

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.