

NATIONAL BLACK UNITED FRONT

CAMPAIGN FOR JUSTICE

(August 2005)

JUDGE JOHN ROBERTS  
=====

CONFIRMATION HEARING LEGAL INITIATIVE  
=====

PURPOSE

To Develop a Standard for Questioning of Nominees for Federal Judgeships; and to make the United States Criminal Justice System *sine qua non* of the Confirmation Process through this Legal Treatise and Judicial Inquiry which is based upon the Study, Report and Recommendations from the American Bar Association ("ABA") Justice Kennedy Commission.

THEME

Racialization of the Criminal Justice System

RACE BASED INJUSTICE

Report and Recommendation from the American Bar Association to the House of Delegates, August 2004, providing a New Standard of Judicial Concern reflective of the negative impact the criminal justice system has on the Black and Hispanic Communities in America.

IMPLEMENTATION OF NEW STANDARD

The New Standard of Judicial Inquiry will Commence with the September 2005 Confirmation Process of the Honorable John Roberts, United States Judge for D.C. Court of Appeals, Nominated by President George W. Bush, July 2005, for a seat on the Supreme Court of the United States -- replacing the Honorable Sandra Day O'Connor.

ROUNDTABLE THINK TANK

Federal Correctional Institution  
Memphis, Tennessee

JUDGE JOHN ROBERTS  
=====

President Bush's Nominee to Replace Sandra Day O'Connor  
on the  
United States Supreme Court

CONFIRMATION HEARINGS QUESTIONARY  
=====

**\*\* NATIONAL BLACK UNITED FRONT \*\***

A Treatise providing in a systematic manner for an expository purpose methodical dialogue of the facts and principles involved in past articles, statements and opinions and conclusions reached from his legal and philosophical perspective on race-based injustice

=====

P R E F A C E

=====

The number of prisoners incarcerated in America is upwards of 2.2 million, recently reported by the Bureau of Justice Statistics. The number of offenders held in federal prisons grew the most in 2003-04 and African-Americans, disproportionately at 12% of the total population, continue to comprise the largest category of prisoners incarcerated for more than a year at 44% -- while 35% were White and 18% Hispanic. And while the number of African-Americans incarcerated in America for violating laws is up, a report by the American Bar Association has found that the proportion of Blacks and Hispanics enrolling in law school has in the past two years decreased, revealing a racial-disparity in American jurisprudence and, perhaps, Criminal (In)justice as applied to Blacks and Hispanics, i.e.; race-based injustice.

The American Bar Association ("ABA") Justice Kennedy Commission Report to House Delegates submitted Recommendations addressing the racial disparity in American Criminal Justice System. The Report, precipitated and named after the Honorable Justice Kennedy subsequent to several articles and speeches criticizing the criminal justice system for racial and ethnic bias.

Accordingly, this Confirmation Hearings Questionary places on the table of America the issue of the racialization of justice in America in the context of Judge Robert's philosophical and ideological predispositions relevant to the administration of justice pursuant to interpretation of law(s).

The Fourteenth Amendment's guaranty of equal protection under the law, as so eloquently opined in Brown v Board of Education, is again ripe for review as a frame of reference when addressing the racial-disparity in the criminal justice system. Perhaps not deliberate, the effect is the same: institutionalized racism to the extent that Blacks and Hispanics are prosecuted more and receive more severe sentence upon conviction for the same crime as, say, a non Black or Hispanic. This fact is codified, documented and bonafide as a reliable statistic with far-reaching ramifications.

It cannot be ignored, rationalized or trivialized any longer that something is wrong with the criminal justice system in America, who now has the dubious distinction of being the world's lock-em-up leader with over two (2) million people in American prisons ... mostly Blacks and Hispanics. Thus, confirmation of Judge Roberts presents a moral-imperative to the members of Confirmation Hearings; representatives of the People of America who must address the racialization of the American criminal justice system which has become a American disgrace in the eyes of the world. This is true because America is ostensibly the land of the free!... while leading the world in incarceration rates and the development of a prison-industrial complex which is out of control.

The Sentencing Reform Act ("SRA") of 1984 replaced the old determinate sentencing paradigm by abolishing parole and the Parole Commission with the Truth in Sentencing Act requiring service of 85% of actual time imposed by the court. The basis for the change in the Old Law to the New Law is based upon Uniformity and Proportionality -- similar crimes get similar sentences, and let the time fit the crime. Initially, it sounded like a good idea at the time but has since morphed into a monster consuming Blacks and Hispanics: Incarceration rates for men only -- All males: 1309 per 100,000; White males 649 per 100,000; **Black males 4810 per 100,000; Latinos 1740 males per 100,000.**

**Discrimination or Disproportionate Offending?**  
=====

1. Given the statistical data on the disproportionate numbers of Blacks and Hispanics incarcerated in America, in your opinion, Judge Roberts -- would it be fair to say the statistics reflect an institutionalized racism or disproportionate offending by Blacks and Hispanics?

2. Is it your belief that Blacks and Hispanics are afforded equal protection of the law guaranteed by the Fourteenth Amendment in light of the disproportionate numbers of Minorities incarcerated in America, and if so what accounts for the racial disparity? If it is not your belief that Minorities are afforded equal protection of the laws as guaranteed by the Fourteenth Amendment, what in your opinion can be done or should be done to redeem the Constitution of the United States and restore justice in the judicial system?

3. On recent Supreme Court jurisprudence regarding the Sentencing Reform Act and the Federal Sentencing Guidelines changing them from **mandatory** to **advisory** (in Booker/Fanfan), what is your position on **retroactivity** of such decisions which afford relief to defendants on appeal but denies relief to inmates already sentenced based on the same Sixth Amendment errors found in Booker-Fanfan but who are denied relief because they are time-barred or procedurally barred; should they not be entitled to relief (i.e., if it's wrong now under Booker-Fanfan, it was wrong before Booker/Fanfan).

4. What is your opinion on the benefits of the Sentencing Reform Acts Truth in Sentencing mandating service of 85% of sentence imposed, versus the Old Law which allowed parole through the United States Parole Commission?

5. What is your thinking on the explosion in the federal prison population from approximately 25,000 in 1987, to over a quarter of a million in 2005 -- and the contrasts of the Sentencing Reform Act and the Old Law: benefits/consequences respectively?

6. What in your opinion is the role of the Supreme Court of the United States regarding Equal Protection of the Law when it comes to the disenfranchised inmates incarcerated in disproportionate numbers as Minorities when cases come before the Court with retroactive ramifications, but are not Issues Presented, e.g., Booker/Fanfan. Is it incumbent upon the Justices of the Court sua sponte to make the retroactive determination?

7. Same Question: Why?

8. Same Question: Why not?

9. What in your opinion might be done by an incarcerated defendant who cannot benefit from nonretroactive decisions but who nonetheless can prove his innocence or right to relief and is procedurally barred for reasons having nothing to do with merit?

10. What is your response to the racial disparity and population explosion in America's prisons in the past 25 years -- on a personal level; and what is your legal assessment of the criminal justice system in America which now has the dubious distinction of being the world's lock-em up leader with over two million people in its prisons?

11. It has been said that tuition to Harvard University is less than it costs to keep many prisoners lock-up for one year. How do you respond to that and how might America intervene on the injustice of the criminal justice system in a timely and effective manner to address and, ideally, remedy the injustices suffered by and inflicted upon Blacks and Hispanics.

12. In your opinion, should certiorari be reserved only for those issues resolving circuit splits, or should defendant have access to Supreme Court review on merit of cases that are not Death Penalty cases?

R E F E R E N C E S

Prepared by the National Black United Front  
Campaign for Justice Committee  
in conjunction with the Editorial Board  
of the  
White Paper Project -- Round Table Think Tank  
Federal Correctional Institution,  
Memphis, Tennessee

R E S E A R C H M A T E R I A L S

1. American Bar Association Justice Kennedy Report  
(August 2004)
2. Resolutions and Recommendations from the 26th Annual  
National Black United Front Conference, Campaign for  
Justice Workshop, Kansas City, Missouri (July 14-17, 2005)
3. Literacy Education and Rehabilitation Act, 108th  
Congress, 2d Session H.R. 4752, June 24, 2004: 1

---

<sup>1</sup>  
Short Title -- Credit for Participation in Educational/Vocational Treatment. Assigned  
Work, or Other Developmental Programs. (Introduced to the House of Representatives by the ABA).