

STATEMENT OF SENATOR HOWELL HEFLIN
ON THE NOMINATION OF JUDGE ANTHONY M. KENNEDY
TO BE AN ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT
DECEMBER 14, 1987

MR. CHAIRMAN:

I COMMEND YOU FOR MOVING RAPIDLY IN REGARDS TO THESE HEARINGS. ON NOVEMBER THE 11TH, ARMISTICE DAY, VETERANS' DAY, JUDGE KENNEDY WAS NOMINATED. HERE, 34 DAYS LATER, WE ARE CONDUCTING HIS HEARINGS. THEY HAVE BEEN SET IN THE CLOSING WEEK OF THIS SESSION OF CONGRESS WHEN MUCH ACTIVITY IS GOING ON IN VARIOUS MATTERS AND WILL, OF COURSE, REQUIRE THE PRESENCE OF MEMBERS OF THIS COMMITTEE ON THE FLOOR AND OTHER PLACES.

NEVERTHELESS, I FEEL THAT THE SUPREME COURT NEEDS THE NINTH MEMBER, AND I CONGRATULATE YOU ON THE EFFORT TO BRING THESE HEARINGS TO A SPEEDY FOCUS AND FOR US TO PROCEED.

TWO HUNDRED YEARS AGO THE FRAMERS OF THE CONSTITUTION CAPTURED THE SPIRIT OF A STRUGGLING NEW NATION IN FIFTY-TWO WORDS. THESE WORDS FORM THE PREAMBLE OF THE CONSTITUTION. I THINK MOST OF US ARE FAMILIAR WITH IT, BUT JUST TO SET THE TONE FOR IT I WILL QUOTE A LITTLE OF IT. "WE THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILITY."

I THINK WE OUGHT TO LOOK AT THE FIRST THREE WORDS OF THE PREAMBLE: WE THE PEOPLE. THAT IS WHAT THIS NATION IS ALL ABOUT. AND THAT IS WHY THE CONSTITUTION IS SO IMPORTANT -- BECAUSE IT PROTECTS THE RIGHTS OF ALL PEOPLE -- CONSERVATIVES AND LIBERALS, EXTREMISTS AND MODERATES, YOUNG AND OLD, MEN AND WOMEN, RICH AND POOR. SOME MAY ARGUE THAT THE ABILITY OF THE CONSTITUTION TO BE ALL ENCOMPASSING IS ITS GREATEST WEAKNESS. I WOULD ARGUE, THEREIN LIES ITS GREATEST STRENGTH.

THE CONSTITUTION IS THE CORNERSTONE OF OUR DEMOCRACY, AND IF WE ARE TO PROTECT IT, WE MUST ENTRUST IT TO MEN AND WOMEN WHO WILL RESPECT ITS PRINCIPLES AND PARAMETERS. THAT IS OUR FUNCTION TODAY, TO DETERMINE THE FITNESS OF THIS NOMINEE FOR A LIFETIME POSITION ON THE SUPREME COURT. AS SENATORS WE HAVE A CONSTITUTIONAL MANDATE TO PROVIDE ADVICE AND CONSENT ON THIS NOMINATION.

JUDGE KENNEDY, IN YOUR QUESTIONNAIRE YOU LISTED WHAT YOU CONSIDER TO BE THE ATTRIBUTES OF A GOOD JUDGE: "COMPASSION, WARMTH, SENSITIVITY AND AN UNYIELDING INSISTENCE ON JUSTICE." I COULD NOT AGREE WITH YOU MORE. BUT LET ME ADD TWO ADDITIONAL CRITERIA: AN UNDERSTANDING OF THE PROPER ROLE OF THE JUDICIARY AS EXPRESSED IN THE CONSTITUTION, AND A DEEP BELIEF IN, AND UNFALTERING SUPPORT FOR, AN INDEPENDENT JUDICIARY.

JUDGE KENNEDY, IN THESE HEARINGS YOU WILL BE QUESTIONED ABOUT YOUR VIEWS OF THE CONSTITUTION, YOUR JUDICIAL PHILOSOPHY, AND YOUR COMMITMENT TO EQUAL JUSTICE UNDER THE LAW. YOUR SPEECHES WILL BE SCRUTINIZED, SOME OF YOUR OPINIONS WILL BE CRITICIZED.

IT IS MY HOPE THAT YOU WILL RESPOND TO OUR QUESTIONS AS THOROUGHLY AS POSSIBLE SO THAT WE WILL BE BETTER ABLE TO UNDERSTAND, NOT JUST JUDGE KENNEDY, THE LAWYER OR THE JUDGE, BUT JUDGE KENNEDY THE MAN.

IN FULFILLING MY RESPONSIBILITY OF ADVICE AND CONSENT, I WILL KEEP AN OPEN MIND AS I HAVE ENDEAVORED TO DO IN EVERY OTHER JUDICIAL CONFIRMATION HEARING. I BELIEVE THE CONFIRMATION PROCESS SHOULD BE EXERCISED IN A JUDICIAL MANNER WITHOUT PRE-DECISION LEANINGS, BIAS OR ALLEGIANCES. TO ACT OTHERWISE MAKES THE HEARING PROCEDURE A WASTE OF TIME OR A PERFUNCTORY PROCESS. MY DECISION WILL BE BASED ON MY OWN AND NO ONE ELSE'S ASSESSMENT OF YOUR COMMITMENT TO THE JUDICIAL SYSTEM, THE AMERICAN PEOPLE AND THE CONSTITUTION.

I AM IN FULL AGREEMENT WITH THE LATE SENATOR SAM ERVIN WHEN HE SAID:

"OUR GREATEST POSSESSION IS NOT THE VAST DOMAIN, IT'S NOT OUR BEAUTIFUL MOUNTAINS, OR OUR FERTILE PRAIRIES, OR OUR

MAGNIFICENT COASTLINE. IT'S NOT OUR GREAT PRODUCTIVE CAPACITY. IT IS NOT THE MIGHT OF OUR ARMY OR NAVY. THESE THINGS ARE OF GREAT IMPORTANCE BUT IN MY JUDGEMENT, THE GREATEST AND MOST PRECIOUS POSSESSION OF THE AMERICAN PEOPLE IS THE CONSTITUTION."

JUDGE KENNEDY, IF CONFIRMED, YOU WILL BE CHARGED WITH SAFEGUARDING THIS MOST PRECIOUS POSSESSION.

THE WORDS IN THE PREAMBLE OF THE CONSTITUTION ARE NOT MERE WORDS IN A DOCUMENT. THEY ARE OUR LIFELINE. JUDGE KENNEDY, IT IS A LIFELINE THAT YOU WILL BE CHARGED WITH PROTECTING, AND ONE WHICH MUST BE EXTENDED TO ALL.

FOLLOWING THE REFLECTION OF JUDGE BORK AND THE SELF-WITHDRAWAL OF JUDGE GINSBURG, THE SPOTLIGHTS OF THE JUSTICE DEPARTMENT, THE MEDIA, THE VARIOUS BAR ASSOCIATIONS, OUTSIDE PARTISAN AND SPECIAL INTEREST GROUPS, AND THE INVESTIGATIVE FORCES OF THIS COMMITTEE HAVE FOCUSED ON YOU. THOROUGH AND EXHAUSTIVE INVESTIGATIONS HAVE BEEN CONDUCTED. YOUR LIFE HISTORY HAS BEEN CAREFULLY DISSECTED DURING THE PAST 34 DAYS. YOUR OPINIONS HAVE REVIEWED UNDER A SEARCHING JUDICIAL MICROSCOPE. YOUR SPEECHES HAVE BEEN READ, RE-READ, AND READ BETWEEN THE LINES. EVERY CLOSET IN YOUR LIFE HAS BEEN OPENED; A FEW SKELETONS HAVE BEEN FOUND. BUT THUS FAR, NONE OF THE BONES ARE RATTLING.