

Senator HATCH. We have agreed that we will not read from FBI reports. You can read statements and give the dates of those statements.

Senator DECONCINI. Mr. Chairman, Mr. Chairman, I have not participated in any such—to proceed as I did yesterday and make statements in the record as to the source of those things—my sources—

Senator HATCH. All we have agreed to is that we will not cite the FBI reports. We can certainly read statements. The Senator knows what we are doing here. We will go through these five witnesses starting with Mr. Brosnahan and then we will move on to the affidavits or statements afterward.

We welcome all of you here. If you will stand, we will swear you all in.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you, God?

Mr. BROSNAHAN. I do.

Mr. PINE. I do.

Mr. MIRKIN. I do.

Mr. SMITH. I do.

Mr. PENA. I do.

Senator HATCH. Thank you.

We welcome you to the committee, and we look forward to taking your testimony. We will give each of you 3 minutes. I will have to cut it off then.

Mr. Brosnahan.

**TESTIMONY OF A PANEL, INCLUDING: JAMES BROSNAHAN, BERKELEY, CA; MELVIN MERKIN, PHOENIX, AZ; CHARLES PINE, PHOENIX, AZ; SYDNEY SMITH, LA JOLLA, CA; AND MANUEL PENA, PHOENIX, AZ**

Mr. BROSNAHAN. Mr. Chairman, thank you very much.

My name is Jim Brosnahan. I was born and raised in Massachusetts, graduating from Boston College in 1956; and after my wife and I graduated from the Harvard Law School in 1959, we moved to Arizona, on April 10, 1961, and between that date and February 1963, I was an assistant U.S. attorney, prosecuting criminal cases in Phoenix.

In 1963, I left Arizona and moved to San Francisco, where I also served as an assistant U.S. attorney prosecuting criminal cases. I am now in private practice in that city.

I am appearing today at the request, as I understand it, of the Democratic members of this committee. I have never volunteered any information about the events of 1962.

Mr. Chairman, I am here today for one reason, having practiced in the law courts for 27 years, and that is this committee is entitled to evidence if you want it, and it should be as accurate as it can possibly be.

On election day in November 1962 in Phoenix, AZ, several assistant U.S. attorneys were assigned the task of receiving complaints alleging illegal interference with the voting process. As complaints came in, an assistant U.S. attorney, accompanied by an FBI agent would be dispatched to the precinct involved.

On that day, the U.S. attorney's office in Phoenix received numerous complaints from persons attempting to vote in precincts in south Phoenix. The most common complaint we received on that day was that the challenges at the various precincts were aggressive and were without foundation. Here, I am distinguishing between a situation where someone knows that there is no house at a certain address; that would be a legitimate challenge.

We received numerous complaints on that day as did the office of Senator Hayden, who was then senior Senator from Arizona. Based upon my understanding at that time, it was legitimate to challenge a person if they could not read. It was not legitimate to challenge a person if you had no basis to believe that your challenge was appropriate.

We were advised on numerous occasions that the lines were long. In south Phoenix at that time, the population was predominantly Hispanic and black. There were charges of harassment. It was a serious situation. Based on interviews with voters, polling officials, and my fellow assistant U.S. attorneys, it was my opinion in 1962 that the challenging effort was designed to reduce the number of black and Hispanic voters by confrontation and intimidation.

I received a complaint on election day and went with an agent of the Federal Bureau of Investigation to a polling place in south Phoenix. The polling place had a long line of voters, several tables at which sat challengers from both parties, and an official whose job it was to preside over allowing people to vote.

There may have been one or two other officials or clerks. When we arrived, the situation was tense. And I recall that situation, Mr. Chairman, because in particular, as that line stood there, when we showed our credentials and I showed that I was an assistant U.S. attorney from the Department of Justice, and the FBI agent showed that he was from the Federal Bureau of Investigation, members of the line made it clear to us by words and gestures that they were glad that we were there.

After we showed our identification, we talked to persons involved, and the FBI agent interviewed anyone having information about what had occurred at the polling place.

At that polling place, I saw William Rehnquist, who was known to me as an attorney practicing in the city of Phoenix. He was serving on that day as a challenger of voters; that is to say, the conduct and the complaints had to do with his conduct.

I have, as you can imagine and appreciate due to the passage of years since I first was asked about this a few days ago, searched my memory as to the nature of those complaints. It is my belief that if I were to try to be accurate and detailed with regard to those complaints, it might well be that I would be unfair to Justice Rehnquist, which is not my desire. That is not the reason that I am here. But I do recall that the complaints had to do with him. And on one point, I am very clear. I showed him my identification coming from the Department of Justice. On that day, we were investigating under the then existing law, which included 18 U.S.C. section 594, which made it a misdemeanor to intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote.

In addition, we were investigating 18 U.S.C. section 241, which is a felony to conspire to deny people of their civil rights.

I have read the testimony and letters supplied by Justice-Designate William Rehnquist to this committee in 1971. On pages 71 and 72 of his testimony, he describes his role in the early 1960's as trying to arbitrate disputes at polling places. This was not what Mr. Rehnquist was doing when I saw him on election day in 1962.

At page 491 of the 1971 record, in his letter, William Rehnquist stated, "In none of these years did I personally engage in challenging the qualifications of any voters." This does not comport with my recollection of the events I witnessed in 1962, when Mr. Rehnquist did serve as a challenger.

William Rehnquist was well-known to me in 1962. As I say, the legal community at that time was a lot smaller than it is today, and Mr. Rehnquist had served as a clerk on the U.S. Supreme Court, which was a distinction, I think, that not too many lawyers in Phoenix had at that particular time.

There is no question in my mind, and I have searched my recollection having in mind the important function of this Committee. I am a lawyer, and I do understand how important this is. There is no question but that the person I talked to in 1962 was William Rehnquist.

In 1971, when Mr. Rehnquist was nominated to be a Justice of the Supreme Court, I recall the 1962 incident. No one contacted me about it at that time. I did not know until recently that this committee had actually inquired into the voting problems of those years, and I found that out only recently.

The only other point, Mr. Chairman, that might or might not be of assistance to this committee is my recollection is that these incidents were covered by the press in 1962, and I know that the evidence I have, Mr. Chairman, involves 1962 because that is the only year I was an assistant U.S. attorney in Phoenix, and it was covered by the press, and in fact there was an article in The Arizona Republic the day after which quoted Carl Michie, who is now the Federal judge—he was then the U.S. Attorney—as saying: "We were obtaining the FBI reports, and when those were received, then a decision would be made as to any criminal prosecution."

In fairness, it should be said that no criminal prosecution was pursued, and in our judgment at that time, this did not make a criminal case against any of the people about whom there had been complaints.

Thank you, Mr. Chairman.

[Statement follows:]