Mr. RAUH. It is my understanding, sir, it was adopted in 1964 and signed in 1965. It was at the end of the year, sir, is my understanding, but it is easy enough to get it. I can supply it. What I have to do is get the original yearly statute book, rather than the compilation I have.

Senator COOK. I just was not aware of any State legislature that met through the fall and through Christmas and New Year's into the new year.

Mr. RAUH. I would like the privilege of getting the exact dates from the statute book, whereas what I have here is the compilation which indicates it was added by laws 1965.

Now, certainly this matter should be cleared up. We have now an affidavit that there was quite an altercation on the steps of the Capitol on this statute which Mr. Rehnquist said didn't ever occur. So that ought to be cleared up.

Fourth, the issue of desegregation. Here again we have a letter to the Arizona Republic, a voluntary intervention against desegregation of de facto school segregation.

To me, the most shocking quote is this:

> We are no more dedicatd to an "integrated" society than we are to a "segregated" society.

How could a man 13 years after *Brown*—for this letter was written in 1967 and I would like to offer it for the record——

Senator Hart. It will be received.

(The letter referred to follows.)

'DE FACTO' SCHOOLS SEEN SERVING WELL

(By William H. REHNQUIST)

The combined effect of Harold Cousland's series of articles decrying "de facto segregation" in Phoenix schools, and The Republic's account of Superintendent Seymour's "integration program" for Phoenix high schools, is distressing to me.

As Mr. Cousland states in his concluding article, "whether school board members take these steps is up to them, and the people who elect them." My own guess is that the great majority of our citizens are well satisfied with the traditional neighborhood school system, and would not care to see it tinkered with at the behest of the authors of a report made to the federal Civil Rights Commission.

My further guess is that a similar majority would prefer to see Superintendent Seymour confine his activities to the carrying out of policy made by the Phoenix Union High School board, rather than taking the bit in his own teeth.

Mr. Seymour declares that we "are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declarations to come from policy-making bodies who are directly responsible to the electorate, rather than from an appointed administrator. But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities.

The neighborhood school concept, which has served us well for countless years, is quite consistent with this principle. Those who would abandon it concern themselves not with the great majority, for whom it has worked very well, but with a small majority for whom they claim it has not worked well. They assert a claim for special privileges for this minority, the members of which in many cases may not even want the privileges which the social theorists urge be extended to them.

The schools' job is to educate children. They should not be saddled with a task of fostering social change which may well lessen their ability to perform their primary job. The voters of Phoenix will do well to take a long second look at the sort of proposals urged by Messrs. Cousland and Seymour.

Mr. RAUH. How could a man 13 years after *Brown* say, "we are no more dedicated to an integrated society than we are to a segregated society"? But worse yet is what he tried to do in this chamber when he was asked about this matter.

When asked about that subject, he said he was against busing. That is on transcript page 146. Of course, he would jump on "busing." Busing is not the most popular item in America today, but that isn't the point.

There are many ways to deal with de facto segregation in the schools. Busing is just one of them. Mr. Rehnquist was against each and every method of dealing with de facto segregation. In this letter, which I have offered for the record, Mr. Rehnquist says:

> My own guess is that the majority of our citizens are well satisfied with the traditional neighborhood school system, and would not care to see it tinkered with at the behest of the authors of a report made to the Federal Civil Rights Commission.

I have that report here; it has dozens of methods to deal with de facto segregation. Busing is only one of them.

The truth of the matter is that Mr. Rehnquist wasn't opposed to just one means of obtaining desegregation. He was opposed to the goal of desegregation. That is the important point about the quote that I read; not that he was opposing a particular means to obtain desegregation, but that he was opposing the goal of desegregation and his sentence can't be read any other way.

I think it was unfair to this committee for him to try to get away with saying that all he was opposing in this letter was busing. He opposed every means to that end and he opposed the goal itself.

The fifth point on civil rights. In a letter to the Washington Post dated February 14, 1970, Mr. Rehnquist, again I take it volunteering, says:

> Your editorial clearly implies that to the extent the judge falls short of your civil rights standards, he does so because of an anti-Negro, anti-Civil Rights animus rather than of a judicial philosophy which, if consistently applied, would reach a conservative result both in civil rights cases and in other areas of the law. I do not believe that this implication is borne out. Thus the extent to which his judicial decisions in civil rights cases fail to measure up to the standards of the Post are traceable to an overall Constitutional conservatism rather than to an animus directed only at civil rights cases or civil rights litigants.

Here Mr. Rehnquist identifies himself with the Carswell positions and tells us, if we will only read, that he, as a conservative on the court, will be, as Mr. Carswell was, an anti-civil rights judge.

Then he was asked twice what he had done for civil rights—once on page 127 of the transcript and once on page 254. On page 127 of the record, when he is saying what he had done for civil rights, he said that he represented some indigents. He didn't list them and he didn't state what he did. Every lawyer in this town knows you had better represent indigents if you get assigned—you do it or else.

And then he said that he was on the Legal Aid Board. That is true in a kind of a strange sense. He was on the Legal Aid Board by virtue of being an ex officio member of the Legal Aid Society because he represented the Bar Association there. The president or the vice president of the Bar Association are automatically ex officio members of the Legal Aid Society in Phoenix. Here he was, making his defense on what he had done for the people on the Legal Aid Society Board, where he was an ex officio member.

Then, I think, in answer to another question (on pages 254 and 255 of the transcript) about what he had done for civil rights, he refers to his Houston law day speech, which I have just read. The only thing that can be said is that this speech ridicules the idea there is anything repressive in America today. Then he referred to his new barbarians speech. Here is the essence of his referrence to the new barbarian speech as proving he was for civil rights, and I quote:

> He who stands in the door of the southern schoolhouse to defy a court order, he who prostrates himself on the railroad tracks to prevent the movement of a troop train, and he who wrongfully occupies a university building are each in his own way attacking this basic premise.

If a man has to use criticism of George Wallace standing in the schoolhouse door as the only thing he has ever done for civil rights, it is a sad day that he would have been the one chosen for this highest honor in America.

It is sad at this time in history that we should have a man proposed for the Supreme Court who, as Mr. Mitchell pointed out, has stated: "I am opposed to all civil rights laws." It is sad to have a man proposed who has no compassion for the blacks, the browns, and the other minorities.

This is enough. But I respectfully suggest that it is only the beginning.

And I turn now to the Bill of Rights.

As Mr. Rehnquist demonstrated in Phoenix that he had no compassion for civil or human rights, he has demonstrated in Washington that he has no dedication to the Bill of Rights.

First, possibly the most revealing thing of all is Mr. Rehnquist's hostility to the Warren court's dedication to the Bill of Rights. In 1957, as there has been testimony, he wrote in the U.S. News and World Report:

> Some of the tenets of the 'liberal' point of view which commanded the sympathy of a majority of the clerks I knew were extreme solicitude for the claims of Communists and other criminal defendants, expansion of federal power at the expense of State power, great sympathy toward any government regulation of business—in short, the political philosophy now espoused by the Court under Chief Justice Earl Warren.

Note the words, "extreme solicitude for the claims of Communists."

Then he is called on this by another law clerk, William Rogers; and how does he answer? He answers the way every McCarthyite of that day answered such questions. This is Mr. Rehnquist on February 21, 1958, after another law clerk had challenged him on his suggestion of sympathy for communism by the court—and I quote what he said:

> The only way to move forward in such a debate would be detailed documentation naming names and explaining the reasons for classification of political views. The obvious unfairness to the people involved of doing this ex parte in a magazine article, coupled with the inevitable in conclusiveness of the result, suggests that no such attempt be made.

It is the straight language of McCarthyism; having accused, you cannot go forward.

Then let's carry on with what he is saying about this Warren Supreme Court which defended the Bill of Rights. In his article in the Bar Association Journal in 1958 he starts out this way; the man has the audacity to start an article with this sentence:

Communists, former Communists, and others of like political philosophy scored significant victories during the October, 1956, term of the Supreme Court of the United States, culminating in the historic decisions of June 17, 1957.

Let me tell you what happened on June 17, 1957, that he is calling great victories for Communists. It was a great day for the Bill of Rights, but it wasn't any victory for Communists.

That day, John Stewart Service was restored to his post in the State Department because the Supreme Court, without dissent, in an opinion written by Mr. Justice Harland whose seat Mr. Rehnquist seeks to take, said that Service had been wrongfully removed without the State Department following its own regulations.

What is possibly or conceivably Communist about reversing the State Department's firing of a person without following its own regulations? You have to have it in your own mind when you say this decision is a victory for Communists.

What was the second case that day that made the headlines on June 18? It was the *Watkins* case. The *Watkins* case said that a congressional committee had to explain to a witness why they needed the information when they asked for something he didn't want to give them.

What in heaven's name is communistic about fair play at a congressional hearing? I should mention that was a decision by Chief Justice Warren with only one dissent.

The same day was the Sweazy opinion. That involved a State legislative committee; and the result was the same. And here there was Chief Justice Warren's decision with two dissents.

The fourth of this notable four-decision day that Mr. Rehnquist was talking about was the *Yates* case. That was the only one that did directly involve communism. What the Court held there was that mere advocacy of a philosophy without advocacy of action was protected by the Constitution. That again was Justice Harlan, with one dissent.

In other words, there was an average of 8 to 1 in these four cases. Only one of them directly related to communism, and yet you get this outrageous sentence that I read at the beginning.

Then you get a little further along in that article, I guess really the conclusion of that article, and I quote:

A decision of any court based on a combination of charity and ideologica sympathy at the expense of generally applicable rules of law is regrettable no matter whence it comes but what could be tolerated as a warm-hearted aberration in a local trial judge becomes nothing less than a Constitutional transgression when enunciated by the highest court of the land.

This language—used in the law clerks' articles and in the article I have just read involving the *Schware* and *Koenigsberg* cases—is the language of hostility to a court that did believe in the Bill of Rights. If I may say this, and I measure my words—this was straight McCarthyism if, and I will give him this, if it is laundered McCarthyism.

Again, you get the same thing—I heard it from Mr. Mitchell here this morning. I wasn't very surprised because it brings it all into focus. Mr. Mitchell presented an affidavit that Mr. Rehnquist said to the people coming to the Arizona legislature supporting the statute that "you are communistically inspired." Heavens; the NAACP?

Second, the surveillance testimony. I almost don't believe this happened:

Question. "Does a serious constitutional question arise when a Government agency places people under surveillance for exercising their first amendment rights to speak and assemble?"

Answer. "No."

There is not even—he says—a constitutional question raised by surveillance. No judicial restraint should be had, no legislative restraint; rely on self-discipline.

Third, the May Day events. At the time that Mr. Rehnquist spoke at North Carolina, the papers had been filled with proof that people had been arrested illegally. Indeed, Judge Green had already acted because of illegal arrests to get the people out. Yet, on Wednesday of that week, Mr. Rehnquist could make in North Carolina a general defense of what happened.

Now, the worst thing he said there, and it raises a question of what was meant, was the use of the term "qualified martial law." In answer to a question from Senator Cook, he indicated he had not intended to apply that term to Washington May Day.

I would make this point in response to Mr. Rehnquist's answer: Every newspaper in America treated his statement as applying the words "qualified martial law" to May Day. He made no attempt to clarify that matter until you, Senator Cook, raised it with him. I may be wrong—he may have clarified it partially in earlier testimony here, but it is at this same hearing.

Senator COOK. First of all, I think his speech speaks for itself.

Mr. RAUH. I do not. I wanted to go into that, sir.

In the first place, what you are in essence saying is that the speech was misread by every newspaper writer in America. I do not believe speeches get misread.

Senator COOK. It wasn't that widely covered, Mr. Rauh.

Mr. RAUH. My goodness; I saw "qualified martial law" in the papers of May 6. Those words have stayed in my mind since then because that is a most pernicious doctrine.

Senator COOK. I question in how many newspapers that speech was covered.

Mr. RAUH. Well, I will show you that the New York Times, even after the nomination, and the Washington Post, they were still interpreting his North Carolina speech as saying that "qualified martial law" applied.

Now, what other reason would there have been for Mr. Rehnquist using the term? Was he just having an academic exercise? He was talking about May Day. Did he just bring it in as some happy thought?

Now, where he is wrong on "qualified martial law" is that martial law is initiated by a proclamation of the Governor or the President. To apply this concept to a chief of police making sweep arrests is the most dangerous concept you could ever espouse. You try to restrain chiefs of police, not give them authority in these matters. You may read it as you do; but I say he deliberately let the press call it "qualified martial law" right through until he became a Supreme Court Justice nominee.

Fourth: Wiretapping. Mr. Rehnquist believes in untrammeled tapping for domestic as well as foreign subversion and without any limits.

It would be funny, if it wasn't sad, what happened before this committee. On page 320 of the transcript, Mr. Rehnquist—I don't want to use the word "brags" but, shall we say, puffs the fact that he got a shift in wiretapping theory from inherent power to reasonableness under the fourth amendment. That is, Mr. Rehnquist was saying: "I got the Justice Department to shift in defending this right to tap for domestic subversion without a court order from the proposition they were using, of inherent power, to the proposition that it is not unreasonable under the fourth amendment to tap under those circumstances."

That, I respectfully suggest, is a distinction without a difference. I have here the Government's brief prepared under the Rhenquist theory. It is perfectly clear that what they are saying is that the tapping is reasonable because the President has got the power to do it. For example, this is on page 6 of the Government's brief in No. 70–153, October term, 1971, *United States of America* v. *United States District Court*, page 6: "We submit that an electronic surveillance authorized by the Attorney General as necessary to protect the national security is not an unreasonable search and seizure simply because it is conducted without prior judicial approval."

In other words, because the Attorney General says it is necessary to protect the national security, because he says this as a matter of security action, therefore, it is not unreasonable and there he says——

Senator BAYH. Excuse me, Mr. Rauh. Are your reading from the brief or interpolating?

Mr. RAUH. No, the second was my interpretation. The first sentence was from the brief, sir.

Senator BAYH. I wanted to be sure.

Mr. RAUH. In "authorizing such surveillances," now reading from the brief again, "In authorizing such surveillances, the Attorney General properly acts for the President."

Now here, taking the two sentences together, what he is saying is that the President, by deciding to tap, is not doing something unreasonable. Therefore, the tap is not an unreasonable search and seizure. But it is predicated on the same basic philosophy that if the Executive wants to do it, he can do it. The whole brief is of that nature.

Now, in addition to that, Mr. Rehnquist, in defending wiretapping, referred to five previous Presidents who had OK'd tapping without a warrant. But there wasn't any procedure for a warrant in those days. The procedure for a warrant was set up in 1968, and the question today is why don't they follow that procedure. Well, Mr. Rehnquist made perfectly clear why they don't in the Brown speech which is quoted at page 131 of the transcript. They don't follow that procedure because they haven't got the proof to get a warrant.

I must say there was some candor in the Brown speech, but that candor was missing here.

Fifth, Mr. Rehnquist favors limitations on freedom of speech of Federal employees.

Sixth, he favors pretrial detention.

Seventh, he favors stopping habeas corpus after trial.

Eighth, he opposes the exclusionary rule.

Ninth, he describes a violation of the search and seizure provisions of the fourth amendment as a technical violation. This appears at

page 317 of the record. The case he is referring to is *Whitely* v. *Warden*, 91 Supreme Court Reporter 1031. I do not think arresting a man without a proper warrant, without probable cause, is a technical violation of the fourth amendment. Neither did Mr. Justice Harlan who was the writer of that opinion and who is being accused of technical actions.

Tenth, and last on the matter of the Bill of Rights, is Mr. Rehnquist's letter defending Mr. Carswell, but a different sentence from it. This is the letter to the Washington Post by Mr. Rehnquist on February 14, 1970:

> In fairness you ought to state all the consequences that your position logically brings to train, not merely further expansion of constitutional recognition of civil rights but further expansion of the constitutional rights of criminal defendants, of pornographers and of demonstrators.

Any human being who would put demonstrators—idealistic young poeple—in a category of criminal defendants and pornographers, has no devotion to the Bill of Rights.

This long list might not be so damning if there had been some slight deviation, if for just once in his life Mr. Rehnquist had come out on the side of the Bill of Rights. But with a record like this and not a single redeeming statement, how could the Senate possibly say he meets the standards of this great Court?

I come now to what I promised, which was a demonstration that Mr. Rehnquist's testimony before this committee was evasive and lacking in candor.

Mr. Mitchell already has given you one example—on voting harrassment. I shall not repeat what Mr. Mitchell said, but I shall give you nine other examples of evasion and absence of candor.

As I was saying, Mr. Chairman——

Senator HART. Mr. Rauh and Mr. Mitchell, and for the benefit of others who may be interested, it is the feeling, given the schedule problem that may be yours and certainly is for certain members of the committee, that we receive your testimony to its completion and at that point recess for lunch; and assuming you conclude in time to permit this, return at 2, at which time questions can be addressed to you and to Mr. Mitchell.

Mr. RAUH. Thank you, sir. We shall return.

Listing 10 examples of the lack of candor and evasiveness, Mr. Chairman, I referred to Mr. Mitchell's testimony on voting harrassment as the first item.

The second item I would refer to is the claim of attorney-client privilege. That claim in this circumstance was built out of whole cloth. Mr. Mitchell and Mr. Nixon are not Mr. Rehnquist's clients; they are his bosses.

Mr. Mitchell here wants me to make clear I was referring to the other Mr. Mitchell. [Laughter.]

Mr. RAUH. There is nothing confidential about Mr. Rehnquist's present views. He goes out and makes speeches; what's confidential about that? You ask him what his real view is; what's confidential about that?

What he is saying is: "I am using the attorney-client privilege, but I really don't want to embarrass the administration by saying what I really believe."

Well, I think Mr. Rehnquist is like everybody else; I think he said what he believed. It was too rough against civil rights and civil liberties, so he is now saying that he has a privilege not to tell this committee what he really believes. Of course, he did tell the committee his views when he wanted to. He made a very selective use of the privilege. When he wanted to puff about the wiretapping change, why, he happily waived the privilege. When he didn't want to say something, then he didn't waive the privilege.

I have talked to a number of people who are experts in this field and I think one can sum up the attorney-client privilege as one that relates to the sphere of confidential information. Mr. Rehnquist's situation was not within the privilege because he was not talking about information but personal views; and the personal views were not within the sphere of confidence or business relations but what he thinks himself.

Mr. Rehnquist's situation is really not attorney-client privilege; he is invoking it to avoid talking about views that might embarrass the administration. I respectfully suggest Mr. Rehnquist was not being frank when he said he could not talk about administration policies, for, back in 1957, he freely talked about the innerworkings of another institution of which he was a part, the U.S. Supreme Court.

It seems to me what he is doing is abusing the attorney-client privilege. When Attorney General Mitchell this morning or yesterday answered Senator Bayh's request with a statement that there was confidentiality, I would respectfully ask the Attorney General what is confidential about Mr. Rehnquist's present views on anything.

Third, at page 152 of the transcript, Mr. Rehnquist says that he was not suggesting in his writings that the Supreme Court sympathizes with communism. Then what in heaven's name did he bring this subject up for? You don't bring a subject up about—you don't start an article in the American Bar Association Journal with the statement—Communists and former Communists had a field day in the Court, if you are not trying to imply something. These things were written, as I said before, by a laundered McCarthyite who was trying to suggest that the Supreme Court's dedication to the Bill of Rights was somehow ideologically sympathetic to an obnoxious and abhorrent doctrine. He was not frank with the committee. I would admire him more if he had simply said, yes, that is his view and stood by it.

Fourth, he contends in testimony at pages 105 and 106 of the transcript that all he had suggested in the letter to the Post about Carswell was that the Post was at least in part in error. If I have ever seen a letter which addressed itself to totality of error, it was that one. When Senator Kennedy sought to get some answers on the letter, Mr. Rehnquist went back to privilege.

Fifth. This was most revealing. I read you the question that was asked by Senator Ervin: "Does a serious Constitutional question arise when a government agency places people under surveillance for exercising their first amendment rights to speak and assemble?"

Answer: "No."

When the Senators questioned Mr. Rehnquist about this, listen to what he says at page 51: "Surveillance is not per se unconstitutional." He didn't testify before Senator Ervin anything about surveillance not being per se unconstitutional. What he talked about was that surveillance didn't even raise a constitutional question.

And then, on page 137, he said surveillance is not a violation of the first amendment. What he testified was that it doesn't even raise a constitutional question. Here a man is seeking to go on the U.S. Supreme Court who thinks governmental surveillance of the people does not even raise a constitutional question.

Sixth, his suggestion at page 83 and again later with Senator Cook, that his "qualified martial law" statement had nothing to do with May Day runs in the face of the fact that it was given in the context of May Day, was interpreted by everyone as referring to May Day and was never repudiated until the hearing here.

Seventh, when asked what he had ever done for civil rights, he referred to the indigents he had represented with no specifics whatever. And he referred to his membership on the Board of the Legal Aid Society as though it was something he had sought, whereas it was an ex officio membership of the Bar Association of Phoenix.

Eighth, on wiretapping, Mr. Rehnquist showed what he really thought of the attorney-client privilege. He didn't think anything of it. He wanted to get in the record the fact that he had shifted the reasoning of the Government in support of wiretapping in domestic subversion cases without a warrant, so he just waived the privilege and did it.

Furthermore, as I indicated earlier, in the brief which I have here, if anybody would like to study it, the distinction is entirely meaningless.

Ninth, when Mr. Rehnquist wrote in the Harvard Law Record about stare decisis, this is what he said, and I quote:

"There are those who bemoan the absence of stare decisis in constitutional law, but of its absence there can be no doubt."

Over and over again here he referred to the importance of stare decisis even in constitutional law, a total negation of what he had said there.

Finally, No. 10: Mr. Rehnquist said that there was no State civil rights legislation in Arizona. I have it here.

I thank you for your courtesy and your patience and I would just like, in conclusion, to make this very short comment:

What is this man whose record you are considering? Here is what he is: (1) A lawyer without compassion for blacks and other minorities; (2) a lawyer who never once spoke up for the Bill of Rights; (3) a lawyer who believes in unchecked Executive power, whether it is security wiretapping, surveillance of individuals, executive privilege on information for Congress, delegation of functions to the SACB or the Cambodian invasion; (4) a lawyer who fenced with the committee rather than speaking with candor.

Members of the committee, there is a generation of young lawyers watching this committee and the Senate. Many of them, most of them, are idealistic young men to whom the Court is the highest body to which one can aspire, the highest post any lawyer can hope for You must not fail them. You owe it to them to insist on Supreme Court nominees dedicated to human rights and the Bill of Rights. You owe it to the whole generation of young lawyers coming up in this country to say "No."

Thank you, Mr. Chairman.

Senator HART. You indicated that it would be possible for you to return for questioning. I suggest, then, a recess until 2 o'clock.

(Whereupon, at 12:40 p.m., the hearing was recessed, to reconvene at 2 p.m., this date.)

AFTERNOON SESSION

Senator HART (presiding). The committee will be in order.

At our recess, it was indicated that as we resumed this afternoon the two witnesses, Mr. Rauh and Mr. Mitchell, would return in order that any questions the committee members might have would be addressed to them.

TESTIMONY OF CLARENCE MITCHELL AND JOSEPH L. RAUH, JR.—Resumed

Senator HART. Senator Mathias?

Senator MATHIAS. Mr. Chairman, I would like to direct the attention of Mr. Mitchell—let me say it is a pleasure to welcome you to the committee, along with Mr. Rauh—I would like to direct Mr. Mitchell's attention to page 2 of his written statement, the paragraph on page 2 which is numbered 4, in which he said that: "During some of the elections in Phoenix Mr. Rehnquist was part of a group of citizens who engaged in campaigns to challenge voters and thereby prevent them from casting their ballots. Most of such voters were the poor and black citizens of Phoenix."

That does concern me, of course. Mr. Rehnquist testified on Wednesday directly on this point in his testimony which appears on page 149 and 150 of the transcript, to the effect that his responsibilities were never those of challenger but as a group of laywers working for the Republican Party in Maricopa County to attempt to supply legal advice to persons who were challenged.

I think there is an ambiguity here, and I know Clarence Mitchell well enough to know that he wants the record to be in as good a state as it can be.

You have said, Mr. Mitchell, that Mr. Rehnquist "prevented" the casting of ballots. In the boldest construction of that, that would be a serious crime. On the other hand, if in fact he was acting as counsel for those who were properly and lawfully commissioned as challengers on the part of the Republican Party, that would be within the scope of a legal political activity.

I wonder if you can clarify that?

Mr. MITCHELL. I would like to, Senator Mathias, in this way: Apparently this was a well organized effort, going back to 1958, and as described to me, Mr. Rehnquist started off working in the ranks as a person who actually sought to challenge voters. The statement given to us asserts that he went first to the Granada precinct, he and another man. They didn't go as arbitrators but as people to challenge the right of voters to vote.

Senator MATHIAS. I am not personally familiar with the law of Arizona. As you know, the law of Maryland requires that a challenger be someone who is so designated by the organized political parties.

Mr. MITCHELL. That is correct.

Senator MATHIAS. Within the State of Maryland.

Mr. MITCHELL. Well, I do not know whether he had such credentials, but——

Senator MATHIAS. Do you know if such credentials are required in Arizona?

Mr. MITCHELL. I do not. But I do know when he was asked he presented sufficient information that the person who talked with him knew who he was; and as I understand it, instead of raising questions about whether a person lives at the address where he purports to live, and whether he is a member of a party or whatever the requirements were, Mr. Rehnquist personally began asking for interpretations of the Arizona constitution. Then, this occurred over an extensive period of time and with so many voters being held up that the officials in the polling place asked him to leave on the ground that his activities were preventing people from voting.

Then, as I understand it, he went around to another precinct, known as the Bethune precinct, which is at a school named for the late Mary McCloud Bethune, a very prominent colored leader, and in that school Mr. Rehnquist began doing the same thing.

I, in the lunch hour, called Senator Cloves Campbell on another matter which I will refer to at the appropriate time, and Mr. Campbell assured me that a Mr. Robert Tate was present at the time that Mr. Rehnquist was engaging in these activities which prevented people from voting.

The gentleman at the Granada precinct is white and he is a State employee. I have done everything that I could do to persuade those who know him to ask him if he would make a statement and he says he is not going to take a chance on losing his job and isn't going to talk. But I understand from Senator Campbell that Mr. Tate will present information on this. I tried to reach him by long distance phone and I was unable to.

I will continue to try and I will try to get substantiation of what Senator Campbell told me.

Senator MATHIAS. Is it your statement, and is it your understanding, that the purpose of these activities was, in fact, to obstruct persons who were trying to vote? Or is it your understanding that the consequential result of these activities happened to be obstructive? This is a very critical question.

Mr. MITCHELL. I agree; it is; and I think the answer merits exploration of facts by the committee by questioning Mr. Rehnquist. That is why I urged that he be called back because Senator Campbell states that this was a concerted effort to prevent Negroes from voting. He said that the only reason he wasn't present when Mr. Rehnquist was operating is that he was trying to handle another similar problem in another precinct himself.

He says this goes on in almost every election and, as I said in my earlier testimony, Mr. Merritt who was the president of our NAACP told me that a Federal judge down in the area had indicated to him that at one point it had been necessary to call in the FBI. That is the reason I suggested that the committee, I would hope, respectfully, would ask the FBI just what kind of investigation they carried on and what did they find, because it is indeed serious to the point of being a conspiracy to deprive people of their right to vote; and it seems to me that is a serious enough thing to warrant the fullest exploration.

Senator MATHIAS. But at the moment the only evidence that you can point to is the statement that Senator Campbell has given you and which you have submitted to the committee?

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

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

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

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

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

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

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

(The affidavit referred to follows:)

AFFIDAVIT

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

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

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

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

(Signed) Senator CLOVES CAMPBELL.

[SEAL]

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

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

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

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