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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1.Judicial profile	Re: Patrick E. Higginbotham, pg. 8	n.d.	~~P2/P5~~ B6
2. Judicial profile	Re: Anthony M. Kennedy, pg. 9, (partial)	n.d.	~~P2/P5~~ B6 CTS 12/4/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

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Freedom of Information Act - [5 U.S.C. 552(b)]
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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PATRICK E. HIGGINBOTHAM

Biographical Information

AGE: 48

BORN: December 16, 1938, Bessemer, Alabama

COLLEGE: Arlington State College, Arlington, Texas, 1956-57
North Texas State University, 1958
University of Texas, Austin, Texas, 1958
University of Alabama, Tuscaloosa, Alabama, A.B., 1958 (age 20)

LAW SCHOOL: University of Alabama, Tuscaloosa, Alabama, 1959-61, LL.B., 1961 (age 23); Note Editor, Alabama L. Rev.

MILITARY: U.S. Air Force, 1961-64, Captain

RELIGION: Methodist

FAMILY: Married since 1961; two children

RESIDENCE: Dallas, Texas

(See attached biographical materials)

Judicial History

TRIAL COURT: N.D. Texas, appointed by President Ford, 1975

APPELLATE COURT: Fifth Circuit, appointed by President Reagan, 1982

Professional Experience

Coke & Coke, Dallas, Texas, associate and partner, 1964-75

General Considerations and Confirmability

Since his appointment as a trial judge by President Ford in 1975, Judge Higginbotham has established himself as a moderately conservative judge with a strong interest and somewhat unpredictable bent in the affirmative action area. He has become somewhat more consistently conservative since his appointment to the Fifth Circuit in 1982. He is strongly opposed by right-to-life groups because of a decision he wrote in 1986 striking down portions of the Lousiana abortion statute (described below).

Judge Higginbotham authored the unanimous Court of Appeals decision in McPherson v. Rankin, 786 F.2d 1233 (1986), recently affirmed by the Supreme Court. McPherson was the case where a black municipal employee (a clerk-typist) was fired after expressing dismay that the attempted assassination of President Reagan did not succeed. She said, "Shoot, if they go for him again, I hope they get him." Judge Higginbotham's opinion reversed the district court, and held in favor of reinstating the employee's job. Though he found McPherson's comment to be "repulsive, nigh obscene," he said it "clearly addressed a matter of public concern." Judge Higginbotham paid tribute to the First Amendment and opined that "the ideal of tolerance is sometimes sorely tested in practice -- when that happens, there is all the more reason to recall its long-term benefits." (For the record, the Solicitor General's brief before the Supreme Court argued that the assassination remark should not be protected.)

In another employee termination case, Gomez v. Texas, 794 F.2d 1018 (1986), Judge Higginbotham held that the First Amendment did not protect a state worker against discharge. Unlike McPherson, the termination in Gomez was found not to have been precipitated by speech on a matter of public concern. Higginbotham deferred to the state agency and said the court was not a proper forum to review a personnel decision.

Judge Higginbotham's recent opinion in Margaret S. v. Edwards, 794 F.2d 994 (5th Cir. 1986), is the source of the opposition to him within the right-to-life movement. At issue in the case was a challenge brought by the American Civil Liberties Union to two provisions of the Louisiana abortion statute. The first required that the attending physician inform his patient, within twenty-four hours after she undergoes an abortion, that she may choose to have the fetus cremated, buried, or disposed of as waste tissue. The second forbade experimentation on the fetal remains of an abortion. Judge Higginbotham voted to strike both down as unconstitutional.

His opinion was short and the analysis fairly cursory. Indeed, he characterized the case as "easily decided" under the applicable Supreme Court precedents. He invalidated the provision requiring physician counseling on the disposition of fetal remains on the ground that it was unreasonable to assume that only a physician could supply this information. (He expressly left open the question of whether a statute which allowed others to convey this information would be constitutional.) Judge Higginbotham adopted this conclusion in reliance upon the Supreme Court's decision in City of Akron v. Akron Center for Reproductive Health, 462 U.S. 447 (1983), which struck down on identical reasoning an Ohio statute which required a physician to inform a woman in advance of the abortion of the various risks it posed to her health. This application of precedent was not implausible, but neither was it obviously correct, and the distinctions between the Ohio and

Louisiana statutes suggest that Judge Higginbotham described the question as "easy" too readily.

The criminal provision barring fetal experimentation was invalidated on vagueness grounds. The basis for this conclusion was testimony at the trial that medical experimentation and medical testing were not clearly distinguishable and that therefore the meaning of the statute was unclear. Yet it is impossible to tell from the two-paragraph analysis given by Judge Higginbotham whether the distinction between "experimentation" and "testing" is as troublesome as he believed it to be. The opinion is notable for the absence of any attempt to describe and answer the arguments of the other side. It is therefore impossible to know what narrowing constrictions the State of Louisiana might have offered in order to justify the statute.

Judge Higginbotham, together with five other judges, joined an opinion written by Judge Gee dissenting from denial of rehearing of Aguillard v. Edwards, a decision that Louisiana's "creation-science" statute was unconstitutional. 778 F.2d 725 (5th Cir. 1985). (Denial of rehearing in essence meant that the original decision striking down the law was left standing.) The statute which Judge Gee and the other dissenters would have upheld required that if either creation-science or evolution-sicence were taught in public schools, the other must be taught as well. Judge Gee's opinion refers to the exclusive teaching of evolution in the schools as "misrepresent[ing] as established fact views. . .which today remain theories only," and states that the majority's view would invalidate Sunday closing laws or statutes against bigamy. Judge Higginbotham's adherence to that opinion could raise concerns among liberals about his adherence to church-state separation. The Supreme Court later affirmed the panel decision holding the creationism statute unconstitutional, with Chief Justice Rehnquist and Justice Scalia dissenting.

Judge Higginbotham's most significant decision as a trial judge came in Vuyanich v. Republic National Bank of Dallas, 505 F. Supp. 224 (N.D. Tex. 1980), a race and sex discrimination class action. The opinion, at a massive 227 pages, was heralded in the press as the longest ever in a case of this kind. In an earlier ruling concerning class certification in the same action, Judge Higginbotham, according to press reports, stated that Republic National Bank's personnel practices were "infested to the core by racial and sex discrimination." A 1979 opinion by Judge Higginbotham in this case took an expansive view of standing to sue in class actions, holding that a class representative could raise class claims that she would not be able to assert individually. See 83 F.R.D. 420, 426-29 (N.D. Tex. 1979). The hefty 1980 opinion is widely reputed to have engendered wider acceptance of the use of mathematical models, including regression analysis, in race and gender based discrimination

class actions. While disclaiming complete reliance on statistics, Judge Higginbotham seemed to relish the use of elaborate statistical evidence as the principal basis for determining whether "the facts found are more likely true than not true." See 505 F. Supp. at 394, and passim. The press estimated potential liability to the bank from Judge Higginbotham's ruling at $50 million. Vuyanich did, however, sidestep an endorsement of the plaintiffs' comparable worth arguments, with Judge Higginbotham describing the comparable worth concept as a "hopelessly involved task inappropriate for judicial resolution."

Judge Higginbotham is also well known for his ruling against Southwest Airlines, which had operated with all-female crews and ticket agents out of Love Field in Dallas as the "Love Airline." Judge Higginbotham ruled that female sex appeal is not a bona fide occupational qualification ("BFOQ"), and required the airline to hire men as well as women. Wilson v. Southwest Airlines Co., 517 F. Supp. 292 (N.D. Tex. 1981). While the result is supportable, the analysis consisted merely of examination of marketing surveys to weigh the airline's claim that its "sex appeal" image was a principal factor in distinguishing it from its competitors. Id. at 294-96. The opinion relied on Justice Marshall's concurrence in Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971), but the analysis suggests that if the marketing surveys had more clearly shown that passengers preferred female attendants, a BFOQ might have been established. The opinion is also windy and rambling.

In other notable trial court rulings covered in the press, Judge Higginbotham entered a contempt order against a reporter for failing to disclose his sources, accompanied by an opinion expressing respect for the reporter's courage; declared misdemeanor arrest warrant procedures unconstitutional in a ruling that affected thousands of misdemeanor cases and gave rise to damage actions against the county (see Crane v. Texas, 534 F. Supp. 1237 (N.D. Tex. 1982)); and granted summary judgment for defendants in a massive antitrust suit against supermarkets and beef packers (In re Beef Industry Antitrust Litigation, 542 F. Supp. 1122 (N.D. Tex. 1982)).

In a decision more notable for its potentially enormous fiscal effects than its legal reasoning, Judge Higginbotham in 1981 ordered the Irving Independent School District to provide daily catheterization for a student afflicted with spina bifida. The School District had argued that the statute requiring it to provide an "appropriate program" to handicapped students did not require it to perform expensive medical procedures such as catheterization. Moreover, the statute exempts from its requirements medical services except those "for diagnostic and evaluation purposes only." 20 U.S.C. § 1401(17). The decision is, for a conservative judge, a puzzlement. Tatro v. Texas, 516 F. Supp. 968 (N.D. Tex. 1981).

In a 1980 ruling, Judge Higginbotham decided that assets of the Iranian government were immune from attack in private suits by American citizens. E. Systems, Inc. v. Islamic Republic of Iran, 491 F. Supp. 1294 (N.D. Tex. 1980). The federal courts were split on this issue.

In a 1982 reverse discrimination case, Jurgens v. EEOC, 30 Employment Practice Decisions (CCH) ¶ 33, 090, 29 Fair Employment Practice Cases (BNA) 1561, he outlined evidence that the EEOC was guilty of reverse discrimination because of its over-representation of minorities and women.

As a Fifth Circuit Judge, Judge Higginbotham's rulings have been more conservative. In Dunagin v. City of Oxford, 718 F.2d. 738 (5th Cir. 1983), for example, Judge Higginbotham ruled that a ban on liquor advertising in Mississippi infringed First Amendment rights of commercial speech.

In a recent en banc opinion in Baker v. Wade, 769 F.2d. 289 (5th Cir. 1985), Judge Higginbotham joined the majority opinion of another judge in a 9-7 vote, ruling that "in view of the strong objection to homosexual conduct, which has prevailed in western culture for the past seven centuries," the Texas sodomy law forbidding sexual intercourse among homosexuals was constitutional.

In Brewer v. Austin Independent School District, 779 F.2d. 260 (5th Cir. 1985), Judge Higginbotham held that school disciplinary proceedings are not the equivalent of criminal court proceedings, and therefore due process guarantees permitting confrontation and cross examination of witnesses are inapplicable.

Regarding drug testing, Judge Higginbotham indicated that the government ahd the right to test its employees. NTEU v. von Rabb, U.S. Customs Service, 808 F.2d 1063 (1987). He made a point of writing a separate opinion addressing the merits of drug testing apart from the court's per curiam decision on a procedural issue.

Significantly, Judge Higginbotham criticized the creation of new rights. He wrote: "reliance upon penumbral rights of privacy adds nothing. The contents and dimensions of such rights are difficult to define at best." Even more important as evidence of his commitment to judicial restraint, was his statement: "The decision by the executive branch that this testing is necessary protection of its interest is entitled to some deference and I find no record basis here for a substitution of judicial judgment."

In Shankle v. U.S., 796 F.2d 742 (1986) Judge Higginbotham held the government was not liable for damages resulting from the crash of a civilian plane that had been permitted to fly over

Randolph Air Force Base. He reversed the district court which held the base was responsible for investigating the private plane's flight path and the pilot's qualifications more thoroughly. Higginbotham held: "Neither Col. Bookout nor any other officer had a legal duty to protect [plaintiff's] decedent from the risk he took in flying with the civilian pilots." "To hold the government liable in this case would give the military increased incentives to find excuses for denying civilian aircraft access to federal reservations. This would unnecessarily abridge the freedom of the flying public."

Other Information

The Almanac of the Federal Judiciary (1985) contains the following lawyers' comments on Judge Higginbotham: "courteous, moderately conservative, smart, knowledgeable, very strong on antitrust and admiralty matters, is diligent and writes well." Additional comments: "If I were Reagan, I'd put him on the Supreme Court." "Too venturesome." "Still too soon to say. He could turn out to be another good one. We have a lot of good judges down here, and he compares well. He's still very young though." "Potential superstar."

On February 2, 1987, U.S. News & World Report cited Judge Higginbotham as an example supporting the premise that Reagan judicial appointments "were supposed to advance a right-wing agenda -- instead they've often stymied conservatives."

Judge Higginbotham is apparently a close personal friend of Merri Spaeth, the former White House Director of Media Relations, and Tex Lezar, Attorney General Meese's former Chief of Staff. He performed their marriage at the boyhood home of Robert E. Lee in Alexandria.

In 1982, at the San Francisco convention of the American Bar Association, Judge Higginbotham presided at a recreation of the 1921 Sacco/Vanzetti trial. In connection with a proposed movie project to film a hypothetical trial of Lee Harvey Oswald, Judge Higginbotham was asked to portray the judge. He was thought to look like a "seasoned jurist, one who had gray hair and looked like a judge." Higginbotham declined the role after thinking about it; he felt it might be inappropriate.

Positions on Critical Issues

Criminal Justice. While generally conservative on criminal justice issues, Judge Higginbotham's independent streak -- manifested in such civil cases as Vuyanich v. Republic National Bank of Dallas, supra -- also is evident in the criminal area. The Crane case, with its wholesale invalidation of thousands of outstanding arrest warrants, could have been crafted much more carefully. More representative of the typical Higginbotham opinion, however, is U.S. v. Brooks, 786 F.2d. 638 (5th Cir.

1986), in which Judge Higginbotham rejected a number of procedural challenges to a conviction for conspiracy to interfere with commerce by threats or violence. The case is noteworthy because the defendant was Sen. Thomas Brooks, President Pro Tem of the Mississippi Senate.

Federalism. Judge Higginbotham's decisions do not evidence any particular penchant to raise to federalism issues. While a LEXIS search revealed many passing references to federalism in general, the thrust of more than one Higginbotham decision is to interpret liberally the scope of federal power as against state or local interests. See, e.g., Tatro v. Texas, supra; Dunagin v. City of Oxford, supra (states' rights under 21st Amendment balanced against 1st Amendment). On the other hand, in Baker v. Wade, supra, in a majority opinion in which he concurred, the right of the State of Texas to legislate on the subject of private sexual conduct was upheld principally on the basis of federalism principles. Judge Higginbotham's opinion in Terrell v. Maggio, 693 F.2d. 591 (5th Cir. 1982), has been noted as an example of aggressive federalism. In that case, the Fifth Circuit vacated the district court's grant of habeas corpus relief, ordering the district judge to explain why he disregarded the state court's findings on the petitioner's claims. Higginbotham asserted:

> "If a single federal judge is to stand an entire state at bay, he ought to say why."

Id. at 594.

Separation of Powers. Judge Higginbotham has not written a significant opinion on this subject. However, references to separation of powers throughout his opinions suggest some amount of reverence for the concept. It would appear that Judge Higginbotham accords a great deal of respect to legislative enactments, and that he favors a cautious judiciary that steers clear of political questions. See the discussions of von Raab and Shankle above.

Economic Matters. With the notable exceptions of his vindication of commercial speech rights in two cases, Judge Higginbotham has not always been aggressively defensive of either property rights or commercial rights. The $50 million liability generated by his Republic National Bank of Dallas decision, some of the dicta notwithstanding, rested principally upon high-tech, high-powered mathematical formulae for quotas. The Tatro decision, unqualifiedly mandating unlimited public spending, clearly did not give much weight to the economic effect of the court's action.

Jus Nem 2.C. (2 of 3)

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1984; Calif. Bar Assn., Los Angeles County Bar Assn., Iowa Bar Assn. Contbr. articles on law to profl. jours. Oil and gas leasing, Real property, Contracts commercial. Office: 400 S Hope St Los Angeles CA 90071

HIESTAND, O.S., JR., lawyer; b. 1920. A.B., Ind. U., 1941; LL.B., Northwestern U., 1947. Bar: Ill. 1947, Tenn. 1953, U.S. Supreme Ct. 1964, D.C. 1973, U.S. Ct. Claims 1979, U.S. Ct. Appeals (fed. cir.) 1983. Gen. counsel Commn. on Govt. Procurement, 1970-73; ptnr. Morgan, Lewis, & Bockius, Washington. Contracts commercial. Office: 1800 M St NW Suite 800 N Washington DC 20036

HIGBE, CLIFTON MELTON HARVIN, lawyer, real estate broker, insurance company executive; b. Columbia, S.C., Sept. 13, 1932; s. William V... and Agnes Irene (Shaw) H.; m. Sally Marith Mehren, June 18, 1955; c... ...lton, Elizabeth Lynn, Randall John William; m. 2d, Anne E... ...nsen, Feb. 14, 1980. A.A., Am. River Coll., 1962; J.D., U. of Pacific, 1970. Bar: Calif. 1971, U.S. Dist. Ct. (ea. dist.) Calif. 1971. Gen. mgr. Comstock Steel Co., Sacramento, 1958-64; prin. Higbe Co., Real Estate & Ins., Sacramento, 1964-66, 1971—; dist. sales mgr. Pacific Telephone Co., Sacramento, 1966-71; sole practice, Sacramento, 1971—; lectr. in field; mem. Steel Service Ctr. Inst., 1958-64. Served to 1st lt. USAF, 1950-58. Recipient Outstanding Adv. award Jr. Achievement, 1967; Am. Jurisprudence award McGeorge Sch. Law, 1967. Mem. Calif. State Bar, Sacramento County Bar, ABA. Republican. General corporate, Real property, Probate. Office: 1555 River Park Dr Suite 202 Sacramento CA 95815

HIGGINBOTHAM, A. LEON, JR., *See Who's Who in America,* 43rd edition.

HIGGINBOTHAM, JAMES M., lawyer; b. Evanston, Ill., Apr. 24, 1939; s. Charles F. and Marie (Flentye) H.; m. Nancy S. Higginbotham; children—Janine, Heidi, Holly, Suzanne, Bradley. B.S. in Bus., Miami U., Ohio, 1961; J.D., John Marshall Law Sch., Chgo., 1964. Bar: Ill. 1964. Atty., Central Nat. Co., Chgo., 1965-67; atty. Field Enterprise Ednl. Corp., Chgo., 1967-73; gen. counsel Rawleigh, Moses & Co., Chgo., 1973-76; assoc. Berman & Abrams, Chgo., 1976—. Bd. dirs. Caring Co., 1st Presbyn. Ch., Evanston, Ill., 1984. Order of John Marshall Law Sch., Chgo., 1964. Mem. ABA, Comml. Law League Am., Am. Arbitration Assn., Ill. Bar Assn., Chgo. Bar Assn. Republican. Presbyterian. Consumer commercial, Arbitration. Home: 2608 Noyes Evanston IL 60201 Office: Berman & Abrams 140 S Dearborn Chicago IL 60603

HIGGINBOTHAM, JOHN TAYLOR, lawyer; b. St. Louis, Feb. 10, 1947; s. Richard Cann and Jocelyn (Taylor) H.; m. Lauren Flint Totty, Aug. 9, 1975 (div. 1979). B.A., UCLA, 1969; J.D., Columbia U., 1972. Bar: N.Y. 1975, Calif. 1976. Assoc., Kirlin, Campbell & Keating, N.Y.C., 1972-74; atty. Nat. Bank of N.Am., N.Y.C., 1974-76; atty., dir. real estate Korvettes Inc., N.Y.C., 1979-82; assoc. Leon Katz, Bklyn., 1983-84; assoc. Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey, N.Y.C., 1984—. Editor: Safe Deposit Decisions and Practice, 1977—. Mem. ABA, Assn. Bar City N.Y. Real property.

HIGGINBOTHAM, PATRICK E., judge; b. McCalla, Ala., Dec. 16, 1938; s. George Hamilton and Anne Druscilla (Tumlin) H.; m. Elizabeth Anne O'Neal, 1961; children—Anne Elizabeth, Patricia Lynn. B.A., U. Ala., 1960, LL.B., 1961. Bar: Ala., Tex., Ala. Ptnr. Coke & Coke, Dallas, 1964-75; judge U.S. Dist. Ct. No. Dist. Tex., Dallas, 1976-82, U.S. Ct. Appeals 5th Cir., Dallas, 1982—; instr. So. Meth. U. Served to capt. JAGC, USAF, 1961-64. Named Outstanding Alumnus, U. Tex.-Arlington, 1978. Fellow Am. Law Inst., Am. Bar Found.; mem. Bench and Bar Legal Honor Soc., Order of Coif, Omicron Delta Kappa. Methodist. Contbr. revs. and articles to legal jours. Jurisprudence. Office: US Ct Appeals 5th Cir 1100 Commerce St Dallas TX 75242

HIGGINS, ANDREW JACKSON, *See Who's Who in America,* 43rd edition.

HIGGINS, HAROLD LESTER, JR., lawyer; b. Neptune, N.J., June 17, 1947; s. Harold L. and Ethel (Carson) H.; m. Anita L. Carpenter, July 20, 1972; c... ...Andrew, Adam. B.A., Brown U., 1969; J.D., Vanderbilt U., 1972. ...1972, U.S. dist. Ct. Ariz. 1976, U.S. Ct. Appeals (9th cir.) 1979. Trial ... County Atty., Tucson, 1973-80, chief civil dep., 1981-84; assoc. J... ...erman, Nuckolls, Edwards & Smith, Tucson, 1984—. Served to 1st lt. USAR. Democrat. Baptist. State civil litigation, Contracts commercial. Office: Jones Dickerman Nuckolls Edwards & Smith PO Box 30010 Tucson AZ 85751

HIGGINS, JOHN PATRICK, lawyer, insurance company executive; b. Beloit, Wis., Feb. 13, 1952; s. John Eugene and Catherine Marie (Beaudry) H. B.A. cum laude, St. Norbert Coll., 1973; postgrad. DePaul U. Law Sch., 1974-76; J.D., U. Wis.-Madison, 1977; postgrad. in bus. Keller Grad. Sch. Mgmt., Milw., 1983—. Bar: Wis. 1977, U.S. Dist. Ct. (ea. and we. dists.) Wis., U.S. Ct. Appeals (7th cir.), U.S. Supreme Ct. Assessment technician Kenosha County Assessor, Wis., 1973-75; law clk. various firms, Madison, 1976-77; claims atty. Employers Ins. of Wausau (Wis.), 1977-80, trial atty., Milw., 1980—; part-time instr. North Central Tech. Inst., Wausau, 1980; dir. John E. Higgins Appraisal Co., Kenosha. Author articles and monographs. Bd. dirs., arbitrator Roman Cath. Archdiocese of Milw., 1983—; active Milw. Repertory Theater, 1983—, Holy Name Soc. Milw., 1983—. Mem. State Bar Wis. (bd. dirs. young lawyers div. 1978—, sec. 1979-82, chmn. law reform com. 1984—, mem. various other coms. chmn. State Bar communications com. 1984—), ABA, Def. Research Inst., Thomas More Soc., State Bar Assn. Wis., Civil Trial Counsel Wis., Wis. Acad. Trial Lawyers, Marathon County Bar Assn., Milw. Bar Assn., Waukesha County Bar Assn., St. Norbert Coll. Alumni Assn. (exec. bd. dirs. 1979—), Cath. Alumni Club of Milw., Am. Corp. Counsel Assn. Phi Alpha Delta. State civil litigation, Insurance, General corporate. Home: 3431 N 92d St Milwaukee WI 53222 Office: Employers Ins of Wausau 6620 W Capitol Dr Milwaukee WI 53216

HIGGINS, MARY CELESTE, lawyer, researcher; b. Chgo., Feb. 9, 1943; d. Maurice James and Helen Marie (Egan) H. A.B., St. Mary-of-the-Woods (Ind.) Coll., 1965; J.D., DePaul Coll., 1970; LL.M., John Marshall Law Sch., Chgo., 1976; certs. program for lawyers Harvard U., 1981, 82. M.P.A., 1982; M.Phil., U. Cambridge (Eng.), 1983. Bar: Ill. 1970, U.S. Dist. Ct. (no. dist.) Ill. 1970. Sole practice, Chgo., 1970-72, 79-80; atty. corporate counsel dept. Continental Bank, Chgo., 1972-76; asst. sec., asst. counsel Marshall Field & Co., Chgo., 1976-79; sr. atty. Mattel, Inc., Hawthorne, Calif., 1980-81; research in revitalization and adjustment of U.S. industries in U.S. and world markets, 1981-84; dep. coordinator Chgo.-South, Reagan-Bush campaign, 1984. Recipient Am. Jurisprudence awards for academic excellence, 1966-70. Mem. ABA, Chgo. Bar Assn., Ill. Bar Assn. Republican. Clubs: Harvard (N.Y.C., Boston, Chgo.); United Oxford and Cambridge, Univ., Univ. Women's, Royal Commonwealth Soc., Am. Women's (London). General corporate, Private international, Public international. Home: care of 8014 S Campbell Ave Chicago IL 60652

HIGGINS, PAMELA WRENN, lawyer; b. Corsicana, Tex., May 5, 1944; d. James M. and Betty Jo (Long) Wrenn; m. Michael L. Higgins, Sept. 26, 1964; (div.). B.A., Rutgers U., 1968; J.D., Temple U., 1972. Bar: Pa. 1972, U.S. Dist. Ct. (ea. dist.) Pa. 1976, U.S. Ct. Appeals (3d cir.) 1979, U.S. Ct. Appeals (2d cir.) 1980, U.S. Supreme Ct. 1981. Asst. dist. atty. Office of Dist. Atty., Phila., 1972-75; assoc. firm David Berger, P.A., Phila., 1975-78, firm Sprague & Rubenstone, Phila., 1980-81; spl. atty. U.S. Dept. Justice, Phila., 1978-80; ptnr. fi... ...ns & Madden, Phila., 1981—. Mem. Pa. Bar Assn., Phila. Bar Assn., Democrat. Criminal. Office: Suite 1112 Ave of the Arts Bldg 1346 Philadelphia PA 19107

H...S, WILLIS EDWARD, lawyer; b. Pitts., Aug. 7, 1940; s. Edward Nichols and Mildred Lucille (Engel) H.; m. Susan Laythe, Sept. 19, 1964; children—Frank, Edward. B.S. in Chem. Engrng., U. Pitts., 1962; J.D., U. Chgo., 1965. Bar: Mich., 1966, Vt., 1968, Calif., 1978, Ariz. 1976, U.S. Pat. Off., 1966. Pat. atty. Dow Chem. Co., Midland, Mich., 1965-67; pat. atty. IBM Essex Junction, Vt., 1967-73; sole practice, Bristol, Vt., 1973-74; pat. atty. Motorola Inc., Phoenix, 1974-75, sr. pat. atty., 1975-76; pat. csl. Nat.

southeastern Stanford Area council Boy Scouts Am., ... 1983—. Recipient Wood Badge, Boy Scouts Am., 1982. Mem. ABA, Vt. Bar Assn., State Bar Calif., State Bar Ariz., State Bar Mich., Peninsula Pat. Law Assn. (treas. 1981-82, sec. 1982-83, v.p. 1983-84, pres. 1984-85), San Francisco Pat. and Trademark Law Assn. Democrat. Unitarian. Clubs: Eichler Swim and Tennis, (Order of Arrow (Palo Alto). Patent, Trademark and copyright, Federal civil litigation. Home: 3449 Thomas Dr Palo Alto CA 94303 Office: 800 Menlo Ave Suite 220 Menlo Park CA 94025

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SEC, 1943-52; prof. law So. Meth. U., 1953-56; prof. law Northwestern U., 1956-62; prof. law Columbia U., 1962-75, Simon H. Rifkind prof. law, 1975—. Mem. Am. Law Inst. Contbr. articles on torts, conflict of laws, fed. cts. to legal jours. Federal civil litigation, Private international, Personal injury. Home: 79 Sherwood Rd Tenafly NJ 07670 Office: Columbia Law Sch New York NY 10027

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1955-56 law clerk to Judge John R. Brown, U.S. Court of Appeals, 5th Circuit; 1959-79 Graves, Dougherty, Hearon, Moody & Garwood and predecessor firms, Austin, Texas, partner, 1961-79; 1979-81 Associate Justice, Supreme Court of Texas; 1981 partner Graves, Dougherty, Hearon, Moody & Garwood; 1981-date Judge U.S. Court of Appeals, 5th Circuit appointed by President Reagan.

Member American Law Institute, Texas Bar Foundation (life member), American Bar Association, American Judicature Society, Order of the Coif, Phi Delta Theta, Westwood Country Club.

Director Anderson, Clayton & Company, 1976-79, executive committee, 1977-79. President Child and Family Service of Austin, 1970-71; board of directors Community Council of Austin and Travis County, 1968-72; Human Opportunities Corp. of Austin and Travis County, 1966-70; Mental Health and Mental Retardation Center for Austin and Travis County, 1966-69; United Fund of Austin & Travis County, 1971-73. St. Andrew's Episcopal School, Austin, 1972.

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Born Oct. 3, 1937 in Meridian, Mississippi; married Bettye Simmons.

University of Mississippi, B.A., 1959; University of Mississippi School of Law, LL.B., 1962; admitted to Mississippi bar 1962.

1962-64 trial attorney National Labor Relations Board, Winston-Salem, North Carolina; 1964-67 assistant U.S. Attorney for Mississippi, Northern; 1967-69 trial attorney Tax Division, U.S. Department of Justice, Washington; 1969-82 Jolly, Miller & Milam, Jackson, Mississippi; 1982-date Judge U.S. Court of Appeals, 5th Circuit appointed by President Reagan.

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Born Dec. 16, 1938 in Bessemer, Alabama; married Elizabeth; children Anne E., Patricia Lynn; 1961-64 USAF.

Arlington State College, 1956-57; North Texas State University, 1958; University of Texas, 1958; University of Alabama, B.A., 1960, LL.B., 1961; admitted to Alabama bar 1961, Texas bar 1962.

1964-75 partner Coke & Coke, Dallas, Texas; 1976-82 Judge U.S. District Court for Texas, Northern appointed by President Ford; 1982-date Judge U.S. Court of Appeals, 5th Circuit appointed by President Reagan.

Member American Bar Association, Dallas Bar Association, Dallas Bar Foundation, American Bar Foundation, Continuing Legal Education, American Law Institute, American Judicature Society, Farrah Law Society, Bench & Bar, Omicron Delta Kappa.

Note editor Alabama Law Review 1960-61. Member faculty American Institute of Banking, Federal Judicial Center, Columbia University Trial Seminar, National Institute of Trial Advocacy; chairman American Bar Association committee to compile federal jury charges anti-trust section; past director Dallas Bar

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Born August 18, 1936 in Winfield, Alabama; married Celia Chalaron.

Howard College, 1954,57; University of Alabama, 1955-56; Tulane University, LL.B., 1960; admitted to Louisiana bar 1960.

1960-64 Phelps, Dunbar, Marks, Claverie & Sims; 1964-76 associate then partner Caffery, Duhe & Davis, New Iberia, Louisiana; 1976-84 Judge U.S. District Court for Louisiana, Western appointed by President Ford; 1984-date Judge U.S. Court of Appeals, 5th Circuit appointed by President Reagan.

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1950-52 associate R.T. Bailey, Dallas, Texas; 1952-55 associate Caldwell, Baker & Jordan; 1955-58 member Caldwell, Baker, Jordan, Woodruff & Hill; 1958 partner Caldwell, Baker, Jordan & Hill; 1959-70 partner Woodruff, Hill, Kendall & Smith; 1970-84 Judge U.S. District Court for Texas, Northern appointed by President Nixon; 1984-date Judge U.S. Court of Appeals, 5th Circuit appointed by President Reagan.

Edith H. Jones Born April 7, 1949 in Philadelphia, Pennsylvania; married Sherwood Jones; two children.

Cornell University, B.A., 1971; University of Texas, J.D., 1974; admitted to Texas bar 1974.

1974-84 associate then partner Andrews & Kurth; 1984-date Judge U.S. Court of Appeals, 5th Circuit appointed by President Reagan.

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Born May 17, 1905 in New Orleans, Louisiana; married Bonnie Stewart Mathews; children John Minor, Kathleen Mathews, Penelope Stewart; Episcopalian; 1942-46 USAAF to Lt. Colonel, received Legion of Merit and Army Commendation medal.

Washington & Lee University, A.B., 1925; Tulane University, LL.B., 1929; admitted to Louisiana bar 1929.

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Military Service U.S.A.F., J.A.G. Corps, 1961-64, Capt.

Private Practice Partner, Coke & Coke, Dallas, 1964-75

Academic Positions Lecturer (federal complex litigation), Southern Methodist Univ. Law Sch., 1976; Columbia Univ. Trial Seminar

Previous Judicial Positions U.S.D.C., N.D. Tex., 1976-82

Professional Associations A.B.A.: chairman, ommittee to Compile Federal Jury Charges, Antitrust ction; Standing Committee on Legal Aid; secretary, ection of Individual Rights and Responsibilities; American Bar Foundation; American Judicature Society; ALI-ABA Continuing Legal Education Committee; Farrah Law Society, Southwest Legal Foundation; Bench & Bar Legal and Honor Society; Dallas Bar Assn.: chairman, Committee on Urban Affairs; director, Dallas Legal Services Project, 1970-72; chairman, Dallas Bar Committee on Legal Aid

Other Activities Chairman of Board, United Methodist Church, Richardson, Tex.

Honors and Awards Omicron Delta Kappa

Publications *Continuing the Dialogue: Civil Juries and the Allocation of Judicial Power*, 56 TEX. L. REV. 47 (1977); *The Commission Recommendations Can Work*, (Nat'l Commission for the Review of Antitrust Laws and Procedures) 48 ANTITRUST L.J. 475 (1980); *Helping the Jury Understand*, 6 LITIGATION 5 (Summer 1980); *How to Judge a Jury Case: A Judge's View*, 7 LITIGATION 8 (Fall 1980); *Bureaucracy — the Carcinoma of the Federal Judiciary*, 31 ALA. L. REV. 261 (1980); *Discovery Management Considerations in Antitrust Cases*, 51 ANTITRUST L.J. 231 (1982); (with L. Greenhouse, P.A. Freund, A.D. Hellman, R.L. Hruska, D.J. Meador, A.B. Rubin, R.L. Stern & W. Burger) *Rx for an Overburdened Supreme Court: Is Relief in Sight?*, 66 JUDICATURE 394 (1983); *Introduction: A Brief Reflection on Judicial Use of Social Science Data*, 46 LAW & CONTEMP. PROBS. 7 (Fall 1983)

Noteworthy Rulings

Terrell v. Maggio, 693 F.2d 591 (1982): The Fifth Circuit vacated the district court's grant of habeas corpus relief, ordering the district judge to explain why he disregarded the state court's findings on petitioner's claims. Higginbotham asserted: "If a single federal judge is to stand an entire state at bay, he ought to say why." Id. at 594.

Media Coverage

Southwest Airlines, flying out of Love Field and calling itself Love Airlines, hired only female flight attendants and ticket agents. The airline claimed that its sex-appeal image was so integral to its operations that it constituted a bonafide occupational qualification under federal law. Higginbotham dismissed the claim, noting: "'Love' is the manner of the job performance, not the job performed." NEW ORLEANS TIMES-PICAYUNE, June 14, 1981, § 1, at 35, col. 1.

Lawyers' Comments

Courteous, moderately conservative, smart, knowledgeable, very strong on antitrust and admiralty matters, is diligent and writes well.

Additional comments: "If I were Reagan, I'd put him on the Supreme Court." "Too venturesome." "Potential superstar."

cooperation in working out this complex agreement, which I think is a reasonable one, which should give the Senate ample time to discuss fully the constitutional amendment and the amendments that will be offered thereto.

Mr. CRANSTON. Mr. President, reserving the right to object, and I shall not object, I thank both leaders for their diligent cooperation in working out a very fine agreement.

I thank the Senator from Alaska for agreeing to an up-or-down vote on a substitute I shall offer.

I thank my leader for his wisdom and for his strength and forcefulness in insisting that that be part of the agreement. I am grateful to him for his leadership.

Mr. ROBERT C. BYRD. Mr. President, while we are passing around expressions of gratitude, I want personally to thank Mr. Charles Kinney on this side and Ms. Elizabeth Baldwin on the Republican side for the work that they did in putting this agreement together. It took a lot of their time and it certainly, I am sure, imposed upon their patience. They are to be highly congratulated for the work that they did in assisting the leadership in putting this agreement together.

Mr. STEVENS. Mr. President, there are in excess of 25 amendments and in excess of 50 hours allocated under this agreement. It means that the Senate will vote on, I think, a very controversial and meaningful proposed constitutional amendment no later than noon a week from tomorrow. I think that the Senate should be on notice that this means there will be votes throughout this week and the early part of next week.

We hope, of course, to be able to finish the constitutional amendment by Tuesday so we can go to the reconciliation bill.

It is the majority leader's intention to go to the reconciliation bill as soon as this constitutional amendment is disposed of.

There may be other matters on which we will seek cooperation of the distinguished minority leader that we might handle on a short-term basis as they come up.

But I do believe, as the distinguished minority leader has indicated, that it is obviously the work product of a long negotiation between our staffs, and I join him in commending those staffs and thank him for his willingness to give us a timeframe within which we can work our way out of this dilemma that has been presented us on what is the reasonable timeframe that the Senate can allocate to the consideration of this resolution.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, is there an order for convening tomorrow?

The PRESIDING OFFICER. There is an order to convene at 10 a.m.

Mr. STEVENS. Is there a time designated for routine morning business?

The PRESIDING OFFICER. There has not yet been an order so entered.

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that following the leaders' time under the standing order and the special orders that have already been entered, there be a period of time for the transaction of routine morning business not to exceed 30 minutes during which Senators may speak therein for not to exceed 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M. TOMORROW

Mr. STEVENS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with the previous order.

There being no objection, at 7:11 p.m., the Senate recessed until tomorrow, Wednesday, July 28, 1982, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate July 27, 1982:

THE JUDICIARY

Harry W. Wellford, of Tennessee, to be U.S. circuit judge for the sixth circuit vice Bailey Brown, retired.

Michael M. Mihm, of Illinois, to be U.S. district judge for the central district of Illinois vice Robert D. Morgan, retired.

Bruce M. Selya, of Rhode Island, to be U.S. district judge for the district of Rhode Island vice Raymond J. Pettine, retired.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 27, 1982:

THE JUDICIARY

Richard A. Gadbois, Jr., of California, to be U.S. district judge for the central district of California.

Patrick E. Higginbotham, of Texas, to be U.S. circuit judge for the fifth circuit.

E. Grady Jolly, of Mississippi, to be U.S. circuit judge for the fifth circuit.

DEPARTMENT OF JUSTICE

Julio Gonzales, of California, to be U.S. Marshal for the central district of California for the term of 4 years.

James O. Golden, of Virginia, to be U.S. Marshal for the District of Columbia for the term of 4 years.

Eugene V. Marzullo, of Pennsylvania, to be U.S. Marshal for the western district of Pennsylvania for the term of 4 years.

WITHDRAWAL

Executive nomination withdrawn by the President, July 27, 1982:

The nomination of James L. Malone, of Virginia, to be Ambassador at Large in connection with his appointment as Special Representative of the President of the United States for the Law of the Sea Conference, and Chief of Delegation, which was sent to the Senate on March 11, 1982.

Oct. 28

DRAFT

FLOOR SPEECH: TIMELY CONFIRMATION

Mr. President, I rise today to call on this body to discharge one of its most important responsibilities under the Constitution. That responsibility is to provide its advice and consent to the President's nomination of Judge Anthony Kennedy to be an Associate Justice of the Supreme Court. While I have not decided whether Judge Kennedy should be confirmed, I believe the confirmation process should begin immediately. It is the duty of the Senate to act on this nomination and to act expeditiously.

The Supreme Court, whose responsibility it is to decide fundamental constitutional issues, is currently disabled in its ability to discharge that function. The Senate now bears the responsibility for removing this disability. The fact that the Supreme Court's membership consists of only eight Justices means that resolution of fundamental constitutional issues may be decided by the various circuit courts. This is intolerable. The Supreme Court must be able to discharge its responsibilities. That is why the Senate must act immediately on the President's nomination. By way of comparison, the Senate took _____ days to act on the President's nomination of Judge Bork. This delay was unreasonable, an embarrassment to this body and most importantly, a disservice to those Americans who look to the Supreme Court as the final arbiter of legal disputes. During Judge Bork's confirmation hearings, members of this body stated that a Justice of the Supreme Court must keep in mind the rights and interests of the individual. Well, the ultimate injustice to an individual is a Supreme Court that is disabled from dispensing justice.

Historically, the Senate has met its responsibility in considering Supreme Court nominees expeditiously. In the two hundred years of the Republic, the average time between the President's submission of a nomination for the Supreme Court, and the confirmation, rejection or withdrawal of that nominee has been _____ days. In fact, since the nomination of Justice (whoever was the first to testify) -- the first nominee to testify before the Senate, the average time between nomination and confirmation has been only ____ days. This body cannot shirk its responsibility. We must act.

There is absolutely no reason for delaying consideration of Judge Kennedy. Since 1975, Judge Kennedy has been a sitting member of the United States Court of Appeals for the Night Circuit. Judge Kennedy's judicial philosophy, intellectual ability, and judicial temperament are matters of public record. Judge Kennedy's _____ opinions are on the books for all to

read. I encourage my fellow Senators to do so. Therefore, there is no reason to delay. As we saw in the case of Judge Bork, such a delay serves the private interest groups who want to turn the nomination and confirmation of Supreme Court Justices into a political struggle. This unseemly process cannot be allowed to repeat itself. The Senate does not need ____ days (time between Judge Bork's nomination and the commencement of the hearings) to review Judge Kennedy's record. His record is available for all to see, now.

I call on my fellow Senators to review that record, to consider Judge Kennedy's judicial philosophy, and to consider his qualifications to sit as a member of the Supreme Court.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 28, 1987

President Reagan announced today that he would nominate Judge Anthony M. Kennedy to be an Associate Justice of the United States Supreme Court. The President believes that Judge Kennedy's distinguished legal career, which includes over a decade of service as a federal appellate judge, makes him eminently qualified to sit on our nation's highest court.

Judge Kennedy, who is 51 years old, was born in Sacramento, California. He received his undergraduate degree at Stanford University in 1958, attending the London School of Economics during his senior year. He received his law degree from Harvard University in 1961, where he was a member of the Board of Student Advisors. He has also served in the California Army National Guard.

From 1961 to 1963, Judge Kennedy was an associate at the firm of Thelen, Marrin, John & Bridges in San Francisco, California. He then returned to Sacramento to pursue a general litigation, legislative and business practice, first as sole practitioner and then, from 1967 to 1975, as a partner with the firm of Evans, Jackson & Kennedy. Since 1965, he has taught constitutional law part-time at the McGeorge School of Law at the University of the Pacific.

In 1975, President Ford appointed Judge Kennedy to sit on the United States Court of Appeals for the Ninth Circuit, where he now ranks among the most senior active judges on the bench. Judge Kennedy has participated in over fourteen hundred decisions and authored over four hundred opinions, earning a reputation for fairness, openmindedmen and scholarship. He has been an active participant in matters of judicial administration. Judge Kennedy has earned the respect of colleagues of all political persuasions.

Judge Kennedy and his wife Mary reside in his home town of Sacramento. They have three children, Justin, Gregory and Kristin.

Judge Kennedy is a strong judicial conservative and a practitioner of judicial restraint. He has a proven commitment to law enforcement, the most important single category of cases heard by the Supreme Court. He represents the best of the judiciary. The President expects that the Senate will accept this nomination in the nonpartisan spirit in which it was made, and speedily end the vacancy that continues to handicap the vital work of the Supreme Court.

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# # # #

ANTHONY M. KENNEDY

Biographical Information

AGE: 51

BORN: July 23, 1936, Sacramento, California

COLLEGE: Stanford University, 1954-57
London School of Economics, 1957-58 (no degree)
Stanford University, B.A., 1958 (age 21)

LAW SCHOOL: Harvard University, 1961 (age 24); Board of Student Advisors

MILITARY: California Army National Guard, 1961, private first class

PARTY: Republican

FAMILY: Married, three children

RESIDENCE: Sacramento, California

(See attached biographical materials)

Judicial History

TRIAL COURT: None

APPELLATE COURT: Ninth Circuit, appointed by President Ford, 1975

Professional Experience

Evans, Jackson & Kennedy, Sacramento, California, partner, 1967-75
Sole practitioner, Sacramento, California, 1963-67
Thelin, Marrin, John & Bridges, San Francisco, California, associate, 1961-63

General Considerations and Confirmability

Alex Kozinski (with Richard Willard) was one of Judge Kennedy's past law clerks.

The Almanac of the Federal Judiciary contains the following lawyers' comments about Judge Kennedy: courteous; stern on

bench, sociable otherwise. Somewhat conservative; evenhanded; bright; usually well prepared.

Additional Comments: "'Very young when appointed. Smart, filled with nervous energy. Usually asks many questions.' 'Good judge, good analytical mind, courageous, not afraid to break new ground. Well prepared, asks many questions.' 'A follower, doesn't do anything on his own.' 'Open-minded.' 'Very bright.' 'Quiet. Asks perceptive questions. Not hostile or aggressive.' 'Good business lawyer.' 'Sometimes caustic.' 'Not that well prepared.' 'An enigma. Hard to peg. Tends to agonize over opinions. Very conservative on Title VII.' 'Writes well reasoned opinions.' 'Opinions are not always well worked out. He loses track of the central argument.' 'Opinions go off on tangents and are too long-winded.' 'Bright, conservative, polite, works hard.'"

Writing for a Ninth Circuit panel in a September 1985 "comparable worth" case, Kennedy overturned an order that the State of Washington pay hundreds of millions of dollars to 15,000 women who said that they should be paid the same as men who do comparable work. Kennedy said the state was not obligated to "eliminate an economic inequality which it did not create." The comparable worth theory should only be used in cases in which there is a "specific, clearly delineated employment practice applied at a single point in the job selection process," he wrote. Instead, the Washington system was based on numerous factors "including supply and demand and other market forces." The State of Washington "has not been shown to have been motivated by impermissible sex-based considerations in setting salaries" he said. He also ruled that "a study which indicates a particular wage structure might be more equitable should not categorically bind the employer . . . ."

In a suit brought by CBS radio and a television network to have legal documents unsealed in the case of a man who pleaded guilty to drug and tax charges in the same transaction that resulted in federal cocaine charges against John DeLorean, Kennedy decided to grant the media request. None of the documents had been made public, and the federal district court ruled that they should remain sealed. Kennedy wrote that only compelling reasons can justify secrecy in court records, and found the government's reasons insufficient. "Most of the information the government seeks to keep confidential concerns matters that might easily be surmised from what is already in the public record," Kennedy said. The documents made public detailed the defendant's request for sentence reduction and the government's response. In his opinion, Kennedy held that there is a presumption that the public and news media have a right of access to files in criminal proceedings. The fact that the district court sealed its findings was given no special weight.

Judge Kennedy was one of the six Ninth Circuit judges (as was Judge Wallace) to join in the unusual "dissent" filed after the panel disposition in Students of California School for the Blind v. Honig. The six judges were unable to muster the absolute majority needed to rehear the case en banc and therefore filed an inchoate "dissent" after the case had been disposed of, even though none was on the panel. Judge Sneed, who wrote the dissent, said that the panel decision reflects "an insensitivity to the most recent relevant Supreme Court pronouncements and to the principles of federalism those pronouncements sought to explicate." The panel had upheld a federal order that state officials either perform more seismic testing in a California school or close it. The Ninth Circuit panel held that California had waived its immunity to sue in federal court under the 11th Amendment by participating in federally funded and regulated programs. That decision appeared to conflict directly with Pennhurst State School and Hospital v. Halderman, 109 S. Ct. 900 (1984).

Judge Kennedy's panel decision in another case reinstated a false-arrest and brutality suit against Las Vegas police by two jewelry salesmen who were apprehended in 1976 under suspicion of killing two shop owners and stealing their jewelry. The suit, alleging violation of the individuals' civil rights, unlawful arrest and seizure, had previously been thrown out by the district court. The case "reflects the inescapable conclusion that the jewelry salesmen were arrested because there is an unknown possibility that the jewelry was stolen," said Kennedy's opinion. The police actions, if true, are "outrageous and unjustifiable," he wrote.

Over constitutional objections, Judge Kennedy -- writing for an en banc court -- ruled that federal magistrates may conduct all procedings in civil cases, provided the litigants consent. The Kennedy opinion reversed a panel decision that had held that magistrates possess only limited power because they do not have the Article III constitutional protection of judges to ensure their independence. The case, Pacemaker Diagnostic Clinic of America v. Instromedix, Inc., decided in 1984, was seen as a major victory for magistrates. It had precedent in the Third Circuit. "Upon examination of the statute before us, we conclude that it contains sufficient protection against the erosion of judicial power to overcome the constitutional objections leveled against it, " Kennedy wrote. The panel had held that magistrates cannot render final decisions or enter judgments in civil cases because of their lack of independence, relying on the Supreme Court's 1982 decision in Northern Pipeline Construction Co. v. Marathon Pipeline Co., which struck down provisions in the 1978 bankruptcy act that gave jurisdiction to federal bankruptcy judges. Judge Kennedy relied heavily on the fact that the waiver of the right to have one's case heard by an Article III judge would be voluntary and knowing.

In a 1983 decision involving Jane Fonda's claim that two banks conspired with the FBI in the 1970s to suppress her political views, Judge Kennedy's panel affirmance said Fonda produced no evidence of a "meeting of the minds between the banks and the FBI" which would have been necessary to prove a conspiracy. Fonda had sued nearly two dozen past or present government officials and Morgan Guaranty Trust Co. of New York and City National Bank in Los Angeles, claiming a wide-ranging conspiracy aimed at supressing her opposition to the Vietnam War and the Nixon Administration. Her suit was based principally upon columnist Jack Anderson's reprints of excerpts from FBI files that revealed phone taps and other surveillance, including examination of her bank records without court clearance. Judge Kennedy concurred in the panel's opinion.

In South-Central Timber Development, Inc. v. LeResche, 693 F.2d. 890 (9th Cir. 1982), Judge Kennedy, writing for the panel, lifted a district court injunction against enforcement of an Alaska statute that was pointedly designed to favor local timber processors. Kennedy concluded that the state statute was not violative of the commerce clause because it was consistent with federal statutes that likewise favored Alaska timber processors. The Supreme Court reversed, holding that the mere fact that the state statute furthered the goals of a federal statute did not give a sufficient basis for inferring congressional intent to burden interstate and foreign commerce relating to Alaskan timber.

In Park'N Fly, Inc. v. Dollar Park and Fly, 718 F.2d. 327 (9th Circuit 1983), Judge Kennedy wrote that the holder of the registered trademark "Park'N Fly" was not entitled to an injunction prohibiting the use of the words "Park and Fly" as the name of a competitor because the mark was merely descriptive and therefore unregisterable (even though it had, in fact, been registered). The Supreme Court reversed, holding that the owner of a registered mark may enjoin infringement, and the fact that a registered mark was merely descriptive was no defense in an infringement action.

In May 1987, Judge Kennedy authored an opinion dismissing a law suit that claimed that the former mayor of Santa Monica (a proponent of rent control) slandered her political opponent (a landlord) by suggesting that the landlord was wanted for Nazi war crimes. Upholding the lower court ruling, Judge Kennedy wrote that the alleged comment was "nothing more than a vicious slur"; it was merely opinion and not grounds for a defamation action. "In this case," said Judge Kennedy, "if the mayor chose to get in the gutter, the law simply leaves her there."

In an important case upholding the prerogatives of the Executive Branch, Judge Kennedy wrote an opinion holding that the decision by a federal agency to take no enforcement action against a federal contractor was not subject to judicial review.

Clementson v. Brock, 806 F.2d 1402 (1986). Specifically, Judge Kennedy's opinion found that the decision of the Department of Labor's Office of Federal Contract Compliance to drop a complaint, or not to seek any penalties, against an employer was within the agency's discretion. He wrote that "When an agency determines not to start enforcement procedings, there is a presumption against judicial review of that decision."

Position on Critical Issues

Criminal Justice. Judge Kennedy has written a number of recent criminal justice opinions. The cases suggest he has a reasonably strong law enforcement position, but he occasionally rules against the prosecution in close cases.

In Neuschafer v. Whitley, 816 F.2d 1390 (1987), Judge Kennedy affirmed the application of the death penalty. He rejected the defendant's claim that the penalty was "disproportionate."

In January 1987, Judge Kennedy upheld the legality of the FBI's electronic surveillance of a former Northrop engineer who was convicted of attempting to sell secrets about the "Stelth" bomber program to the Soviet Union. U.S. v. Cavanagh, 807 F.2d 787 (1987).

In U.S. v. Mostella, 802 F.2d 358 (1986), Judge Kennedy upheld a conviction for bank robbery against a challenge that the district judge had become unduly involved in questioning witnesses. He said a judge's "extensive nonpartisan questioning, without more, does not require reversal." Judge Kennedy felt a reversal would not be appropriate absent an extreme overstepping of a proper judicial role.

In two other cases, however, Judge Kennedy threw out evidence submitted by the prosecution, or overturned convictions. In U.S. v. Spilotro, 800 F.2d 959 (1986), a racketeering case, Judge Kennedy suppressed evidence on Fourth Amendment grounds. He said that he reached this conclusion with "little enthusiasm for there was probable cause to believe that [Anthony] Spilotro and his associates . . . were engaged in loan sharking and book making," however, the warrants were "hopelessly general" and violated constitutional protections designed to prevent "exploratory searches and indiscriminate rummaging."

In August 1986, he overturned a murder conviction on the grounds that the jury had not been given the opportunity to find the defendant guilty of second degree, rather than first degree murder. His opinion held that the conviction violated the defendant's due process rights because the jurors were not told they could find the defendant guilty of killing on "impulse," as opposed to after premeditation. Although there was "clear, persuasive evidence of premeditation in the case," said Judge Kennedy, there was also testimony by a psychiatrist that the

defendant might have been in the midst of an impulsive episode of violence resulting from his epilepsy. Judge Kennedy reached this result despite the fact that the defendant's counsel had not requested that the district judge deliver a charge for second degree murder. The Ninth Circuit panel's decision was unanimous, however.

Federalism. Judge Kennedy's decisions in this area are notable for their clear explication of concepts of federalism and deference to state concerns. His exceptional concern for proper state/federal roles in judicial matters is illustrated by his decision in a damage suit for negligence against a drug manufacturer. Judge Kennedy's panel decision expressly asked the Idaho Supreme Court to explain the Idaho standard for negligence claims, and whether jury instructions on the issue of negligence were sufficient. The Court also asked whether, based on Idaho law, the jury could have found the defendant negligent for failure to develop a safer cell vaccine, since "relevant Idaho precedents do not indicate whether [the defendant's] conduct in designing and distributing a vaccine for which there is no legally available substitute and which possesses a degree of social utility may be characterized as negligent." His decision in South Central Timber Development showed that he can carry federalism so far that it conflicts with other important Constitutional principles.

Economic Matters. Judge Kennedy dissented from a 1982 panel decision holding that an employee who was discharged has standing to bring a private treble damage suit under Section 4 of the Clayton Act based on the allegation that the employer participated in an antitrust conspiracy. Judge Kennedy's dissent in Ostrofe v. H.A. Crocker Co., argued that the court's majority opinion extended the reach of the antitrust laws far beyond the established precedent and the intent of Congress. Under the Supreme Court's decision in Brunswick Corp. v. Pueblo Bowl-o-Mat, Inc., 429 U.S. 447 (1977), actions under Section 4 are limited to persons injured as competitors in a defined market or a discreet area of the economy. Since the plaintiff was not in the area of the economy endangered by a breakdown of competitive conditions -- i.e., he was not injured by any elimination of competition. His majority opinion in the Washington State comparable worth case, described above, is also significant.

Judge Kennedy expressed "some misgivings" about expanding the use of RICO in civil suits between business competitors. He expressed these thoughts in a separate concurrence while joining in the court's decision. He noted that in the civil context, there are no prosecutors available to check overbroad use of the RICO statute.

Separation of Powers. Judge Kennedy wrote the unanimous three-judge panel's decision in the Chadha case for the Ninth

Circuit, which was affirmed on appeal. The opinion, which struck down the legislative veto, said that the use of this procedure "undermines" the executive branch's powers and replaces it with "a species of nonlegislation" making "meaningless" the executive's duty to enforce law fairly. Kennedy's opinion also stressed that the use of the congressional veto in immigration cases interfered with "a central function of the judiciary," that of ensuring fairness and uniformity in dealing with aliens who seek suspension of deportation. The opinion said the use of the Congressional veto also "trespasses upon central functions of the executive" to enforce the law. The Court found that the one-house veto provision bypassed "the internal check of bicameralism" inherent in the constitutional requirement that legislation be passed by both House and Senate. The decision, reported at 634 F.2d. 408 (1980), held (1) that the Ninth Circuit had the jurisdiction to hear a case in which an alien was challenging the constitutionality of the statute rather than a decision of the INS; (2) that the statutory one-house "legislative veto" of the Attorney General's suspension of an INS deportation order violated the doctrine of separation of powers; and (3) that the unconstitutional portion of the statute was severable from the remainder.

Other Issues

Judge Kennedy was involved as a witness in the 1984 trial of U.S. District Harry E. Claiborne for bribery, wire fraud, obstruction of justice, tax evasion and filing a false financial disclosure form. One of the bribery charges was that Judge Claiborne bilked Nevada brothel owner Joe Conforte (who owns the Mustang Ranch Brothel outside of Reno), promising to influence the Ninth Circuit Court of Appeals decisions on Conforte's criminal tax conviction and never doing so. That count was framed as wire fraud. To establish the fraud element, the prosecution called all three Ninth Circuit judges who were members of the panel hearing Conforte's criminal case, one of whom was Judge Kennedy. Two of the panel members said they had no contact at all with Judge Claiborne, but Judge Kennedy recalled one conversation, which he said was brief and inappropriate. Judge Kennedy said the phone conversation regarding Conforte's tax case occurred in late 1979 or early 1980. At that time, according to Judge Kennedy, he and Judge Claiborne were in intermittent contact because they were sitting together on a Ninth Circuit case. "When are you coming out with Conforte?" Judge Claiborne allegedly asked. "The case is under submission," Judge Kennedy said he replied curtly. Kennedy testified that he was "taken aback" when Claiborne called him about the Conforte case. Judge Claiborne allegedly collected $55,000 from Conforte as a result of the promise.

One of Kennedy's two former law partners has been the subject of press reports because of his decision to abandon the law in

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Additional Comments: "'Very young when appointed. Smart, filled with nervous energy. Usually asks many questions.' 'Good judge, good analytical mind, courageous, not afraid to break new ground. Well prepared, asks many questions.' 'A follower, doesn't do anything on his own.' 'Open-minded.' 'Very bright.' 'Quiet. Asks perceptive questions. Not hostile or aggressive.' 'Good business lawyer.' 'Sometimes caustic.' 'Not that well prepared.' 'An enigma. Hard to peg. Tends to agonize over opinions. Very conservative on Title VII.' 'Writes well reasoned opinions.' 'Opinions are not always well worked out. He loses track of the central argument.' 'Opinions go off on tangents and are too long-winded.' 'Bright, conservative, polite, works hard.'"

As these comments indicate, Judge Kennedy is somewhat of an enigma, as is his judicial philosophy. While his opinions generally evince a healthy respect for principles of judicial restraint and for precedent, his dearth of legal articles makes it difficult to ascertain the details of his general judicial philosophy. He is recognized as one of the more conservative members of the Ninth Circuit and is particularly sound on jurisdictional issues and on avoiding unnecessary constitutional questions.

Among his most controversial cases, which may present some confirmation objections (especially from women's groups and labor unions), is the September 1985 "comparable worth" case, in which Kennedy overturned an order that the State of Washington pay hundreds of millions of dollars to 15,000 women who said that they should be paid the same as men who do comparable work. Kennedy said the state was not obligated to "eliminate an economic inequality which it did not create." The comparable worth theory should only be used in cases in which there is a "specific, clearly delineated employment practice applied at a single point in the job selection process," he wrote. Instead, the Washington system was based on numerous factors "including supply and demand and other market forces." The State of Washington "has not been shown to have been motivated by impermissible sex-based considerations in setting salaries" he said. He also ruled that "a study which indicates a particular wage structure might be more equitable should not categorically bind the employer. . . ."

In another case, Topic v. Circle Realty, Judge Kennedy denied standing to a community volunteer organization which sought to bring actions against real estate brokers under the Fair Housing Act for "racial steering." None of the plaintiffs were actual homeseekers subjected to racial steering and Judge Kennedy refused to deviate from the general rule against third party standing. In Fisher v. Reiser, he declined to expand the right to travel cases to require a state to provide benefits to former residents.

Finally, in Spangler v. Pasadena, Judge Kennedy held that a court should relinquish jurisdiction when the effects of a prior

constitutional violation have been remedied and there is no continuing violation. He also noted that there is no constitutional obligation to maintain a particular racial mix in schools; the constitution requires only that governments refrain from segregating schools according to race.

As solid as most of his decisions appear to be, several of them may raise questions as to his commitment to the interpretivist principles of this Administration. Perhaps the primary example is his reasoning in the Chadha case, where he struck down the legislative veto. He reached the correct result and the Supreme Court affirmed the holding on appeal. There are, however, significant differences between the reasoning of Judge Kennedy's opinion and that of the Supreme Court majority. The brilliance and usefulness of the Supreme Court opinion is its clear focus on the concrete, structural "how to" provisions of the Constitution. The Supreme Court did not, as Judge Kennedy did attempt merely to rely on more abstract, free floating and potentially dangerous constitutional rhetoric about the separation of powers, nor did it attempt to tackle the difficult task of defining the content of the three powers. Recognizing that Congress can act only by passing a law barring several narrow exceptions specified (explicitly or implicitly) in the Constitution -- exceptions that were not applicable to its action concerning Jagdish Chadha, -- the majority turned to the instructions for passing a law explicitly stated in Article I, section 7. Since those instructions (i.e., bicameralism and presentment) were not followed, the House action was unconstitutional. In contrast to this simple and compelling approach, Judge Kennedy took the more difficult and confused approach of determining "whether the one house disapproval disrupts an essential function of the judicial office or of the executive office . . . especially in a long-term and routine basis," if that assumption of power is not only disruptive, but "unnecessary to the attainment of a legitimate purpose." Not only does he fail to make any serious effort to define what the essential functions of those offices are, his preoccupation with "practical" (rather than "constitutional") concerns about whether or not departures from the separation of powers are "necessary" is extremely disturbing.

Several of his other cases are also troubling, although because of the predominantly liberal nature of the Ninth Circuit, it is difficult to assess the importance of these and other decisions. Judge Kennedy may well have felt compelled to temper some of his opinions to gain a majority or to insulate his opinions from en banc review.

For example, In Beller v. Middendorf, Judge Kennedy upheld the validity of naval regulations prohibiting homosexual conduct but made it clear his decision rested largely on the special circumstances and needs of the military. Not only does Judge Kennedy fail to evidence any hostility to so-called privacy rights, judicial conservatives may find disconcerting the somewhat favorable tone Judge Kennedy adopts in discussing them and the fact

that by formulating the rationale for upholding the naval regulation so narrowly he gave very narrow scope to a Supreme Court precedent (i.e., summary affirmance of a lower court opinion) that upheld a state's criminalization of homosexual conduct.

James v. Ball, however, is more troubling. There, Judge Kennedy expanded the "one-man, one-vote" rule of Reynolds v. Sims by writing the majority opinion for a split panel that distinguished a Supreme Court precedent which had recognized an exception to that rule on facts that look very similar to the ones in the case before the panel. The Supreme Court overruled the Ninth Circuit, concluding that while Judge Kennedy was correct in "conceiving the question in this case to be whether the purpose of the District is sufficiently specialized and narrow and whether its activities bear on landowners so disproportionately as to distinguish the District from those public entities whose more general government functions demand application of the Reynolds principle," he did not apply those criteria correctly to the facts of this case.

Other of his more significant cases include:

A suit brought by CBS radio and a television network to have legal documents unsealed in the case of a man who pled guilty to drug and tax charges in the same transaction that resulted in federal cocaine charges against John DeLorean, in which Judge Kennedy granted the media request. None of the documents had been made public, and the federal district court ruled that they should remain sealed. Kennedy wrote that only compelling reasons can justify secrecy in court records, and found the government's reasons insufficient. "Most of the information the government seeks to keep confidential concerns matters that might easily be surmised from what is already in the public record," Kennedy said. The documents made public detailed the defendant's request for sentence reduction and the government's response. In his opinion, Kennedy held that there is a presumption that the public and news media have a right of access to files in criminal proceedings. The fact that the district court sealed its findings was given no special weight.

Students of California School for the Blind v. Honig, in which Judge Kennedy was one of the six Ninth Circuit judges (as was Judge Wallace) to join in the unusual "dissent" filed after the panel disposition. The six judges were unable to muster the absolute majority needed to rehear the case en banc and therefore filed an inchoate "dissent" after the case had been disposed of, even though none was on the panel. Judge Sneed, who wrote the dissent, said that the panel decision reflects "an insensitivity to the most recent relevant Supreme Court pronouncements and to the principles of federalism those pronouncements sought to explicate." The panel had upheld a federal order that state officials either perform more seismic testing in a California school or close it. The Ninth Circuit panel held that California had waived its immunity to sue in federal court under the 11th

Amendment by participating in federally funded and regulated programs. That decision appeared to conflict directly with Pennhurst State School and Hospital v. Halderman, 109 S. Ct. 900 (1984).

Over constitutional objections, Judge Kennedy -- writing for an en banc court -- ruled that federal magistrates may conduct all procedings in civil cases, provided the litigants consent. The Kennedy opinion reversed a panel decision that had held that magistrates possess only limited power because they do not have the Article III constitutional protection of judges to ensure their independence. The case, Pacemaker Diagnostic Clinic of America v. Instromedix, Inc., decided in 1984, was seen as a major victory for magistrates. It had precedent in the Third Circuit. "Upon examination of the statute before us, we conclude that it contains sufficient protection against the erosion of judicial power to overcome the constitutional objections leveled against it, " Kennedy wrote. The panel had held that magistrates cannot render final decisions or enter judgments in civil cases because of their lack of independence, relying on the Supreme Court's 1982 decision in Northern Pipeline Construction Co. v. Marathon Pipeline Co., which struck down provisions in the 1978 bankruptcy act that gave jurisdiction to federal bankruptcy judges. Judge Kennedy relied heavily on the fact that the waiver of the right to have one's case heard by an Article III judge would be voluntary and knowing.

In a 1983 decision involving Jane Fonda's claim that two banks conspired with the FBI in the 1970s to suppress her political views, Judge Kennedy's panel affirmance said Fonda produced no evidence of a "meeting of the minds between the banks and the FBI" which would have been necessary to prove a conspiracy. Fonda had sued nearly two dozen past or present government officials and Morgan Guaranty Trust Co. of New York and City National Bank in Los Angeles, claiming a wide-ranging conspiracy aimed at suppressing her opposition to the Vietnam War and the Nixon Administration. Her suit was based principally upon columnist Jack Anderson's reprints of excerpts from FBI files that revealed phone taps and other surveillance, including examination of her bank records without court clearance. Judge Kennedy concurred in the panel's opinion.

In South-Central Timber Development, Inc. v. LeResche, 693 F.2d. 890 (9th Cir. 1982), Judge Kennedy, writing for the panel, lifted a district court injunction against enforcement of an Alaska statute that was pointedly designed to favor local timber processors. Kennedy concluded that the state statute was not violative of the commerce clause because it was consistent with federal statutes that likewise favored Alaska timber processors. The Supreme Court reversed, holding that the mere fact that the state statute furthered the goals of a federal statute did not give a sufficient basis for inferring congressional intent to burden interstate and foreign commerce relating to Alaskan timber.

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In May 1987, Judge Kennedy authored an opinion in Koch v. Goldway dismissing a law suit that claimed that the former mayor of Santa Monica (a proponent of rent control) slandered her political opponent (a landlord) by suggesting that the landlord was wanted for Nazi war crimes. Upholding the lower court ruling, Judge Kennedy wrote that the alleged comment was "nothing more than a vicious slur"; it was merely opinion and not grounds for a defamation action. "In this case," said Judge Kennedy, "if the mayor chose to get in the gutter, the law simply leaves her there."

In an important case upholding the prerogatives of the Executive Branch, Judge Kennedy wrote an opinion holding that the decision by a federal agency to take no enforcement action against a federal contractor was not subject to judicial review. Clementson v. Brock, 806 F.2d 1402 (1986). Specifically, Judge Kennedy's opinion found that the decision of the Department of Labor's Office of Federal Contract Compliance to drop a complaint, or not to seek any penalties, against an employer was within the agency's discretion. He wrote that "When an agency determines not to start enforcement procedings, there is a presumption against judicial review of that decision."

Position on Critical Issues

Criminal Justice. Judge Kennedy has written a number of recent criminal justice opinions. The cases suggest he has a reasonably strong law enforcement position, but he occasionally rules against the prosecution in cases where there is a strong argument that the prosecution should prevail.

In United States v. Rubalcava-Montoyn, for example, Judge Kennedy reversed several convictions on conspiracy to transport aliens and transportation of illegal aliens on the ground that the exclusionary rule required suppression of evidence obtained from a police search of a car containing illegal aliens in the trunk. Judge Kennedy stated "That the defendant had previously been arrested for the same crime at the same place, and that he had a dejected, hangdog demeanor when he exited the car, are insufficient facts on which to base a finding of probable case to search for evidence of a crime." In United States v. Jones, Judge Kennedy reversed a conviction for attempted murder on the ground that stabbing a victim five times was insufficient to prove

intent, given the defendant's defense that he did not intend to kill the victim, only "to teach him a lesson." In dissent, Judge Goodman stated "All the government could produce was the guard who pulled Jones off Wingard while Jones was stabbing Wingard as fast as he could with a prison-made knife. Jones had completed five thrusts when he was pulled away. One would think that a jury reasonably could find from the evidence that Jones intended to murder Wingard."

In U.S. v. Spilotro, 800 F.2d 959 (1986), a racketeering case, Judge Kennedy suppressed evidence on Fourth Amendment grounds. He said that he reached this conclusion with "little enthusiasm for there was probable cause to believe that [Anthony] Spilotro and his associates . . . were engaged in loan sharking and book making," however, the warrants were "hopelessly general" and violated constitutional protections designed to prevent "exploratory searches and indiscriminate rummaging."

In August 1986, he overturned a murder conviction on the grounds that the jury had not been given the opportunity to find the defendant guilty of second degree, rather than first degree murder. His opinion held that the conviction violated the defendant's due process rights because the jurors were not told they could find the defendant guilty of killing on "impulse," as opposed to after premeditation. Although there was "clear, persuasive evidence of premeditation in the case," said Judge Kennedy, there was also testimony by a psychiatrist that the defendant might have been in the midst of an impulsive episode of violence resulting from his epilepsy. Judge Kennedy reached this result despite the fact that the defendant's counsel had not requested that the district judge deliver a charge for second degree murder. The Ninth Circuit panel's decision was unanimous, however.

On the other hand, in Neuschafer v. Whitley, 816 F.2d 1390 (1987), Judge Kennedy affirmed the application of the death penalty. He rejected the defendant's claim that the penalty was "disproportionate." In January 1987, Judge Kennedy upheld the legality of the FBI's electronic surveillance of a former Northrop engineer who was convicted of attempting to sell secrets about the "Stelth" bomber program to the Soviet Union. U.S. v. Cavanagh, 807 F.2d 787 (1987). In U.S. v. Mostella, 802 F.2d 358 (1986), Judge Kennedy upheld a conviction for bank robbery against a challenge that the district judge had become unduly involved in questioning witnesses. He said a judge's "extensive nonpartisan questioning, without more, does not require reversal." Judge Kennedy felt a reversal would not be appropriate absent an extreme overstepping of a proper judicial role.

Federalism. While some of Judge Kennedy's decisions in this area are notable for their clear explication of concepts of federalism and deference to state concerns, at least a couple of his decisions seem antithetical to principles of federalism. His concern for proper state/federal roles in judicial matters is illustrated

by his decision in a damage suit for negligence against a drug manufacturer. Judge Kennedy's panel decision expressly asked the Idaho Supreme Court to explain the Idaho standard for negligence claims, and whether jury instructions on the issue of negligence were sufficient. The Court also asked whether, based on Idaho law, the jury could have found the defendant negligent for failure to develop a safer cell vaccine, since "relevant Idaho precedents do not indicate whether [the defendant's] conduct in designing and distributing a vaccine for which there is no legally available substitute and which possesses a degree of social utility may be characterized as negligent." His decision in South Central Timber Development showed that he can carry federalism so far that it conflicts with other important Constitutional principles.

On the other hand, in Vanelli v. Reynolds School District, Judge Kennedy ignored the decision of the highest state court to have ruled on an issue in concluding that there was a property interest involved under Oregon state law in the context of a teacher dismissal. He also ignored the Oregon statutory rules for dealing with that "right", even though those rules would have established the perimeter of the right. In Usery v. Lacy, Judge Kennedy upheld the applicability of OSHA regulations to what should have been a state law matter. Here, again, there was a very effective dissent that would have been a majority had Judge Kennedy supported it.

Economic Matters. Judge Kennedy dissented from a 1982 panel decision holding that an employee who was discharged has standing to bring a private treble damage suit under Section 4 of the Clayton Act based on the allegation that the employer participated in an antitrust conspiracy. Judge Kennedy's dissent in Ostrofe v. H.A. Crocker Co., argued that the court's majority opinion extended the reach of the antitrust laws far beyond the established precedent and the intent of Congress. Under the Supreme Court's decision in Brunswick Corp. v. Pueblo Bowl-o-Mat, Inc., 429 U.S. 447 (1977), actions under Section 4 are limited to persons injured as competitors in a defined market or a discreet area of the economy. Since the plaintiff was not in the area of the economy endangered by a breakdown of competitive conditions -- i.e., he was not injured by any elimination of competition. His majority opinion in the Washington State comparable worth case, described above, is also significant.

Judge Kennedy expressed "some misgivings" about expanding the use of RICO in civil suits between business competitors. He expressed these thoughts in a separate concurrence while joining in the court's decision. He noted that in the civil context, there are no prosecutors available to check overbroad use of the RICO statute.

Separation of Powers. As noted above, Judge Kennedy wrote the unanimous three-judge panel's decision in the Chadha case, which struck down the legislative veto. His approach to that case with

its heavy focus on abstractions and pragmatics rather than the explicit language of the Constitution is troublesome.

Other Issues

Judge Kennedy was involved as a witness in the 1984 trial of U.S. District Harry E. Claiborne for bribery, wire fraud, obstruction of justice, tax evasion and filing a false financial disclosure form. One of the bribery charges was that Judge Claiborne bilked Nevada brothel owner Joe Conforte (who owns the Mustang Ranch Brothel outside of Reno), promising to influence the Ninth Circuit Court of Appeals decisions on Conforte's criminal tax conviction and never doing so. That count was framed as wire fraud. To establish the fraud element, the prosecution called all three Ninth Circuit judges who were members of the panel hearing Conforte's criminal case, one of whom was Judge Kennedy. Two of the panel members said they had no contact at all with Judge Claiborne, but Judge Kennedy recalled one conversation, which he said was brief and inappropriate. Judge Kennedy said the phone conversation regarding Conforte's tax case occurred in late 1979 or early 1980. At that time, according to Judge Kennedy, he and Judge Claiborne were in intermittent contact because they were sitting together on a Ninth Circuit case. "When are you coming out with Conforte?" Judge Claiborne allegedly asked. "The case is under submission," Judge Kennedy said he replied curtly. Kennedy testified that he was "taken aback" when Claiborne called him about the Conforte case. Judge Claiborne allegedly collected $55,000 from Conforte as a result of the promise.

Conclusion

REDACTED

ANTHONY M. KENNEDY

Biographical Information

AGE: 51

BORN: July 23, 1936, Sacramento, California

COLLEGE: Stanford University, 1954-57
London School of Economics, 1957-58 (no degree)
Stanford University, B.A., 1958 (age 21)

LAW SCHOOL: Harvard University, 1961 (age 24); Board of Student Advisors

MILITARY: California Army National Guard, 1961, private first class

PARTY: Republican

FAMILY: Married, three children

RESIDENCE: Sacramento, California

(See attached biographical materials)

Judicial History

TRIAL COURT: None

APPELLATE COURT: Ninth Circuit, appointed by President Ford, 1975

Professional Experience

Evans, Jackson & Kennedy, Sacramento, California, partner, 1967-75
Sole practitioner, Sacramento, California, 1963-67
Thelin, Marrin, John & Bridges, San Francisco, California, associate, 1961-63

General Considerations and Confirmability

Alex Kozinski (with Richard Willard) was one of Judge Kennedy's past law clerks.

The Almanac of the Federal Judiciary contains the following lawyers' comments about Judge Kennedy: courteous; stern on

bench, sociable otherwise. Somewhat conservative; evenhanded; bright; usually well prepared.

Additional Comments: "'Very young when appointed. Smart, filled with nervous energy. Usually asks many questions.' 'Good judge, good analytical mind, courageous, not afraid to break new ground. Well prepared, asks many questions.' 'A follower, doesn't do anything on his own.' 'Open-minded.' 'Very bright.' 'Quiet. Asks perceptive questions. Not hostile or aggressive.' 'Good business lawyer.' 'Sometimes caustic.' 'Not that well prepared.' 'An enigma. Hard to peg. Tends to agonize over opinions. Very conservative on Title VII.' 'Writes well reasoned opinions.' 'Opinions are not always well worked out. He loses track of the central argument.' 'Opinions go off on tangents and are too long-winded.' 'Bright, conservative, polite, works hard.'"

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Judge Kennedy's panel decision in another case reinstated a false-arrest and brutality suit against Las Vegas police by two jewelry salesmen who were apprehended in 1976 under suspicion of killing two shop owners and stealing their jewelry. The suit, alleging violation of the individuals' civil rights, unlawful arrest and seizure, had previously been thrown out by the district court. The case "reflects the inescapable conclusion that the jewelry salesmen were arrested because there is an unknown possibility that the jewelry was stolen," said Kennedy's opinion. The police actions, if true, are "outrageous and unjustifiable," he wrote.

Over constitutional objections, Judge Kennedy -- writing for an en banc court -- ruled that federal magistrates may conduct all proceedings in civil cases, provided the litigants consent. The Kennedy opinion reversed a panel decision that had held that magistrates possess only limited power because they do not have the Article III constitutional protection of judges to ensure their independence. The case, Pacemaker Diagnostic Clinic of America v. Instromedix, Inc., decided in 1984, was seen as a major victory for magistrates. It had precedent in the Third Circuit. "Upon examination of the statute before us, we conclude that it contains sufficient protection against the erosion of judicial power to overcome the constitutional objections leveled against it, " Kennedy wrote. The panel had held that magistrates cannot render final decisions or enter judgments in civil cases because of their lack of independence, relying on the Supreme Court's 1982 decision in Northern Pipeline Construction Co. v. Marathon Pipeline Co., which struck down provisions in the 1978 bankruptcy act that gave jurisdiction to federal bankruptcy judges. Judge Kennedy relied heavily on the fact that the waiver of the right to have one's case heard by an Article III judge would be voluntary and knowing.

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In two other cases, however, Judge Kennedy threw out evidence submitted by the prosecution, or overturned convictions. In U.S. v. Spilotro, 800 F.2d 959 (1986), a racketeering case, Judge Kennedy suppressed evidence on Fourth Amendment grounds. He said that he reached this conclusion with "little enthusiasm for there was probable cause to believe that [Anthony] Spilotro and his associates . . . were engaged in loan sharking and book making," however, the warrants were "hopelessly general" and violated constitutional protections designed to prevent "exploratory searches and indiscriminate rummaging."

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Circuit, which was affirmed on appeal. The opinion, which struck down the legislative veto, said that the use of this procedure "undermines" the executive branch's powers and replaces it with "a species of nonlegislation" making "meaningless" the executive's duty to enforce law fairly. Kennedy's opinion also stressed that the use of the congressional veto in immigration cases interfered with "a central function of the judiciary," that of ensuring fairness and uniformity in dealing with aliens who seek suspension of deportation. The opinion said the use of the Congressional veto also "trespasses upon central functions of the executive" to enforce the law. The Court found that the one-house veto provision bypassed "the internal check of bicameralism" inherent in the constitutional requirement that legislation be passed by both House and Senate. The decision, reported at 634 F.2d. 408 (1980), held (1) that the Ninth Circuit had the jurisdiction to hear a case in which an alien was challenging the constitutionality of the statute rather than a decision of the INS; (2) that the statutory one-house "legislative veto" of the Attorney General's suspension of an INS deportation order violated the doctrine of separation of powers; and (3) that the unconstitutional portion of the statute was severable from the remainder.

Other Issues

Judge Kennedy was involved as a witness in the 1984 trial of U.S. District Harry E. Claiborne for bribery, wire fraud, obstruction of justice, tax evasion and filing a false financial disclosure form. One of the bribery charges was that Judge Claiborne bilked Nevada brothel owner Joe Conforte (who owns the Mustang Ranch Brothel outside of Reno), promising to influence the Ninth Circuit Court of Appeals decisions on Conforte's criminal tax conviction and never doing so. That count was framed as wire fraud. To establish the fraud element, the prosecution called all three Ninth Circuit judges who were members of the panel hearing Conforte's criminal case, one of whom was Judge Kennedy. Two of the panel members said they had no contact at all with Judge Claiborne, but Judge Kennedy recalled one conversation, which he said was brief and inappropriate. Judge Kennedy said the phone conversation regarding Conforte's tax case occurred in late 1979 or early 1980. At that time, according to Judge Kennedy, he and Judge Claiborne were in intermittent contact because they were sitting together on a Ninth Circuit case. "When are you coming out with Conforte?" Judge Claiborne allegedly asked. "The case is under submission," Judge Kennedy said he replied curtly. Kennedy testified that he was "taken aback" when Claiborne called him about the Conforte case. Judge Claiborne allegedly collected $55,000 from Conforte as a result of the promise.

One of Kennedy's two former law partners has been the subject of press reports because of his decision to abandon the law in

favor of running a pizza parlor. Herb Jackson, a former prosecutor in Sacramento, operates a pizza parlor in the resort town of Stinson Beach, California. Jackson started the pizza parlor when he lost his bid for re-election as District Attorney of Sacramento County in 1982. Kennedy's other former partner, Hugh Evans, is a California appellate judge.

Conclusion

Judge Kennedy is bright and conservative. His conservatism is intellectual rather than practical, leading to an occasional anomalous result. His reversals by the Supreme Court in South Central Timber Development and Park'N Fly may be examples of this overintellectualization. As noted by one of the lawyers who commented on him, his opinions often take tangents away from the panel; the number of cases in which he filed separate concurrences is relatively high. The Joe Conforte/Harry Claiborne fraud trial involvement could conceivably come up in confirmation hearings, but there is no evidence that Kennedy did anything but what was properly required in the circumstances. There has been no negative publicity about Judge Kennedy.

Anthony M. Kennedy

Circuit Judge
Ninth Circuit
Suite 1400
555 Capitol Mall
Sacramento, CA 95814
(916) 440-3484
Appointed in 1976
by President Ford

Born: 1936
Spouse: Mary Davis
Children: Justin, Gregory, Kristin

Education Stanford Univ., 1954-57; London Sch. of Economics, 1957-58; Stanford Univ., A.B., 1958, Phi Beta Kappa; Harvard Univ., LL.B., 1961, Board of Student Advisors, 1960-61

Military Service Army Nat'l Guard, Cal., 1961, pfc.

Private Practice Associate, Thelen, Marrin, John & Bridges, San Francisco; self, Sacramento, 1962-67; Evans, Jackson & Kennedy, Sacramento, 1967-75

Academic Positions Professor (constitutional law), McGeorge School of Law, Univ. of the Pacific, 1965-present

Professional Associations A.B.A.; State Bar of Cal.; Sacramento County Bar Assn.

Publications Book Review, 126 SOLICITOR'S J. 153 (1982)(reviewing THE LAW ON COMPENSATION FOR CRIMINAL INJURIES IN THE REPUBLIC OF IRELAND)

Judicial Committees & Activities Judicial Conference: Advisory Panel on Financial Disclosure Reports and Judicial Activities, 1979-present; Committee on Pacific Ocean Territories, 1979-present

Noteworthy Rulings

Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (1980): In an alien's petition to review an INS deportation order following a "legislative veto" of the Attorney General's suspension of the order, the Ninth Circuit held (1) that it had jurisdiction to hear a case in which an alien was challenging the constitutionality of a statute rather than a decision of the INS; (2) that the statutory provision for a one-house "legislative veto" of the Attorney General's suspension of an INS deportation order — pursuant to the Immigration and Nationality Act, § 244 (c)(2), 8 U.S.C. § 1254 (c)(2) — violated the doctrine of separation of powers and was therefore unconstitutional; and (3) that the unconstitutional portion of the statute was severable from the remainder, allowing that remainder to stand on its own. The Supreme Court affirmed, thereby (in effect) invalidating use of the "legislative veto" in hundreds of statutes adopted during the past half century. Immigration and Naturalization Service v. Chadha, No. 80-1832, 51 U.S.L.W. 4907 (6-23-83).

South-Central Timber Development, Inc. v. Le Resche, 693 F.2d 890 (1982): The Ninth Circuit lifted the district court's injunction against enforcement of an Alaska statute that was pointedly designed to favor local timber processors. Kennedy concluded that the state statute was not violative of the commerce clause because it was consistent with federal statutes that likewise favored Alaska timber processors. The Supreme Court reversed, holding that, while there was a congressionally-endorsed federal policy of imposing local-processing requirements on timber taken from federal lands in Alaska, the policy did not apply to timber taken from state lands — absent congressional contemplation of such an application. The Court held that the mere fact that the state statute furthered the goals of the federal statute did not give a sufficient basis for inferring congressional intent to burden interstate and foreign commerce relating to Alaskan timber. South-Central Timber Development, Inc. v. Wunnicke, No. 82-1608, 52 U.S.L.W. 4631 (5-22-84).

Park 'N Fly, Inc. v. Dollar Park And Fly, 718 F.2d 327 (1983): The Ninth Circuit held that the holder of the registered trademark "Park 'N Fly" was not entitled to an injunction prohibiting the use of the words "park and fly" because the mark was merely descriptive and therefore unregistrable — and thus not entitled to injunctive protection (even though it had, in fact, been registered). The Supreme Court reversed, holding that the holder of a registered mark may enjoin infringement, and that the fact that a registered mark was "merely descriptive" (and could therefore have been challenged in a registration contest) was no defense in an infringement action. No. 83-1132, 53 U.S.L.W. 4044 (1-8-85).

Lawyers' Comments

Courteous; stern on bench, sociable otherwise. Somewhat conservative; evenhanded; bright; usually well prepared.

Additional comments: "Very young when appointed. Smart, filled with nervous energy. Usually asks many questions." "Good judge, good analytical mind, courageous, not afraid to break new ground. Well prepared, asks many questions." "Open-minded." "Very bright." "Quiet. Asks perceptive questions, not hostile or aggressive." "Good business lawyer." "An enigma, hard to peg. Tends to agonize over opinions. Very conservative on Title VII." "Writes well-reasoned opinions." "Opinions go off on tangents and are too long-winded." "Bright, conservative, polite, works hard."

1955-70 Gray, Cary, Ames & Frye, San Diego, California; 1970-72 Judge U.S. District Court for California, Southern appointed by President Nixon; 1972-date Judge U.S Court of Appeals, 9th Circuit appointed by President Nixon.

Member American Bar Association, American Law Institute, American Board of Trial Advocates, Blue Key, Phi Kappa Delta.

Lecturer San Diego State University, 1975-date.

Joseph T. Sneed P.O. Box 547, U.S. Court of Appeals, San Francisco, California 94101. (FTS-556-4576). Orig. App't. Dt. 8-24-73.

Born July 21, 1920 in Calvert, Texas; married Madelon Juergens; children Clara Hall, Cara Carleton, Joseph Tyree, IV; Republican; 1942-46 USAAF.

Southwestern University, B.B.A., 1941; University of Texas, LL.B., 1947; Harvard University, S.J.D., 1951; admitted to Texas bar 1948.

1947 instructor business law University of Texas at Austin, 1947-51 assistant professor of Law, 1951-54 associate professor, 1954-57 professor; 1954-56 counsel Graves, Dougherty & Greenhill, Austin, Texas; 1957-62 professor of law Cornell University; 1962-71 professor of law Stanford Law School; 1971-73 Dean Duke Law School; 1973 deputy U.S. Attorney General; 1973-date Judge U.S. Court of Appeals, 9th Circuit appointed by President Nixon.

Member American Bar Association, State Bar of Texas, American Law Institute, American Judicature Society, Association of American Law Schools, Order of the Coif.

Southwestern University, LL.D., 1968. Board of visitors Duke Law School 1973-76. California Law Revision Committee, 1970-71. Author *The Configurations of Gross Income* (1967).

Anthony M. Kennedy Suite 1400, 555 Capitol Mall, Sacramento, California 95814. (916-440-3484). Orig. App't. Dt. 5-30-75.

Born July 23, 1936 in Sacramento, California; Republican; U.S. Army National Guard, California 1961.

London School of Economics, England 1957-58; Stanford University, A.B., 1958; Harvard University, LL.B., 1961; admitted to California bar 1962, U.S. Tax Court bar 1971.

1961-63 Thelen, Marrin, John & Bridges; partner Evans, Jackson & Kennedy; professor constitutional law, University of the Pacific, McGeorge School of Law; 1975-date Judge U.S. Court of Appeals, 9th Circuit appointed by President Ford.

Member American Bar Association, Sacramento County Bar Association, State Bar of California, Phi Beta Kappa.

Member board of student advisors, Harvard Faculty, 1960-61.

J. Blaine Anderson 666 U.S. Courthouse, 550 West Fort Street, Boise, Idaho 83724. (208-334-1612). Orig. App't. Dt. 7-23-76.

Born Jan. 19, 1922 in Trenton, Utah; married Grace Little; children J. Eric, J. Blaine, Leslie Ann, Dirk Brian; Republican; 1942-45 U.S. Coast Guard.

University of Idaho, 1940-41; University of Washington, 1945-46; University of Idaho, LL.B., 1949; admitted to Idaho bar 1949.

distinguished Republican leader, Mr. HUGH SCOTT; with the ranking member on the Committee on Agriculture and Forestry, Mr. DOLE; with Mr. CURTIS, who is a member of that committee; with Mr. EASTLAND, who is a member of the committee; and with Mr. TALMADGE, who is a member of the committee.

I ask unanimous consent that at such time as the farm bill has been called up and made the pending business before the Senate, there be a 2-hour limitation on the debate thereon, the time to be equally divided between Mr. TALMADGE and Mr. DOLE; that time on any amendment be limited to 30 minutes; that time on any debatable motion or appeal be limited to 20 minutes; and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Mr. President, reserving the right to object—and I do not object—I did not understand when the bill was coming up. Is that tomorrow?

Mr. ROBERT C. BYRD. No; the agreement would just apply when the bill was called up.

Mr. STENNIS. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FROM TOMORROW UNTIL 9 A.M. ON SATURDAY, MARCH 22, 1975

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, it stand in recess until 9 a.m. on Saturday.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 8 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, is the Senate convening tomorrow following an adjournment or following a recess?

The PRESIDING OFFICER. Following an adjournment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE MEETING DURING SENATE SESSION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary be given consent to meet while the Senate is in session tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 8 a.m. tomorrow, following a recess. After the two leaders or their designees have been recognized under the standing order, Mr. WEICKER and Mr. KENNEDY each will be recognized for not to exceed 15 minutes and in that order.

Upon the disposition of those two orders, the Senate will resume consideration of the Tax Reduction Act of 1975, and the distinguished Senator from Michigan (Mr. PHILIP A. HART) will be recognized at that time to offer an amendment, on which there will be a 20-minute limitation. Presumably a rollcall vote would be asked for and would occur.

Upon the disposition of that amendment, the Senator from California (Mr. TUNNEY) will be recognized for the purpose of calling up an amendment on which there is a 15-minute limitation. Again, a rollcall vote could occur.

Upon the disposition of that amendment, 15 minutes will be allotted to the amendment by Mr. DOMENICI.

After that amendment is disposed of, Mr. JAVITS will call upon an amendment on which there is a 10-minute limitation, following which Mr. HELMS will call up an amendment on which there is a 10-minute limitation, after which Mr. PERCY will call up two amendments on which there is a time limitation of 10 minutes each.

At the conclusion of the action on those two amendments, Mr. HATHAWAY will call up an amendment on which there is a 10-minute limitation.

Upon the disposition of the Hathaway amendment, the 1 hour will begin to run, under Senate rule XXII, on the motion to invoke cloture.

I ask unanimous consent that the hour be equally divided between Mr. LONG and Mr. CURTIS.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. What occurs after the vote on cloture will depend upon the outcome of that vote. If that vote carries, then action will continue on the Tax Reduction Act of 1975, to the exclusion of all other business; if the vote on cloture does not carry, I think we are in for about the same thing.

Mr. President, for the protection of all Senators I ask unanimous consent that no rollcall vote occur tomorrow morning prior to 8:50.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 8 A.M. TOMORROW

Mr. MORGAN. Mr. President, I move, in accordance with the previous order, that the Senate stand in recess until 8 o'clock tomorrow morning.

The motion was agreed to; and at 8:07 p.m. the Senate recessed until tomorrow, Friday, March 21, 1975, at 8 a.m.

NOMINATIONS

Executive nominations received by the Senate March 20, 1975:

IN THE AIR FORCE

Maj. Gen. William Lyon, 560-26-1980FV, U.S. Air Force Reserve, for appointment as Chief of Air Force Reserve under the provisions of section 8019, title 10 of the United States Code.

IN THE NAVY

Adm. Ralph W. Cousins, U.S. Navy, for appointment to the grade of admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 20, 1975:

DEPARTMENT OF JUSTICE

Ronald T. Knight, of Georgia, to be U.S. attorney for the middle district of Georgia for the term of 4 years.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

THE JUDICIARY

Anthony M. Kennedy, of California, to be U.S. circuit judge for the ninth circuit.

CANAL ZONE GOVERNMENT

Maj. Gen. Harold R. Parfitt, 176-32-1174, U.S. Army, to be Governor of the Canal Zone for a term of 4 years.

EXTENSIONS OF REMARKS

SEVEN CENTURIES OF TYRANNY IN IRELAND

HON. LEO C. ZEFERETTI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 19, 1975

Mr. ZEFERETTI. Mr. Speaker, St. Patrick's Day has just been celebrated again in our country and everybody has had a wonderful time, as usual. The toasts have been drunk and everybody agrees that the Irish are great poets, marvelous in battle and boon companions. And everyone forgets all about the real story behind the Irish and Ireland for another year. That is a tragedy almost as great as the misery of Ireland today.

Ireland as we know it now has known the conquering sword and boot of Great Britain for approximately 700 years. The Irish never tolerated that rule willingly, struggling against all odds to assert their rights as people and unique individuality.

Periodically, that group feeling expressed itself in violent upheaval, as again and again the Irish people sought to show Britain they considered foreign domination intolerable.

British rule in most of Ireland during these centuries took the most dictatorial forms. In essence, the Roman Catholic Irish had the right to die and pay taxes to absentee landlords who sucked wealth from the land and life from the people. In a country where Roman Catholicism had deep, permanent roots, the Irish people were made to feel strangers in