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THE WHITE HOUSE

WASHINGTON

December 4, 1987

MEMORANDUM FOR MARION C. BLAKEY
DIRECTOR OF PUBLIC AFFAIRS

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

Original Signed by ABC

SUBJECT: REVISION OF TALKING POINTS

We have recently reviewed two sets of talking points previously cleared by this office and have concluded that the references made in them to Judge Kennedy's dissenting opinion in United States v. Leon should be deleted. These references occur on the first page of the talking points entitled "Judge Kennedy and Criminal Justice," dated November 20, 1987, under the subheading 'Judge Kennedy's Decisions;' and at the top of the third page of the talking points entitled "Judge Anthony M. Kennedy: The President's Nominee to the Supreme Court," under the subheading 'Noteworthy Opinions Authored by Judge Anthony Kennedy.'

Both references could be read as implying that Judge Kennedy's dissent propounded the so-called "good faith" exception to the Exclusionary Rule adopted on appeal by the Supreme Court, whereas his dissent actually argued that the warrants in question were valid. Accordingly, we request that these two references be deleted in their entirety from all copies of these materials hereafter distributed. It is particularly important that this change be made before the mailing of these materials to potential witnesses takes place on Monday or Tuesday of next week.

THE WHITE HOUSE
WASHINGTON

November 23, 1987

MEMORANDUM FOR ADMINISTRATION SPOKESPERSONS

FROM: MARION C. BLAKEY *MCB*
DIRECTOR OF PUBLIC AFFAIRS

SUBJECT: Judge Kennedy's Record on Criminal Justice and
Judicial Restraint

Attached for your information and use are additional talking points that discuss in detail the record of Judge Anthony M. Kennedy on criminal justice and judicial restraint issues.

If you have any questions concerning these materials, please feel free to contact the White House Office of Public Affairs at (202) 456-7170.


Thanks very much.

WHITE HOUSE TALKING POINTS

JUDGE KENNEDY AND CRIMINAL JUSTICE

- o Judge Kennedy has participated in hundreds of criminal law decisions during his tenure on the Ninth Circuit Court of Appeals. "In that time," President Reagan has said, "he's earned a reputation as a courageous, tough, but fair jurist."
- o Throughout his career on the bench, Judge Kennedy has faithfully applied the Constitution and the criminal law in a manner that recognized a balance between society's need to protect innocent victims and the procedural rights of defendants.
- o Judge Kennedy's decisions reflect his belief that law enforcement activities must be reasonable and that the right of a criminal defendant under the Constitution to receive a fair trial must be protected vigorously.
- o However, his judicial decisions likewise reflect his firm commitment to vindicating the victims of crime and protecting the rights of society from vicious criminals.

Judge Kennedy's Decisions

- 
- o In Judge Kennedy's view, mistakes by law enforcement officers that do not represent willful misconduct and do not affect the fairness of a defendant's trial are not grounds for releasing criminals to renew their war on society. In one of the most important criminal law cases of this decade, the Supreme Court agreed with Judge Kennedy that a "good-faith exception" to the exclusionary rule should be recognized in certain circumstances. Judge Kennedy had argued in a dissenting opinion that evidence in a drug case should not have been suppressed where the police officers had acted in good faith and had reasonably relied upon a search warrant, issued by an impartial magistrate, that was later found to be invalid (U.S. v. Leon, 1983).
 - o Judge Kennedy has supported the use of the death penalty. In Neuschafer v. Whitley, (1987) an inmate murdered another inmate and was sentenced to death by the state. The murderer sought relief in federal court. When the case first came before Judge Kennedy, he sent it back to the lower court to make sure that a statement by the murderer was properly in evidence in his state trial. When the lower court determined that it was, Judge Kennedy then upheld the imposition of the death sentence.

WHITE HOUSE TALKING POINTS

(Criminal Justice, continued)

- o Applying common sense to the law, Judge Kennedy ruled against a criminal defendant's claim that documents sitting on the dashboard of a stolen vehicle were not in plain view (U.S. v. Hillyard, 1982).

Drug Trafficking

- o Supreme Court decisions will have a vital impact on the success of the Nation's crusade against illegal drugs. Judge Kennedy has issued a number of rulings that are likely to be critical in our efforts to counter illegal drug trafficking.
- o Judge Kennedy has upheld tough sentences against drug dealers. He upheld a life sentence without parole for a drug manufacturer and dealer. Although the conviction was for a first offense, Judge Kennedy noted the defendant had expanded his drug manufacturing operations while free on bail, directed the operation from his jail cell after his bail was revoked, and shown no remorse for his crimes. Judge Kennedy upheld the maximum sentence imposed by the lower court (U.S. v. Stewart, 1987).
- o International cooperation is essential in combatting international drug cartels, and in U.S. v. Peterson (1987), Judge Kennedy held that American officials may assume the constitutional validity of the actions of foreign governments cooperating in anti-drug ventures. Judge Kennedy affirmed a conviction obtained on the basis of evidence received from Phillipine narcotics agents with whom American law enforcement officials were acting in a joint anti-drug venture.

Respect for Law Enforcement Officials

- o Judicial activists have in the past elevated the rights of criminals over the right and responsibility of society to protect citizens from violent crime. Often this has been the result of unjustified and unrealistic suspicion toward law enforcement officials on the part of judges -- suspicion Judge Kennedy does not share.
- o Judge Kennedy's respect for law enforcement officials and his sensible and balanced perspective on the criminal justice process is reflected in his concurring opinion in Darbin v. Nourse (1981). There, he wrote separately to emphasize the narrowness of the holding in the case and commented:

WHITE HOUSE TALKING POINTS

(Criminal Justice, continued)

"Were a juror to announce that most law officers, by reason of their profession and their oath, are trustworthy and honest but that similar respect cannot be accorded to prisoners, I should be gratified, not shocked. Those principles are consistent with a responsible citizenship and are not a ground to challenge the juror for cause."

--- Judge Anthony Kennedy

Darbin v. Nourse, 664 F.2d 1109 (1981)

Criminal Justice in the Balance

- o Criminal cases make up the largest single category of cases heard by the Supreme Court. These cases also have the most immediate impact on our citizens. Supreme Court decisions will determine:
 - Whether convicted murderers may receive the death penalty (Last term, the constitutionality of the death penalty was sustained by a single vote -- that of Lewis Powell, whose seat Judge Kennedy has been nominated to fill);
 - Whether the rights of victims will be considered, as well as the rights of accused and convicted criminals; and
 - Whether court-created rules will help -- or hinder -- the search for truth in criminal trials.
- o The Supreme Court's criminal law cases are particularly vital to the poor, women, the aged, and minority groups, who are disproportionately victimized by crime and who have the greatest interest in fair and effective law enforcement. When our criminal justice system fails, these Americans are the first to suffer.
- o In October 1987, the Bureau of Justice Statistics reported the rate of violent crime dropped 6.3 percent in 1986. Since 1981, the rate of violent crime has fallen 20 percent. Seven million fewer crimes occurred in 1986 than in the peak crime year of 1981.
- o This hard-won progress must be allowed to continue. Nearly one-third of the Supreme Court's time is taken up with matters of criminal justice. Judge Kennedy's nomination presents America with the opportunity to continue our progress in the war against crime.

WHITE HOUSE TALKING POINTS

JUDGE KENNEDY AND JUDICIAL RESTRAINT

- o Judge Kennedy would interpret the law, not invent it. He believes that the role of the judge in our democratic society is faithfully to apply the law as established under the Constitution and as enacted by the people's elected representatives, not to substitute his own personal preferences as to desirable social policy.
- o Judge Kennedy's philosophy of judicial restraint is amply demonstrated in the more than 400 opinions he has authored on the United States Court of Appeals for the Ninth Circuit.

Judges are not Legislators

- o Judge Kennedy refused to make new law in the area of comparable worth. He authored a unanimous panel opinion that reversed a finding of sex discrimination against the State of Washington based on a "comparable worth" theory. While observing that "the Washington legislature may have the discretion to enact a comparable worth plan if it chooses to do so," he held that Title VII of the Civil Rights Act did not support a court-imposed comparable worth remedy (AFSCME v. State of Washington, 1985).
- o In Schreiber Distributing Co. v. Serv-Well Furniture Co. (1986), the court upheld a plaintiff's right to bring a civil suit under the Racketeer Influenced and Corrupt Organizations (RICO) Act. In a concurring opinion, Judge Kennedy strongly suggested that application of civil RICO to this kind of case improvidently expanded federal power over business in an intrusive and disruptive way, but concluded nonetheless that "we are required to follow where the words of the statute lead."
- o Similarly, in U.S. v. Bell (1984), Judge Kennedy's opinion for a unanimous panel noted that a poorly drafted statutory exception to jurisdiction could be remedied only by the Congress and not by the courts.
- o Judge Kennedy's scholarly dissent in Oliphant v. Schlie (1976) further demonstrates his commitment to judicial restraint. In that case, a majority of the court concluded that an Indian tribe had jurisdiction over a non-Indian for violations of tribal law on the reservation. Judge Kennedy's contrary view, supported by a thorough analysis of the history and text of the treaties and federal legislation relating to Indian reservations, later prevailed in the Supreme Court.

WHITE HOUSE TALKING POINTS

(Judicial Restraint, continued)

The Power of Government

- o As a practitioner of judicial restraint, Judge Kennedy has vigorously enforced provisions of the Constitution that allocate governmental powers and protect individual rights.
- o In one of the most important constitutional cases of our time, Chadha v. INS (1980), Judge Kennedy held a provision authorizing a one-house legislative veto to be invalid. In so doing, he properly restricted his analysis to the text and structure of the Constitution. His decision in the case was affirmed in a landmark ruling of the Supreme Court.
- o Judge Kennedy's decisions also reflect due regard for the role of states in our Federal system. Dissenting in Ostrove v. Crocker (1982), he argued that the law of wrongful discharge was a matter of state concern and that Federal antitrust laws were not intended to supercede state regulation of employer-employee relations.
- o In CBS v. United States District Court, Judge Kennedy authored a unanimous panel opinion ordering a district court to unseal pre-trial documents sought by CBS relating to the criminal prosecution of John DeLorean's co-defendant. In that opinion he stated: "We begin with the presumption that the public and the press have a right of access to criminal proceedings and documents filed therein."

Style of Decision making

- o Rather than draw larger conclusions and reach decisions that affect persons not actually before the court, Judge Kennedy's general approach to judging is to focus on the specific issues presented, to avoid constitutional issues where possible, and to follow precedent.
- o For example, in U.S. v. Boatwright (1987), Judge Kennedy's opinion for a unanimous panel reversed a defendant's conviction but declined to give the exclusionary rule the broad reading urged by the parties. Noting that such a reading would go beyond that required by relevant binding precedent, Judge Kennedy formulated a narrower rule for the case at hand -- a rule that would prevent evidence of criminal activity from being excluded unnecessarily in other cases.

THE WHITE HOUSE

WASHINGTON

November 12, 1987

MEMORANDUM FOR ADMINISTRATION SPOKESPERSONS

FROM: MARION C. BLAKEY *MB*
DIRECTOR OF PUBLIC AFFAIRS

SUBJECT: Talking Points on Judge Kennedy

Attached for your information are materials concerning the President's nomination of Judge Anthony M. Kennedy to be Associate Justice of the U.S. Supreme Court.

This package includes talking points, a White House press release discussing Judge Kennedy's qualifications and the President's remarks on yesterday's nomination.

If you have any questions concerning these materials, please feel free to contact the White House Office of Public Affairs at (202) 456-7170.

Thanks very much.

JUDGE ANTHONY M. KENNEDY

THE PRESIDENT'S NOMINEE TO THE SUPREME COURT

Overview

- o Judge Anthony Kennedy, President Reagan's nominee to the Supreme Court, is an experienced and impartial jurist. His twelve years of service on the U.S. Court of Appeals for the Ninth Circuit, together with his experience in private practice, make him an outstanding nominee to the United States Supreme Court.
- o He received his undergraduate degree at Stanford University in 1958 and attended the London School of Economics during his senior year. He received his law degree from Harvard University.
- o From 1961 to 1963, Judge Kennedy was an associate at the firm of Thelen, Marrin, Johnson & Bridges in San Francisco, California. From 1963 to 1975, he practiced in Sacramento, first as a sole practitioner and then as a partner with the firm of Evans, Jackson & Kennedy.
- o In 1975, President Ford appointed Judge Kennedy to sit on the United States Court of Appeals for the Ninth Circuit, where he now ranks among the most senior active judges on the bench.
 - Judge Kennedy has participated in over fourteen hundred decisions and authored over four hundred opinions.
 - Popular with colleagues of all political persuasions, Judge Kennedy has built a reputation for being fair, openminded and scholarly.
- o Judge Kennedy's long and outstanding career in the law has demonstrated that he has the experience and wisdom to be a great Justice of the Supreme Court.

WHITE HOUSE TALKING POINTS

Noteworthy Opinions Authored by Judge Anthony Kennedy

- o In Chadha v. Immigration and Naturalization Service, Judge Kennedy authored the unanimous opinion holding the legislative veto to be unconstitutional, concluding that it was a "prohibited legislative intrusion upon the Executive and Judicial branches." This decision was later affirmed by the United States Supreme Court.
- o 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.
- o In United States v. Mostella, Judge Kennedy rejected a challenge to a bank robbery conviction based on the trial judge's alleged undue involvement in questioning witnesses. Judge Kennedy wrote that the Judge's "extensive nonpartisan questioning, without more, does not require reversal."
- o In United States v. Cavanagh, Judge Kennedy authored a unanimous opinion upholding the legality of the FBI's electronic surveillance of a former Northrop engineer who had been convicted of attempting to sell secrets about the Stealth bomber program to the Soviet Union.
- o In Adamson v. Ricketts, Judge Kennedy dissented from the majority's holding overturning the death penalty for the man who confessed to killing Arizona Republic reporter Don Bolles with a car bomb in 1976. The majority, reversing the conviction, held that Arizona officials violated defendant Adamson's double-jeopardy rights. When Adamson violated the terms of his plea-bargain agreement, by which he was convicted of second-degree murder in exchange for agreeing to testify against his alleged accomplices, Arizona 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." The Supreme Court reversed the majority opinion, substantially adopting the reasoning of Judge Kennedy's dissent.

WHITE HOUSE TALKING POINTS

(Noteworthy opinions, continued)

- o In 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, though issued by an impartial magistrate, is later found to be invalid. In a dissent adopted on appeal by the Supreme Court, Judge Kennedy strongly objected to the holding: "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 officer's 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."
- o In United States v. Harvey, Judge Kennedy would have granted rehearing of a case where the court had thrown out a manslaughter conviction because the results of a pre-arrest blood alcohol test had been admitted as evidence. Judge Kennedy noted that the officers involved had acted in good faith and that the defendant's blood had to be tested at once or the alcohol content would have diminished while the officers waited for a warrant.
- o In United States v. Sherwin, Judge Kennedy held that pornographic materials seized by federal officers could be admitted into evidence at the defendant's trial on charges relating to transportation of obscene materials.
- o In Barker v. Morris, Judge Kennedy held admissible sworn videotaped testimony of a member of the Hell's Angels motorcycle gang who had witnessed other gang members commit two brutal murders. The witness had died prior to trial, and had agreed to give the testimony only when he learned that he was dying. Judge Kennedy's holding that use of such testimony did not violate the Constitution has since been used as a precedent to permit the use of videotaped testimony in cases involving child abuse.
- o In American Federation of State, County and Municipal Employees v. State of Washington, Judge Kennedy authored a unanimous panel opinion reversing a district court judge who had found discrimination by Washington State against its female employees on the basis of a "comparable worth" theory. While acknowledging that "the Washington legislature may have the discretion to enact a comparable worth plan if it chooses to do so," the court held that the existing law did not support a court-imposed comparable worth remedy.

WHITE HOUSE TALKING POINTS

(Noteworthy opinions, continued)

- o In Fisher v. Reiser, Judge Kennedy authored a majority opinion holding that Nevada's decision to grant cost-of-living increases to workers' compensation beneficiaries who continued to reside in Nevada but not to those who live outside the state did not violate the constitutional rights of out-of-state beneficiaries. "We are reluctant to impose upon states fiscal burdens that are not coterminous either with their taxing power or their general jurisdiction."
- o In Beller v. Middendorf, Judge Kennedy authored a unanimous opinion upholding the constitutionality of Navy regulations providing for the discharge of those who engage in homosexual activities. "In view of the importance of the military's role, the special need for discipline and order in the service, the potential for difficulties arising out of possible close confinement aboard ships or bases for long periods of time, and the possible benefit to recruiting efforts, we conclude that at the present time the regulation represents a reasonable effort to accommodate the needs of the government with the interests of the individual."
- o In CBS v. United States District Court, Judge Kennedy authored a unanimous panel opinion ordering a district court to unseal pre-trial documents sought by CBS relating to the criminal prosecution of John DeLorean's co-defendant. "We begin with the presumption that the public and the press have a right of access to criminal proceedings and documents filed therein."
- o In Koch v. Goldway, Judge Kennedy authored a unanimous opinion dismissing a lawsuit claiming the former mayor of Santa Monica slandered her political opponent by suggesting the opponent was wanted for Nazi war crimes. He concluded the statement was one of opinion, not fact, and could therefore not be the basis for a libel suit. "It is perhaps unfortunate that the legal category of opinion, which sounds, and often is, a dignified classification for the pursuit of honest and fair debate, must also be used to describe statements such as the one at issue here, which, in reality, is nothing more than a vicious slur. The law of defamation teaches, however, that in some instances speech must seek its own refutation without intervention by the courts. In this case, if the mayor chose to get in the gutter, the law simply leaves her there."

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 11, 1987

REMARKS BY THE PRESIDENT
UPON NOMINATION OF
JUDGE ANTHONY KENNEDY
AS SUPREME COURT JUSTICE

The Briefing Room

11:30 A.M. EST

THE PRESIDENT: It's not just in fulfillment of my constitutional duty, but with great pride and respect for his many years of public service, that I am today announcing my intention to nominate United States Circuit Judge Anthony Kennedy to be an Associate Justice of the Supreme Court.

Judge Kennedy represents the best tradition of America's judiciary. His career in the law, which has now spanned the better part of three decades, began following his graduation from Stanford University and Harvard Law School.

When he joined a prominent San Francisco law firm later, after the death of his father -- who was himself a well-respected attorney in Sacramento -- Tony Kennedy took over his father's law practice. He devoted himself to a wide range of matters including tax law, estate planning and probate, real estate law, international law and litigation.

In 1965 he began a teaching career on the faculty of the McGeorge School of Law at the University of the Pacific. He has been teaching continuously since that time as a professor of constitutional law.

In 1975 President Ford appointed him to the United States Court of Appeals, where he has established himself as a fair but tough judge who respects the law. During his 12 years on the nation's second highest court, Judge Kennedy has participated in over 1400 decisions and authored over 400 opinions. He's a hard worker and, like Justice Powell, whom he will replace, he is known as a gentleman.

He's popular with colleagues of all political persuasions. And I know that he seems to be popular with many senators of varying political persuasions as well.

I guess by now it's no secret that Judge Kennedy has been on the very shortest of my short lists for some time now. I've interviewed him personally and, at my direction, the FBI, the Department of Justice and the Counsel to the President have concluded very extensive preliminary interviews with him.

Judge Kennedy's record and qualifications have been thoroughly examined. And before I submit his formal nomination to the Senate, a full date -- update of his FBI background investigation will have been completed.

Judge Kennedy is what in -- many in recent weeks have referred to as a true conservative -- one who believes that our constitutional system is one of enumerated powers -- that it is we, the people who have granted certain rights to the government -- not the other way around. And that unless the Constitution grants a power to the federal government, or restricts a state's exercise of that power, it remains with the states or the people.

Those three words, "We, the people," are an all-important reminder of the only legitimate source of the government's authority over its citizens. The preamble of the Constitution, which begins

with these three powerful words, serves also as a reminder that one of the basic purposes underlying our national charter was to ensure domestic tranquility. And that's why the Constitution established a system of criminal justice that not only protects the individual defendants, but that will protect all Americans from crime as well.

Judge Kennedy has participated in hundreds of criminal law decisions during his tenure on the Ninth Circuit Court of Appeals. In that time he's earned a reputation as a courageous, tough, but fair jurist. He's known to his colleagues and to the lawyers who practiced before him as diligent, perceptive, and polite. The hallmark of Judge Kennedy's career has been devotion -- devotion to his family, devotion to his community and his civic responsibility, and devotion to the law.

He's played a major role in keeping our cities and neighborhoods safe from crime. He's that special kind of American who's always been there when we needed leadership. I'm certain he will be a leader on the Supreme Court.

The experience of the last several months has made all of us a bit wiser. I believe the mood and the time is now right for all Americans in this bicentennial year of the Constitution to join together in a bipartisan effort to fulfill our constitutional obligation of restoring the United States Supreme Court to full strength. By selecting Anthony M. Kennedy, a superbly qualified judge whose fitness for the high court has been remarked upon by leaders of the Senate in both parties, I have sought to ensure the success of that effort.

I look forward, and I know Judge Kennedy is looking forward, to prompt hearings conducted in the spirit of cooperation and bipartisanship. I'll do everything in my power as President to assist in that process.

And now I believe that Judge Kennedy has a few words to say.

JUDGE KENNEDY: Thank you, Mr. President. By announcing your intention to nominate me to the Supreme Court of the United States, you confer a singular honor, the highest honor to which any person devoted to the law might aspire. I am most grateful to you. My family, Mary and the children, also express their deep appreciation for your reposing this trust upon us.

When the Senate of the United States receives the nomination, I shall endeavor to the best of my ability to answer all of its questions and to otherwise assist it in the discharge of its constitutional obligation to determine whether to give its advice and full consent to the appointment.

I share with you, Mr. President, and with each member of the Senate an abiding respect for the Supreme Court, for the confirmation process, and for the Constitution of the United States, which we are all sworn to preserve and to protect.

Thank you, Mr. President.

Q Mr. President --

Q Mr. President --

THE PRESIDENT: No -- it's limited, and I think you know that, to two questions -- Helen first and then Terry.

Q Mr. President, throughout this whole process, Senator Hatch says there have been a lot of gutless wonders in the White House. Do you know who they are, who he is referring to, why he would say such a thing since he is such a devoted conservative?

THE PRESIDENT: Helen, when these ceremonies here this morning are over, I'm going to try to find out where he gets his information because, you know something, I haven't been able to find

a gutless wonder in the whole place.

Q Do you know why he was so upset?

THE PRESIDENT: I don't know. I don't know, unless he's been reading the paper too much.

Q Mr. President, you said that Judge Kennedy is popular with people of all political persuasions. What happened to your plan to give the Senate the nominee that they would object to just as much as Judge Bork?

THE PRESIDENT: Maybe it's time that I did answer on that, where that was said and why -- and it was humorously said. I was at a straight party organization affair, a dinner. And when I finished my remarks, which were partisan, a woman, down in front, member there, just called out above all the noise of the room, "What about Judge Bork?" And she got great applause for saying that. And then, the questions came, was I going to give in and try to please certain elements in the Senate? And I made that -- intended to be facetious answer to her. And so, as I say, it was -- sometimes you make a facetious remark and somebody takes it seriously and you wish you'd never said it, and that's one for me.

Q Mr. President --

THE PRESIDENT: I said only two questions now. And I want to -- I want Judge Kennedy's family to come up here.

Q Can't you take some more questions, sir?

THE PRESIDENT: What?

Q Can't you take some more questions?

Q Can't you take one or two more, Mr. President?

Q Just one or two?

THE PRESIDENT: No, because there would be no such thing as just one or two.

Q Judge Kennedy, can we ask you, are you concerned about this intense scrutiny that seems to go to a Supreme Court nominee now?

JUDGE KENNEDY: I'm looking forward to the scrutiny that the Senate should give any nominee in its discharge of its constitutional duty.

Q And you're not concerned about how you stand up, sir?

Q Judge Kennedy, are you worried or upset that you are, in effect, the third choice for this seat?

JUDGE KENNEDY: I'm delighted with this nomination.
(Laughter.)

Q Mr. President, why didn't you nominate Judge Kennedy the first time?

MR. FITZWATER: Thank you very much.

Q Well, Marlin --

Q Would you like to answer that, sir?

Q -- to pre-selected reporters.

Q That's a good question, Marlin.

Q Can't the President answer for himself?

MORE

Q Do you like where the dollar is --

THE PRESIDENT: I -- all three. We came down to a final three and that all three were so close and so well-qualified, you could have almost thrown a dart going by that decision.

Q Mr. President, do you believe that the Senate Democrats may try to stall this nomination in order to prevent you from being able to fill that seat?

THE PRESIDENT: I'm counting on Pete Wilson here to see that doesn't happen.

Q Mr. President --

Q Did you cave into the liberals, Mr. President? Some conservatives are saying you caved into the liberals, appointing someone who can be confirmed, but not appointing someone who is going to turn the Court around.

THE PRESIDENT: When the day comes that I cave in to the liberals, I will be long-gone from here. (Laughter.)

Q Judge Kennedy, did they ask you if you'd ever smoked marijuana? Judge Kennedy?

Q Did you ever smoke marijuana?

Q Did they ask you?

JUDGE KENNEDY: They asked me that question and the answer was, no, firmly, no.

Q Mr. President, do you think conservatives, sir, will back this nominee? You know, Senator Helms, at one point, is alleged to have said, "No way, Jose," to Judge Kennedy.

THE PRESIDENT: We'll find out about that in the coming days ahead.

Q How can you be confident of the background check by Attorney General Edwin Meese's Justice Department when he blew the last one? (Laughter.)

THE PRESIDENT: He didn't blow the last one. We were talking the last time about a man who had been confirmed and who had been investigated four times for positions in government.

Q Are you going to fire the FBI --

Q Who did blow it?

Q Do you blame Ginsburg for not telling --

Q Mr. President, who do you blame?

THE PRESIDENT: I can't, Andrea.

Q Mr. Meese or Mr. Baker?

Q Do you think the Russians are stalling on an INF agreement, sir? There's a story that -- (laughter) -- there's a story that --

THE PRESIDENT: Bye. (Laughter.)

THE PRESS: Thank you.

END

11:40 A.M. EST

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 11, 1987

President Reagan announced today that he would nominate Judge Anthony M. Kennedy to be an Associate Justice of the United States Supreme Court. The President believes that Judge Kennedy's distinguished legal career, which includes over a decade of service as a federal appellate judge, makes him eminently qualified to sit on our nation's highest court.

Judge Kennedy, who is 51 years old, was born in Sacramento, California. He received his undergraduate degree at Stanford University in 1958, attending the London School of Economics during his senior year. He received his law degree from Harvard University in 1961. He has also served in the California Army National Guard.

From 1961 to 1963, Judge Kennedy was an associate at the firm of Thelen, Marrin, Johnson & Bridges in San Francisco, California. He then returned to Sacramento to pursue a general litigation, legislative and business practice, first as sole practitioner and then, from 1967 to 1975, as a partner with the firm of Evans, Jackson & Kennedy. Since 1965, he has taught constitutional law part-time at the McGeorge School of Law at the University of the Pacific.

In 1975, President Ford appointed Judge Kennedy to sit on the United States Court of Appeals for the Ninth Circuit, where he now ranks among the most senior active judges on the bench. Judge Kennedy has participated in over fourteen hundred decisions and authored over four hundred opinions, earning a reputation for fairness, open-mindedness and scholarship. He has been an active participant in matters of judicial administration. Judge Kennedy has earned the respect of colleagues of all political persuasions.

Judge Kennedy and his wife Mary reside in his hometown of Sacramento. They have three children, Justin, Gregory and Kristin.

Judge Kennedy represents the best traditions of America's judiciary. The President urges the Senate to accept this nomination in the spirit in which it is being made, and fill the vacancy that continues to handicap the vital work of the Supreme Court.

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THE WHITE HOUSE
WASHINGTON

December 8, 1987

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MEMORANDUM FOR A.B. CULVAHOUSE, *JA*
FROM: MARION C. BLAKEY *MB*
SUBJECT: Revised Talking Points on Judge Kennedy

Attached, per your request, are the revised versions of our November 12 and November 20 White House Talking Points on Judge Kennedy which have incorporated the new bullet on the U.S. v. Leon case. I will send these revised materials to Senior Administration Spokespersons.

Enclosed also are copies of both materials printed on White House Issue Brief paper for distribution to witnesses.

Thank you.

JUDGE KENNEDY AND CRIMINAL JUSTICE

- o Judge Kennedy has participated in hundreds of criminal law decisions during his tenure on the Ninth Circuit Court of Appeals. "In that time," President Reagan has said, "he's earned a reputation as a courageous, tough, but fair jurist."
- o Throughout his career on the bench, Judge Kennedy has faithfully applied the Constitution and the criminal law in a manner that recognized a balance between society's need to protect innocent victims and the procedural rights of defendants.
- o Judge Kennedy's decisions reflect his belief that law enforcement activities must be reasonable and that the right of a criminal defendant under the Constitution to receive a fair trial must be protected vigorously.
- o However, his judicial decisions likewise reflect his firm commitment to vindicating the victims of crime and protecting the rights of society from vicious criminals.

Judge Kennedy's Decisions

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WHITE HOUSE ISSUE BRIEF

(Criminal Justice, continued)

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- o Rather than draw larger conclusions and reach decisions that affect persons not actually before the court, Judge Kennedy's general approach to judging is to focus on the specific issues presented, to avoid constitutional issues where possible, and to follow precedent.
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JUDGE ANTHONY M. KENNEDY

THE PRESIDENT'S NOMINEE TO THE SUPREME COURT

Overview

- o Judge Anthony Kennedy, President Reagan's nominee to the Supreme Court, is an experienced and impartial jurist. His twelve years of service on the U.S. Court of Appeals for the Ninth Circuit, together with his experience in private practice, make him an outstanding nominee to the United States Supreme Court.
- o He received his undergraduate degree at Stanford University in 1958 and attended the London School of Economics during his senior year. He received his law degree from Harvard University.
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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

November 11, 1987

President Reagan announced today that he would nominate Judge Anthony M. Kennedy to be an Associate Justice of the United States Supreme Court. The President believes that Judge Kennedy's distinguished legal career, which includes over a decade of service as a federal appellate judge, makes him eminently qualified to sit on our nation's highest court.

Judge Kennedy, who is 51 years old, was born in Sacramento, California. He received his undergraduate degree at Stanford University in 1958, attending the London School of Economics during his senior year. He received his law degree from Harvard University in 1961. He has also served in the California Army National Guard.

From 1961 to 1963, Judge Kennedy was an associate at the firm of Thelen, Marrin, Johnson & Bridges in San Francisco, California. He then returned to Sacramento to pursue a general litigation, legislative and business practice, first as sole practitioner and then, from 1967 to 1975, as a partner with the firm of Evans, Jackson & Kennedy. Since 1965, he has taught constitutional law part-time at the McGeorge School of Law at the University of the Pacific.

In 1975, President Ford appointed Judge Kennedy to sit on the United States Court of Appeals for the Ninth Circuit, where he now ranks among the most senior active judges on the bench. Judge Kennedy has participated in over fourteen hundred decisions and authored over four hundred opinions, earning a reputation for fairness, open-mindedness and scholarship. He has been an active participant in matters of judicial administration. Judge Kennedy has earned the respect of colleagues of all political persuasions.

Judge Kennedy and his wife Mary reside in his hometown of Sacramento. They have three children, Justin, Gregory and Kristin.

Judge Kennedy represents the best traditions of America's judiciary. The President urges the Senate to accept this nomination in the spirit in which it is being made, and fill the vacancy that continues to handicap the vital work of the Supreme Court.

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THE WHITE HOUSE
WASHINGTON

December 9, 1987

for —
filed ✓

MEMORANDUM FOR SENIOR ADMINISTRATION SPOKESPERSONS

FROM: MARION C. BLAKEY *MB*
SUBJECT: Revised Talking Points and Issue Briefs
on Judge Kennedy

We have revised the materials on Judge Kennedy entitled Talking Points on Judge Kennedy and Judge Kennedy's Record on Criminal Justice and Judicial Restraint originally dated 11/12/87 and 11/23/87. In future mailings and speeches please use the attached materials dated 12/8/87 and discard earlier versions. Thank you.

cc: Rhett Dawson

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Overview

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Style of Decision making

- o Rather than draw larger conclusions and reach decisions that affect persons not actually before the court, Judge Kennedy's general approach to judging is to focus on the specific issues presented, to avoid constitutional issues where possible, and to follow precedent.
- o For example, in U.S. v. Boatwright (1987), Judge Kennedy's opinion for a unanimous panel reversed a defendant's conviction but declined to give the exclusionary rule the broad reading urged by the parties. Noting that such a reading would go beyond that required by relevant binding precedent, Judge Kennedy formulated a narrower rule for the case at hand -- a rule that would prevent evidence of criminal activity from being excluded unnecessarily in other cases.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 27, 1988

STATEMENT BY THE PRESIDENT

The Senate Judiciary Committee's 14 - 0 vote to approve the nomination of Judge Anthony Kennedy gives us considerable confidence that the Nation will soon have a full Court. The Committee has acted responsibly and expeditiously to review his qualifications and favorably report Judge Kennedy to the full Senate. I look forward to a positive vote soon by the Senate that will bring this distinguished and scholarly legal mind to the Court. I am very pleased by the Committee action.

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