

TESTIMONY BY

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

BEFORE THE
SENATE JUDICIARY COMMITTEE

CONCERNING THE CONFIRMATION OF
JUDGE ANTHONY M. KENNEDY

TO
THE SUPREME COURT OF THE UNITED STATES

DECEMBER 15, 1987





The International Association of Chiefs of Police is a professional organization comprised of over 14,500 top law enforcement executives from the United States and 68 nations. IACP members lead and manage several hundred thousand law enforcement officers and civilian employees in international, federal, state and local governments. Members in the United States direct the nation's largest city police departments including New York City, Los Angeles, Chicago, Detroit, Houston and others, as well as suburban and rural departments throughout the country.

Since 1893, the IACP has facilitated the exchange of important information among police administrators and promoted the highest possible standards of performance and conduct within the police profession. This work is carried out by functionally oriented committees consisting of police practitioners with a high degree of expertise that provide contemporary information on trends, issues and experiences in policing for development of cooperative strategies, new and innovative programs and positions for adoption through resolution by the association.

Throughout its existence, the IACP has been devoted to the cause of crime prevention and the fair and impartial enforcement of laws with respect for constitutional and fundamental human rights.



Jerald R. Vaughn was appointed Executive Director of the 14,000 member International Association of Chiefs of Police on September 10, 1985. IACP is the world's largest association of police executives with members in the United States and sixty-seven overseas nations.

Director Vaughn is a native of Denver, Colorado, and received his Bachelors of Science Degree in the Administration of Justice from Metropolitan State College and Masters Degree in Public Administration from the University of Northern Colorado.

Director Vaughn began his law enforcement career in February 1968 with the Englewood, Colorado Police Department. He worked assignments in radio car and foot patrol, as a Field Training Officer, a Traffic Officer in the Traffic Bureau, and served fourteen months as an undercover agent in a federally funded multi-jurisdictional drug task force where he received a citation for service above and beyond the call of duty from the Governor of the State of Colorado. Director Vaughn was promoted to the rank of Sergeant, where he held assignments as a Field Supervisor, Tactical Team Leader, Internal Affairs Supervisor, and as the Administrative Assistant to the Chief of Police. Director Vaughn was promoted to the rank of Lieutenant and held assignments in the Patrol and Administration Division, and was serving as Commander of the Support Service Unit when he was appointed Chief of Police of the sixty-eight member Garden City, Kansas Police Department. Director Vaughn was then appointed to the position of Chief of Police of the 173 member Largo, Florida Police Department in May 1983.

GOOD MORNING SENATOR BIDEN AND MEMBERS OF THE JUDICAIRY COMMITTEE. MY NAME IS JERALD R. VAUGHN AND I AM THE EXECUTIVE DIRECTOR OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE. (IACP). WE ARE PLEASED TO STRONGLY SUPPORT THE NOMINATION OF JUDGE ANTHONY M. KENNEDY TO THE SUPREME COURT OF THE UNITED STATES. THE IACP EXECUTIVE COMMITTEE, BY MAJORITY VOTE AT THEIR DECEMBER MEETING IN LOUISVILLE, KENTUCKY, PLEDGED THEIR SUPPORT TO JUDGE KENNEDY. WE BELIEVE THAT HIS EXPERIENCE AND CREDENTIALS SPEAK FOR THEMSELVES. WE URGF THE JUDICIARY COMMITTEE TO QUICKLY CONFIRM HIM, THUS BRINGING THE COURT BACK TO ITS FULL COMPLEMENT OF JURISTS.

AS MEMBERS OF THE LAW ENFORCEMENT COMMUNITY, WE ARE EXTREMELY CONCERNED WITH ALL ELEMENTS OF THE CRIMINAL JUSTICE SYSTEM. THE SUPREME COURT IS THE HIGHEST COURT IN THE LAND; THEREFORE, IT IS OF GREAT IMPORTANCE TO US. CRIMINAL CASES MAKE UP THE LARGEST SINGLE CATEGORY OF CASES HEARD BY THIS COURT. THESE CASES ALSO HAVE THE MOST IMMEDIATE IMPACT ON OUR CITIZENS AND ON THE LAW ENFORCEMENT PERSONNEL IACP REPRESENTS.

WE HAVE REVIEWED JUDGE KENNEDY'S RECORD EXTENSIVELY AND WE ARE SATISFIED THAT HE WILL FAIRLY AND EVENLY ADJUDICATE THE CRIMINAL MATTERS COMING BEFORE HIM, THAT HE WILL FAIRLY AND CONSISTENTLY INTERPRET THE LAW, AND THAT HE WILL, AS MUCH AS HUMANLY POSSIBLE, BALANCE THE RIGHTS OF VICTIMS, THE RIGHTS OF THE ACCUSED, AND THE RIGHTS OF THE CITIZENS OF OUR GREAT NATION TO LIVE A CRIME FREE LIFE.

AS WE HAVE SAID TO THIS COMMITTEE PREVIOUSLY, WE ARE INTERESTED IN A GOVERNING SYSTEM THAT RESPECTS THE IDEA THAT SOME ISSUES ARE TO BE DECIDED BY THE STATES. WE CERTAINLY SUPPORT THE MOTION OF JUDICIAL REVIEW, BUT WE DO NOT THINK THAT COURTS HAVE BEEN VESTED WITH THE POWER TO SIT AS SUPERVISORY AGENCIES OVER ACTS OF DULY CONSTITUTED LEGISLATIVE BODIES AND SET ASIDE THEIR LAWS BECAUSE OF THE COURT'S BELIEF THAT THE LEGISLATIVE POLICIES ADOPTED ARE UNREASONABLE, UNWISE, ARBITRARY, CAPRICIOUS OR IRRATIONAL. WE BELIEVE THAT IT IS THE COURT'S FUNCTION TO OVERTURN LAWS PASSED BY STATE LEGISLATURES WHEN THE LAW VIOLATES A CLEAR CONSTITUTIONAL PROVISION. OUR RESEARCH SHOWS THAT JUDGE

KENNEDY SHARES OUR POINT OF VIEW.

JUDGE KENNEDY'S PHILOSOPHY OF JUDICIAL RESTRAINT IS CLEARLY DEMONSTRATED IN THE MORE THAN 400 OPINIONS HE HAS AUTHORED ON THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. HE HAS REFUSED TO MAKE NEW LAW (IN THE AREA OF COMPARABLE WORTH; AFSCME V. STATE OF WASHINGTON, 1985); HE HAS VOTED AGAINST EXPANDING FEDERAL POWER BEYOND "...WHERE THE WORDS OF THE STATUTE LEAD." (SCHREIBER DISTRIBUTING CO. V. SERV-WELL FURNITURE CO., 1986); HE HAS WRITTEN OPINIONS NOTING THAT MISTAKES IN STATUTORY CONSTRUCTION MUST BE REMEDIED BY THE CONGRESS AND NOT THE COURTS (U.S. V. BELL, 1984).

JUDGE KENNEDY'S DECISIONS REFLECT DUE REGARD FOR THE ROLE OF STATES IN OUR FEDERAL SYSTEM. HE HAS DECIDED CASES BY NOTING THAT THE ISSUE AT HAND (IN ONE CASE, WRONGFUL DISCHARGE) WAS A MATTER OF STATE CONCERN, AND FEDERAL LAWS IN THAT AREA WERE NOT INTENDED TO SUPERCEDE STATE REGULATION. [OSTROFE V. CROCKER (1982)]

JUDGE KENNEDY HAS ALSO RULED ON THE EXCLUSIONARY RULE,

A CRIMINAL PROCEDURE QUESTION THAT IS VERY INTEGRAL TO LAW ENFORCEMENT PROCEDURES. IN A DRUG CASE [UNITED STATES V. LEON] THE JUDGE DISSENTED FROM A DECISION THAT THE EVIDENCE SHOULD BE THROWN OUT BECAUSE , IN THE MAJORITY'S VIEW, IT WAS BASED ON AN INVALID SEARCH WARRANT. HE ARGUED THAT THE WARRANT WAS IN FACT VALID, STATING: "WHATEVER THE MERITS OF THE EXCLUSIONARY RULE, ITS RIDIGITIES BECOME COMPOUNDED UNACCEPTABLY WHEN COURTS PRESUME INNOCENT CONDUCT WHEN THE ONLY COMMON SENSE EXPLANATION FOR IT IS ON-GOING CRIMINAL ACTIVITY." WE WOULD NOTE THAT ON APPEAL, THE SUPREME COURT, WITHOUT EXAMINING THE VALIDITY OF THE WARRANT, CREATED A NEW "GOOD FAITH" EXCEPTION TO THE EXCLUSIONARY RULE. JUDGE KENNEDY QUITE APTLY REPRESENTED ONE OF LAW ENFORCEMENT GREATEST CONCERNS WITH THE COURT'S INTERPRETATION OF THE EXCLUSIONARY RULE, THAT IS, WHEN "COMMON SENSE" IS LEFT OUT OF THE INTERPRETATIVE PROCESS. WE TOTALLY AGREE WITH HIS POSITION ON THIS ISSUE.

JUDGE KENNEDY ALSO HAS SUPPORTED THE USE OF THE DEATH PENALTY, WHICH WE ENDORSE. IN ONE CASE [MEUSCHAER V. WHITLEY,

(1987)], THE JUDGE FIRST REMANDED THE CASE TO THE LOWER COURT TO ASSURE THAT ALL LEGAL PROCEDURES HAD BEEN OBSERVED. HOWEVER, WHEN THE LOWER COURT DETERMINED THAT SUCH WAS THE CASE, THE JUDGE FIRMLY UPHELD THE IMPOSITION OF THE DEATH PENALTY.

AS LAW ENFORCEMENT EXECUTIVES, WE ARE GREATLY INVOLVED IN THE WAR AGAINST ILLEGAL NARCOTICS IN OUR COUNTRY. SUPREME COURT DECISIONS HAVE A VITAL IMPACT ON THIS AREA OF THE LAW. JUDGE KENNEDY HAS UPHELD MAXIMUM SENTENCES AGAINST DRUG DEALERS [U.S. V. STEWART (1987)] AND UPHELD THE CONSTITUTIONAL VALIDITY OF THE ACTIONS OF FOREIGN GOVERNMENTS COOPERATING WITH THE UNITED STATES IN ANTI-DRUG VENTURES [U.S. V. PETERSON (1987)]. WE RESPECT HIS OPINIONS IN THIS AREA ALSO.

PERHAPS ONE OF THE MOST DIFFICULT ISSUES FOR LAW ENFORCEMENT OFFICERS TO UNDERSTAND IS THE UNJUSTIFIED AND UNREALISTIC SUSPICION OF SOME JUDGES TOWARD ALL LAW ENFORCEMENT OFFICIALS. IN MANY INSTANCES, WHEN WE TAKE THE STAND AT TRIALS, WE MUST FIRST ESTABLISH OUR CREDIBILITY AND HONESTY, NOT ON THE BASIS OF EVIDENCE PRESENTED AT TRIAL, BUT BASED ON THE FACT THAT

WE WEAR A BLUE UNIFORM. I CANNOT TELL YOU THE TOLL THIS TAKES ON OUR MORALE. JUDGE KENNEDY DOES NOT SHARE THIS VIEW OF LAW ENFORCEMENT. HE HAS STATED THAT

"WERE A JUROR TO ANNOUNCE THAT MOST LAW OFFICERS, BY REASON OF THEIR PROFESSION AND THEIR OATH, ARE TRUSTWORTHY AND HONEST BUT THAT SIMILAR RESPECT CANNOT BE ACCORDED TO PRISONERS, I SHOULD BE GRATIFIED, NOT SHOCKED. THOSE PRINCIPLES ARE CONSISTENT WITH A RESPONSIBLE CITIZENSHIP AND ARE NOT A GROUND TO CHALLENGE THE JUROR FOR CAUSE."

JUDGE ANTHONY KENNEDY
DARVIN V. MOURSE, 664 F.2D
1109 (1981)

JUDGE KENNEDY IS AN EXPERIENCED AND IMPARTIAL JURIST. HIS TWELVE YEARS OF SERVICE ON THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TOGETHER WITH HIS EXPERIENCE IN PRIVATE PRACTICE, MAKE HIM AN OUTSTANDING NOMINEE TO THE UNITED STATES SUPREME COURT. THE AMERICAN BAR ASSOCIATION HAS GIVEN HIM THEIR HIGHEST RATING. THE IACP SUPPORTS HIS NOMINATION WITHOUT QUALIFICATION. WE URGE YOU TO CONFIRM HIM AS AN ASSOCIATE JUSTICE OF THE HIGHEST COURT IN OUR LAND.

THANK YOU VERY MUCH GENTLEMEN. I WOULD BE HAPPY TO RESPOND TO ANY OF YOUR QUESTIONS.