

The CHAIRMAN. Thank you very much. Mr. Stokes.

Mr. STOKES. Good evening, Mr. Chairman, and members of the committee. It's a privilege and an honor to again appear before you in order to participate in these important proceedings. As the largest member organization of law enforcement professionals in the United States, we are vitally interested in the pending nomination of Judge Anthony M. Kennedy to become an Associate Justice of the U.S. Supreme Court.

Roughly, as we have said before, one-third of the Supreme Court's docket consists of criminal matters. We believe that a review of the nominee's views on criminal justice issues is essential, and it is our belief that Judge Kennedy has a sophisticated, yet common sense understanding of, and respect for, our criminal justice system. We believe that Judge Kennedy's strong academic background, his year in private practice, and his experience as a jurist, equips him to confront the many complex criminal justice issues that so vitally affect the law enforcement on a daily basis.

We are aware that over the span of his judicial career Judge Kennedy has confronted cases in which virtually every interest group known, including law enforcement, has had an interest. It is significant that Judge Kennedy's decisions have not always sided with any of these groups, including us, law enforcement.

Judge Kennedy has decided cases in favor of criminal defendants, and against the Government. He has decided cases in favor of management and against labor. He has decided cases in favor of private litigants and against police defendants. Yet, upon review of these cases, and all his cases, what emerges is a judge who follows the law. If bad facts compel an unpleasant result, Judge Kennedy follows the law without regard to the interest groups that may benefit. In the final analysis, we believe that that is just what we need, a Justice who adheres to the rules of law as opposed to one who attempts to create rules of law.

In our statement, which I have submitted for inclusion in the record, we have made reference to just a few of the hundreds of cases decided by Judge Kennedy. I will not reiterate those references. I do believe that a few points are worth mentioning.

Judge Kennedy has written, as John said, on the exclusionary rule, and we believe this to be a common-sense judging premised on the sophisticated understanding, the purpose of which the exclusionary rule was first developed.

Judge Kennedy has confined himself to the issues before him. His decisions adhere to precedent and do not speak to create judge-made law, whether in favor of or contrary to any particular interest.

In *United States v. Leon*, the Ninth Circuit suppressed the necessary evidence on the basis of staleness of document. In his dissent, Judge Kennedy found that the evidence should not have been suppressed and that there was sufficient probable cause and that common sense compelled such a conclusion. Later, the U.S. Supreme Court also found the evidence should not be suppressed, although its decision announced the so-called "good faith" exception to the warrant requirements.

Judge Kennedy's decision in the *Barker v. Morris* case, the sixth amendment case, this was another example of judicial common

sense; allowing the use of videotape at the preliminary hearing, testimony of a witness prevented the defendant from benefiting from successfully avoiding apprehension until after the witness had died. Because that testimony had been substantiated in specific indicia of the liability, Judge Kennedy held that the confrontation clause had not been violated.

Judge Kennedy's decision in the Fifth Amendment case also demonstrated his scholarly yet common-sense approach to criminal justice, Judge Kennedy's dissent in *Adamson v. Ricketts*, which would have prevented the murderer from going free.

A majority of the U.S. Supreme Court, including Justice Powell, agreed with the dissent. Adamson was a contract killer that did not go free.

Judge Kennedy's decisions are not pro police, they are pro justice. He has decided cases as a result of which convictions were overturned, evidence suppressed, and criminal defendants have gone free. Yet, when we review the totality of his writings, Judge Kennedy emerges as a fair-minded, principled, and common-sense judge, one with the opinion of police, that we share, and he so adequately described, and Jerry covered—when he announced to the juror—to announce that the most law-enforcement officers, by reason of their profession and their oath, are trustworthy and honest—but that similar respect cannot be afforded to prisoners, I should be gratified, not shocked. Those principles are consistent with a responsible citizen.

Based on his common sense, and his practice before the courts, and his interpretation of his rulings, we, in law enforcement, in the Fraternal Order of Police, urge you to confirm our new Associate Justice as soon as possible.

Thank you for the opportunity to speak to you this evening, Mr. Chairman.

[Statement of Dewey Stokes follows:]