Statement of Susan Westerberg Prager
Senate Committee on the Judiciary
Hearings on
the Nomination of Anthony M. Kennedy
to the Supreme Court of the United States
December 16, 1987

Senator Biden and Members of the Committee, as I begin these brief comments I want to make clear that while I am the Dean of the UCLA School of Law, I am not here in my capacity as Dean nor as a representative of UCLA or the University of California.

As some of you know, I was a member of the informal advisory committee formed by the Chair of this Committee this past summer to advise him on the President's nomination. That experience caused me to think deeply about both the Senate's role in the confirmation process and the qualities that I believe we should value most highly in a Justice of the Supreme Court.

I am here urging the Senate to consent to this nomination because I believe that Anthony Kennedy will approach each issue which comes before him, freshly and fairly. I see him as a person who will listen, who has the capacity to be compassionate and who recognizes that his decisions affect people, not pieces of paper or theories or principles. While Judge Kennedy has demonstrated himself to be cautious about extending the law, I believe that his openness and his sense of the special role of the Supreme Court with respect to such things as individual rights and of the values protected by the first amendment will lead him to serious reflection and at times to fresh conclusions.

In his warm and anti-hierarchical way, Judge and Professor Kennedy has set high standards for those around him by communicating his own love of his work and the study of law. While I have known his reputation in Sacramento for many years, (having myself been raised in Sacramento County and later having worked in the California legislature), I first came to know Kennedy personally through his effort to attract outstanding law clerks to his chambers immediately after his appointment to the 9th Circuit in 1975. Kennedy proved himself to be broadly interested in finding the best possible people; he clearly was not applying political tests to individual candidates in making his choices, he sought intellectual balance in the aggregate in his clerks, and he freely hired women and men.

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I want to make clear that I would not be here today if I felt Tony Kennedy would become a Justice unsympathetic to the need to continue to address racial and gender-based discrimination in this society. I believe that Kennedy will strive to be sensitive to discrimination. Certainly, I wish that his reflections with respect to private clubs had evolved more rapidly and with an appreciation that this form of discrimination is indeed invidious. Nevertheless, I see in Anthony Kennedy's actions significant understanding of the issue and its societal importance. The unfortunate reality is that a number of powerful men in this society, men of the full spectrum of political viewpoints, have chosen to not put themselves on the line on this issue, and have continued their membership in these discriminatory institutions which pride themselves on excluding whole classes of people. Knowing Sacramento as I do, I place a great deal of positive weight on Kennedy's 1980 decision to leave the Sutter Club.

Because Anthony Kennedy is both open to discussion and open minded, I am sure the concerns expressed during these hearings will be taken in and reflected upon by him over a long period of years. To be able to consent to the nomination of a person who is genuinely open, who loves the study of law but also has a real world sense of the impact of the law on individual people, and who is deeply concerned about fairness, suggests that the Senate and this Committee have exercised the Senate's constitutional role in a positive, highly significant way.

I very much appreciate this opportunity to appear before you to urge that the Senate consent to the President's nomination of Anthony M. Kennedy.