



November 8, 2019

Judicial Qualifications Commission
Post Office Box 14106
Tallahassee, FL 32317

To the Members of the Judicial Qualifications Commission,

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) respectfully writes this letter to support the complaint filed by Florida State Senator Bobby Powell, Jr. against Judge John S. Kastrenakes of the 15th Judicial Circuit of Florida for violations of the Code of Judicial Conduct. LDF requests that the Commission examine allegations of racial bias in meting out punishments to jurors. In two recent incidents, Judge Kastrenakes sentenced Black men to prison for missing jury service because they overslept or left a jury summons due to a disability. Imprisoning jurors under these circumstances is an inappropriate and excessive sentence, which risks discouraging any engagement and participation of jurors who may simply choose not to come to court at all rather than risk being jailed if they are selected for a jury pool and then are absent.

Under Florida’s Code of Judicial Conduct, “[a] judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race.”¹ Juror compliance can be obtained through communication and education. The court should reserve carceral penalties as options of last resort, and the public must be certain that failing to appear for jury service will be dealt with consistently and fairly. It is critical that all judges, including Judge Kastrenakes, develop legally sound, fair, and uniform process for dealing with jurors who do not appear for service. In addition, any punishment must be free of racial discrimination and bias.

Judge Kastrenakes’ action in this case warrants investigation because of the potential that his sentencing may reflect a racially disparate approach to punishment for jurors who fail to appear. We are unaware of any instances in which Judge Kastrenakes has imposed similar sentences on white jurors who missed jury service. In explaining his reasons for providing such a harsh sentence, Judge Kastrenakes even referred to the fact that one of the jurors he sentenced to jail was the only Black person on the jury. The prospect that Judge Kastrenakes has targeted jurors who fail to appear for imprisonment, at least in part, because of race requires a serious inquiry. It goes to the very heart of public confidence in the justice system.

On August 20th, Deandre Somerville was selected as a juror, for the first time, for a civil automobile accident negligence case at a courthouse in Palm Beach County. However, after oversleeping and missing his ride to the courthouse, Mr. Somerville failed to appear for service. Instead, Mr. Somerville went to work and failed to call the juror office to denote his absence. Mr. Somerville’s actions delayed the trial by 45 minutes. Mr. Somerville has a part-time job at the city of West Palm Beach Parks and Recreation Department coordinating after-school programs. When Mr. Somerville is not working, he serves as his grandfather’s caretaker.

A few weeks after Mr. Somerville’s missed summons, police arrived at his home requesting he appear

¹ Fla. Code of Jud. Conduct Canon 3B(5).

before Judge Kastrenakes. When Mr. Sommerville appeared before Judge Kastrenakes, he admitted his mistake, apologized, and explained his unfamiliarity with the judicial process. Despite Mr. Somerville’s admission, Judge Kastrenakes convicted Mr. Somerville of direct criminal contempt,² imposing a 10-day jail sentence as well as 12 months’ probation, 150 hours of community service, and an order to write an apology letter. Mr. Somerville was immediately handcuffed. Judge Kastrenakes asserted that Mr. Somerville’s absence, as the sole Black juror, harmed the entire cross-section of his community. Earlier this year, Judge Kastrenakes similarly sentenced Keith Lattimore, another Black West Palm Beach citizen, to a 9-day jail sentence. Mr. Lattimore reported for jury duty in December 2018 for a cocaine trafficking trial. After being picked for a pool of 50 prospective jurors, Mr. Lattimore later left the courthouse, due to an alleged learning disability and anxiety over crowds. In March, Judge Kastrenakes found Mr. Lattimore in indirect contempt of court for his departure. Despite pleas of mercy from his family, and advocacy by Mr. Lattimore’s lawyer, Judge Kastrenakes found that Mr. Lattimore “willfully refused” to serve. LDF is unaware of similar carceral punishment given to white jurors.

Although the nature of the sanction is different, Judge Kastrenakes’s imprisonment of Mr. Sommerville and Mr. Lattimore for missing jury service is consistent with our nation’s shameful history of mistreating Black venire members. Until the Civil War era, jury service was almost universally restricted to white men.³ After the Civil War, Congress passed the Fourteenth Amendment and the Civil Rights Act of 1875 to protect the rights of newly freed African Americans. One of the rights protected by those provisions was the right to serve on a jury.⁴ However, the jury service provision of the Act was rarely enforced and had little effect on the conduct of local officials. Many jurisdictions avoided statutes that expressly restricted jury service to whites, but utilized other exclusionary methods, including purging African Americans from jury rolls, implementing ruses to exclude Black citizens, and using preemptory strikes to severely limit the number of African Americans on juries.⁵ A more recent study by the Equal Justice Initiative (EJI) of jury processes in eight states, including Florida, shows that racial discrimination in jury service remains pervasive and persistent. The study uncovered evidence of racial bias in the states’ jury processes, including the usage of race-based preemptory strikes to exclude African Americans and other racial minorities from jury service.⁶

The historical maltreatment and exclusion of African Americans on juries has seriously undermined the credibility and reliability of the criminal justice system.⁷ By imprisoning two Black men for missing jury service, Judge Kastrenakes’s orders risks chilling participation in jury service. This threat is particularly burdensome for a protected class that is continuously subjected to the perils of overcriminalization.⁸ Judge Kastrenakes’s

² Judge Kastrenakes found Mr. Sommerville in direct contempt of court, rather than indirect contempt. But, under Florida law, in order to find a juror in direct contempt, the contentious behavior must occur in the immediate presence of the court. Failure to appear is not considered direct contempt. *See State v. Diaz de la Portilla*, 177 So. 3d 965, 973 (Fla. 2015) (“The trial court may not have personal knowledge with respect to [...] whether the individual was somehow unable to appear, and therefore could not know whether the nonappearance was willful.”) And, because Mr. Sommerville was not properly charged with direct contempt, Judge Kastrenakes was required to appoint an attorney to represent Mr. Sommerville, which he did not, and afford Mr. Sommerville all other procedural and constitutional protections to which he was entitled at the hearing. *See Cooke v. United States*, 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767 (1925); *Plank v. State*, 190 So. 3d 594, 601 (Fla. 2016).

³ *See* Neil Vidmar & Valerie P. Hans, *American Juries* 71-72 (2007); Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867, 884, 894 (1994).

⁴ *See* Civil Rights Act of 1875, ch. 114, § 4, 18 Stat. 336 (codified as amended at 18 U.S.C. § 243); *see also* *Batson v. Kentucky*, 476 U. S. 79, 85 (1986) (*citing* *Strauder v. West Virginia*, 100 U.S. 303 (1880)).

⁵ Michael J. Klarman, *From Jim Crow to Civil Rights* 39-42 (2004); *See* Morton Stavis, *A Century of Struggle for Black Enfranchisement in Mississippi: From the Civil War to the Congressional Challenge of 1965—And Beyond*, 57 MISS. L.J. 591, 602-07 (1987) (discussing Mississippi’s mission to suppress jury service and jury-trial rights of African Americans).

⁶ *See* Equal Justice Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* 5-6, 19 (Aug. 2010), <https://eji.org/sites/default/files/illegal-racial-discrimination-injury-selection.pdf>.

⁷ *See* *Miller-El v. Dretke*, 545 U.S. 231, 238 (2005) (explaining that judicial proceedings tainted with racial bias undermines public confidence in adjudication).

⁸ Becky Pettit and Bryan Sykes, *The Poverty and Inequality Report*, STANFORD CENTER ON POVERTY & INEQUALITY NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC

reference to the lack of racial diversity on the jury cannot justify subjecting a Black juror to a harsher sanction for missing jury service and Black Floridians should bear no greater burden of jury service than their peers.

Therefore, LDF requests that this committee undertake Senator Powell's request, carefully considering whether, (1) Judge Kastrenakes's punishment of Mr. Sommerville and Mr. Lattimore was so arbitrary and excessive that it gave rise to judicial misconduct, (2) Judge Kastrenakes's conduct towards Mr. Sommerville and Mr. Lattimore was racially biased, and (3) there is a pattern and practice of undue or unfair sanctions related to jury service based, at least in part, on race.

Sincerely,



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(2017), <https://www.themarshallproject.org/documents/4316517-Pettit-Sykes-2017-incarceration-report> (finding that intensive incarceration in the United States disproportionately burdens Black men); Criminal Justice Fact Sheet, NAACP(2019), <https://www.naacp.org/criminal-justice-fact-sheet/> (stating that African Americans are incarcerated at more than 5 times the rate of whites and though African Americans and Hispanics make up approximately 32% of the US population, they comprised 56% of all incarcerated people in 2015); Robert D. Crutchfield and Gregory A. Weeks, *The Effects of Mass Incarceration on Communities of Color*, 32 ISSUES IN SCIENCE AND TECH 1 (Fall 2015) (discussing how poor people of color have been incarcerated disproportionately during the massive increase in imprisonment that has occurred in the nation since the early 1980s).