

The CHAIRMAN. Thank you, Professor. Professor Perdue?

Ms. PERDUE. Mr. Chairman, members of the Senate Judiciary Committee, my name is Wendy Collins Perdue. I am an associate professor of law at the Georgetown University Law Center.

From the fall of 1978 to the fall of 1979, I served as a law clerk to Judge Kennedy, and my testimony here today is based largely on that experience.

A law clerk has a unique opportunity to observe a judge in action, and as a result of my clerking experience, I have the highest regard for Judge Kennedy's abilities as a judge and his fitness to serve on the U.S. Supreme Court. I believe he possesses all of the attributes that would make him an outstanding Justice.

He always prepared carefully and thoroughly. He examined precedent and legal authorities in a disciplined and intellectually honest way. He respected binding authority, but not without close scrutiny of whether the holdings were truly on point.

Contrary to comments that have been made today, I never knew him to reach a conclusion first and then seek out or construe authority to justify that preconceived result.

He actively sought out the views of his clerks. He encouraged us to speak honestly. When there was disagreement, he sincerely sought to understand the source of that disagreement, was never doctrinaire, always open-minded in his approach to cases.

I believe Judge Kennedy profoundly appreciated the role of a judge. He understood that cases are not mere intellectual exercises, that they involve real people, and that they have real effects.

At the same time, he viewed his role as a limited one of deciding the controversy before him. If a case posed a difficult question of judgement, he never shied away from making that judgement; however, he never used his opinions as a vehicle for expounding doctrine beyond that which was called for by a particular case.

Two cases come to mind as illustrations of the Judge's approach. The first is *James v. Ball*. The issue in that case was the constitutionality of an Arizona statute providing that voting in elections for directors of an agricultural and power district was limited to landowners, with voting apportioned according to acreage.

The voting scheme was challenged as a violation of the Equal Protection Clause of the 14th amendment, and Judge Kennedy upheld that challenge, finding the voting scheme unconstitutional.

The opinion includes not only a careful examination of prior precedent; it also includes a thorough and careful examination of how the water district at issue operated, and that district's impact on the lives of millions of people.

The case was a close one, and Judge Kennedy was ultimately reversed, but by a sharply divided Supreme Court, with the four dissenters explicitly endorsing Judge Kennedy's opinion. Regardless of one's views of the merits of that case, it is, I believe, a good illustration of Judge Kennedy's careful but pragmatic approach.

The second case is *U.S. v. Penn*. The case is instructive because it demonstrates that although Judge Kennedy is quite accurately, I believe, portrayed as a restrained and moderate jurist, he is passionate in his pursuit of justice.

In this case, a police officer present at a residence pursuant to search warrant, offered the defendant's five-year-old son a five-

dollar bribe if the son would show the police where his mother had hidden a cache of drugs. The child showed the police where the drugs were hidden, and as a result, the child's mother was indicted.

The ninth circuit sitting en banc held that the evidence obtained through the use of the child should not be suppressed; Judge Kennedy dissented.

Observing that the parent-child union occupies a fundamental place in our culture—and those were his words—he concluded as follows:

“I know for a certainty that none of my brothers sitting in this case would neglect for an instant their duty to protect essential liberties. I regret only that we the dissenters have been unable to convince them that the case before us presents a question of this gravity.

“I view the police practice here as both pernicious in itself and dangerous as precedent. Indifference to personal liberty is but the precursor of a state's hostility to it. That is why the judgement is entered over my emphatic dissent.”

Let me conclude with a more personal note. I came to my clerkship with Judge Kennedy somewhat jaded after 3 years in law school dissecting and critiquing judicial opinions. I left that clerkship with a much less cynical view.

In working with Judge Kennedy, I observed a man of integrity who struggled with some truly difficult cases and attempted to reach just resolutions consistent with precedent and our system of government.

He is, I believe, well qualified in every respect to sit on the United States Supreme Court.

[The statement of Wendy Collins Perdue follows:]