Senator THURMOND. Mr. Chairman, today the committee begins consideration of the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court.

As we begin the hearing process, we must remain keenly aware that a Supreme Court appointment is unique, not only because it grants life tenure, but more specifically, because it invests great power in individuals not held accountable by a popular election.

Along with this power comes a greater responsibility to the people of this nation, to the concept of justice, and to the Constitution. Judge Kennedy, it is very fitting that the Senate consider your nomination to be an Associate Justice of the Supreme Court at a time when we are celebrating the 200th anniversary of the Constitution of the United States.

It is also fitting that we take a moment to reflect not only on the wisdom of our forefathers in preparing this magnificent document, but also on the tremendous responsibility it confers on the Senate. The Constitution assigns the Senate and the House equal responsibility for declaring war, maintaining an armed forces, assessing taxes, borrowing money, minting currency, regulating commerce, and making all laws necessary for the operation of the Government.

However, the Senate alone holds exclusive authority to advise and consent on nominations, and this, without doubt, is one of the most important responsibilities undertaken by this body.

It is one that takes on an even greater significance when a nomination is made to the highest court in the land. The Senate has assigned the task of reviewing judicial nominations to the Judiciary Committee.

This responsibility is critical to the nomination process. The committee's consideration must be equitable, thorough, and diligent. The Judiciary Committee must be ever so mindful that a nomination to the Supreme Court affects all the people of this nation, and not just a select group.

The role of the Supreme Court in America's development has been vital because the Court has faced many difficult issues. Using its collective intellectual capacity, precedent, and constitutional interpretation, the Court must address issues related to criminal law, abortion, privacy, church-state relations, freedom of speech, freedom of the press, the death penalty, civil rights, and much, much more.

Throughout the course of this nation's history, the Court has been thrust into the center of many difficult controversies.

As Justice Holmes stated, "We are quiet here, but it is the quiet of a storm's center."

Due to the broad range of controversial issues which must be resolved by the Court, and the impact these decisions will have, great responsibility is placed upon each Justice, and an Associate Justice must be an individual who possesses outstanding qualifications.

In the past, I have reflected upon these qualifications, and I will only briefly reiterate that I feel a nominee should possess integrity, courage, wisdom, professional competence, and compassion.

An individual with these attributes cannot fail the cause of justice. In his 12 years of service on the U.S. Court of Appeals for the Ninth Circuit, Judge Kennedy has displayed these qualities.

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His proud judicial service, and his distinguished background make him eminently well-qualified to serve on the nation's highest Court.

He attended Stanford University from 1954 to 1957, and was awarded the degree of bachelor of arts, with great distinction, in 1958.

During the year 1957 to 1958, after he had already fulfilled the principal requirements for graduation from Stanford, he attended the London School of Economics and Political Science at the University of London, where he studied political science and English legal history, and also lectured in American Government.

He graduated cum laude from Harvard Law School in 1961. Judge Kennedy practiced law for several years before his appointment to the ninth circuit, where he now ranks among the most senior judges on the bench.

He has vast judicial experience, participating in over 1400 decisions, and authoring over 400 published opinions. In addition, Judge Kennedy has been a constitutional law professor at the McGeorge School of Law at the University of the Pacific for more than 20 years.

A review of Judge Kennedy's 400 written opinions indicates that he is among the leaders of thoughtful jurisprudence. Judge Kennedy's published opinions have earned him the reputation reserved for our most distinguished jurists.

His opinions clearly show that he is an advocate of judicial restraint. Judge Kennedy has already had a major impact on American jurisprudence. In 1980 he ruled against the so-called legislative veto, a once common practice under which Congress would grant certain authority to the executive branch, would reserve to itself the right to disapprove particular sections exercised under that authority.

Judge Kennedy declared that the practice violated the constitutional separation of powers. The Supreme Court adopted Judge Kennedy's position.

In a 1983 dissent, in the case of *U.S.* v. *Leon*, Judge Kennedy argued that a court should admit evidence seized by law-enforcement officers under a search warrant, that they believed to be proper. The Supreme Court ultimately reversed a majority opinion, and adopted a good-faith exception to the exclusionary rule.

Generally, the opinions written by Judge Kennedy take a law-and-order position. However, Judge Kennedy has made it clear that if law-enforcement officers overstep legal bounds, he will not hesitate to limit overreaching.

While the constitutional rights of criminal defendants must be protected, Judge Kennedy will not ignore the rights of victims or law-abiding citizens.

I am confident that he will take a practical, common-sense approach to criminal cases, protecting the constitutional rights of criminal defendants, but upholding the right of society to be protected from those who commit criminal wrongdoings.

A review of other opinions written by Judge Kennedy shows that he examines viewpoints and arguments from all sides. His opinions show that he is openminded, fair, and independent. He does not,

before he has the facts, in reviewing the appropriate law, develop preconceived ideas about what the ultimate result should be.

I will also note that Judge Kennedy's opinions show compassion, and why Judge Kennedy has upheld tough sentences. He has shown the fortitude to reverse a criminal conviction if an individual has been treated fundamentally unfair, or his constitutional rights have been violated.

In summary, a complete and thorough review of Judge Kennedy's background indicates that he is competent, fair, and just, and furthermore, that he is exceptionally well-qualified to serve as an Associate Justice of the Supreme Court.

His vast experience as a practicing attorney, professor of constitutional law, and many years of service on the federal bench provide the ideal background and qualifications for confirmation to the nation's highest Court.

Judge Kennedy, we welcome you to the committee, along with your wife Mary, and the rest of your family, and congratulate you on the honor that President Reagan has bestowed upon you.

[The statement of Senator Thurmond follows:]