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Justice laments sentencing rules

Anthony M. Kennedy addresses fellow judges at a 9th Circuit conference.

By JOHN McDONALD

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HUNTINGTON BEACH - U.S. Supreme Court Justice Anthony M. Kennedy told a gathering of judges Monday that he is troubled by lengthy prison terms meted out in the U.S.

"If an 18-year-old is growing marijuana for a friend, that's distribution," the Sacramento native told judges, lawyers and court officials at the conference, held at the Hyatt Regency. "If he has his father's .22 rifle, that's a firearm. That will get 15 years.

"Did you know what 15 years was when you were 18? I didn't when I was 18."

Kennedy said that sentences in the U.S. are eight times longer than sentences in Europe and that California alone has 200,000 people incarcerated. He said there needs to be more education of the public on the length of sentences.

"If sentences are to be a deterrent, what is the good of them if nobody knows how long they are?" he said.

Kennedy has been designated as the Supreme Court justice for the 9th U.S. Circuit Court of Appeals, replacing Justice Sandra Day O'Connor, who retired this year.

The annual meeting of the 9th U.S. Circuit Court of Appeals justices drew 2,000 registered attendees against a background of blue ocean, white sand and swaying palm trees. Those listening to Kennedy mostly wore shorts, beach shoes, Hawaiian shirts and sundresses. Some wore suits but there wasn't a black robe in sight.

The meeting is held in various parts of the multistate 9th Circuit region, with last year's meeting held in Spokane, Wash.

Kennedy told those at the conference that judges must be aware of the potential consequences of their decisions and at the same time stay true to the law.

"There are consequences; that's why the case is before us," he said. But, he added, "We must keep our allegiance to the law. Otherwise, we are just policy makers, and we are not supposed to make policy."

Kennedy entertained some questions from the audience.

When asked how his fellow Supreme Court justices felt about his becoming the "swing" vote on the court, he quipped, "that's their problem."

In a more serious tone, he downplayed being a "swing" vote, a reference to news reports that his vote has gone back and forth between conservative and liberal factions on the court in several key cases this year. He said only that the swing depends on the case before the court.

Senior 9th Circuit Justice Warren J. Ferguson, who lives in Fullerton, said he has known Kennedy for many years and he had expected Kennedy to dodge the "swing" vote question.

"That's a term you gave him," Ferguson said, referring to the news media. Several newspapers including the Register have reported in recent weeks that Kennedy has been the deciding vote in more controversial cases in the last court session than any other justice.

"No judge is going to admit to being a swing vote," Ferguson said.

