

The CHAIRMAN. Judge, would you stand to be sworn?

Do you swear that the testimony you are about to give will be the whole truth and nothing but the truth, so help you God?

Judge KENNEDY. I do so swear.

The CHAIRMAN. Thank you, Judge. Welcome back.

Do you have an opening statement you would like to make?

**TESTIMONY OF HON. ANTHONY M. KENNEDY TO BE AN
ASSOCIATE JUSTICE OF THE SUPREME COURT**

Judge KENNEDY. Thank you, Senator; if I may make just a few remarks.

The CHAIRMAN. Take as much time as you like.

Judge KENNEDY. I most appreciate the gracious welcome from the members of the committee this morning, from Senator Wilson and from the two distinguished Congressmen from their districts in Sacramento, all three of whom I have known for a number of years.

This is an appropriate time for me to thank the President for entrusting me with the honor of appearing before you as his nominee for Associate Justice of the United States. My family shares in extending our deep and great appreciation for this or his confidence in me.

I wish also to thank the members of your committee, Mr. Chairman, for the most interesting and impressive set of meetings that I have had with you and Members of the Senate as a whole over the last 4 weeks. These are denominated "courtesy calls" in the common parlance, as I understand it. It seems to me that that is perhaps a somewhat casual term for what is a very important and significant part of the advice and consent process.

In a number of these advise and consent discussions, Mr. Chairman, you or your colleagues indicated that you wanted to explain to me your own views, your own convictions, your own ideas, your own concerns about the Constitution of the United States. You have indicated that no reply or response was expected from me. And in every case, Mr. Chairman, I was profoundly impressed by the deep commitment to constitutional rule and the deep commitment to judicial independence that each Member of the United States Senate has.

I wish your workload were such that you could give the experience that I have had to every nominee for appointment to the courts in the article III system.

Now, Mr. Chairman, I understand that it is appropriate, and at your invitation, to introduce my family who are here with me.

The CHAIRMAN. Please do.

Judge KENNEDY. My oldest son, Justin, is a recent graduate of Stanford and is now an assistant project manager for a major corporate relocation in Sacramento. We are delighted to have him home with us in Sacramento.

His brother, Gregory, our other son, is a senior at Stanford, and I am authorized to assure the committee that he has taken the LSAT test and is on his way to law school.

Our youngest child is Kristin, who is now a sophomore at Stanford majoring in liberal arts, particularly English and history.

Finally, my wife Mary, who has the love and admiration of our family and also of her 30 students in the Golden Empire School in Sacramento. They most appreciate your invitation to be with us here today, Mr. Chairman.

Thank you very much.

The CHAIRMAN. We welcome you all here. I surely do not envy your tuition bill. [Laughter.]

Judge KENNEDY. I am glad that is part of the record, Mr. Chairman.

The CHAIRMAN. It is a sacrifice you are making, and I mean that sincerely.

Please move forward, Judge, if you would like.

Judge KENNEDY. That concludes my opening remarks, Mr. Chairman. I am ready to receive questions from you and your committee members.

The CHAIRMAN. Judge, let me explain to you, and to my colleagues, how the ranking member and I would like to proceed today. That is, as has been the custom in the recent past, we will allow each Senator to question you up to a half an hour, hopefully to have some continuity to the questions, and allow both you full time to answer the questions and they to flesh out the line of questioning they wish to pursue.

It is my hope, although not my expectation, that we will complete one round of questioning today. We will stop, though, at 6 o'clock, or as close to 6 o'clock as we can get. And at approximately 3:15, we will take a break for 15 minutes or so to give you an opportunity to stretch your legs and maybe get a cup of coffee or whatever you would like.

Judge, I will begin my first round here by telling you at the outset that I would like to pursue or touch on three areas in my first round. One is the question of unenumerated rights, and if there are such, if they exist under our Constitution. Secondly, as a matter, quite frankly, more of housekeeping and for the record, with you under oath, I would like to question you about your meetings with Justice Department, White House and other officials, and whether or not any commitments were elicited or made. I quite frankly must tell you at the outset I have had long discussions and full cooperation from the White House in this matter, and I am satisfied; but I think we should have it under oath what transpired and what did not.

Thirdly, if time permits—which it probably will not—I would like to discuss with you a little bit about your views on the role of precedent as a Supreme Court Justice. Oftentimes, it is mentioned here that we unanimously voted for you when you came up as a circuit court appointee, and that is an honor. You are to be congratulated. But as you well know, we unanimously vote for almost everybody who comes up. Ninety-eight percent of all those that come before the Congress are unanimously approved of. That is in no way to denigrate the support shown to you by us in your previous appearance here, but it is to indicate that, as you know better than most of us, the role of a lower court judge and the role of a Supreme Court judge are different. They are both to seek out and find justice under the Constitution, but lower court judges are bound by precedent. They do not have the authority, the constitu-