

**STATEMENT OF SENATOR PETE WILSON  
OF CALIFORNIA  
BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE -- DECEMBER 14, 1987**

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**NOMINATION OF ANTHONY M. KENNEDY  
TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT**

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Mr. Chairman and members of the Committee, I am extremely pleased to appear here today to introduce Judge Anthony M. Kennedy, who has been nominated by the President to serve as Associate Justice of the Supreme Court of the United States.

My state of California has been blessed with an abundance of legal talent, and the public has been well served by the willingness of the very best to serve there as judges.

Among the very distinguished judges at all levels of the judiciary in California, it has been known far and wide for many, many years that there is no more distinguished and talented member of this varied fraternity than Judge Anthony Kennedy.

Anthony Kennedy was born in Sacramento, California, on July 23, 1936. The son of a noted lawyer in the state capital, he grew up in Sacramento and then attended Stanford University.

At Stanford, Judge Kennedy was an excellent student. Not only did he graduate "with great distinction" in 1958, he was also elected to Phi Beta Kappa and Phi Sigma Alpha, the national political science honor fraternity.

During his senior year at Stanford, Judge Kennedy already had fulfilled the principal requirements for graduation and attended the London School of Economics and Political Science at the University of London.

Deciding to follow his father into a career as a lawyer, Judge Kennedy attended Harvard Law School, where during his final year he served as a member of the Board of Advisors of the law faculty. He received his law degree, cum laude, in 1961.

Judge Kennedy began his legal career at the noted San Francisco law firm of Thelen, Marrin, Johnson & Bridges. In 1963, upon his father's death, Judge Kennedy returned to Sacramento to assume his father's business law practice. Four years later, he formed a partnership, Evans, Jackson & Kennedy.

Judge Kennedy's Sacramento law practice was broad in scope. During his years as a solo practitioner, he handled twenty to thirty litigation matters per year, including criminal and probate cases. After forming his partnership in 1967, Judge Kennedy's practice for major clients was extensive, including corporate, tax, administrative, real estate, and environmental law, as well as legislation, estate planning and probate, and international legal transactions.

Judge Kennedy's excellent reputation attracted the attention of President Ford, who named him in 1975 to the United States Court of Appeals for the Ninth Circuit. At the age of 38, Judge Kennedy was one of the youngest lawyers ever honored by a presidential appointment to the Nation's second highest court.

As a member of the Ninth Circuit Court, Judge Kennedy has authored more than 300 majority opinions, as well as 100 concurring and dissenting opinions.

While maintaining a full judicial docket, Judge Kennedy has also served on a number of administrative panels of the federal judiciary, including the Judicial Conference's Advisory Committee on Codes of Conduct and its Committee on Pacific Ocean Territories. He is also a director of the Federal Judicial Center and a National Correspondent for Crime Prevention and Control with the United Nations.

Beyond his work on the bench, Judge Kennedy's dedication to the law has inspired him to teach at the McGeorge School of Law of the University of the Pacific, where he has been a professor since 1965. He has been a distinguished teacher of the law.

It would be a gross understatement to say that Judge Kennedy has been well received by his students. Not only have they found him to be, in the words of one former student, "an excellent teacher" who commands a "brilliant intellect", they also know him to be a creative instructor. He reportedly has taken to conducting a lecture on the Constitutional Convention having assumed the persona of James Madison -- complete with period garb.

I have been privileged to know Tony Kennedy for more than 20 years, since we first met in Sacramento -- where, as I noted, he was born and raised, and where I had come to begin my political career in the state Assembly.

During his 12 years on the Court of Appeals, and indeed during his entire life, Tony Kennedy has shown himself to possess the highest intellect, temperament, and compassion.

Furthermore, as the Committee considers Judge Kennedy's nomination to serve on the Supreme Court, your review of his service on the Court of Appeals will leave no doubt that he subscribes to the conservative principles which the framers of our Constitution adopted 200 years ago.

He knows that our Founding Fathers exercised great care that the national government, and especially our federal courts, should play a properly limited role in the lives of our citizens. We should expect no less care of any candidate for our Nation's highest court, and in Judge Kennedy you will find that expectation fully met.

When a judicial candidate's qualifications are considered, one everpresent question is whether he or she possesses compassion. But too often the test of compassion has focused too heavily on the candidate's concern for the accused, with little or no regard for society, and with little or no regard for the victim.

Justice does not simply demand protection of the rights of the accused. Justice also demands the protection of the rights of those harmed. Until a verdict has been returned, the accused in a criminal case is just that -- the accused. But whether the accused being tried is ultimately adjudged guilty or innocent, we cannot ignore the fact that an innocent victim has been harmed -- either deprived of property, or in the most egregious circumstances, forced to suffer the violence of rape or other assault, or even death.

Unfortunately, in the effort to respond to some past abuses of those accused by our criminal justice system, we have almost lost sight of the need to safeguard the rights of victims.

Judge Kennedy has never lost sight of the need for our criminal justice system to seek justice for all those affected by crime, as made clear in a speech he delivered earlier this year in New Zealand. As he stated forthrightly, "[A] decent and compassionate society should recognize the plight of its victims."

In fleshing out this basic truth, Judge Kennedy went on to say that, "An essential purpose of the criminal justice system is to provide a catharsis by which a community expresses its collective outrage at the transgression of the criminal."

Clearly that is what law-makers do in enacting criminal codes. We proscribe anti-social conduct and prescribe a penalty for the commission of prohibited acts -- and we entrust the application of the laws to judges. That is why the role of judges is so important. As Judge Kennedy noted in his speech, "It does not do to deny that same catharsis to the member of the community most affected by the crime. A victim's dissatisfaction with the criminal justice system, therefore, represents a failure of the system to achieve one of the goals its sets for itself."

This failure occurs most often at retail, in the courts, when the application of the law achieves not justice, or the legislative intent of deterrence and catharsis, but frustration and distrust in the victim and in the public.

It is little wonder that victims often fail to report crimes, Judge Kennedy notes, for the criminal justice system's failure to care about victims is well known, and too often inspires public doubt that true justice will be done.

Ultimately, victims and witnesses become indifferent to the need of the criminal justice system for their cooperation, in the belief that the system has become indifferent to them.

Judge Kennedy's concern is appropriate not only for those of us entrusted with making the law, but also for judges who apply it. Certainly it is appropriate for those whose duty it is to test it against the Constitution.

If the proper protections of the Constitution are stretched to the point where the criminal law provides inadequate and uncertain protection to the public, if our criminal justice system is perceived to be unjust, the demoralizing affects may well breed distrust, disrespect for the legal process, and a desperate resort to vigilante actions. The Bernhard Goetz case comes to mind.

Broadly stated, our exclusionary rule requires that if the constable blunders, the criminal goes free. The sad fact is that too often when the constable makes no willful blunder, the criminal has still gone free, even where evidence of guilt was entirely reliable.

And again, the result in such cases has been that in seeking to curb and penalize unlawful police practices, our criminal justice system, through largely court-made law, has released the clearly guilty -- to the outrage of the victim and the peril of the public. This situation has been one that cries out for judicial application of a rule of reason to limit abuses.

Enter now Judge Kennedy -- and reasonable balance.

In an exceptional dissenting opinion in the case of United States v. Leon, Judge Kennedy argued that a truly good-faith mistake by police should not lead to a criminal's release. What makes the opinion exceptional is that its persuasiveness ultimately led to its adoption by the Supreme Court.

It is this strict approach to the application of the Fourth Amendment that is necessary if we are to restore effectiveness, fairness, and true compassion to our criminal justice system.

There are many issues that will be raised by the members of this committee during these confirmation hearings, drawing deep from the well of American law. But as the Committee carries out its constitutional responsibilities, it should not only look to see if Judge Kennedy's service on the Supreme Court will serve the interests of justice -- which it surely will -- but as the Committee seeks justice, it should also do justice, both to the nominee and to the confirmation process.

At the President's announcement of his nomination, Judge Kennedy told reporters that this Committee and the entire Senate have a duty to give the most careful scrutiny to his candidacy -- and that he welcomed such scrutiny. I take pride in joining him in inviting that scrutiny.

Tony Kennedy's record as a lawyer, as a judge, and as a human being is an open book, and it is a story of an individual who has charted a judicial course of such distinction and soundness that there should be little question of his exceptional qualifications to serve on the Court. Therefore, I urge the Committee to complete its work with both deliberation and alacrity, so that the full Senate may consider Judge Kennedy's nomination at the start of the new year.