

## PREPARED STATEMENT OF THE COALITION OF BAR ASSOCIATIONS OF COLOR ("CBAC")

Good morning Chairman Biden, members of the Committee, I am Paulette Brown, president of the National Bar Association (NBA). Also present are Wilfredo Caraballo, president of the Hispanic National Bar Association (HNBA), Brian Sun, president of the National Asian-Pacific American Bar Association (NAPABA), and Richard Monet, a representative of the Native American Bar Association (NABA), Jonnie Bearcub Stiffarm, president of the Native American Bar Association, could not be present today.

This morning we are here representing not only the National Bar Association, but the entire membership of the coalition of Bar Associations of Color; the National Bar Association, Hispanic National Bar Association, the National Asian-Pacific Bar Association, and the Native American Bar Association.

By way of background, the coalition became a formal organization as of May 22, 1994. The preceding year, the Boards of Governors of each organization held a summit to discuss and resolve issues of common concern. This year when we convened, a decision was made to formalize our association. We have learned over the years that the issues that we face are not necessarily unique to our individual organizations. We believe it to be crucial to our well being and to our constituents that on certain issues, we speak as one voice.

CBAC is a unified voice for more than 50,000 attorneys of color. We are unified and bonded together by our common experiences of discrimination and denial of access. For these reasons, we feel compelled to speak to the nomination of Judge Breyer to the Supreme Court.

Our primary purpose before the Committee this morning is neither to oppose nor extol, but rather to once again apprise Judge Breyer and the members of the Senate Judiciary Committee of the growing need for the Supreme Court to once again assume the mantle of leadership as to ensuring the protection, inclusion, empowerment and uplifting of people of color throughout our Nation.

Although we are not here this morning to oppose the confirmation of Judge Breyer as the 108th Justice of the United States Supreme Court, in truth, the Coalition of Bar Associations of Color would have preferred that President Clinton nominate a jurist of color with some meaningful degree of exposure and sensitivity to the issues of concern and importance to all Americans, particularly those who are least likely of having their interests and rights protected. We are not certain that the background of Judge Breyer comports with these important qualities which the President has himself recognized as a priority in the makeup of the Court.

Of the 107 Justices to serve on our Nation's highest court to date, there have been only two (2) persons of color: Justice Thurgood Marshall and now Justice Clarence Thomas; two (2) women: Justice Sandra Day O'Connor and Justice Ruth Bader Ginsburg; zero (0) Hispanic Americans; zero (0) Native Americans; and no Asian-Pacific Americans. The two African-American Justices represent less than a paltry 2 percent of all Supreme Court Justices throughout the years. If we count the two (2) women now serving as "minorities," the combined total of four (4) "minority" Justices would represent an anemic 4 percent of the total number of those who have served on the Nation's highest court. If you further consider that of those named, the sensitivity toward those who are most likely to be underrepresented, the percentages decrease even further.

Hispanics, for example, and Asian-Pacific Americans now constitute the fastest growing segments of our Nation's population. The inability of Presidents over the last 25 years to nominate judges of color to serve on the Supreme Court tends to imply, whether intentionally or not, that there are no well-qualified intellectuals of color deserving of a seat on this court. This implication is untrue and must be dispelled as soon as possible. Further, while a Hispanic, Asian-Pacific, or African-American jurist would have been an appropriate choice, we cannot ignore the fact that Native Americans have lived in this country longer than any other group of people and, likewise, they have, if we dare to say, been trampled upon more than other groups of people. One among their ranks should also have been considered. It appears that people of color are only entitled to have one representative on the court at any given time. Moreover, at this time there is no one who clearly represents our interests.

For the Supreme Court to remain viable, relevant, respected and accepted, at least a few of its members must be more than intellectuals isolated from the realities, experiences and perspectives of significant segments of American society. We wonder whether Judge Breyer, because of his gender and ethnicity is able to fully understand this reality.

Despite our preference, the coalition of Bar Associations of Color, for the moment, has moved forward to deal with the hand that we have been dealt.

The Department of Justice has averred that Judge Breyer's "career reflects a deep-seated commitment to fairness \* \* \* so that all government and law may work better for all people \* \* \* (and) that courts and law \* \* \* be accessible to all citizens."<sup>1</sup>

Vernon Jordan has written: "Judge Breyer's decisions reflect his strong commitment to protecting the rights of all Americans and ensuring the vindication of our civil rights. He will be a champion of fairness and justice on the bench."<sup>2</sup>

Robert Pitofsky, a former dean of Georgetown University asserts: "He understands that Government regulation is often necessary to ensure not just efficiency but fairness \* \* \*"<sup>3</sup>

All of these laudatory assertions begin heaped upon Judge Breyer, however, constitute no more than mere statements about the potential of a Justice Breyer.

As we all know, however, potential simply means that the thing has not yet manifested itself, and more realistically, justices do change.

Yet, the Coalition of Bar Associations of Color, remains hopeful that Justice Breyer's commitment to fairness will extend to encompass issues such as affirmative action: Discriminatory application of the death penalty; reflect a sensitivity on immigration issues; adequate due process protection for death penalty appeals; environmental justice; minority and women business set-aside programs; insurance, mortgage and commercial redlining; selective prosecution of doctors of color on Medicaid fraud charges and as amazing as it may seem, the Voting Rights Act, which is being steadily undermined by the regressive trend of voting rights decisions emanating from the court during the past several years.

We have read with interest the assertions that Judge Breyer is "pro-business". Hopefully, if such a propensity exists, Justice Breyer will extend this "pro-business" attitude to supporting tribal sovereignty and Native Americans in their effort to support economic development in Indian country. We are also hopeful that a Justice Breyer will be forceful and influential on cases involving the Civil Rights Act, which still regrettably provides an exemption to the Asian-American workers in the *Ward's Cove* case.

Though our rights are under attack from more than one source, people or color across the nation have not yet all become pessimistically cynical.

In hopes of preventing such an occurrence, the Coalition of Bar Associations of People of Color will be closely watching to see whether Judge Breyer manifests his fullest potential for fairness once he assumes his role as Justice Breyer and if so, what impact it has on the entire Court.

For people of color, the time for potential has passed. As it has been said, words are wonderful. But deeds are divine.

The Coalition of National Bar Associations of Color looks forward to Justice Breyer's deeds of fairness and, hopefully, those of the entire Court during the 1995 term and beyond.

Thank you.

CBAC.

National Bar Association.

National Hispanic Bar Association.

Native American Bar Association.

National Asian-Pacific American Bar Association.

Senator KENNEDY. Thank you, Mr. Brown.

Mr. Sun.

#### STATEMENT OF BRIAN SUN

Mr. SUN. Thank you, Senator Kennedy, for allowing me to speak on behalf of my organization here today on Judge Breyer's nomination. NAPABA, as my organization is known, was formed basically for the same reasons that the NBA, the HNBA and NABA were formed, as a response to a historical pattern, a long historical pattern of discrimination, denial of access to political and social insti-

<sup>1</sup>Judge Stephen Breyer, nominee for the U.S. Supreme Court, at 1 (1994) (alteration in original) (emphasis added) (Publication of the U.S. Department of Justice).

<sup>2</sup>Id.

<sup>3</sup>Id. (Alteration in original).