

Jack Doner Marriage and Family Counselor
 Enhanced Living, Relationship & Communication Skills Training
 Individuals, Families, Groups, Organizations
 2930 Colorado Avenue No. C11 (213) 828-8420
 Santa Monica, California 90404

December 18, 1987

Senator Joseph Biden
 United States Senate
 Washington, D.C.

It is an honor and a pleasure to write to you. I appreciate your leadership in the senate and on the judiciary committee. Your dedication and effectiveness is invaluable.

In the present hearings to confirm Judge Kennedy as a Supreme Court Justice a serious question has been raised a sufficient number of times as to become a central issue in the matter. This question raised by witness after witness, and by some of the committee members as well, covers the apparent discrepancy between the Judge's actual record of case findings and his verbal sentiments expressed in his testimony in the current hearings.

This central question is this: with respect to the historically necessary, bitterly fought for, and ultimately agreed upon advances in the elevation, promotion and protection of equal rights of those classes of people, which had been traditionally and institutionally oppressed with prejudice and discrimination, how does Judge Kennedy's present verbal responses of assurance of moderation and sensitivity, to the challenges of the committee members, stand up to his record of action as an appellate judge which indicates, at best, imperviousness to such advances; effectively obstructing, retarding or rejecting such critical social gains of the past twenty-five years; gains which not only redresses past injustices, but also, in reality, promotes, in general, social harmony, and thus prevents the otherwise kind of civil strife that we have seen to rip and wound America's society and inherent strength.

Hastily, I add that Judge Kennedy's record does indicate awareness, compassion and advocacy when a given case concerned the narrower issue of individual interests and where there were clear procedural errors and/or violations. But almost every case where there was at issue the interests of a class of people, as in the "San Fernando" case and the cases of the rights of privacy for women, the Judge's finding were obstructive, or at the least impeding, to those interests and concerns. Witness after witness on both the panels of neutrality and against vis a vis confirmation with often eloquent, moving and persuasive arguments and testimony, raised these crucial points.

Which criteria, the Judge's verbal sentiments or his record of

action, is to be considered having the greater weight in the committee's deliberations as to whether the health, safety and enhancement of our social fabric is to be entrusted to the hands, mind and heart of Judge Kennedy? One of the members of the neutral witness panel commented that one of the great difficulties facing most of us in society is the "enculturation" and socialization encountered while growing up in our different social groups and classes. I believe you were impressed by this comment as one of the gems of the entire hearings.

In short, the great concern in the deliberations for confirmation on the part of the committee members and those classes of people (the which being women and "minorities" might well number 150 million, a full three-fifths of our population) is: how will Judge Kennedy perform as an Associate Justice of the Supreme Court and as the swing vote on the Court in these great nationally impactful issues? Will there continue to be the advancement of social harmony and progress or will there be a return to tragic and costly civil strife and enormous pain to countless individuals?

It is clear to me that these are not only questions of law, but of conscience, morality and historic awareness and responsibility; questions of underlying processes of reasoning and behavior. It may be that the committee's efforts can be assisted by the testimony of expertise in "enculturation" and behavioral patterns of individuals, groups and social structures in the social interactions. Such testimony make be of valuable contribution to the committee in its considerations of the complicated factors involved in this historic matter.

Briefly, for example, patterns of behavior and reasoning are generally predictable once a person has been enculturated and socialized. These dynamics interact with the person's intrinsic uniqueness during the maturation and formative years. The person's patterns of perception, intellectual processes and reasoning (quite apart from one's quality of intellect), of moral perspective and emotional reactance shape one's ultimate assumptions, general perspectives, awarenesses and limitations of awarenesses and, finally, resultant decisions, actions and behaviors. One's past actions then become predictive of one's present and future actions and tendencies.

Of course, the patterns of individuals and even groups, can be changed and influenced by great events, by serious and consistent education, by crucial positive pressure and influence, by critical existential priorities. President Nixon opened China to the west, President Reagan - Scourge of the Soviet par excellence, recently signed the IBM with U.S.S.R. and visibly softened his attitude towards its present leader. . . But elected officials are vastly more susceptible, and immediately so, to public and world pressure and to the heart-cry of their constituencies. Elected officials have far less time to respond to their own internal compulsions of making their personal mark and contributions to the public record. Thus, elected officials are far more immediately instructed and conditioned by the demands, expectations, sensitivities and expediences of their respective offices.

Supreme Court Justices, on the other hand, are by design protected and immunized from the political pressures of society, and only over great time and indirectly may such pressures influence justices to varying degrees. Once ensconced, a Justice has life-time tenure, free from constituency demand and obligation. Thus, meaningful change in a Justice's viewpoint and reasoning processes may be affected only indirectly and by subtle influences over slow moving time.

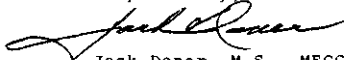
Of course, the interactions between the Justices themselves, over time, can influence such changes. By the same token the patterns of the individual Justices, as in any group, act to reinforce like patterns, giving increased credibility, legitimacy and rigidity to them. The greater number of like "minded" patterns the greater and more entrenched do the patterns of each member becomes. Thus, strong prediction, based on such factors, of general tendency of an individual's future performance may be made.

As a professional therapist, teacher, workshop and seminar facilitator in just such dynamics of human conduct, reasoning and behavior, over the last sixteen years, with all humility, I submit this testimony, and to both the privilege and duty to appear before you as a witness before your committee for its deeper questioning and probing. The momentous and pivotal historic matter at hand and the decision thereof which confronts the (fortunately) capable and dedicated members of your committee, require any American with any pertinent expertise to do no less than to offer his/her assistance to the service of the committee.

There can be no minimizing the awesome historic and social responsibility facing, first, the members of the Judiciary Committee, and then all Americans, actually. I am delighted to say that the front line trench, manned by the members of your committee, is in the hands of caring and honorable servants of the people. As one who is passionately in love with the American people and principles (a model to the world) I can do no less than to offer my heart and learning for whatever service and value you may find in them.

Should circumstances prevent any more than offering this letter to the public record, and for your consideration, I must dutifully state that based on all my learning and experience, based on much research and study on the part of multitudinous other behavior and human processes researchers, Judge Kennedy's future performance, on or off, the Supreme Court, will tend strongly to follow the record of his past performance, that is, to favorably advocate when possible, for individual and narrow interests, and to block or retard maintenance and/or progress of the gains in civil and legal rights of women, minorities and of the poor; the just and historically imperative and unavoidable social progress critically necessary for the healthy survival of the fabric and framework of the American society which we all cherish.

Respectfully,



Jack Doner, M.S., MFCC