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RICHARD H. GROGAN, JR., STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C. 20510

Dear Judicial Nominee:

The attached questionnaire was authorized by the Minority membership of the Senate Judiciary Committee. Your responses to these questions will be of considerable assistance in enabling these Senators to evaluate your nomination. If you have any questions concerning this questionnaire, please contact Mr. Duke Short, Chief Minority Investigator, at (202)-224-8248 or (202)-224-5712.

It would be appreciated if you would return the completed questionnaire in duplicate to Mr. Short no later than the date on which the full Judiciary Committee questionnaire is completed.

Thank you very much for your cooperation in this matter.

Sincerely,

Strom Thurmond

Strom Thurmond
Ranking Republican
Senate Judiciary Committee

ST/dib

Enclosure

EDWARD M. KENNEDY, MASS., CHAIRMAN

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DAVID BOIES
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C. 20510

MINORITY QUESTIONNAIRE FOR JUDICIAL NOMINEES

The role of the Federal Judiciary within the Federal Government, and within society generally, has become the subject of significant controversy in recent years. The expansion in the size of the Federal Judiciary approved by the 95th Congress affords the opportunity to explore, on a systematic basis, the attitudes of judicial nominees on these matters. This supplemental questionnaire is designed to elicit these views. Your answers to the following questions will assist in evaluating your nomination to become a Federal judge. Please answer these questions in the same manner as the main questionnaire. Your responses will be treated as public.

Name _____

Address (H) _____

(B) _____

Telephone (H) _____

(B) _____

Position Nominated For _____

1. Chief Justice John Marshall once remarked that the words of the Constitution were not to be extended to "objects not contemplated by the framers". Please comment on whether or not you agree with this point of view.

2. The Federal Judiciary has become the target of both popular and academic criticism that alleges that it has usurped many of the prerogatives of the Legislative Branch of the Federal and State governments by engaging in their own "lawmaking". Some of the characteristics of such "lawmaking" have been said to include:

   (a) A tendency toward problem-solution rather than grievance-resolution;

   (b) A tendency to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   (c) A tendency to impose broad, affirmative duties upon governments and society;

(d) A tendency toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency to impose the Judicial Branch upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Please discuss whether or not you agree with these criticisms. What are your own personal views on "judicial activism", the phrase often used to describe these judicial tendencies?

3. At various times during your legal career, you may have engaged in pro bono publico, or public interest legal work. If so, could you please describe the nature and extent of such activity. What organizations have you worked for, or in behalf of, with respect to this activity? Have you received financial reimbursement? Are you a member of any 'public interest' organizations (whether or not they are primarily engaged in legal work)? Could you describe the basic objectives of these organizations? Would you have any difficulty presiding over cases to which these organizations were party?

4. While generally guided by statute and by precedent, Federal judges do have considerable discretion in the area of criminal justice sentencing. Depending upon their philosophies, judges may exercise this discretion to promote primarily criminal rehabilitation, the protection of society, deterrence of other criminals, etc. Could you characterize your own views on how this discretion ought to be exercised? Do you favor further limits on such discretion through legislation?

MINORITY QUESTIONNAIRE FOR JUDICIAL NOMINEES

Name: Earl B. Gilliam

Address: Home: 6046 Caminito De la Taza
San Diego, California 92120

Business: 220 West Broadway
San Diego, California 92101

Telephone: Home: (714) 265-1213

Business: (714) 236-2643 or 236-2121

Position Nominated for: Judge of U.S. District Court
Southern District of California

1. Chief Justice John Marshall once remarked that the words of the Constitution were not to be extended to "objects not contemplated by the framers". Please comment on whether or not you agree with this point of view.

I would agree with the view that the framers of our Constitution granted to the federal government certain inumerated powers and that those rights which were not granted to the government are reserved unto the several states. However, the "objects not contemplated by the framers" in the Constitution should not be executed.

2. The Federal Judiciary has become the target of both popular and academic criticism that alleges that it has usurped many of the prerogatives of the Legislative Branch of the Federal and State governments by engaging in their own "lawmaking". Some of the characteristics of such "lawmaking" have been said to include:

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(d) A tendency toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency to impose the Judicial Branch upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Please discuss whether or not you agree with these criticisms. What are your own personal views on "judicial activism", the phrase often used to describe these judicial tendencies?

I am aware of criticisms that have been launched upon the courts relative to there being activists. I also very strongly believe that there should be separation of powers in the Judiciary, in the Executive, and in Congress. I would further submit to you that many of the criticisms levied on the courts fall within the basic concept that when people criticize the court or judges, they do so because the decision rendered by the court is not the one they would like to hear. I submit to you that it is very important that the court breathe life into the law, and in most of those instances where the court has taken an overzealous role in a lawsuit it has been to see that the spirit of its orders be carried out. Overall, however, I submit that the judge in handling any of his functions and responsibilities should do so in the framework of judicial acts and not interfere with those powers of the Executive or those of Congress. I cannot totally agree with the criticisms as set forth above.

3. At various times during your legal career, you may have engaged in pro bono publico, or public interest legal work. If so, could you please describe the nature and extent of such activity. What organizations have you worked for, or in behalf of, with respect to this activity? Have you received financial reimbursement? Are you a member of any 'public interest' organizations (whether or not they are primarily engaged in legal work)? Could you describe the basic objectives of these organizations? Would you have any difficulty presiding over cases to which these organizations were party?

While in private practice 1961 through 1963 I represented many indigents in court and at that time there was no pay. In addition, I also donated time to serve with a panel of lawyers in the screening of legal cases for the NAACP.

While on the Municipal Court bench 1964 through 1967 I served on the Board of Directors of the Legal Aid Society and during the years of 1975 and 1976 I served on the Board of Directors of the Urban League.

The Superior Court
OF THE
State of California
COURTHOUSE SAN DIEGO 92101

CHAMBERS OF
EARL B. GILLIAM
JUDGE OF THE SUPERIOR COURT

MAILING ADDRESS
POST OFFICE BOX 2724
SAN DIEGO, CALIFORNIA 92112
(714) 236-2121

January 14, 1980

Honorable Strom Thurmond
Ranking Republican
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Attention: Mr. Duke Short,
Chief Minority Investigator

Re: Minority Questionnaire for Judicial Nominees

Dear Senator Thurmond:

I am enclosing herewith the above-entitled questionnaire, in duplicate, which has been completed by me.

Very truly yours,

EARL B. GILLIAM

EBG/ra
encl.

MINORITY QUESTIONNAIRE FOR JUDICIAL NOMINEES

Name: Earl B. Gilliam

Address: Home: 6046 Caminito De la Taza
San Diego, California 92120

Business: 220 West Broadway
San Diego, California 92101

Telephone: Home: (714) 265-1213

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Position Nominated for: Judge of U.S. District Court
Southern District of California

1. Chief Justice John Marshall once remarked that the words of the Constitution were not to be extended to "objects not contemplated by the framers". Please comment on whether or not you agree with this point of view.

I would agree with the view that the framers of our Constitution granted to the federal government certain inumerated powers and that those rights which were not granted to the government are reserved unto the several states. However, the "objects not contemplated by the framers" in the Constitution should not be executed.

2. The Federal Judiciary has become the target of both popular and academic criticism that alleges that it has usurped many of the prerogatives of the Legislative Branch of the Federal and State governments by engaging in their own "lawmaking". Some of the characteristics of such "lawmaking" have been said to include:

(a) A tendency toward problem-solution rather than grievance-resolution;

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(e) A tendency to impose the Judicial Branch upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Please discuss whether or not you agree with these criticisms. What are your own personal views on "judicial activism", the phrase often used to describe these judicial tendencies?

I am aware of criticisms that have been launched upon the courts relative to there being activists. I also very strongly believe that there should be separation of powers in the Judiciary, in the Executive, and in Congress. I would further submit to you that many of the criticisms levied on the courts fall within the basic concept that when people criticize the court or judges, they do so because the decision rendered by the court is not the one they would like to hear. I submit to you that it is very important that the court breathe life into the law, and in most of those instances where the court has taken an overzealous role in a lawsuit it has been to see that the spirit of its orders be carried out. Overall, however, I submit that the judge in handling any of his functions and responsibilities should do so in the framework of judicial acts and not interfere with those powers of the Executive or those of Congress. I cannot totally agree with the criticisms as set forth above.

3. At various times during your legal career, you may have engaged in pro bono publico, or public interest legal work. If so, could you please describe the nature and extent of such activity. What organizations have you worked for, or in behalf of, with respect to this activity? Have you received financial reimbursement? Are you a member of any 'public interest' organizations (whether or not they are primarily engaged in legal work)? Could you describe the basic objectives of these organizations? Would you have any difficulty presiding over cases to which these organizations were party?

While in private practice 1961 through 1963 I represented many indigents in court and at that time there was no pay. In addition, I also donated time to serve with a panel of lawyers in the screening of legal cases for the NAACP.

While on the Municipal Court bench 1964 through 1967 I served on the Board of Directors of the Legal Aid Society and during the years of 1975 and 1976 I served on the Board of Directors of the Urban League.

I am not a member of any public interest organization and if any of these organizations were a party to a lawsuit filed in my court I would not say that I would have any difficulty in presiding over said case, because it goes without saying a judge should be fair to both sides so that equal justice can prevail.

4. While generally guided by statute and by precedent, Federal judges do have considerable discretion in the area of criminal justice sentencing. Depending upon their philosophies, judges may exercise this discretion to promote primarily criminal rehabilitation, the protection of society, deterrence of other criminals, etc. Could you characterize your own views on how this discretion ought to be exercised? Do you favor further limits on such discretion through legislation?

I do not favor limits on the judges discretion in the area of the criminal justice system.

In the 16 years that I have been a judge, I have participated in thousands of criminal matters and I submit that there are several interests which are involved in such cases: (1) the public; (2) the victim; and (3) the defendant.

In dealing with the defendant, it is necessary that the judge be aware of his background and history, and with that information and the circumstances of the particular offense the judge should endeavor to decide whether rehabilitation, punishment or deterrence should be the most important function to consider relative to the defendant. I submit that these members should be considered individually in each individual case.

Therefore, since the judge is dealing with the individual defendant and knows about his background and the circumstances of the particular case, I feel that he should be given broad discretion in deciding what should happen to a particular defendant.