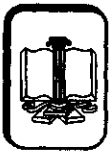

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TESTIMONY OF DEAN GORDON D. SCHABER BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, IN SUPPORT OF THE NOMINATION OF ANTHONY M. KENNEDY, DECEMBER 15 AND 16, 1987.

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE:

I APPEAR HERE IN MY INDIVIDUAL CAPACITY TO SUPPORT THE NOMINATION OF JUDGE ANTHONY KENNEDY.

I DO SO AFTER HAVING HAD THE OPPORTUNITY TO OBSERVE HIM AS A PERSON, A MEMBER OF A COMMUNITY, A PRACTICING ATTORNEY, A LAW TEACHER AND A JUDGE OF THE COURT OF APPEALS.

MY VANTAGE POINTS HAVE BEEN AS A PRACTICING MEMBER OF THE BAR FOR TWELVE YEARS IN THE SAME BUILDING WHERE HE UNDERTOOK PRIVATE PRACTICE AFTER HIS FATHER PASSED AWAY, AS THE PRESIDING JUDGE OF THE SUPERIOR COURTS OF CALIFORNIA IN SACRAMENTO WHILE HE WAS IN ACTIVE PRACTICE, AND AS THE DEAN OF THE McGEORGE SCHOOL OF LAW OF THE UNIVERSITY OF THE PACIFIC WHO SOUGHT HIM OUT TO UNDERTAKE THE TEACHING OF CONSTITUTIONAL LAW TWENTY-THREE YEARS AGO.

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HE HAS EXCELLED IN EACH OF THE ENDEAVORS I MENTIONED:

1. HIS INTEREST IN OUR GOVERNMENT AND COURT SYSTEMS BEGAN WHEN HIS ELEMENTARY SCHOOL CURRICULUM SIMPLY COULD NOT CONTAIN HIS INTELLECT AND ENERGY. HE BECAME AN ALMOST FULL-TIME PAGE IN THE STATE SENATE OF CALIFORNIA AT TEN YEARS OF AGE AND WAS SOON FOLLOWING HIS TRIAL LAWYER FATHER AROUND THE STATE TO OBSERVE COURT TRIALS. HIS LEGAL EDUCATION, AS AN HONOR GRADUATE AT THE HARVARD LAW SCHOOL, AND HIS SUBSEQUENT SERVICE IN A LARGE SAN FRANCISCO LAW FIRM PREPARED HIM WELL FOR THE SUCCESSFUL PRIVATE PRACTICE THAT FOLLOWED IN SACRAMENTO.

2. IN THAT PRIVATE PRACTICE, HE DISPLAYED SKILLS OVER AN IMMENSE SCOPE OF LEGAL SUBJECTS AND WAS KNOWN FOR TREMENDOUS CAPACITY IN MANY FIELDS IN AN ERA WHEN GENERALISTS IN THE PRACTICE WERE MORE COMMON THAN NOW. HE QUICKLY BECAME KNOWN AS A SKILLED TRIAL LAWYER, AND HIS EFFECTIVE WORK IN THE COURTS WAS A JOY FOR ME TO OBSERVE AND TO HEAR ABOUT.

3. AS DEAN, I SOUGHT HIM OUT TO UNDERTAKE LAW TEACHING. I DID SO BECAUSE I WAS AWARE OF HIS INTELLIGENCE, ANALYTICAL SKILL, AND THE INTENSITY AND DEVOTION HE BROUGHT TO HIS WORK. HE HAD EXCELLENT PROFESSIONAL VALUES AND A SUBPERB ABILITY AT COMMUNICATION, WHICH INCLUDES A GREAT WIT. DURING THE PAST TWENTY-TWO YEARS OF HIS TEACHING, HE HAS ENRICHED THE LEGAL

EDUCATION PROGRAM AT McGEORGE AND THE LIVES AND CAPACITIES OF HIS STUDENTS. TESTIMONIALS TO HIS TEACHING ABOUND. THE RECORD CONTAINS THE SALUTES OF HIS STUDENTS, WHO ACKNOWLEDGE HIS LEGAL CAPACITY, HIS FINE JUDICIAL TEMPERAMENT AND HIS BALANCED JUDGMENTS ON THE ISSUES.

I OBSERVED A WILLINGNESS TO INCLUDE PRO BONO COMMUNITY SERVICE IN HIS PRACTICE SUCH AS HIS DEVOTION TO ASSISTING THE HISPANIC COMMUNITY IN A LOCAL PROJECT WHICH UNITED THOUSANDS IN THE SOCIO-ECONOMIC SPECTRUM OF THE MEXICAN-AMERICAN COMMUNITY IN SACRAMENTO.

AT HIS INSTALLATION AS AN APPLELLATE JUDGE, HE CLOSED HIS REMARKS BY QUOTING HOLMES WHEN HE SAID, "LAW IS THE BUSINESS TO WHICH I HAVE DEVOTED MY LIFE, AND I WOULD SHOW LESS THAN DEVOTION IF I DID NOT DO ALL THAT LIES WITHIN ME TO IMPROVE IT." THAT IS AN ACCURATE REFLECTION OF HIS DEDICATION.

WHILE THOSE WHO SPECIALIZE IN CONSTITUTIONAL LAW ARE BETTER EQUIPPED THAN THIS CONTRACTS PROFESSOR TO INTERPRET OR COMMENT UPON HIS HUNDREDS OF OPINIONS, MY READING OF SOME OF THEM DEMONSTRATES TO ME FURTHER EVIDENCE OF HIS INTELLECTUAL REFINEMENT -- HOW HE IS PROBING IN HIS INVESTIGATION OF LEGAL MATTERS, THOUGHTFUL AND STRAIGHTFORWARD. HE HAS BEEN DEVOTED TO HIS ASSIGNED TASK ON THE COURT OF APPEALS. HE WILL CONTINUE THAT DEVOTION IN AN OBJECTIVE MANNER, WITH COMPASSION AND WITH

EMPATHY FOR THOSE WHO PRESENT THEMSELVES. HE WILL DO SO WITHOUT PERSONAL PREDILECTIONS OR SPECIFIC PHILOSOPHICAL INCLINATIONS, WITH AN AIM AT CONSENSUS BUILDING, BY CLOSE EXAMINATION OF THE FACTS, WITH CONSIDERATION OF ISSUES ON A CASE BY CASE BASIS, AND WITH AN ABIDING RESPECT FOR PRECEDENT.

I URGE A VOTE OF CONFIRMATION.