



AMERICAN BAR ASSOCIATION

Standing Committee on  
Federal Judiciary  
1800 M Street, NW  
Washington, DC 20036  
(202) 331-2210

December 15, 1987

CHAIRMAN  
Harold R. Tyler, Jr.  
30 Rockefeller Plaza  
New York, NY 10112

FIRST CIRCUIT  
Ralph I. Lancaster, Jr.  
One Monument Square  
Portland, ME 04101

SECOND CIRCUIT  
William E. Willis  
125 Broad Street  
New York, NY 10004

THIRD CIRCUIT  
Jerome J. Shestack  
Suite 3600  
1600 Market Street  
Philadelphia, PA 19103

FOURTH CIRCUIT  
James A. Howard, Sr.  
1410 First Virginia Bank Tower  
101 51 Paul's Boulevard  
Norfolk, VA 23510

FIFTH CIRCUIT  
Lloyd Lochridge  
Suite 1300  
999 Congress Avenue  
Austin, TX 78701

SIXTH CIRCUIT  
John C. Flam  
52 East Gay Street  
Columbus, OH 43215

SEVENTH CIRCUIT  
Joan M. Hall  
Suite 4300  
One IBM Plaza  
Chicago, IL 60611

EIGHTH CIRCUIT  
James W. Florent  
Post Office Box 81268  
1815 Y Street  
Lincoln, NE 68501

NINTH CIRCUIT  
J. David Andrews  
1900 Washington Building  
Seattle, WA 98101

Samuel L. Williams  
45th Floor  
355 South Grand Avenue  
Los Angeles, CA 90071

TENTH CIRCUIT  
James A. Clark  
Suite 1100  
303 East 17th Avenue  
Denver, CO 80203

ELEVENTH CIRCUIT  
M. Roland Nachman, Jr.  
Post Office Box 78  
2 Dexter Avenue  
Montgomery, AL 36107

DISTRICT OF COLUMBIA  
CIRCUIT  
James J. Bierbower  
International Square  
Suite 1275  
1875 I Street, NW  
Washington, DC 20006

FEDERAL CIRCUIT  
John D. Lane  
Suite 600  
1666 K Street, NW  
Washington, DC 20006

BOARD OF GOVERNORS  
LIAISON  
Sharp Whitmore  
2005 Gird Road  
Fallsbrook, CA 92028

STAFF LIAISON  
Irene R. Emsellem  
2nd Floor, South Lobby  
1800 M Street, NW  
Washington, DC 20036  
(202) 331-2210  
ABA/NET ABA 461

The Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Re: Judge Anthony M. Kennedy

Dear Mr. Chairman:

This letter is submitted in response to the invitation of your Committee to the Standing Committee on the Federal Judiciary of the American Bar Association (the "Committee") to submit its views with respect to the nomination of the Honorable Anthony M. Kennedy to be an Associate Justice of the Supreme Court of the United States.

The Committee's evaluation of Judge Kennedy is based on its investigation of his professional competence, integrity and judicial temperament, as defined in the Guidelines of the Committee.

The Committee investigation in recent weeks included the following:

1. Members of the Committee interviewed the Justices of the Supreme Court of the United States, colleagues of Judge Kennedy on the Court of Appeals, judges who have worked closely with Judge Kennedy on Judicial Conference committees and a large number of other federal and state judges throughout the country, including judges who are women or members of minority groups.

2. Committee members interviewed a cross-section of practicing lawyers across the country, including former law clerks of Judge Kennedy.

The Honorable Joseph R. Biden, Jr.  
Page 2  
December 15, 1987

3. Committee members interviewed a number of Deans and faculty members of law schools in the United States, including a number of colleagues of the nominee at McGeorge Law School.

4. Members of the faculty of three law schools, Fordham University, the University of Pennsylvania and Vermont Law School, divided the task of evaluating the published opinions of Judge Kennedy throughout his career as a member of the Court of Appeals for the Ninth Circuit. In addition, all of the opinions of Judge Kennedy were reviewed by a group of lawyers in the office of the Chairman of the Committee.

5. The Committee reviewed the relatively few available speeches of Judge Kennedy.

6. Three members of the Committee interviewed Judge Kennedy in person on November 30, 1987. In addition, the chairman talked with the nominee by telephone on several occasions.

#### Professional Background

As is surely known to the Senate Judiciary Committee, Judge Kennedy's career includes service as a practicing lawyer, a Federal Circuit Judge and a law school professor. He received a Bachelor of Arts degree with great distinction from Stanford University in 1958. He also attended the London School of Economics and Political Science at the University of London. He then attended Harvard Law School, from which he graduated cum laude in June, 1961, with an LL.B. degree. He was admitted to the bar of the State of California in 1962.

In the fall of 1961, he entered private practice as an Associate in a San Francisco law firm. Following the death of his father, he left San Francisco in 1963 to return to Sacramento, where he assumed charge of his late father's law practice. He continued to practice law in Sacramento from December, 1963 until May, 1975, when he was appointed a United States Circuit Judge for the Court of Appeals for the Ninth Circuit by President Gerald Ford. Since 1965, he also has served as an Adjunct Professor of Law at McGeorge Law School, located in Sacramento, where he taught constitutional law.

#### Interviews with Judges

Of the more than 480 persons interviewed by this Committee, over 300 are federal and state judges. All of those judges who had direct knowledge of Judge Kennedy's professional work spoke positively about his intellect, his thoughtful analyses of legal problems presented to him, both as a lawyer and a judge, his

The Honorable Joseph R. Biden, Jr.  
Page 3  
December 15, 1987

writing ability and his collegiality. He has been described by various judges as "studious", "always well prepared", "collegial" and "willing to listen to the submitted facts and law from the parties and their counsel."

Those judges who do not personally know Judge Kennedy have a favorable impression of him based on his reputation and their readings of his opinions.

In sum, the judges interviewed by this Committee looked favorably on Judge Kennedy's nomination.

#### Interviews with Lawyers

The Committee interviewed approximately 100 practicing lawyers throughout the United States, many of whom have appeared before a panel of the Ninth Circuit of which Judge Kennedy was a member. On the whole they spoke affirmatively about the nominee's intellect, temperament and integrity. Specifically, some recalled that "the Judge was always well prepared and asked pertinent questions"; that the Judge had a perceptive and inquiring mind; and that "he was always fair and willing to listen." Other lawyers who knew the Judge only by reputation were universal in their praise of his reputation for decency, sound scholarship and willingness to decide cases on a case-by-case basis without a particular preordained agenda or set philosophical approach to the relevant areas of the law.

#### Interviews with Law School Deans and Faculty Members

The Committee interviewed more than 80 law school deans and faculty members, including his colleagues at McGeorge Law School and others who know Judge Kennedy only by reputation or through occasional review of his opinions. None of these people in academic life reported adverse or unduly critical opinions of Judge Kennedy. Indeed, he was praised for a willingness to be fair, to write with attention to all issues in each case, and to proceed with reasonable thoroughness in his legal analyses.

#### Review of Judge Kennedy's Written Opinions

Three law schools were asked to divide, study and comment on Judge Kennedy's opinions. The Fordham University Law School reviewed Judge Kennedy's constitutional law opinions in areas other than the First Amendment and certain of his criminal law opinions. Vermont Law School reviewed his environmental law opinions and certain administrative law opinions, together with his statutory civil rights opinions. Finally, the University of

The Honorable Joseph R. Biden, Jr.  
Page 4  
December 15, 1987

Pennsylvania Law School reviewed Judge Kennedy's First Amendment, antitrust, securities and labor law opinions.

Moreover, as heretofore stated, a team of lawyers in the office of the undersigned reviewed all of Judge Kennedy's reported decisions as a Circuit Judge.

The consensus reached by all of the reviewers, whether strongly affirmative or more reserved in their approval, was that Judge Kennedy's opinions are on the whole technically and persuasively crafted, fair and even-handed and generally do not go beyond points at issue. Indeed, it is part of this consensus, in which the members of this Committee concur, that Judge Kennedy has not been prone to give long, expository opinions reflecting his philosophy, but rather uses his analytic and writing skills to deal with the issues raised by the litigants and their lawyers. Most reviewers specifically commented favorably about his judicial temperament. By way of illustration, most noted his fairness and his effort to give parties and their lawyers a sense that their arguments were listened to, carefully considered and decided on the basis of the record. Moreover, it was frequently commented that no bias was discerned; and Judge Kennedy always has endeavored to convey a sense of balance, compassion and fairness. Hence, he was frequently described as a "lawyers' judge" or a "litigants' judge". There were occasional minor suggestions that some of the nominee's opinions disclose that he is not always "a good teaching judge." The characteristics giving rise to this concern did not predominate over the great bulk of his opinions and, in the view of the Committee, were not of sufficient significance to affect the Committee's conclusions.

#### Conclusion

This Committee is satisfied that its investigations reveal that Judge Kennedy's integrity is beyond reproach, that he enjoys justifiably a reputation for sound intellect and diligence in his judicial work and that he is uniformly praised for his judicial temperament. Hence, we have concluded that Judge Kennedy is among the best available for appointment to the Supreme Court of the United States from the standpoint of professional competence, integrity and judicial temperament\* and that he is entitled to

---

\* This Committee confines its investigation to these three criteria. As in investigations of lower court nominees, it does not investigate a nominee's political or ideological philosophy "except to the extent that extreme views on such matters might bear upon judicial temperament or integrity."

The Honorable Joseph R. Biden, Jr.  
Page 5  
December 15, 1987

this Committee's highest evaluation of a nominee to that Court because of the high standards which he meets. Accordingly this Committee has unanimously found him "Well Qualified".

This report is being filed at the commencement of the Senate Judiciary Committee's hearings. We will review our report at the conclusion of the hearings and notify you if any circumstances have developed that dictate modification of the views herein expressed.

Respectfully submitted,

  
Harold R. Tyler, Jr.  
Chairman

7084A