

**TESTIMONY OF A PANEL CONSISTING OF JOHNNY L. HUGHES, DIRECTOR, LEGISLATIVE AND CONGRESSIONAL AFFAIRS, NATIONAL TROOPERS COALITION; JERALD R. VAUGHN, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE; AND DEWEY R. STOKES, NATIONAL PRESIDENT, INTERNATIONAL ORDER OF POLICE**

Mr. HUGHES. Mr. Chairman, honorable members of this distinguished committee, I wish to thank the committee for once again giving my organization the opportunity to speak on the proposed nomination of Supreme Court Justice, an office to which only the most qualified should be appointed. I note in this regard that the nominee has been rated "well qualified" by the American Bar Association.

The National Trooper's Coalition, having reviewed the positions taken by Judge Kennedy in numerous cases involving issues of criminal law, believes him to be eminently qualified and urges his speedy confirmation to this most important position. Judge Kennedy, who has lengthy experience within our judicial system, having served for 12 years as a member of the U.S. Court of Appeals for the Ninth Circuit, has amassed a record of participating in some 1,400 decisions, authoring over 400 of these.

It is in the area of criminal law that we believe Judge Kennedy would prove to be an outstanding jurist. He has shown throughout his 12 years on the Federal bench a keen understanding of the challenges facing police officers in their struggle against society's criminal element. Police officers risk their lives and, unfortunately, too often give them in this battle that can at times be made frustrating by rulings that protect the criminal over the rights of society as a whole.

Judge Kennedy, recognizing the difficulties facing officers and appreciating the costs paid by all citizens of this country if relevant evidence is excluded and the guilty are allowed to go unpunished, has been in the forefront of those members of the judiciary taking a second look at the exclusionary rule.

Writing in a dissent in *United States v. Leon*, Judge Kennedy believed that the rigidities of the exclusionary rule had been stretched beyond reason under the facts of that case, a position later adopted in that case by the Supreme Court when it recognized a good faith exception to the rule.

In *United States v. Harvey*, he argued, again in dissent, that the results of blood alcohol test had been properly admitted in a manslaughter case. Judge Kennedy, arguing that the officer had acted in good faith and with probable cause in taking the blood sample, would not have excluded the results of the test simply because the defendant had not been arrested prior to the taking of the sample. He again warned against such illogical application of the exclusionary rule, writing:

If the exclusionary rule becomes an end in itself, and the courts do not apply it in a sensible and predictable way, then one approach is to reexamine it altogether. We do not have that authority, but we do have the commission and the obligation to confine the rule to the purposes for which it was announced.

The exclusionary rule seems to have acquired such independent force that it operates without reference to any improper conduct by the police.

In other areas of criminal law, we believe that Judge Kennedy has distinguished himself with his positions taken. He has upheld the conviction of drug smugglers where evidence was gathered by the use of helicopter overflights of the defendant's property. In another matter, he upheld the death penalty for an inmate who murdered a fellow inmate while serving a life term without parole for previous rapes and murders of two teenagers. He has, we believe, struck a proper balance between protecting the rights of society to enforce its laws and upholding the constitutional rights of an accused at the same time.

The National Trooper's Coalition urges the Senate Judiciary Committee membership to endorse this nomination, and we hope for the earliest possible confirmation by the U.S. Senate.

Thank you once again for giving us the opportunity to express our views.

[The statement of Johnny L. Hughes follows:]