

Now, if they want to stay around and gain some wisdom from the Senators, that will be fine, too.

Thank you very much.

Senator LEAHY. Mr. Chairman, before you start, could I just note one thing, because a number of us are going to be doing this? So I will not have to be answering all kinds of phone calls from my office, a lot of us are on various committees of conference, and I think different ones will be going in and out during this hearing. I thought I would note that so that Judge Kennedy does not think that we suddenly left in dismay.

The CHAIRMAN. The Judge has some extensive experience in California, in the California legislature, and I know he knows how legislative bodies work. That is a good point to make. I know some of my Republican and Democratic colleagues will have to be absent at part of the hearing throughout. I know Senator Metzenbaum has business he has to attend to this afternoon. I know that you and many others are on a conference.

So, Judge, if, in fact, Senators are moving in and out, it is not out of lack of interest. It is additional responsibilities in the Senate that require them to do so.

Senator THURMOND. Mr. Chairman, we will be glad to excuse any of them, of course, just so they are here when the time comes to vote for Judge Kennedy. That is all that counts.

The CHAIRMAN. As usual, my colleague from South Carolina beats around the bush a lot.

Let me yield now to our colleague from California, Senator Wilson. Welcome, Senator.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. I will avail myself of the opportunity to drink deep from the wisdom. I do have some time this morning, and I look forward to it.

I am particularly pleased—in fact, I feel privileged—to be able to introduce a long-time friend, but much more importantly an exceptional judge, one who gives promise of giving truly distinguished service on the Supreme Court of the United States. The committee is in possession of his background, his record, which is an extraordinary one. You know that he was a brilliant student, both as an undergraduate at Stanford, graduating Phi Beta Kappa, having completed all of the work required for his graduation by the end of his junior year so that he took his senior year at the London School of Economics. You know that he was a cum laude graduate of the Harvard Law School; that he was born and raised in Sacramento and, after his father's death, returned, having served 2 years with one of the best known, most prestigious San Francisco firms, to take over his father's practice in Sacramento. I will not dwell at length on that.

I was privileged to first know Tony Kennedy some 20 years ago when we were both young men—still, I hope, young at heart. He was a young lawyer practicing in Sacramento. I was a young member of the State legislature. A small part of his practice consisted of legislative advocacy, and it was in that role that I first

knew him. He was a very different kind of legislative advocate. He came to my office, and without my soliciting him to do so, he informed me not only who was for the legislation that he was proposing, but who was opposed to it and why in both cases. He anticipated my questions. He did not offer to buy me a drink. He did not offer to take me to dinner. He was a very good legislative advocate and, I think, an effective one, though I have read that it was not particularly a part of his practice that he enjoyed. But for those of us who were exposed to him, we quickly learned that this was a young man who obviously knew what it was that he was talking about, who disclosed everything, and who concealed nothing.

Judge Kennedy's excellent reputation as a lawyer became so well known in 1975 President Ford named him to the U.S. Court of Appeals for the Ninth Circuit. He was only 38 years old, one of the youngest lawyers ever honored by a Presidential appointment to the nation's second highest court. It was as a member of the ninth circuit that Judge Kennedy has authored hundreds of opinions, majority opinions, as well as some very important dissents, one of which I will dwell upon in a moment.

He has, through all the years of maintaining a very heavy judicial docket, found time to serve on a number of administrative panels for the improvement of the functioning of the federal judiciary, as well as upon the Committee on Pacific Ocean Territories. He has been a director of the Federal Judicial Center and a National Correspondent for Crime Prevention and Control with the United Nations.

Beyond his work on the bench, Judge Kennedy's dedication to the law has inspired him to teach at the McGeorge School of Law of the University of the Pacific, where he has been a distinguished professor since 1965.

It would be a gross understatement to say that Judge Kennedy has been well received by his students. Not only have they found him to be, in the words of one former student, "an excellent teacher" who commands a "brilliant intellect," but they also know him to be a very creative instructor. He reportedly has taken to conducting a lecture on the Constitutional Convention having assumed the persona of James Madison—complete with period garb.

What I was looking for a moment ago was the exact quote of one of his students, a Mr. Norm Scott, and I will have to paraphrase Mr. Scott. He said that it was clear that Judge Kennedy enjoyed the interchange, the interaction with his students, enjoyed teaching them to think. It was also true that, while he told them that they should respect the pronouncements of the Supreme Court, they should not accept them as gospel.

I think that it is clear from those who have known Judge Kennedy in one persona or another—whether as teacher or as a judge during his 12 years on the Court of Appeals—that he has demonstrated the highest intellect, a truly judicial temperament, great compassion.

I think, too, that it is clear from those that have known him, either as teacher or judge, that he has exhibited, in the courtroom as well as in the classroom, the belief that the Founding Fathers exercised the greatest care that the national government, and especially our federal courts, should play a properly limited role in the

lives of our citizens. We should expect no less care of any candidate for our nation's highest court, and in Judge Kennedy you will find that expectation fully met.

When a judicial candidate's qualifications are considered, one ever-present question is whether he or she possesses compassion. But too often, the test of compassion is focused too heavily on the candidate's concern for the accused, with little or no regard for society and little or no regard for the victim.

Justice does not simply demand protection of the rights of the accused; it demands as well the protection of the rights of those harmed. Until a verdict has been returned, the accused in a criminal case obviously is just that—the accused. But whether the accused being tried is ultimately adjudged guilty or innocent, we cannot ignore the fact that an innocent victim has been harmed: either deprived of property or, in the most egregious circumstance, forced to suffer the violence of rape or robbery or other assault, or even death.

Unfortunately, in the effort to respond to some past abuses of those accused by our criminal justice system, we have almost lost sight of the need to safeguard the rights of victims. Judge Kennedy has never lost sight of the need for our criminal justice system to seek justice for all those affected by crime, as he made clear in a speech delivered earlier this year in New Zealand. As he stated forthrightly, “[A] decent and compassionate society should recognize the plight of its victims.”

In fleshing out this basic truth, Judge Kennedy went on to say that, “An essential purpose of the criminal justice system is to provide a catharsis by which a community expresses its collective outrage at the transgression of the criminal.”

Clearly, that is what law-makers do in enacting criminal codes. We proscribe antisocial conduct and prescribe a penalty for the commission of a prohibited act; and we entrust the application of the laws to judges. That is why the role of judges is so important. As Judge Kennedy noted in his speech, “It does not do to deny the same catharsis to the member of the community most affected by the crime. A victim's dissatisfaction with the criminal justice system, therefore, represents a failure of the system to achieve one of the goals it sets for itself.”

This failure which Judge Kennedy has noted occurs most often at retail, in the courts, when the application of the law achieves not justice, or the legislative intent of deterrence and catharsis, but frustration and distrust in the victim and in the public.

It is little wonder that victims often fail to report crimes, Judge Kennedy notes, for the criminal justice system's failure to care about victims is too well known and too often inspires in the public doubt that true justice will be done. Ultimately, victims and witnesses become indifferent to the need of the criminal justice system for their cooperation in the belief that the system has become indifferent to them.

Judge Kennedy's concern is appropriate not only for those of us entrusted with making the law, but also for judges who apply it. Certainly, it is appropriate for those whose duty it is to test it against the Constitution.

If the proper protections of the Constitution are stretched to the point where the criminal law provides inadequate and uncertain protection to the public, if our criminal justice system is perceived to be unjust, the demoralizing effects may well breed distrust, disrespect for the legal process, and a desperate resort to vigilante actions. The *Bernhard Goetz* case comes to mind.

Broadly stated, our exclusionary rule requires that if the constable blunders, the criminal goes free. The sad fact is that too often when the constable has made no willful blunder, the criminal has still gone free, even where evidence of guilt was entirely reliable.

And, again, the result in such cases has been that in seeking to curb and penalize unlawful police practices, our criminal justice system, through largely court-made law, has released the clearly guilty, to the outrage of the victim and to the peril of the public. This situation has been one that cries out for judicial application of a rule of reason to limit abuses.

Enter now Judge Kennedy—and reasonable balance.

In an exceptional dissenting opinion in the case of *United States v. Leon*, Judge Kennedy argued that a truly good-faith mistake by police should not lead to a criminal's release. What makes the opinion exceptional is that its persuasiveness ultimately led to its adoption by the Supreme Court.

It is this strict approach to the application of the fourth amendment that is necessary to restore effectiveness, fairness, and true compassion to our criminal justice system.

There are many issues that will be raised by the members of this committee during these confirmation hearings, drawing deep from the well of American law. But as the committee carries out its constitutional responsibilities, it will look, I am sure, to see whether or not Judge Kennedy's service on the Supreme Court will serve the interests of justice—which, in my judgment, it surely will—but as the committee seeks justice, it should also do justice both to the nominee and to the confirmation process.

At the President's announcement of his nomination, Judge Kennedy told reporters that this committee and the entire Senate have a duty to give the most careful scrutiny to his candidacy, and that he welcome such scrutiny. Mr. Chairman, I take pride in joining him in inviting that scrutiny.

Tony Kennedy's record as a lawyer, as a judge, as a teacher, as a human being, is an open book, and it is a story of an individual who has charted a judicial course of such distinction and soundness, of such consistency and reliability, that there should be little question of his exceptional qualifications to serve on the Court—as, indeed, the American Bar Association has found in giving him its highest rating. Therefore, I urge the committee to complete its work with both deliberation and alacrity, so that the Senate may consider Judge Kennedy's nomination at the start of the new year. I know that is the Chairman's intention. I congratulate him upon his having moved expeditiously to convene these hearings as early as he has.

Mr. Chairman, I will simply say that I think when you have completed your deliberations, and when the Senate has voted, we will have given the Supreme Court a distinguished new member, one who will reflect credit upon us and upon the President in having

made this nomination. More importantly, he will be a valuable addition. He has long years of service to give. His, I think, will be a truly extraordinary career, as it has been already.

Thank you, Mr. Chairman.

[The statement of Senator Wilson follows:]