENBAUM. After you arrived, the situation became less tense, and voting was continued at a regular pace?

Mr. BROSNAHAN. That is true.

Senator METZENBAUM [reading]:

Brosnahan was told by a person or persons unknown that Rehnquist was challenging, and in conversation with Brosnahan, Rehnquist stated to Brosnahan that Rehnquist was a challenger.

Mr. BROSNAHAN. That is true.

Senator METZENBAUM. That is true. He told you he was a challenger?

Mr. BROSNAHAN. Because we talked about the complaints in terms of, "This is said; what do you say about it?" and he made a response to that. At no time did he ever say, "I was not a challenger," or "I was not doing this" or "It is not me, it is somebody else."

Senator METZENBAUM [reading]:

It is Brosnahan's opinion that Rehnquist was not there as peacekeeper or overseer, but it appeared Rehnquist was of a confrontational attitude to discourage primarily Democratic precinct voters who were mostly black and Hispanic.

Mr. BROSNAHAN. I have absolutely no question that at that time at that precinct in 1962, we did not have the benefit of any assistance in peacekeeping, or anything of that kind.

Senator METZENBAUM [reading]:

Brosnahan concluded by stating that it was his opinion that the total purpose of the confrontational challenges was to discourage black and Hispanic voters who were predominantly Democratic voters from voting. It was Brosnahan's recollection that on the above date, challenges were indiscriminately made, and voters were requested to read portions of the Constitution. He reiterated that the normal basis for a challenge was a question of the voter's eligibility and validity to vote. This was not the case on November 6, 1962, according to Brosnahan.

Mr. BROSNAHAN. That is true.

Senator METZENBAUM. So that is it fair to say that your recollection and your testimony under oath is that, notwithstanding the representations of Justice Rehnquist in 1971 and again in 1986, a few days ago, that indeed, Justice Rehnquist was a challenger at the precinct?

Mr. BROSNAHAN. That is true.

Senator METZENBAUM. I have no further questions, Mr. Chairman.

Senator HATCH. Senator DeConcini.

Senator DECONCINI. Mr. Brosnahan, I join with Senator Metzenbaum as to your coming here and being part of this process. I must say that I admire that, and I appreciate you doing that.

I think we are addressing indeed a very important subject matter here, not only as to the question of veracity of Mr. Rehnquist, but also whether or not there is sufficient evidence brought forward to overcome his denial and other statements that have been given that indicate that he was a peacemaker or legal adviser to the Republican Party. I for one remember very well those years, because I was on what was known as the Democratic truth squad of lawyers and law students in Pima County to circumvent what we felt was outrageous conduct by the Republican Party, and that was my own view. However, when I went to the polls because of Republican challenges in Pima County, we had some arguments and disagreements, but I could not remember today first who I saw there, except one Republican—there were a number of them—nor could I remember that anyone broke any law. They were challenging, and we did not like it because it upset those in line, and they wanted to go home, go to work, or whatever the case was, and it slowed things down. But we, to my recollection, did not have any prosecution, nor did they do anything legally wrong, although in my judgment it was wrong to do what they were doing.

Whatever Mr. Rehnquist was doing here, if in fact he was challenging, as you have said—he refutes that—he did not break the law. Is that your observation, or your opinion?

Mr. BROSNAHAN. Well, first of all, just to say what I know, there was no criminal prosecution of anyone, including Mr. Rehnquist. As to whether he broke the law or not, it would turn on the question of whether it was lawful to have blanket or broad challenges

to lots of people, which in turn would turn on the facts with regard to what it is that he did. And——

Senator DECONCINI. So we do not know; we are unable to——

Mr. BROSNAHAN. I am unable to go beyond what I just said to you.

Senator DECONCINI. We do not have an answer to the question.

Now, my recollection probably is, like yours, a little bit murky as to what the Arizona law was at the point. You pointed out one provision of challenge as to residency. My recollection—and I would appreciate you correcting me; I do not have that statute here—is that you could also question whether or not a person could read the English language——

Mr. BROSNAHAN. That——

Senator DECONCINI [continuing]. Let me finish—and that the voting poll judge, who was the elected official there to conduct the operation of the poll, had a card, in fact, that he would present upon request of a challenger to a particular voter—that is the way I saw it done, at least, when it was done what I thought was correct—and that that voting poll judge would then ask the person to read this. If they could not, the voting poll made a judgment right there or not, whether or not to give the person a ballot.

Is that your recollection of the contest as to the right to read the English language?

Mr. BROSNAHAN. I am speaking, of course, as to just the one year 1962. My understanding is that it was the law at that time, later held unconstitutional.

Senator DECONCINI. Right.

Mr. BROSNAHAN. But in 1962, it was the law in Arizona that you had to be able to read in order to vote. As I understood it, a challenge with regard to that question of reading was not made of every person. For example—and I am pretty sure on this—I used to vote in those days, and nobody showed me a card and asked me if I could read.

Senator DECONCINI. Yes, but I am not——

Mr. BROSNAHAN. And I think I would remember it if they had. So I do not think on the one point, I do not think that there was an official whose job it was to ask each voter whether they could read——

Senator DECONCINI. I am not suggesting that there was. What I am suggesting—what I would like to know is whether or not you concur that that was the way a challenger, Democrat or Republican, in this case Republican, challenger should have gone about challenging someone if they felt they did not know how to read, was to direct that inquiry to the voting judge, who had the list, or had the people there, and ask him to make that judgment and make that presentation.

Mr. BROSNAHAN. I think that I absolutely agree that if there was any kind of challenge, it should be referred to the official—and you might know the title, and I do not—of the person who is going to resolve that. And that was one of the problems in 1962, is that that was not the system being used broadly, No. 1.

No. 2, it was my understanding that before you challenged a particular voter, you ought to have some basis for that challenge, whatever that would be, and that you could not make and should

not make—whatever the word is——indiscriminate challenges of lots of people without a basis to believe that the challenge was a good one.

Senator DECONCINI. Well, let me ask a hypothetical. If you had the right to challenge—which I abhor that that happened to be in the Arizona law, and I am very embarrassed that it was, but it was, and I had nothing to do with putting it in there—but that being the case, that you had to write or, as a requirement of voting, you had to prove that you could read, hypothetically, how would you ever challenge someone if you did not ask them to read something?

Mr. BROSNAHAN. Well, you would do it, I suppose, the same way that you would prepare yourself to challenge other people. In fact, as I recall it, the Republican Party—and probably Democrats, too—had done some homework in terms of addresses, and they would mail out letters and get things back. And I suppose you could do some homework and try to get a basis for a particular challenge.

Senator DECONCINI. But what homework would you think they could do as to whether or not they could read? Whether or not there is a house there, you mail something, and it comes back, or you go see it physically.

Mr. BROSNAHAN. No, that is right. You would have to do some form, I suppose, of checking the way they do in the other areas, No. 1. But No. 2——

Senator DECONCINI. What other areas?

Mr. BROSNAHAN. Well, for example, I would not—I am just giving you my opinion—I think most everybody in that line could read, and that is——

Senator DECONCINI. Well, that is not my question. I will ask it so it is in the record. In your opinion, could everybody in the line read?

Mr. BROSNAHAN. I cannot say with regard to that.

Senator DECONCINI. Well, do you think that they could read?

Mr. BROSNAHAN. Yes, I would say most of them, I am sure, could read.

Senator DECONCINI. Fine; that is really not what I am getting at. What I am getting at is that as I remember the law in Arizona, that there was a right to ask you or Dennis DeConcini, if he was registered to vote, to read something if the judge or the challenger asked the judge to do so. Now, they did not do it, and it was unfair as hell, and they did it in minority precincts, the Republicans did it, in order to deter Democrats from voting, and if nothing else, to slow up the line. And that was very clear what it was all about.

My point is, notwithstanding how abhorrent that is, if someone did it in accordance with the law, they did not break the law, obviously, even though in your moral judgment and mine and others, it was wrong.

So if Mr. Rehnquist was complying with the law there and either asking people himself—and we do not know that that was illegal, because you cannot say for certain, and I cannot say; we do know, quote, "harassment" is illegal, and I do not know that that is; I can conjure that up—but if he was complying with the law, he is only guilty, in my judgment, of doing something that I thought was wrong, and not something that was a violation of a law. And like-

wise, the Justice Department, under your testimony, investigated that and concluded that he did nothing wrong.

Mr. BROSNAHAN. You know, the only thing I can give you—and you would be the one that would know a lot more about this, I am sure—the only thing I can give you is my understanding formed at the time in 1962, which was that before a challenger from a party could challenge one person, and certainly before they could challenge lots of people, which had the effect of obstructing the flow of voters, that you had to have a basis of some kind for that challenge. Now, all that is, Senator, is my recollection. I have not gone back to try to research that point or anything of that kind.

Senator DECONCINI. You worked for Carl Michie?

Mr. BROSNAHAN. Yes.

Senator DECONCINI. Now, he gave a statement on this issue back in 1962. He said he received a report of an incident at the Bethune precinct himself, and he went there to investigate. When he arrived, he was notified of irregular practices in the challenge of voters.

"He," meaning Mr. Michie, "says he is not aware of anything more than minor irregularities." Now he is referring to the Bethune precinct. "He is certain Justice Rehnquist was not present at the Bethune precinct. Judge Michie told the Arizona Republic this week"—that is back in 1971—"that there never was talk about prosecuting Republicans for their challenge activities.

"He went on to say that he knew Bill Rehnquist at the time, and never saw him do anything. Michie said that he did not think Republicans actually were preventing people from voting in 1962, but he said they were holding up lines and causing delays. Democrats at the same time were being accused of handing out campaign literature too close to the polls."

Excuse me. I stand corrected. I was reading from an 1986 report, so this was very current that Michie just said what I said, and not in 1971.

And what I ask you is that you cannot substantiate from your memory, nor can Mr. Rehnquist, what precinct you and he met each other.

Mr. BROSNAHAN. I think that is true.

Senator DECONCINI. That is true. So, we have a big disagreement here of a fact as to whether or not you both were in the same precinct and what action Mr. Rehnquist took.

Mr. BROSNAHAN. No, Senator—I mean, as far as what my testimony is, we were both in the same precinct, and we were there at one time together.

Senator DECONCINI. Yes, all right.

Mr. BROSNAHAN. But which precinct that was is another question.

Senator DECONCINI. You do not know. All right.

Mr. BROSNAHAN. Right.

Senator DECONCINI. Was Mr. Benson—did you ever come across Wayne Benson's name?

[Pause.]

Mr. BROSNAHAN. I cannot say that.

Senator DECONCINI. Apparently, you do not remember Wayne Benson.

Mr. BROSNAHAN. I cannot say that, no.

Senator DECONCINI. Because it appears to me that we are talking about another precinct than the Bethune precinct as to where you encountered Mr. Rehnquist, because Mr. Benson was at Bethune precinct, and he accordingly was escorted out of that precinct, and several people said they saw Mr. Rehnquist there. You did not have any familiarity with any incident involving a Mr. Benson?

Mr. BROSNAHAN. There were other incidents, and the name is familiar, but I think I may have read it in a clipping. So I am not sure.

Senator DECONCINI. What about any other—you testified to Senator Specter that there were no other Republican officials there at the precinct you were at——

Mr. BROSNAHAN. That is right, right.

Senator DECONCINI [continuing]. When Mr. Rehnquist was there. Were there any Democratic officials of the Democratic Party?

Mr. BROSNAHAN. I think so

Senator HATCH. Would the Senator yield on that one point——

Senator DECONCINI. Yes, I would.

Senator HATCH. When I was asking questions, you had difficulty remembering whether this was Bethune or not.

Mr. BROSNAHAN. What I have said is that I am not sure what the name of the precinct was.

Senator HATCH. Yes, that is it.

Mr. BROSNAHAN. Right.

Senator HATCH. And the Arizona Republic—this may refresh your recollection—on November 7, 1962, did say:

> The scuffle came at a polling place in Mary MacLeod Bethune School.

And they give the address.

> Where opposing party watchers struggled briefly inside, and an angry crowd gathered outside. Police hustled the combatants inside the nurse's office, and Mrs. Ellen Jane Greer, Deputy County Attorney, restored order. The U.S. District Attorney's Office made two checks at the polling place after receiving repeated complaints. The first was made at 11 a.m., and the second at the request of Senator Hayden at about 4:30 p.m.
>
> The first investigation was made by William J. Knudson, Jr.

That is the FBI agent who was with you, I presume——

Mr. BROSNAHAN. No, that name is of an Assistant U.S. Attorney in the Phoenix office at that time

Senator HATCH. OK. It says, "The first investigation was made by William J. Knudson, Jr. and James J. Brosnahan, Assistant District Attorneys, on reports that the voting line was being delayed by the challenges."

That basically establishes that it was at the Bethune School. There had been a scuffle——

Mr. BROSNAHAN. No, I do not know that the Senator is——

Senator HATCH. I do not know how you can say no. It is right here in the newspaper.

Mr. BROSNAHAN. No, I do not know that the Senator is recalling what I said.

Senator HATCH. OK.

Mr. BROSNAHAN. I said that I went to—and I said this earlier—perhaps two or three different places in the course of that day. The article that you are reading from recalls that Mr. Knudson—it says

Mr. Knudson and I went to the Bethune School in the morning, I think, around 11 a.m. or 12 noon or something like that, and Mr. Michie went there around 4 p.m., and there was a scuffle. And I do not recall whether the scuffle was early or late; I do not know.

Senator DECONCINI. Mr. ——

Senator HATCH. Excuse me. Go ahead, Senator.

Senator DECONCINI. If I may continue, Mr. Chairman.

Senator HATCH. Surely.

Senator DECONCINI. I want to ask you this question, Mr. Brosnahan. You said you recalled that you think there were other Democratic officials there?

Mr. BROSNAHAN. I am pretty sure there were.

Senator DECONCINI. Do you recall who they might have been?

Mr. BROSNAHAN. No.

Senator DECONCINI. Was one of them a party chairman, do you remember?

Mr. BROSNAHAN. A party chairman in terms of Maricopa County?

Senator DECONCINI. A chairman of the Democratic Party.

Mr. BROSNAHAN. I do not recall that.

Senator DECONCINI. Does the name Charlie Hardy refresh your memory at all?

Mr. BROSNAHAN. Not as to him being at a specific precinct. But of course, I knew him in those days, and he is now a Federal judge, so I know who he is.

Senator DECONCINI. He is a Federal judge, and he says that on occasion, both in 1962 and 1964, he visited various polling places with Bill Rehnquist in order to check the challenges and what the process was.

But you do not recall—do you know who Charlie Hardy is?

Mr. BROSNAHAN. I know who Charlie Hardy is, but——

Senator DECONCINI. You do not recall him being there?

Mr. BROSNAHAN. I recall—well, my recollection is that there was one Democratic challenger there, and that is—that is what I am sure of——

Senator DECONCINI. And you do not know who it was?

Mr. BROSNAHAN [continuing]. And beyond that—and I do not know who that person was.

Senator DECONCINI. Who was the agent that went with you, the FBI agent, do you remember?

Mr. BROSNAHAN. I do not have the name of the agent. It would have been somebody assigned to that task, and not necessarily somebody whom I would work with on other cases. You can check this. My recollection is there were maybe 50 FBI agents in Phoenix at that time.

Senator DECONCINI. Fifty?

Mr. BROSNAHAN. That is my recollection; some figure like that.

Senator HATCH. Senator DeConcini, can I just interrupt you for a second? I am going to go vote, and what I would like to do if you finish is have Senator Heflin begin his questioning.

Senator DECONCINI. I think everybody had better go vote.

Senator HEFLIN. Yes, I had better go vote, too.

Senator HATCH. Maybe we had better all go and vote.

Senator DECONCINI. Let me just finish this line of questioning.

Did you take any notes of this yourself, or was that left for the FBI agent?

Mr. BROSNAHAN. I do not remember. It probably was left to the FBI agent, would be my best estimate at this point. He would be more official in the sense that he would be getting the detailed information and recording it in some fashion.

Senator DECONCINI. When you came into the voting place, do you remember where Mr. Rehnquist was? Was he seated?

Mr. BROSNAHAN. My recollection is he was seated behind a table as one of several people who were functioning at that place.

Senator DECONCINI. Which might have been where the judge of the precinct, the person in charge of the precinct, would have been sitting?

Mr. BROSNAHAN. I think it was where the judge, or whatever you call that person——

Senator DECONCINI. Yes, the official——

Mr. BROSNAHAN. The official for the precinct, yes.

Senator DECONCINI. And when you saw him, did he get up and come talk to you?

Mr. BROSNAHAN. At some point, we got up and got it to the side. We were trying to do a couple things. One was we were trying to quiet the situation down. That was the first thing. No. 2, we were trying to find out what happened, and we did that by talking to various people. And No. 3, he was one of the people we talked to. And my best recollection is that we did get over to the side somewhere to sort of discuss, well, what is your recollection, or what is your understanding of what is going on here, and that we got him over to one side and got his side of the story.

Senator DECONCINI. And that side of the story was that he was doing what was legal in his opinion, or do you recall?

Mr. BROSNAHAN. I am sure that in some form, with some words, he told us that whatever it is he had done, he thought was appropriate. I am sure that is true.

Senator DECONCINI. And what did you think?

Mr. BROSNAHAN. I did not think it was appropriate.

Senator DECONCINI. Did you tell him that what he said he had done, that you thought it was inappropriate?

Mr. BROSNAHAN. I could have, I could have. I cannot tell you that now. I hope I was trying to be professional and sort of "What has happened here?" and that kind—it was a somewhat volatile situation, and our goal was not to inflame it.

Senator DECONCINI. Was he professional in telling you whatever he told you?

Mr. BROSNAHAN. He was subdued at that point, I thought.

Senator DECONCINI. He was subdued. Well, was he professional?

Mr. BROSNAHAN. Well, he was responsive.

Senator DECONCINI. He was responsive, and he was answering your questions?

Mr. BROSNAHAN. Yes.

Senator DECONCINI. He did not tell you—did he tell you that he was a lawyer, and he did not have to answer your questions, or anything like that?

Mr. BROSNAHAN. I knew he was a lawyer, and he did not refuse to answer any of my——

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Senator DECONCINI. He did not; he cooperated?

Mr. BROSNAHAN. It is fair to say he cooperated.

Senator DECONCINI. Thank you.

Do you know what time of day it was? Was it in the morning or afternoon?

Mr. BROSNAHAN. I do not really recall that. I really do not recall that.

Senator DECONCINI. How many precincts did you visit that election day, do you recall?

Mr. BROSNAHAN. Two or three.

Senator DECONCINI. Two or three. Do you remember going to the Bethune precinct——

Mr. BROSNAHAN. I think I did.

Senator DECONCINI [continuing]. At that particular time?

Mr. BROSNAHAN. I think I did.

Senator DECONCINI. You think you did. When you went there, was Mr. Rehnquist there?

Mr. BROSNAHAN. I cannot say that.

Senator DECONCINI. Do you recall who was at the other precinct? [Pause.]

Do you recall the names of any of the precincts, except you think one of them was——

Mr. BROSNAHAN. No, I would not remember the names of any of the precincts. You understand I left Arizona in 1963 and was there for 3½ years.

Senator DECONCINI. I understand, I understand.

Mr. BROSNAHAN. So I would not remember the names of the precincts.

Senator DECONCINI. But you think one of them was Bethune precinct.

Mr. BROSNAHAN. I think so. Part of my recollection is the newspaper clipping that Senator Hatch cited, which says that I did go to the Bethune precinct, I think, sometime in the morning.

Senator DECONCINI. So your statement is here—so that I can just wind up here—is that from what you were told and could feel, what you could see from those people who were telling you, Mr. Rehnquist was challenging voters?

Mr. BROSNAHAN. That is true.

Senator DECONCINI. And you never saw him challenge any voter.

Mr. BROSNAHAN. As I have described it, that did not happen while we were there.

Senator DECONCINI. I mean, you never saw him challenge any voter, either as to residency or being able to speak or not?

Mr. BROSNAHAN. No.

Senator DECONCINI. Your information comes from what people that were in the polling place conveyed to you?

Mr. BROSNAHAN. That is correct.

Senator DECONCINI. Thank you.

Mr. BROSNAHAN. May I add one thing? I am sorry. Whatever information I had came from people at the polling place and whatever complaints we had received before we got there.

Senator DECONCINI. Which brought you down there.

Mr. BROSNAHAN. Yes.

Senator DECONCINI. Just like Mr. Maggiore said he went to a voting place at the Bethune precinct; somebody called and said, "Hey, something is going on here."

Mr. BROSNAHAN. Something is going on; right.

Senator DECONCINI. Thank you, Mr. Chairman

The CHAIRMAN. Are they through with this panel?

Senator DECONCINI. No, I do not think they are, Mr. Chairman. Senator Heflin and Senator Simon certainly want to ask some more questions, and they will be right back.

The CHAIRMAN. There is a vote in the Senate, so we will take a recess until some of the members return.

Mr. PINE. How long will that recess be, Mr. Chairman?

The CHAIRMAN. Not over 10 minutes.

Mr PINE. Thank you. I want to know, because I want to know if I have time to get something to eat.

The CHAIRMAN. You will not have time to do that.

Mr. PINE. Thank you.

[Short recess.]

The CHAIRMAN. The committee will come to order.

The distinguished Senator from Alabama.

Senator HEFLIN. I have listened to part of your testimony and read, very hurriedly, a statement that you made, and some things that Senator Specter asked and some questions that Senator DeConcini asked. There are some questions in my mind as I try to understand exactly what your testimony is.

First, in regard to your written testimony, you say here on page 4, which I gather is the major aspect of it,

> I have read the testimony and the letter supplied by Justice Designate William Rehnquist to this Committee in 1971. On Page 71 and 72 of his testimony, he describes his role in the early 1960s as trying to arbitrate disputes at polling places. That is not what Mr. Rehnquist was doing when I saw him on Election Day in 1962.

Are you stating there that you did not see him trying to arbitrate disputes?

Mr. BROSNAHAN. That is true.

Senator HEFLIN. All right. You cannot say whether that day he did or did not at polling places endeavor to try to arbitrate disputes?

Mr. BROSNAHAN. That is also true.

Senator HEFLIN. Now, I gather from what Senator DeConcini has described relative to this that there is some official that is stationed at a polling place, this is a little different from my State and maybe from some other States, who was there to settle disputes as to whether or not someone can vote; and that under the Arizona law, the parties have representatives there and that those representatives have the title of challenger. Is that correct?

Mr. BROSNAHAN. That was my understanding, yes.

Senator HEFLIN. Now, in order to be there to be behind the table, or to be there in any capacity representing the party, is it necessary that you have that title or some other title?

Mr. BROSNAHAN. It was my understanding that, yes, you had to have the title in the sense that your party would designate you to be the challenger for that precinct. That was my understanding.

Senator HEFLIN. Now, a person can be given the title of challenger and never exercise any function as a challenger, can he not?

Mr. BROSNAHAN. That would certainly be possible.

Senator HEFLIN. All right, sir. Now, you next in this statement here say, "At Page 491 of the 1971 record in his letter, William Rehnquist stated, 'In none of these years did I personally engage in challenging the qualifications of any voter.' This does not comport"—and this is your language—"This does not comport with my recollection of the events I witnessed in 1962 when Mr. Rehnquist did serve as a challenger."

Now, will you tell us what you personally saw Mr. Rehnquist do relative to personally engaging in challenging?

Mr. BROSNAHAN. Other than him having a position, Senator, behind a table when I arrived, as far as what I saw—and I am distinguishing, and I think you want me to, what I heard or what I was told by the people in the line, for example, and other officials there. Putting that to one side, I did not see him challenge people while I was there, as far as I can now recall.

Senator HEFLIN. In other words, you never saw him do an overt act of challenging himself, even if he did, at that time, occupy the position of a challenger?

Mr. BROSNAHAN. While I was there, as I recall it, the main activity was not the continuation of the voting, although some of that may have gone on. The main activity was that we were getting answers to our questions from various people so that the process, as best I recall it, was at least slowed down. So there would not be an occasion for somebody to be doing a lot while we were there.

Senator HEFLIN. All right, sir. Now then, if he did perform acts of challenges, as distinguished from bearing the title of challenger, it depended on hearsay of what people told you.

Mr. BROSNAHAN. That is true. In two forms. Whatever it was we heard before we got there, and when we were back at the U.S. attorney's office; and second, whatever we heard once we arrived, as various people, whether they be voters or somebody behind the table, would tell us. And as you say, that was hearsay.

May I add one other thing? And I have been expressing this. When we interviewed Mr. Rehnquist, there was not pending at that time any question about whether he was acting as a challenger. The question, really, was whatever the complaints were about his conduct, that is what we were discussing, and he was giving us the benefit of his side of that story.

Senator HEFLIN. All right, sir. Now, as to whether or not the hearsay accurately depicted whether he was doing overt acts of challenging would depend upon the subjective evaluation of the person that you were interviewing, would it not?

Mr. BROSNAHAN. Well, to some extent. But when somebody tells you right there that this person standing over there has just done something as to whether it is absolutely accurate, that is the question, but not as to whether that person is standing over there. I mean, do you see what I am saying?

In other words, it was pretty clear. There is some subjective element to this, I agree with you, but it was clear that he had been acting as a challenger before we arrived there, and he did not contest that at any time.

Senator HEFLIN. Well, what did they say? In other words, you impress me as being truthful, and I have to admit that Justice Rehnquist impresses me as being truthful.

Now, are we talking about semantics and language?

Mr. BROSNAHAN. I am trying not to.

Senator HEFLIN. You are saying here that he said in his language, as you read in that letter, "In none of these years did I personally engage in challenging the qualifications of any voter." And you have said in your statement, "This does not comport with the recollection of events that I witnessed in 1962 when Mr. Rehnquist did serve as a challenger."

Now, you have not cited any events that you saw to base your statement on. You have said that it was hearsay. Now, what was the hearsay that they told you he was doing?

Mr. BROSNAHAN. Well, what I have given you is my best recollection as an assistant U.S. attorney as to what witnesses at the scene told me what Mr. Rehnquist said. When you get to the question which you have now raised as to what was the nature of the complaint, it is clear to me they were complaining. It is also clear to me that it had to do with his conduct.

But when you get to that point and say what were the precise complaints, what was the conduct, and what was Mr. Rehnquist's response, and I have thought a lot about that, Senator. I am concerned that if I attempt that, that I might be unfair in some way or inaccurate in some way.

I think we have probably reached the outer limit of my recollection when we get to that point.

Senator HEFLIN. In other words, you are telling me that you cannot remember what the complaints were, but your overall evaluation of the complaints made to you was that he was doing some type of overt act of challenging?

Mr. BROSNAHAN. That is true.

Senator HEFLIN. But you cannot remember it.

Now, all of that is hearsay, and actually I do not——

Mr. BROSNAHAN. It is not—I am sorry.

Senator HEFLIN. Well, I mean, if you were testifying in court and an objection was made, basically because they have got new rules of Federal evidence, and I am not exactly sure where we are now with them; but in the days when I was trying lawsuits, an objection would have prevented you from testifying to the conclusion that you have testified, would it not?

Mr. BROSNAHAN. No, it would not as to at least this part. I showed—as he was then called—Bill Rehnquist my identification. That is not hearsay.

I understand. I am just trying to explain it. By the way, when I am in court, my objections do not always get ruled on the right way, anyway.

When the FBI agent showed him his identification, that is not hearsay. When we took him somewhere to talk with him about what it is he had been doing, the fact that we talked with him is not hearsay. The fact that we were there is not hearsay. The gestures and signs from the people in the line before you get to the content of what they said, that is not hearsay.

It is true, and it is part of the situation, that the specific complaints, whatever those were, would be the statements of people who were there and would have to be weighed in some fair fashion. That is true.

Senator BIDEN. Will my colleague yield for 30 seconds?

Senator HEFLIN. Yes.

Senator BIDEN. Let me ask you this one precise question: When you identified Mr. Rehnquist as a challenger, did anyone with whom you spoke in that line who was complaining about treatment—whether it was legally improper or proper—regardless, without making a judgment, whether it was right or wrong what they were compaining about, did anyone in that line turn and say, "That man, Bill Rehnquist"?

Mr. BROSNAHAN. Yes, and I appreciate the question because nobody has asked me that this morning. A number of people in the line designated Mr. Rehnquist as someone who had been challenging. That is why we went to him. That is why we talked to him.

Senator BIDEN. You have no doubt about that.

Mr. BROSNAHAN. I have no doubt about it.

The thing is that if I tried to tell you this is just the passage of time that the complaint involved or the complaints was this and this and this, I would be very concerned about my recollection. But that people in the line said, "That gentleman over there is the person who is doing the challenging," words to this effect, "we do not like it."

Senator BIDEN. And that gentleman to whom they were referring was Bill Rehnquist.

Mr. BROSNAHAN. Was Bill Rehnquist, that is true.

Senator DECONCINI. Would you yield just for a short question? What did they say that he was doing? Was he doing something illegal?

Mr. BROSNAHAN. That is the point, Senator, that might be a very important point, but it is not one that I can be accurate about.

They were complaining about his conduct.

Senator DECONCINI. He was doing something they did not like.

Mr. BROSNAHAN. Something they did not like. That is certainly true. That is certainly true.

Senator DECONCINI. But in your judgment, you cannot say whether it was illegal?

Mr. BROSNAHAN. No, I cannot. I really cannot.

Senator DECONCINI. You cannot remember that what they told you sounded illegal, like "He hit me"?

Mr. BROSNAHAN. It was nothing like that.

Senator DECONCINI. Well, I mean, that obviously would be illegal.

Mr. BROSNAHAN. Well, I know, but there was nothing like that.

But there were complaints, and I do not think they were stated in legal terms, complaints about the conduct at some level being certainly something they did not like.

Senator DECONCINI. Improper, in their view?

Mr. BROSNAHAN. In their view, certainly.

Senator DECONCINI. I thank the Senator from Alabama.

Senator HEFLIN. Well, I think maybe Senator Biden has clarified more of what you did. I think I did not give you the opportunity to

answer that when I asked you about what they did. When you said what you did, that was in answer to a general question. But that still leaves us somewhat in the dark, now, for 25 years about how somebody could point and say that this is the judge and I am whispering something to him, and I turn and look at him or do something else. The subjective evaluation that I would be talking about Joe Biden or that I am talking about somebody else is a subjective evaluation as to what it was that he did that they challenged.

Well, I think this is more a matter of semantics of the language in your statement as to what we can establish and say is based on evidence that you saw. And I am assuming you are telling the truth. I think you are endeavoring to do so.

But to try to do so where it is not the inner workings of your mind and your evaluation, rather based strictly on evidence, I am not sure about your statement there, that "This does not comport with my recollection of events I witnessed in 1962 when Mr. Rehnquist did serve as a challenger."

Mr. BROSNAHAN. I hope I have not at any time tried to characterize or make a judgment about Justice Rehnquist's testimony. I do not think that is my function, and I have tried not to do that.

But when I refer here to what I witnessed, I am referring to the arrival, the receipt of the complaint, the interview of Mr. Rehnquist, and those are the events that I am referring to.

How you are going to weigh all that together, that is really for the committee.

Senator BIDEN. Let me just make sure, since I just asked the question, and I apologize to my colleague from Illinois. I thought I asked you a question that was objective. Not that the question was objective; asking for an objective judgment. I want to make sure I have got it straight because it is really important to me.

Mr. BROSNAHAN. Yes.

Senator BIDEN. Are you swearing under oath that you in the polling place that we have been referring to were told by specific people standing in the line that Bill Rehnquist—either by name or by gesturing to him—was the person responsible for their unhappiness?

Mr. BROSNAHAN. Yes.

Senator BIDEN. So there is nothing subjective about that. You are swearing under oath that you saw and heard an individual say to you, "That person sitting at that seat is the cause of my unhappiness here"?

Mr. BROSNAHAN. That is correct.

Senator DECONCINI. But not necessarily that he was challenging; that he just did something they did not like.

Mr. BROSNAHAN. No, oh, no.

Senator DECONCINI. What was it?

Mr. BROSNAHAN. The thing they did not like was the challenging.

Senator DECONCINI. What was that?

Mr. BROSNAHAN. That is what you and I have discussed which is beyond my recollection. But the thing they did not like, Senator, was the challenging. It is not anything other than that.

Senator BIDEN [presiding]. The Senator from Illinois. I apologize for the interruption.

Senator SIMON. Thank you, Mr. Chairman.

Senator BIDEN. But I so seldom get to be chairman any more, now that we are in the minority. I just took advantage of it.

Senator SIMON. I am glad you have taken over as chairman here. I knew it was going to happen sooner or later, but I am glad it has happened now.

Senator BIDEN. I am not sure what means, but I will let it go.

Senator SIMON. Mr. Brosnahan, when you went out there, do you remember the complaints that caused you to go out? Were the complaints about the conduct of Mr. Rehnquist?

Mr. BROSNAHAN. Yes; the complaints, whether the name was mentioned or not—to try to be square-cornered about it—whether the name was mentioned, I would not remember now.

We received complaints that at this precinct there was what we thought was a serious problem. And then we went there in response to those complaints.

Senator SIMON. You referred to gestures that you saw as you drove up or walked up to indicate that there were problems. What kind of gestures are you talking about?

Mr. BROSNAHAN. The best recollection I have is that, first of all, we came up and they kind of looked at us, and we showed our identification and probably said who we were to the people behind. And as the people in the immediate line heard that, they responded. And they responded by saying or showing that they were very glad we were there.

The complaints were with regard to Mr. Rehnquist, and by sign or some fashion, that was indicated. Plus, when we talked to people, that is what they were talking about.

Senator SIMON. When you said he was challenging them, was he challenging one or two people, or do you have the impression it was a larger number? How many people was he challenging that caused the consternation?

Mr. BROSNAHAN. Well, he had been there, he had been challenging enough so that the line responded in a very graphic way. I cannot say how many people he had challenged or anything like that, except that it was enough to cause this line of voters to evidence their real displeasure.

I have a very distinct recollection of that day for that very reason. These were people who wanted to vote, and there was somebody there who was stopping them. Or at least they thought that was the problem.

How many he challenged, I would not be able to say that. I do not think I should try.

Senator SIMON. But it was apparently more than one or two or three?

Mr. BROSNAHAN. Oh, yes.

Senator SIMON. You were with an FBI agent; the FBI agent presumably made a report back to his office. You were an assistant U.S. attorney. Did you make a written report to your office, do you recall?

Mr. BROSNAHAN. I would not have made a written report because I do not think we ever made written reports. We would have received FBI reports over a course of maybe a day or two, and I think on this one, really, the U.S. attorney, Mr. Mickey, would have made the final decision. But I think we would have talked about it

to discuss what it was we found and whether this would make a criminal case or not. And I think we pretty well knew, and I should say this, that we were not going to make a criminal case out of it. And when I say "it," I am referring to the different situations and the different precincts.

But one of the things that did occur was that Mr. Mickey was to receive additional FBI reports, and some of the voters who had gone home were being interviewed at home and that kind of thing. And that took a day or two, something like that.

Senator SIMON. You said "we were not going to make a criminal case out of it." In your judgment, was what he did a violation of the law?

Mr. BROSNAHAN. When a judge asks me that, I am usually better prepared than I am to do this. We are talking about 1962 in Arizona.

I can give you my impression of the law at that time, which is what I had at that time. You cannot have blanket challenges of numerous people without a basis for it. And that would be at some level against the law.

That is as close as I can get to it.

Senator SIMON. All right. I think you have answered my questions. I have no further questions, Mr. Chairman.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Arizona.

Senator DECONCINI. Would the chairman yield to me just long enough. I have secured here a copy of the Arizona statutes, A.R.S. 16.9.11, 921, and it states the grounds for challenging voters at that time. I am going to take a moment and read them real quickly.

A person offering to vote may be orally challenged by any registered elector of the county on any of the following grounds: One, that he is not the person whose name appears on the register; two, that he has not resided within the State for 1 year next preceding the election; three, that he has not resided within the county or precinct for 30 days next preceding the election; four, that he has not voted before at that election; five, that he has—excuse me, that he has voted before at that election; five, that he has been convicted of a felony and has not been restored to his civil rights; six, that he has made a bet on the result of the election—boy, that would hurt. I am glad nobody challenges. In the bars I used to attend in those days—seven, is not being prevented by physical disability from doing so; he is unable to read the Constitution of the United States in the English language in such a manner as to show he is neither prompted nor reciting from memory or he is unable to write his name.

So, Mr. Chairman, I think it is important to realize that this very clearly gave any registered elector of the county the right to make an oral challenge. I am not justifying anybody doing that by stating that, but I think it is important that this be inserted in the record.

Senator SIMON. If my colleague would yield.

Senator DECONCINI. I would be glad to yield.

Senator SIMON. As I understand Mr. Brosnahan's testimony, it is also illegal to just preemptorily pick out people and challenge them on any basis without——

Senator DECONCINI. And I would dispute that, just based on the grounds here. It says any person offering to vote may be orally challenged by any registered elector in the county upon any of the following grounds.

It does not make it right, in my judgment.

Mr. BROSNAHAN. If I could comment, because what I am giving you is the benefit of my state of mind as to that particular statute. I thought at the time, and I still think listening to the statute being read, that it does not authorize anybody from either party to challenge based on any one of those, pick it out and challenge a large percentage—say 75 percent of all the people who show up to vote. I do not think that that is authorized by that statute, but that is just my view.

Senator BIDEN. If the Senator would yield, in the State of Delaware and other States that have similar legislation, unfortunately, in its history, the standard, as best I understood, was as has been stated by the witness. And if I could make an analogy, it is illegal to carry a concealed and deadly weapon. It is not legal to walk up without reason to believe they are carrying one and challenge whether or not they are in possession of one.

Senator METZENBAUM. I might point out to both the Senator from Delaware and the Senator from Arizona, nobody is making an issue about the legality of Justice Rehnquist's actions. That is not the major issue.

If I just may finish my sentence. The issue is the Justice has said to us that he did not challenge and he told us that again 2 days ago. So the issue is whether or not he has represented the facts to us. I do not think there is any question under the law of your State that challenges could be made under the law and could be made probably under the law of mine. That is not the issue.

Senator DECONCINI. Well, I just would say, Mr. Chairman——

The CHAIRMAN. The distinguished Senator from Arizona, do you have anything else, Senator?

Senator DECONCINI. Yes, Mr. Chairman. I was just making a response to the Senator that that is an issue. Also as an issue is what is a challenge. Being present there talking to the judge of the election board? Is that a challenge? Going up to the person and asking him to read something? That obviously is a challenge under the statute I just read at the time. So there is a question.

Senator METZENBAUM. Well, if it walks like a duck and talks like a duck and quacks like a duck, then I suppose it is a challenge.

Senator DECONCINI. Well, I suppose if the Senator is predisposed to the conclusion that a legal representative of the party being in a polling place is a challenge, it is a challenge. I am not satisfied that that is a challenge.

Senator METZENBAUM. Well, I guess my point about it is it is the reaction of the people. The people were afraid. They were walking out of the booths. They were calling officials to come in to protect them. They felt they were being challenged. That is my point about if it appears to be something and people are reacting to it in that manner, then you do not need to have a law book definition. The fact is it obtained the results.

Senator DECONCINI. If the Senator would yield then, in that case, if the people in this audience say that you have brown hair, then you must have brown hair, right?

Senator METZENBAUM. I do not think that is quite possible.

Senator DECONCINI. At least he has hair. I do not have any.

[Laughter.]

Senator BIDEN. May I clarify a point?

The CHAIRMAN. Let us move on now.

Senator BIDEN. At least this is important to make, because I think that I am not certain about whether or not Justice Rehnquist's testimony is in absolute opposition to the testimony stated here, and I think Senator DeConcini may have put his finger on something. I want to make sure we understand what we mean by challenge.

If in fact Justice Rehnquist meant by challenge that he—I would like you to respond to this, if you know, Mr. Brosnahan. I know you would not if you do not know. But if I as a Republican challenger have a doubt about whether or not a person about to vote is qualified to vote, and I can legitimately challenge, under the law do I turn to the elected official who is there?

What was the title of that official?

Senator DECONCINI. They call him the judge.

Senator BIDEN. The judge. To the judge that is there, and do I say, "Judge, I ask you to challenge John Doe"?

Mr. BROSNAHAN. That is my understanding why the judge was there was, among other things, to deal with any disputes, and that in some of the precincts that was not what was happening.

Senator BIDEN. The last comment, Mr Chairman. Justice Rehnquist indicated in response to me and others that he did not challenge anyone. We may very well have to ask Justice Rehnquist back here to define what he meant by challenge because if he is playing a technical game here saying, well, I did not personally challenge; I turned to the judge and asked the judge to challenge, then I would like to give him a chance to clarify that.

So I respectfully suggest we should not foreclose the option that we may have to have Justice Rehnquist back here.

The CHAIRMAN. We have released him now. We kept him here for 3 days. Full opportunity was given to ask all questions they wanted to.

Senator BIDEN. Mr. Chairman.

The CHAIRMAN. Incidentally, your side was to have 4 hours this morning. They have taken—we started at 8. They have taken 6 hours already.

Senator BIDEN. Mr. Chairman, I think that is accurate. Obviously there is no side here. The side is whether or not Justice Rehnquist has an opportunity to clarify what, in fact, appears to be conflicting testimony from a witness whose credibility is unimpeachable. That is the question. If he chooses not to do that——

The CHAIRMAN. I will offer him that opportunity, if that is what you want to do.

Senator BIDEN. That is all I am saying.

The CHAIRMAN. I will offer him the opportunity if he wants to come back. I thought it was pretty clear that he had finished.

The distinguished Senator from Alabama. We want to move on.

Senator HEFLIN. Mr. Chairman, at the end, I may have been the only Democrat here. I believe Senator Simon did finish. But I did make the statement that we reserve the right for him because he might want to return, and there might be other reasons. There was a reservation, I think, and it was as left. He was not excused. It was left with no contest to my reservation that if it was desirable, he could be returned.

The CHAIRMAN. I dismissed him, but I told him we would give him an opportunity to come back if he wanted to, and we will afford that opportunity to him if he cares to come back.

Senator HEFLIN. I think the record will speak for itself on that.

The CHAIRMAN. That is right. It is res ipso locitur, speaks for itself.

The distinguished Senator from Utah.

Senator HATCH. The Arizona statute stated that at each voting place one challenger for each political party may be present. The Arizona Republic indicated that Bethune is where there was an incident and that you and somebody else went to Bethune.

Mr. BROSNAHAN. Not that it was the only incident, though.

Senator HATCH. No; that is right

Mr. BROSNAHAN. Right.

Senator HATCH. You went there with the FBI. It should interest you to know that there is only one FBI report from any incidents that day. And that happens to be at Bethune. That is the only incident reported in the press. So it is pretty clear that that is where it was.

I might add there is nothing in the FBI report mentioning Rehnquist.

Mr. BROSNAHAN. Does the FBI report say that I went to a precinct? Do you have, a report? If I may ask, I do not know what your rules are. Mr. Chairman, I do not know if this is in order, but does the FBI report, Senator, that you have, say that James J. Brosnahan, assistant U.S. attorney, accompanied by an FBI agent went to a precinct and there there were some interviews and here are the interviews and here are the people that are involved? Does it say that?

Senator HATCH. I do not know if your name is mentioned or not.

Senator BIDEN. I did not hear the response.

Senator HATCH. I said I do not know whether his name is mentioned or not. I am not sure it is. The July 25, 1986, Washington Post states:

> Brosnahan, however, said there were enough complaints about the GOP challenges at the Bethune precinct in 1962 that he went there with an FBI agent to investigate. Brosnahan said he found a small group of Republicans including Rehnquist there challenging voters on a random basis, asking Hispanic voters if they could read English and black voters if they could read at all. They would do this right in line rather than getting a person off to the side Brosnahan said, telling one person after another you cannot read is an aggressive thing to do.

You are quoted as saying:

> My best recollection is that he, Rehnquist, was challenging voters Brosnahan said. But that was 1962 and this is 1986. I know he has denied that, but I have asked myself in fairness what can I remember.

Let us be fair here. The police made a report on the disturbances that you investigated for 15 minutes. Mr. Chairman, I will ask that it be placed in the record.

Mr. BROSNAHAN. All the police reports?

Senator HATCH. At least the one at the Bethune school.

Mr. BROSNAHAN. No; that is not what I said.

Senator HATCH. All that any of them have is the Bethune school. That was the only disturbance that occurred that day.

Mr. BROSNAHAN. I want to be fair but that is not what I said.

Senator HATCH. You said 15 or 20 minutes.

Mr. BROSNAHAN. No; I did not say what you just said.

The CHAIRMAN. Counsel, we will give you a chance in a minute. He has the floor now.

Senator HATCH. What did I say that was wrong? I said the police made a report on the disturbances that you investigated for 15 or 20 minutes.

Mr. BROSNAHAN. You said you had a police report involving an incident at the Bethune school, and that was the one that I told you about, and that is not what I told you about.

Am I right?

Senator HATCH. It is the only place where anybody recalls an incident occurring.

Mr. BROSNAHAN. Am I right?

Senator HATCH. No; you are not right.

Senator BIDEN. The witness——

The CHAIRMAN. Senator, you have to keep quiet. We can only take one at a time. I will give everybody a chance.

Senator HATCH. You have said that you do not know where it was. A lot of evidence indicates where this incident occurred.

Mr. BROSNAHAN. No; I have said more than that. With the chairman's permission, I am not sure about your procedures.

Senator HATCH. You said a lot of things. I am going to go into them.

Mr. BROSNAHAN. Here is what I said, Senator. On that day, there were a number of complaints from different precincts so that the concept which I think is implicit in your question which was that you hold the report that must deal with the same incident is not correct and it is not even close to being correct, and it does not fairly state my testimony.

I have come to be fair to all the people concerned and particularly a Justice of the U.S. Supreme Court, but I have told you rather directly what my recollection is, and what you just said about that report is not correct.

Senator HATCH. Let me stand corrected and say again that the FBI report reports the only incident. The only incident they have at that time was at Bethune school. The Arizona Republic agrees. You said that in the Washington Post.

Mr. BROSNAHAN. Well, the Arizona Republic does not say it is the only incident.

Senator HATCH. Are you saying the Washington Post is wrong? "Brosnahan said, however there were enough complaints of GOP challengers at the Bethune precinct in 1962"——

Mr. BROSNAHAN. The Arizona Republic does not say that was the only incident, and it was not the only incident.

Senator HATCH. Are you denying what you said in the Washington Post that it was the Bethune school in 1962?

Mr. BROSNAHAN. What I have told you——

Senator HATCH. Do you go by what is said here or do you not?

Senator METZENBAUM. Let him finish.

Senator HATCH. I want an answer to my question.

The CHAIRMAN. I will decide it.

Senator HATCH. I will let him answer.

Senator METZENBAUM. I understand you will decide it.

The CHAIRMAN. Well, keep quiet then. He has the floor.

Senator HATCH. Have him answer my question.

The CHAIRMAN. I will decide.

Senator METZENBAUM. Let him answer.

Senator HATCH. Is this a true statement, Mr. Brosnahan? Did you make it or did you not make it to the Washington Post? You have not said it here today. Is the Washington Post right?

Mr. BROSNAHAN. Are you going to let me answer?

Senator HATCH. Yes.

Mr. BROSNAHAN. Because I would like to.

Senator HATCH. I would like to get an answer to that question.

Mr. BROSNAHAN. I would like to answer, and if you are finished your question to me——

Senator HATCH. I am finished.

Mr. BROSNAHAN. I want to be respectful and responsive.

Senator HATCH. And I will try to be the same.

The CHAIRMAN. And you have a right to answer. Go ahead and answer it.

Mr. BROSNAHAN. My answer is that I have told you four times that I am not sure which polling place it was, and that is my testimony and that is accurate testimony.

Senator HATCH. All the evidence points that it is Bethune. You said in the Washington Post that that is where it was. That is all I am saying. You can say that you are not sure today. That is fair. That is what you have said.

I am saying everything else says that is where it had to be.

Mr. BROSNAHAN. You are saying that that is where it has to be, even though I have given you my testimony.

Senator HATCH. I am saying that is what the evidence shows. That is what the FBI report shows. It was the only report made by the FBI. You are aware that they make reports of everything they investigate. The logical conclusion is that is where it occurred.

Mr. BROSNAHAN. I know that the FBI gets——

Senator HATCH. The Arizona Republic article says that is where you were. I am sorry to interrupt you.

Mr. BROSNAHAN. Mr. Chairman, if I may, I do not want to take your time. You have other witnesses here. I know the FBI has a destruction schedule. I know this just from my practice of 5 years, which they instituted in 1970. I know nothing that would please me more that we would find the FBI report that would reflect what the FBI agent who accompanied me to that precinct said and did, and I also know that what you probably have is one of the reports covering everything that happened in 1962.

Senator HATCH. We have searched it thoroughly, and they did not destroy this report. It is the only report that there is. I under-

stand that you do not want to put yourself at the Bethune school. I am just saying that everything else seems to put you there

Mr. BROSNAHAN. No; that is not the way I would put it.

Senator HATCH. Let me go further. The police made a report on the disturbances at Bethune school. I am going to put a copy of that police report in the record.

Senator HATCH. It mentions there was a great deal of unrest there including a fist fight. It mentions Wayne Benson. It mentions reports from Mrs. Bass, Mr. Marino, Mr. Delice and others. It never mentioned Mr. Rehnquist. He was the legal adviser.

Any fair reconstruction of the incident is that Rehnquist was the legal adviser to the Republican Party. He showed up to settle the same dispute. Evidently the police had already arrived and they had taken Mr. Benson, the challenger, the only one who could have had the credentials there that day, who created the disturbance.

There is no question that he was part of that disturbance. Mr. Rehnnquist was probably the only one left because he had done nothing wrong. We will put that in the record. The thing that troubles me is that a National Public Radio broadcast of July 25, quotes you as saying that you never saw Rehnquist do anything personally.

In your account of 1986, you said you have, "no accurate recollection of Rehnquist actually challenging voters." In the Los Angeles times, July 29, you stated, "I cannot recall any specific action I saw Rehnquist take personally."

Mr. BROSNAHAN. That is exactly what I have been saying for 3 hours.

Senator HATCH. That is right. In an AP story, you stated that, "I cannot say I saw anything specifically that he did."

Mr. BROSNAHAN. That is exactly what I have said during my testimony.

Senator HATCH. Then you state in the National Institute article that you saw Rehnquist challenging voters. They quoted you as an eyewitness, saying "that Rehnquist himself engaged in voter challenges."

Mr. BROSNAHAN. And I have explained to you that that is based on the complaints of the people in line and on my discussion with then Bill Rehnquist on that day. I have explained that to you.

Senator HATCH. You are saying he admitted to you he challenged?

Mr. BROSNAHAN. Yes. I have explained that to you

Senator HATCH. Why did you not say that in these articles?

Senator BIDEN. He has.

Senator HATCH. I do not think he has.

The CHAIRMAN. Senator, you have to keep quiet. Senator Hatch has the floor.

Senator HATCH. He can interrupt.

The CHAIRMAN. I will give you time.

Senator HATCH. Maybe you are not aware that Mr. Rehnquist was the legal adviser for the Republican Party. You know Judge Ralph Hardy.

Mr. BROSNAHAN. Yes.

Senator HATCH. He was the adviser for the Democratic Party at that time.

Mr. BROSNAHAN. He was active. I do not know what his capacity was or what his title was.

Senator HATCH. He was the adviser.

Mr. BROSNAHAN. I think he was county chairman one of the witnesses indicated. I think that is right.

Senator HATCH. Judge Hardy's letter states that the incident at the Bethune precinct which Mr. Tate and Mr. Harris allege took place in 1964 did, in fact, occur in 1962. He worked rather closely with Mr. Rehnquist.

Judge Hardy is unequivocal about Mr. Rehnquist's noninvolvement in such an incident. I am reading from the committee report at that time. Judge Hardy makes the following statements in his letter to the committee.

> I never observed Mr. Rehnquist attempting to challenge voters at any polling place. I understand that there was testimony, that he had challenged voters at Bethune and Grenada precincts. I can state unequivocally that Mr. Rehnquist did not act as a challenger at the Bethune precinct because of the disruptive tactics of the Republican challenger at that precinct. I had occasion to be there on several occasions. The same Republican challenger was there continuously from the time that the polls opened at 6 a.m. until about 4 in the afternoon.
>
> About that time after a scuffle he was arrested or removed from the polling place by sheriff's deputies. Thereafter there was no Republican challenger at Bethune, and that challenger's name was Wayne Benson.

It is pretty apparent that a lot of those people had him mixed up. He was 6 feet, 2, about 220 pounds.

Mr. BROSNAHAN. I did not get him mixed up.

Senator HATCH. Mr. Rehnquist is 6 feet 2, about 195 pounds.

Mr. BROSNAHAN. No, Senator; I did not get Bill Rehnquist mixed up with a gentleman named Benson any more than I got John O'Connor, the husband of the present Justice on the Supreme Court, mixed up with anybody else. I know him, and I did not get mixed up about Bill Rehnquist. I knew him then. I could spot him now, and there is no question about that.

Senator HATCH. You say one thing and Mr. Justice Rehnquist says another. This occurred before his first nomination proceeding occurred in 1971.

Mr. Hardy, who was there, who is now a sitting Federal district judge says you are wrong.

Mr. BROSNAHAN. No; he did not say that.

Senator HATCH. He says that he does not——

The CHAIRMAN. You must not interrupt. I will give you time later. You cannot run the meeting and me too.

Mr. BROSNAHAN. You are right.

Senator HATCH. If you add up all the facts together, he does. That is my viewpoint. I could be wrong. There is room for dispute here.

Mr. BROSNAHAN. Mr. Chairman.

Senator HATCH. You have a Supreme Court Justice who has served 15 years. Nobody brought you forth in 1971 and you did not offer to come. You claim you did not offer to come forth today. You have a Supreme Court Justice who says that your account is not correct. You have a conflict between you and Mr. Justice Rehnquist over an event which occurred almost 25 years ago.

You admit that you never personally observed anything other than he was there.

Mr. BROSNAHAN. No. At no time, Senator——

Senator HATCH. You did in these reports.

Mr. BROSNAHAN [continuing]. You can ask anyone in the room, anybody in the room whether I ever said I never observed anything. What I observed was a line of voters, some officials. The line was unhappy and made it clear.

Senator HATCH. Yes.

Mr. BROSNAHAN. There was Bill Rehnquist as he was then called. There was an FBI agent. There was a discussion with Bill Rehnquist that I was part of.

Senator HATCH. Yes.

Mr. BROSNAHAN. I think it is not accurate. I think it is not fair to suggest that I have said I did not see anything when I saw those events, and I think you have not, in all fairness to you, Mr. Chairman, if I may, you have not correctly characterized my testimony here today.

Senator HATCH. After 24 years, after looking at the police report which does not mention Justice Rehnquist, after looking at the only FBI report available from that day, and which was retained by the FBI which does not mention Mr. Justice Rehnquist, after looking at all your statements that you made to the press, including the Post article where you admit—or at least the press says that you talked about the Bethune school, after realizing you could have testified in 1971, after looking at Judge Hardy's statement, and after looking at all the statements that you made, it appears that some of your statements are contradictory. Whether they are or not will have to be judged by others. In all of those interviews you never said that you had personally chatted with Mr. Justice Rehnquist and he admitted that he was a challenger that day.

Today is the first time that we have ever heard that.

Mr. BROSNAHAN. No; that is not correct.

Senator HATCH. It is not?

Mr. BROSNAHAN. And——

Senator HATCH. Are you saying that you did not talk to these reporters?

Mr. BROSNAHAN. Since 1962 I have known that I talked with Bill Rehnquist at the site of a polling place——

Senator HATCH. Did you?

Mr. BROSNAHAN. If I may finish.

Senator HATCH. Yes.

Mr. BROSNAHAN. If you do not mind.

Senator HATCH. Yes.

Mr. BROSNAHAN [continuing]. In Phoenix.

Senator HATCH. I would love to hear your answer.

Mr. BROSNAHAN. I have known that. In fact, one or two members of my family have known that.

Senator HATCH. Why are they not here?

Mr. BROSNAHAN. Excuse me. Senator, if you do not want me to testify.

The CHAIRMAN. Go ahead. You have a right to finish. Go ahead and finish.

Mr. BROSNAHAN. Thank you.

Senator HATCH. I apologize.

Mr. BROSNAHAN. OK. I have explained to you that Bill Rehnquist was interviewed by myself and as I recall it, by an FBI agent. There was certainly an agent there, and I think he talked to Bill Rehnquist.

I have explained to you that there was a line of voters there, that we were told that Bill Rehnquist was serving as a challenger. He did not contest it, and there was some level of complaint about his conduct.

I have told you all of those things.

Senator HATCH. That you have said.

Mr. BROSNAHAN. And do you think that I really would be here in front of the Judiciary Committee of the U.S. Senate to testify on the qualifications of the Chief Justice after 27 years of trying lawsuits if I was not absolutely sure that I interviewed Bill Rehnquist because voters pointed him out?

Do you think, Senator, I would do that because I assure you——

Senator HATCH. Yes; I do.

Mr. BROSNAHAN. I assure you that if it was even close——

The CHAIRMAN. Senator, let him get through.

Mr. BROSNAHAN. If it was even close, I would be home having my Friday afternoon lunch at Jack's and I would not be here in front of you. I am telling you my recollection. [Applause.]

The CHAIRMAN. Let us get quiet.

Senator HATCH. Let me ask you a question.

The CHAIRMAN. I am going to ask the police to come up and remove anybody that claps in here. This is not a place for such conduct.

Senator HATCH. In any of these interviews——

The CHAIRMAN. I wish guards would watch anybody that does any clapping and take them out.

Senator HATCH. In any of these interviews with various media sources throughout the country, have you told them what you told us here today? Is this the story that you gave them? And if not, why not?

Mr. BROSNAHAN. Excuse me. If not, why not? Is that what you said?

Senator HATCH. Have you told them what you have told us here today?

Mr. BROSNAHAN. Yes; if I may answer your questions, in those interviews that I have given I have been very careful to express to them my best recollection of the events as I recall them. They have been pretty good I must say about recounting what I have said basically those that I read. Some of them I have not read.

Here or there, there may be something that I do not agree with, but by and large, they have been accurate as to what I have told them. When I responded because of this committee or the Democrats of this committee wanted me to come here and testify, I was particularly conscious of trying to be accurate and trying to say to people what I know and not go beyond it, even though some reporters might ask you a question that might lead you down somewhere where you do not have a good recollection.

Senator HATCH. In all of these media sources, not one of them gives as full an account as you claim to be true today.

Mr. BROSNAHAN. I do not agree with your characterization. I do not think, if I may say so in my own defense, Mr. Chairman, I do not think that it is fair to characterize it that way, because I think you will find that I have been pretty faithful to my recollection.

Senator DECONCINI. Would the Senator from Utah yield?

Senator HATCH. I would be happy to yield to the distinguished Senator from Arizona.

The CHAIRMAN. The distinguished Senator from Arizona.

Senator DECONCINI. I think it is important, Senator Hatch, to note that in one report that I am looking at here that was taken in early from Mr. Brosnahan, it says, and I will just quote it:

> Brosnahan was told by a person or persons unknown that Rehnquist was challenging, and in conversations with Brosnahan, Rehnquist stated to Brosnahan that Rehnquist was a challenger.

So it is in one report, not just today that it was up. I just think it is fair for the record.

Senator METZENBAUM. Mr. Chairman.

The CHAIRMAN. Any more questions of this gentleman?

Senator BIDEN. Mr. Chairman, yes, I do.

The CHAIRMAN. Well, are you through?

Senator HATCH. I'm finished.

The CHAIRMAN. I thought we were through with these witnesses.

Senator BIDEN. I thought so, too, but we keep seeing new information brought up. Mr. Chairman, I am disturbed not by the testimony because I have tried to be as fair and precise and as pointed as I can with this witness to test his credibility.

I do want to say for the record, and I apologize for having interrupted Senator Hatch, that to talk of the Bethune School and the FBI report as if it somewhat, even indirectly, contradicts the testimony of the witness is the ultimate non sequitur.

They have no relationship to one another nor has the witness, because I questioned him pointedly on that in the beginning, No. 1. No. 2, never has the witness said today that he personally saw Justice Rehnquist challenge a voter. He has never even implied that.

He has said what he said over and over again that he spoke to individuals in the line who said that Justice Rehnquist challenged the voter. The third point I would like to make is Judge Hardy's testimony or statement in no way, shape or form contradicts the issue at hand, the statement of the witness.

It does speak to the Bethune School incident. That is unrelated, according to the witness's testimony. Now, I am really very, very concerned. I would suggest that we consider going back and finding out, ask the FBI to tell us, who were the FBI agents at the time in Phoenix in fairness to Justice Rehnquist, who were those FBI agents and we should, if they are living, subpoena all of those FBI agents to come here and testify as to whether or not the statement being made by the witness is accurate or whether or not the statement made by Justice Rehnquist is accurate.

Here we have an ability to resolve from the lips of an FBI agent under oath, assuming he or she is still alive, who is telling the truth, and I want to know.

Mr. BROSNAHAN. It was a he. I will tell you that. [Laughter.]

The CHAIRMAN. Let us get quiet.

Now, are we through? We have other witnesses here.

Senator METZENBAUM. Mr. Chairman, I am not going to ask any other questions.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Mr. Chairman, our colleague from Utah seemed to indicate that there was a statement of Mr. Hardy's that somehow related to Mr. Brosnahan, and therefore, since I have that statement in front of me, and Mr. Brosnahan's name is not even mentioned in the statement——

Senator HATCH. I did not say that, Senator. I said are you aware that Mr. Hardy was intimately involved with this incident at this time. He was the leader of the Democrats. He was the co-equal of Bill Rehnquist for the Republicans. He said there was absolutely nothing wrong.

Senator METZENBAUM. Did he not also say that he has heard that Rehnquist was a participant in the Bethune precinct incident, and does he not say that he said he cannot say whether Rehnquist was there or not but he did not see Rehnquist at the time of his visit to the Bethune poll in Phoenix, and that he indicates that he does not know whether Rehnquist was there or not, but you would seem to suggest that he was making the point that he was not there.

The CHAIRMAN. All right. Let us move on.

Senator LEAHY. Mr. Chairman, I have a couple of questions.

Senator HATCH. Excuse me, on that point. Let me just answer that.

The CHAIRMAN. We are not going to carry this hearing on forever.

Senator HATCH. I understand.

The CHAIRMAN. This side agreed to 4 hours today, and we agreed to take only 2, and this side has already had 6½ hours. Now, we are going to move on. Do you have anything, Senator?

Senator LEAHY. I have questions that will take about 3 minutes. As the chairman knows in most of the questions I have asked of any witnesses I have yielded back most of my time. So if he has some extra time, it is because of me.

The CHAIRMAN. Proceed for 3 minutes then.

Senator LEAHY. Or whatever. Mr. Brosnahan. You said Mr. Rehnquist was a challenger. Was that based on what he said to you?

Mr. BROSNAHAN. I think in part it was, and it was based on the statements of others that he had been a challenger and then in an interview with him that proceeded on that basis and his response as to why what he was doing he thought was all right.

Senator LEAHY. Now, did the voters tell you what it was Mr. Rehnquist did when he challenged them?

Mr. BROSNAHAN. Yes; I am sure they did.

Senator LEAHY. What did they tell you?

Mr. BROSNAHAN. That is the point at which I am concerned that if I am specific about it I could be unfair in either direction. The level of my memory is such that there were complaints about his conduct, and then he responded to those by giving his side of that story, whatever that was.

If I go beyond that, my concern is that I will mix together frankly complaints that had to do with other people in other precincts

on that day, and I am concerned about doing that, and I do not want to do it.

Senator LEAHY. I understand, and I commend you on your efforts to be totally fair, and I think it should be noted and I watched or listened to almost all your testimony and I think you bent over backward to be totally fair and objective in this.

Mr. BROSNAHAN. Thank you.

Senator LEAHY. And I compliment you for doing what is really a public service and something a lot of people would not do.

Did you speak to Mr Rehnquist about the statements people had made to you about the nature of his challenges?

Mr. BROSNAHAN. I did.

Senator LEAHY. Did he, in any way, indicate that he would do different as a result of his conversation with you?

Mr. BROSNAHAN. There could well have been an element of that in the discussion in the sense that when we withdrew, my sense of it was that the situation was calmed down. So there could have been an element of him without—I am not saying he admitted anything about the exact nature of his conduct, but the idea was that it was going to be peaceful after we left, and I have that distinct impression that when we left it, I thought we a peaceful situation.

Senator LEAHY. As compared to the situation when you arrived?

Mr. BROSNAHAN. When we arrived, it was a tense kind of a situation.

Senator LEAHY. Is it your recollection that there was a modification of whatever he was doing as a result of your conversation with him?

Mr. BROSNAHAN. I would say that is a fair comment, based on the complaints.

Senator LEAHY. Did you and Mr. Rehnquist ever have a discussion about this incident afterward?

Mr. BROSNAHAN. No; and I have seen him about four or five times. The last time was last spring at the Judicial Conference in Tucson. I came around the corner and he was seated there and I stopped and chatted with him. I have never talked with him about it. I have probably seen him four or five times.

One of those times was when I argued in the Supreme Court and he, of course, was there, but he was sitting up front. There was no opportunity. We have never discussed it since.

Senator LEAHY. It was not a comfortable situation like here, is that what you are saying? [Laughter.]

Mr. BROSNAHAN. No; it was not, because they told me my time was up and made me go away.

Senator LEAHY. That sometimes happens to members in this committee, too, so do not feel bad.

Mr. BROSNAHAN. I have never discussed this with him after November 1962.

Senator LEAHY. Thank you.

Thank You, Mr. Chairman.

The CHAIRMAN. I think the record, affidavits and everything speaks for itself. The matter of interpreting them, well, that is another question. People interpret them in different ways, but the record speaks for itself, and that is what we will go by.

Now, we want to thank all you gentlemen for coming.

Senator HATCH. This is the second witness.

The CHAIRMAN. I was out. I was under the impression that all spoke.

Mr. Mirkin.

Senator BIDEN. I think we agreed to go to Mr.——

The CHAIRMAN. Well, I will call the arrangement.

Senator BIDEN. When you were out. I am sorry, Mr. Chairman. When you were out.

The CHAIRMAN. It does not make any difference to me, though.

Senator BIDEN. Well, let us go to Mr. Smith then.

The CHAIRMAN. I am just going to go down the line.

Mr. Mirkin, do you have a statement?

## STATEMENT OF MELVIN J. MERKIN

Mr. MIRKIN. Yes, sir; a brief one, sir. First, I would like to say I would rather be at Jack's, too, but here I am.

I am Melvin J. Mirkin. I am a native of Arizona. I went to Stanford Law School a couple of years after Mr. Rehnquist. I did not know him there. I got to know him in Phoenix through alumni affairs, and I never knew him well, but pass on the street, "Hello, how are you," things like that.

I became familiar with his political positions during this time in the early to middle 1950's. I thought they were somewhat quaint, and I tried to figure out what he was and I finally determined he must be a Jeffersonian loyalist or something like that.

In the sixties, he led a group of Republicans whose program was, I felt, to inhibit people from voting Democratic. And if he knew that a person or his people, his group knew that a person would vote Republican, they would never have challenged them.

But they did not know that, so they went to where most of the Democrats were, to precincts that had 85, 90, 95 percent Democrats, and they set up their so-called flying squads of challengers. This was either in 1960 or 1962. I was asked to be at a precinct for the Democrats, I do not remember whether I was there when the polls opened or whether I responded to a call.

But I went to one on the south side of Phoenix. And Mr. Rehnquist was there with a couple of other people. And he told them in an audible voice that it was their task to stay at this poll and to see that no persons who were improperly registered were permitted to vote. And that extended to challenging for being illiterates.

I did not feel that he was really talking to the people who he was putting in position but, instead, he was letting the crowd that was there know what the drill was going to be. And some of the people peeled off at that time.

I then spoke ostensibly to him, but I was not speaking to him either. I was trying to comfort those who were peeling off and those who were worrying about whether they should remain or not.

And I told Mr. Rehnquist and his people that they better not harass voters. If they did, I would call the Sheriff of Maricopia County, and he was not a Republican and he would not take much sympathy with what they were doing. Again, I say I was speaking to the crowd and not really to him.

I also said that if they wanted to slow down the vote, we could do the same thing in the Phoenix Country Club precinct, and I am sure we could find as many illiterates there as they were able to find where we were. [Laughter.]

The CHAIRMAN. You have to keep quiet. I wish the policeman would see who it is misbehaving, laughing, clapping, and remove them from the room.

We are going to have order.

You may proceed.

Mr. MIRKIN. Thank you, sir.

This became an anecdote that I used to tell regularly about—not particularly about Rehnquist, but just about something that happened during this period.

When Mr. Rehnquist became a Justice of the Supreme Court, it became a more interesting anecdote, and I probably gave him a much more prominent spot than I had before because, previous to that, I was the star of the story.

I have always considered Mr. Rehnquist an honorable man, and I still do. And I do not feature myself being here in opposition to his appointment but just to answer any questions that may be asked me about that or any other incident.

Thank you.

The CHAIRMAN. Mr. Mirkin, I believe Justice Rehnquist was confirmed in 1971.

Did you come forward then?

Mr. MIRKIN. Oh, no. No, I did not come forward this time either, sir. I was asked. I do not volunteer.

The CHAIRMAN. Where did you live in 1971?

Mr. MIRKIN. 1971, I may have been in Malaysia or Princeton, NJ, one of the two places. [Laughter].

The CHAIRMAN. Could you have lived in northern Virginia?

Mr. MIRKIN. I lived in northern Virginia too, I think——

The CHAIRMAN. Do you not know where you lived in 1971?

Mr. MIRKIN. I am not sure, sir. I was moving around quite a bit at the time. I think——

The CHAIRMAN. No other questions.

The distinguished ranking member.

Senator BIDEN. Thank you very much.

Were you a Democrat at the time of this incident?

Mr. MIRKIN. Yes, sir, I was.

Senator BIDEN. Were you active in the Democratic Party?

Mr. MIRKIN. Yes, sir.

Senator BIDEN. Were you expecting, whether from Mr. Rehnquist or anyone else, the kind of challenging that you spoke to today?

Mr. MIRKIN. Yes. I think that is why a great number of us were amassed to try to cover that.

Senator BIDEN. Well, did anyone else with you that you can identify at the time, did anyone besides you and Mr. Rehnquist, another attorney, an election official, anyone else that you could name at this time who was there at the time to witness the exchange as you have testified to between you and Mr. Rehnquist?

Mr. MIRKIN. I cannot remember.

Senator BIDEN. Was the exchange that you had with Mr. Rehnquist one that can be characterized as him instructing the Republican challenger or challengers?

Mr. MIRKIN. As I remember, challengers, plural, sir.

Senator BIDEN. And can you give us an estimate based on your recollection of how many people were waiting in line? Was it 2, 10, 20? Just rough estimate. Just for me to get a sense of what we are talking about.

Mr. MIRKIN. I would think 10 to 20.

Senator BIDEN. And Mr. Rehnquist, how did you characterize the tone of his voice, the level of his voice as he was giving instructions to the Republican challengers?

Mr. MIRKIN. Well, Mr. Rehnquist is not a strident man. He spoke in audible tones.

Senator BIDEN. How then do you make the determination that his audible tones were directed at the people in line and not merely the challengers to whom he was speaking?

Mr. MIRKIN. Well, I do not think he would have brought two people to the polls who had no idea of what they were going to do and then have to instruct them at the time. I thought this was purely for public consumption.

Senator BIDEN. Did he instruct them standing next to the line, off in a corner, outside? I am trying to get a picture.

Mr. MIRKIN. As I remember, this was not that big a place. I do not know where he was standing. Everybody knew who these people were. They were Republicans that were going to do something, probably something not good.

Senator BIDEN. In Delaware, the polling places are usually schools, sometimes they are in cafeterias as big as this room; sometimes the table is like where you are standing, sitting where the challengers sit and the voting judges sit, and the booth is off to the right, and there is a great open space behind. And it is a large place.

And so if Justice Rehnquist walked in, walked behind the table and was standing off to the right speaking in audible tones to the challengers, that is one thing.

If Justice Rehnquist was standing in front of the table, positioned in a way to turn to the challengers and telling them in audible tones what you say he said, facing the people in the line, that is another thing.

So I am trying to get a sense of whether or not Justice Rehnquist's instruction to the mere fact that he instructed two people who were challengers, I admit it is unusual he would wait until they got to the precinct, notwithstanding the fact they all three came in together, but notwithstanding that, it to me has some impact on your recollection as to the circumstances, the physical circumstances under which the instructions took place.

Mr. MIRKIN. I am sorry, I do not think I can help you. I know it was not a large room. I know it was a room in which normal conversation could be heard from one end to the other.

Senator BIDEN. I thank you very much.

I have no further questions.

The CHAIRMAN. Senator Mathias, you just came in. You said you want to ask one question of Mr. Brosnahan and then we will proceed.

Senator MATHIAS. I have a couple of questions for Mr. Mirkin.

The CHAIRMAN. Mr. Mirkin? OK.

Senator MATHIAS. Mr. Mirkin, was there an official status for a challenger at that time?

Mr. MIRKIN. It is my recollection that there was. And I heard you previously ask whether this was a descriptive term or whether challenger was the title, but challenging was the descriptive term? I think it has become confused.

Senator MATHIAS. Well, it did become a little confused. I just wondered whether there was any record kept.

The Maryland practice may not be similar to the Arizona practice, but we usually have in each party a county chairman or similar official who authorizes certain poll watchers and challengers. Those were the two titles, poll watchers and challengers. And it becomes a matter of just a simple fact, whether you are appointed as a challenger.

What kind of challenging you do may be something else, but I think it would be interesting to determine, No. 1, if Justice Rehnquist was an official challenger? It is a perfectly respectable thing to be. In fact, it is an important thing in any political organization.

But then, secondly, we must determine what he did as a challenger. Did he actually carry out that function and in what manner did he carry it out?

Mr. MIRKIN. From what I saw, it was not my opinion that he was an official challenger. He was dealing with people who he wanted us to believe were official challengers, but I do not know that they were official challengers as you have characterized to me. And I never saw Mr. Rehnquist challenge.

Senator MATHIAS. You never saw him address anyone in that voting line?

Mr. MIRKIN. No, sir.

He talked to his people. He was easily overheard talking.

Senator MATHIAS. And he was instructing them on what they should do?

Mr. MIRKIN. That is correct.

Senator MATHIAS. What they should do as challengers?

Mr. MIRKIN. As something or other, that they were to see that people who were not entitled to vote, properly entitled to vote, should not vote.

Senator MATHIAS. Are you implying that it was some kind of a vigilante spirit with which he was talking, or was he talking as an official of his party?

Mr. MIRKIN. I am not implying at all that he was a vigilante. I concluded that the purpose of this entire exercise was to convince those who were waiting in line, and those to whom they would speak after they left, that there may be some problems in voting, that you may be subjected to challenges and tests. And this had a negative effect upon them.

Senator MATHIAS. Would you go so far as to say it was an attempt to chill the atmosphere?

Mr. MIRKIN. That would be my conclusion. Others might conclude otherwise.

Senator MATHIAS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Massachusetts.

Senator KENNEDY. Is it your view that Mr. Rehnquist was giving instructions to the Republican poll watchers in a voice that was unnecessarily loud?

Mr. MIRKIN. I do not know that it was unnecessarily loud. I know that it was audible. He was not whispering to these people.

It was in a tone and it was in an intensity that could be heard by everyone in the room.

Senator KENNEDY. It was not just a—you did not gather it was just a personal conversation of one person with another, or was it in kind of a context in which you would gather that it was either a demand or an order or recommendation or suggestion that several members of the group might follow?

Mr. MIRKIN. My conclusion was and is that the people to whom he was ostensibly speaking were merely props, but they were an excuse for saying what was being said, that the real targets were those waiting to vote.

Senator KENNEDY. Why do you think Mr. Rehnquist was doing this?

Mr. MIRKIN. Why was he doing that? Because I think he wanted the Republicans to become a majority party in Arizona.

Senator KENNEDY. Well, let us be somewhat more specific.

As a result of his conversation, his demand of those individuals, what did you assume would result from those kinds of commands?

What were these people going to do? And who were they going to do it to?

Mr. MIRKIN. I assumed that some of them would leave and they would tell their friends and relatives that there were problems at this polling place.

I tried to allay their fears.

Senator KENNEDY. And was there anything significant about the color of these individuals? Was it a mixed group? Was it more of one color than another?

Mr. MIRKIN. I do not remember. I suppose there were mostly Latin people and some blacks, some Anglos, not too many.

Senator KENNEDY. Were there more Anglos, or was it large percent Anglos and a few blacks and a few browns, or was it predominantly brown with some blacks and a few Anglos? I mean just in general. We are not looking for exact percentages, but we would just like to get a flavor of the kind of people.

Mr. MIRKIN. I think it was predominantly Latin.

Senator KENNEDY. I have no further questions.

The CHAIRMAN. Thank you.

The distinguished Senator from Utah.

Senator HATCH. Mr. Mirkin, welcome to the committee.

Let me just focus for a minute on what you actually saw.

As I understand it, you did not see Rehnquist confront any voters personally?

Mr. MIRKIN. No, sir.

Senator HATCH. You did not see him engage in any scuffling or fisticuffs or anything else?

Mr. MIRKIN. No, sir.

Senator HATCH. You did not see him directly challenge any voters himself?

Mr. MIRKIN. No, sir.

Senator HATCH. What you did say is you overheard him talking in a strong voice to various Republican challengers or poll watchers, or whatever they were called. Is that correct?

Mr. MIRKIN. Yes, sir.

Senator HATCH. It was not overly loud, but it was clear?

Mr. MIRKIN. Correct.

Senator HATCH. I notice that you said in a New York Times interview, "Mr. Mirkin also said, however, I know Rehnquist to be an honorable man. I like the man. And if he would say something else happened, I wouldn't contradict him."

Is that correct?

Mr. MIRKIN. What I meant by that was that after 25 years, it's something like Rashomon—I mean we all have our own stories to tell about that great heroic day when the battle was fought, and I would not contradict him in that he believed something other than what I have said happened. I believe what I have said happened.

Senator HATCH. Mr. Rehnquist was addressing his own party's challengers. This was fully consistent with his assignment as legal advisor to his party.

Can you find any inconsistency with that?

Mr. MIRKIN. I do not know what his charge was. But I was not horribly offended by this. In fact, I have always thought it was small potatoes and rather amusing. And I find out now that it is not. It is far more serious.

Senator HATCH. But you have always believed Bill Rehnquist to be an honorable man?

Mr. MIRKIN. I did and I do.

Senator HATCH. That is all.

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. No questions.

The CHAIRMAN. The distinguished Senator from Arizona.

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. Mirkin, thank you for being here today, and I think you have covered quite well. I would just like to clarify for myself.

The report indicates, when you were interviewed, that you confronted Mr. Rehnquist, and the report used the words "you threatened to call the sheriff."

Do you recall what you said to him?

Mr. MIRKIN. I think it was something, "If you guys don't get the hell out of here, I'm gonna call the sheriff, and he's not going to send Republicans."

Senator DECONCINI. He is not going to do what?

Mr. MIRKIN. He is not going to send Republicans.

Senator DECONCINI. And do you recall any response from Mr. Rehnquist?

Mr. MIRKIN. I did not intimidate him.

Senator DECONCINI. Did he say anything back to you?

Mr. MIRKIN. Not that I remember.

Senator DECONCINI. Did you call the sheriff?

Mr. MIRKIN. No. I would be afraid to do that. He would probably arrest me.

Senator DECONCINI. You were afraid to call the sheriff?

Mr. MIRKIN. No. I am just kidding.

No, I had no intention of calling the sheriff. As I indicated——

Senator DECONCINI. You were bluffing?

Mr. MIRKIN. Certainly I was bluffing.

Senator DECONCINI. Why were you bluffing?

Mr. MIRKIN. Because I thought Rehnquist had muddied these waters. He had made people nervous. I wanted to try to convince those same people that it was safe, that they had a stronger rod than me to rely on.

Senator DECONCINI. Do you think you convinced them of that?

Mr. MIRKIN. I doubt it, but I tried.

Senator DECONCINI. How long did you stay at the polls.

Mr. MIRKIN. Probably 10 to 15 minutes.

Senator DECONCINI. When you left, was Mr. Rehnquist still there?

Mr. MIRKIN. I think we left about the same time.

Senator DECONCINI. What brought you to the polls?

Mr. MIRKIN. Again I am not quite sure. I either was—it had either been decided that I would start there that morning or I received a call and was told that I had better go there.

Senator DECONCINI. When you arrived, Mr. Rehnquist was already there?

Mr. MIRKIN. I do not remember whether he was already there or not.

Senator DECONCINI. Do you remember a man by the name of Wayne Benson?

Mr. MIRKIN. No.

Senator DECONCINI. Do you remember anyone else who was there at the polls?

Mr. MIRKIN. No.

Senator DECONCINI. Were you by yourself from the standpoint of——

Mr. MIRKIN. I do not know. I do not remember anybody being with me. We usually went in pairs, but I do not——

Senator DECONCINI. Did you drive there?

Mr. MIRKIN. I am sure I did.

Senator DECONCINI. Do you remember driving yourself?

Mr. MIRKIN. No. But——

Senator DECONCINI. Now, after you left this polling place—first of all, do you remember what polling place it was for sure?

Mr. MIRKIN. No, sir.

Senator DECONCINI. After you left this polling place, where did you go?

Mr. MIRKIN. I do not know.

Senator DECONCINI. Did you go back to the Democratic headquarters or to your office or go to lunch, or did you go to another precinct?

Mr. MIRKIN. I probably went to my office. I do not remember going to any other precinct.

Senator DECONCINI. Where was your office at that time?

Mr. MIRKIN. My office at that time was—well, I think I was sharing office space with Langerman and Begam also.

Senator DECONCINI. You were practicing law at that time?

Mr. MIRKIN. Yes.

Senator DECONCINI. Based on your involvement in this situation, what would you do if you were going to vote confirmation of Mr. Rehnquist?

Mr. MIRKIN. I would vote——

Senator DECONCINI. You would what?

Mr. MIRKIN. I would vote to confirm him based upon what I know.

Senator DECONCINI. You would vote to confirm him.

Thank you, Mr. Chairman. I have no further questions.

Thank you, Mr. Mirkin, for being here with us.

The CHAIRMAN. The distinguished Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

I know there are a number of other witnesses and I have no further questions.

The CHAIRMAN. The distinguished Senator from Illinois.

Senator SIMON. Just very briefly.

In response to the questions of the gentleman from Arizona, you said that they were there to make people nervous and you were there trying to make people feel safe.

So the object was basically intimidation of voters, is that correct?

Mr. MIRKIN. That is what I thought it was.

Senator SIMON. I have no further questions, Mr. Chairman.

The CHAIRMAN. Any other questions over here on this side?

If not, we will move on.

Senator KENNEDY. Mr. Chairman, I just have a brief question.

Mr. Mirkin, during the exchange of Senator Metzenbaum and Justice Rehnquist, he referred to your affidavit, and he inquired of Justice Rehnquist, and if I could just read his response and get your reaction.

Mr. Mirkin, attorney in Phoenix, told the FBI that he recalled seeing you, Mr. Rehnquist, giving instruction to challengers in a polling place and had voters in line begin to leave as a result. He said he confronted you and told you that people did not want to be embarrassed like that. Is he being untruthful as well?

Justice REHNQUIST. As to the first part, Senator, if he saw, he certainly could have seen me giving instructions to challengers in a polling place. As to the second part, would you read that again?

Senator METZENBAUM. He said he confronted you and told you that people did not want to be embarrassed like that. He also said that voters in line began to leave as a result of your having given instructions to the challengers

Justice REHNQUIST. I have no recollection of that, no.

Now, was Justice Rehnquist wrong?

Mr. MIRKIN. I do not know whether he is wrong about what he remembers or not. I remember something else having happened. And what I remember is what I told you today.

Senator KENNEDY. No further questions.

The CHAIRMAN. Mr. Charles Pine.

Senator METZENBAUM. I just have one more question.

The CHAIRMAN. Go ahead.

Senator METZENBAUM. I have here a statement of Justice Rehnquist in 1971. I just ask you to comment as to whether it might be factual or not.

I have not, either in the general election of 1964 or in any other election at Bethune Precinct or in any other precinct, either myself harassed or intimidated voters, or encouraged or approved the harassment or intimidation of voters by other persons.

Would you agree with that statement?

Mr. MIRKIN. I have already drawn a different conclusion from the same facts.

Senator METZENBAUM. So your answer is that you do not agree with that statement?

Mr. MIRKIN. All I can tell you, sir, is what I would conclude. And I concluded then, and I am still of the opinion, that the conduct resulted in voter intimidation.

Senator METZENBAUM. Thank you.

The CHAIRMAN. Mr. Pine.

## STATEMENT OF CHARLES PINE

Mr. PINE. Mr. Chairman, in the interest of time, I have a one-page statement. I would prefer not to read it but I would like to submit it for the record.

Mr. Chairman, I want to say this. I am quite aware of the fact that Justice Rehnquist has denied that he ever challenged or attempted to harass or intimidate qualified voters.

All I can say in response to that is, based on my personal experience, is the Justice obviously is currently suffering from a convenient lapse of memory.

I say that because I saw him in person challenging individuals, and I saw him do it illegally.

In response to Senator Mathias, sir, we do not have wardens, we have inspectors, we have marshals, we have judges, we have clerks. Each party is allowed one certified poll watcher.

The expression "poll watcher" or "poll challenger" in that instance becomes synonymous. Poll challengers can challenge for anything within the parameters of the Arizona statute outlined by Senator DeConcini, my good friend, and they are limited to that. They can also, of course, if they suspect somebody does any voting under a false name or does not give a correct address, challenge. The warden also can challenge.

But Justice Rehnquist, and to me then he was just Mr. Rehnquist, was approaching voters and saying, "Pardon me, are you a qualified voter?" He gave them no explanation. None of his actions was based on any of the reasons in the parameters outlined by Senator DeConcini. I saw him with my own eyes approach a middle-aged gentleman, arbitrarily in the line, say "Pardon me," but in a very firm and authoritative voice, say "Are you a qualified voter?"

I do not know what the gentleman said in response. He had his back to me and he was softspoken. But he started searching his pockets, first his wallet, and I knew what he was doing because in those days—no one has told you this—we gave out a small card, approximately a little larger than a paper match cover, and that was a receipt, in effect. But it was not necessary. It said that you had been registered by John Doe on a given day at a given precinct, and it had your address on it. But it was not considered an official receipt. You did not have to have it on your person to vote.

If you approached the head of the line and your name was on that voting list, you were eligible to vote.

Incidentally, Mr. Rehnquist, who has admitted that he headed up these flying squads—publicly admitted it in Phoenix and was so reported in the Phoenix press—admitted he headed up these flying squads in 1958 and 1960, 1962 and 1964. I saw him in 1964 at Bethune polling place. And the reason I did, I was a volunteer working out of county headquarters, simply handling telephone calls. People were not certain what polling place they should vote at. Perhaps they had moved in the interim.

This lady called me, very hysterical, and she said there are some Republicans threatening, intimidating our voters down at Bethune. I said to a young attorney, let us drive down there and see what is happening.

When we arrived there, he pointed out William Rehnquist to me. And I fairly recognized him. Although I had never met him physically, I had seen, I believe, a photograph of him, either in the newspaper or in the bar directory.

He was pointed out to me, and just a minute after he was pointed out to me, he approached a voter and this incident happened. Incidentally, the gentleman turned away and left the line.

It happened again 2 minutes later, whereupon I stopped the janitor and asked where the nearest phone was, and went to the phone and called Democratic headquarters, and said you had better rush down some of your best attorneys informed about elections laws because a guy named Rehnquist is illegally challenging people. He is intimidating them.

And when I came out from the phone, which was in an adjacent room, the assistant principal's office or something like that, Rehnquist was just leaving with the two members of his party.

Incidentally, that day I drove around to three or four other districts and I found out that he had also made visits there. But I cannot tell you whether or not he was intimidating voters.

But I want to point this out. I found the Democratic certified, the authorized precinct watcher, and I said will you show me your Republican counterpart? And he pointed to an Anglo, a lady, I believe, but I could be mistaken, but it was not Mr. Rehnquist. So Mr. Rehnquist was not the official challenger for Bethune on general election day in November 1962, he was illegally challenging people, and he was definitely challenging them in a harassing manner. And I will stand on that information because I witnessed it with my own eyes.

The CHAIRMAN. What year was that?

Mr. PINE. 1962.

The CHAIRMAN. The distinguished ranking member.

Senator BIDEN. No questions.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. No questions.

The CHAIRMAN. The distinguished Senator from Massachusetts.

Senator KENNEDY. No questions.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. Mr. Pine——

Mr. PINE. Yes, sir.

Senator HATCH. What do you do for a living?

Mr. PINE. Beg your pardon?

Senator HATCH. What do you do for a living? What is your living?

Mr. PINE. I still cannot hear you. I am sorry. I wear a hearing aid in my right ear.

Senator HATCH. What is your occupation?

The CHAIRMAN. He said what do you do for a living?

Mr. PINE. I operate, and have for the past 23 years, a public relations agency in the city of Phoenix. I also served as the Democratic State chairman from 1972 to 1976. My wife is taking a bar exam today, hopefully, to become a lawyer.

Senator HATCH. That is great.

Mr. PINE. I am also recognized as a respected businessman, and I defer to Senator DeConcini, who has known me for the past quarter of a century.

Senator HATCH. Nobody is doubting that.

Mr. PINE. Beg your pardon?

Senator HATCH. You provided a one-page sheet of testimony. I would like to read some of it.

Mr. PINE. Yes.

Senator HATCH [reading]:

> I appear before this committee as a concerned citizen, one who questions the proposed confirmation of William H. Rehnquist as Chief Justice of the U.S. Supreme Court. My major concern is that in years past, Mr. Rehnquist headed and participated in a blatant effort to deny the right to vote to members of minority groups in South Phoenix precincts in 1958, 1960, 1962, and 1964. The right to vote, in my estimation, is among the most precious of all our rights.
>
> Furthermore, Justice Rehnquist had demonstrated an alarming insensitivity to civil liberties and the bill of rights. He has rejected the notion that the Constitution requires total separation of church and state. He consistently votes against women and minority groups who contend they are victims of discrimination. He has consistently voted against the press in libel suits.

And you go on through—well, let me just read it:

> Prior to his 1971 appointment to the Court, he was a vigorous advocate of the arrest of anti-Vietnam war protesters, arrests that later were ruled unconstitutional by the Court in 1972. He opposed arguments that the Court should outlaw school desegregation which it later supported.

Let me ask one question. You stated that the phone call you received from an unknown female voter, was at the Bethune precinct in Phoenix.

Mr. PINE. Yes; I was working out of the county headquarters on East Roosevelt. The woman who called—I say unidentified because she was obviously very perturbed, and she hung up—said, "You people better get somebody down here and do something about this," and then hung up.

Senator HATCH. Are you aware that Mr. Bentson was the one authorized challenger who was removed forcibly from that precinct?

Mr. PINE. I was not aware of that.

Senator HATCH. Are you aware that he is about 6 feet, 2, and 220 pounds, and the Associate Justice of the Supreme Court is 6 feet, 2, about 195 pounds?

Mr. PINE. I was not aware of that. After the Bethune incident, we toured a few other precincts and then I returned back to——

Senator HATCH. I see.

Mr. PINE [continuing]. Headquarters and continued taking telephone calls.

Senator HATCH. This was 24 years ago?

Mr. PINE. Sir?

Senator HATCH. This was about 24 years ago?

Mr. PINE. Yes; exactly 24 years ago in November.

May I make one point, Mr. Chairman. Nobody has asked this question. I think it is significant. Why did Mr. Rehnquist organize these "flying squads," and what did he hope to gain by disqualifying Democratic voters in heavily Democratic districts, districts that honestly might be described as strongholds?

Obviously he could not affect the districts if he could disqualify several hundred voters. He could not change the outcome of the legislative races.

The members of the Arizona House and the Arizona State Senate continue to be Democrats elected from those districts, because their nomination was tantamount to election. But if he could disqualify a substantial number of votes, it conceivably could have an impact upon closely contested statewide races and we had many of them in those years, because we elected, in those years, every 2 years. We elected a Governor, an attorney general, a secretary of state, a State treasurer and members of the Corporation Commission who regulate our utilities. Highly important offices, and some of these were very closely contested, and 300, 400, 500 votes could make a great difference and determine who would be the victor and who would be the loser.

And that was the obvious strategy of this. A young attorney told me, who is now a Democrat and was then a young Republican:

> I was addressed by a member of, of Rehnquist's group and was told, if we can disqualify enough blacks and enough Mexican-Americans, we can elect Paul Fannin Governor in 1962.

And that is precisely what happened. Paul Fannin was elected Governor in 1962.

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. Just one simple question. Is there any doubt in your mind that the man with whom you were speaking at Bethune was William Rehnquist?

Mr. PINE. There is no doubt in my mind. I was 6 feet away from him when I was listening to the conversation as he approached the people in the line, and by coincidence, Senator Metzenbaum, a few weeks later, at a downtown Phoenix restaurant, I sat almost next to him. He was pointed out to me again. He is approximately my build, my height, strong jaw, wore glasses, and even then he was beginning to bald.

Senator METZENBAUM. What was the color of——

The CHAIRMAN. I do not want to inhibit anybody, but if we could answer the direct questions and not go into other things, it would save a lot of time.

Mr. PINE. Yes, sir.

The CHAIRMAN. You may proceed, Senator.

Senator METZENBAUM. What was the color of most of the voters that were in the polls?

Mr. PINE. Sir?

Senator METZENBAUM. What was the color of the voters in the polling place?

Senator DECONCINI. What was the color of the voters? What were they, Mexican-Americans, or Anglos?

Mr. PINE. Oh. There were about 30 or 40 in line when I arrived, and I would say at least half of them were blacks, and I would say the preponderance of the remainder were Hispanics, Mexican-Americans, and perhaps there was a scattering of 5 or 6 Anglos.

Senator METZENBAUM. Thank you very much.

The CHAIRMAN. The distinguished Senator from Arizona.

Senator DECONCINI. Mr. Pine, welcome very much, and good luck to Selma. Please tell her that I hope she passes the bar, be an outstanding lawyer, and I want the record to show Mr. Pine is an outstanding businessman, and has a long career of community service to the city of Phoenix, and we, as Democrats, are indebted to his service as our party chairman for a number of years.

He is a good friend of mine, and I appreciate that he is here. I do want to ask you, Charlie, if I can, a couple of questions.

When you were at the polls, at the Bethune precinct, and you saw what was happening there, were there any other Republicans there?

Mr. PINE. There were two, two members of—with Rehnquist, two other men standing there, but they did nothing but——

Senator DECONCINI. Do you know who they were?

Mr. PINE. No; I did not. I never saw them before in my life, and I do not think I have seen them since.

Senator DECONCINI. Could one of them have been Wayne Bentson?

Mr. PINE. I do not know, Senator. I do not even know Wayne Bentson.

Senator DECONCINI. When you went and called the Democratic——

Mr. PINE. I called county headquarters on East Roosevelt.

Senator DECONCINI. You were at the school, when you were at the Bethune precinct, you went and used a phone and called the Democratic headquarters to alert them that there was a problem down there?

Mr. PINE. Yes, sir.

Senator DECONCINI. Do you remember who you talked to?

Mr. PINE. I think I talked to Frankie Archer——

Senator DECONCINI. Frankie Archer.

Mr. PINE [continuing]. Who was the acting executive director of the party, and Frankie said she would get somebody on it right away. She would contact Charlie Hardy. I believe Charlie was coordinating the Democratic rescue squads that day.

Senator DECONCINI. And did anyone come?

Mr. PINE. I do not know. I left. I left shortly after—she said they would be on their way, shortly. I left a few minutes after Mr. Rehnquist and his party left. I wanted to tour other precincts and see if similar situations were taking place.

Senator DECONCINI. Do you know if anybody ever arrived from the Democratic headquarters?

Mr. PINE. I understand just a few minutes after I left a couple of attorneys arrived, and nothing happened then.

Senator DECONCINI. Did you ever——

Mr. PINE. Nothing happened then. The Rehnquist party had left, the line was shorter, and I do not know what took place the rest of the day.

Senator DECONCINI. Did you ever ask, or, do you know today, what took place after you left Bethune precinct?

Mr. PINE. I heard there was a disturbance the latter part in the day, but it had nothing to do with Mr. Rehnquist, to the best of my knowledge.

Senator DECONCINI. At Bethune precinct?

Mr. PINE. I believe it is the same—yes, at Bethune.

Senator DECONCINI. Do you know if there was ever any complaint filed against any Republicans who were challenging voters in the Bethune precinct?

Mr. PINE. I do not know. It was not my prerogative. At that time, as you know, Senator, I was a volunteer. I was not a county chairman. I did not become a State chairman until 1972. I assumed it was the responsibility of Charlie Hardy, the county chairman, or, later on, Herb Ely, the State chairman, to file complaints.

I asked Mr. Ely, in 1971, if he planned to testify at the time that Mr. Rehnquist was being nominated as Associate Justice. He said no, he was not. I felt that it was his prerogative; he should do it.

The reason I did not testify in 1971 was nobody asked me.

Senator DECONCINI. Did you talk to Charlie Hardy, then then Democratic——

Mr. PINE. I spoke to Charlie Hardy. I spoke to Charlie Hardy that day, yes, and I told him about my experience.

Senator DECONCINI. And you told him about your experience?

Mr. PINE. Yes.

Senator DECONCINI. Did he tell you that anything had happened at that precinct as a result of your complaint?

Mr. PINE. I do not recall.

Senator DECONCINI. Did he tell you that he had visited precincts with Mr. Rehnquist?

Mr. PINE. He did not tell me that. I gathered from Mr. Brosnahan's, and other comments made today, that is what occurred. I believe you brought that out earlier today.

Senator DECONCINI. He happens to concur with you, in his statement that he gave, as to what the Republican Party was up to, but he also states that he did not think Mr. Rehnquist was involved in the challenges, but was involved in the legal representation of the party.

But he leaves a scathing report as to, or statement as to what the process was, and what the intent was, similar to what you have laid out today.

Now Mr. Pine, thank you for your time, and your commitment to our democratic process. I appreciate your being here. Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Mr. Sydney Smith. You have a statement you would like to make?

## STATEMENT OF DR. SYDNEY SMITH

Dr. SMITH. Yes, I do. Unlike these other people who are at the table, I am not a lawyer. I do not have very much to do with lawyers, and I am, however, a psychoanalyst by training and a clinical psychologist by training. And some time during the early 1960's I became interested and invested in the political process in Arizona, got to know about the existence of one Mr. Rehnquist, and had the experience that is very similar to the one that Mr. Pine described, in which I went—and I cannot remember whether it was 1960—1960, or 1962. I think it was one of those years.

In any event, I went to a polling place with my friend, John Grimes, who was at that time the academic dean, or the retired academic dean at Arizona State University.

I was still on the university faculty myself as a professor of psychology. And in going to the precinct where the voting booths were, he had told me along the way, that there had been some difficulties with people arriving at the polling places, as Mr. Pine described, and attempting to frighten people off.

While we were there—I remember we were standing outside of the polling place. There was a long line that was wandering on the outside, and—that was winding around outside—and as we were standing there talking, this line was made up largely of black voters. There were some Chicano voters. I think there may even have been some Asian voters. We saw Mr. Rehnquist drive up, got out of the car. I cannot remember whether there was one or two men with him, but he had somebody with him.

He approached the line on the outside of the polling place. He held up some kind of a white card which I could not see, in front of two black men in the line and said: "You are not able to read, are you? You have no business being in this line trying to vote. I would ask you to leave."

At that point, Dr. Grimes immediately went over to the line. These two black men started to move away from the line and Dr. Grimes attempted to push them back into the line.

And at that point Dr. Grimes turned to me and asked me if I would get to the telephone and call the Democratic Party office, which I went off to do.

What happened while I was gone I am not entirely sure, but when I returned, after several minutes on the telephone, Dr. Grimes was indicating to me, as I saw myself, that Mr. Rehnquist and the man, or two men who were with him, had gotten back into their car and were driving away.

Now this was not—he was not in the role of a challenger at that precinct. He just came in and then flew out again, and the challenge that he provided these people, or confronted them with was not so much a challenge, it seemed to us, as a clear intimidation. And it was also true, that other people in the line had been upset and troubled by this experience.

So, that is the extent of my contact with Mr. Rehnquist in that regard.

The CHAIRMAN. Thank you. The distinguished ranking member, Senator Biden.

Senator BIDEN. Mr. Smith, is Mr. John McCurdy still alive?

Dr. SMITH. John Grimes?

Senator BIDEN. Grimes. I beg your pardon.

Dr. SMITH. J.O. Grimes. No. No. John—J.O. Grimes was about 70 at the time that that occurred, and I am very sure he is dead by now.

Senator BIDEN. I have no further questions but I have one statement, Mr. Chairman.

My office has received a telephone call a few minutes ago, well, actually about a half hour ago now, by a man identifying himself as William McCurdy, who alleges, by the telephone—I have no reason to believe this is true, or not—alleges to have been the FBI agent that accompanied our first witness to the polling place.

He gave us a phone number. The phone number is a number that is, the operator says is, quote, "blocked," cannot get through. I have asked the FBI—my staff from the Judiciary Committee asked the FBI whether in fact there was a Mr. William McCurdy who was an agent at the time, in 1962, in Phoenix.

I suspect the reason why he called is he is watching these proceedings. Mr. McCurdy, if there is such a Mr. McCurdy, please call home.

I would like very much to know—I would like to have the proper number, if in fact this is true. Again, I want to make it clear, I have no idea whether this is some prank, someone calling, but I will ask the witness: Do you recall a Mr. McCurdy, any William McCurdy?

Mr. BROSNAHAN. The name is familiar to me. The name William McCurdy is familiar to me, and I want to say, that he was an FBI agent in Phoenix. I have no idea whether he was the one that went with me that day.

As I have said earlier, some of the agents I knew very well because we worked on specific kinds of cases together all the time.

The name, William McCurdy, certainly rings a bell with me as somebody who could have been an FBI agent in Phoenix.

Senator BIDEN. Well, Mr. Chairman, I am sure the FBI will cooperate with us and let us know whether there was a Mr. William McCurdy who was an agent, in Phoenix, at the time, and I wanted to share that with the committee.

I thank you. I have no further questions. Thank you.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Mr. Smith, or is it Dr. Smith?

Dr. SMITH. It is Dr. Smith, again.

Senator MATHIAS. Dr. Smith, you said that you observed a car drive up. Mr. Rehnquist and someone else got out?

Dr. SMITH. Yes.

Senator MATHIAS. How did you know it was William Rehnquist?

Dr. SMITH. I had seen him before in Phoenix. He was not unknown to, to people who were in the political stream at that time. He is a, he is a person who has an unusual—has unusual facial features, and I think once you take a good look at him, you do not forget it.

Senator MATHIAS. It is your testimony that he went up to some people in the line and flashed a white card at them?

Dr. SMITH. Yes.

Senator MATHIAS. Did he get out of the car and walk right up to these people, or, did he get out, and look around a little bit, and then single out people in the line?

Dr. SMITH. No; his activities were very deliberate. He came directly to the line, and stood in front of these two black men who were there, and flashed this white card, and gave the little speech to them that I have described.

Senator MATHIAS. Which is to the effect, "You can't read so you're not qualified to vote?"

Dr. SMITH. Yes.

Senator MATHIAS. That is all.

The CHAIRMAN. The distinguished Senator from Massachusetts.

Senator KENNEDY. Mr. Smith, earlier in the course of the inquiry on these other witnesses, questions were raised about how they came to testify here before the committee, or, how did it come that they were willing to sort of "go public" about matters that took place some time ago.

Can you, to the best of your recollection, tell us why you sort of came forward, or why you became public, and what were the circumstances in which you did.

Dr. SMITH. Well, sitting behind me in the two chairs are my daughter and my son. The—my son had heard me talk about the case with Rehnquist when it happened, and when Mr. Rehnquist was then nominated for the Supreme Court. I remember that we were at the dinner table and I brought up that incident again, and wondered how it was that a person who could act in this way could be a member of the Supreme Court. And then it was, to a very large extent, forgotten by me, until 2 or 3, or 4 days ago, whatever it was.

I received a hurried telephone call from my son, indicating that somebody was going to call me from Public Radio about my experiences.

I then received a phone call from Nina Totenberg, and she talked to me for a very few minutes on the telephone. It was not a phone call that I was really prepared to give, and I think I muddled my words with her in this discussion. But in any event, it was that occasion, and my son and daughter indicating that it was my patriotic duty to come forth, even though I am not so involved in politics anymore.

Senetor KENNEDY. And that is really the reason that you are here today, is that you feel a citizen's responsibility to report as accurately as you possibly can, the circumstances which took place at the polling booths——

Dr. SMITH. Yes.

Senator KENNEDY [continuing]. In 19—I guess it was 1960 or 1962. Now Mr. Smith, I have inquired of the Justice about this story, and let me just review, very quickly, with you, what I said to him, and what he said, and get your reaction.

Dr. SMITH. Yes.

Senator KENNEDY [responding]:

Smith states that on election day in 1960 or 1962, a poll watcher at a southwest Phoenix poll booth observed you arrive with two or three other men. He says he recognized you from political functions and is positive of his identification. States you approached a group of voters holding a card in your hand and said, "You

cannot read, can you? You do not belong here." Dr. Smith says the voters were intimidated by your actions.

Justice REHNQUIST. I am sure he is mistaken as to the latter part. It is perfectly possible that I could have arrived at a southwest Phoenix polling booth with a couple of other people. And, again, I gather, he is not definite as to the years, because one of my jobs is notice reading. What I said in 1971, and recalling as best I can now, was to go to the polling places where our challenger was not allowed into the polling place, or if a dispute came up as to something similar to that, either I, or along with my Democratic counterpart would go. So, it is not at all inconceivable that I would have been with a group or two or three other people going to a southwest Phoenix polling place, in whatever year that was, but the latter part is false.

Senator KENNEDY. Well, the activity described basically is personally challenging voters. That is the activity alleged, and you categorically deny ever having done that in any precincts in Maricopa County, in the Phoenix area, at any election? Is that correct?

That is correct.

Senator KENNEDY. Well, what is "I think"? I mean, you would remember whether you did or not. I mean, it is not an event if you are talking about harassing—isn't it an event if you are talking about harassing or intimidating voters, something that you are going to forget very much about?

Justice REHNQUIST. Senator, let me beg to differ with you on that point, if I may. I thought your question was challenging. Now you say harassing or intimidating. As to harassing or intimidating, I certainly do categorically deny any time, any place.

Would you characterize the activities that you saw at that polling place as harassing or intimidating voters from participating in voting?

Dr. SMITH. Well, that is what it certainly looked like to me.

Senator KENNEDY. For the reasons you have described in your testimony here today?

Dr. SMITH. Yes.

Senator KENNEDY. I had trouble understanding—it continues.

If you're talking about challenging—this is Rehnquist—I reviewed my testimony. I think I said I did not challenge during particular years. I think it is conceivable that in 1954 I might at least have been a poll watcher on the west side.

SENATOR KENNEDY. Well, did you challenge individuals then?

Justice REHNQUIST. I think it was simply watching the vote being counted.

Senator KENNEDY. Then you did not challenge them?

REHNQUIST. I do not think so.

Senator KENNEDY. Well, you would remember whether you challenged them, or not, Mr. Justice, wouldn't you? Did you at any time challenge any individual?

Justice REHNQUIST. A challenger, Senator, was someone who was authorized by law to go to the polling place. Frequently, the function was not to challenge but simply to watch the poll, watch the vote being counted. Well, that is fine.

As I understand your testimony, you said you were a poll watcher. The challenger has a different connotation.

Justice REHNQUIST. To be a poll watcher at that time, I think you had to be a challenger.

Well, here we go around in semantics, which we have found the Justice very capable of doing. In the *Laird-Tatum* case we found that possible. We found it in terms of the Jackson memorandums, and we found it in terms of response to these questions.

But as I understand your testimony here today, is that you positively identified Rehnquist as being there, and you positively identified him doing the kinds of activities of requiring the voters to read from a card, and that you observed voters who were subject to that kind of activity leaving the line.

And that you are here today, really, in response to your children's belief that this is a patriotic duty. That at a time of conflicting testimony, that you have a positive citizen's responsibility to

speak to this Judiciary Committee, and to the American people, to tell them——

Dr. SMITH. Yes.

Senator KENNEDY [continuing]. What you know to be factual and accurate and true, having taken a sworn oath to God?

Dr. SMITH. Yes. If I could say just one further thing, I would say that in the words of Justice Potter Stewart, on another occasion: I may not be able to define intimidation but I know it when I see it.

Senator KENNEDY. No further questions, Mr. Chairman; no further questions.

The CHAIRMAN. What year was that?

Dr. SMITH. Well, as I indicated, I was confused about whether it was 1960 or 1962.

The CHAIRMAN. Thank you. The distinguished Senator from Ohio.

Senator SPECTER. Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Pennsylvania. Excuse me. I should have gone to you next. I beg your pardon.

Senator SPECTER. Thank you, Mr. Chairman. Dr. Smith, you say it was either 1960 or 1962?

Dr. SMITH. Yes.

Senator SPECTER. How do you determine the year?

Dr. SMITH. Well, I think that I was actually more heavily involved in Democratic politics in 1960, largely because John F. Kennedy was running, and he was an exciting candidate for all of us, and we were, all of us, trying to get involved in the political process at that time.

In 1962, I was still to some extent involved, but not as much as in 1960. So it had to have be one of those 2 years.

Senator SPECTER. Have you had contacts with Justice Rehnquist in political terms on other occasions?

Dr. SMITH. Well, not personal contact. I had seen him—I went to a speech he gave once in Phoenix, and had seen his picture in the newspaper on occasion, and had certainly heard about him enough.

Senator SPECTER. How long did the entire incident take, when Justice Rehnquist approached these men in line?

Dr. SMITH. Well, from the moment we saw him get out of his car with the one or two other people that were with him, he approached the line very rapidly, as if he knew exactly what he was going to be doing. He was not looking the scene over. He was coming directly to the line. And he went to these two black men who were standing in the line next to each other and engaged in the conversation that I described.

Senator SPECTER. All of this was outdoors?

Dr. SMITH. It was outdoors, yes.

Senator SPECTER. What time of the day or night did this occur?

Dr. SMITH. Well, I think it must have been in the late morning hours. It was probably—I would just make a guess that it was probably around 11 o'clock.

Senator SPECTER. Do you recall approximately how many people were in the line?

Dr. SMITH. Yes, there was a long line. It must have been—it must have been someplace between 20 and 30 people in the line.

Senator SPECTER. And you say he walked right up to two black men?

Dr. SMITH. Yes.

Senator SPECTER. Were they standing together?

Dr. SMITH. Yes, they were together.

Senator SPECTER. What was the racial mixture of the line, if you recall?

Dr. SMITH. Well, it was mostly blacks. I think there were some Chicanos in the line as well, but it was mostly a black precinct in this southwestern area.

Senator SPECTER. Did he speak to anyone besides these two black men?

Dr. SMITH. No; but then I don't think that Dr. Grimes gave him the opportunity to do that, since Dr. Grimes immediately started talking with him, after first turning to me and asking me to go find a phone and get a hold of Democratic headquarters, which I did.

By the time I arrived back, Rehnquist and his men were already on the way out.

Senator SPECTER. Did you discuss with Dr. Grimes what happened during the time you were gone?

Dr. SMITH. I can't remember whether we had a discussion at that time or not, but we certainly talked about it later.

Senator SPECTER. You heard Justice Rehnquist say, as you have testified, "You can't read; you're not qualified to vote"?

Dr. SMITH. Yes.

Senator SPECTER. Did he say anything other than that?

Dr. SMITH. Yes. He said at the end that "You should leave here."

Senator SPECTER. And what happened next?

Dr. SMITH. Well, both of these men, as I mentioned to you, then started moving away from the line, and it was at that point when Dr. Grimes moved up to these men and kind of pushed them back into the line, and then turned to me and asked me to go to the phone. Then I think he started talking with Mr. Rehnquist and whoever Mr. Rehnquist was with.

Senator SPECTER. Do you know who Justice Rehnquist was with?

Dr. SMITH. No; I never saw those men before or after.

Senator SPECTER. And Justice Rehnquist was with two other men?

Dr. SMITH. Yeah—I think it was one or two.

Senator SPECTER. Dr. Smith, how can you be sure with such precision what Justice Rehnquist said to these two men?

Dr. SMITH. Well, I think because I was so surprised by that kind of activity, and I was also very much incensed by it. I think the words were kind of emblazoned on my mind. You know, if you ask me what route I took to get to the polling place, I couldn't tell you. I can't even remember exactly the year. But those words were very much indelibly imprinted on my memory.

Senator SPECTER. And you say Justice Rehnquist said to the two black men, "You can't read"?

Dr. SMITH. Yes.

Senator SPECTER. Is it possible he could have asked them if they could read?

Dr. SMITH. No; he did not ask them if they could read. He went up to them and said, "You cannot read, can you?"

Senator SPECTER. Was there any indication to you why he happened to pick these two black men out of this long line, which contained many other blacks?

Dr. SMITH. No; they were closer to the end of the line.

Senator SPECTER. Were they at the very end of the line?

Dr. SMITH. I'm not sure whether they were at the very end of—I think not. I think there were one or two people behind them. But he went rather deliberately to the line and then directly to these men.

Senator SPECTER. Do you recall if the people behind these two black men were white or black or Hispanic?

Dr. SMITH. I really don't recall that.

Senator SPECTER. When you had the conversation with your family, where I believe you testified "How could a person who acted this way be a member of the Supreme Court," did you consider doing anything about it at the time?

Dr. SMITH. No; I was by that time living in another State, far away from the scene. I really didn't even know how to go about doing that, or whether anybody was interested.

Senator SPECTER. Where were you living at that time?

Dr. SMITH. I was living then in Kansas.

Senator SPECTER. Where in Kansas?

Dr. SMITH. In Topeka, KS.

Senator SPECTER. Thank you very much, Dr. Smith.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. Thank you, Mr. Chairman

I might say, Mr. Chairman, it seems to me that perhaps your offices—that there ought to be some cooperation with Senator Biden, to see that that agent can be located.

The CHAIRMAN. You may proceed, Senator Metzenbaum.

Senator METZENBAUM. Thank you, sir.

Dr. Smith, in the inquiry we had with Justice Rehnquist, I said to him:

> There's a man by the name of Arthur Ross, now a deputy prosecutor in Honolulu. He told the FBI that he saw you and others in 1962 with a card which had on it a constitutional phrase asking prospective voters to read from it before entering the polls.

Do you have any recollection of ever having done that? Did you ever do it: Justice Rehnquist: "Did I ever ask a voter to read from a card? No, I do not think I did."

Then I said to him, "Did you ever ask a prospective voter to read from any text, whether the Constitution or otherwise?" Justice Rehnquist: "Not that I recall."

As I understand your testimony—in fact, your testimony as well as your statement on Nina Totenberg's radio program—you stated, "So I was standing with him—" that being Mr. John Grimes "—and it was he who brought to my attention Mr. Rehnquist standing by several black people and holding up some kind of little white card. And after he would talk with them very briefly, they would move away from the line and some of them actually left."

Is that a correct description of your conversation with Nina Totenberg?

Dr. SMITH. Well, yes, it is a correct description of my conversation with her. As I mentioned to you, the telephone call from her came out of the blue. I was between patients. I was waiting for a patient to arrive and had just gotten rid of one. The scene was one in which I didn't have a lot of time to talk with her. As I mentioned to you, I didn't think that I had given her a very adequate description because my memory was not really tuned into that. It was not until later when I began to recall, and I talked with my wife, to whom I had also discussed this scene in detail.

So what I am telling you now I think is more the correct memory than what I was able to give her in a short, pressured time.

Senator METZENBAUM. Let me be sure I get the distinction.

In her interview, you said that there was somebody there with a card, showing it to—let me just be sure I don't misstate it. Standing, holding up some kind of little white card.

Now, is your testimony today a little bit different than that?

Dr. SMITH. Well, no. There was no question about his showing them the card. It was a white card. I couldn't see what was printed on it. He was pushing this in front of their faces and indicating the words that I indicated. He did not ask them to read it.

Senator METZENBAUM. Then you said to her:

> And the matter of scaring people off, I think that there were some of the Chicanos there who were also frightened away. Mr. Grimes said he knew some of these people and he knew they could read, and out of that they were simply being frightened away.
>
> TOTENBERG. Do you know that he ever personally challenged voters?
>
> SMITH. I seen that in newspaper accounts before.
>
> TOTENBERG. And as far as you're concerned, that is not true?
>
> SMITH. That's absolutely not true; at least on this one occasion when we saw him engaging in this kind of activity, there was just no question as to what he was doing.

Is that a correct transcription of your statement and is it factually correct?

Dr. SMITH. Yes; it is.

Senator METZENBAUM. Yes to both?

Dr. SMITH. Yes.

Senator METZENBAUM. I have no further questions, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator HEFLIN. Let me see if I can get your testimony correct.

You were a Democratic poll watcher on this occasion?

Dr. SMITH. Yes.

Senator HEFLIN. Was there some type of table or place where there was a polling judge or somebody, if challenges of an individual voter were to occur, you could go to this arbiter, this judge, who would make some determination I suppose, if the man voted, he would vote under protest—I assume there is some right of appeal or something on these things.

But was there some type of mechanism or table or chairs or some sort of thing set aside? Can you describe to me the scene, where the challenges were and where the polling judge might be located?

Dr. SMITH. Well, I am sure that there was a table for such an activity inside of the building. At the time that I was describing to

you, Dr. Grimes and I were both outside of the building. I think we had spent some time inside watching the process carefully.

But at the time, for some reason, he and I were outside the building. And I do not remember where we were there.

Senator HEFLIN. Now, inside the building was where you voted. Do you remember whether there were voting machines?

Dr. SMITH. Yes, voting machines, or the place where you could go into a little booth and mark your ticket. I am not sure we had machines then.

Did we have machines then?

Mr. PINE. In 1962 we had machines.

Dr. SMITH. Yes; but in any event, we had been inside of the polling place for some time. And for some reason, Dr. Grimes and I were standing outside talking to each other.

Senator HEFLIN. Do you remember if this was the Presidential election in which Kennedy was elected President?

Dr. SMITH. Well, I think that that was probably the year. But as I say, it could have also been in 1962. I just cannot remember that precisely.

Senator HEFLIN. Was there a line of voters waiting to go in and vote that extended outside the building?

Dr. SMITH. Yes, sir.

Senator HEFLIN. And it was in this line of voters outside the building that you and Dr. Grimes observed William Rehnquist with a card in his hand?

Dr. SMITH. Yes.

Senator HEFLIN. All right. Now, how big a card was it?

Dr. SMITH. Well, it is hard for me to say now. It seemed to me that it was about this big.

Senator HEFLIN. You do not know what was on the card?

Dr. SMITH. I do not know what was on it, no.

Senator HEFLIN. What did he ask him to do pertaining to the card?

Dr. SMITH. He didn't ask them to do anything. He simply had the card. He had it up in front of them. And then spoke the words to these people that I mentioned to you

Senator HEFLIN. What were the words? I must have missed something. I had to go to the floor and make a speech there——

Dr. SMITH. His words were: "You do not know how to read, do you? You do not belong in this line. You should leave."

Senator HEFLIN. But you do not know whether he asked them to read, or what?

Dr. SMITH. Yes; I do know that he did not ask them to read from the card.

Senator HEFLIN. He had a card.

Dr. SMITH. He had a card up in front of him, showing it to them.

Senator HEFLIN. He would state to them that you do not know how to read. But you never saw him ask them whether they could read or not?

Dr. SMITH. He did not ask them.

Senator HEFLIN. Well, did they read anything to him?

Dr. SMITH. No.

Senator HEFLIN. Did any of them read anything to him?

Dr. SMITH. No.

Senator HEFLIN. Well, now, if they did not read, how could he say that they did not know how to read? I mean, in order to read, did he not necessarily need a verbal response?

Dr. SMITH. Well, that is the intimidating part of the interchange.

Senator HEFLIN. In other words, you do not think he gave them a chance or what?

I am confused a little bit.

Dr. SMITH. Well, he certainly did not give them a chance at that point.

Senator HEFLIN. He just goes up and down, saying, you do not know how to read, and holding a card. Did he not give them the opportunity to show whether they could read or not?

Dr. SMITH. Well, we saw him do that, as we came up to the line, we saw him do that only to those two black men that were in the line near the end of the line, as I mentioned to you.

Senator HEFLIN. And he came to two black men, and he flashed the card toward them, and he said, "you do not know how to read?"

Dr. SMITH. Yes.

Senator HEFLIN. And you do not know whether there was writing on the card, or what was on the card, or anything about it?

Dr. SMITH. From where I was standing, I could not see the card. I could not see what was written on it.

Senator HEFLIN. Now, at that time there has been some testimony—was he wearing glasses?

Dr. SMITH. Yes, I think he was wearing glasses.

Senator HEFLIN. Well, there have been some, either statements or something, some people have said that he was, and some said that he was not, at that time. And there has been a little confusion.

Senator KENNEDY. If the Senator would yield, I think that refers to another witness.

Senator HEFLIN. I know, I mean I said, some witnesses.

Senator KENNEDY. But not this witness.

Senator HEFLIN. Well, that is why I was asking him about it.—whether he did or did not.

Did you go in to where the polling judge or the judge that took the challenges were? Were you sitting in there with him at any time, at a table, or in the presence of the polling judge, with Mr. Rehnquist?

Dr. SMITH. No; he was not inside at that time.

Senator HEFLIN. You never did see him inside?

Dr. SMITH. No; he never went inside.

Senator HEFLIN. Did you ever go inside?

Dr. SMITH. Yes; I was inside. When we first went there, at the beginning of the duty that we had assigned to us, we were in there at that time.

Senator HEFLIN. And how long would you say you stayed inside?

Dr. SMITH. Well, I was there probably a couple of hours before Dr. Grimes and I went on the outside, and we were standing outside, near the end of the line.

Senator HEFLIN. Do you remember seeing any of the witnesses who are here there on that occasion other than Dr. Grimes?

Dr. SMITH. No; I do not.

Senator HEFLIN. You do not?

I believe that is all.

The CHAIRMAN. Did you have a question?

Senator MATHIAS. One further question, Mr. Chairman.

The CHAIRMAN. The senior Senator from Maryland.

Senator MATHIAS. You indicated when I asked you earlier that Mr. Rehnquist got out of the car with his companion or companions?

Dr. SMITH. Yes.

Senator MATHIAS. And walked immediately to the two men to whom he presented this card?

Dr. SMITH. Yes.

Senator MATHIAS. Now, you have testified that the racial composition of the line was predominantly black?

Dr. SMITH. Yes.

Senator MATHIAS. So there was not the factor of color that identified these two people as the two he should immediately walk up to?

Dr. SMITH. No.

Senator MATHIAS. But it appeared to you as though he walked directly to them?

Dr. SMITH. Yes.

Senator MATHIAS. Were there any distinguishing characteristics about them that would lead you to conclude why he walked to those two men?

Dr. SMITH. No; I cannot honestly tell you, Senator.

Senator MATHIAS. They might have been any other two men in the line?

Dr. SMITH. Yes.

Senator MATHIAS. As far as you could tell?

Dr. SMITH. Yes.

Senator MATHIAS. All right.

Thank you.

Senator KENNEDY. Mr. Chairman, could I ask just one?

The CHAIRMAN. OK. Are you through?

Senator KENNEDY. Mr. Chairman, Senator Metzenbaum made reference earlier to a question whether the FBI could not be of help to this committee in trying to locate the agent that was with Mr. Brosnahan back at those precincts. It seems to me that they must have their files, they must have their sheets, they must have the records. And when you have the kind of testimony that comes from a former assistant U.S. attorney, I find it somewhat puzzling that the FBI could not have been helpful to the committee in attempting to locate that individual to date. I appreciate the efforts that are being made by Senator Biden on this to locate him.

But I would certainly hope that we could request from the FBI, if it is at all possible, that we locate that particular agent.

The CHAIRMAN. It has already been done, Senator.

Senator KENNEDY. Well, that will be good.

Finally, let me just ask—I want to again thank Mr. Smith for his statement. I understand his children are here. There is Ann Smith who is sitting behind him, and Christopher Smith.

I just might ask one question, and that is: Mr. Smith, Christopher Smith—or could I ask Christopher Smith, are you a Republican or a Democrat?

CHRISTOPHER SMITH. I am a registered Republican at the moment.

The CHAIRMAN. That is a little out of the ordinary, Senator. We swear in the witnesses. [Laughter.]

You strike that from the record unless he will be sworn first.

Senator KENNEDY. Yes.

The CHAIRMAN. Any other?

Senator KENNEDY. Well, then I will mention as a member of the committee that Christopher Smith was here at this table, and that it is my judgment is registered as a Republican.

The CHAIRMAN. But you are not testifying, Senator.

Senator KENNEDY. But I can say what I please.

The CHAIRMAN. Well, you can say what you please but——

Senator KENNEDY. Well, I just did. [Laughter.]

The CHAIRMAN. I will let him come up and swear him if you want to do that.

All right, we will move on.

Are there any other questions here?

Again, I repeat, that this side agreed to 4 hours today. And you have already had 8 hours. And we are going to finish this matter up today.

Senator Pena? Do you have any statement to make?

## STATEMENT OF MANUEL PENA

Mr. PENA. Yes, Mr. Chairman.

I was a volunteer party worker for the Democratic Party.

The CHAIRMAN. If you could summarize your statement in about 3 minutes; then there will be questions.

Mr. PENA. I was a volunteer party worker for the Democratic Party in the general election of November 3, 1964. My assignment was to cruise south Phoenix precincts and western Maricopa County precincts. I was provided an automobile with a telephone. And what I was to do is, whenever I got a call, if a problem existed at one of the precincts, I was to go there and try to resolve it.

I was called to Butler precinct. All of this occurred in the morning of that day. I was called to Butler precinct and told to go check a problem, there was a hangup on voting.

And when I got there, there was a long line of people standing outside of the polling place, waiting to get in to vote. The line was four abreast. There had to be about 100 people waiting to get inside the polling place.

I went on into the polling place and asked the inspector what the hangup was. She told me that there was this fellow sitting at the end of the table, and he was sitting at the wrong place, was questioning everybody that came in, and slowing down the process.

We had six machines inside of that Butler precinct, and only two of them were being utilized as a result of the slowdown of voting.

I told the inspector that the proper thing to do would be to take the challenger and whoever he is challenging and move him to a corner of the building; let him ask all the questions that he wanted to; and allow the rest of the people to vote, instead of questioning the voter in line, holding up the other people from voting.

The fellow objected to this. And at that point I stepped in between him and the people who were moving into the line, and I told him, you are in the wrong place as a challenger. You should be behind the inspector, and you should only challenge if you have a good cause to challenge.

He was asking everybody who came in what their name was, where they lived, how long have they lived there, that kind of thing. I told him that was not a legal way to challenge. And he said he wanted to make a telephone call, so I took him into the principal's office—Butler is a school—and he made his call.

I do not know who he called. But after talking to somebody for a few minutes, he told me that he was told that what he was doing was correct, and that he was going to continue to do it.

And I told him that he was not going to do it because it was not the correct way to challenge. He could challenge if he wanted to if he did it in a correct manner.

At any rate, he insisted that he was going to do it again. He went back into the polling place. My job was to call back to headquarters and tell them what had occurred, and they would send somebody out to take care of the problem.

When I did that, I was given a message to go to another precinct and check another problem there. I returned to Butler precinct about 30 or 40 minutes later, and the line had diminished, people were voting. I went inside the polling place and asked the inspector what had happened.

And she said that somebody came in and had an argument with the challenger, physically removed him from the polling place, and had a conversation with him outside, and the fellow disappeared.

And so we had kind of a peaceful election after that at that polling place.

Now, later—a few years later—I saw a picture in the paper of William Rehnquist. And I recognized him from that picture as the person who was doing the challenging inside the polling booth, inside the polling place, and who was impeding the traffic of voters into the booth.

And that is how I came to know that Mr. Rehnquist was involved.

The CHAIRMAN. What year was this?

Mr. PENA. 1964.

The CHAIRMAN. 1964.

And you did not recognize him until years later, did you say, you saw a picture of him?

Mr. PENA. That is correct, yes.

The CHAIRMAN. That is all.

The distinguished Senator from Massachusetts.

Senator KENNEDY. You have no doubt in your own mind, having seen that picture a number of years ago and of pictures subsequently, about the identification of the individual that you claim to be Mr. Rehnquist?

Mr. PENA. I do not have any doubt at all. It was him. We had a close confrontation. And we had some words for at least 30 minutes, both inside the polling place and on our way to the telephone at the principal's office, in the principal's office, and after his telephone call.

So when the picture came out in the paper, I told my wife—I read the paper at breakfast, and I told my wife, this is the guy that was challenging people and holding up voting at Butler precinct in 1964.

Senator KENNEDY. As a result of those challenges, did any of the people leave the line?

Mr. PENA. I think that was the whole idea, to discourage people from voting. I did not see anybody leave, because——

Senator KENNEDY. What was the color of the people being challenged? Did you make any judgment?

Mr. PENA. The precinct at that time was about 40 percent Hispanic and perhaps 1 percent black.

Senator KENNEDY. No further questions.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. No questions

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. Are you presently a State senator?

Mr. PENA. Yes; I am.

Senator METZENBAUM. And how long have you been a State senator?

Mr. PENA. Fourteen years, and prior to that—I was 6 years in the House. It is my 20th year in the legislature.

Senator METZENBAUM. For 6 years you were a house member?

Mr. PENA. For 6 years.

Senator METZENBAUM. I am not sure I heard all of your testimony. You may have stated this.

But when you told Mr. Rehnquist that the correct way to do the matter, to raise these issues, is to take the person aside. Is that what you said?

Mr. PENA. Yes.

Senator METZENBAUM. And what did Mr. Rehnquist say to you?

Mr. PENA. He objected to that procedure. He said he had a right to stay where he was. And he had a right to question anybody that he wanted to.

And at that point, I stepped in between him and the people who were coming in to vote to stop him from asking those kinds of questions.

Senator METZENBAUM. I have a statement here, I am not sure whether it is yours. Pena was close to taking a poke at him. I do not know if that is a correct statement or not.

Mr. PENA. Well, when we went into the principal's office to make that telephone call, after making the call, we had another conversation where he told me that he had been told that he should continue doing what he was doing. And I told him that he was not going to do it.

And I do not know whether—I think probably I pushed him first, backward, saying, you are not going to do it anymore. At that point, he measured his fist at my face, and I said, OK, if that is what you want I will get somebody to take care of it.

And he went back into the polling place, and that is when I went out to make my call to headquarters.

Senator METZENBAUM. Thank you very much.

The CHAIRMAN. The distinguished Senator from Arizona.

Senator DECONCINI. Mr. Chairman.

Senator Pena, thank you for joining us and being here. Senator Pena has an outstanding career of service to the State of Arizona, State house and in the senate.

Senator, in the course of your statement that I read—and I am sorry that I had to be out for the first part of your statement here—you indicate, if I am correct, that on the phone call that you got when you were a troubleshooter driving around, and you went to the Bethune precinct and that—is that not correct? Please correct me.

Mr. PENA. Butler precinct.

Senator DECONCINI. I mean Butler precinct. When you went to Butler precinct, you encountered Mr. Rehnquist?

Mr. PENA. I did not know it was Mr. Rehnquist.

Senator DECONCINI. You did not know then, but it turned out to be Mr. Rehnquist?

Mr. PENA. Yes.

Senator DECONCINI. Were there other people there, other Republicans, challengers, or anybody else?

Mr. PENA. No.

Senator DECONCINI. He was the only one?

Mr. PENA. He was the only one inside the polling place.

Senator DECONCINI. And did you observe him—what did you observe him doing?

Mr. PENA. He was asking each person as they came in what their name was. He was doing this before the inspector had a chance to recognize the voter.

Senator DECONCINI. At the door, but before they signed in?

Mr. PENA. Well, he was sitting at a table like this, where the inspector, the judge, the clerk, and a marshal sit, and he was at the end of the table:

Senator DECONCINI. He was asking their names?

Mr. PENA. Asking their name as they came in, what is your name, where do you live. And since you can only come in in a single line, that delayed the other folks from coming in and voting.

Senator DECONCINI. You mean the fact that he asked the question and slowed it down?

Mr. PENA. Yes.

Senator DECONCINI. Now, when you confronted him, apparently you confronted him about this. And if I understand your statement, you stepped out into another room and made some phone calls, or did he do that, or what?

Mr. PENA. No; he said he wanted to make a telephone call.

Senator DECONCINI. He wanted to make a phone call?

Mr. PENA. Yes; so I said, all right, come on. he did not know the area too well. So I took him around to the principal's office, which is in another building. And there I asked the principal's secretary to allow this fellow to make a call, which she did.

Senator DECONCINI. Were you there when he made the call?

Mr. PENA. Yes; I was inside the office.

Senator DECONCINI. Who did he call?

Mr. PENA. I have no idea.

Senator DECONCINI. You do not know who he called?

Mr. PENA. No.

Senator DECONCINI. Do you think it was Republican headquarters?

Mr. PENA. I think that is obvious, but I am not sure.

Senator DECONCINI. He did not say to you.

Mr. PENA. He did not tell me who he was going to call.

Senator DECONCINI. After the call, what did he say?

Mr. PENA. He said that he was told that what he was doing is correct and that he was to continue to do it.

Senator DECONCINI. Now, that person turned out to be, in your judgment, later, Mr. Rehnquist?

Mr. PENA. Yes.

Senator DECONCINI. Based on a picture that you identified?

Mr. PENA. Yes.

Senator DECONCINI. Based on what you have heard today, that Mr. Rehnquist was the strategist or the head of this 12-man committee, according to then-Chairman Staggs, to do what they could toward the election challenges, does it make sense to you that he would call anybody when he was the lead guy to get permission to come back and tell you that, I know it is all right, or I am told it is OK to do what I am doing?

Mr. PENA. Yes, it does; because in the other precincts we encountered the same thing. They would called for reinforcements.

Senator DECONCINI. They what?

Mr. PENA. They called for reinforcements.

Senator DECONCINI. You mean for more people.

Mr. PENA. Right. And I am assuming that is what he did.

Senator DECONCINI. Oh, you think he called, not—you think he called to have more people come down and help him.

Mr. PENA. Yes.

Senator DECONCINI. Not to conclude that what he was doing was OK?

Mr. PENA. No, to help him continue to do what he was doing.

Senator DECONCINI. To help him? But he told you that what he was doing, he had checked out, and it was OK?

Mr. PENA. Yes.

Senator DECONCINI. Did you—how long did you stay there, Senator? Do you remember?

Mr. PENA. I believe that I was there approximately 30 minutes, maybe 40 minutes, trying to——

Senator DECONCINI. Did you leave before mister—this gentleman, Mr. Rehnquist?

Mr. PENA. Did I do what?

Senator DECONCINI. Did you leave before this gentleman, Mr. Rehnquist?

Mr. PENA. Yes, when I called in to headquarters and told them what the problem is, and what I thought we needed to do to clear it up, at the same time, they gave me a message that I was to go to another precinct and try to correct another problem in that area.

Senator DECONCINI. And so did you go?

Mr. PENA. I left.

Senator DECONCINI. Did you go to another precinct?

Mr. PENA. Yes.

Senator DECONCINI. Which one did you go to?

Mr. PENA. Let us see. We were at Butler's, so I think I went up to Brown precinct.

Senator DECONCINI. Brown, and what did you find there?

Mr. PENA. It was a—at Brown precinct, we had the identical thing, except that the fellow who was doing the challenging realized, or apparently believed what I said, and he quit doing what he was doing.

Senator DECONCINI. And you did not make any telephone calls from Brown?

Mr. PENA. No.

Senator DECONCINI. Did he leave, or did he just——

Mr. PENA. He stayed. I came back later on to check and see if——

Senator DECONCINI. Were there Democratic poll watchers there, too?

Mr. PENA. I was the poll-watcher——

Senator DECONCINI. For several polls?

Mr. PENA. Yes.

Senator DECONCINI. Roving around between poll-watchers?

Mr. PENA. Yes.

Senator DECONCINI. I mean between polling places.

Did you ever go to Bethune precinct?

Mr. PENA. Yes.

Senator DECONCINI. And what did you find there?

Mr. PENA. That was early in the morning, and what we had there was a slow reader.

Senator DECONCINI. A slow what?

Mr. PENA. Reader.

Senator DECONCINI. OK.

Mr. PENA. You know, the inspector gets the name and then passes the name on to a judge or a clerk.

Senator DECONCINI. Yes; I just did not hear.

Mr. PENA. And there was a hang-up before she could find the name, and so what we did is replace that reader with another—that judge, or I think it was a clerk, with another person who was a faster reader.

Senator DECONCINI. So it was moving slowly?

Mr. PENA. It was a slow-moving line, yes.

Senator DECONCINI. Was there a Republican challenger there, do you recall?

Mr. PENA. Yes, yes, there was.

Senator DECONCINI. Do you remember the name Wayne Benson at all?

Mr. PENA. No; I did not ask for names.

Senator DECONCINI. Was there any confrontation or anything other than delay or moving slowly at Bethune when you were there?

Mr. PENA. Not at Bethune, no.

Senator DECONCINI. Did you only visit Bethune once that day?

Mr. PENA. No, no. I—

Senator DECONCINI. Went back and forth?

Mr. PENA. I must have hit Bethune three or four times.

Senator DECONCINI. Just for the record, Senator Pena, what was your understanding—and I realize that is a long time ago—as a

Democratic representative, a poll-watcher or challenger—what was your understanding of what the law that a challenge could be made?

Mr. PENA. In my opinion, a legitimate challenge should be based on probable cause, on concrete evidence that that individual failed to do something; he did not live where he lived.

Let me point out to you that that year, the Republican Party sent out a mailing to every Democrat, registered Democrat, in south Phoenix. They might have done this throughout the State; I do not know. But they did that, and so if any envelopes were returned, that was their basis for a challenge.

Senator DECONCINI. That is what they primarily used?

Mr. PENA. Right.

Senator DECONCINI. Was it effective, do you remember?

Mr. PENA. It is a challenge in that manner, yes, and it was legitimate because if a person did not live where he said he was registered to vote and he had moved away from there to another precinct, then he was not eligible to vote in that precinct.

This fellow at Butler was not using the envelopes. They were there, but they were not being used.

Senator DECONCINI. And you probably already told the committee; what was he doing?

Mr. PENA. He was challenging each one that came through the line, asking what is your name, which is the responsibility of the inspector, but he was up front, the first one up there.

Senator DECONCINI. Was he next to the inspector?

Mr. PENA. At the end of the table, the inspector sitting where Charlie is sitting and—

Senator DECONCINI. And this man was sitting next to him?

Mr. PENA. Right at the end of the table.

Senator DECONCINI. Oh, right at the end?

Mr. PENA. Yes.

Senator DECONCINI. And he was asking the name instead of the inspector asking?

Mr. PENA. Yes; as they came in. What is your name?

Senator DECONCINI. Did he do something else?

Mr. PENA. Other than ask him questions in that manner and slowing down the flow—

Senator DECONCINI. Mostly delay, causing delay?

Mr. PENA. Delaying tactics.

Senator DECONCINI. Thank you, Senator Pena, very much.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator HEFLIN. Senator Pena, let me try to get it straight. You were there and you saw this; you protested it. And he indicated he wanted to go to the phone; he did not know where to go. You took him and guided him to it.

Now, when did the fray occur between you? Was this after the phone call or before the phone call, where you pushed him and he balled his fist up?

Mr. PENA. After the phone call.

Senator HEFLIN. After?

Mr. PENA. Yes.

Senator HEFLIN. And that was where he came back from the phone call and told you that he had been told that it was all right to do what he was doing?

Mr. PENA. That is correct.

Senator HEFLIN. And then you—did he say he was going to continue to do it?

Mr. PENA. He did not say it. He went back to inside the polling place and continued to do it.

Senator HEFLIN. And when did you push him?

Mr. PENA. When we were inside the principal's office.

Senator HEFLIN. When he came from the phone?

Mr. PENA. Yes, after he got through with his telephone call and he told me what they had told him, and I said you are not going to do it anymore because that is not the right thing to do.

And he looked a little belligerant to me, so I pushed him back and he balled up his fist and aimed it in my face and I pushed him again and I—

Senator HEFLIN. You pushed him again?

Mr. PENA. Yes. I pushed him away from me because we were, you know, this close and—

Senator HEFLIN. Eyeball to eyeball?

Mr. PENA. Eyeball—we were eyeballing each other, yes.

Senator HEFLIN. How tall are you?

Mr. PENA. I am about six foot, maybe six-one in my shoes.

Senator HEFLIN. I had not seen you standing up.

Now, when he balled up his fist, what did you say then?

Mr. PENA. I did not say anything. I just pushed him back and then I said, if that is what you want, I will get some of that for you.

Senator HEFLIN. Now, at that time, did he have on glasses?

Mr. PENA. Yes.

Senator HEFLIN. All right. Now, did you have on glasses?

Mr. PENA. Myself?

Senator HEFLIN. Yes.

Mr. PENA. Yes, sir.

Senator HEFLIN. You both were wearing glasses.

All right, sir. Now, the picture that you—the photograph that you saw, you said you saw it a few years later. What is your best judgment as to the length of time from that incident until you saw the photograph in the newspaper? I suppose you saw it in the newspaper, was it not?

Mr. PENA. Yes; since this came up, I have been trying to pinpoint the time, more or less, and I would suspect that it must have been in 1971, although it could have been prior to that, as Mr. Rehnquist was very active with the Goldwater campaign and the Richard Kleindienst campaign. So it might have been before 1971.

This is the first time I had ever seen that picture and I recognized him immediately as the fellow who was doing the challenging at Butler.

Senator HEFLIN. Now, the incident that occurred, did it occur in 1960 or 1962?

Mr. PENA. 1964.

Senator HEFLIN. 1964; is that when this occurred?

Mr. PENA. Yes.

Senator HEFLIN. This was in the Goldwater campaign at that time?

Mr. PENA. Yes.

Senator HEFLIN. That is when the incidents occurred out at the—what is it, the Butler precinct?

Mr. PENA. The Butler precinct.

Senator HEFLIN. Now, you are not certain as to whether you saw the photograph in 1971 or when it occurred—but you said a few years. Could it have occurred in the Goldwater—it must have been, because Goldwater ran in 1964.

That would have been the same year. When you said a few years then, it would not be that one, or could it have been the Goldwater year?

Mr. PENA. I had not seen his picture before and, as I said, it could have been anywhere in between, after the election in 1964.

Senator HEFLIN. Well, you said a few years.

Mr. PENA. Yes.

Senator HEFLIN. Is it your best judgment that there was a passage of at least 1 year, 2 years, 3 years, 4 years, between the incident and the time that you said you saw the photograph?

Mr. PENA. As I indicated, I have been trying to pinpoint the date when I might have seen that picture. I cannot be specific, but I do know that the picture did appear when he was nominated to the bench, so that might have been when I saw the picture.

Senator HEFLIN. Now, was the picture that you saw in the paper, was it a mugshot—that is, a picture of him alone—or was it a picture of more than one individual in a photograph?

Mr. PENA. It was a face shot.

Senator HEFLIN. A what?

Mr. PENA. Face.

Senator HEFLIN. Face shot, a mugshot?

Mr. PENA. Yes.

Senator HEFLIN. And was that picture—did he have glasses on in that picture?

Mr. PENA. Yes.

Senator HEFLIN. I believe that is all.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. Mr. Pena, I have a couple of questions for you. Did you personally know Mr. Rehnquist in 1964?

Mr. PENA. No, no.

Senator HATCH. You did not know him from the man in the moon. Is what you are saying? Is that right?

Mr. PENA. I do not know the man in the moon either.

The CHAIRMAN. Speak out so we can hear you.

Mr. PENA. Pardon?

The CHAIRMAN. Speak out so we can hear you

Mr. PENA. I wonder if Senator Hatch would do the same because I cannot seem to hear you too well.

Senator HATCH. I am sorry. I could not hear you.

Mr. PENA. Would you speak up so I can hear what you are saying?

Senator HATCH. In 1964 did you know Mr. Rehnquist?

Mr. PENA. I did not know Rehnquist, no.

Senator HATCH. Not at all?

Mr. PENA. Not at all.

Senator HATCH. According to a recent statement that you made, your sole basis for identifying Mr. Rehnquist at that time, a man you had only met once, which you claim you met in 1964, was a picture you saw 7 years later in the newspaper. Is that correct?

Mr. PENA. Well, I did not say 7 years later. I said——.

Senator HATCH. Approximately 7 years later.

Mr. PENA. All right, approximately is fine, yes.

Senator HATCH. Approximately 5 years later. I am sorry; I did not mean to misstate it.

Mr. PENA. Approximately, in between 1964 and 1971.

Senator HATCH. That is why I said 7 years.

That is all I have, Mr. Chairman.

Senator HEFLIN. Let me ask you this: Why do you pick out the year 1971 as being the latest year you would have recognized the photograph?

Mr. PENA. Well, the reason I am doing that is because as the nominee, as President Nixon's nominee, he had to have appeared not only in the newspapers, but on television. And like I said, I wish I could pinpoint the day when the picture I saw and recognized him as the fellow who was a Butler precinct—.

Senator HEFLIN. But you associate seeing the photograph, whenever you saw it—do you associate that with his nomination to the Supreme Court as Associate Justice, or do you associate it with some other factor?

Mr. PENA. I associated him with the challenging at Butler School.

Senator HEFLIN. I know, but do you associate why the photograph was in the newspaper?

Mr. PENA. No.

Senator HEFLIN. You say it is 1971, and I assume that what you are doing is that you are assuming that that would have been the height of his publicity; that you would have had an opportunity to view it, and therefore that would be the latest possible date, since, that was the way that you put it, as to the—somewhere between 1964 and 1971.

But you do not associate any material fact about the photograph or what newsworthiness he had obtained to be in the newspaper?

Mr. PENA. I do not.

Senator HEFLIN. You do not.

Mr. PENA. I just remember a picture, and it looked like the fellow.

Senator HEFLIN. Were you then in politics in the State senate?

Mr. PENA. No, sir. I was elected in 1966 and began serving in 1967.

Senator HEFLIN. Well, what I am saying is that at the time that you saw a photograph, could you have been in the State senate?

Mr. PENA. No; I was elected to the house. I served in the house for 6 years, so my first election was 1966.

Senator HEFLIN. Your first election was 1966?

Mr. PENA. Yes.

Senator HEFLIN. While I am here, might I ask Dr. Smith something about those glasses? I see something about a Mr. Robert Tate talking about glasses. I did not know who it was, but someone did

present it and I read it. So it was not you, if there was any confusion on that.

The CHAIRMAN. Senator Simon, do you have any questions?

Senator SIMON. I do not. I regret I have been away at another meeting

The CHAIRMAN. I just have one question I would like to ask each one of you for the record, and we will just start with Mr. Brosnahan and go on down to Mr. Mirkin and Mr. Pine, Mr. Smith, and Mr. Pena.

What positions have you held as a Democrat, and what, also, positions have you held in the Democratic Party?

Mr. BROSNAHAN. I was a member of the town committee, which had 700 members, in Wellesley, MA, for about 2 years when I was in college.

The CHAIRMAN. Speak a little bit louder.

Mr. BROSNAHAN. Yes; I am sorry, Mr. Chairman.

I am just trying to recall because it is not—in this group, it is not a terrific political career. The only other position that I have ever held in the Democratic Party—I was some kind of—I was a precinct person in Phoenix in about 1960 and I was—this is not the Democratic Party, but if you are talking about campaigns, I have been in a lot of campaigns.

And I was, in 1960, the chairman of the Youth for Kennedy in the State of Arizona, and then I have been in other campaigns in San Francisco and California. I do not know if you want those or not, but I have participated in Presidential campaigns, usually on behalf of lawyers' groups and that kind of thing, and that is the extent of it.

The CHAIRMAN. You were assistant U.S. attorney under what administration?

Mr. BROSNAHAN. I was appointed by Robert Kennedy, effective April 10, 1961, and then I was reappointed for the San Francisco office in February 1963, and I believe that was still Robert Kennedy at that time.

The CHAIRMAN. Thank you.

Mr. Mirkin.

Mr. MIRKIN. Yes; all my positions were in Arizona. In the 1950's, I was a precinct committeeman. In the late 1950's, early 1960's, I was Young Democratic National committeeman, and in 1964 I was a delegate to the National Nominating Convention.

The CHAIRMAN. Mr Pine.

Mr. PINE. Mr. Chairman, I was active initially in the Democratic Party in my native State of Rhode Island. I was secretary of the Young Democrats. I was vice chairman of the Providence City Democratic Committee, and I was chairman of the State Committee Speakers Bureau.

I moved to Arizona 33 years ago because of my infant son's health, asthma. I could not become active in the party immediately because I was public relations director for a major bank. I was forbidden from taking a public role.

When I left the bank to establish my own business, I gradually became more and more active with the party. In 1978, I was a member of the delegation in Chicago. I became a precinct commit-

tee person in 1968; I have held that title of precinct captain ever since.

I became a district chairman in 1969, 1970, and 1971. I became chairman in 1971 of Nucleus Club, our principal fundraising arm. I became chairman of the Democratic State Party of Arizona in 1972, and I held it for 4 years and stepped down.

I am currently a member of the executive committee. Of course, as I was chairman for those 4 years, I was also a member of the Democratic National Committee. Currently, my only two political affiliations, other than the precinct committeemanship which I still hold—I am captain of my little precinct. I must hold that position in order to be eligible for the State committee.

I must be eligible for the State committee in order to be elected to the executive committee. I am on the executive committee. I also author as a labor of love a political news weekly called "Political Potpurri," in which I comment on the local, State, and sometimes national scenes, and I have several hundred private subscribers, one-third of whom are Republicans or Republican-oriented.

The CHAIRMAN. Senator Pena.

Mr. PENA. Yes, sir, as a precinct committeeman, precinct captain, district chairman, assistant county chairman, county executive board, State executive board. I was vice chairman of voter registration for the State party in 1964, and I was chairman of the Maricopa County Democratic Party's effort on voter registration in 1964.

The CHAIRMAN. Mr. Smith.

Dr. SMITH. I was elected precinct committeeman, which was a job I held for 2 years.

Senator SIMON. Mr. Chairman, may I——

The CHAIRMAN. The distinguished Senator from Illinois.

Senator SIMON. If I may just ask one question to follow up the chairman's question I would like each of you to answer. Are you here for any partisan reason, or are you here simply because, as good citizens, you are interested in justice in this country?

Mr. PINE. May I respond to that, Mr. Chairman, if that question is directed to us individually or collectively?

Senator SIMON. I would like each of you to respond.

The CHAIRMAN. If you will please make your responses very brief now, we are going to move right on to the next panel.

Mr. PINE. I understand, Mr. Chairman; you are quite correct.

Senator Simon, I am here today as a concerned citizen more than a Democrat, as a concerned citizen who questions the advisability of confirming the nomination of William Rehnquist as Chief Justice of the U.S. Supreme Court, in view of the fact that over a period of 6 years, he exerted tremendous efforts to deny people and to discourage them from exercising their most——

The CHAIRMAN. We are not going into all the evidence again.

Mr. PINE. That is the end of my response, Mr. Chairman.

The CHAIRMAN. OK, all right.

Any other questions?

Senator SIMON. If I may ask each member to respond.

Mr. BROSNAHAN. The only thing I would say, Mr. Chairman, is that the truth is this: When I became a prosecutor, and I was prosecutor for 5 years, I threw myself into it with tremendous enthusi-

asm and, during that period, prosecuted a lot of people, of whom, in Arizona, regrettably, I would guess about two-thirds were Democratic because of the registration.

And I am not here as part of any political-oriented view, but rather because, as we have gone into, I have a recollection of certain events and you have asked me to give you those. Thank you.

Mr. MIRKIN. I have not been politically active for 20 years. I am here because the committee, or members of it, asked me to come.

Mr. PENA. Yes, I am here also because I was invited to be here.

The CHAIRMAN. Mr. Smith, do you have anything to say?

Dr. SMITH. Well, yes. I am here to keep from being shamed in the eyes of my own children.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. All right. I believe that covers—at this point now, we are ready to move on.

Senator HATCH. Senator DeConcini——

Senator DECONCINI. Mr. Chairman, I beg to indulge the chairman's patience, but let me ask Senator Pena a question

Senator Pena, it just occurred to me, based on your experience, not what you have heard here necessarily, but just based on your experience, having identified, in your judgment, that this was Mr Rehnquist that delayed the votes at Butler precinct, is that reason enough to deny him confirmation to be Chief Justice of the Supreme Court?

Mr. PENA. In my opinion, yes

Senator DECONCINI. Thank you.

Senator HEFLIN. Let me ask Mr. Pena one question.

Have you ever seen Justice Rehnquist in person and has it been pointed out to you that he is Judge Rehnquist?

Mr. PENA. No, I never have.

Senator HEFLIN. You never have seen him in person?

Mr. PENA. Other than the time that I saw him at Butler——

Senator HEFLIN. I mean since that time.

Mr. PENA. No.

Senator HEFLIN. You never have.

Senator KENNEDY. Mr. Chairman, just a one-word answer, if they feel that they can answer it.

There is one question about Mr Rehnquist's activities. I think the question is whether he personally challenged any—if you can personally state that he challenged any of the voters. I would like to just go across.

Mr. PINE. Yes, he personally challenged.

Mr. BROSNAHAN. Based on what I was told, yes.

Mr. MIRKIN. No.

Mr. PENA. Yes.

Dr. SMITH. Yes.

Senator KENNEDY. That is an issue because that is what Mr. Rehnquist's sworn testimony is, that he did not, and we have four sworn testimonies that he had, and the other affidavits, plus the other testimony of Mr. Mirkin.

No further questions.

Senator HATCH [presiding]. We will be happy to excuse the panel at this time. We appreciate your coming.

Mr. PINE. Thank you.

Senator HATCH. We will call our next witness. However we will take a 5-minute recess. We would like you Mr. Vincent Maggiore, Edward Cassidy, William Turner, all three from Phoenix, AZ, and Ralph Staggs from Coronado, CA. to take your place at the witness table.

[Whereupon, a brief recess was taken.]

The CHAIRMAN. The committee will come to order.

Mr. Bush, I understand you have to leave right away. We are going to go 10-minute rounds with members of the committee.

Mr. Bush, you may proceed now.

**TESTIMONY OF A PANEL CONSISTING OF JAMES BUSH, ATTORNEY, PHOENIX, AZ; VINCENT MAGGIORE, PHOENIX, AZ; FRED ROBERTSHAW, ATTORNEY, PHOENIX AZ; WILLIAM C. TURNER, PHOENIX, AZ; EDWARD CASSIDY, PHOENIX, AZ; GORDON MARSHALL, PHOENIX, AZ; RALPH STAGGS, CORONADO, CA; AND GEORGE RANDOLPH, PHOENIX, AZ.**

Mr. BUSH. Thank you, Mr. Chairman. My name is James Bush. I am a resident of Phoenix, AZ. I am a practicing lawyer there.

The CHAIRMAN. If you would all stand and raise your right hand and be sworn.

Will the testimony that you give in this hearing be the truth, the whole truth and nothing but the truth, so help you God?

Mr. MAGGIORE. Yes.

Mr. BUSH. YES.

Mr. ROBERT-SHAW. Yes.

Mr. TURNER. YES.

Mr. CASSIDY. Yes.

Mr. MARSHALL. Yes.

Mr. STAGGS. Yes.

Mr. RANDOLPH. Yes.

The CHAIRMAN. Have a seat. OK. Mr. Bush, you may proceed.

And I will ask you to make your testimony as brief as you can to cover the points that you wish to convey.

Mr. BUSH. Very well, sir. As I said, I am a resident of Phoenix. I am a practicing lawyer. I have been a practicing attorney there for 32 years. I was a registered Democrat from 1943 to 1953. I have since been a registered Republican. I do not hold any office. I never have held any office in either the Democratic Party or the Republican Party.

I am a uniform laws commissioner from the State of Arizona. I was originally appointed by a Republican Governor. I have been reappointed twice by Democratic Governors.

During the 1960 and 1962 general elections in Arizona, I worked with William Rehnquist in organizing and supervising a lawyers committee to counsel and advise Republican Party officials and representatives with respect to legal questions that might arise during voting on election day.

It is my recollection that in both of those years Mr. Rehnquist acted as chairman and I was vice chairman, although I am not certain whether there was any formal title given. In any event, our functions and responsibilities essentially included the following: