

**Nomination of John B. Nalbandian to the
United States Circuit Court for the Sixth Circuit
Questions for the Record
Submitted March 14, 2018**

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.² These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

- a. Do you believe there is implicit racial bias in our criminal justice system?

I am not a psychologist or otherwise an expert on unconscious or implicit bias. I have participated in training sessions on implicit bias and my understanding of implicit bias is that all persons bring their background experiences and assumptions to human interactions. And that those experiences could unconsciously affect a person's decisions. We should work to ensure that no bias, explicit or implicit bias is present in our court system. To that end, as part of my work as a Board member on the State Justice Institute we have funded training programs and materials for judges and court personnel on implicit bias through the National Consortium on Racial and Ethnic Fairness in the Courts.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

I believe that this is a political and public policy question and it would be inappropriate for me to offer an opinion on the criminal justice policies adopted by the political branches. I will treat all litigants who appear before me equally.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

¹ JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), *available at* <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

² *Id.*

³ ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), *available at* <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴ *Id.* at 8.

Please see my answer to 1(a).

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.⁶

- a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied the question of links between crime rates and incarceration rates. My understanding is that this is a complex area. I believe that these are broad issues best left to policy experts and the political branches to debate and resolve. Judges who impose criminal sentences should consider all appropriate factors and options permitted by law when sentencing and should not treat defendants differently based on impermissible factors like race.

- b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my answer to 2(a).

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

I believe that diversity is important generally and have worked on diversity initiatives as a practicing lawyer through my involvement in groups like the Greater Cincinnati Minority Counsel Program and the Asian Pacific American Bar Association of Southwest Ohio. The selection and approval of judges is a task left to the political branches.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

⁶ *Id.*