

Senator KENNEDY. Mr. Chairman, I regret I wasn't here when Ms. Hernandez was sworn in. I would express a warm word of welcome to her and to our panelists. Antonia Hernandez worked as a staff member of the Judiciary Committee for a long period of time, and during that period of time performed very good service for our committee, just generally, and personally, on the whole range of issues involving equal rights. Those rights are an important issue we face here.

I was just, as someone who has pursued this issue, wondering if you would be kind enough to just tell us what was happening in that community at this time. We heard the allegations. Judge Kennedy heard that whole series of allegations, in terms of where the ballot boxes were located, the harassment of Hispanic Americans in terms of poll watching—the whole range of allegations, and he had indicated that even if they accepted those it wouldn't justify changing the kind of elections that would be held.

What was really happening in that community at that time? Do you firmly believe that if those allegations were reviewed, even submitted to a jury, that there would have been a finding that the elections in that community were sufficiently tainted as to justify or warrant a new election?

Ms. HERNANDEZ. Well, basically, this was in the early seventies, and there was a great deal of effort to try to apply the Voting Rights Act to Hispanics. And we were doing this in Texas and in California. And when I speak of we, I mean MALDEF did.

And there was a great deal of activity within our community trying to activate and educate the Hispanic community to participate in the political process. So that there was a great deal of effort to get the community to really go out and try to participate, knowing that there's a great deal of poverty, lack of education, et cetera.

What is interesting in this particular case is that the facts as they were happening in San Fernando Valley were similar to what was happening in Texas and in other places in the Southwest. Interestingly enough, in Texas, because of the severe overt discrimination of the last 100 years, the courts were finding in our favor.

In California, because you didn't have the lynchings, or at least the overt lynchings and the overt actual segregation and discrimination—in California it is much more subtle—the same facts that we were presenting were being rejected as not being sufficient.

Some of the allegations in this particular case included statements by the Mayor about outside agitators coming in, you know, to change our government, our city government.

Second, we had statements a week before the election by the city clerk alleging fraud and irregularities. Moreover, there was the whole issue of employment discrimination. And also placing of the polling places in predominantly Anglo areas.

The combination of factors is overwhelming. When you have unemployment, poverty, and lack of education, our trying to get minorities and particularly Hispanics to participate in the political process by giving them hope that they will make a difference is extremely difficult. To give you an example, in every case where we have litigated and have won, and gone from an at large to a single member district, there has been a marked difference.

In the Hispanic community, if you show our community that there is hope, that they can make a difference, it happens. And let me give you an example. In San Antonio, as I have already cited, the fact is that in 1976, 37 percent were participating in the polling and voting. By 1985, it had increased to 43 percent. And, in fact, in the last Presidential election, there are statistics that show that Hispanics participated at a higher level than the majority of the population.

Senator KENNEDY. Let me ask you this.

The Judge indicated that the case really asked for a citywide result, that they wanted basically to overturn the whole election system, and I think you make a strong case that if they examined the facts, and they went to a jury, the facts were there that it may very well have been proved. And I think you make a strong case that it would have been proved sufficiently powerful to overturn the whole kind of election system.

Let me go back a step. He'd indicate that he might have been prepared to make some kinds of adjustment in terms of polling places and have partial kinds of response to some of these charges that were made in the petition. But since the plea was for an overall elimination of the at-large election, or vacating of the election, he didn't have that opportunity to be able to make those kinds of findings.

What is your response to that?

Ms. HERNANDEZ. I beg to differ with Judge Kennedy, and let me tell you why. Two reasons.

As you all know, once the case is dismissed, it's *res judicata*. There have been some statements about the fact that we could have gone back. We couldn't have.

Second, in voting rights cases as in desegregation cases, there are two stages. You first go to the stage of establishing liability, and after you establish liability at a trial, then you go into the second stage, which is the remedy stage.

By dismissing the case on a summary motion, he precluded us from even going to court and establishing liability.

Now, as we all know, once you get to court and establish liability, what one pleads as a remedy might not be what one gets. And it is at the remedy stage, as you know, that the Judges have the discretion to give less than what one would ask for.

So to say he dismissed the entire case because we only wanted the remedy from going to at large to single member districts just doesn't hold.

Furthermore, as I stated, and what makes this case to us extremely important, is that he went out of his way to fill in the blanks where the majority had not done it. And, quite frankly, I must say that with friends like Judge Kennedy, he would have done us a lot more of a favor if he had just concurred and left it at that.

But by setting out all the facts, as he did in this case, what he basically said is if this is all you have, it isn't good enough in the ninth circuit, and you're out.

And so that's the particular significance. And also for us, and I highlight—

Senator KENNEDY. Why do you think he did that?

Ms. HERNANDEZ. Really, I don't know, and I don't understand. And I know that yesterday some comments were made by Judge Kennedy about the fact that he was trying to sort of set out something so that we—and it's MALDEF, because we litigated the case—could come back again. But, as I've already stated the issue was *res judicata*.

But I think this shows his lack of understanding, and to me that is even more distressing. He comes from California. He has lived among us all of his life. If I was here testifying about someone from the Midwest or even the Northeast, to say that they are not familiar with Hispanics, with the history of our discrimination, I could understand that I have to educate someone. But we're dealing with someone that comes from the Southwest, who has lived among us, and should be much more sensitive to the subtleties of the discrimination and to the subtleties of exclusion when they're in a political process.

And that's where I have the greatest of concern as to what's going to happen. And I have come to you to express that concern. And I guess the question, before you ask me, is what do I want?

Senator KENNEDY. You're a heck of a litigator and educator. [Laughter.]

Ms. HERNANDEZ. And what I want is to go back and to ask Judge Kennedy to give further assurance and clarification as to how he views Hispanics. My concern is that he might not feel that we deserve the same type of protection as the black community and other protected minorities that are protected on civil rights.

I want that assurance. I want to see what he states on the record. I'm also concerned on the issue of women, the *AFSCME* issue. I'm concerned on the *Spangler* issue, I'm concerned with the *TOPIC* issue, and basically the common threat that one sees in those cases is the threat that he kicks people out of court, that he doesn't give them that opportunity. And even when they do win, even when they do satisfy the stringent requirements of a federal district court judge, that he overturns those decisions.

He is a man of intellect, no question about it; a man of devotion, but he's also a man of the establishment and, unfortunately, we have not been part of that establishment.

And what I want is an expansive of consideration of that perception of what America is.

Thank you.

Senator KENNEDY. Thank you very much. Your testimony's very powerful.

The CHAIRMAN. I yield to the Senator from Pennsylvania. The reason we're doing this is because both the witnesses have to catch an airplane and then we'll go to the rest of the panel, if you have any questions for us.

Senator SPECTER. Thank you, Mr. Chairman.

The CHAIRMAN. Ms. Hernandez is her name.

Senator SPECTER. Ms. Hernandez, I came in late on your testimony because I have a conflicting assignment with the Intelligence Committee which is having a session right now, but I wanted to return and ask a few questions.

The subjects which you raised have been discussed at length with Judge Kennedy. In my final round yesterday, I discussed with him