THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

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TESTIMONY OF

CLARENCE M. MITCHELL, III, PRESIDENT

NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

before the

COMMITTEE ON THE JUDICIARY

UNITED STATE SENATE

on the confirmation of

WILLIAM H. REHNQUIST

to be Chief Justice of the United States

July 29, 1986

NBCSL

"A National Network For Political Equality!"

Mr. Chairman and Members of the Judiciary Committee:

My name is Clarence M. Mitchell, III, and I testify today on behalf of the National Black Caucus of State Legislators on the nomination of Associate Justice William Rehnquist to be Chief Justice of the United States.

The National Black Caucus of State Legislators opposes the nomination of Associate Justice Rehnquist to be the Chief Justice of the United States. We take this extraordinary position because Mr. Justice Rehnquist's entire public career both on the Court and off demonstrates unmitigated hostility to the interests of minority Americans.

Before I get into the specific reasons why Mr. Justice Rehnquist should not be confirmed, I want this Committee and the full United States Senate to understand how black citizens feel about the institution of the Supreme Court.

For most white Americans the only court they encounter in their entire lives is the traffic court or the small claims court. Only rarely do decisions of state and federal courts affect them personally. For black Americans, the most fundamental questions affecting our daily existence -- even decisions about whether we are persons or property -- are decided by the Supreme Court. It is that Court to which we have turned time and time again over the course of history for judgments on where we can live and go to school, where we can eat and travel, the extent of our political rights, our access to jobs and thus

our very economic existence. Save possibly for American Indians, I doubt that there is any other group of Americans so directly touched by this institution.

Who sits on the Supreme Court in judgment over our lives is therefore of enormous importance to us. In his 15 years on the Court, Justice Rehnquist has consistently voted against the claims of minorities. He has shown a persistent refusal to recognize the deep roots of racism in American life and to permit the federal courts the tools to remedy past racial discrimination and its continuing effects.

Evidence of his hostility of our rights is also apparent in Mr. Rehnquist's private life in Phoenix, Arizona, before he came to the Court. This Committee ought truly to regret that it did not fully examine in 1971 the allegations that are now surfacing about Mr. Rehnquist's purported role in harassing black and Hispanic voters at the polls in the early 1960's. But you can rectify that unfortunate error in these hearings. It would be a shame if this Committee brushed off these charges on the grounds that, even if true, Mr. Rehnquist's activities happened so long ago and have been dimmed by his "brilliant" scholarship and judicial service. And the Senate of the United States should not confirm as Chief Justice a man who is not fully forthcoming in defending himself against the testimony of personal witnesses that he did intimidate minority voters.

Were these allegations about interference with minority voting rights the only cloud hanging over this nomination, they

would be serious enough. But Mr. Justice Rehnquist publicly espoused opposition to a public accommodation ordinance and school desegregation in Phoenix 22 years ago. While he disavowed his earlier position at the time of his confirmation hearing in 1971, the reasoning for his original positions continues to haunt black citizens.

The record shows that Mr. Rehnquist testified in opposition to a public accommodation ordinance before the Phoenix City Council on June 15, 1964. After the City Council unanimously passed the ordinance, Mr. Rehnquist wrote a letter to the editor of the Arizona Republic which was published on June 21, 1964. Mr. Rehnquist distinguished between the power of government to interfere with the rights of private property owners in such "orthodox" matters as zoning, health and safety regulations and the power of government to require private proprietors of public facilities to serve all without regard to race. The former he favored; the latter he opposed by reference to some "historic right" of owners to choose their own customers. Black Americans are offended by this notion that the cleanliness of an eating establishment is more important than the skin color of the person who orders a meal. We well remember that time when black Americans were arrested and jailed for challenging that "historic right" of proprietors to refuse us service.

On the matter of racially segregated schools in Phoenix, Mr. Rehnquist wrote a letter to the Arizona Republic dated September 9, 1967 opposing integration proposals and defending the

neighborhood school concept "which has served us well for countless years." That letter contains an astounding statement 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...." A free society for whom, I would ask. That sentiment bespeaks an attitude that the white majority's free society is to be valued above the aspirations of minority citizens to be full-fledged and equal partners in that society.

Now you may say to me, Senators, "Why Mr. Mitchell, do you not admit of the capacity of a man to change his mind? Do you forever hold against Mr. Rehnquist the positions he took in the 1960's?" My answer, Senators, is that he may have changed his positions on these issues, and even his rationale. But it is the way in which he balances competing interests on great public questions of the day which bothers me the most. After all, we have a 15-year record of his votes as a Justice of the Supreme Court on civil rights cases to show how he continues to balance those interests.

I leave to my fellow panelists the legal analysis of Mr. Justice Rehnquist's decisions in civil rights cases.

I thank you for the opportunity to testify.