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Executive Director
Alexandria, Virginia

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314
Telephone Number 703-836-7827
Telecopier Number 703-683-6541

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TESTIMONY

OF

L. CARY BITTICK
EXECUTIVE DIRECTOR
NATIONAL SHERIFFS' ASSOCIATION

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on

THE NOMINATION OF JUDGE KENNEDY
FOR ASSOCIATE JUSTICE OF THE
UNITED STATES SUPREME COURT

December 17, 1987

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Chairman Biden and Members of the Committee:

Thank you for inviting the National Sheriffs' Association to address you on the nomination of Judge Kennedy to be an Associate Justice of the United States Supreme Court.

Let me provide you with some background information about myself and about the National Sheriffs' Association, before outlining the reasons we recommend that you confirm Judge Kennedy to this important position.

My name is L. Cary Bittick. I am the Executive Director of the National Sheriffs' Association. Prior to this appointment, I was the Sheriff of Monroe County, Georgia for 22 years.

I am here today to represent the National Sheriffs' Association and its 35,000 members. Our membership includes the nations 3,100 sheriffs, their deputies and other criminal justice practitioners. The National Sheriffs' Association was first incorporated in 1940 as a nonprofit organization. We actively work to increase the professionalism of law enforcement and corrections officers, to seek new ways to reduce crime, and to increase crime prevention efforts.

As you know, sheriffs in most parts of the country have a variety of duties. In most jurisdictions, sheriffs have several responsibilities in the criminal justice system -- including law enforcement and the administration of our jails. Because of the sheriff's role in enforcing the law and administering the jails, there are many occasions where the sheriff's job is directly impacted by the actions of the United States Supreme Court. Each of us in law enforcement can recite examples in our communities, where criminals have gone free because of technicalities. In our view, an overriding problem for law enforcement throughout the United States has been the courts -- on the federal, state and local level.

In our view, the courts have repeatedly overstepped their authority in criminal cases; they have legislated new rights for criminals and set up impediments in the search for truth. We are anxious to see this trend reversed. We look forward to a court system that puts the meaning of "justice" back into the phrase "criminal justice system."

Because of the critical role that the court plays in our criminal justice system, I have requested to speak to you about Judge Kennedy.

I am pleased to tell you that everything I have heard about Judge Kennedy from our members is positive and the National Sheriffs' Association urges you to confirm his nomination.

The National Sheriffs' Association supports Judge Kennedy for a variety of reasons which I will outline for you:

1. His educational and professional background eminently qualify him for this position. For example, Judge Kennedy:

- graduated from Stanford University in 1958; he was a member of Phi Beta Kappa; and he received his law degree, cum laude from Harvard University in 1961;

- he was in private practice as an associate with the firm of Thelen, Marrin, Johnson and Bridges; a sole practitioner; and a partner with the firm of Evans, Jackson, and Kennedy;

- in 1975, he was appointed to sit on the United States Court of Appeals for the Ninth Circuit; a position he currently holds;

- he has taught constitutional law part-time at the McGeorge School of Law, University of the Pacific, since 1965.

In our opinion, Judge Kennedy's various professional positions and achievements make him superbly well qualified to serve on the United States Supreme Court. He has been in private practice, the educational field, and served in the judicial branch of government. In each position he has served with distinction.

2. We believe that Judge Kennedy's judicial philosophy is sound and we support his common sense approach in reviewing criminal cases. Let me cite two examples of what I mean:

(a) In Adamson v. Ricketts, Judge Kennedy dissented from the majority's holding overturning the death penalty for the man who confessed to the murder of Arizona Republic reporter Don Bolles. The majority reversed the conviction holding that Arizona officials violated the defendants double-jeopardy rights. When the defendant violated the terms of his plea-bargain agreement, by which he was convicted of second-degree murder, the state tried him for first degree murder. In a strongly

worded dissent, Judge Kennedy called the majority's holding "artificial" and said that "it gives the defendant a windfall . . . in what should have been a simple case of the making of a bargain and the failure to keep it."

(b) In another case, United States v. Leon, Judge Kennedy dissented from the majority's holding, which affirmed the suppression of evidence in a drug case and refused to recognize a "good faith" exception to the exclusionary rule where police officers act in reasonable reliance on a search warrant which is later found to be invalid. In his dissent, Judge Kennedy stated "one does not have to read many cases involving illegal drug traffic before it becomes clear exactly what was going on at the residences described by the officers affidavit. . . whatever the merits of the exclusionary rule; its rigidities become compounded unacceptably when courts presume innocent conduct when the only common-sense explanation for it is on-going criminal activity."

In our view, this common-sense approach is a good one that will help restore a proper balance to our criminal justice system.

3. During Judge Kennedy's tenure on the Ninth Circuit Court of Appeals he has demonstrated a commitment to see that justice is carried out. In the cases that he has reviewed he has supported several concepts important to us as law enforcement officers: the death penalty and a "good faith" exception to the exclusionary rule.

(a) In Neuschafer v. Whitley, Judge Kennedy upheld the death sentence of a Nevada prison inmate convicted of strangling another inmate while serving a life-without-parole term for the rapes and murders of two teenagers. He wrote that there was "no valid constitutional or federal objection to the imposition of the capital sentence" on the defendant.

(b) In the United States v. Leon, which I discussed previously, Judge Kennedy's dissent from the majority opinion later was the basis for a Supreme Court reversal. Judge Kennedy's position in the Leon case also provides the basis of President Reagan's proposal for exclusionary rule reform.

We concur with Judge Kennedy's reasoning in these cases and agree with his support of the death penalty and a "good faith" exception to the exclusionary rule.

Mr. Chairman, Members of the Committee:

In conclusion, I would like to quote President Reagan when he stated, "It's time we reassert that the fundamental principle and purpose of criminal justice is to find the truth and not to coddle criminals." We believe that President Reagan's desire to put some justice back in the justice system would be best served by the appointment of Judge Kennedy to the United States Supreme Court.

Again, thank you for the opportunity to speak to you.