

The CHAIRMAN. Thank you very much.

Ms. KUHL. And I failed to mention you are a former Deputy Solicitor General in your introduction.

Ms. KUHL. Thank you, Mr. Chairman. It is a privilege to be on a panel with such distinguished members of the California Bar, and I am pleased and honored to have the opportunity of being here to testify in support of the nomination of Judge Anthony Kennedy to be Associate Justice of the U.S. Supreme Court.

I clerked for Judge Kennedy in the years 1977 and 1978, which was his third year on the bench, and I am now a partner in the Los Angeles firm of Munger, Tolles and Olson. As you have mentioned, Mr. Chairman, in the recent past I did serve with the Department of Justice and had an opportunity to concentrate in appellate and Supreme Court litigation in the Civil Division and also in the Solicitor General's Office.

The CHAIRMAN. What years was that?

Ms. KUHL. The Solicitor General's Office was in 1985 and 1986. I began with the Justice Department in 1981, I believe.

The CHAIRMAN. Thank you.

Ms. KUHL. I would like to address two aspects of Judge Kennedy's qualifications for the bench. First, his general approach to deciding cases; and, second, the personal qualities he brings to his work. And, if this begins to sound a little bit repetitive with regard to what other witnesses are saying, I hope that it is convincing you that you are getting a true picture of the man both as judge and as a person.

In terms of Judge Kennedy's approach to deciding cases, judging is, of course, more an art than a science, and so it is not always easy to describe a judge's approach to case decision. But I would like to point to several characteristics of Judge Kennedy's decision-making: his practicality, his collegiality, his courage and restraint. I know the committee's time is short, so I will just touch briefly on each of these.

Judge Kennedy's approach to the law is above all practical, and by that I mean that he is concerned about how a legal principle will work in practice. He, as you know, has been a trial lawyer and a general practitioner, and he understands how lawyers approach their representation of clients, he understands the discovery process and its potentials for abuse, he understands how a case is actually tried to a judge or to a jury, and he understands the types of matters that are best decided at the trial level.

Judge Kennedy understands also that appellate judges, through their decisions, act essentially as supervisors of a very complex legal system. He therefore thinks carefully about how each rule of decision that he sets forth in an opinion will affect the interplay of that legal system.

Judge Kennedy also places great importance on collegiality. I have heard him observe that collegial decision-making is in fact different from individual decision-making. He strives to have good relationships on the ninth circuit with judges with whom he tends to disagree as well as with judges with whom he tends to agree.

He also has great respect for what is called the Law of the Circuit. That is, he decides cases consistently with cases previously decided by the ninth circuit. If he disagrees with circuit precedent, he

may seek to have the issue reviewed by the ninth circuit en banc, but he does not simply ignore prior precedent or seek to distinguish it on some spurious basis.

Judge Kennedy also has demonstrated courage in his decision-making, and that quality is important especially for Justices of the Supreme Court, who are faced more often than most judges with cases in which the branches of our government are pitted against each other. An example of Judge Kennedy's courage in striking down an action that cannot be squared with the Constitution is his decision in *Chadha v. Immigration and Naturalization Service*. In addition, he has been just as vigilant in halting or reversing executive branch actions when he has found them contrary to law.

While Judge Kennedy shows courage in striking down improper actions of the political branches, he also shows restraint in exercising this judicial power. His own personal views of right and wrong do not govern his decisions. He always tries to follow the letter and intent of the statute or Constitution, letting justice be defined by the written law rather than by the feelings or beliefs, however sincere, of himself and his fellow judges.

I especially remember one case where Judge Kennedy articulated personal distress about the particular consequences to the individual plaintiff of a district court's decision. Nonetheless, Judge Kennedy upheld the district court because he believed that that result was in fact required by an honest application of the relevant statute and of the existing circuit precedent.

Turning then briefly to the personal qualities that Judge Kennedy brings to the bench, he is a man of compassion, as I have just noted, in his personal approach to trying to understand what is happening to a plaintiff in a case. He is a man of great humility; he is not someone who is influenced by the statements of others, by deference to him, by people coming up to him and indicating he is someone important. And I think humility is very important when a person goes on the Supreme Court, which is a very isolated and formal existence.

Judge Kennedy has many other fine qualities. I know the committee's time is short. Suffice it to say that if Judge Kennedy is confirmed the current Supreme Court Justices will be very lucky indeed to have so genial a colleague and the country will be well served by a jurist of proven integrity and ability.

Thank you, Mr. Chairman. And my thanks to the committee.

[The statement of Carolyn B. Kuhl follows:]