[MS-0494.012.007.004]

JUDGE
EARL B. GILLIAM

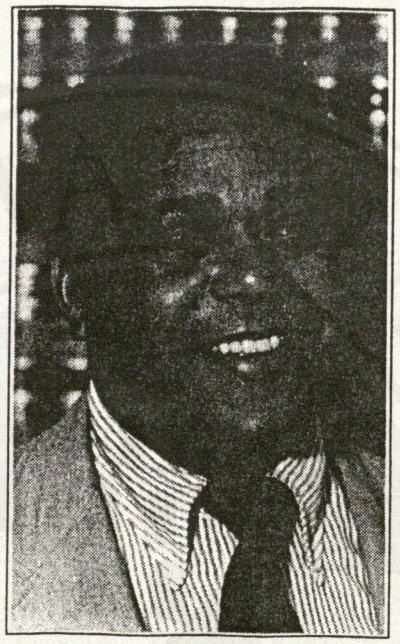
US DISTRICT COURT - SOUTHERN

DATA

Earl B. Gilliam
Title: Judge
Court: US District Court - Southern
Address: 940 Front St.,
San Diego, CA 92189
Dates: 1980 to present
Telephone: (619) 293-6625
Appointed by: Pres. Carter
Date: December 10, 1979
Case Load: Civil 65% Criminal 35%

SIGNIFICANT CASES

Martori Bros. v. James-Massengale, 84-6137, 84-6274, 84-6275, 1/30/86
US v. Stanert, 84-5128, 6/5/85
Bankruptcy of Adams, 84-5877, 5/29/85



PROFILE

Attorneys who appear before U.S. District Court Judge Earl B. Gilliam frequently remark on how the judge's easy-going personality makes his court an enjoyable place to try a case.

Gilliam was appointed to the federal bench in 1980 after spending 17 years on the San Diego municipal and superior courts. He recalls the transition from state to federal court posed some problems because he had to accustom himself to the greater formality of the federal bench.

"I've always been a little informal about how I handled proceedings and that was one of the major adjustments I had to make," said Gilliam.

An assistant U.S. attorney and former deputy district attorney who has appeared before Gilliam in both state and federal court said he has not noted any discernable difference in the judge's demeanor.

"There's no change in him since he's been on the federal court," said the attorney. "He's carried over most of his mannerisms from the state side over here. He's very relaxed and easy-going. He hasn't seen fit to put a halo over his head at all."

"He's a very easy person to appear before," said another assistant U.S. attorney. "He lets you try your own case. . . . He tries to keep some humor present in his courtroom without making a mockery of it. He tries to keep everyone relaxed."

"He goes back a long way here," the attorney added about Gilliam, who has lived in San Diego for more than 40 years. "People know him and he's friendly to them. But that doesn't get in the way of his rulings."

"In trial, he's a very fair judge," said a federal defender. "He lets the litigants try their cases. It's a pleasure to be in his courtroom because he's very polite and it's not push, pull, hurry up, get out of here. If you're going to try a case, he's a very gentle-manly type to try it in front of."

Accommodating to Lawyers

Gilliam, according to several lawyers, tries hard to accommodate attorneys whose scheduled appearances in his courtroom conflict with matters they must handle before other judges. However, one attorney claimed Gilliam's willingness to do this inhibits his disposition of cases.

"He doesn't move cases along; they seem to drag sometimes," said the lawyer. "You'd like for him to be a little more decisive as far as moving a case along. If a party has a request for putting a case over, I would say the majority of times, he would go ahead and grant it, even though another judge would see fit to say, 'Well, you've had your chance.' He's a little more lenient in terms of accepting excuses."

In his position on the federal bench, Gilliam handles a variety of civil and criminal cases. He presided over the trial of "Fast Eddie," a San Diego sportscaster who was sent to prison for writing bad checks to cover the expenses of a bankrupt business he had acquired. Like Fast Eddie, many of the defendants who come before Gilliam are con artists with fast-buck schemes. The judge recalls one defendant who tried to sell someone a portion of a satellite and has dealt with "people selling tax schemes that are not worth a nickel."

The judge also has been assigned to cases involving more sophisticated white-collar criminals. Local attorneys say the judge tends to be tough when sentencing these defendants.

Gilliam this week was scheduled to try a case involving a man charged with seriously injuring a woman while driving under the influence. The man filed bankruptcy shortly after the accident and maintains the woman's claims for damages she suffered in the accident are dischargeable because he is bankrupt. The injured woman insists she be compensated.

"The question is whether or not he can be relieved from that obligation," said Gilliam about the case. "Is it dischargeable? And secondly, what are the damages of the

woman? What should he have to pay her?"

Enjoys Legal Issues

Gilliam clearly relishes discussing these and other legal issues. Many times during an interview he assumed the role of teacher, patiently explaining the jurisdiction and procedures of federal court. One of the reasons he enjoys serving on the federal bench is the opportunity it affords him to sit on the Ninth U.S. Circuit Court of Appeals, where he can review other trial judges' decisions.

"In trial court, you're right there, on the firing line," he said. "On the appellate level, you're reviewing the people just like you who are sitting on the firing line and you tell them, 'Hey, what you did is wrong and what you did is right.' "

Since he has been on the federal bench Gilliam has been assigned to handle cases in other district courts in the Ninth Circuit. He just returned from Las Vegas, where he spent the past month substituting for U.S. District Judge Harry E. Claiborne, who has been indicted on bribery and other charges and is now on trial in Reno.

Gilliam also has traveled to Guam and Saipan and, somewhat closer to home, to Montana, where he handled several motions in a dispute that pitted the Atlantic Richfield Co. against the Black Crow Indian tribe.

"Arco had gone over to the Black Crow reservation and entered into an agreement that they could drill in a certain area," Gillia explained. "Among the Crow they have a situation that when they have their meetings, everyone on the reservations has a voice on what they do.

"Here Arco brings in a million dollars worth of equipment to start sounding (exploring for oil) in two weeks on a contract they made three years before. And the Crow people said 'No, that contract's no good. Some of us weren't at that meeting when we approved that contract and you can't start sounding.' "

Personal Background

Gilliam, 53, was born in New Mexico but has lived in San Diego since he was 10 years old. He received a bachelor's degree in 1953 from San Diego State College and his law degree from Hastings College of the Law in 1957. After graduation he returned to San Diego to become a deputy district attorney. In 1961 he opened a private practice, handling probate and business cases as well as some criminal defense work.

Gilliam recalled he also worked on civil rights cases and participated in a demonstration in front of a San Diego store that refused to serve black customers.

"Sure I was active," he says about this period in his life. "You couldn't help but be. Those were the days of (Martin Luther) King."

Gilliam waged another sort of struggle against racial discrimination in 1963, when then-Gov. Edmund G. Brown Sr. appointed him to the San Diego Municipal Court. He was the first black to hold this position and the first black to serve on the San Diego Superior Court, where he was elevated by then-Gov. Edmund G. Brown Jr. in 1975.

When former President Jimmy Carter nominated him to the federal bench in December, 1979 and the Senate confirmed the appointment eight months later, Gilliam became the first black to serve on the U.S. District Court for the Southern District.

Minimizes Racial Trailblazing

Gilliam does not boast about being a racial trailblazer and is almost bitter when asked to comment on the subject.

"You don't need that for this country," he said. "You don't need a situation where you can come in and say 'I'm the first black.' It's nice to me that it happened but it's not the thing I'd like to see overall for our society and our community."

"It's a nice honor," he added, as an afterthought.

In making the transistion to the federal bench, Gilliam said he had to learn how to juggle a heavier and more complicated caseload than he was assigned in municipal or superior court.

"I've got 350 cases," he said. "Those all have to be worked by me. I have to handle them from beginning to end. That's my responsibility. As a consequence, I know that as a state court judge, I never worked on a Saturday.

"But I did that in Las Vegas because I knew that I had matters to take care of Monday in California and I went over there to handle a matter I wasn't able to finish on Friday."

Despite his busy schedule, the judge finds time to teach courses in trial practice and contracts at Western State University School of Law, a task he has performed for almost 15 years.

"My hobby has always been teaching," he said. "It's exciting. It keeps you sharp."

"I don't get a chance to be around the great professors and the great minds in the legal profession, like if you were at Harvard and Yale," he continued. "But I do get to see the opinions of fellow judges many times in the cases and I can talk to the students about that. I know in the contracts book there are about four or five cases that I lecture on as part of the course that were written by a judge I know. I know many judges from the California system who wrote the opinions."

— REBECCA KUZINS

This profile originally appeared in The Daily Journal on March 22, 1984.

BIOGRAPHY

CURRENT ASSIGNMENT

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Bankruptcy of Adams, 84-5877, 5/29/85

PREVIOUS JUDICIAL APPOINTMENTS

Court: San Diego Superior Court
Title: Judge
Dates: 1975-1980
Appointed by: Gov. Brown, Jr.
Date: August 18, 1975

Court: San Diego Municipal Court
Title: Judge
Dates: 1963-1975
Appointed by: Gov. Brown, Jr.
Date: December 27, 1963

EDUCATION

High School: San Diego HS
Location: San Diego, CA

Coll./Univ: San Diego St. College
Location: San Diego, CA
Date: 1953
Degree: BA

Law School: Hastings College of the Law
Location: San Francisco, CA
Date: 1957
Degree: JD
Honors: Phi Alpha Delta

PRACTICE

Sole Practitioner
Location: San Diego, CA
From: 1961-1963

Deputy District Attorney
Location: San Diego County
From: 1957-1961

BARS AND RELATED PROFESSIONAL ACTIVITIES

American Bar Assn.
1961-1972: California Judges Assn.
San Diego County Juvenile Justice Commission

OTHER ORGANIZATIONS

1981: Urban League of San Diego, Board of Directors
Little League Baseball, former coach

PERSONAL HISTORY

Birthdate: August 17, 1931
Birthplace: Clovis, NM
Sex: M
Race: Black
Religion: Presbyterian
Political Affiliation: Democrat
Recreation: Racquetball, swimming

OTHER

1965: "Young Man of the Year Award" from San Diego Junior Chamber of Commerce

COMMENTS ON TRIAL COURT PROCEDURES

PRETRIAL

Do you render tentative rulings in law and motion matters? . . . . . YES
If yes, do you provide an explanation for your tentative rulings? . . . . . YES
Are you willing to resolve disputes that arise during depositions over the telephone? . . . . . YES
Do you prefer to hear motions in limine:
BEFORE trial? . . . . . YES
AFTER trial? . . . . . NO
Do you allow for modification of the pretrial conference order after the trial has started?
- Rarely.
What is the most common reason you would bifurcate a case?
- Complexity of case.
Do you play an active role in encouraging settlement? NO
Under what circumstances, if any, do you allow for discovery within 30 days of the trial?
- If necessary to get to the truth.
Under what circumstances have you referred a matter to a special master or referee on your own motion?
- Complex case.

COURTROOM PROCEDURE

Do you require trial briefs? . . . . . NO
At oral argument, do you prefer the attorneys to:
- summarize the major points? . . . . . YES
- respond to your specific questions? . . . . . NO

Do you require attorneys to use the podium? . . . . . YES
What are your preferences on how an attorney makes an objection?
- Merely state legal reason for the objection.
Do you allow sidebar approaches for objections? . . . YES
Do you allow attorneys for the parties to stipulate to a briefing schedule? . . . . . YES
Under what circumstances do you find it necessary to exercise control over an attorney who is examining a witness?
- Very seldom.

TRIAL

Do you conduct the voir dire examination of potential jurors? . . . . . YES
What procedure do you use for handling challenges?
- "Arizona" method.
Do you limit the time for an opening statement? . . . NO
What is the most common mistake attorneys make regarding the opening statement?
- Argument.
During trial, what time of day do you start/break for the day?
9:00 a.m. 4:00 p.m.

Under what circumstances have you used court-appointed experts?
- Sanity evidence.
Do you allow jurors to take notes? . . . . . YES
Do you allow jurors to examine exhibits after they have been introduced? . . . . . YES
Do you allow jurors to examine exhibits during deliberations? . . . . . YES
As a general rule, do you provide the jury with written jury instructions? . . . . . YES
In court trials, as opposed to jury trials, do you permit opening statements? . . . . . YES

GENERALLY

What do you expect attorneys to do to contribute to the efficient running of your courtroom?
- Be on time.
- Be prepared.
What type of behavior by attorneys is most irritating to you?
- Continuing to argue after ruling.