

PROPOSED TESTIMONY OF ROBERT B. MCKAY
AT THE CONFIRMATION HEARINGS FOR
JUDGE ANTHONY M. KENNEDY

My name is Robert B. McKay. At New York University School of Law I teach constitutional law and professional responsibility. I am a former Dean of that school and former President of the Association of the Bar of the City of New York; but I speak for myself alone, and for no institution.

My acquaintance with Judge Kennedy is not extensive, but has left me with an extremely favorable impression of his intellectual capacity, his integrity and his congenial personality. Our mutual interest arises out of shared admiration for one document and one institution. The institution we both admire is the McGeorge School of Law in Sacramento, California, where Judge Kennedy has taught constitutional law for many years.

The document in which we share an interest is the Constitution of the United States. His respect for that venerable instrument, as its meaning evolves over time, shines through his opinions, his speeches, and through the admiration of successive generations of his students who enthusiastically endorse his nomination. I know well how difficult it is to persuade students of any view which they believe conflicts with their own opinions.

Undoubtedly, Judge Kennedy's views and mine are likely to diverge on some constitutional questions -- perhaps even more than would be the case with some hypothetical candidate never to be nominated in the real world. I find nothing novel in differences on constitutional issues. Alas, I find no one on the present Supreme Court, and no previous incumbent who got it right all the time, at least when compared with my own views of what is right and what is wrong. The important point is that Judge Kennedy's views, now extensively on the record, demonstrate two things that I consider important: First, the views he has expressed are in the mainstream. Whether a little to the right or a bit to the left is less significant than the manifest indication of an interest to stay with the main current. Second, his written product demonstrates a respect for precedent. Like any intellectually capable member of the Court, he may from time to time seek further movement in the law; but there is no evidence of a desire for abrupt departures from carefully developed doctrines of the law.

I will close, perhaps frivolously, by quoting the letter I sent to Judge Kennedy when the President announced his nomination. This is the whole text:

Dear Tony:

Finally, the President has got it right.
Congratulations and best wishes!

Sincerely,

Bob McKay