



ANTHONY M. KENNEDY: "You're supposed to stand up when judges come in. But you're not supposed to applaud."

Kennedy Heads for High Court

Judge Regales McGeorge School of Law With His Victory Comments

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SACRAMENTO — In a moment of triumph, Ninth Circuit U.S. Court of Appeals Judge Anthony M. Kennedy flashed a grin and two thumbs up to journalists and a crowd of applauding students gathered Wednesday at McGeorge School of Law.

Kennedy was delighted by the 97-0 Senate vote confirming him as an associate justice of the U.S. Supreme Court. He will be sworn in Feb. 18 in Washington, D.C.

During the press conference, which was more like a post-game victory celebration, he showed himself to be genial, articulate and comfortable enough in the national spotlight to display his extemporaneous witticisms.

"You're supposed to stand up when judges come in," the 51-year-old jurist and popular McGeorge constitutional law

professor remarked with a wry smile. "But you're not supposed to applaud."

The students howled with laughter. Even the reporters, who strive to show no emotion during press conferences, smiled and chuckled.

"I notice there are students and members of the press here," Kennedy continued, on something of a roll. "I think I shall take questions from the members of the press because they'll be somewhat easier to answer."

More laughter.

"So I'll entertain four or five questions of the innocuous variety, ladies and gentlemen."

Because Kennedy's character and views have been examined and probed from a variety of vantage points, there wasn't much left to ask.

But the reporters did their job, asking about the abortive nominations of Robert Bork and Douglas Ginsburg, resurrecting the debate over Kennedy's member-

ships in private, discriminatory clubs, inquiring about his attitudes toward minorities and women.

Although Kennedy declined to answer questions on substantive issues of law that might come before the court and refused to comment specifically about the confirmation processes involving Bork and Ginsburg, he did offer one aside when asked how he felt about getting passed over initially by President Reagan in favor of Ginsburg: Ginsburg dropped out after it was learned that he had smoked marijuana.

"In retrospect, I think of it as simply a minor detour," Kennedy said. More laughter, loud applause.

"I will say with seriousness," he added, "that when the constitutional process appears to be in some disarray, when there are more checks than balancing going on [more laughter], that it is a great honor to be chosen to attempt to bring

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about consensus, and I am gratified to have been chosen to help bring that about."

On Bork, Kennedy said he did not follow the hearings and does not know Bork, "but I have read a number of his opinions, and they are scholarly, they are clearly the mark of an extraordinary legal mind, and I regret that the federal judicial system will no longer have the benefit of his wisdom and his insight.

"I think [in] the next year, dispassionate commentary will shed much more light on that [the conduct of the Bork hearings] than I can in an offhand manner," he said. "I will say that when the political branches are involved in the confirmation process, as they should be, there is a danger of recrimination and angry words, and in that process reputations will get injured and damaged.

"That's a part of the process, and an unfortunate part. And I hope the next 12 months will give us a better perspective as to what really happened there."

In a prepared statement, Kennedy expressed "deep appreciation for the honor conferred by the Senate's vote" and thanked President Reagan "for the confidence he has shown in me.

"Finally, I wish to thank the members of the Senate Judiciary Committee and the members of the Senate as a whole for the advice and counsel that they gave to me during the confirmation process," he added. "The advice and consent process is a component of the system of checks and balances, and it's a very interesting part . . .

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"It attests to the strength of the constitutional system . . . despite unresolved differences or divergences with respect to

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constitutional interpretation," he said.

Asked about his legal opinions affecting women and minorities — the only major issues of contention in the confirmation process — Kennedy said it was "a wonderful opportunity [for] a judge to be able to review his or her own past record. Judges are lifetime appointments, and unless another appointment is in the offing, you simply don't have the time to go back and look at your opinions.

"I found it was a very helpful and instructive process to be able to go back and do that, and I think the entire process makes the judge realize that he represents all of the people in the United States, and I think that's one of the most valuable parts of the process," he said.

Kennedy said his attitudes toward women and minorities were "covered exhaustively" in the confirmation hearings. He reiterated his view that "people are becoming more sensitive" to such issues and said some private clubs have imposed — perhaps "quite unwittingly" — harmful practices against persons "who are not admitted to membership.

"I think society as a whole is becoming more sensitive to that," he added. "Certainly I stand on my record as understanding and embracing all of the protections of the Constitution and the Bill of Rights and all of the protections a de-

cent sense of humanity should [give] to persons who have been left out of important segments of our economy and our society."

Asked about his earlier comments regarding "unclear" Supreme Court decisions, Kennedy quipped: "Beauty is in the eye of the beholder.

"It is important for the Supreme Court justices and for the justices of the Supreme Courts in the states to try to give clear guidance," he said. "I've found as a circuit judge that I wish the court have been more clear.

"I think one contribution that a justice can make is to try to bring about consensus by a majority of the court so that there is a single, unified opinion speaking for a majority of the court and not fractionated opinions. The court under Rehnquist is heading in that direction. I hope it continues to do so."

Declining to answer questions about specific legal issues, Kennedy said press conferences are "awkward" for judges to hold because they are precluded from commenting on matters which might come before the court.

"As you know, judges are required to give neutral, logical, dispassionate, non-political reasons for their decisions," he said. "The tradeoff is that they can't discuss those policies in advance of cases

being decided. That's why we sometimes feel we're imposing on the press when we call you here."

Kennedy is a lifelong resident of Sacramento, where he lives with his wife and three children in the same house where he grew up. He said it would be "hard to leave my home" but added that the work load of the court precluded maintaining residences both in Sacramento and Washington.

Citing a humorous anecdote about an associate justice appointed by President Ulysses Grant, Kennedy said the newly appointed justice was so impressed by his appointment that "he immediately went to Georgetown and bought a huge house and a carriage for his wife.

"The Senate was so annoyed by the presumption that they turned him down," Kennedy said, adding that "I've confined myself to looking at a large map of the metropolitan area" for purposes of house-hunting.

Refusing to comment on his views on abortion, Kennedy said the law "is very much in a state of evolution" on that subject.

"If you had asked a judicial nominee 20 years ago if defamation suits would have been covered by the First Amendment, even the most gifted legal prophet could not have foreseen that the evolution that the law eventually took," he added.

When asked if he found the role of potential tie-breaker on the court burdensome, Kennedy shot back: "I think of myself as one of nine members, not the fifth member."

Increasingly adroit in dealing with contentious reporters, Kennedy — whose prepared statement indicated that he would take "four or five" questions — finally said: "You know, I have some work to do. Does this go on all day?"