

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.

Senator 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 been 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 Chicagos 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.