



NATIONAL TROOPERS COALITION

112 NIATI STREET SOUTH 1212 ALBANY N.Y. 12207 518-962-7168

BEFORE
THE UNITED STATES SENATE
JUDICIARY COMMITTEE

CONFIRMATION HEARING

FOR
THE HONORABLE ANTHONY M. KENNEDY

AS
ASSOCIATE JUSTICE
OF THE UNITED STATES SUPREME COURT

CHAIRMAN
THOMAS J. ISKRZYCKI
30 NEWPORT DRIVE
HOWELL, NEW JERSEY 07731
HP 201-364-0870
WP 049-540-8800

1ST VICE CHAIRMAN
STEPHEN J. LUMP
P.O. BOX 6254
PHOENIX, AZ 85005
HP 602-979-2938
WP 602-262-8411

2ND VICE CHAIRMAN
MICHAEL MUTH
P.O. BOX 90
LAFAYETTE, MARYLAND 20646
HP 301-675-8955
WP 301-674-4620

RECORDING SECRETARY
LLOYD VITT
607 HIGHWAY B
HILLSBORO, MICHIGAN 49090
HP 314-789-2747
WP 314-645-2778

CORRESPONDING SECRETARY
FRANCIS D. RILEY
25 ANN LANE
LYNN, MASS 01904
HP 617-598-4341
WP 617-549-7916

TREASURER
MARIO A. GAROFALO
52 SEBASTIAN AVE
DORRY, CONN 06418
HP 203-734-5765
WP 203-238-0688

LEG. M. COUNSEL
MICHAEL G. O'Rourke
127 NORTH AVENUE
METHUEN, N.Y. 14211
HP 716-683-1574
WP 716-683-2748

SPEAKING IN FAVOR OF THE NOMINATION
THE NATIONAL TROOPERS COALITION

JOHNNY L. HUGHES
DIRECTOR, LEGISLATIVE AND
CONGRESSIONAL AFFAIRS

PARTICIPATING MEMBER, NATIONAL LAW
ENFORCEMENT COUNCIL

SUPPORT YOUR STATE TROOPERS
REPRESENTING OVER 40,000 TROOPERS SERVING 250 MILLION AMERICANS

THE UNITED STATES SENATE JUDICIARY COMMITTEE

December, 1987

CONFIRMATION HEARING
ANTHONY M. KENNEDY
FOR ASSOCIATE JUSTICE OF THE
UNITED STATES SUPREME COURT

TESTIFYING: 1/LT. JOHNNY L. HUGHES
Maryland State Police
1201 Reisterstown Road
Pikesville, Maryland 21208
(301) 653-4343
(301) 679-6276

LIEUTENANT HUGHES, A TWENTY YEAR VETERAN OF THE MARYLAND STATE POLICE, IS DIRECTOR OF LEGISLATIVE AND CONGRESSIONAL AFFAIRS FOR THE NATIONAL TROOPERS COALITION. THE NATIONAL TROOPERS COALITION IS COMPOSED OF STATE POLICE AND HIGHWAY PATROL AGENCIES THROUGHOUT THE UNITED STATES AND HAS A MEMBERSHIP OF APPROXIMATELY 45,000 TROOPERS.

MR. CHAIRMAN, HONORABLE MEMBERS OF THIS DISTINGUISHED COMMITTEE.

I AM JOHNNY L. HUGHES, TESTIFYING ON BEHALF OF, AND AS DIRECTOR OF LEGISLATIVE AND CONGRESSIONAL AFFAIRS FOR, THE NATIONAL TROOPERS COALITION. OUR ORGANIZATION, COMPOSED OF APPROXIMATELY 45,000 MEMBERS, REPRESENTS TROOPERS FROM STATE POLICE AND HIGHWAY PATROL AGENCIES THROUGHOUT THE UNITED STATES. WE BELIEVE, HOWEVER, THAT WE SPEAK TO THE SAME CONCERNS AS DO MANY MILLIONS OF OUR FELLOW CITIZENS FOR A FAIR AND IMPARTIAL JUDICIARY AND ONE THAT PROTECTS THE RIGHTS OF SOCIETY TO EFFECTIVELY ENFORCE ITS CRIMINAL LAWS.

I WISH TO THANK THE COMMITTEE FOR ONCE AGAIN GIVING MY ORGANIZATION THE OPPORTUNITY TO SPEAK ON THE PROPOSED NOMINATION

- 3 -

OF A 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 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, HAS AMASSED A RECORD OF PARTICIPATING IN SOME 1,400 DECISIONS, AUTHORIZING 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.

- 4 -

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 A 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

- 5 -

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.

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 UNITED STATES SENATE.

THANK YOU ONCE AGAIN FOR GIVING US THE OPPORTUNITY TO EXPRESS OUR VIEWS.