

U. S. SENATE JUDICIARY COMMITTEE

HEARINGS ON NOMINATION OF JUDGE ANTHONY M. KENNEDY
TO BE ASSOCIATE JUSTICE OF THE U. S. SUPREME COURT

DECEMBER 14, 1987, 10:00 A.M.

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

I am pleased to welcome Judge Kennedy and his family to the Judiciary Committee this morning.

Today, the Committee gathers for the second time in less than three months to undertake one of our most important tasks: to hear the testimony of the President's nominee to the United States Supreme Court.

Our work here over the next few days actually will reflect the performance of three important duties.

First, we have a duty to the Senate, to develop a complete and detailed record on all issues pertaining to the fitness of Judge Kennedy to serve on the Supreme Court, and to recommend to the Senate, based on that record, whether it should give its consent to this nomination.

Second, we have a duty to the Constitution, that magnificent charter whose 200th anniversary we mark this year. The men who wrote the Constitution recognized that the appointment of a Justice of the Supreme Court is too important a decision to leave to one branch of government alone. They gave the President the power to nominate, but they entrusted to

the Senate the power to give or withhold its consent. The fulfillment of this second duty also requires that we examine this nomination with extraordinary care.

Finally, we have a duty to the American people. The decisions of the Supreme Court touch the lives of every citizen of our Republic. We depend upon the Supreme Court as the ultimate guardian of our liberties. Whoever succeeds Justice Powell on the Supreme Court will play a pivotal role in defining the shape of those liberties, not only for us, but also for our children, well into the next century. So our duty to the American people also requires us to act on the basis of a complete record that discloses, as well as it can be disclosed, what this nomination might mean for the future of our freedoms.

We have already begun to fulfill these three duties -- to the Senate, to the Constitution, and to the American people -- by studying Judge Kennedy's distinguished record as an attorney, as a professor of constitutional law, and, for the past twelve years, as a United States Circuit Judge. The hearings that begin today are the next important step.

Three months ago, this Committee convened to carry out these same duties with respect to another nomination to the Supreme Court. The hearings on the nomination of Judge Robert

Bork established three precedents that should guide our work in the days ahead.

First, the Bork hearings were wide-ranging, thorough, and intensive. These hearings will share those features. I hope that every relevant aspect of the nominee's record will be thoroughly explored. Too much is at stake for the Committee to falter in its obligation to develop a complete record on which to base its recommendation to the Senate.

Second, the Bork hearings focused on the judicial philosophy of the nominee: his approach to the Constitution, and to the role of the Supreme Court in discerning and enforcing its commands. These hearings should have the same focus. No issue is more central to a decision on the appointment of Justice of the Supreme Court, the court which under our system has the last word on what the Constitution means.

Judge Kennedy will be asked about many aspects of his judicial philosophy, as reflected in his previous record. He will also be asked about many topics on which he has not previously spoken in public. His responsiveness to these questions, and the candor and completeness of his answers, will be important factors in the Committee's ultimate recommendation.

Finally, these hearings, like the Bork hearings, will be fair. Judge Kennedy will be given every opportunity to explain his judicial philosophy, to put his record in context, and to respond to any criticisms that may be leveled. That will give this Committee, the Senate, and the American people the chance to see the whole picture before a decision is made on this nomination.

The hearings on Judge Bork's nomination set a precedent in another way as well. Never before in our history have the American people been so engaged and so involved in the debate over the future of the Supreme Court. The public debate that accompanied the Bork nomination had its excesses and its low points, like every public debate in a democratic society. But on the whole, it was a positive example of our democratic system in action.

The decision on Justice Powell's successor remains the most important decision in the field of constitutional rights and responsibilities of this decade. It has been, and it must continue to be, a public decision, made on the basis of a public record and with the input of concerned citizens. I hope that the high level of public interest continues. Public debate on a nomination to the Supreme Court is in the best traditions of American citizenship.

I look forward, over the next few days, to learning more about Judge Kennedy's judicial philosophy and about his qualifications to serve on the Supreme Court.

Most importantly - these hearings carry out our duty to the United States Senate, to the Constitution and to the American people. We fulfill that duty if we are fair and thorough - we fail our fellow Americans, the Constitution and the Senate if we are not. I look forward to the challenge.