AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 112–158

NOMINATION HEARING ON U.S. CIRCUIT AND U.S. DISTRICT JUDGES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 2, 2011

Serial No. J–112–8

Printed for the use of the Committee on the Judiciary



NOMINATION HEARING ON U.S. CIRCUIT AND U.S. DISTRICT JUDGES

S. HRG. 112–158

NOMINATION HEARING ON U.S. CIRCUIT AND U.S. DISTRICT JUDGES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 2, 2011

Serial No. J–112–8

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

71–212 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

HERB KOHL, Wisconsin	CHUCK GRASSLEY, Iowa
DIANNE FEINSTEIN, California	ORRIN G. HATCH, Utah
CHUCK SCHUMER, New York	JON KYL, Arizona
DICK DURBIN, Illinois	JEFF SESSIONS, Alabama
SHELDON WHITEHOUSE, Rhode Island	LINDSEY GRAHAM, South Carolina
AMY KLOBUCHAR, Minnesota	JOHN CORNYN, Texas
AL FRANKEN, Minnesota	MICHAEL S. LEE, Utah
CHRISTOPHER A. COONS, Delaware	TOM COBURN, Oklahoma
RICHARD BLUMENTHAL, Connecticut	

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN DAVIS, *Republican Chief Counsel and Staff Director*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page

Feinstein, Hon. Dianne, a U.S. Senator from the State of California 1
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa 2
prepared statement 577
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 601

PRESENTERS

Alexander, Hon. Lamar, a U.S. Senator from the State of Tennessee presenting Kevin Hunter Sharp, Nominee to be District Judge for the Middle District of Tennessee 3
Corker, Hon. Bob, a U.S. Senator from the State of Tennessee presenting Kevin Hunter Sharp, Nominee to be District Judge for the Middle District of Tennessee 4
Lautenberg, Hon. Frank R., a U.S. Senator from the State of New Jersey presenting Claire C. Cecchi, Nominee to be District Judge for the District of New Jersey and Esther Salas, Nominee to be District Judge for the District of New Jersey 5
Menendez, Hon. Robert, a U.S. Senator from the State of New Jersey presenting Claire C. Cecchi, Nominee to be District Judge for the District of New Jersey and Esther Salas, Nominee to be District Judge for the District of New Jersey 6
Nelson, Hon. Bill, a U.S. Senator from the State of Florida presenting Roy Bale Dalton, Jr., Nominee to be District Judge for the Middle District of Florida 7
Rubio, Hon. Marco, a U.S. Senator from the State of Florida presenting Roy Bale Dalton, Jr., Nominee to be District Judge for the Middle District of Florida 9

STATEMENT OF THE NOMINEES

Cecchi, Claire C., Judge, Nominee to be District Judge for the District of New Jersey 356
biographical 357
Dalton, Roy Bale, Jr., Nominee to be District Judge for the Middle District of Florida 269
biographical 270
Liu, Goodwin, Nominee to be Circuit Judge for the Ninth Circuit 13
biographical 14
Salas, Ester, Judge, Nominee to be District Judge for the District of New Jersey 405
biographical 406
Sharp, Kevin Hunter, Nominee to be District Judge for the Middle District of Tennessee 215
biographical 216

QUESTIONS AND ANSWERS

Responses of Claire C. Cecchi to questions submitted by Senator Grassley 467
Responses of Roy B. Dalton Jr. to questions submitted by Senator Grassley 469
Responses of Goodwin H. Liu to questions submitted by Senators Coburn, Grassley, Lee and Sessions 472

Page

Responses of Esther Salas to questions submitted by Senators Grassley and Sessions 504
Responses of Kevin H. Sharp to questions submitted by Senator Grassley 509

SUBMISSIONS FOR THE RECORD

Amar, Akhil Reed, Sterling Professor of Law, Yale Law School, New Haven, Connecticut, and Kenneth W. Starr, Duane and Kelly Roberts Dea and Professor of Law, Pepperdine University School of Law, March 19, 2010, joint letter 512
American Bar Association, Benjamin H. Hill, III, Chair, Washington, DC, January 20, 2011, letter 515
American Federation of Labor and Congress of Industrial Organizations, William Samuel, Director, Government Affairs Department, Washington, DC, May 18, 2011, letter 517
Arizona Asian American Bar Association (AAABA), Melissa Ho, President, Phoenix, Arizona, April 14, 2010, letter 518
Asian American Justice Center, Karen K. Naraskai, President and Executive Director, Washington, DC, May 18, 2011, letter 521
Asian Pacific American Labor Alliance, AFL–CIO, (APALA), John Delloro, President, Washington, DC, March 18, 2010, letter 523
Bolick, Clint, Goldwater Institute, Phoenix, Arizona, January 20, 2010, letter 525
Business Leaders, Mariann Byerwalter, Chairman JDN Corporate Advisory LLC; Steven A. Denning, Chairman General Atlantic LLC; John A. Gunn, Chairman, Dodge & Cox; Frank D. Less, CEO, Dragonfly Sciences, Inc.; Hamid R. Moghadam, Chairman and CEO, AMB Property Corporation; Ruther Porat, Executive Vice President and Chief, Financial Officer, Morgan Stanley; Shriram, Founding Board Member, Google, Inc.; and Jerry Yang, co-Founder and Chief Yahoo, Yaholl!, Inc, May 17, 2011, joint letter .. 526
California Correctional Peace Officers Association (CCPOA), Mike Jimenez, President, West Sacramento, California, March 17, 2011, letter 528
California District Attorneys, Will Richmond, Alpine County; Todd D. Riebe, Amador County; John R. Poyner, Colusa County; and Michael D. Diese, Del Norte County, March 26, 2010, joint letter 530
California Labor Federation, AFL–CIO, Art Pulaski, Executive Secretary-Treasurer, Oakland, California, March 19, 2010, letter 532
Chinese American Citizens Alliance, (CACA), San Francisco, California, statement 534
Choper, Jesse H., Berkeley Law, University of California, Berkeley, California, April 7, 2010, letter 535
Coleman, William T., O'Meleveny & Myers LLP, Washington DC:
March 11, 2011, letter 541
Apri1 29, 2011, letter 543
Conference of Asian Pacific American Law Faculty (CAPALF), Wu, Frank H., Chancellor and Dean, University of California, Hastings College of the Law, March 4, 2010, letter 545
Congressional Asian Pacific American Caucus (CAPAC), Michael M. Honda, Chair, Washington, DC, March 23, 2010, letter 548
Constitution Project, Gerald Kogan, former Chief Justice, Supreme Court of the State of Florida; former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida, and Mark White, former Governor of Texas; former Attorney General of Texas; former Secretary of State of Texas; former Assistant Attorney General of Texas, Washington, DC:
March 2, 2011, joint letter 550
April 9, 2011, joint letter 552
80–20 Initiative, S. B. Woo, Founding President, Cerritos, California, April 23, 2010, letter 554
Former Judges and Prosecutors, Rebecca A. Betts, U.S. Attorney, Southern District of West Virginia; Robert C. Bundy, U.S. Attorney, District of Alaska; J. Joseph Curran, U.S. Attorney, State of Maryland; Michael H. Dettmer, U.S. Attorney, Western District of Michigan; Robert DelTufo, Attorney General and U.S. Attorney, State of New Jersey; W. Thomas Dillard, U.S. Attorney Northern District of Florida; and U.S. Attorney, Eastern District of Tennessee; Hon. Bruce J. Einhorn, U.S. Immigration Judge, Special Prosecutor and Chief of Litigagtion, United States Department of Justice Office of Special Investigations:
April 13, 2010, joint letter 556

Page

Former Judges and Prosecutors, Rebecca A. Betts, U.S. Attorney, Southern District of West Virginia; Robert C. Bundy, U.S. Attorney, District of Alaska; J. Joseph Curran, U.S. Attorney, State of Maryland; Michael H. Dettmer, U.S. Attorney, Western District of Michigan; Robert DelTufo, Attorney General and U.S. Attorney, State of New Jersey; W. Thomas Dillard, U.S. Attorney Northern District of Florida; and U.S. Attorney, Eastern District of Tennessee; Hon. Bruce J. Einhorn, U.S. Immigration Judge, Special Prosecutor and Chief of Litigagtion, United States Department of Justice Office of Special Investigations—Continued
March 1, 2011, joint letter 563
Leaders in Education, Cynthia G. Brown, Vice President for Education Policy, Center for American Progress Action Fund; bipartisan group of 22 leaders in education law, March 23, 2010, joint letter 570
Friedman, Donald M., Professor (retired), March 5, 2010, letter 575
Family Research Council Action (FRCA), Thomas McClusky, Senior Vice President, Washington, DC, May 19, 2011, letter 576
Hispanic National Bar Association (HNBA), Román D. Hernández, National President, Washington, DC, September 3, 2010, letter 581
Huffington Post, Richard Painter, March 2, 2011, article 583
Humphries, Arthur L., Physician (retired), Georgia, May 18, 2011, letter 593
Jones, Brian W., Founder & President, Latimer Education, Inc., Former General Counsel, Department of Education, May 16, 2011, letter 595
Judicial Watch, Thomas Fitton, President, Washington, DC, March 24, 2010, letter 597
Leadership Conference on Civil and Human Rights, Wade Henderson, President & CEO, and Nancy Zikin, Executive Vice President, Washington, DC, May 13, 2010, letter 599
Liberty Counsel Action, Manidi Campbell, Director of Public Policy, Washington, DC, March 9, 2011, letter 604
Liu's, 81 former Classmates, Yale Law School, May 12, 2010, joint letter 606
Mabuhay Alliance, Faith Bautista, President and CEO, Washington, DC, April 14, 2010, letter 609
McCaw, Susan R., Santa Barbara, California, March 11, 2011, letter 612
National Asian Pacific American Bar Association (NAPABA), and Asian American Justice Center (AAJC), joint statement 614
National Asian Pacific American Bar Association, Joseph J. Centeno, President, on behalf of Asian Pacific American Organizations, Washington, DC, April 15, 2010, joint letter 619
National Association for the Advancement of Colored People (NAACP), Hilary O. Shelton, Director, Senior Vice President for Advocacy and Policy, Washington, DC, May 18, 2011, letter 623
National Review Online, Ed Whelan, March 3, 12011, article 625
National Senior Citizens Law Center (NSCLC), Paul Nathanson, Washington, DC, May 18, 2011, letter 631
National Women's Law Center, Nancy Duff Campbell, Co-President, and Marcia D. Greenberger, Co-President, Washington, DC:
May 18, 2011, letter 632
May 5, 2010, letter 634
Religious Action Center of Reform Judaism, Rabbi David Saperstein, Director and Counsel, Washington, DC, May 5, 2010, letter 636
Sklansky, David Alan, Yosef Osheawich Professor of Law, Berkeley Law, University of California, Berkeley, California, letter and attachment 638
State Building and Construction Trades Council of California, Robert L. Balgenorth, President, September 17, 2010, letter 644
Stanford University, John L. Hennessy, President; Gerhard Casper, President Emeritus; and Donald Kennedy, President Emeritus, Palo Alto, California, March 18, 2010, letter 645
Sturdevant Law Firm, James C. Sturdevant, San Francisco, California, April 15, 2010, letter 647
University of California, Mark G. Yudof, President, Oakland, California, May 18, 2011, letter 649
Yin, C.C., Founder of APAPA, Sacramento, California, letter 651

NOMINATION HEARING OF GOODWIN LIU, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, KEVIN HUNTER SHARP, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF TENNESSEE, ROY BALE DALTON, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, HON. CLAIRE C. CECCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, AND HON. ESTHER SALAS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

WEDNESDAY, MARCH 2, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:47 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Klobuchar, Franken, Coons, Blumenthal, Grassley, Sessions, Cornyn, Lee, and Coburn.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. This hearing will come to order, and I want to welcome everyone and thank you for being here.

Today the Committee will hear from five nominees for our Federal courts: Professor Goodwin Liu, who has been nominated to sit on the United States Court of Appeals for the Ninth Circuit; Mr. Kevin Sharp, nominated for the United States District Court for the Middle District of Tennessee; Mr. Roy Dalton, Jr., nominated for the United States District Court for the Middle District of Florida; United States Magistrate Judge Claire Cecchi, nominated for the U.S. District Court for the District of New Jersey; and United States Magistrate Judge Esther Salas, also nominated for the United States District Court for the District of New Jersey.

So I want to welcome all of the nominees and also your families. We are very happy to have you here today.

It is my understanding that the Chairman has asked that there be no opening statements by nominees, that we go directly to the

questions, and that exists for all levels of the court, except for the Supreme Court. So what I would like to do right now is ask our distinguished Ranking Member if he has any comments, and then I would like to introduce the candidate for the Ninth Circuit.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I will not repeat any of the biographical information that is normal to give in an opening statement, but I want to comment all the nominees for their public service.

This week, we confirmed two more nominees to vacancies in the Federal judiciary, and both of these positions were what is termed "judicial emergencies." We have now confirmed seven nominees during this new Congress, which has only been in session for 19 days. We have taken positive action, in one way or another, on more than half of the 52 judicial nominees submitted during this Congress. So we are moving forward, as I indicated I would do, on consensus nominees.

The primary purpose of this hearing is to review the nomination of Goodwin Liu, nominated to be United States Circuit Judge for the Ninth Circuit. I thank the Chairman for favorably responding to my request for this hearing, and I made the request in order to provide the nominee an opportunity to address the many concerns which have been raised and, of course, to allow new members of this Committee to question and evaluate the nominee, which they have not had an opportunity to do because obviously they were not Members of the Senate at the time the nomination first came up.

While much of this hearing will focus on Mr. Liu, I do not want the district judge nominees to feel slighted in any way. Their nominations are important, and I will look forward to their testimony as well.

With regard to Mr. Liu, the Committee twice reported his nomination on a 12–7 vote. In addition, the nomination has been returned to the President on more than one occasion. Concerns raised during his prior hearing and in written questions include his writings and speeches; his judicial philosophy; public statements, including testimony before this committee; his judicial temperament; and limited experience.

I am concerned about his understanding and appreciation of the proper role of a judge in our system of checks and balances, and I want to make certain, as with all nominees, that personal agendas and political ideology will not be brought into the courtroom.

It is ironic that in commenting on the Roberts nomination, Mr. Liu said, "the nomination is a seismic event that threatens to deepen the Nation's red-blue divide. Instead of choosing a consensus candidate [the President] has opted for a conservative thoroughbred who, if confirmed, will likely swing the Court sharply to the right on many critical issues."

If confirmed, I am concerned that Mr. Liu will deeply divide the Ninth Circuit and move that court even further to the left. Opinions he could offer would mean his ideology and judicial philosophy would seep beyond Berkeley, California. His potential rulings will affect individuals throughout the nine-State Circuit, including

places like Bozeman, Montana; Boise, Idaho; and Anchorage, Alaska.

The Senate has a right to determine the qualifications of judicial nominees. The burden is on the nominee appearing before this Committee to demonstrate he or she is suitable for a lifetime appointment to the court. I would note that in his previous appearances and in response to written questions, Mr. Liu failed to provide responsive answers to our questions, and I hope that performance is not repeated today.

I ask unanimous consent, Madam Chairman, that the balance of my statement regarding the district court nominees be entered into the record, and I look forward to reviewing their testimony and responses.

Senator FEINSTEIN. So ordered.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator FEINSTEIN. I would note that we have two distinguished Senators here wishing to introduce some of the district court judges, so if there is no objection, I am going to proceed to them. I will go by seniority, and my Ranking Member on Interior and now on the Energy Subcommittee of Appropriations, the distinguished Senator Lamar Alexander, and then Bob Corker.

PRESENTATION OF KEVIN HUNTER SHARP, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF TENNESSEE, BY HON. LAMAR ALEXANDER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator ALEXANDER. Thank you, Madam Chairman, for your courtesy, and distinguished members of the Committee. Senator Feinstein seems to be Chairman of everything.

Senator FEINSTEIN. No, no.

[Laughter.]

Senator ALEXANDER. And there could not be a better one anywhere.

Senator FEINSTEIN. Do not guffaw.

Senator COONS. It was a funny joke.

Senator ALEXANDER. Madam Chairman, it is my privilege today to introduce to the Committee Kevin Sharp, who has been nominated by President Obama as the nominee to be United States District Judge for the Middle District of Tennessee. Senator Corker is here with me for the same purpose.

No one could be more pleased that the President has made a nomination and that the Committee is moving quickly to consider Kevin Sharp than the current judges of the Middle District of Tennessee because this position has been vacant for 4 years, and it is the fourth longest vacancy of any judicial emergency.

I will briefly mention Mr. Sharp's background. He is a founding partner of a law firm in Nashville. He graduated summa cum laude from Christian Brothers College. He is a graduate of Vanderbilt University with honors. He has been voted by his peers in a variety of ways as Best of the Bar in the Nashville Journal, among the Mid-South Super Lawyers, Best Lawyers in America. He is a Navy veteran. And he not only has the support of two Republican Senators; he has strong Democratic support in our State, as might be

expected. Among those who have written letters to either the White House or members of the Congressional delegation recommending him include Vice President Gore and former Governor Bredesen, former Representative Harold Ford, former Governor Bill Richardson, as well as a host of others.

I know him personally. His temperament is good. I had the privilege as Governor of Tennessee of appointing about 50 judges, and it was always one of the most important responsibilities. I rarely asked them what their positions were on the issues. I looked at their intelligence, character, evenhandedness, and whether I thought they would treat litigants and others before the court with dignity and courtesy. I believe Kevin Sharp will. I highly recommend him to this Committee and urge his speedy confirmation.

Thank you very much for allowing me to go ahead.

Senator FEINSTEIN. Thank you very much, Senator. And I know that every Senator here is busy and has other commitments, so everyone should feel free to leave following your remarks.

We will go right down the line. Senator Corker.

PRESENTATION OF KEVIN HUNTER SHARP, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF TENNESSEE, BY HON. BOB CORKER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator CORKER. Thank you, Madam Chairman, and thank you for the many roles that you play here in the Senate.

I could not be more delighted to follow our senior Senator, Lamar Alexander, in heavily advocating on behalf of Kevin Sharp. I know that Lamar has gone through the various C.V. activity of the nominee. I just want to talk a little bit about the person.

Kevin is someone that anybody who is involved in the State of Tennessee gets to know. He is a person who enlisted in the Navy out of high school. He was not in any way born with a silver spoon in his mouth. He worked his way through, starting in junior colleges, making it through the fine university of Vanderbilt. He has been with numbers of law firms. He is highly involved civically. He is an outstanding family man.

And, Madam Chairman, I think what I like most about his nomination is he is one of those judges that—or nominees that comes before you with support from both sides of the aisle. Everybody who has come in contact with him or dealt with him I think thinks very highly of him. They know his courtroom manner is going to be one that is most appropriate.

He is a young man. I think he has a tremendous future, if confirmed, and I could not be more pleased to be here in support of him—again, someone who both sides of the aisle have said they think he will be an outstanding judge.

So without further ado, I could not be more positive about this young man becoming a Federal judge, and I hope this Committee sees fit to send him to the floor for confirmation. And I thank you so much.

Senator FEINSTEIN. And I thank you, Senator Corker.

The distinguished Senator from New Jersey, Senator Lautenberg, welcome.

PRESENTATION OF CLAIRE C. CECCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, AND ESTHER SALAS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, BY HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Madam Chairman and members of the Committee. I am honored and pleased to have an opportunity to come before the Committee, and as you and other colleagues know, while I am not formerly a lawyer, there are times that I wish I was in moments like this to be able to recommend two outstanding nominees for the Federal district court.

In New Jersey, there is a courthouse that carries my name. It was done according to protocol when I was out of the Senate, and I was out long enough to get the building name, and I came back to the Senate.

[Laughter.]

Senator FEINSTEIN. Did you give up the building name?

Senator LAUTENBERG. It was a courthouse.

Senator FEINSTEIN. Oh, you could not give up the name when you came back. I am teasing you.

Senator LAUTENBERG. They are not allowed to.

[Laughter.]

Senator LAUTENBERG. By practice.

Before that building was dedicated, I requested that an inscription be placed on the wall, and I was asked whether it would be by Oliver Wendell Holmes or Learned Hand. And I said, no, it is something that I really believe. And I developed an inscription that did finally carry, and it reads: "The true measure of a democracy is its dispensation of justice." And that is the way I feel about the system, and I take something like this so seriously.

Today I am pleased to introduce to this Committee two nominees for this court: Judge Claire Cecchi and Judge Esther Salas. They both come from the magistrate court in New Jersey. Judge Cecchi has presided over hundreds of civilian and criminal cases, and before joining the bench, Judge Cecchi spent 14 years in private practice focusing on complex civil litigation.

One of Judge Cecchi's passions is to expose young people, attract young people to careers in law. She has hosted a "Bring Your Child to Work Day" program in the district court, as well as a mock trial for a sixth grade class to let young people understand something about what we have in our judiciary positions.

In addition, Judge Cecchi has volunteered for organizations: Junior League, Orphans with AIDS, Human Needs Food Pantry, Salvation Army. She is a graduate of Fordham University Law School where she had a clerkship with Judge Thomas Duffy of the Southern District of New York.

Judge Cecchi, like I, likes to ski, and she recently—this does not help qualify her necessarily, but down a very serious mountain in Wyoming famous for expert trails. So I know that she can handle something that she might have to from the bench with courage and direction.

Like Judge Cecchi, Judge Salas has served as a U.S. magistrate judge since 2006. Judge Salas is the first Latina in New Jersey to hold this position. In a newspaper profile a few years ago, Judge

Salas recalled that when she was 10, her family lost everything in a fire in the apartment building in which they lived. The judge's mother told her children, "Things are going to be fine. We have gotten this far, and we will make it." And I would say Judge Salas' mother was correct. Judge Salas has made it.

Before Judge Salas became a magistrate judge, she served 9 years as an assistant Federal public defender in Newark representing indigent clients in a variety of cases. She has also worked in private practice handling appellate court for a New Jersey law firm. She is a graduate of the Rutgers University School of Law and clerked for New Jersey Superior Court Judge Eugene Cody. Judge Salas has also served as president of the Hispanic Bar Association of New Jersey.

I am honored to present both Judge Cecchi and Judge Salas to this Committee, and I believe both nominees are exceptional and well qualified to serve on the district court. We need them desperately in a hurry because the court docket is so full, and I am hopeful that this Committee will agree with my view of their abilities.

Thank you.

Senator FEINSTEIN. Thank you very much, Senator Lautenberg.

Also from the great State of New Jersey, Senator Menendez, welcome, sir.

PRESENTATION OF CLAIRE C. CECCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, AND ESTHER SALAS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, BY HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Thank you, Madam Chair, and also to Ranking Member Grassley and all the distinguished members of the Committee. I am pleased to join with my senior colleague in introducing and supporting two outstanding judicial professionals to fill the vacancies of the U.S. District Court in New Jersey. Both of these very qualified women are United States magistrates in our States. Judge Cecchi and Judge Salas are among the most respected leaders in New Jersey's judicial community. Both have demonstrated skill and professionalism on the bench and an impressive ability to manage heavy and complex dockets before them.

Judge Cecchi has a wide range of litigation experience, having worked in the private sector for nearly a decade and a half. After serving in the Office of Corporation Counsel for the city of New York, she practiced with Robinson, St. John & Wayne, later with Robinson, Lapidus & Livelli, both large and well-respected New Jersey firms. She is no stranger to complex litigation for both defendants and plaintiffs, and in the course of her distinguished career has focused on a range of challenging issues, from securities litigation and complex tort matters to employment law, criminal cases, construction cases, and contracts. In handling a prominent case involving a suit by the Securities and Exchange Commission against two companies in the Federal Court of the Southern District of New York, Judge Cecchi demonstrated her legal skills and an impressive depth of knowledge about the subject at hand.

She later went on to the firm of Carpenter, Bennett & Morrissey, the second oldest law firm in New Jersey, where she worked for nearly a decade developing a wide range of litigation experience in environmental toxic tort cases, class actions, patent cases, and employment law. So she is incredibly qualified. As a magistrate judge, she has shown a unique set of judicial skills that makes her an exceptional nominee for the District Court of New Jersey.

Magistrate Judge Esther Salas has been an exceptional public servant. As Senator Lautenberg said, in 2006 she became the first Hispanic to serve as a United States magistrate in the history of New Jersey, but more importantly, her handling of a docket of well over 400 cases has earned the respect of many in the legal community who have said she is among the finest judges they have worked before in many years of practice.

In a decade-old environmental dispute involving 350 attorneys, she skillfully managed the resulting avalanche of motions and counter-motions on Federal and State claims for more than $300 million for past and future cleanup costs and damages. Her handling of the case prompted several lawyers not only to credit her with being the principal moving force in bringing the parties to agreement, but recommending her to the Committee with their unqualified support.

Prior to serving as a magistrate judge, she spent 10 years in the Federal public defender's office where she zealously represented each of her clients, providing them with the best legal skill and advice that they could have.

She clerked with distinction for a superior court judge, Judge Eugene Cody, and I am proud that she earned her law degree from my alma mater, Rutgers Law School. That should be extra weight, Senator Grassley, in your consideration.

[Laughter.]

Senator MENENDEZ. She is a respected member of the New Jersey State Bar and past president of the Hispanic Bar Association.

Let me conclude by saying these are two extraordinary nominees. They represent among the best of New Jersey's legal professionals. I believe they have the intellect, the judicial temperament, and the experience to be great Federal district judges, and I join Senator Lautenberg in strongly recommending them to the Committee, and I am hopeful for quick passage by the Committee and then through the Senate.

Thank you very much.

Senator FEINSTEIN. Thank you very much, Senator Menendez.

And from Florida, Senator Nelson, welcome.

PRESENTATION OF ROY BALE DALTON, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Thank you, Madam Chairman, and to the members of the Committee, thank you. And I want to give some special note to the staff that is seated behind you because they are the ones that go through all of the laborious tasks of checking out all these nominees and then doing the due diligence on them. So thank you all for making the process work.

By the time the nominees from Florida get here, they have been thoroughly vetted. They have not only been vetted by going through the White House, but we have our own vetting process in Florida, which is set up an unofficial judicial nominating commission, and it is prominent citizens, not all lawyers, from all over the State and the three different judicial districts, three judicial nominating commissions that receive all the applications after they advertise for the vacancy, process those applications, and then interview. And you can imagine some of the talent that is drawn to the position, and these interviews go on for hours and hours. And their goal is to boil down all of the talent down to three, and they produce three names for Senator Rubio and me and have for years for the two Florida Senators, going back to Bob Graham and Lawton Chiles and then Bob Graham and Connie Mack, and so forth and so on, all the way up to today.

So by the time the two Senators get these three names, they are pretty well vetted. Then we interview them as well, and then pass on our recommendations to the President. And then, of course, they go through their whole vetting process along with the American Bar Association's. So I want to thank the staff back there for everything that you do.

Senator Rubio and I are here on behalf of Skip Dalton of Orlando, and, first of all, I want to introduce you to his family. May I do that, Madam Chairman?

Senator FEINSTEIN. You may.

Senator NELSON. I would like—and if they will stand as I call: Skip's wife, Linda—and, Skip, will you stand with her?—and their daughter Taylor Dalton, and their son Lieutenant Bale Dalton, and their daughter Lee Loflin, and her husband, their son-in-law, Brendan Loflin; son Mack Dalton, and Skip's sister, Debbie Melnyk. And then I have saved the best for last. Skip's 86-year-old mother, Dell Dalton. Thank you all. Thank you very much.

Skip is a native Floridian. He is a graduate with high honors of the University of Florida and the University of Florida Law School. He is a fellow in the American College of Trial Lawyers. He was a law partner of our former colleague, Mel Martinez. He has been recognized with all kinds of recognitions in the Florida Bar and the National Board of Trial Advocates.

He has been extremely involved in our community, and later after Mel came to the Senate, Skip came up here and gave 6 months of his life as Mel's general counsel here in the Senate office.

He has worked as pro bono counsel to the victims of the World Trade Center attack, and that was through a program of Lawyers Caring. And I could go on and on. He is involved in his church, the Cathedral Church of St. Luke in Orlando. He has served as a guardian at litem for youthful offenders and dependency cases. In other words, he has done what you would like a practicing lawyer to do, and he has clearly been a part and very active in the Orange County Bar Association.

He has been admitted to practice as a member of the trial bar in the Federal district courts in Florida, the U.S. Court of Appeal for two Circuit Courts of Appeal, and the Federal Claims, and, of

course, admitted to the Supreme Court. He is also a licensed private pilot.

I think we have in one package here someone that we are looking at. And, by the way, I might say that we were mindful—some of our most outstanding people that the Senators have recommended have been judges of State courts, magistrate judges in the Federal courts. We were mindful to be looking for a practicing lawyer as well. And you have got that in this package right here.

So Senator Rubio and I heartily recommend Skip to you, Madam Chairman and Senator Grassley.

Senator FEINSTEIN. Thank you very much, Senator Nelson.

Senator Rubio, welcome.

PRESENTATION OF ROY BALE DALTON, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, BY HON. MARC RUBIO, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator RUBIO. Thank you, Madam Chairman. I will add just briefly to what Senator Nelson has said.

First of all, the first good sign is that he is a double Gator, which in Florida means you have gone to the University of Florida twice, that is, the law school. That is always a good sign and a good start, so we are happy to see that.

Beyond that, I would just add he has a five-out-of-five AV rating from Martindale-Hubbell. He is involved in the Orange County Bar Association. In particular, he has authored some books that are used in continuing legal education training in the State of Florida, and as Senator Nelson pointed out, he actually was an employee of the U.S. Senate back in 2005 when he served as counsel to my predecessor, Mel Martinez.

And so I join Senator Nelson in urging you to give Mr. Dalton your full consideration, and we are proud to offer him up to you here today.

Senator FEINSTEIN. Thank you very much, both of you. It is appreciated.

I would like to acknowledge some distinguished Members of the House present in the audience: Representative Judy Chu, the former Secretary of Transportation during the Ford administration, Bill Coleman; Representative Bobby Scott; and Representative Doris Matsui. Thank you for coming. We are delighted that you see fit to come to this humble House, so thank you very much.

I would like to take this opportunity to introduce the nominee for the Ninth Circuit, and I must tell you, I do not think he has gotten a fair shake. This is the second time he has been nominated. On the Republican side, I regret to say that only one member has sat down with him. I had the privilege of spending several hours with him. My daughter is the presiding judge of the superior court in San Francisco, so I invited him to join us for a family dinner so I could get to know him. And there was substantial legal discussion, and what I found was a very interesting and very talented young man.

Professor Liu is the associate dean of the University of California, Boalt Hall School of Law. He is a highly regarded expert in

the field of constitutional law and education law and policy, and a well-regarded teacher of law at the University of California.

He is a proud husband and father. He is a scholar of formidable intellect who cares deeply about the law and takes great care in formulating his thoughts and ideas. And he is a person with an abiding commitment to public service.

What also comes through in talking with Professor Liu is his deep appreciation for the opportunities our country affords. He is the son of Taiwanese immigrants. His parents came to this country as part of a program that recruited primary care physicians to work in rural areas throughout America. He spent his childhood in Augusta, Georgia; Clewiston, Florida; and Sacramento, California. He attended public schools where, far from having an easy time, he struggled first to read and later to master the English vocabulary. He went on, however, to become co-valedictorian of Rio Americano High School in Sacramento and to attend Stanford University, my alma mater, where he graduated Phi Beta Kappa and was elected co-president of the undergraduate student body. I only made vice president.

He was a Rhodes scholar at Oxford University, and he graduated from Yale Law School, where he was an editor of the Yale Law Journal. He served as a law clerk on the United States Supreme Court to Justice Ruth Bader Ginsburg and on the United States Court of Appeals to Judge David Tatel.

Professor Liu served as a legal and policy adviser in the Department of Education. He also has private practice experience at the prestigious law firm of O'Melveny & Myers, and he now a tenured constitutional law professor and the associate dean of the Boalt Hall School of Law.

Among other accolades, he has received the University of California at Berkeley's highest award for teaching. He has been a legal consultant to the San Francisco Unified School District. He is a recipient of the Education Law Association's Award for Distinguished Scholarship. He is an elected member of the American Law Institute, and he is on the Board of Trustees of Stanford University.

As a professor, he has written extensively. His work has been published in prestigious journals such as the Stanford Law Review, the California Law Review, and the Iowa Law Review.

There is no question that some of his written work is thought provoking. As Professor Liu himself said at his last hearing, "The job of law scholars, when they write, largely, I think, is to probe, criticize, invent, and be creative."

Nor is there any question that the role of a judge is quite different from that. Again, in Liu's own words, and I quote, "The role of a judge is to be an impartial, objective, and neutral arbiter of specific cases and controversies that come before him or her, and the way that process works is through absolute fidelity to the applicable precedents and the language of the laws, statutes, regulations that are at issue in the case."

He clearly recognizes that these are very different roles. The question is: Can he make the transition? And I have every confidence that he can.

I would also point out that the Committee has previously confirmed Republican appointees, such as Michael McConnell for the Tenth Circuit, Harvey Wilkinson for the Fourth Circuit, Frank Easterbrook on the Seventh Circuit, and Kimberly Ann Moore on the Federal Circuit. Moore and Wilkinson were younger at their confirmation than Liu is now and had quite comparable experience, and Michael McConnell's writings were at least equally provocative, but from a conservative point of view. But all of these nominees were confirmed, as I believe Professor Liu deserves to be.

I had one situation and I am going to relay it here. We had a nominee for the Tenth Circuit by the name of Southwick. Democrats were not going to vote for him. I was implored not to vote for him. Trent Lott came to me on the floor of the Senate and said, "Would you at the very least sit down with him and listen to him?" I did, for a long time, more than once. And I reviewed what the allegations were, and I talked with him about them, and I decided I was going to vote for him. And I did vote for him, and he is now sitting on the Tenth Circuit. As a matter of fact, I received a letter from him not too long ago saying how much he appreciated that vote and what it meant to me.

Well, since those days, we have become very polarized, and it is a tragedy because if this kind of thing continues, nobody can break away from the party and vote to approve another party's person. And that would be a real tragedy for this Committee.

For those who would question Goodwin Liu's ability to make the transition, I would refer you to one of the conservatives who has written to the Committee in support of his confirmation, and I would like to call special attention to a letter submitted by Kenneth Starr.

As many here will know, Kenneth Starr is currently the president of Baylor University and has served in the past as a D.C. circuit judge and as Solicitor General of the United States. He was appointed to both positions by Republican Presidents. Here is what he and Professor Akhil Amar wrote about Professor Liu, and I quote: "We recognize that commentators on all sides will be drawn to debate the views that Goodwin has expressed in his writings and speeches. In the end, however, a judge takes an oath to uphold and defend the Constitution. Thus, in our view, the traits that should weigh most heavily in the evaluation of an extraordinarily gifted nominee such as Goodwin Liu are professional integrity and the ability to discharge faithfully an abiding duty to uphold the law. Because Goodwin possesses those qualities to the highest degree, we are confident that he will serve on the Court of Appeals not only fairly and confidently but with great distinction. We support and urge his speedy confirmation."

Now, Professor Liu is a great asset to the faculty to the University of California, and I really believe he will be a superb judge on the Ninth Circuit. It is my hope that for those on this Committee who do not know him, you will take the time to get to know him, sit down with him, ask him questions. But, please, do not turn your backs on a brilliant young man.

So now I would like to ask the nominees to come forward, and we will begin the hearing.

Oh, it is just Goodwin Liu for the first panel, and it is my understanding that you would like to introduce your family. Please proceed.

Mr. LIU. Thank you so much, Senator Feinstein, and thank you for the very generous introduction.

I do have some family members with me here today. Let me begin with my parents, who are seated to my right, Yang-Ching and Wen-Pen Liu. My parents came all the way from Sacramento, California, to be with me here again.

Seated behind me is my wife, my wonderful wife Ann, who has made her share of sacrifices to support me in this process. In her arms is our baby boy Emmett, who last time, you will remember, Senator Feinstein, he slept through the whole thing. Hopefully we will have the same luck today.

[Laughter.]

Mr. LIU. And then seated next to them is my daughter Violet, who turns 4 in a couple weeks. She said she likes coming to these hearings. I said, "Good for you, Violet."

[Laughter.]

Mr. LIU. So I apologize if there is some sort of back-and-forthing going on, but I think it is nap time for the kids.

I am also very fortunate that my wife's parents are also here, Pamela Braley and Charles O'Leary, right behind my right shoulder. They came all the way from Orono, Maine, where they have lived for over 40 years.

And I am also joined by a cousin of mine, Sue Liu, who hails from Salt Lake City, Utah, and another cousin, Lillian Tsai, who grew up in the Chicago area.

I would also like to recognize and thank the many friends and former students that I have here today in the hearing room, and also I want to give a special recognition and thanks for the Members of Congress who are here: Judy Chu, Bobby Scott, Doris Matsui, and I am especially honored that Secretary Bill Coleman has joined us. I have often thought a lot about Bill in this process, and he has been a steady guide and mentor to me. So I really appreciate his being here.

Senator FEINSTEIN. Excellent. Would you stand and affirm the oath? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LIU. I do.

Senator FEINSTEIN. Thank you very much.

I want to ask you right off the bat about an issue that has caused considerable consternation among Committee members. In 2006, you submitted testimony to this Committee regarding the nomination of now Justice Alito. In your testimony, you criticized a series of his decisions, but the real concern has been with the lengthy hypothetical at the end of your comments. I would like to give you another chance to explain this so that the members hear your response.

STATEMENT OF GOODWIN LIU, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. LIU. Certainly, Senator. I would be happy to address that and thanks for the opportunity.

As you can imagine, Senator Feinstein, I have thought a lot about that testimony in this process, and I would like to acknowledge to you today and to the members of this Committee what I acknowledged last year in a written response to a question from Senator Kyl, and that is that I think that the last paragraph of that testimony was not an appropriate way to describe Justice Alito as a person or his legal views.

I think the language that I used was unduly harsh, it was provocative, and it was unnecessary because what it was was a summary in shorthand of a few cases from the legal analysis in the pages that preceded that paragraph. And it also seemed to suggest that Justice Alito endorsed certain Government practices as a policy matter, when, in fact, his view was only that those practices did not violate the Constitution.

So I think that I should have omitted that paragraph, and, quite frankly, Senator, I understand now much better than I did then that strong language like that is really not helpful in this process. If I had to do it over again, I would have deleted it, and I just hope, Senator, that you and the other members of the Committee can read that statement in the context of the other parts of my record and hope that the other parts of my record show that I am a more measured and thoughtful person than that single statement in isolation might suggest.

Senator FEINSTEIN. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Goodwin Hon Liu

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Ninth Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   UC Berkeley School of Law
   Berkeley, California 94720

4. **Birthplace**: State year and place of birth.

   1970; Augusta, Georgia

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1995 – 1998, Yale Law School; J.D., 1998
   1991 – 1993, Oxford University; M.A., 2002
   1987 – 1991, Stanford University; B.S. with distinction, 1991
   1986, Harvard Summer School; no degree

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2003 – Present
   UC Berkeley School of Law
   Berkeley, California 94720
   Associate Dean and Professor of Law (2008 – Present)
   Assistant Professor of Law (2003 – 2008)

2008 – Present
San Francisco Unified School District
555 Franklin Street
San Francisco, California 94102
Legal Consultant

2006 – 2007
University of Washington
Center for Reinventing Public Education
2101 North 34th Street, Suite 195
Seattle, Washington 98103
Consultant

2005
The William and Flora Hewlett Foundation
2121 Sand Hill Road
Menlo Park, California 94025
Consultant

2001 – 2003
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, D.C. 20006
Litigation Associate

2000 – 2001
Supreme Court of the United States
One First Street, NE
Washington, D.C. 20543
Law Clerk to Justice Ruth Bader Ginsburg

2000
Nixon Peabody LLP
401 Ninth Street, NW, Suite 900
Washington, D.C. 20004
Contract Attorney

1999 – 2000
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20003
Special Assistant to the Deputy Secretary of Education

1998 – 1999
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001
Law Clerk to Judge David S. Tatel

1998
NAACP Legal Defense Fund
1444 Eye Street, NW
Washington, D.C. 20005
Summer Intern

1996 – 1998
Yale Law School
P.O. Box 208215
New Haven, Connecticut 06520
Teaching Assistant to Professor Drew Days (Civil Procedure)
Teaching Assistant to Professor Owen Fiss (Civil Procedure)

1997
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
Summer Intern

1997
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004
Summer Associate

1996
Howard Rice Nemerovski Canady Falk & Rabkin
Three Embarcadero Center, 7th Floor
San Francisco, California 94111
Summer Associate

1995
Providence College
Feinstein Institute for Public Service
Providence, Rhode Island 02918
Senior Fellow

1993 – 1995
Corporation for National Service
1201 New York Avenue, NW
Washington, D.C. 20525
Senior Program Officer for Higher Education

1992
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
Document Analyst

1991
Upward Bound
Haas Center for Public Service
Stanford, California 94305
Chemistry Teacher

Other Affiliations

2009 – Present
Public Welfare Foundation
1200 U Street, NW
Washington, D.C. 20009
Member, Board of Directors

2008 – Present
Stanford University
Stanford, California 94305
Member, Board of Trustees (uncompensated)

2008 – Present
National Women's Law Center
11 Dupont Circle, NW, Suite 800
Washington, D.C. 20036
Member, Board of Directors (uncompensated)

2008 – Present
Alliance for Excellent Education
1201 Connecticut Avenue, NW, Suite 901
Washington, D.C. 20036
Member, Board of Directors (uncompensated)

2004 – Present
American Constitution Society
1333 H Street, NW, 11th Floor
Washington, D.C. 20005
Chair, Board of Directors (2009 – Present) (uncompensated)
Member, Board of Directors (2004 – Present) (uncompensated)

2008
Obama-Biden Transition
Office of the President-Elect
Washington, D.C. 20500
Member, Education Policy Working Group
Member, Education and Labor Agency Review Team

2005 – 2008
ACLU of Northern California
39 Drumm Street
San Francisco, California 94111
Member, Board of Directors (uncompensated)

2004 – 2008
Chinese for Affirmative Action
17 Walter U. Lum Place
San Francisco, California 94108
Member, Board of Trustees (uncompensated)

1997 – 2000
Stanford Alumni Association
Stanford, California 94305
Member, Board of Directors (uncompensated)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I have registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Distinguished Teaching Award, UC Berkeley, 2009
   Pacific Islander, Asian, and Native American Law Students Association Alumni Award, Yale Law School, 2009
   Elected to American Law Institute, 2008

Selected as one of ten Emerging Scholars by *Diverse Issues in Higher Education*, 2008
Steven S. Goldberg Award for Distinguished Scholarship in Education Law, Education Law Association, 2007
Asian American Alumni Award, Stanford University, 2005
Stanford Associates Governors' Award for exemplary volunteer service, Stanford University, 2005
Benjamin Scharps Prize (best paper by third-year law student), Yale Law School, 1998
Clifford Porter Prize (best paper on taxation), Yale Law School, 1998
Potter Stewart Prize (best team argument in appellate moot court competition), Yale Law School, 1997
Editor, *Yale Law Journal*, 1996 – 1998
Doctor of Public Service (honorary degree), Unity College, 1995
Rhodes Scholarship, 1991
Lloyd W. Dinkelspiel Award for Outstanding Service to Undergraduate Education, Stanford University, 1991
Phi Beta Kappa, 1990
James W. Lyons Dean's Award for Service, Stanford University, 1990
Boothe Prize for Excellence in Writing, Stanford University, 1988
Walter Vincenti Prize (best paper on values, technology, science, and society), Stanford University, 1988
University President's Award for Academic Excellence, Stanford University, 1988
David Starr Jordan Scholar, Stanford University, 1987

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
American Law Institute
National Asian Pacific American Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1999
District of Columbia, 2002

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2006
United States Court of Appeals for the Third Circuit, 2002
United States Court of Appeals for the Seventh Circuit, 2001
United States Court of Appeals for the Ninth Circuit, 2008
United States Court of Appeals for the D.C. Circuit, 2002

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Public Welfare Foundation, Board of Directors (2009 – Present)
Stanford University Board of Trustees (2008 – Present)
Chair, Special Committee on Investment Responsibility (2009 – Present)
American Constitution Society (2001 – Present)
Board of Directors (2004 – Present); Chair (2009 – Present); Secretary (2004 – 2008); Chair, Board Development Committee (2004 – 2008)
American Law Institute (2008 – Present)
National Women's Law Center, Board of Directors (2008 – Present)
Alliance for Excellent Education, Board of Directors (2008 – Present)
Oakland Zoo (2008 – Present)
California Academy of Sciences (2008 – Present)
Education Sector, Nonresident Senior Fellow (2007 – Present)
The Club at the Claremont (2006 – Present)
United States Tennis Association (2006 – Present)
KQED Public Radio (2004 – Present)
Stanford Alumni Association (1991 – Present)
Board of Directors (1997 – 2000)
Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, UC Berkeley
Faculty Co-Director (2004-2009)
Center on Reinventing Public Education, University of Washington
National Working Group on Funding Student Learning (2006 – 2008)
ACLU of Northern California, Board of Directors (2005 – 2008)
Chinese for Affirmative Action, Board of Trustees (2004 – 2008)
Haas Center for Public Service, National Advisory Board (1999 – 2007)
Chair (2005 – 2007); Deputy Chair (2003 – 2005)
Young Faculty Leaders Forum, Kennedy School of Government (2002 – 2006)
Alumni Trustee Nominating Committee, Stanford University (2001 – 2005)
Task Force on Minority Alumni Relations, Stanford University (2001 – 2005, 1995 – 1996)

Vice Chair (2001 – 2005)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above currently discriminates or has discriminated at any time I have been a member on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. I am not aware of any discrimination by these organizations prior to my membership.

2. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Scholarly Work

The Bush Administration and Civil Rights: Lessons Learned, 4 Duke J. Const. L. & Pub. Pol'y 77 (2009)
Keeping Faith with the Constitution (Oxford University Press, forthcoming 2010; American Constitution Society, 2009) (with Pamela S. Karlan and Christopher H. Schroeder)
National Citizenship and the Promise of Equal Educational Opportunity, *in* The Constitution in 2020 (Jack M. Balkin & Reva B. Siegel eds., 2009)
Rethinking Constitutional Welfare Rights, 61 Stan. L. Rev. 203 (2008)
The First Justice Harlan, 96 Cal. L. Rev. 1383 (2008)
Improving Title I Funding Equity Across States, Districts, and Schools, 93 Iowa L. Rev. 973 (2008)
"History Will Be Heard": An Appraisal of the Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008)
Interstate Inequality and the Federal Role in School Finance, *in* Holding NCLB Accountable: Achieving Accountability, Equity, and School Reform 103 (Gail L. Sunderman ed., 2008)
Seattle *and* Louisville, 95 Cal. L. Rev. 277 (2007)
Education, Equality, and National Citizenship, 116 Yale L.J. 330 (2006)
Interstate Inequality in Educational Opportunity, 81 N.Y.U. L. Rev. 2044 (2006)
Developments in U.S. Education Law and Policy, 2 Daito L. Rev. 17 (2006)

The Parted Paths of School Desegregation and School Finance Litigation, 24 L. & Inequality 81 (2006)
School Choice to Achieve Desegregation, 74 Fordham L. Rev. 791 (2005) (with William L. Taylor)
Race, Class, Diversity, Complexity, 80 Notre Dame L. Rev. 289 (2004)
Brown, Bollinger, *and Beyond*, 47 How. L.J. 705 (2004)
Separation Anxiety: Congress, the Courts, and the Constitution, 91 Geo. L.J. 439 (2003) (with Hillary Rodham Clinton)
The Causation Fallacy: Bakke *and the Basic Arithmetic of Selective Admissions*, 100 Mich. L. Rev. 1045 (2002)
Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform, 1999 Wis. L. Rev. 1
Affirmative Action in Higher Education: The Diversity Rationale and the Compelling Interest Test, 33 Harv. C.R.-C.L. L. Rev. 381 (1998)
Developments in Policy: The FDA's Tobacco Regulations, 15 Yale L. & Pol'y Rev. 399, 416–29 (1996)
Knowledge, Foundations, and Discourse: Philosophical Support for Service-Learning, Mich. J. Community Service Learning, Fall 1995, at 5

Editorials

"The Next Verdict on Prop. 8," *L.A. Times*, Nov. 10, 2008, at A19
"Finding Right Mix for School Funding," *Sacramento Bee*, Jan. 13, 2008, at E5 (with Alan Bersin and Michael Kirst)
"The Meaning of Brown vs. the Board," *L.A. Times*, Dec. 25, 2006, at A31
"Life and Death and Samuel Alito," *L.A. Times*, Nov. 27, 2005, at M5
"Roberts Would Swing the Supreme Court to the Right," *Bloomberg.com*, July 22, 2005
"Truth Is, We Do Underfund Our Schools," *S.F. Chron.*, June 23, 2005, at B9
"A Misguided Challenge to Affirmative Action," *L.A. Times*, Dec. 20, 2004, at B11; reprinted in "Too Good To Be True," *Cal. Bar Journal*, Feb. 2005, at 8
"Regent's Stand on UC Admissions Is on Shaky Ground," *Sacramento Bee*, Apr. 1, 2004, at B7 (with Theodore Hsien Wang and William Kidder)
"A Moment as Big as 'Brown,' " *Wash. Post*, June 29, 2003, at B3
"Real Options for School Choice," *N.Y. Times*, Dec. 4, 2002, at A35
"The Myth and Math of Affirmative Action," *Wash. Post*, Apr. 14, 2002, at B1

Other

"Getting Beyond the Facts: Reforming California School Finance," Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity Issue Brief (2008) (with Alan Bersin and Michael W. Kirst)
"Justice Alito and the Death Penalty," American Constitution Society Issue Brief (2005) (with Lynsay Skiba)
"From *Brown* to *Grutter* and Beyond," *Boalt Hall Transcript*, Spring/Summer 2004, at 26

Foreword, in SERVICE-LEARNING: A MOVEMENT'S PIONEERS REFLECT ON ITS ORIGINS, PRACTICE, AND FUTURE at xi (Timothy K. Stanton et al. eds., 1999)
"Origins, Evolution, and Progress: Reflections on a Movement," Feinstein Institute for Public Service, Providence College (1996); portions reprinted in *Metropolitan Universities: An International Forum*, Summer 1996, at 25
"Service-Learning: A Paradigm Shift in Higher Education?," *NSEE Quarterly* (National Society for Experiential Education, Mt. Royal, N.J.), Fall 1995, at 8
National Service, The Federal Government and Higher Education: Reflections on the Corporation's Role, in CAMPUS COMPACT, SERVICE COUNTS: LESSONS FROM THE FIELD OF SERVICE AND HIGHER EDUCATION (Melissa Smith ed., 1995)

Some of my published works may have been reprinted in other media.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Funding Student Learning: How to Align Education Resources with Student Learning Goals, School Finance Redesign Project, Center on Reinventing Public Education, University of Washington (2008)
Final Report of the Task Force on Minority Alumni Relations, Stanford University (2004)
Final Report of the Task Force on Minority Alumni Relations, Stanford University (1996)

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Letter to Senator Patrick Leahy and Senator Jeff Sessions in support of the confirmation of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court (2009) (I did not contribute to the preparation of this letter; I joined it as a signatory.)
Testimony Before a Joint Hearing of the California Senate and Assembly Judiciary Committees on Proposition 8 (Oct. 2, 2008)
Brief of Amici Curiae Professors of Constitutional Law in Support of Respondents, *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008) (I did not contribute to the preparation of this brief; I joined it as a signatory.)
Testimony Before the California Assembly Education Committee on AB 586 (Jan. 16, 2008)

Testimony Before the U.S. Senate Judiciary Committee on the Nomination of Judge Samuel A. Alito, Jr. to the U.S. Supreme Court (Jan. 10, 2006)
Lawyers' Statement on Bush Administration's Torture Memos (2004) (I did not contribute to the preparation of this statement; I joined it as a signatory.)

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have repeatedly and thoroughly searched on-line resources (Westlaw, Lexis, Google), my calendar, and my memory to produce the list below. To the best of my knowledge, this list is accurate and complete.

Aug. 10, 2009: American Sociological Association Annual Meeting, San Francisco, CA. I spoke on a panel titled "Education in Diverse Communities."
June 19, 2009: American Constitution Society National Convention, Washington, D.C. I discussed the ideas in my co-authored book, *Keeping Faith with the Constitution*, on a panel. I also gave brief remarks at lunch.
May 16, 2009: Boalt Hall Commencement, Berkeley, CA. I gave a commencement speech to the Boalt Hall Class of 2009.
May 1, 2009: American Constitution Society, Washington, D.C. I spoke at an event to release my co-authored book *Keeping Faith with the Constitution.*
Apr. 22, 2009: UC Berkeley Distinguished Teaching Award Ceremony, Berkeley, CA. I gave an award acceptance speech.
Apr. 18, 2009: Northern District of California Judicial Conference, Yountville, CA. I compared and contrasted the early Obama administration with the early Lincoln administration on a panel titled "Team of Rivals." I do not have copies of any notes, transcript, or recording.
Apr. 16, 2009: Blum Center for Developing Economies, Berkeley, CA. Justice Stephen Breyer gave a presentation on "International Law," and I served as a moderator and commenter.
Apr. 15, 2009: American Educational Research Association Annual Meeting, San Diego, CA. I presented my paper, *Improving Title I Funding Equity Across States, Districts, and Schools*, 93 Iowa L. Rev. 973 (2008), on a panel titled "Funding Public Education for Disadvantaged Students: Economic, Legal and Policy Perspectives."
Apr. 4, 2009: Brennan Center for Justice Conference on "The Next Democracy," White Oak Conservation Center, FL. I gave a brief interview for a conference video.

Feb. 23, 2009: Washington University St. Louis School of Law, St. Louis, MO. I spoke on civil rights as part of the Public Interest Law and Policy Speaker Series.

Jan. 30, 2009: Dale Minami Boalt Alumni Fellowship Dinner, San Francisco, CA. I gave dinner remarks urging the student audience to pursue public service.

Jan. 8, 2009: American Association of Law Schools Annual Meeting, San Diego, CA. I described the mission and activities of the American Constitution Society on a panel titled "Associational Pluralism." I do not have copies of any notes, transcript, or recording.

Dec. 17, 2008: Public Education Network Annual Conference, San Francisco, CA. I described the activities of the Obama-Biden Transition team on education policy in a session titled "Equity and Access." I do not have copies of any notes, transcript, or recording.

Nov. 14, 2008: American Constitution Society Conference on "The Second Founding and the Reconstruction Amendments: Toward a More Perfect Union," Philadelphia, PA. I spoke on a panel titled "The Privileges or Immunities Clause."

Nov. 13, 2008: Columbia Law School, New York, NY. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008), at a legal theory workshop.

Oct. 30, 2008: University of Chicago Law School, Chicago, IL. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008), at a constitutional law workshop.

Oct. 22, 2008: Duke Law School, Durham, NC. I presented my paper, *The Bush Administration and Civil Rights: Lessons Learned*, 4 Duke J. Const. L & Pub. Pol'y 77 (2009), in the "Lessons Learned Series" of the Program in Public Law.

Oct. 3, 2008: Stanford Center for Opportunity Policy in Education, Stanford, CA. I gave a talk on civil rights at a conference on the forty-year anniversary of the Kerner Commission report.

Sept. 16, 2008: Institute for Legal Research, Forum on "Courts, Politics, and the Media," Berkeley, CA. I gave brief remarks on the need for judicial decisions to be better communicated to the public. I do not have copies of any notes, transcript, or recording.

June 14, 2008: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "Our Enduring Constitution: Applications and Interpretations."

June 9-10, 2008: James B. Hunt Institute for Educational Leadership and Policy, Governors Education Symposium, Cary, NC. I discussed my articles, *Improving Title I Funding Equity Across States, Districts, and Schools*, 93 Iowa L. Rev. 973 (2008), and *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006).

May 16, 2008: UC Santa Barbara Conference on "Realizing *Bakke*'s Legacy: Equal Opportunity and Access to Higher Education," Santa Barbara, CA. I gave remarks on diversity and higher education.

May 6, 2008: Grantmakers in Film and Electronic Media, Washington, D.C. I spoke on a panel discussing the documentary film *Traces of the Trade*.

Apr. 25, 2008: Asian Pacific Americans in Higher Education Annual Conference, San Francisco, CA. I spoke at a session on university trusteeship and described my service as a member of the Stanford Board of Trustees. I do not have copies of any notes, transcript, or recording.

Apr. 18, 2008: EdSource Forum, Palo Alto, CA. I presented my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008).

Apr. 2, 2008: UC Berkeley webcast on "Understanding California's School Funding Crisis," co-sponsored by the California Media Collaborative, Commonwealth Club of California, and Education Writers Association, Berkeley, CA. I discussed ideas from my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008).

Mar. 17, 2008: National Academy of Sciences, Workshop Series on Common Standards for K-12 Education, Washington, D.C. I was assigned to speak on "Implications of Common Standards for Adequacy Lawsuits."

Feb. 8, 2008: University of Washington School of Law, American Constitution Society student chapter, Seattle, WA. I discussed my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008).

Feb. 8, 2008: Seattle University School of Law, Seattle, WA. I discussed the ideas in my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), at a conference titled "*Brown* Undone? The Future of Integration in Seattle After *PICS v. Seattle School District No. 1*."

Jan. 11, 2008: Policy Analysis for California Education Seminar, Sacramento, CA. I presented my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008).

Jan. 4, 2008: American Association of Law Schools Annual Meeting, New York, NY. I discussed the ideas in my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), on a panel titled "The *Seattle/Louisville* Ruling: Constriction or Expansion of Race-Based Policies?"

Dec. 12, 2007: Union for Reform Judaism Biennial Conference, San Diego, CA. I gave remarks at a session examining recent Supreme Court cases in light of new appointments.

Dec. 12, 2007: Kaiser Permanente Annual National Diversity Conference, San Francisco, CA. I discussed the current state of affirmative action law and policy on a panel titled "Affirmative Action: Past, Present, and Future."

Nov. 19, 2007: American Association of State Colleges and Universities Annual Conference, San Francisco, CA. I gave remarks on diversity in higher education.

Nov. 2, 2007: Center for Comparative Study of Race and Ethnicity Conference on "Embracing Diversity: Making and Unmaking Race, Ethnicity and Difference in the 21st Century," Stanford, CA. I discussed changes in civil

rights law and policy since *Brown* on a panel titled "Education and Equity in a Post-*Brown* Era." I do not have copies of any notes, transcript, or recording.

Oct. 9, 2007: U.S. Court of Appeals for the Ninth Circuit annual law clerk orientation, San Francisco, CA. I gave dinner remarks published as *The First Justice Harlan*, 96 Cal. L. Rev. 1383 (2008).

Oct. 5, 2007: Columbia Law School, American Constitution Society student chapter, New York, NY. I discussed my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008).

July 27, 2007: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "Race and the Constitution: The State of Equal Protection."

July 24, 2007: Bar Association of San Francisco "Supreme Court Review," San Francisco, CA. I discussed major cases of October Term 2006. I do not have copies of any notes, transcript, or recording.

Mar. 31, 2007: *Pepperdine Law Review* Symposium on "Post-*Grutter*: What Does Diversity Mean in Legal Education and Beyond?," Malibu, CA. I discussed the implications of *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003) for university admissions policies in a session titled "Diversity in Admissions." I do not have copies of any notes, transcript, or recording.

Mar. 23, 2007: San Mateo Legal Aid Society Annual Awards Luncheon, East Palo Alto, CA. I gave remarks on the meaning of *Brown v. Board of Education*.

Mar. 6, 2007: UC Berkeley Graduate School of Education Colloquium, Berkeley, CA. I spoke on a panel discussing No Child Left Behind and commented on a presentation by Sandy Kress, former education advisor to President George W. Bush.

July 20, 2006: Bar Association of San Francisco "Supreme Court Review," San Francisco, CA. I discussed major cases of October Term 2005. I do not have copies of any notes, transcript, or recording.

June 19, 2006: Achievement Gap Initiative Research Conference, Kennedy School of Government, Cambridge, MA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006).

June 18, 2006: American Constitution Society National Convention, Washington, D.C. I moderated a panel titled "Wealth Inequality."

May 8, 2006: Mathematical Sciences Research Institute, Berkeley, CA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006), at a conference titled "Raising the Floor: Progress and Setbacks in the Struggle for Quality Mathematics Education for All."

Apr. 28, 2006: UC Berkeley School of Law, Berkeley, CA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J.

330 (2006), at a conference titled "Rethinking *Rodriguez*: Education as a Fundamental Right."

Apr. 10, 2006: American Educational Research Association Annual Meeting, San Francisco, CA. I was a commenter on a keynote address by Christopher Edley on educational opportunity and civil rights.

Mar. 11, 2006: Daito Bunka University Law School, Tokyo, Japan. I presented my article, *Developments in U.S. Education Law and Policy*, 2 Daito L. Rev. 17 (2006), to law students and faculty.

Mar. 9, 2006: National Taiwan University College of Law, Taipei, Taiwan. I gave a talk on the U.S. Supreme Court and recent appointments to law students and faculty.

Mar. 4, 2006: National Asian Pacific American Conference on Law and Public Policy, Harvard Law School, Cambridge, MA. I gave a talk on the historical struggle of Asian Americans for equal citizenship and marriage equality.

Feb. 13, 2006: American Constitution Society Bay Area Lawyers Chapter, San Francisco, CA. I spoke on a panel titled "Domestic Spying: Illegal or Inevitable?"

Sept. 29, 2005: Charles Hamilton Houston Institute for Race and Justice, Harvard Law School, Cambridge, MA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006).

July 30, 2005: American Constitution Society National Convention, Washington, D.C. I moderated a panel titled "The Right to Education Revisited." I described the Supreme Court decision in *San Antonio Independent School District v. Rodriguez* (1973) and introduced the panelists. I do not have copies of any notes, transcript, or recording.

June 28, 2005: Bar Association of San Francisco "Supreme Court Review," San Francisco, CA. I discussed major cases of October Term 2004. I do not have copies of any notes, transcript, or recording.

May 5, 2005: University of Minnesota Law School Conference on "With All Deliberate Speed: *Brown II* and Desegregation's Children," Minneapolis, MN. I presented my article, *The Parted Paths of School Desegregation and School Finance Litigation*, 24 L. & Inequality 81 (2006).

July 1, 2004: Supreme Court Review, American Constitution Society, Washington, D.C. I moderated a panel discussion on the major cases of October Term 2003.

June 15, 2004: American Association of Law Schools Racial Justice Workshop, Portland, OR. I presented my article, *Race, Class, Diversity, Complexity*, 80 Notre Dame L. Rev. 289 (2004).

Sept. 11, 2003: Boalt Hall Alumni Association Annual Dinner, Berkeley, CA. I presented my article, "From *Brown* to *Grutter* and Beyond," *Boalt Hall Transcript*, Spring/Summer 2004, at 26.

Aug. 30, 2003: Harvard Civil Rights Project Color Lines Conference, Cambridge, MA. I spoke on a panel titled "Inequality in K-12 Educational Opportunity" and presented my co-authored article, *School Choice to Achieve Desegregation*, 74 Fordham L. Rev. 791 (2005).

Aug. 2, 2003: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "Segregation, Integration, and Affirmative Action After *Bollinger*." I do not have copies of any notes, transcript, or recording.

Mar. 31, 2003: Georgetown University Law Center, Washington, D.C. I spoke on a panel titled "One Step Forward, Two Steps Back? *Grutter v. Bollinger* and the Future of Affirmative Action" and analyzed the *Grutter* decision. I do not have copies of any notes, transcript, or recording.

Sept. 30, 1999: Workshop on "Foundations of Educational and Psychological Assessment," National Academy of Sciences, Washington, D.C. I discussed federal laws and policies concerning student assessment in K-12 public schools. I do not have copies of any notes, transcript, or recording.

May 20, 1995: Chandler-Gilbert Community College, Chandler, AZ. I gave a commencement speech.

May 13, 1995: Unity College, Unity, ME. I gave a commencement speech.

Apr. 10, 1991: Panel discussion on "Safe Speech, Free Speech, and the University," Stanford University, Stanford, California. I discussed recent debates on campus concerning hate speech. I do not have copies of any notes, transcript, or recording.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Peter Jamison, "The Torture Memos and Berkeley's Law-School Schedule," *SF Weekly*, Aug. 12, 2009

Jess Bravin, "Decision Reflects Court's Deep Division," *Wall Street Journal*, June 30, 2009, at A4

Ari Shapiro, "Conservatives Have 'Originalism'; Liberals Have ...?," *NPR All Things Considered*, June 23, 2009

Lydia DePillis, "Et Tu, Scalia?," *Slate*, June 22, 2009

Ariel Alexovich, "Suite Talk: ACLU Director Leaves D.C. Office," *Politico.com*, June 3, 2009

Maura Dolan, "Battles Brew As Gay Marriage Ban Is Upheld," *Los Angeles Times*, May 27, 2009, at A1

Petra Pasternak, "Prop 8 Stands, But What About the 18K Marriages?," *LegalPad Blog*, May 26, 2009

Bara Vaida, "ACLU's Fredrickson Departs for Legal Group," *Under the Influence* (*National Journal* blog), May 19, 2009

Aaron Wiener, "Supreme Court Nominee Debate Defined by Conservatives," *Washington Independent*, May 18, 2009

Joe Garofoli, "Pros and Cons of President's Potential Choices," *San Francisco Chronicle*, May 13, 2009, at A6

David Lightman et al., "Obama Court Pick Could Sail Through," *Miami Herald*, May 2, 2009, at A5

Michael Doyle, "Souter Has Defied a Legal Stereotype," *Miami Herald*, May 2, 2009, at A5
Michael Doyle & Marisa Taylor, "Liberal or Not, Souter's Departure Will Remake Court," *McClatchy-Tribune News Service*, May 1, 2009
Dan Levine, "A Handful of Hopefuls Eye Ninth Circuit," *Recorder*, Mar. 18, 2009, at 1
Jess Bravin, "Rethinking Original Intent," *Wall Street Journal*, Mar. 14, 2009, at W3
Leslie A. Gordon, "Left Turn Permitted," *ABA Journal*, Mar. 2009, at 9
Noelle Carter, "Slow Revolution," *Los Angeles Times*, Feb. 25, 2009, at F1
Eric Lichtblau, "Obama Pick to Analyze Broad Powers of President," *New York Times*, Jan. 8, 2009, at A22
Ari Shapiro, "Balance of Power Swings to Liberal Legal Group," *NPR Weekend Edition*, Jan. 3, 2009
Lisa Lerer, "Liberal Legal Group Comes to the Fore," *Politico.com*, Dec. 28, 2008
Maura Dolan, "Brown Asks Justices to Toss Prop. 8," *Los Angeles Times*, Dec. 20, 2008 at A1
James Parker, "Prop. 8 Suits Win Supreme Court Review," *Daily Californian*, Nov. 20, 2008
Maura Dolan, "Justices Will Hear Prop. 8 Challenges," *Los Angeles Times*, Nov. 20, 2008 at A1
John Simerman, "Same-Sex Marriage Headed Back to Court," *Contra Costa Times*, Nov. 6, 2008
Ben Smith, "Affirmative Action Change Under Obama?," *Politico.com*, Nov. 3, 2008
David G. Savage, "Roe vs. Wade? Bush vs. Gore? What Are the Worst Supreme Court Decisions?," *Los Angeles Times*, Oct. 23, 2008
Bob Egelko, "U.S. Supreme Court in Play After Election," *San Francisco Chronicle*, Oct. 20, 2008, at A1
Tony Mauro, "Can McCain, Obama Turn High Court?," *Legal Times*, Oct. 13, 2008, at 8
Joseph Bui, "Same-Sex Couples Plan to Marry," *Daily Californian*, June 24, 2008
Amber Lee, "Anticipation over Supreme Court Ruling on Same-Sex Marriage," *KTVU Evening News*, May 14, 2008, http://www.ktvu.com/video/16269552/index.html
Zusha Elinson, "Valley Attorneys Get Political: Local Lawyers Help Candidates to Form Tech, IP Policies," *Recorder*, May 13, 2008, at 1
Peter Schrag, "California School Funding: Inadequate By Any Measure," *Sacramento Bee*, Apr. 9, 2008, at B7
Kendra Hamilton, "Is Right the New Left? An Analysis of Justice Clarence Thomas's Concurring Opinion in the Seattle and Louisville Cases," *Diverse Issues in Higher Education*, Aug. 23, 2007, at 27
Marcia Coyle, "Prevailing Winds: In the First Full Term with Alito, Court Took Marked Conservative Turn," *National Law Journal*, Aug. 1, 2007, at 1

Ibram Rogers, "The Weight of One Man's Opinion: While Casting the Deciding Vote in the Recent K-12 Desegregation Case, Justice Anthony Kennedy's Opinion Left Some Room to Maneuver," *Diverse Issues in Higher Education*, July 26, 2007, at 7

Shirley Dang, "Panel Tries to Explain Desegregation Ruling," *Contra Costa Times*, July 25, 2007, at A10

Mark Walsh, "Use of Race Uncertain for Schools," *Education Week*, July 18, 2007, at 1

Josh Gerstein, "Duplicity Pervades Race-Related Measures," *New York Sun*, July 2, 2007

Bill Mears, "5-4 Votes Nudge Supreme Court to the Right," *CNN.com*, July 2, 2007

Margaret Warner, "Key Decisions Mark Shift in Supreme Court," *NewsHour with Jim Lehrer*, June 29, 2007

Ellen Goodman, "The Transformation of Justice Ginsburg," *Boston Globe*, June 29, 2007, at 17A

Nina Totenberg, "High Court's New Race Ruling Echoes in Schools," *NPR Morning Edition*, June 29, 2007

Bob Egelko, "5-4 Decision Disrupts Schools' Integration Plans," *San Francisco Chronicle*, June 29, 2007, at A21

Joan Biskupic, "Roberts Steers Court Right Back to Reagan," *USA Today*, June 29, 2007, at 8A

Brent Kendall, "State's Ban on Race Use Exceeds Court's; Opinion Won't Affect California Schools' Plans," *Los Angeles Daily Journal*, June 29, 2007

Joseph Goldstein, "Color-Blind Schools Set by Court," *New York Sun*, June 29, 2007, at 1

Nina Totenberg, "Supreme Court Rejects School Desegregation Plan," *NPR All Things Considered*, June 28, 2007

Warren Olney, "The United States Supreme Court and School Integration in L.A.," *Which Way, L.A.?* (KCRW radio), June 28, 2007, http://www.kcrw.com/news/programs/ww/ww070628the_united_states_su

Linda Greenhouse, "Oral Dissents Give Ginsburg a New Voice," *New York Times*, May 31, 2007, at A1

Michael Krasny, "School Integration," *KQED Forum*, May 30, 2007, http://www.kqed.org/epArchive/R705300900

Halimah Abdullah, "School Systems Still Losing Numbers Game: Neediest Don't Always Get Their Fair Share of Money," *Memphis Commercial Appeal*, Jan. 29, 2007, at A1

"More Fairness in Funding Key to Equal Opportunity," *Oakland Tribune*, Jan. 3, 2007

Linda Seebach, "If School Funding Is Rigged, It's to Benefit Those in Charge," *Rocky Mountain News*, Dec. 30, 2006, at 11C

"Report Rips Funding for Low-Income Education," *Mobile Press-Register*, Dec. 23, 2006, at B2

Grace Rauh, "Needy Students Go Without, Report Finds," *Contra Costa Times*, Dec. 22, 2006, at F4

Amit R. Paley, "Program Widens School Funding Gap, Report Says," *Washington Post*, Dec. 21, 2006, at A4
Naush Boghossian, "Wealthy Schools Get More, Report: Districts Nationwide Shortchange Poor, Minorities," *Los Angeles Daily News*, Dec. 21, 2006, at N1
Nancy Zuckerbrod, "Aid Policies Hurting Poor Students?," *Deseret Morning News*, Dec. 21, 2006, at A3
Todd Silberman, "School Funding Gaps Cited," *Raleigh News & Observer*, Dec. 21, 2006, at B7
Eleanor Chute, "Report: Education Funds Misdirected," *Pittsburgh Post-Gazette*, Dec. 21, 2006, at B3
Bob Egelko, "School Integration Back Before Supreme Court," *San Francisco Chronicle*, Dec. 3, 2006, at A1
Paul Tough, "What It Takes to Make a Student," *New York Times Magazine*, Nov. 26, 2006
"UC Teachers Propose New Admissions Policy," *Monterey County Herald*, Oct. 28, 2006
Michelle Locke, "University of California Professors Propose Admissions Changes," *Associated Press*, Oct. 27, 2006
Elaine Ayala, "Kauffman Still Seeks Equality in Education," *San Antonio Express-News*, Sept. 5, 2006, at 1C
Charles Lane, "Justices to Hear Cases of Race-Conscious School Placements," *Washington Post*, June 6, 2006, at A3
Wendy Davis, "Vouchers Tested: School Vouchers Are Facing a Different Set of Legal Challenges in State Courts," *ABA Journal*, June 24, 2006
Ray Suarez, "The Alito Effect," *NewsHour with Jim Lehrer*, Feb. 21, 2006
Ed Gordon, "High Court Considers Domino's Discrimination Suit," *NPR News & Notes*, Dec. 8, 2005
Daniel Eisenberg, "How Alito Looks Under the Lens," *Time Magazine*, Nov. 14, 2005, at 28
Jonathan Jones, "Alito Record on Religion a Concern," *Argus*, Nov. 2, 2005
Adam Liptak & Jonathan D. Glater, "The Paper Trail: Lucid Rulings Tackling Many of Biggest Issues," *New York Times*, Nov. 1, 2005, at A25
Bob Egelko, "The President's Supreme Court Nominee," *San Francisco Chronicle*, July 20, 2005, at A13
Matt Krupnick, "Campuses Reject Polarizing Guests," *Contra Costa Times*, June 12, 2005, at F4
Stephen Phillips, "Union Joins Attack on Bush Flagship Reforms," *Times Education Supplement*, Apr. 29, 2005
Tom Hamburger, "White House Curbs Probe of Commentator's Hiring," *Los Angeles Times*, Apr. 15, 2005, at A13
Tonia Bui, "Affirmative Action Study Met with Controversy," *Daily Californian*, Feb. 17, 2005
Matt Krupnick, "New Spotlight on High Court Appointments," *Contra Costa Times*, Oct. 26, 2004, at A1
Marcia Coyle, "2003-2004 Term: Supreme Court Review, Flexing Muscle and Wisdom," *National Law Journal*, Aug. 2, 2004, at S1

Charles Lane, "Finality Seems to Elude High Court's Grasp," *Washington Post*, July 4, 2004, at A12

Michael Doyle, "Election-Year Term is Cautious One for Court," *Sacramento Bee*, July 3, 2004, at A1

Jonathan D. Glater, "Attention Wal-Mart Plaintiffs: Hurdles Ahead," *New York Times*, June 27, 2004, at 35

Margarita Bauza, "U-M Readies New Admissions Plan; More Individualized Review of Freshman Applicants Is Expected," *Detroit News*, Aug. 26, 2003, at 1A

Linda Greenhouse, "Context and the Court," *New York Times*, June 25, 2003, at A1

Peter Y. Hong, "Justices to Reconsider Race in Admissions," *Los Angeles Times*, Mar. 31, 2003, at A18

Sean Groom, "Clerking at the Supreme Court," *Washington Lawyer*, Mar. 2003, at 21

Elliot Zaret, "Will *Grutter* Trump *Bakke*?," *Washington Lawyer*, Dec. 2002, at 22

"From Statistics to Soup Kitchens: Youth as Resources in the 1990s," *National Civic Review*, Mar. 22, 1994, at 120

Sue Hutchison, "Travails of the 'Stanford Man': For Some, Donald Kennedy's Brash Image Is Symbolic of the School's Arrogance," *San Jose Mercury News*, Apr. 14, 1991, at 1A

Sue Hutchison, "Stanford Students to Lobby Sacramento for Public Schools," *San Jose Mercury News*, Mar. 27, 1991, at Peninsula Extra 8

Carolyn Jung, "Stanford Out Front in Focus on Teaching: University Backs New Push with Cash," *San Jose Mercury News*, Mar. 8, 1991, at 1B

"List of 32 Rhodes Scholars Includes Two Texans," *Houston Chronicle*, Dec. 10, 1990, at A7

Art Campos, "Capital's Rhodes Scholar," *Sacramento Bee*, Dec. 10, 1990, at A1

Carl Irving, "N. Californians Named as Rhodes Scholars Are Both from Families of Achievers, with Hopes of Careers with Government in Public Service," *San Francisco Examiner*, Dec. 10, 1990, at A5

Kathryn Dettman, "Thirty-Two Rhodes Scholars Announced, Including Minister, Five from Harvard," *Associated Press*, Dec. 9, 1990

Herbert A. Michelson, "Capital Teen Completes Project at UC Lab," *Sacramento Bee*, July 6, 1987, at B2

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am a registered Democrat. I have never held office in or rendered services to a political party. I have never been a member of, held office in, or rendered services to an election committee. I have never held a position or played a role in a political campaign, apart from occasional monetary contributions to political candidates.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

1998 – 1999; I served as a law clerk to Judge David S. Tatel, U.S. Court of Appeals for the D.C. Circuit.

2000 – 2001; I served as a law clerk to Justice Ruth Bader Ginsburg, Supreme Court of the United States.

ii. whether you practiced alone, and if so, the addresses and dates;

2008 – Present; I serve as a legal consultant to the San Francisco Unified School District. My office address is UC Berkeley School of Law, Berkeley, California 94720.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1998
NAACP Legal Defense Fund
1444 Eye Street NW
Washington, D.C. 20005
Summer Intern

1999 – 2000
United States Department of Education
400 Maryland Avenue SW
Washington, D.C. 20003
Special Assistant to the Deputy Secretary of Education

2000
Nixon Peabody LLP
401 Ninth Street NW, Suite 900
Washington, D.C. 20004
Contract Attorney

2001 – 2003
O'Melveny & Myers LLP
1625 Eye Street NW
Washington, D.C. 20006
Litigation Associate

2003 – Present
UC Berkeley School of Law
Berkeley, California 94720
Associate Dean and Professor of Law (2008 – Present)
Assistant Professor of Law (2003 – 2008)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

As a law clerk to Circuit Judge David S. Tatel (1998-1999) and to Associate Justice Ruth Bader Ginsburg (2000-2001), I assisted with legal research and writing. As a Special Assistant to the Deputy Secretary of Education (1999-2000), I was an attorney staff member to the senior leadership in the Department. Early in my career, I also served short stints as a legal intern to the NAACP Legal Defense Fund (summer 1998) and as a contract attorney to a law firm (summer 2000), where I assisted with legal research and writing.

After clerking at the Supreme Court, I practiced law at O'Melveny & Myers in Washington, D.C. (2001 to 2003). I did general business litigation and was a member of the appellate litigation group. I also did significant pro bono work.

Since 2003, I have been a full-time law professor at the UC Berkeley School of Law.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At O'Melveny & Myers, my typical clients were large businesses. In addition to appellate work, my areas of practice included antitrust, insurance, and product liability. I also represented some individuals in white collar criminal matters and pro bono matters.

Since my appointment to the UC Berkeley faculty in 2003, my primary work has consisted of teaching and research. I also have performed occasional legal work as a consultant in the area of education law.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice at O'Melveny & Myers was exclusively litigation. I appeared in court occasionally. My other work as an attorney has not involved court appearances.

i. Indicate the percentage of your practice in:
   1. federal courts 75%
   2. state courts of record 25%
   3. other courts
   4. administrative agencies

ii. Indicate the percentage of your practice in:
   1. civil proceedings 80%
   2. criminal proceedings 20%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried any cases in courts of record to verdict, judgment, or final decision.

i. What percentage of these trials were:
   1. jury:
   2. non-jury:

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I filed one amicus brief in the Supreme Court of the United States. Brief of 19 Former Chancellors of the University of California as *Amici Curiae* in Support of Respondents, *Parents Involved in Comm. Schs. v. Seattle Sch. Dist. No. 1*, No. 05-908, and *Meredith v. Jefferson County Bd. of Educ.*, No. 05-915 (Oct. 10, 2006).

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In re: Rite Aid Corp. Securities Litigation*

I assisted O'Melveny attorneys Bruce Hiler, Jeffrey Kilduff, and William Stuckwisch in handling an appeal in the U.S. Court of Appeals for the Third Circuit on behalf of a former chief financial officer of Rite Aid facing fraud and other charges in a securities class action filed after Rite Aid restated its earnings in the late 1990s. The appeal (No. 01-3563) challenged the district court's entry of a settlement bar order that purported to eliminate potentially valuable contractual indemnification claims that our client might have had against Rite Aid under state law (E.D. Pa., Civil Action No. 99-CV-1349, Judge Dalzell). I briefed the appeal. Our client reached a settlement with Rite Aid in September 2002 before the appeal was argued.

Managing counsel for our client were Bruce Hiler and Jeffrey Kilduff, O'Melveny & Myers LLP, 1625 Eye St., NW, Washington, DC 20006, (202) 383-5300. Counsel for Rite Aid were William A. Slaughter, Ballard, Spahr, Andrews & Ingersoll, 1735 Market Street, 51st Floor, Philadelphia, PA 19103, (215) 665-8500, and Douglas B. Adler, Skadden, Arps, Slate, Meagher & Flom, 300 South Grand Avenue, 34th Floor, Los Angeles, CA 90071, (213) 687-5000. Counsel for Class Plaintiffs were Carole Broderick, Berger & Montague, 1622 Locust Street, Philadelphia, PA 19103, (215) 875-3015; David J. Bershad, Milberg, Weiss, Bershad, Hynes & Lerach.

2. *Hidalgo v. FBI*

This case involved a Freedom of Information Act (FOIA) request by a federal inmate, who in 1999 sought documents from the FBI relating to an informant who had testified at his trial. The FBI invoked various FOIA exemptions and refused to confirm or deny the existence of responsive documents. After an unsuccessful administrative appeal, plaintiff brought this case *pro se* (D.D.C., Civil Action No. 00-0709, Judge Robertson), and the court rejected his claims on March 16, 2001. He then filed a *pro se* appeal in the U.S. Court of Appeals for the D.C. Circuit (No. 01-5161). The appeal was on a list of *pro se* cases that the D.C. Circuit assigns to pro bono counsel. I volunteered for the assignment, and Walter Dellinger served as the supervising partner. I briefed the appeal and argued the case before Chief Judge Ginsburg and Judges Sentelle and Henderson. On October 3, 2003, the court held that my client's administrative appeal was untimely and dismissed the suit without prejudice. 344 F.3d 1256 (D.C. Cir. 2003). The court of appeals did not reach the merits of the FBI's nondisclosure decision, although I had fully briefed those issues. After I left O'Melveny, plaintiff refiled the suit with the firm's continued assistance, and the district court ultimately ordered the FBI to disclose most of the information plaintiff had requested. 541 F. Supp. 2d 250 (D.D.C. 2008). The opinion relied substantially on the merits arguments I had made in the original case.

Supervising co-counsel was Walter Dellinger, O'Melveny & Myers LLP, 1625 Eye St., NW, Washington, DC 20006, (202) 383-5300. Counsel for the government was Diane M. Sullivan, United States Attorney's Office, Judiciary Center, 555 Fourth Street NW, Washington, D.C. 20530, (202) 514-7205.

3. *IVAX Corp. v. Aztec Peroxides LLC*

I assisted O'Melveny attorneys Richard Parker and William Stuckwisch in the representation of a defendant foreign company in this suit alleging unlawful price-fixing among organic peroxide manufacturers. The complaint was filed on March 28, 2002, in the U.S. District Court for the District of Columbia (02-CV-00593), and the case was assigned to Judge Robertson. I helped brief a motion to dismiss for lack of personal jurisdiction or, in the alternative, for failure to state a claim. On January 7, 2003, Judge Robertson dismissed our client from the suit based on plaintiffs' failure to state a claim.

Managing counsel for our client was Richard Parker, O'Melveny & Myers LLP, 1625 Eye St., NW, Washington, DC 20006, (202) 383-5300. Counsel for Plaintiffs was Ann C. Yahner, Cohen Milstein, 1100 New York Avenue NW, Washington, D.C. 20005, (202) 408-4600.

4. *Paper Systems Inc. v. Nippon Paper Industries Co.*

I assisted O'Melveny attorneys Ian Simmons and William Stuckwisch in handling this appeal in the U.S. Court of Appeals for the Seventh Circuit. Our client, a paper manufacturer, had won dismissal in district court of a price-fixing conspiracy suit against it. 2000 WL 362020 (E.D. Wis. Mar. 30, 2002). I was principal author of the briefs. The court of appeals (Chief Judge Flaum and Judges Bauer and Easterbrook) reversed. 281 F.3d 629 (7th Cir. 2002).

Managing counsel for our client was Ian Simmons, O'Melveny & Myers LLP, 1625 Eye St., NW, Washington, DC 20006, (202) 383-5300. Counsel for Plaintiffs was Daniel A. Small, Cohen, Milstein, Hausenfeld & Toll, 1100 New York Avenue NW, Suite 500, Washington, D.C. 20005, (202) 408-4600.

5. *Parents Involved in Community Schools v. Seattle School District No. 1*

The case concerned the constitutionality of race-conscious voluntary desegregation plans in the Louisville and Seattle school districts. I was counsel of record and the primary author of an amicus brief filed on October 10, 2006, in the Supreme Court of the United States on behalf of nineteen former University of California chancellors representing all ten UC campuses in support of the school districts. Boalt Hall dean Christopher Edley collaborated with me on the brief. We did all the work pro bono. The Supreme Court invalidated the school districts' plans. 551 U.S. 701 (2007).

Co-counsel on the amicus brief was Christopher Edley, Dean, UC Berkeley School of Law, Boalt Hall, Berkeley, CA 94720, (510) 642-6483. Counsel for Louisville Petitioner

was Teddy B. Gordon, 807 West Market Street, Louisville, KY 40202, (502) 585-3534. Counsel for Seattle Petitioner was Harry Korrell, Davis Wright Tremaine, 1201 Third Avenue, Suite 2200, Seattle, WA 98101, (206) 622-3150. Counsel for Jefferson County Public Schools was Francis J. Mellen, Wyatt, Tarrant & Combs, 500 West Jefferson Street, Suite 2800, Louisville, KY 40202, (502) 589-5235. Counsel for Seattle School District No. 1 were Michael Madden, Bennett Bigelow & Leedom, 1700 Seventh Avenue, Suite 1900, Seattle, WA 98101, (206) 622-5511, and Maree Sneed, Hogan & Hartson, 555 Thirteenth Street NW, Washington, D.C. 20004, (202) 637-5600.

6. *Gilchrist v. State Farm Mutual Automobile Insurance Co.*

Plaintiffs alleged that defendant insurers violated federal antitrust laws by conspiring to limit coverage for certain auto body repairs. After the district court certified a nationwide class of 70 million policyholders, the insurance companies appealed to the U.S. Court of Appeals for the Eleventh Circuit. I assisted O'Melveny attorney John Beisner in writing an amicus brief in support of the insurance companies on behalf of several insurance trade associations. Among other arguments, we contended that the McCarran-Ferguson Act required this dispute to be resolved by state regulatory authorities and not by federal courts. The Eleventh Circuit agreed that the McCarran-Ferguson Act barred the suit. 390 F.3d 1327 (11th Cir. 2004).

Managing counsel for our clients was John Beisner, now with Skadden, Arps, Slate, Meagher & Flom, 1440 New York Ave., NW, Washington, DC 20005, (202) 371-7000. Counsel for Plaintiffs was R. Stephen Berry, Berry & Leftwich, 1717 Pennsylvania Avenue NW, Suite 450, Washington, D.C. 20006, (202) 296-3020. Counsel for State Farm was Carey P. DeDeyn, Sutherland Asbill & Brennan, 999 Peachtree Street NE, Atlanta, GA 30309, (404) 853-8000

7. *Lloyd v. General Motors Corp.*

I assisted O'Melveny attorneys John Beisner, Neil Gilman, and Jonathan Hacker in representing General Motors in the Maryland Court of Appeals in a suit by several individuals seeking to recover the cost of repairing allegedly unsafe seatbacks where none of the individuals claimed actual personal injury as a result of the alleged defect. General Motors prevailed in the lower courts, and plaintiffs appealed. I helped brief the appeal, heard by Chief Judge Bell and Judges Eldridge, Raker, Wilner, Cathell, Harrell, and Battaglia. The Maryland Court of Appeals reversed. 916 A.2d 257 (Md. 2007).

Managing counsel for our clients was John Beisner, now with Skadden, Arps, Slate, Meagher & Flom, 1440 New York Ave., NW, Washington, DC 20005, (202) 371-7000. Counsel for Plaintiffs were John M. Mason, Marks & Sokolov, 1835 Market Street, 28th Floor, Philadelphia, PA 19103, (215) 569-8901; and William F. Askinazi, Law Offices of William F. Askinazi, OBA Bank Building, Suite 200, 20300 Seneca Meadows Parkway, Germantown, MD 20876, (301) 540-5380.

8. *Martinez v. Bush*

I assisted O'Melveny attorneys Ron Klain and Jeremy Bash in the representation of minority voters raising constitutional and statutory challenges to Florida redistricting plans. The complaint was filed in January 2002 in the U.S. District Court for the Southern District of Florida (Nos. 02-20244-CIV, 02-10028-CIV), and the case was assigned to a three-judge district court comprised of Judges Tjoflat, Hinkle, and Jordan. I helped draft the second amended complaint and plaintiffs' consolidated memorandum in opposition to defendants' motion for judgment on the pleadings. The district court upheld the redistricting plans. 234 F. Supp. 2d (S.D. Fla. 2002).

Managing counsel were Ron Klain and Jeremy Bash, both now with the United States Government. Counsel for the State of Florida was Paul F. Hancock, Deputy Attorney General, 110 SE 6th Street, 10th Floor, Fort Lauderdale, FL 33301, (954) 712-4600.

9. *State of Maryland v. Sanders*

I was pro bono defense counsel to a Maryland inmate facing a criminal charge of second-degree assault for striking a correctional officer during an altercation with another inmate (Montgomery County Circuit Court Docket No. 96047C). I took on this case through a partnership between my law firm and a local public defender's office in which firm attorneys provided pro bono counsel to indigent defendants facing misdemeanor charges. By working with the state's attorney and the victim of the offense, I helped the client secure probation before judgment. To achieve this result, I successfully persuaded the assault victim to appear on the defendant's behalf at an October 2002 hearing before Judge Weinstein in Montgomery County Circuit Court.

My co-counsel was Brett S. Lonker, Assistant Public Defender, 199-P East Montgomery Avenue, Rockville, MD 20850, (240) 773-9600. Counsel for the State of Maryland was John McLane, Montgomery County State's Attorney, 50 Maryland Avenue, 5th Floor, Rockville, MD 20850, (240) 777-7300.

10. *Highland Tank v. ACE/CIGNA*

In October 2000, Plaintiff filed this class action suit against its insurers alleging failure to pay certain dividends owed under a workers' compensation policy. The case was filed in Pennsylvania state court (Lancaster County Court of Common Pleas). The court certified a nationwide class, and I assisted O'Melveny attorney Brian Boyle in the representation of the defendants on appeal. I helped brief the appeal, in which our clients argued that class certification was improper because the policies were governed by state laws that varied from one jurisdiction to another. I do not recall whether the appeal was argued or decided before I left O'Melveny, and I am unable to locate the docket or filings for this case. The parties settled in July 2004.

Managing counsel for our client was Brian Boyle, O'Melveny & Myers LLP, 1625 Eye St., NW, Washington, DC 20006, (202) 383-5300.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

    Since 2003, I have been a full-time law professor at UC Berkeley. My principal work consists of teaching and research and, since becoming associate dean in 2008, administrative duties. I also served as faculty co-director of the Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity from 2004 to 2009 and in that capacity advised and participated in civil rights research projects.

    On a limited basis, I have been a legal consultant on matters of education law and policy. Most significantly, I advise the San Francisco Unified School District on its student assignment plan. I occasionally testify on constitutional law questions before local, state, and federal government entities. I have served on the boards of several nonprofit legal organizations.

    I have performed no lobbying activities on behalf of any client or organization.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    I have been a member of the UC Berkeley School of Law faculty since 2003. In those years, I have taught the following courses:

    Constitutional Law: 2004, 2005, 2006, 2008, 2010
        judicial review, federalism, separation of powers, equal protection, due process
    Contemporary Issues in Constitutional law: 2009
        a different topic each week, including gun rights, death penalty, abortion, and voting rights
    Fundamental Rights: 2005, 2006
        positive and negative rights, legislative constitutionalism, substantive due process, theories of constitutional interpretation
    Education Law & Policy: 2003, 2004, 2005
        school desegregation, school finance, school choice, vouchers, standards, and testing

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Under my contract with Oxford University Press for publication of *Keeping Faith with the Constitution*, I am entitled to royalties based on book sales. I have no other arrangements for deferred income or future benefits.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife and I are both presently employees of the University of California. I serve on the Board of Trustees of Stanford University. I am a consultant to the San Francisco Unified School District. I also serve and recently have served on the boards of several nonprofits, some of which participate in litigation on behalf of clients or on their own behalves. My wife is a senior fellow at the Center for American Progress, and she serves on two non-profit boards, Public Advocates and the East Bay Community Law Center, some of whose work involves litigation. If confirmed, I would carefully apply the recusal statutes, the relevant canons of the Code of Conduct for United States Judges, and the advice of colleagues and/or the Judicial Conference to any case involving one or more of these entities in any capacity. Where necessary to ensure impartiality or to avoid

appearance of partiality, I would disclose ties to litigants and recuse myself where appropriate.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I take seriously the professional responsibility of lawyers to serve the disadvantaged, which was a large part of my motivation to go to law school. As a law firm associate, I took on many pro bono matters, which in some months accounted for one-third or more of my billable hours. Those matters included *Hidalgo v. FBI*, 344 F.3d 1256 (D.C. Cir. 2003), a Freedom of Information Act case in which I served as court-appointed counsel. They also included cases I handled through a local partnership between my firm and the Montgomery County, Maryland, Office of the Public Defender. For example, I represented a woman facing an assault charge for throwing a kitchen knife at her husband and successfully persuaded the district attorney to drop the charge by uncovering a long history of physical and psychological abuse of the woman by her husband.

Since joining the Berkeley Law faculty, I have continued to devote considerable time to the needs of the disadvantaged, especially low-income or minority children in public schools. In addition to my scholarship and policy work in these areas, I contributed my time and expertise to the creation of a new charter school run by UC Berkeley and Aspire Public Schools in my local community. From 2004 to 2008, I served on a faculty advisory committee that helped launch the California College Preparatory Academy. The school serves a predominantly low-income, African American, and Hispanic student population in grades 7-10 (with plans to expand to grades 7-12). In the first two years of my involvement, I participated in monthly two-hour committee meetings as well as volunteer activities at the school site.

I also have worked with disadvantaged students in more direct ways. During the first two years after law school, while clerking on the D.C. Circuit and then serving in the U.S. Department of Education, I volunteered my services for three hours on Saturday mornings as an SAT tutor for low-income students at Washington-Lee High School, a public school in Arlington, Virginia.

Finally, I devote considerable time to serving on boards of nonprofit organizations that address the needs of disadvantaged individuals and groups through policy, litigation, and

direct services. I typically spend one to three days per month on this board work.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission to recommend candidates for nomination to the United States Court of Appeals for the Ninth Circuit.

On February 6, 2009, I met with White House Counsel Gregory Craig and staff regarding my interest in serving as a judge. I had a second meeting with White House Counsel's Office attorneys on March 12, 2009. Since August 2009, I have been in contact with White House staff and pre-nomination officials in the Office of Legal Policy at the Department of Justice. On September 23, 2009, I interviewed in Washington, D.C., with Associate Attorney General Thomas Perrelli and attorneys from the Department of Justice and the White House Counsel's Office. The President submitted my nomination to the United States Senate on February 24, 2010.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Goodwin Liu, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/23/10
(DATE)

(NAME)

State of California
County of ALAMEDA)

On FEBRUARY, 23RD 2010 before me, ANDREW ADIKRI BAPI. (NOTARY PUBLIC)
(insert name and title of the officer)

personally appeared GOODWIN HON LIU.,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ANDREW ADIKRI BAPI
COMM. # 1862758
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
My Comm. Exp. Sept. 22, 2013

Signature ~~(Seal)~~

GOODWIN LIU
Associate Dean and
Professor of Law
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

March 3, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am providing an additional response to my Senate Questionnaire that was inadvertently omitted from my original submission.

Question 12.e - Interviews

"Alito Hearings: Day Four Wrap-Up," *Pacifica Radio*, Jan. 12, 2006. I am unable to find an audio clip or transcript of the interview.

Thank you for your consideration.

Sincerely,

Goodwin Liu

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

SUPP2

GOODWIN LIU
Associate Dean and
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

March 16, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am providing an additional response to my Senate Questionnaire that was inadvertently omitted from my original submission.

Question 12.c – Statements relating to matters of public policy or legal interpretation

Constitutional Law Professors' Statement About Proposition 8 (Oct. 29, 2008) (I did not contribute to the preparation of this statement; I joined it as a signatory.)

Thank you for your consideration.

Sincerely,

Goodwin Liu

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

From YubaNet.com

CA

Leading Legal Scholars Reject Prop 8 Arguments

Author: NO on Prop. 8
Published on Oct 29, 2008 - 11:58:54 AM

SACRAMENTO, Calif. - 10/29/2008 - Today the NO on Prop 8 campaign released a rare joint statement signed by 59 distinguished law professors concluding that the Prop. 8 campaign's legal arguments are false, adding their voices to a growing chorus of educators, newspapers and other experts who say the Prop. 8 campaign has been deceptive and misleading.

The list of scholars include Erwin Chemerinsky, the Founding Dean of the University of California School of Law; Kathleen Sullivan, Former Dean of Stanford Law School; and Paul Brest, Dean Emeritus of Stanford Law School.

"We recognize that people of integrity can differ in their views of the meaning of marriage," the scholars write. "But people who want to take the right to marry away from same-sex couples should not rely on misleading claims about the current state of the law or about what Proposition 8 would do."

The legal scholars conclude:

1. Prop. 8 clearly discriminates against gay men and lesbians.
2. Prop. 8 would have no effect on the tax exemptions of churches.
3. Prop. 8 would have no effect on teaching or the protection of parental rights already provided by state law.

"As teachers of the law we feel an obligation to speak out when claims are made about the law that are simply and clearly false," said Professor Pam Karlan, the Kenneth and Harle Montgomery Professor of Public Interest Law at Stanford Law School.

"The Prop. 8 campaign can't produce a single respected expert to back up any of their preposterous claims," said Rep. Zoe Lofgren (D-CA), a member of the House Judiciary Committee. "Californians deserve to know the facts. I am grateful California's best legal scholars have taken the time to review the facts and the law and to share their conclusions with the public."

Constitutional Law Professors' Statement About Proposition 8

Proposition 8, on the ballot this November, proposes a constitutional amendment that would eliminate the right to marry that same-sex couples in California currently possess. We recognize that people of integrity can differ in their views of the meaning of marriage. But people who want to take the right to marry away from same-sex couples should not rely on misleading claims about the current state of the law or about what Proposition 8 will do. As professors who teach and write about constitutional law, family law, and related subjects, we emphasize the following basic points.

First, Proposition 8 would change existing California law and would require the state to discriminate against gay men and lesbians. Proposition 8 would forbid government officials from according gay men and lesbians a fundamental right they now enjoy and that all other adults in California will continue to enjoy: the right to marry a person of their choice. Just as California's long ago-repudiated ban on interracial marriage constituted racial discrimination, so too, a ban on same-sex marriage would constitute discrimination on the basis of sexual orientation. The ability of same-sex couples to enter into registered domestic partnerships does not eliminate that discrimination. Thus, the claim made by some of Proposition 8's supporters that the amendment does not discriminate against gay men and lesbians is simply false.

Second, the claim that Proposition 8 is necessary to protect the tax exemptions of churches that refuse to solemnize or recognize marriages between same-sex couples is also false. As the Supreme Court of California made clear in its decision in the Marriage Cases, "affording same-sex couples the opportunity to obtain the designation of marriage will not impinge upon the religious freedom of any religious organization, official, or any other person; no religion will be required to change its religious policies or practices with regard to same-sex couples, and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs." 183 P.2d. 384, 451-52 (2008). That protection for religious views is already written into the California Constitution. Article I, section 4 guarantees "[f]ree exercise and enjoyment of religion without discrimination or preference," and that is true even if a religion forbids conduct that the state permits. The First Amendment to the United States Constitution also already protects a religion's decisions about whether to solemnize and recognize particular marriages. So, for example, a religion is free to treat only marriages between members of its faith as valid - or even to excommunicate members who marry outside the faith - even though the state permits marriages between individuals regardless of their religious identity and cannot punish individuals' failure to follow religious commands. The same protections clearly apply in the case of same-sex marriages. No church will be required to perform or to recognize such marriages. No church's tax-exempt status will be affected by its decisions about whether to solemnize marriages between same-sex couples. Current law affects only the civil institution of marriage.

Third, the claim that Proposition 8 is necessary to prevent public schools from teaching issues relating to marriage by same-sex

couples to children whose parents oppose that instruction is false. Existing California law already provides parents with an absolute right to review all materials provided as part of a school's comprehensive sexual health education program and to have their children excused from participation. Cal. Educ. Code 51240; see also Citizens for Parental Rights v. San Mateo County Bd. of Educ., 124 Cal. Rptr. 68, 80-82 (Cal. Ct. App. 1st App. Dist. 1975) (discussing the prior version of this longstanding policy). Nothing about Proposition 8 will change this rule, and Proposition 8 adds nothing to the protection of parental rights already provided by law.

The full text list of the Constitutional Law Professors follows.

Kathryn Abrams
Herma Hill Kay Distinguished Professor of Law UC-Berkeley School of Law

John M. Adler
Professor of Law
University of San Francisco School of Law

Scott Altman
Vice Dean and Virginia S. and Fred H. Bice Professor of Law University of Southern California Gould School of Law

Diane Marie Amann
Professor of Law
University of California, Davis School of Law

Vikram Amar
Associate Dean for Academic Affairs and Professor of Law University of California, Davis, School of Law

Angelo N. Ancheta
Assistant Professor of Law
Santa Clara University School of Law

R. Richard Banks
Jackson Eli Reynolds Professor of Law
Stanford Law School

Ash Bhagwat
Professor of Law
University of California, Hastings College of the Law

Grace Ganz Blumberg
Professor of Law
UCLA School of Law

Paul Brest
Dean Emeritus
Stanford Law School

Rebecca Brown
Newton Professor of Constitutional Law
USC Gould School of Law

Kim Buchanan
Assistant Professor
University of Southern California Gould School of Law

Alan Brownstein
Professor of Law
Boochever and Bird Chair for the Study and Teaching of Freedom and Equality
UC Davis School of Law

Patricia A. Cain
Inez Mabie Distinguished Professor of Law Santa Clara University

Erwin Chemerinsky
Founding Dean

University of California, Irvine School of Law

Eric C. Christiansen
Associate Professor of Law
Academic Co-Director, Honors Lawyering Program Co-Director, GGU-Paris Nanterre Comparative Law Program Golden Gate University School of Law

William Cohen
C. Wendell and Edith M. Carlsmith Professor, Emeritus Stanford Law School

Jan C. Costello
Professor of Law
Loyola Law School - Loyola Marymount University

David B. Cruz
Professor of Law
University of Southern California Gould School of Law

Mary L. Dudziak
Judge Edward J. and Ruey L. Guirado Professor of Law, History and Political Science University of Southern California Law School

David L. Faigman
John F. Digardi Distinguished Professor of Law University of California, Hastings College of the Law

Deborah L. Forman
Professor of Law
J. Allan Cook & Mary Schalling Cook Children's Law Scholar Whittier Law School

Philip Frickey
Alexander F. and May T. Morrison Professor of Law UC Berkeley School of Law

Thomas C. Grey
Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, Emeritus Stanford Law School

Pratheepan Gulasekaram
Assistant Professor
Santa Clara University School of Law

Elizabeth L. Hillman
Professor of Law
University of California Hastings College of Law

Joan Heifetz Hollinger
Professor and Lecturer-in-Residence in Family Law University of California, Berkeley

Marina Hsieh
Assistant Dean for Academic & Professional Development Santa Clara University Law School

Leslie Gielow Jacobs
Director, Capital Center for Government Law & Policy and Professor of Law Pacific McGeorge School of Law

Courtney G. Joslin
Acting Professor of Law
UC Davis School of Law, King Hall

Pamela S. Karlan
Kenneth and Harle Montgomery Professor of Public Interest Law Stanford Law School

Kenneth L. Karst
David G. Price and Dallas P. Price Professor of Law Emeritus UCLA School of Law

Herma Hill Kay
Barbara Nachtrieb Armstrong Professor of Law University of California, Berkeley

Ellen S. Kreitzberg
Professor of Law
Santa Clara University School of Law

Brian K. Landsberg
Distinguished Professor and Scholar
Pacific McGeorge School of Law

Carlton F.W. Larson
Acting Professor of Law
UC Davis School of Law

Lawrence Lessig
C. Wendell and Edith M. Carlsmith Professor of Law Stanford Law School

Lawrence C. Levine
Professor of Law
Pacific McGeorge School of Law

Goodwin Liu
Associate Dean and Professor of Law
UC Berkeley School of Law

Jean C. Love
John A. and Elizabeth H. Sutro Professor of Law Santa Clara University
School of Law

Maya Manian
Associate Professor
University of San Francisco School of Law

Lawrence C. Marshall
Associate Dean for Public Service and Clinical Education & David & Stephanie
Mills Director of Clinical Education Stanford Law School

Jenny S. Martinez
Associate Professor of Law and Justin M. Roach, Jr. Faculty Scholar Stanford
Law School

John E.B. Myers
Distinguished Professor and Scholar
University of the Pacific, McGeorge School of Law

Julie Nice
Visiting Professor of Law
University of San Francisco School of Law

Deborah L. Rhode
McFarland Professor of Law
Stanford Law School

Camille Gear Rich
Assistant Professor of Law
USC Gould School of Law

Margaret M. Russell
Professor
Santa Clara University School of Law

Jane S. Schacter
William Nelson Cromwell Professor of Law Stanford Law School

Darien Shanske
Associate Professor
University of California Hastings College of the Law

John Cary Sims
Professor of Law
Pacific McGeorge School of Law

Edward Steinman
Professor of Law
Santa Clara University School of Law

Kathleen M. Sullivan
Stanley Morrison Professor of Law and Former Dean Stanford Law School

Jonathan D. Varat
Professor of Law
University of California, Los Angeles School of Law

Michael S. Wald
Jackson Eli Reynolds Professor of Law, Emeritus Stanford Law School

Kelly Weisberg
Professor of Law
University of California, Hastings College of the Law

Lois A. Weithorn
Professor of Law
University of California, Hastings College of the Law University of California

Stephanie M. Wildman
Professor of Law and Director, Center for Social Justice and Public Service
Santa Clara University School of Law

Michael Zamperini
Professor of Law
Golden Gate University School of Law

Titles and Institutional Affiliations Are Included Only for Purposes of Identification

© Copyright YubaNet.com

GOODWIN LIU
Associate Dean and
Professor of Law
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

March 20, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am providing additional responses to my Senate Questionnaire that were inadvertently omitted from my original submission.

Question 12.a – Publications

National Citizenship and Equality of Educational Opportunity, 116 Yale L.J. Pocket Part 145 (2006), http://www.thepocketpart.org/2006/11/21/liu.html (this is adapted from my article *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006))

How the Federal Government Makes Rich States Richer, *in* Education Trust, Funding Gaps 2006, at 2 (this is adapted from my article *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006))

Community Colleges: Critical Partners in National and Community Service, Trustee Quarterly, Spring 1994, at 10

Service-Learning: An Overview, *in* Corporation for National and Community Service, Roles for Higher Education: A Resource Guide 12 (Mar. 1994)

Question 12.d – Speeches or talks

Oct. 22, 2008: Duke Law School chapter of the American Constitution Society, Durham, NC. I spoke on a program titled "Counting to Five: What the 2008 Election Will Mean for the Supreme Court." I do not have notes or a transcript of the event. A video of the event is available at http://realserver.law.duke.edu/ramgen/fall08/students/10222008.rm.

Question 12.e – Media interviews

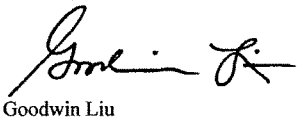
Stephanie Frances Ward, "Schools Cast About for New Diversity Plans," ABA Journal E-Report, July 6, 2007

In addition, my original submission on Question 12.d listed a panel discussion at the American Association of Law Schools Annual Meeting on January 8, 2009. I recently became aware that a podcast of the panel is available at https://memberaccess.aals.org/eWeb/DynamicPage.aspx?webcode=SesDetails&ses_key=dddb96f7-3996-4c82-bee1-0e551dcbe5d5.

My original submission on Question 12.d also listed a panel discussion at the American Constitution Society National Convention on August 2, 2003. I recently became aware that a transcript is available, and I have attached it here.

Thank you for your consideration.

Sincerely,



Goodwin Liu

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

THE YALE LAW JOURNAL POCKET PART

GOODWIN LIU

National Citizenship and Equality of Educational Opportunity

Fifty years after *Brown v. Board of Education*, school desegregation and school finance litigation have made modest strides toward remedying the separate and unequal opportunities too long afforded to our poor and minority schoolchildren. However, it is a striking yet often neglected fact that the most significant component of educational inequality across the nation is not disparities within states, the traditional concern of equal protection doctrine, but rather disparities *between* states. To address this latter problem, I propose a federal education policy rooted in legislative enforcement of the Fourteenth Amendment guarantee of national citizenship. Such enforcement animated sustained efforts by members of Congress, soon after the Fourteenth Amendment was adopted, to establish a strong federal role in narrowing interstate disparities in public education. Current federal policies, unlike that early ambition, are largely indifferent to or complicit in the perpetuation of interstate inequality. Recovering the historical vision of a genuinely national education policy and adapting it to contemporary norms of cooperative federalism are vital steps toward realizing the constitutional promise of equal citizenship.

I. THE PROBLEM

Although disparities in educational opportunity still exist within and between school districts in each state, disparities *across states* are more severe. Adjusting for geographic cost differences and student needs, the ten highest-spending states on average spend over fifty percent more per pupil than the ten lowest-spending states. Low-spending states are found in the South, Southwest, and Far West, while high-spending states are clustered in the Northeast, mid-Atlantic region, and Midwest. This geographic pattern reflects the historically uneven development of public education in the United States.

Large interstate disparities exist not only in spending but also in education standards and outcomes. Under the federal No Child Left Behind Act (NCLB), states may establish their own learning standards and assessments, but they must also participate annually in the National Assessment of Educational Progress (NAEP), a widely respected test of important knowledge and skills. Comparing student performance on NAEP versus state tests tells us three things.

First, state standards vary significantly and are almost always less rigorous than NAEP's. In Alabama, for example, 73% of fourth-graders scored at a proficient level on state math tests in 2005, but only 21% were proficient on NAEP. Among Arizona fourth-graders, 72% were proficient on state reading tests, but only 24% were proficient on NAEP. Second, student performance varies considerably from state to state. While 35% of fourth-graders nationwide achieved proficiency on the NAEP math test in 2005, state figures ranged from 49% in Massachusetts to 19% in Mississippi and New Mexico. Third, the states below the national average are almost all low-spending states in the South, Southwest, and Far West.

These performance disparities reflect not only resource disparities but also student demographics. While the student body in the top third of states in terms of adjusted spending is 70% white, 14% poor, and 4% limited in English proficiency (LEP), the student body in the bottom third is less than 50% white, over 18% poor, and over 13% LEP. In short, children with the greatest educational needs live disproportionately in states with the lowest education spending.

Moreover, interstate disparities in school spending have more to do with the ability of states to finance education than with their willingness to do so. On average, the ten states with the highest fiscal capacity enjoy 40% more non-federal revenue per pupil than the ten states with the lowest capacity, even though the latter states devote a higher percentage of their taxable resources to education. This highlights the need for a robust federal role in ameliorating interstate inequality.

But Congress has done little to address educational inequality between states. Federal policy sets no consistent national expectations for the performance of our public schools and instead allows education standards to vary dramatically from state to state. Moreover, the federal share of the national education budget has never exceeded 10%; in recent decades, it has been 6% to 8%. Very little interstate equalization can be achieved with such small sums. What's worse, the largest program of federal education aid—Title I of the Elementary and Secondary Education Act of 1965—tends to reinforce not reduce interstate inequality by allocating aid not only based on child

poverty but also in proportion to each state's level of per-pupil spending.[1] Thus Massachusetts, a wealthy high-spending state, received almost 80% more Title I aid in 2001 than Oklahoma, a poor low-spending state, even though Massachusetts had fewer poor children.

II. THE GUARANTEE OF NATIONAL CITIZENSHIP

It is hard to see how this approach to public education can be reconciled with the Fourteenth Amendment guarantee of national citizenship. From the constitutional text and history, we learn three important things about that guarantee. First, the grant of citizenship was meant to secure not only a legal status but also substantive rights—hence the Fourteenth Amendment's reference to the "privileges or immunities of citizens of the United States." The framers understood citizenship to mean, at a minimum, equal standing in the national political community. The citizenship guarantee thus encompasses substantive rights essential to realizing this equality.

Second, Section 5 of the Fourteenth Amendment authorizes Congress to enforce the guarantee of national citizenship. Under this authorization, Congress may determine not only what civil and political rights but also what social and economic entitlements are necessary to make national citizenship meaningful and effective. Because the citizenship guarantee is affirmatively declared, unconstitutional state action is not a necessary predicate for congressional enforcement.

Third, the grant of congressional power to enforce the national citizenship guarantee implies a constitutional duty of enforcement. Unlike any other constitutional provision up to that time, the Civil War amendments expressly assigned enforcement power to Congress, reflecting the Framers' belief that "appropriate legislation," not merely judicial enforcement, would be needed to make the newly created rights fully effective. Early on, Congress understood national citizenship as a guarantee it had the power and duty to enforce. That understanding led Congress then, and should lead us now, to see the task of narrowing educational inequality between states as a constitutional imperative.

III. LESSONS FROM CONGRESS, 1870 TO 1890

During the two decades after the Fourteenth Amendment was adopted, Congress repeatedly sought to enforce the national citizenship guarantee through ambitious bills to provide leadership and funding for public

1. *See* 20 U.S.C. §§ 6333(a)(1), 6334(a)(2), 6335(b)(1) (2000).

education. Four efforts are particularly noteworthy. The first was an 1867 statute establishing a federal Department of Education.[2] Congress charged the committee that drafted the statute to create an agency "to enforce education, without regard to race or color, upon the population of all such States as shall fall below a standard to be established by Congress."[3] Proponents stressed the national interest in "universal education."[4] Although the Department was ultimately limited to data collection and reporting, its creation signaled an emerging federal responsibility for ensuring, in the words of one supporter, that "every child . . . receive[s] a sufficient education to qualify him to discharge all the duties that may devolve upon him as an American citizen."[5]

Second, Representative George Hoar in 1870 introduced the first-ever proposal for federal supervision of public elementary education.[6] It would have required states to provide common schools for children aged six to eighteen, with instruction in reading, writing, arithmetic, geography, and history. The President was authorized to determine whether the schools of each state were adequate. Where they weren't (the inadequacies were concentrated in the South), the bill proposed "national schools" run by federal officials and financed with a federal tax.

This heavy-handed approach was easily attacked, and the bill never reached a vote. But it drew attention to the need for education and the basis for Congress's power and duty to make schooling universally available. As Hoar put it in 1871, "the fundamental civil rights of the citizen include[] the right to receive a full, free, ample education from the Government . . . . We neglect our plain duty so long as we fail to secure such provision."[7]

The Hoar bill's underlying notion of federal responsibility paved the way for a third proposal, introduced by Representative Legrand Perce in 1872.[8] Perce sought to fund education using revenue from public lands, with half going into a permanent "national educational fund" and the other half, plus interest from the fund, apportioned to states offering free education to children between the ages of six and sixteen. His bill had genuinely national scope and would have allocated funds on the basis of illiteracy, directing more aid to states with greater need and less fiscal capacity. As one proponent explained, the bill aimed to ensure that "the children of [each] State, who will be called on

2. Act of Mar. 2, 1867, ch. 158, 14 Stat. 434.

3. CONG. GLOBE, 39th Cong., 1st Sess. 60 (1865) (resolution introduced by Rep. Donnelly).

4. *Id.* at 3044 (statement of Rep. Moulton).

5. *Id.* at 3045.

6. H.R. 1326, 41st Cong. (2d Sess. 1870).

7. CONG. GLOBE, 42d Cong., 1st Sess. 335 (1871).

8. H.R. 1043, 42d Cong. (2d Sess. 1872).

to discharge the duties of citizens of the United States, shall be educated" to a national standard of literacy.[9]

The bill passed the House but died in the Senate. Nevertheless, the Hoar and Perce bills set the stage for a fourth bill—the most significant education-aid proposal of the postbellum period. Authored by Senator Henry Blair of New Hampshire in 1882 and extensively debated throughout the 1880s, the bill introduced the idea of granting federal aid through direct appropriations from the national treasury. Like the Perce bill, it envisioned an equalizing federal influence across states through a distribution of funds based on illiteracy. Further, the bill advanced the notion of state and local administration of public schools within a framework of federal funding conditions, an early form of cooperative federalism.

Along with many Senate colleagues, Blair, an able constitutional lawyer, championed his bill by invoking Congress's power and duty to give meaning to the Citizenship Clause:

> Our leading proposition is that the General Government possesses the power and has imposed upon itself the duty of educating the people of the United States whenever for any cause those people are deficient in that degree of education which is essential to the discharge of their duties as citizens either of the United States or of the several States wherein they chance to reside.[10]

The Blair bill passed the Senate and would have been signed by President Arthur in 1884 had it not been blocked by a reactionary House minority.[11]

These early bills left important guideposts for the federal role in public education. They linked education to national citizenship with the recognition that Congress had a duty to act. Congress's duty was not to guarantee absolute equality of opportunity but rather sufficient opportunity to achieve equal standing in the national community. In promoting basic literacy, the proposals sought to ensure what Blair called "the indispensable standard of education" for "the duties and opportunities of citizenship"[12]—a standard we might today call *educational adequacy for equal citizenship*.

---

9. CONG. GLOBE, 42d Cong., 2d Sess. 794 (1872) (statement of Rep. Townsend).

10. S. REP. NO. 48-101 (1884), *reprinted in* 17 CONG. REC. 1240, 1248-49 (1886).

11. S. 371, 50th Cong. (2d Sess. 1887) (as amended); S. 194, 49th Cong. (1st Sess. 1886) (as amended); S. 398, 48th Cong. (1st Sess. 1884), *reprinted in* 17 CONG. REC. 1282 (1886).

12. 15 CONG. REC. 2000 (1884) (statement of Sen. Blair).

IV. POLICY IMPLICATIONS

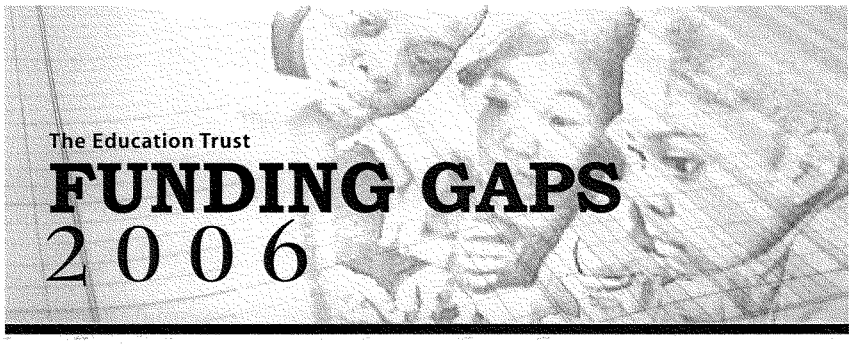
If Congress were to take seriously its duty to secure full and equal national citizenship, what might be the contemporary contours of the federal role in public education? As the early aid bills showed, the national citizenship guarantee does not entail a singular mode of legislative enforcement; Congress has wide policymaking discretion in discharging its legislative duty. But the essential requirement is that Congress pursue a rational and deliberative inquiry into the meaning of national citizenship and its educational prerequisites, and take steps reasonably calculated to remedy conditions that deny children adequate opportunity to achieve those prerequisites. Current policies, including NCLB, fail to satisfy this basic account of legislative duty, highlighting the need for a stronger federal role within a continuing framework of cooperative federalism.

Three policy reforms seem especially important for giving expression to the citizenship guarantee. First, Congress should enlist non-governmental organizations to develop national education standards that set common expectations of all public schools and schoolchildren, and then provide incentives to states to adopt those standards voluntarily. National education standards in some form are a logical and achievable outgrowth of the current standards-based reforms embodied in NCLB. Second, Congress should reform Title I to allocate aid simply based on child poverty, adjusted for regional cost differences, and not in proportion to each state's own per-pupil spending. Title I should treat all poor children not as citizens of the state where they reside, but as citizens of the United States. Third, Congress should expand the federal role in school finance to narrow interstate disparities and to establish a national floor of educational opportunity below which no state or district may fall. The key feature of such a program would be a distribution of aid to states in inverse proportion to their fiscal capacity, much as federal Medicaid funds are currently distributed.

Although not a panacea for all that ails public education, these policies would foster greater equality throughout the nation by situating the federal government as the ultimate guarantor of opportunity for every child to achieve equal standing and full participation in the national community. Establishing national education standards and the resources to make them meaningful in every state will not be cheap. But as we routinely spend billions on law enforcement, courts, and national defense to enforce constitutional rights to liberty and property, isn't it time we gave substance to the one provision of the Constitution that literally *constituted* the nation over a century ago? Then and now, an ambitious education policy agenda furthers the constitutional imperative of securing the promise of national citizenship.

Goodwin Liu is Assistant Professor of Law, Boalt Hall School of Law, University of California, Berkeley. *This essay is adapted from Education, Equality, and National Citizenship*, 116 YALE L.J. 330 (2006), *and Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. REV. 2044 (2006).

Preferred Citation: Goodwin Liu, *National Citizenship and the Promise of Equal Educational Opportunity*, 116 YALE L.J. POCKET PART 145 (2006), http://www.thepocketpart.org/2006/11/21/liu.html.



The Education Trust

FUNDING GAPS 2006

As Americans, we rightly take pride in the fact that the United States has led the world in extending free public education to *all* children, including those from racial and language minorities, those living in poverty, and those with disabilities. We extend this opportunity with the conviction that if given a fair shot at a good education these students, through hard work, can rise above the challenges they face and find a secure place at the heart of the American mainstream.

What many Americans don't fully understand, however, is that even as we've extended a free public education to all children, we've rigged the system against the success of some of our most vulnerable children. How do we do that? By taking the children who arrive at school with the greatest needs and giving them less in school. Our low-income and minority students, in particular, get less of what matters most; these students get the fewest experienced and well-educated teachers, the least rigorous curriculum, and the lowest quality facilities.[1]

At the core of these inequities is a set of school finance policy choices that systematically shortchange low-income and minority students and the schools and districts that serve them. In this unprecedented look at school funding across multiple levels—federal, state, and district—we show how funding choices at each of these levels tilt away from equity.

- The first analysis examines how *federal* education funds for low-income students are distributed *among states*. It finds that rich states are rewarded with richer federal aid packages, and that poor ones get less.
- The second set of analyses scrutinizes spending differences *among school districts within states* and finds that most states shortchange their highest poverty and highest minority school districts.
- The third analysis examines how school *districts* spend their money, and finds inequalities *within school districts*, with less money spent in schools serving the most disadvantaged students.

Taken together these analyses make clear how—despite our national commitment to fairness and educational opportunity for all—a series of separate school funding choices stack the deck against the students who need the greatest support from their schools.

Over the last several years, there's been a flurry of activity aimed at addressing the achievement gap that separates low-income students and students of color from their more affluent and White peers. Yet year after year test results show precious little progress. It's easy to understand why some are growing frustrated and even discouraged. But the truth is, despite the new attention to the gap, we so far have failed to address the fundamental inequities—such as the funding gaps highlighted in this report—that are buried deep in our education systems. And until these inequities are exposed and addressed by the adults who make the policy choices that affect children we will continue to undermine our professed goal of providing equal opportunities for all.

Funding is just the most easily measured among the myriad ways in which public education systematically puts students of color and low-income students—and the schools these students attend—at a disadvantage. Securing equity in funding would send a powerful signal that equity is more than just a rhetorical priority. Fairer finance systems are not a silver bullet, but they are a first step toward the harder work of substantive education improvement.

We offer this new report with the hope that the information provided herein will arm policymakers, parents, and educators with the facts they need to make new policy choices that will make real our aspiration to give every student a fair chance.

How the Federal Government Makes Rich States Richer

By Goodwin Liu

Assistant Professor of Law, Boalt Hall School of Law, and Co-Director, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California, Berkeley. *This paper is adapted from a December 2006 article in* New York University Law Review.

Any serious effort by the federal government to improve equality of educational opportunity must confront a sobering and often neglected fact: Funding gaps *among* states are even larger than funding gaps *within* states. In 2003-04, the ten highest spending states spent an average of more than 50 percent more dollars per pupil than was spent by the lowest spending ten states. Low-spending states are clustered in the South, Southwest, and West, and serve a disproportionate share of the nation's poor children.

The purpose of Title I of the Elementary and Secondary Education Act is to level the educational playing field for poor children. Given this ambition, one would expect Title I to disproportionately benefit low-spending states, where low-income students are concentrated. But the reality is otherwise. Wealthier, higher-spending states receive a disproportionate share of Title I funds, thereby exacerbating the profound differences in education spending from state to state. Title I makes rich states richer and leaves poor states behind.

The problem lies in the Title I formulas. Under the three main formulas (basic, concentration, and targeted grants), each state's Title I allocation is largely a product of two factors. The first is the number and concentration of poor children in the school districts of each state. This factor benefits poorer states because they have disproportionate numbers of low-income children. But the second factor is the average per-pupil expenditure in the state. This state expenditure factor means that high-spending states get more Title I money per poor child than low-spending states. The net effect is that Title I does not reduce, but rather reinforces, inequality among states.

As Table 1 shows, interstate differences in Title I allocations are not small. Column A lists the number and percentage of the nation's poor children in each state in 2003, and column B lists each state's share of Title I funds in 2003. Together, columns A and B show that states do not receive Title I money in proportion to their shares of the nation's low-income children. Maryland, for example, had fewer poor children than Arkansas but received 51 percent more Title I aid per poor child. Massachusetts had fewer low-income children than Oklahoma but received more than twice as much Title I aid per poor child. Similarly, Minnesota had fewer poor children than New Mexico but received 27 percent more Title I aid per poor child.

Column C shows each state's Title I funding per poor child in rank order. The amounts per poor child at the top are as much as double the amounts at the bottom, with the variation essentially mirroring interstate variation in per-pupil spending. (Some of the highest amounts in column C reflect statutory minimum allocations for small states.) When these data are adjusted for geographic differences in educational costs, the degree of interstate inequality is slightly reduced but still quite substantial.

The state expenditure factor might be defensible if it served as a reward or incentive for higher state spending on education. But this is implausible for two reasons. First, Title I aid is too small to realistically motivate additional state or local spending; states typically do not spend an additional dollar just to capture a few extra pennies. Second, by linking Title I aid to state per-pupil spending, the state expenditure factor primarily rewards state fiscal capacity (i.e., taxable wealth per pupil, shown in Column A in Table 2), not educational effort (i.e., willingness to tax that wealth, shown in Column B in Table 2). Nonfederal education revenue is more highly correlated with state fiscal capacity than with state effort, and states with higher capacity tend to exert lower effort. Thus, tying federal aid to state per-pupil spending does not reward effort so much as it rewards wealth. Indeed, in the examples above, the wealthier states (Maryland, Massachusetts, and Minnesota) exert less effort than the poorer states (Arkansas, Oklahoma, and New Mexico) but have higher per-pupil spending and thus receive higher Title I aid per poor child.

Simply put, the state expenditure factor in the Title I formula should be eliminated. This reform would bring Title I into line with the aid formulas for special education, English language instruction, and child nutrition, all of which assign equal weight to eligible children regardless of the state where they reside. Title I should simply allocate aid in proportion to each state's share of poor children. Moreover, instead of the state expenditure factor, Title I should include a cost factor to adjust for geographic

Table 1: Children in Poverty and Title I Allocations, 2003-2004 *(with percentage of national total)*

	A		B		C
	Poor children		Title I allocation		Title I allocation per poor child
Wyoming	9,796	*0.1*	$28,964,809	*0.3*	$2,957
Vermont	9,667	*0.1*	27,005,035	*0.2*	2,794
North Dakota	11,245	*0.1*	30,329,411	*0.3*	2,697
Massachusetts	112,570	*1.3*	260,050,569	*2.3*	2,310
New Hampshire	13,140	*0.2*	29,733,465	*0.3*	2,263
Alaska	14,330	*0.2*	30,431,327	*0.3*	2,124
Maine	25,025	*0.3*	47,816,946	*0.4*	1,911
Delaware	16,038	*0.2*	30,637,587	*0.3*	1,910
Connecticut	55,987	*0.7*	106,557,518	*1.0*	1,903
New York	638,992	*7.6*	1,184,751,800	*10.7*	1,854
New Jersey	155,082	*1.9*	272,032,782	*2.4*	1,754
South Dakota	19,125	*0.2*	32,000,786	*0.3*	1,673
Michigan	251,533	*3.0*	420,799,581	*3.8*	1,673
Pennsylvania	274,088	*3.3*	438,337,029	*3.9*	1,599
Rhode Island	27,313	*0.3*	43,155,247	*0.4*	1,580
Wisconsin	96,223	*1.1*	151,746,825	*1.4*	1,577
Kansas	55,419	*0.7*	87,046,905	*0.8*	1,571
Montana	25,827	*0.3*	40,458,865	*0.4*	1,567
Ohio	258,749	*3.1*	399,821,239	*3.6*	1,545
Minnesota	76,892	*0.9*	117,728,364	*1.1*	1,531
Maryland	101,153	*1.2*	153,983,710	*1.4*	1,522
West Virginia	63,503	*0.8*	94,167,837	*0.8*	1,483
Nebraska	32,413	*0.4*	46,769,850	*0.4*	1,443
Illinois	333,173	*4.0*	478,793,210	*4.3*	1,437
Hawaii	26,720	*0.3*	36,094,503	*0.3*	1,351
Missouri	146,574	*1.7*	194,886,735	*1.8*	1,330
California	1,288,493	*15.4*	1,649,697,459	*14.8*	1,280
Iowa	49,808	*0.6*	62,955,699	*0.6*	1,264
Oregon	93,069	*1.1*	115,317,070	*1.0*	1,239
Louisiana	207,871	*2.5*	256,175,473	*2.3*	1,232
Virginia	149,256	*1.8*	182,110,558	*1.6*	1,220
New Mexico	85,331	*1.0*	103,273,759	*0.9*	1,210
Indiana	129,878	*1.6*	156,540,820	*1.4*	1,205
Kentucky	138,101	*1.6*	162,957,050	*1.5*	1,180
Georgia	292,431	*3.5*	343,346,663	*3.1*	1,174
South Carolina	138,465	*1.7*	157,877,214	*1.4*	1,140
Washington	138,049	*1.6*	157,166,797	*1.4*	1,138
Texas	902,369	*10.8*	1,018,467,898	*9.2*	1,129
Mississippi	139,374	*1.7*	157,215,840	*1.4*	1,128
Idaho	35,921	*0.4*	39,875,687	*0.4*	1,110
Oklahoma	117,122	*1.4*	128,454,510	*1.2*	1,097
Tennessee	171,970	*2.1*	185,694,729	*1.7*	1,080
Colorado	96,512	*1.2*	104,115,332	*0.9*	1,079
Alabama	165,578	*2.0*	177,362,455	*1.6*	1,071
North Carolina	248,492	*3.0*	261,980,283	*2.4*	1,054
Florida	512,261	*6.1*	523,834,879	*4.7*	1,023
Arkansas	105,100	*1.3*	106,001,974	*1.0*	1,009
Utah	49,259	*0.6*	45,809,427	*0.4*	930
Nevada	59,296	*0.7*	53,216,311	*0.5*	897
Arizona	213,295	*2.5*	187,860,284	*1.7*	881

Source: U.S. Census Bureau, Small Area Income and Poverty Estimates, 2003 (children ages 5 to 17 in poverty); U.S. Department of Education Budget Tables, ESEA Title I Grants to Local Educational Agencies by State, 2003.

differences in educational costs. This approach would lessen interstate inequality because poor children are disproportionately concentrated in low-spending states and because equal federal dollars per eligible child provide a bigger boost, proportionally speaking, to low-spending states than to high-spending states.

Although eliminating the state expenditure factor in Title I would be a positive step, its effect on interstate inequality would be modest. A more serious effort to narrow interstate inequality requires three main policy components. First, the federal role in school finance must be substantially increased; the federal government cannot buy much equality when it spends only nine cents of every education dollar. Second, because interstate differences in education funding primarily reflect differences in fiscal capacity, federal aid should compensate for differences across states in their ability to support education. Medicaid provides an example of federal aid distributed in inverse proportion to state fiscal capacity. Third, in aiding states with low education spending, federal policy should distinguish between low fiscal capacity and low effort. Where low spending is due to low effort, the primary federal role should be to spur states toward greater effort. Congress could require low-effort states to gradually increase their effort up to a minimum threshold as a condition of receiving significantly expanded federal aid.

These reforms would not be cheap, and they would require robust political will. But the problem of interstate inequality is both glaring and longstanding. If we are serious about wanting to ensure that every child in America meets high standards, then we must develop a federal school finance policy equal to the task.

Table 2 State Fiscal Capacity and Educational Effort by State, 2003-2004 *(with percent of national average)*

	A		B		C	
	Total taxable resources (per pupil)		**Educational effort**		**Nonfederal revenue (per pupil)**	
Alabama	$178,064	*89*	3.27	*93*	$5,819	*83*
Alaska	159,139	*80*	3.66	*104*	5,822	*83*
Arizona	160,354	*81*	3.12	*89*	5,003	*72*
Arkansas	167,832	*84*	3.53	*100*	5,929	*85*
California	168,055	*84*	3.42	*97*	5,743	*82*
Colorado	230,315	*116*	2.96	*84*	6,818	*98*
Connecticut	253,996	*128*	3.44	*98*	8,737	*125*
Delaware	362,954	*182*	2.24	*64*	8,130	*116*
Florida	209,398	*105*	2.96	*84*	6,199	*89*
Georgia	195,964	*98*	3.80	*108*	7,453	*107*
Hawaii	225,548	*113*	3.82	*109*	8,627	*123*
Idaho	157,727	*79*	3.57	*101*	5,626	*80*
Illinois	209,172	*105*	3.35	*95*	7,010	*100*
Indiana	208,503	*105*	3.96	*113*	8,264	*118*
Iowa	224,688	*113*	3.40	*97*	7,645	*109*
Kansas	212,974	*107*	3.79	*108*	8,075	*116*
Kentucky	187,524	*94*	3.28	*93*	6,147	*88*
Louisiana	182,526	*92*	3.23	*92*	5,890	*84*
Maine	187,498	*94*	4.27	*121*	8,013	*115*
Maryland	252,749	*127*	3.22	*91*	8,140	*116*
Massachusetts	234,883	*118*	3.39	*96*	7,966	*114*
Michigan	181,531	*91*	4.24	*120*	7,688	*110*
Minnesota	234,525	*118*	3.48	*99*	8,152	*117*
Mississippi	148,437	*75*	3.62	*103*	5,380	*77*
Missouri	206,812	*104*	3.30	*94*	6,823	*98*
Montana	178,136	*90*	3.65	*104*	6,505	*93*
Nebraska	232,972	*117*	3.42	*97*	7,968	*114*
Nevada	226,288	*114*	2.81	*80*	6,362	*91*
New Hampshire	232,031	*117*	3.39	*96*	7,875	*113*
New Jersey	234,549	*118*	4.34	*123*	10,186	*146*
New Mexico	157,280	*79*	3.79	*108*	5,962	*85*
New York	226,166	*114*	4.08	*116*	9,216	*132*
North Carolina	213,979	*108*	2.90	*82*	6,201	*89*
North Dakota	229,595	*115*	3.15	*89*	7,223	*103*
Ohio	201,149	*101*	3.92	*111*	7,890	*113*
Oklahoma	163,416	*82*	3.50	*100*	5,725	*82*
Oregon	202,845	*102*	3.43	*98*	6,966	*100*
Pennsylvania	216,454	*109*	3.75	*106*	8,113	*116*
Rhode Island	207,837	*104*	3.62	*103*	7,534	*108*
South Carolina	177,184	*89*	3.81	*108*	6,746	*96*
South Dakota	241,334	*121*	2.72	*77*	6,557	*94*
Tennessee	206,282	*104*	2.61	*74*	5,388	*77*
Texas	170,616	*86*	3.68	*105*	6,282	*90*
Utah	146,631	*74*	3.31	*94*	4,857	*69*
Vermont	203,727	*102*	4.63	*131*	9,425	*135*
Virginia	248,386	*125*	2.95	*84*	7,340	*105*
Washington	206,431	*104*	3.07	*87*	6,343	*91*
West Virginia	166,089	*83*	4.27	*121*	7,086	*101*
Wisconsin	217,554	*109*	3.91	*111*	8,514	*122*
Wyoming	263,292	*132*	3.49	*99*	9,191	*131*

Note: "Total taxable resources" (column A) is a measure of state fiscal capacity developed by the U.S. Department of Treasury; 2003 figures are available at http://www.treas.gov/offices/economic-policy/resources/estimates.shtml. Nonfederal revenue data (column C) are from U.S. Census Bureau, Public Elementary-Secondary Education Finances: 2003-04 (table 1). The data in columns A and C are cost-adjusted dollars per weighted pupil. The cost adjustment applies the state-level Geographic Cost of Education Index in Jay G. Chambers, Geographic Variations in Public Schools' Costs (NCES Working Paper No. 98-04, 1998) (table III-3). Pupil weights are 1.9 for students with disabilities, 1.6 for students in poverty, and 1.2 for English-language learners. Enrollment data used to derive weighted pupil counts are from NCES, Digest of Education Statistics 2005 (table 33 (fall 2003 enrollment) and table 52 (children ages 6 to 21 served under the Individuals with Disabilities Education Act, Part B, 2003-04)); U.S. Census Bureau, Small Area Income and Poverty Estimates, 2003 (children ages 5 to 17 in poverty); and U.S. Department of Education, National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, ELL Demographics by State, 2003-04. Dividing column C by column A yields the "Educational effort." figures in Column B. Across the states, nonfederal revenue is more strongly correlated with fiscal capacity (.62) than with effort (.45). Further, capacity and effort are negatively correlated (–.39). With some exceptions, states with higher capacity tend to make less effort yet raise more revenue than states with lower capacity.

How States Shortchange the Districts That Need the Most Help

By Ross Wiener and Eli Pristoop
Education Trust

States bear primary responsibility for public education.[2] As education has become more important to being an active citizen and earning a livelihood, states have increasingly exercised their authority to set rules for who can teach, what students are expected to learn in school, and how student learning is measured. Just as important, states determine how–and how equitably–education is funded.

The analyses on the pages that follow examine how well the states are living up to their obligation to fund public education equitably. There are encouraging examples of states that have stepped up to their responsibilities, but on the whole these data reveal serious problems with most state funding systems.

What This Analysis Does—and What it Does Not Do

This analysis focuses on state and local revenues. Federal revenues (which made up 8.9 percent of public school revenues in 2004) are not included, in order to isolate the specific effect of *state* policies on the educational opportunities provided to low-income children and children of color. Federal education funds are specifically meant to supplement, not supplant, state and local revenues. So it is appropriate to examine whether state policies equitably support public education in high-poverty and high-minority districts.[3] When states fail to equitably fund public education, federal funds are forced to make up for shortfalls, instead of providing the additional opportunities Congress intended.

Second, the analysis does not examine whether funding in any particular state is *adequate*. Rather, taking current spending as it is, this analysis asks whether the districts with the highest concentrations of low-income students and students of color are getting their fair share of state money.

Third, this report examines school district revenues, not practices or policies in terms of how the money is spent. At the Education Trust, we are acutely aware that how money is spent matters immensely in whether education is improved. We spend most of our time and energy trying to improve practice and policy so that existing resources in public education are used effectively. But we also know that many necessary improvements in the education of low-income and minority students will cost money.

Fourth, we have applied a consistent methodology to examining funding equity in 49 states (the exception is Hawaii, which operates a single, statewide school district). This methodology, which is described in the text and explained in detail in the technical appendix, allows for cross-state comparisons and provides good information on how funding is distributed between high- and low-poverty and high- and low-minority districts. But it is not ideally suited to analyzing a few unique state contexts. For example, the Clark County school district, home to Las Vegas, serves approximately 70 percent of Nevada's public school students, so it is not possible to divide Nevada's districts into comparable quartiles.

We do not mean to imply that we have described the full range of school funding inequities. States that do not necessarily show large funding disparities in this analysis might show inequities if looked at through a different lens. We encourage researchers and advocates to use this data as a starting point for additional analysis.

How We Did the Analysis

This study analyzes annual financial data from each of the nation's approximately 14,000 public school districts, gathered by the U.S. Census Bureau and the U.S. Department of Education. The calculations are based on the total amount of state and local revenues each district received for the 2003-2004 school year, the latest year for which such financial data are available.[4]

To calculate funding gaps for each state, we compare average state and local revenues per student in the highest-poverty school districts–those in the top 25 percent statewide in terms of the percent of students living below the federal poverty line–to per-student revenues in the lowest poverty school districts.[5] These quartiles are built so each contains approximately the same total number of students. This procedure also is used to establish comparable quartiles for analyzing funding in high- and low-minority school districts.

The analysis accounts for the fact that school districts vary in how much they need to spend depending on the different prices they have to pay for goods and services and the different kinds of students they have. Accordingly, we adjust for the local cost of providing education. In 2006, the National Center for Education Statistics released a new formula for adjusting for cost differences across school districts across the entire United States, and we applied that formula in these analyses.[6] Using this new formula allows for the most fair comparisons across districts, but it makes the data in this report not perfectly comparable to previous Education Trust *Funding Gap* reports.

Similarly, we adjust our calculation of school district revenues based on the number of special education students enrolled, recognizing that districts with disproportionately more students with disabilities have higher costs and, thus, effectively less money to spend. The formula we used for this adjustment was developed by the American Institutes of Research and is widely used in school funding analyses.[7]

Most States are Unfair to Their High-Poverty and High-Minority Districts

In 26 of the 49 states studied, the highest poverty school districts receive fewer resources than the lowest poverty districts.[8] As can be seen in Table 3, across the country, state and local funds provide $825 per student less in the highest poverty districts than in the most affluent districts.[9] Four states–Illinois, New Hampshire, New York, and Pennsylvania–shortchange their highest poverty districts by more than $1,000 per student per year. These states, and others that allow funding gaps to persist, are compounding the disadvantages that low-income students face outside of school and undercutting public education's ability to act as an engine of social mobility.

In 28 states, high-minority districts receive less state and local money for each child than low-minority districts (Table 4). Across the country, $908 less per student is spent on students in the districts educating the most students of color, as compared to the districts educating the fewest students of color.[10]

Equal Dollars Are Not Good Enough

The absolute dollar numbers in Table 3 actually understate the inequity suffered by high-poverty districts. To educate children growing up in poverty to common, meaningful standards costs more. Children from low-income families need more instructional time and especially well trained teachers. To provide another way of looking at state funding gaps, we also calculate the gaps with a 40 percent adjustment for educating students growing up in poverty.[11] We use this 40 percent adjustment because it is included in the federal Title I formula to determine whether state funding policies are fair to low-income students. Title I funding to states that do not meet this standard is reduced.[12] Studies that have attempted to quantify the additional costs of educating students growing up in poverty have often produced higher adjustments. Maryland, for example, determined that it would require virtually double the foundation funding to educate low-income students up to its state standards, and phased in a funding formula to meet that goal beginning in 2002.[13] Others, such as Professor Liu, use a 60 percent adjustment.

Applying the 40 percent adjustment, the number of states that underfund school districts serving large numbers of poor children grows to 34, and the national gap goes from $825 to $1,307. Underneath this national gap lie huge differences among the states. Six states have per-student funding gaps that exceed $1,000 between high- and low-poverty districts; once the 40 percent adjustment is applied, Michigan and Montana join the four states that have funding gaps in excess of $1,000 (Illinois, New Hampshire, New York, and Pennsylvania).

A similar analysis based on districts serving students of color finds the same pattern: After the 40 percent adjustment for low-income students is made, school districts serving the largest concentrations of students of color receive $1,213 less per child than school districts serving the fewest children of color every year. (No adjustment is made on the basis of the percent minority enrollment.) Thirty states have funding gaps between their highest and lowest minority districts, and twelve have funding gaps that exceed $1,000 per child (Colorado, Illinois, Kansas, Montana, Nebraska, New Hampshire, New York, North Dakota, South Dakota, Texas, Wisconsin, and Wyoming).

How to Read Tables 3 and 4

Tables 3 and 4 illustrate the gap in funding between highest and lowest poverty districts (Table 3) and highest and lowest minority districts (Table 4). When highest poverty and highest minority districts receive less per pupil, the gaps are shown with negative numbers. So, for example, the highest poverty districts in Alabama receive an average of $323 less per student than the lowest poverty districts, and the highest minority districts receive an average of $241 per student less than the lowest minority districts. In states where the highest poverty districts receive more money per pupil, the number is positive. So, for example, the highest poverty districts in Minnesota receive $1,349 per student more than the lowest poverty districts.

Table 3: Poverty Funding Gaps by State, 2004

State	Gap Between Revenues per Student in the Highest - and Lowest - Poverty Districts (no adjustment for low-income students)	Gap Between Revenues per Student in the Highest - and Lowest - Poverty Districts (40% adjustment for low-income students)
Alabama	-$323	-$656
Alaska	2,474	2,054
Arizona	-225	-736
Arkansas	-158	-500
California	218	-259
Colorado	-70	-440
Connecticut	666	59
Delaware	-207	-371
Florida	-272	-461
Georgia	156	-292
Hawaii	*	*
Idaho	-55	-257
Illinois	-1,924	-2,355
Indiana	518	93
Iowa	82	-176
Kansas	-549	-885
Kentucky	852	448
Louisiana	-200	-481
Maine	-137	-543
Maryland	-123	-432
Massachusetts	1,299	694
Michigan	-573	-1,072
Minnesota	1,349	950
Mississippi	207	-191
Missouri	190	-271
Montana	-789	-1,148
Nebraska	515	210
Nevada	-249	-297
New Hampshire	-1,084	-1,297
New Jersey	1,824	1,069
New Mexico	1,106	679
New York	-2,319	-2,927
North Carolina	-344	-543
North Dakota	271	17
Ohio	683	113
Oklahoma	133	-213
Oregon	579	302
Pennsylvania	-1,001	-1,511
Rhode Island	311	-394
South Carolina	414	127
South Dakota	-147	-438
Tennessee	591	330
Texas	-249	-757
USA	**-825**	**-1,307**
Utah	860	663
Vermont	-403	-894
Virginia	-114	-436
Washington	196	-110
West Virginia	-22	-345
Wisconsin	-351	-742
Wyoming	-303	-539

Table 4: Minority Funding Gaps by State, 2004

State	Gap Between Revenues per Student in the Highest - and Lowest - Minority Districts (no adjustment for low-income students)	Gap Between Revenues per Student in the Highest - and Lowest - Minority Districts (40% adjustment for low-income students)
Alabama	-$241	-$437
Alaska	4,955	4,435
Arizona	-230	-680
Arkansas	445	253
California	-160	-499
Colorado	-799	-1,032
Connecticut	-74	-602
Delaware	408	353
Florida	17	-106
Georgia	566	271
Hawaii	*	*
Idaho	-836	-849
Illinois	-1,223	-1,524
Indiana	1,345	1,096
Iowa	-327	-414
Kansas	-1,514	-1,630
Kentucky	150	274
Louisiana	355	111
Maine	-817	-874
Maryland	-302	-454
Massachusetts	1,663	1,139
Michigan	68	-251
Minnesota	898	623
Mississippi	413	26
Missouri	795	662
Montana	-1,787	-1,838
Nebraska	-1,280	-1,374
Nevada	-470	-496
New Hampshire	-2,371	-2,392
New Jersey	1,730	1,087
New Mexico	246	18
New York	-2,239	-2,636
North Carolina	-211	-296
North Dakota	-1,259	-1,290
Ohio	1,285	942
Oklahoma	-133	-383
Oregon	222	127
Pennsylvania	-454	-709
Rhode Island	-21	-639
South Carolina	392	206
South Dakota	-962	-1,140
Tennessee	275	202
Texas	-792	-1,167
USA	**-908**	**-1,213**
Utah	-202	-311
Vermont	-800	-613
Virginia	418	239
Washington	-87	-225
West Virginia	244	290
Wisconsin	-1,043	-1,270
Wyoming	-1,020	-1,041

Note: All dollar amounts in this chart have been adjusted to account for regional cost differences and the additional cost of educating students with Individualized Education Programs. This has the effect of reducing the effective level of funding in high-cost districts and districts with large numbers of students with disabilities. In addition, the third column in this table contains gap numbers that have been adjusted to account for the additional cost of educating low-income students (40% adjustment). For a more detailed explanation of the methodology used in this report, see the Technical Appendix.

Source: Education Trust calculations based on data from U.S. Census Bureau and U.S. Department of Education data for the 2003-2004 school year.

Some states demonstrate that equitably funding education is possible. Kentucky and Massachusetts, for example, have targeted more money to high-poverty districts and coupled the monetary resources with meaningful accountability and technical assistance--and real progress has been accomplished.[14] But equitable funding is not a panacea. Washington, for example, does not distribute its money in a particularly unfair way in comparison to other states, but that does not make up for the fact that it simply spends less on education than other states with similar wealth. There are, of course, examples where increased education funding has not translated into commensurate improvements in teaching and learning. We have to confront those issues seriously, but ignoring or condoning funding gaps only makes it harder to tackle the substantive problems.

Per-Student Funding Gaps Add Up

For example, when you consider the per-student funding gap for low-income students (without 40-percent adjustment for low-income students) **in...**	**Between two typical classrooms of 25 students, that translates into a difference of....**	**Between two typical elementary schools of 400 students, that translates into a difference of....**	**Between two typical high schools of 1,500 students, that translates into a difference of....**
New York	$57,975	$927,600	$3,478,500
Illinois	$48,100	$769,600	$2,886,000
Michigan	$14,325	$229,200	$859,500
North Carolina	$8,600	$137,600	$516,000
Delaware	$5,175	$82,800	$310,500

Table 5: Percent of Elementary-Secondary Public School System Revenue from Local Sources by State: 2003-2004

State Name	Percent of System Revenue from Local Sources
Alabama	32.8
Alaska	25.7
Arizona	43.3
Arkansas	15.4
California	34.1
Colorado	49.6
Connecticut	59.7
Delaware	27.9
Florida	45.6
Georgia	46.7
Idaho	31.6
Illinois	56
Indiana	44
Iowa	45.5
Kansas	40.8
Kentucky	30.4
Louisiana	38.2
Maine	50.4
Maryland	55.9
Massachusetts	53.6
Michigan	30
Minnesota	22.6
Mississippi	30.3
Missouri	47.9
Montana	40.4
Nebraska	58.2
Nevada	32.4
New Hampshire	48.6
New Jersey	53.3
New Mexico	13.1
New York	48.9
North Carolina	32.5
North Dakota	46.7
Ohio	49.2
Oklahoma	36.1
Oregon	38.2
Pennsylvania	56.1
Rhode Island	52.3
South Carolina	43.6
South Dakota	50.3
Tennessee	45.6
Texas	52.7
Utah	34.7
Vermont	23.9
Virginia	54.3
Washington	29.7
West Virginia	28.7
Wisconsin	41.7
Wyoming	38
USA	**43.9**

Source: "Public Education Finances 2004", US Census Bureau. March 2006. Page 5, Table 3.

States Can Close Funding Gaps

Education reform poses many complicated issues, where additional innovation and research is still needed. Making education funding more fair, however, is not one of these issues. States need to take a greater share of education funding and target more money to the districts with the biggest challenges.

First, states should reduce reliance on local property taxes. As shown in Table 5, states vary dramatically in the extent to which local taxes fund schools–from a low of 13 percent in New Mexico to a high of 60 percent in Connecticut. Because wealth and property value are so unequally distributed, using local taxes as the primary resource for schools inherently gives wealthier communities an advantage in providing better educational opportunities. It is antithetical to states' professed commitments to close achievement gaps to rely on local communities to fund education. This tradition reinforces privilege, exacerbates inequality, and is anachronistic at a time when we expect all students within a state to meet consistent, meaningful standards.

Once states assume more responsibility for education funding, they should target funds to help educate low-income children. In Massachusetts, for example, local taxes account for a majority of public schools' revenue, but state funding is highly targeted, which allows the state to do more to address funding equity than some other states. Wisconsin, in contrast, actually allocates a majority of all public education revenue at the state level, but still maintains funding gaps that disadvantage both high-poverty and high-minority districts.

It is unfair that children's educational horizons are limited by their neighborhoods' demographics. As state education systems grow into their responsibilities in a standards-based world, they need to ensure that budgets reflect fairness and that resources are targeted to districts with the most need. Aligning state education funding policies with goals would mark necessary, but not sufficient, progress toward equality of educational opportunity.

How Districts Shortchange Low-income and Minority Students

By Marguerite Roza

Research Assistant Professor in the Center on Reinventing Public Education at the Daniel J. Evans School of Public Affairs at the University of Washington.

It is well known that some school districts have more money to spend than others with consequent ill effects on poor and minority students. Analyses such as the ones contained in this report and well-publicized court cases have long documented the inequities between wealthier and poorer school districts.

Less well known is that, almost universally, school districts themselves magnify those initial inequities by directing more non-targeted money to schools and students with less need. Even school districts that claim to be spending more on high-poverty and high-minority schools can in fact spend considerably less, leading to predictable and devastating results for low-income and minority students.

To understand how these inequities develop within districts, it is necessary to understand the way school budgets are built. Typically, district budget documents report how money is spent by category and program rather than by school. As a result, even superintendents and school board members often do not know whether they spend more money on one school than another or whether they spend more or less on low-income and minority students. Layered onto those opaque accounting practices are long-established policies and practices—particularly regarding personnel assignments—that virtually guarantee that low-income and minority children have access to fewer resources than their more advantaged peers.[15]

No large-scale national databases or analyses can be used to see these problems. However, in the last five years I and others have carefully analyzed the spending patterns of dozens of districts in more than 20 states. In some cases the districts only allowed us to examine their finances with the understanding that we would not name them. However, we can say that in many ways they typify large and medium-sized districts throughout the country. Two major patterns emerged in almost every district studied and can be presumed to be replicated in most large and medium-sized school districts.

1) Less money is spent on salaries in high-poverty schools than on salaries in low-poverty schools within the same district.

2) Districts assign a larger share of unrestricted funds to low-poverty schools.

Let us examine each of these inequitable patterns.

1) Less money is spent on salaries in high-poverty schools than on salaries in low-poverty schools within the same district.

Evidence abounds that in many school districts the most experienced and highly paid teachers congregate in the district's more affluent schools. At the same time, the least qualified, lowest paid teachers tend to serve in the schools with the highest numbers of low-income and minority students. A typical pattern is that a new teacher will start his or her career at a high-poverty school and, as he or she gains experience and moves up the pay scale, will transfer to a more affluent school. District transfer policies, sometimes codified in teacher union contracts, help facilitate this migration pattern. Additionally, after teaching in high-poverty schools, some newer teachers leave the profession, also contributing to the teacher turnover in the schools.

Although there are no guarantees that teacher experience is an indicator of teacher quality, researchers generally agree that teacher effectiveness increases during the first five to seven years of teaching. Educationally, the migration pattern of teachers means that students who attend high-minority and high-poverty schools have a lower chance of encountering a teacher at the peak of his or her effectiveness than students who attend more affluent schools with fewer students of color.

Financially, such teacher migration patterns mean that considerably less salary money is spent on high-poverty and high-minority schools. This disparity is often hidden by the fact that most district budgets report the distribution of staff *positions* at individual schools and not the distribution of teacher *costs* or teacher quality. Typically a district will allocate one teacher to a set number of students across all schools or types of schools (for example, all elementary schools will have a 1:18 ratio or all high schools will have a 1:22 ratio). The district will then report salaries at a particular school as the number of positions multiplied by the average salary paid by the district. By reporting salaries in this way (known as salary averaging), school districts disguise the actual salaries paid at individual schools.

When actual salaries are examined, the differences between high-poverty schools and low-poverty schools are significant and pervasive, as shown in Table 6.

Table 6: Gap between average teacher salaries in top and bottom poverty quartiles, by school district (2003-2004)

District	Salary Gap
Austin*	$3,837
Dallas*	$2,494
Denver*	$3,633
Fort Worth*	$2,222
Houston*	$1,880
Los Angeles**	$1,413
Sacramento**	$4,846
San Diego**	$4,187
San Francisco**	$1,286
San Jose Unified**	$4,008

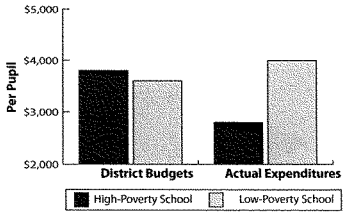
Sources: *Center for Reinventing Public Education Analyses, 2005
**Education Trust, Hidden Funding Gap, 2005, available at http://www.hiddengap.org/

In each city cited here, the district effectively spends less on teaching in schools with high concentrations of low-income students. And these are not the most extreme examples. A 2002 analysis of Baltimore City showed that teachers at one high-poverty school were paid an average of almost $20,000 less than those at another school in the same district.[16]

Salary differences translate into big effects on school spending. For a school with 600 students and 25 teachers, a $4,000 average salary gap creates a difference of $100,000 per school. For a school with 1,700 students and 100 teachers, that is a difference of $400,000 per school.

Members of the general public often believe that high-poverty and high-minority schools receive more money than other schools because they know that there are special programs targeted to high-poverty schools. In some cases, however, targeted funds don't even make up for the salary differences.

Figure 1: Salary Averaging Diverts Resources Budgeted for High-Poverty Schools to Low-Poverty Schools*



Source: Roza, Marguerite and Paul Hill. "How Within-District Spending Inequities Help Some Schools to Fail," Brooking Papers on Education Policy (2004).

2) Districts further exacerbate inequality by assigning a larger share of unrestricted funds to low-poverty schools.

Each school in a district is supposed to receive an equal share of unrestricted funds, in addition to whatever categorical allocations are intended for the special needs of the students it has (such as for special education services or English-language instruction). Even after the salary differences between high- and low-poverty schools are accounted for, low-poverty schools still get more than their share of unrestricted dollars. In fact, salary differences only explain between 20 and 80 percent of the differences between spending at high- and low-poverty schools.

This somewhat unexpected finding first emerged in various analyses some two years ago,[17] and other recent analyses confirm it. For example, data from the Public Policy Institute of California documented that low-poverty elementary schools tend to have larger teacher/pupil ratios and higher non-teacher expenditures than higher poverty schools.[18]

Table 7: Unrestricted spending per pupil in elementary schools across sampled California Districts

Category	Low Poverty	High Poverty
Unrestricted Teacher Expenditures	$2570	$1973
Teachers per 1000 students	44.9	41.5
Average teacher salary	$57,242	$47,545
Unrestricted Other Expenditures	$1839	$1648
Total Unrestricted	**$4409**	**$3621**

Source: Rose, et. al (2006)

Interviews with district leaders have helped make sense of how and why this happens in their districts. Sometimes the placement of more expensive magnet or alternative programs drives up the costs in schools with fewer low-income students. In Chicago, for instance, selective enrollment schools (those with admission requirements) spend some 15 percent more than the district average per pupil.[19] In one district, the more affluent communities have smaller schools where per-pupil costs are higher. More often, the patterns are created in response to pressures to equalize services across all schools. Where earmarked categorical funds such as federal Title I money pay for such extra services as full-day kindergarten or reading specialists in high-need schools, more flexible state and local money is often used to fund the same services in the low-need schools.

The result is that general or unrestricted funds are skewed toward schools that do not qualify for targeted programs. Even when states restrict certain funds to provide extras for low-income students, school districts use unrestricted funds to provide similar services to more affluent students.

While the patterns somewhat vary by district, it is clear that most districts distribute the state and local funds they control inequitably. Again, this is masked by the way budgets are reported, showing expenditures coded by activity, function, and program, but not by school or student.

Emerging research indicates that there may be yet another way local districts shortchange low-income and minority students by inequitably distributing categorical funds targeted to specific kinds of students, such as money targeted to English-language learners. The way this seems to work is that districts put equally funded programs into schools regardless of how many students need them. For example, a district might allocate $100,000 to each school with English-language learners, even though one school might have 200 students with limited English proficiency and another—often a more affluent school—might have only 20. This results in a per-pupil cost of $500 in the first school and $5,000 in the second. The research into this practice is still in the early stages[20] and deserves further scrutiny.

The important point here is that school budgets are tangled webs, and it takes considerable amounts of analytic energy to unravel them in order to understand exactly how money is spent and on which students. When examined closely, however, it is clear that the typical school budget document is used to conceal very inequitable spending patterns.

To change these patterns, school boards, superintendents, and members of the general public should demand that budget documents be much more accurate and transparent so that all involved know exactly how resources are being distributed among different schools within the same school district. Accuracy demands that school budgets reflect actual teacher salaries, not district averages. Relying on average teacher salaries obscures the fact that less teacher salary money is allocated to the highest poverty and highest minority schools, where novice teachers and those with the least credentials are concentrated. One hopeful sign is that California, Texas, and Colorado have recently changed their school accounting practices to make it easier for school districts to report actual salaries by school level.

Collecting and disseminating truthful information about individual school budgets will help in acknowledging the problems, but it will take deliberate policies to change the underlying inequities. An increasing number of districts, including some of those that have allowed me and my colleagues to study them, are adopting student-based

allocation policies known as weighted student funding.[21] Others are changing the way teachers are compensated in order to change the way teacher talent and experience are distributed. If public school systems are serious about closing achievement gaps, they must begin to allocate more resources to the students with the greatest need. The previous sections of this report illustrate the important role of federal and state policies, but we cannot achieve real funding equity until we design school budgets that better respond to student needs.

Conclusion and Recommendations

The fundamental promise of standards-based reform is that inputs vary so that outcomes can be held constant. While there are many intangibles on the input side of the education equation, we can at least measure whether money is being appropriately targeted to provide extra support to the students and schools who start out behind. By this score, we have yet to deliver on the promise of standards-based reform.

For standards and accountability to represent more than a hollow exhortation to "do better," education funds must be directed to the places where they are most needed. Changing how education funds are distributed presents political challenges, but isolated progress at every level of government demonstrates that these issues can be overcome. Education is too important to our identity as Americans – and who we aspire to be – to allow current funding inequities to persist.

Below are recommendations for each level of government.

Federal Government

- **Invest more in education.** Despite a 40 percent increase in Title I funding within three years of enacting *No Child Left Behind* (NCLB), the federal government still only provided 8.9 percent of public education funds in 2004. There is only so much equity that can be secured with 9 cents of every education dollar.
- **Target federal funds to high-poverty states.** Title I currently rewards states that spend more on education without regard to differences in state capacity, which compounds the disadvantage of living in a low-wealth state. Federal policy should distinguish among states based on their effort in education funding, and help to address differences in capacity.
- **Use federal funds more aggressively to force states and districts to disburse their own funds equitably.** State and local policy have to be aligned with the national goal of closing achievement gaps, or the relatively small amount of federal funds will represent mere drops in a leaky bucket. Congress could start by updating the "comparability" provisions in Title I, which allow states to ignore inequities in state/local funding in Title I schools.

State Governments

- **Take more responsibility for education funding.** As the constitutional guarantors of educational opportunity, states should ensure that public schools are funded adequately regardless of community wealth. Because the traditional role of local property taxes in funding local school districts inherently puts low-wealth and low property value communities at a disadvantage, states should rely more on statewide sources of revenue.
- **Target more funding to high-poverty districts.** Disbursing education dollars at the state level creates the opportunity for more equitable funding, but does not make equity inevitable. States need to assess the relative challenges across school districts and ensure that funding equitably addresses these challenges.
- **Set funding equity standards for school districts.** States have devolved authority for funding individual schools to school districts, but this cannot allow states to abdicate responsibility for ensuring equitable educational opportunities within districts.

Local School Districts

- **Publish transparent budget and allocation figures.** While the destination of federal and state funds is easily traceable at the school-district level, school district budgets remain opaque and expenditures are often not even tracked at the school level. The lack of transparency shields local spending patterns from scrutiny and provides cover for pervasive and indefensible inequality among schools within the very same school districts.
- **Examine contract and budgeting provisions that perpetuate inequality.** Most school districts have negotiated away their ability to use differential pay to attract and retain the best teachers in the hardest-to-staff schools. Along with salary-averaging budgeting practices, this helps concentrate the most highly paid teachers in the schools with the fewest low-income students and students of color.
- **Implement weighted student funding.** To make good on the promise of educating just about all students to a common standard, we have to identify students' needs and then allocate funds proportionate to those needs. School budgets currently are oriented to funding programs and staff allocations, without adequate differentiation based on student needs.

Pitched debates have been joined over whether it is possible for public education to educate all students to meaningful levels of academic proficiency. The truth is that we cannot know how much more is possible until we adjust our systems toward this goal. It would be a shame if the debates over what's possible in public education were resolved without addressing patent unfairness in education funding.

Appendix

Table 8: Percent Distribution of Elementary-Secondary Public School System Revenue by Source and State, 2003-2004

State	Federal	State	Local
Alabama	11.7	55.5	32.8
Alaska	19.4	54.9	25.7
Arizona	11.8	44.9	43.3
Arkansas	12.5	72.1	15.4
California	11.4	54.5	34.1
Colorado	6.7	43.7	49.6
Connecticut	5	35.3	59.7
Delaware	8.1	64	27.9
District of Columbia	15.4	-	84.6
Florida	10.1	44.4	45.6
Georgia	8.5	44.8	46.7
Hawaii	11.1	86.6	2.4
Idaho	10.2	58.2	31.6
Illinois	8.6	35.5	56
Indiana	6.4	49.6	44
Iowa	8.3	46.2	45.5
Kansas	7.8	51.4	40.8
Kentucky	11.8	57.8	30.4
Louisiana	13.8	48	38.2
Maine	8.9	40.7	50.4
Maryland	6.4	37.7	55.9
Massachusetts	6.5	39.8	53.6
Michigan	7.9	62	30
Minnesota	6	71.4	22.6
Mississippi	14.9	54.9	30.3
Missouri	7.9	44.2	47.9
Montana	15.2	44.4	40.4
Nebraska	9	32.8	58.2
Nevada	7.2	60.4	32.4
New Hampshire	5.6	45.8	48.6
New Jersey	4.3	42.4	53.3
New Mexico	17.2	69.7	13.1
New York	7.5	43.6	48.9
North Carolina	9.7	57.9	32.5
North Dakota	15.2	38.1	46.7
Ohio	6.9	43.9	49.2
Oklahoma	12.8	51.1	36.1
Oregon	9.1	52.7	38.2
Pennsylvania	8	35.9	56.1
Rhode Island	7.2	40.5	52.3
South Carolina	10.4	46	43.6
South Dakota	15.6	34.2	50.3
Tennessee	11	43.4	45.6
Texas	10.5	36.8	52.7
Utah	10	55.3	34.7
Vermont	8	68	23.9
Virginia	7	38.7	54.3
Washington	8.5	61.8	29.7
West Virginia	11.3	60	28.7
Wisconsin	6.1	52.2	41.7
Wyoming	9.9	52.1	38
USA	**8.9**	**47.1**	**43.9**

Notes: Some data appear under local sources for Hawaii's state-operated school system for consistency with data presented for all other school systems.

Source: Public Education Finances 2004. US Census Bureau, March 2006. Table 5.

Endnotes

[1] For disparities in access to teacher quality, see Peske, H., and Haycock, K. *Teaching Inequality: How Poor and Minority Students Are Shortchanged on Teacher Quality*; Education Trust, 2006. For disparities in access to challenging curriculum, see Barth, Patte, *A New Core Curriculum for All*, The Education Trust, 2003. Both reports are available under reports and publications at www.edtrust.org. The specific urls are (Peske and Haycock): http://www2.edtrust.org/NR/rdonlyres/010DBD9F-CED8-4D2B-9E0D-91B446746ED3/0/TQReportJune2006.pdf; and (Barth): http://www2.edtrust.org/NR/rdonlyres/26923A64-4266-444B-99ED-2A6D5F14061F/0/k16_winter2003.pdf. For an examination of disparity in facilities and capital improvements, see Filardo, Mary, et. al. *Growth and Disparities: A Decade of U.S. Public School Construction*, Building Educational Success Together (BEST), 2006, available at http://www.edfacilities.org/pubs/GrowthandDisparity.pdf.

[2] Almost every state's constitution creates an affirmative obligation to provide public education. See discussion in, for example, Thro, William E., "The Role of Language of the State Education Clauses in School Finance Litigation," *West's Education Law Reporter*, vol. 2 no. 2,1993.

[3] Non-supplantation language is common in federal education statutes; for an example, see Section 1120(A)(b)(1) of the No Child Left Behind Act, which says, "A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds."

[4] Local revenues include local property taxes used for school facilities, construction bonds, etc. For a more detailed explanation of the data sources and methodology used to generate the numbers used in the report, see the Technical Appendix, available as a separate document on The Education Trust web site, www.edtrust.org.

[5] The poverty rate in this analysis is defined as the percent of people ages 5 to 17 living in each school district with a household income below the federal poverty line, as estimated by the U.S. Census Bureau. In 2003, the poverty line for a family of four with two children was $18,660. http://www.census.gov/hhes/poverty/threshld/thresh03.html. It should be noted that this is a more restrictive definition of poverty than eligibility for the federal free or reduced-price lunch programs, which include students with income at or below 130 percent and 185 percent of the poverty line, respectively (Federal Register, Vol. 68, No. 49, Notices). Federal Title I funds are distributed to states and local districts on the basis of poverty. Districts often then use the free and reduced-price lunch programs to distribute Title I money to schools.

[6] Taylor, L.L., and Fowler, W.J., Jr. *A Comparable Wage Approach to Geographic Cost Adjustment* (NCES 2006-321), U.S. Department of Education. Washington, DC: National Center for Education Statistics, 2006.

[7] Chambers, Jay et al, *What Are We Spending on Special Education Services in the United States, 1999-2000?* American Institutes for Research, Center for Special Education Finance, 2002. For more information see the Technical Appendix, available at www.edtrust.org.

[8] Hawaii is excluded from inter-district funding analyses, as is the District of Columbia because each operates a single, state-wide school district.

[9] This national figure is not the same as the average of each state's funding gap. Rather, it is the difference between the aggregate cost-adjusted per-student funding level in the districts among all states with the highest proportion of low-income students compared to the per-student funding in the districts with the lowest proportion of low-income students across all the states.

[10] Race and poverty are often highly correlated, which is why many of the states with the largest poverty gaps also have similar gaps for minority students. However, this isn't always the case. High-poverty school districts in Washington state, for example, receive slightly more in state/local funding ($196 per-student), but high-minority districts get $87 less per-student than low-minority districts. In some states, the minority funding gap is much bigger -- up to three times bigger -- than the poverty funding gap.

[11] This means, for example, that if a state provides districts with $10,000 per non-low-income student, equity demands that the state provide at least $14,000 per low-income student.

[12] One of the criteria for states to receive Title I "Incentive Grants" under No Child Left Behind is whether states have distributed money "evenly." The definition of evenly includes a 40 percent differential for low-income children. *No Child Left Behind Act*, Section 1125(A), Education Finance Incentive Grant Program. Other studies also have used this 40 percent adjustment. See for example, *Inequalities in Public School District Revenues*, U.S. Department of Education, National Center for Education Statistics, 1998; *School Finance: Per Pupil Differences between Selected Inner City and Suburban Schools Varied by Metropolitan Area*, U.S. General Accounting Office, 2002.

[13] Hunter, Molly A., Maryland Enacts Modern, Standards-Based Education Finance System: Reforms Based on "Adequacy" Cost Study, National Access Network. See http://www.schoolfunding.info/resource_center/MDbrief.php3.

[14] For an analysis of Kentucky's progress, see *Gaining Ground: Hard Work and High Expectations for Kentucky's Schools*, The Prichard Committee for Academic Excellence, 1999. http://www.prichardcommittee.org/pubs/gground.pdf. For an analysis of Massachusetts's progress, see "Staying the Course," *Education Week*, January 5, 2006 at http://www.edweek.org/rc/articles/2004/10/15/qc-archive.html.

[15] Together with Kevin Carey, I plan to quantify how inequities from different levels of government add up for individual schools and their students in a forthcoming study.

[16] Roza, Marguerite, and Hill, Paul, *How Within-District Spending Inequities Help Some Schools to Fail*, Chapter from the 2004 Brookings Institute Papers on Education Policy (2004). http://www.crpe.org/pubs/pdf/InequitiesRozaHillchapter.pdf

[17] Roza, Guin, and Davis (forthcoming). *What is the sum of the parts?*, Center on Reinventing Public Education.

[18] Rose, Heather et al., *School Resources and Academic Standards in California: Lessons from the Schoolhouse*, Public Policy Institute of California, 2006. http://www.ppic.org/content/pubs/report/R_106HRR.pdf

[19] John Myers, "Some more equal than others." *Catalyst-Chicago*, 2005.

[20] Roza, Guin, and Davis (forthcoming).

[21] For a discussion of weighted student funding, including several case studies of districts that are implementing this policy, see Fund the Child: Tackling Inequity and Antiquity in School Finance, the Fordham Foundation, June, 2006, available online at: http://www.edexcellence.net/fundthechild/FundtheChild062706.pdf.

© The Education Trust, 2006

Data Analysis by Eli Pristoop

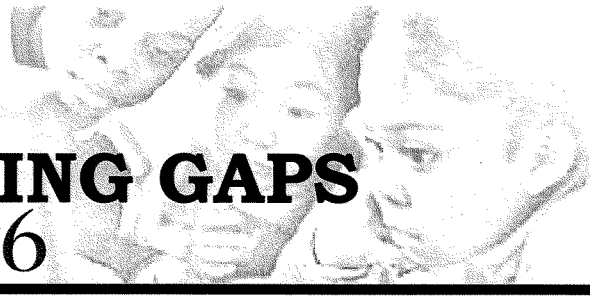
About the Education Trust



The Education Trust, Inc. was created to promote high academic achievement for all students, at all levels – pre-kindergarten through college. While we know that all schools and colleges could better serve their students, our work focuses on the schools and colleges most often left behind in plans to improve education: those serving African-American, Latino, Native American and low-income students.

The Education Trust works side-by-side with policymakers, parents, education professionals, community and business leaders—in cities and towns across the country—who are trying to transform their schools and colleges into institutions that genuinely serve all students. We also bring lessons learned in local communities back to Washington to help inform national policy debates.

202-293-1217 • 1250 H Street, NW • Suite 700 • Washington, DC 20005 • www.edtrust.org



The Education Trust

FUNDING GAPS 2006

Technical Appendix

How States Shortchange the Districts that Need the Most Help

The *Funding Gaps* report contains an analysis of disparities in funding between high- and low-poverty and high- and low-minority school districts. It is based on school district-level financial data collected by the U.S. Census Bureau and the U.S. Department of Education for the 2003–2004 school year, the latest year for which all the data are available. That data was supplemented with other school- and district-level data regarding student enrollment and child poverty, also collected by the Census Bureau and the Department of Education.

The scope of the analysis included estimates for 49 individual states and for the nation as a whole.[1] Vocational and special education systems were excluded from the study, as were supervisory or administrative districts (which usually serve multiple local districts). Also excluded from the study were federally and state-operated institutions, such as Department of Defense schools. The final database used in the analysis included 13,878 school districts enrolling approximately 47.7 million students.

Data Sources and Variables

The following is a list of data sources and individual variables used for each dataset required to perform this analysis. In addition, their designated abbreviations and Web site address are also included.

School District Financial Data: *Federal, State, and Local Governments, Public Elementary-Secondary Education Finance Data for Year 2004*, U.S. Census Bureau (often referred to as the "F-33" database). http://www.census.gov/govs/www/school.html

- State identification number (STATE)
- School level code (SCHLEV)
- NCES ID Code (NCESID)
- Fall membership, October 2003, FY 2004 (V33)
- Total revenue from state sources in thousands of dollars (TSTREV)
- Total revenue from local sources in thousands of dollars (TLOCREV)

School District Enrollment Data: *Common Core of Data (CCD), Local Education Agency (School District) Universe Survey Data, 2003-2004* National Center for Education Statistics (NCES). http://nces.ed.gov/ccd/pubagency.asp

- NCES Local Education Agency ID (LEAID)[2]
- NCES code for type of agency (TYPE03)
- Special Education – IEP students (SPECED03)[3]

School Enrollment Data: NCES, *Common Core of Data, Public Elementary/Secondary School Universe Survey Data for 2003-2004*. http://nces.ed.gov/ccd/pubschuniv.asp

- NCES Local Education Agency ID (LEAID)[4]
- American Indian / Alaskan Native students (AM03)
- Asian / Pacific Islander students (ASIAN03)
- Hispanic students (HISP03)
- Black, non Hispanic students (BLACK03)
- Total Ethnic (TOTETH03)[5]

NCES provides student enrollment data by race/ethnicity at the school level, but does not include it in its district-level enrollment files. For this analysis, minority enrollment at the district level was calculated as the sum of the minority enrollment in each school within the district.

School District Poverty Data: *Small Area Income and Poverty Estimates, School District Estimates for 2003*, U.S. Census Bureau. http://www.census.gov/hhes/www/saipe/district.html

- CCD District ID (CCDID)[6]
- Estimated population of children 5 to 17 years of age (CPOP517)
- Estimated population of poor children 5 to 17 years of age (CPOP517P)

Note: The number of low-income children in each school district changes from year to year. This can change the makeup of the districts designated as being in the "highest poverty" and "lowest poverty" quartiles for the purposes of conducting this analysis. This, in turn, can affect the funding gap calculations for that state.

Comparable Wage Index: *School District CWI and State CWI for 2003 NCES*, http://nces.ed.gov/edfin/prodsurv/data.asp

- NCES Agency ID (LEAID)[7]
- Comparable Wage Index for 2003 (CWI_2003) (from school district CWI file)
- Comparable Wage Index for 2003 (CWI_2003) (from State CWI file)

The Comparable Wage Index (CWI) was developed for the NCES by Dr. Lori Taylor of Texas A & M University and Dr. William Fowler of the NCES. The CWI uses baseline estimates from the 2000 census and annual data from the Occupational Employment Statistics (OES) survey of the Bureau of Labor Statistics (BLS) to generate labor market level comparable wages for college graduates who are non-educators, but similar to educators in terms of education level and age. The labor markets are then matched with local school districts to create a comparable wage index across all school districts in the United States. This cost adjustment makes it possible to compare the per-pupil funding of districts that must spend varying amounts to pay teachers and purchase educational materials.

In past years, The Funding Gap used the Cost of Education Index (CEI) for cost adjustments. This index was created by education researcher Jay Chambers, and was developed for the 1993-1994 school year based on data from the Schools and Staffing Survey (SASS) administered by the NCES. We have decided to use the CWI this year because it is based on more recent data and will be updated annually, but this change limits the comparability between the gap numbers in this year's report and prior reports. It should be noted that Professor Goodwin Liu used the Chambers index for the state fiscal capacity and effort table, Table 1 (See below for full citation).

Dataset Construction

To perform this analysis, data from each of the five datasets were merged into a single dataset. To calculate district-level data for minority student enrollment, school-level data were aggregated within each district. Once the datasets were merged, districts that did not meet certain criteria were eliminated from the study. Those included:

- Districts with no NCESID;
- Districts that received no state and local revenues;
- Districts that enrolled no students;
- Non-local school districts (TYPE03 values other than 1 or 2) , which excludes special state and federal districts serving special student populations, and regional or supervisory districts and;
- Districts with school levels other than elementary, secondary, or unified (SCHLEV values other than 1, 2, or 3). Excluded district types include vocational, special education, non-operating school system, and educational service agencies. These types often overlap with regular school districts, serving students from multiple districts.

Forty districts were missing data for the Comparable Wage Index. When this occurred, they were adjusted using the 2003 state CWI, which is a weighted average of the state's local wages. Twenty-three districts lacked updated 2003 poverty data. For these districts, the prior year's poverty rates were used. Additionally, Tennessee's race data were not available from the NCES for the year in question. Tennessee's race data were provided directly to The Education Trust by the Tennessee Department of Education's Office of the Deputy Commissioner. Finally, New York State's special education data were not available from the NCES for the 2003-2004 academic year. To determine a number, the percent of students with IEPs from each of New York's districts the prior year was multiplied by each district's enrollment numbers for the 2003-2004 school year to estimate the number of students with IEPs in each district in 2003-2004.

Funding Gap Calculations and Methodology

Once the data were assembled, the funding gaps were calculated as follows:

1) Calculate adjusted state and local revenue amount

Total state and local revenues for each school district are calculated as the sum of total state revenues (TSTREV) and total local revenues (TLOCREV).

This sum is adjusted for the district's Comparable Wage Index. Districts with average costs have a CWI equal to 1. Those with below-average costs have a CWI of less than 1, and those with above-average costs have a CWI of greater than 1. The adjusted state and local district revenues (ADJREV) are calculated by taking the total state and local revenues and dividing by the cost index:

ADJREV = (TSTREV + TLOCREV) / CWI

This increases the resources that are effectively available in districts with below-average CWIs, and decreases the resources that are effectively available in districts with above-average CWIs.

2) Calculate adjusted pupil count

The pupil count used in the calculation of revenues per student was adjusted for the additional costs of serving two groups of students: students with disabilities and students living in households with incomes below the federal poverty line.

To account for the additional cost of serving students with disabilities, the number of special education students with individual education plans (SPECED03) was multiplied by 1.9, reflecting the estimate that special education students cost, on average, 90 percent more to educate than non-special education students (individual costs vary widely, depending on the nature of the disability). This estimate is based on the recent study of special education spending, *What Are We Spending on Special Education Services in the United States, 1999-2000?* (Jay G. Chambers, Thomas B. Parrish, Jennifer J. Harr, American Institutes for Research, Center for Special Education Finance, September 2002).

To account for the additional cost of serving low-income students, the number of students living below the federal poverty line ($18,660 for a family of four in 2003) was multiplied by a cost factor that varied among different tables in the report. For Column 2 of Table 3, no adjustment for poverty was used. Column 3 uses a 40 percent cost adjustment. Column 3 of Table 4 also uses a 40 percent cost adjustment for low-income students (not for minority students). Adjustments for the cost of educating low-income students are widely used in academic studies of education funding, as well as in recent analyses performed by the U.S. Department of Education and the U.S. General Accounting Office. For a further discussion of the source and rationale for these adjustments, see the main body of the text and accompanying footnotes.

The adjusted pupil count for each school district is calculated as follows:

Where:

V33 = Total enrollment, all students

SPECED03 = Total special education enrollment

POV03 = Total low-income enrollment, calculated as the percent of students living below the poverty line (CPOP517P / CPOP517) multiplied by total enrollment (V33)

The adjusted pupil count (ADJPUPIL) equals:

V33 + (SPECED03 * 0.9) + (POV03 * (poverty adjustment))

In Column 2, Tables 3 and 4, the poverty adjustment is 0.

In Column 3, Tables 3 and 4, the poverty adjustment is 0.4.

3) Calculate the cost-adjusted funding per-pupil

After calculating the total adjusted state and local revenues using the Cost of Education Index, we take that amount (ADJREV) and divide it by the adjusted pupil count (ADJPUPIL) for each school district:

Adjusted revenues per student (ADRVPSTD) = ADJREV / ADJPUPIL

4) Identify the groups of districts with the highest and lowest percentages of low-income and minority students

To perform this calculation, we rank all the districts in a state from top to bottom in terms of the percent of low-income students (CPOP517P / CPOP517). We then divide the districts into four quartiles with approximately the same number of students in each group. For example, if a state had 1,000,000 students, each quartile would contain approximately 250,000 students. To identify the top quartile in this hypothetical state, begin with the highest poverty district and then move down the list, adding up the cumulative enrollment in the districts until the sum reaches 250,000. The student count in each quartile is not precisely the same, because each quartile group consists of whole school districts. In New York State, for example, one district -- New York City -- contains, by itself, significantly more than 25 percent of all students.

To calculate national funding gap amounts, this procedure was applied to all districts nationwide, including those in Hawaii and the District of Columbia, which were excluded from state-level analyses because they consist of one unified statewide school district.

To calculate minority funding gaps, the same procedure was used based on the percent of minority students within the district.[8] That amount was calculated as the sum of American Indian, Asian, Black, and Hispanic students, divided by total enrollment:

(AM03 + ASIAN03 + BLACK03 + HISP03) / DISTTOTETH03

4) Calculate average per-student revenues in the districts with the highest and lowest percentages of low-income students

Having identified the quartiles of students with the highest and lowest percentage of low-income students, the average per-student funding level of each quartile is calculated as the sum of district revenues within the quartile divided by the sum of district pupils within the quartile, or:

Σ (ADRVPSTD * V33) / Σ (V33)

This process was repeated for the quartiles of school districts with the highest and lowest percentage of minority students within each state.

Both the poverty and minority calculations were repeated for the United State as a whole. The national funding gap numbers in Tables 3 and 4 are not based on an average of the state funding gap amounts on those tables. Rather, they are based on creating four quartiles for all districts nationwide, including Hawaii and the District of Columbia, which are not included in the individual state analyses.

How the Federal Government Makes Rich States Richer

For a fuller analysis and a broader discussion of the issue of the way Title I dollars are distributed, see Goodwin Liu's full article, "Interstate Inequality in Educational Opportunity," *New York Law Review*, December 2006. http://www.law.nyu.edu/journals/lawreview/issues/index.html

It should be noted, however, that Professor Liu used slightly different weighting techniques for his analysis than those used elsewhere in the paper. To adjust for the cost of education in different geographical areas, Liu uses the state-level Geographic Cost of Education Index in Jay G. Chambers, Geographic Variations in Public Schools' Costs (NCES Working Paper No. 98-04, 1998) (table III-3). (In How States Shortchange the Districts that Need the Most Help, the district-level Comparable Wage Index is used. See full citation above.)

To adjust for the cost of educating different kinds of students, Professor Liu uses 1.9 for students with disabilities, 1.6 for students in poverty, and 1.2 for English-language learners. (In How States Shortchange the Districts that Need the Most Help, the pupil weights are 1.9 for students with disabilities, 1.4 for students in poverty, and no adjustment for English-language learners.)

How Districts Shortchange Low-Income and Minority Students

For technical citations and more information on the within-district funding inequities examined by Marguerite Roza, see the following research reports and working papers from the Center on Reinventing Public Education at the University of Washington (http://www.crpe.org/):

Roza, Marguerite, *District fiscal practices and their effect on school spending*, Center on Reinventing Public Education, 2005. http://www.crpe.org/workingpapers/pdf/Roza_AspenInstitute.pdf

Roza, Marguerite, and Hill, Paul, *How Within-District Spending Inequities Help Some Schools to Fail*, Chapter from the 2004 Brookings Institute Papers on Education Policy, 2004. http://www.crpe.org/pubs/pdf/InequitiesRozaHillchapter.pdf

Roza, Marguerite with Hawley Miles, Karen, *A New Look at Inequities in School Funding: A Presentation on the Resource Variations Within Districts*, Center on Reinventing Public Education, 2002. http://www.crpe.org/pubs/pdf/report_schoolfundingweb.pdf

Roza, Marguerite, with Miller, Larry, and Hill, Paul, *Strengthening Title I to Help High-Poverty Schools: How Title I Funds Fit Into District Allocation Patterns*, Center on Reinventing Public Education, 2005. http://www.crpe.org/workingpapers/pdf/TitleI_reportWeb.pdf

Endnotes

1. Hawaii and the District of Columbia were excluded from the analysis because each operates a single school district, making inter-district comparisons impossible. However, they were included as individual districts when studying inter-district funding gaps across the entire United States.
2. This is the same value as the "NCESID" in the F-33 dataset.
3. IEP refers to an "Individualized Education Program" – a personalized, written instructional plan for students with disabilities designated as special education students under the federal Individuals with Disabilities Education Act (IDEA).
4. This is the same value as the "NCESID" in the F-33 dataset.
5. Total Ethnic is the sum of Black Non Hispanic, White Non Hispanic, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native students.
6. This is the same number as the NCESID in the F-33 dataset, and the LEAID in the district and school universe datasets.
7. Also the same as NCESID, LEAID, and CCDID.
8. In past years, the denominator for the percent minority calculation was the V33. The V33 is the total district enrollment number from the census bureau, and the DISTOTETH03 is the total number of students in a district that NCES has race data for. In approximately 200 of the 13,878 districts we analyzed, the difference between V33 and DISTOTETH03 was more than 10% of the V33. Therefore, this year, we chose to use DISTOTETH03 as our denominator, and base our percent minority calculation solely on students for which race data was available.

FEATURE

Community Colleges: Critical Partners in National and Community Service

by Goodwin Liu

We are at a ground-breaking moment in our contemporary history. It is not often that we have an opportunity to galvanize the American people around a cause that is so deeply rooted in our traditions and so vital to the future of this nation. Some of you may have heard the President's speech at the national service bill-signing ceremony last September, in which he predicted that the American people, "if organized, if challenged, if directed, if asked," will stand and answer the call to service. Our charge is to show that his prediction was right.

Let me start by introducing the Corporation for National and Community Service. The Corporation is a new federal agency brought into existence by the National and Community Service Trust Act, which President Clinton signed last year. The organization is a merger of the ACTION agency, which runs the VISTA and older American volunteer programs, and the former Commission on National and Community Service, which administered grants under a 1990 national service law. The Corporation also has a new branch, the National Civilian Community Corps, which is a federally run, residential youth corps that will combine the best traditions of military and civilian service. We are a start-up organization, and we are moving at breakneck speed in implementing the new national service legislation.

The Corporation's newest efforts are the grant programs. These are built upon a philosophy of partnership between the Corporation and all of you—the States, nonprofits, and institutions of higher education. In this partnership, the Corporation will set standards for high quality, establish national priorities to align our efforts, and provide the funding and technical assistance you need. All of you—our partners—will identify needs in your communities, design the appropriate, creative solutions, and implement effective programs. These are the roles we envision in this partnership. We want to link our national leadership with your local expertise. We want to combine flexibility with accountability. We want to "steer more" while "rowing less." At the Corporation, we are serious about the idea of "reinventing government." We are trying hard to be a public corporation that is efficient, responsive, effective, and accountable to the taxpayers, to the Congress, to the programs we fund, and ultimately to the communities we are trying to improve.

The centerpiece of our grant-making efforts is the national service program, called AmeriCorps. The general design of AmeriCorps programs is simple. Participants will make a substantial commitment to service, and in exchange they will

Goodwin Liu is the senior program officer for higher education at the Corporation for National and Community Service. This article is adapted from a speech at the ACCT National Legislative Seminar, February 28, 1994.

receive an educational award of up to $4,725 to help pay for the cost of college. It embraces the age-old idea of linking responsibilities and rewards, obligations and opportunities. In the words of John Gardner, "Liberty and duty. Freedom and obligation. That's the deal."

This year the Corporation will award over $150 million and 20,000 educational awards to public agencies, nonprofits, institutions of higher education, and other eligible entities that create high-quality national service programs. Two-thirds of these funds will go to local programs through State Commissions on National and Community Service that are being formed in every state. The State Commissions will play a central role in our effort. Not only will they distribute the majority of AmeriCorps funds; they also will develop strategic plans for promoting national service within their states. Try calling your governor's office in order to contact your State Commission.

All the AmeriCorps programs we fund will be locally driven. But they also will contribute to three common impacts. First, all programs will "get things done." We made that our tag line because we want programs, first and foremost, to make direct and demonstrable impacts in the national priorities we've established in the areas of education, public safety, human needs, and the environment. Second, we want all programs to strengthen communities by bringing together diverse institutions and individuals into productive relationships that contribute to community problem-solving. This reflects one of the President's most fundamental beliefs about service—that it can be a common ground on which people can come together, affirm common values, and achieve a common purpose. Finally, all programs must develop the participants. We want participants to develop the motivation and skills they will need to commit themselves to a life of active, productive citizenship. Thirty years from now, we want the nation to hold AmeriCorps participants in the same high esteem as we now hold members of the Peace Corps.

Getting things done, strengthening communities, developing participants, that's our vision for AmeriCorps.

Having described the basics, I want to give you a better sense of why the Corporation sees community colleges as such critical partners in our efforts. College students across the country have been engaged in community service for many years. Indeed, during the past decade we have seen a resurgence of grassroots activity that helped catapult the issue of service onto the national agenda. Now we are asking institutions of higher education and their students to continue their leadership and involvement.

One reason why we are inviting community colleges to participate is that we want national service participants, including those who are college students, to reflect the diversity of America. And, we want the array of colleges involved to reflect the diversity of American higher education. Community colleges account for roughly half of the nation's institutions of higher education and an even greater percentage of the students who go to college. This population of students reflects the changing demographics of the nation's student body. As you are well aware, students with families, part-time students, students of various racial and ethnic minority groups, students who commute, and older, returning students are attending college in increasing proportions. This reality challenges us to stretch our creativity in structuring programs that enable all students to serve. Quite a challenge—but also quite an opportunity, for these students come to college with a wealth of "real world" experiences under their belts. They often come from the local community, they know the problems that exist, and they are motivated to address those problems. Simply put, community college students are some of the best resources we have for community problem-solving. And community colleges have the potential to create some of the most effective service programs in the country.

Another reason why we are encouraging community colleges to participate is quite simple: Incorporating service into the education and experiences of college students makes a great deal of sense. Of course, community service is a way to engage students in helping to meet community needs. But it also can be a vehicle for learning and growth. In fact, when community service programs occur within a strong educational framework, they are more likely to maximize their potential to affect positively both the communities and the participants involved.

I want to emphasize the importance of making deliberate efforts to link service with education. I want to make this point by sharing with you the often-told story of the college student who works at a soup kitchen for several months. She becomes a valued volunteer, and she helps hundreds of people who are homeless or hungry. At the end of her experience, she tells her supervisor, "You know, I had such a wonderful time working in the soup kitchen that I hope my kids and grandkids have a chance to do this someday!"

Clearly, one reason for encouraging students to do community service is to give them an opportunity not only to help people in need, but also to understand—and someday to remedy—the root causes of the problems they address through direct service. This simple anecdote powerfully illustrates why it is important for programs to integrate a structured educational component with the service activity, so that students can reflect critically on and learn from their experiences. This learning component is important not only for the students who do community service. It is also important for those of you working to institutionalize service in an educational setting. Service will not help students to understand our society and their role in it,

and service will not become institutionalized in higher education, until we make deliberate efforts to tap its educational potential.

Integrating service with academic curricula is one very powerful way to structure service experiences so that they simultaneously meet community needs and contribute to student learning. Let me offer some examples. If you are teaching students how to write, why not ask them to write not only for a grade, but also for a real audience? If you want them to understand the limitations of certain kinds of rhetoric, or the challenges in communicating an idea to the public, or the sensitivity of different audiences to diction and syntax, then students need opportunities to go beyond "The Essay"; to write in real contexts where the writing matters. Successful models have engaged students in writing newsletter articles for local nonprofits, in writing grant proposals for CBOs, in writing brochures for museums, in meeting a variety of other community needs for good writing. These activities can introduce students to the power, the difficulty, and the relevance of writing well.

If you are teaching students about social policy related to poverty, welfare, or homelessness, doesn't it make sense for students to know not only the levers of policy and economics, but also the root causes that precipitate poverty and homelessness in the richest nation on earth? Without an understanding of how policy affects individuals—from the perspective of those individuals—students are left to rely on textbook analyses of why some policies fail while others succeed, never grasping the human dimension of statistics and reports, never having an opportunity to test their preconceptions against reality, never informing their hypotheses with first-hand observations.

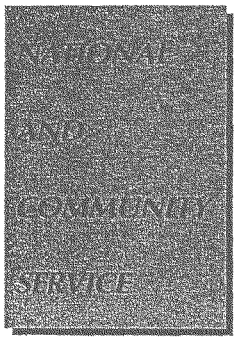
I'll give you one more example from my own field, philosophy. Even in this most classical discipline, service can be a vehicle for learning. Simple soup-kitchen service can raise some of the most excruciating moral and political issues. What if the soup runs out? What theory of distributive justice will the student use to allocate scarce resources in situations that matter more than a grade? Such circumstances are real; they are not contrived hypotheticals. And they can motivate and inform students in their moral reasoning in ways that reading the works of Kant, Hume, Mill, Rawls, and Walzer cannot.

I hope these examples begin to give you a sense of the learning objectives that service-learning can support. I should add that service-learning is aligned with another set of educational objectives that distinguishes it from other forms of experiential learning and that is equally important to the mission of higher education, and that is the broader aim of preparing students to be citizens and leaders in a 21st century democracy. A thriving democracy will require leadership that is developed not only through specialized training in the professions and disciplines. More importantly, it will require leadership developed through education that fosters real capacities to work in complex communities, to recognize diversity and use it as a resource in problem-solving, to negotiate relationships of power and inequity. We need leaders who are prepared to build community and work for the common good. Linking service with education can help.

I am sure that many of these themes resonate with all of you who are deeply committed to the purpose of community colleges. The notion of service taps into the civic dimension of the educational mission on which the nation's colleges and universities were founded. A commitment to service can renew and revitalize the mission of preparing students not only to pursue "the American dream" (i.e., material wealth), but also to preserve and shape our democratic civic culture.

There is a critical and fragile interdependence between education and democracy. Our nation's founders, notably Jefferson, recognized this connection, and today we are presented with an opportunity to strengthen it. The Corporation is turning to you for leadership in reminding all of the higher education community that colleges and universities have a civic dimension to their educational mission. This is something that you have long known and put into practice. Thirty years ago, community colleges made near-universal access to higher education a reality for students of all ages and backgrounds. In this young history there is a strong tradition of commitment to the community. Since your institutions were grown from the community, for the community, they help make the point that "community" does not refer simply to the homeless, the hungry, and the poor—to whom and for whom service is done. "Community" need not be defined in opposition to "campus." Indeed, the two are, or ought to be, one entity engaged in a mutual, ongoing enterprise of self-sustenance, advancement, and achievement of group purpose.

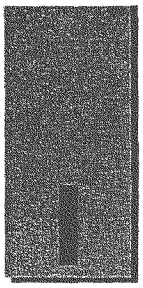
The involvement of community colleges in national service is a natural extension of institutional mission. Your institutions model the civic character that they seek to develop in their students through the educational process. It is for this reason that we ask community colleges to join us in our effort to "get things done" in communities across America. You are setting a first-rate example of what it means to be an educational institution inspired by civic purpose. You are showing us how the mission, welfare, and fate of the college and the community are integrated and unitary. And you are giving us an excellent point of reference as we call on your peers in higher education for participation, support, and leadership. ■



Roles for Higher Education

A Resource Guide

The Corporation for National and Community Service
1100 Vermont Avenue, N.W.
Washington, D.C. 20525
(202) 606-5000



Introduction

Thank you for your interest in the Corporation for National and Community Service's grant programs. Together with the AmeriCorps and Learn and Serve America: Higher Education grant applications, the Corporation's "Principles for High Quality National Service Programs," and the tape of the Corporation's videoconference called "National and Community Service: Roles for Higher Education," this resource guide should provide you with a clear understanding of the Corporation's purpose and programs. In this guide you will find the following

- National and Community Service: Opportunities for Higher Education
- Questions & Answers
- Campus-Based Programs: Tips for Proposal Development
- Service-Learning: An Overview
- Resource List
- State Commission Contacts

How to Obtain Applications and Other Materials

You may obtain copies of the AmeriCorps and Learn and Serve America applications and regulations, the "Principles for High-Quality National Service Programs," and this resource guide through Internet. You may obtain copies of applications and regulations also by U.S. mail or in the Federal Register.

Internet: Send a blank electronic mail message to cncs@ace.esusda.gov. There should be no text in the body of the message. An automatic response will be sent back to you with information on how to retrieve the information through electronic mail, gopher and anonymous file transfer protocol (ftp). You may also access Internet through an on-line (modem) service such as CompuServe or America On-Line. If you are unsure about your Internet capabilities, speak to the systems administrator or computer expert at your organization.

U.S. mail: To receive applications or regulations by mail, call (202) 606-4949. Indicate which application(s) you wish to receive.

Federal Register: Final regulations and final applications for the Corporation's programs will be published in the Federal Register. Consult the grants, development, or federal relations officer on your campus.

Acknowledgments

This resource guide is the product of the hard work of many people. Goodwin Liu and Suzanné Mintz wrote and edited the guide; Jina Sanone helped assemble resource materials; and Theresia Boland did the layout. Nathalie Augustin, Michael Camuñez, Sue Lehmann, Catherine Milton, Peg Rosenberry, Terry Russell, Shirley Sagawa, and Trish Thomson at the Corporation gave helpful feedback on several drafts. Barbara Baker, Debbie Cotton, Irene Fisher, Ellen Porter Honnet, Sally Migliore, Keith Morton, Kathleen Rice, Greig Stewart, Cesie Delve Scheuermann, Tim Stanton, Erin Swezey, Marie Troppe, Susan Wilson, and Allen Wutzdorff offered excellent comments that helped refine the

overview on service-learning. The U.S. Department of Education working group on national service provided useful questions and answers.

Originally, this resource guide was written to accompany the Corporation's live national videoconference, called "National and Community Service: Roles for Higher Education," which aired February 23, 1994. You may obtain a videotape of the broadcast by calling the Corporation at (202) 606-5000 ext. 117. The broadcast reached thousands of individuals at hundreds of institutions and organizations in the higher education community. Its purpose was to provide timely information about grant opportunities. The success of the videoconference, which catalyzed the development of this resource guide, was the result of the hard work and energy of many individuals.

First, the Corporation extends gratitude to the U.S. Department of Agriculture, whose staff produced the videoconference and provided excellent guidance throughout its development. Specifically, the Corporation acknowledges the effort and support of Joel Berg, Janet Poley, Tom Willis, and Barbara White.

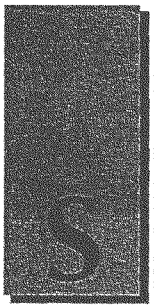
In addition, the Corporation appreciates the preliminary technical assistance provided by Joe Prince of the American Association of State Colleges and Universities and Bob Ward of the National Association of Student Personnel Administrators, who helped familiarize Corporation staff with videoconferencing.

Moreover, the Corporation thanks Deanna Durham of the Community of Hope in Washington, D.C. and Rolette Thomas of Hands On Atlanta for serving as panelists on the videoconference. Their insights and comments enriched the program.

The videoconference reached a large audience thanks to the help of over 30 higher education organizations and associations that assisted our outreach. The heavy turn-out also was a result of the work of many individuals who helped to identify host sites. They include Marsha Adler of the National Association of State Universities and Land Grant Colleges, Lyvier Conss of the Campus Compact Center for Community Colleges, Fleda Mask Jackson of the Campus Compact HBCU Network, Jeannie Kim of the California Campus Compact, Kevin Morse of New Hampshire Technical College, Kristin Parrish and Caroline Durham of the Campus Outreach Opportunities League, Dawn Pettit of the Cooperative Education Association, and Kathleen Welch and Michael Caudell-Feagan of the National Association for Public Interest Law.

Special thanks go to the more than 70 host site coordinators who promoted the videoconference, invited individuals from neighboring institutions and community-based agencies to their campuses, and facilitated discussions and workshops around the broadcast.

Finally, this project would not have succeeded without the able assistance and hard work of the following members of the Corporation staff : Diana Aldridge, Hugh Bailey, Rosa Harrison, Melinda Hudson, Goodwin Liu, Jessica Marshall, Catherine Milton, Suzanné Mintz, Ermette W. Purce, Jina Sanone, Ashton Sebrell, and Chuck Supple.



Service-Learning: An Overview

This overview provides an introduction to service-learning in higher education. It was written by Suzanné Mintz and Goodwin Liu at the Corporation, in consultation with several leaders in the field. It is neither a comprehensive review, nor a definitive voice from the Corporation. Nevertheless, the information in this section will provide readers – particularly newcomers to service-learning – with a general understanding of the concept. The Corporation encourages readers to review past and current literature in the field. See the resource list in this guide on pages 15-17.

Service-learning is a method and philosophy of experiential learning through which participants in community service meet community needs while developing their abilities for critical thinking and group problem-solving, their commitments and values, and the skills they need for effective citizenship. The core elements of service-learning are (1) service activities that help meet community needs that the community finds important, and (2) structured educational components that challenge participants to think critically about and learn from their experiences. Service activities give rise to learning opportunities, and what participants learn further informs their service. Indeed, service-learning is a continuous process of reciprocity that, when implemented with care and expertise, results in high-quality service in communities and personal and intellectual development among students.

Service experiences are naturally infused with periods of tension between participants' expected experience and their actual experience. When the tension is captured and explored, participants move toward new knowledge and understandings. These "teachable moments" challenge participants to probe, question, and grapple with their value systems, their preconceptions and stereotypes, and their academic learning. When encouraged and supported through guided reflection or academic study, the participants' attempts to resolve the tensions that arise during their service experiences sharpen their ability to reason, to think critically, and to be more effective and committed problem-solvers.

For example, consider a college student who volunteers to tutor a sixth-grader whose achievement in school has been low. Over time, the tutor develops a relationship with the student and learns about the conditions of her school and family life. A dynamic tension develops when the tutor tries to place his efforts in the context of the many factors that may be contributing to the student's poor grades. The tutor asks: Is my tutoring really making a difference? Is my tutoring just a band-aid if there are only limited resources at school or at home supporting her progress? Whom do I work with to better understand the situation? What skills do I need to be a better tutor? How do I stay motivated to continue tutoring? What forces in the community and society at-large affect the situation?

Service-Learning: A Definition*

Service-learning means a method under which students or participants learn and develop through active participation in thoughtfully organized service that: is conducted in and meets the needs of a community and is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; helps foster civic responsibility; is integrated into and enhances the academic curriculum of the students or the educational components of the community service program in which the participants are enrolled; and includes structured time for the students and participants to reflect on the service experience.

* National and Community Service Trust Act of 1993

When captured and explored through structured learning opportunities, the questions present great potential for developing the tutor's knowledge and understanding. For example, he might record his observations and examine his motivations for tutoring through structured journal-writing, led by a project supervisor who helps focus his questions and gives feedback on his writing. The tutoring program might incorporate regular discussions that allow him and his peers to share effective strategies, to unravel the moral, social, and political complexities of their work, and to think critically about how to improve the educational achievement of all the community's children. Or, he might do his tutoring as a part of a psychology class on models for teaching and learning, or a public policy course on school reform. In any case, the learning that occurs through a structured setting both informs and is informed by the tutoring experience. In the context of service-learning, the activities of service and learning are reciprocal, dynamic, and continuous.

In sum, like its cousins in experiential learning – cooperative education, internship, field experience, practicum – service-learning connects theory with practice and advocates active learning. What is distinctive about service-learning is that (1) the experiential component in service-learning addresses unmet community needs that the community finds important, and (2) the learning component intentionally fosters a sense of social responsibility, a commitment to the community, and skills for solving community problems. Service-learning brings the civic and educational missions of higher education into a powerful synergy that addresses community needs while enhancing education for participatory citizenship.

Program Options

No matter how they are designed, all college and university service-learning programs must engage participants in organized community service that provides direct, short- and long-term benefits to the community. In addition, they must provide participants with structured opportunities to reflect on and learn from their service experiences. Moreover, they should foster collaboration both within the institution and between the institution and the community. In this capacity, the resources of the institution contribute to the welfare of the community, and the community is a contributing partner in education. Programs should combine the talents and resources of faculty, students, administrators, community-based agencies, and individual community members in order to achieve the objectives of service-learning.

Service integrated with academic study. Curriculum-linked service-learning programs must ensure that the service activity is directly connected to the learning objectives of the course. The service activity must not be viewed as merely an adjunct activity, but rather as an activity that has academic merit and is an integral part of the course. Faculty should award academic credit for the learning from the service, not for the service activities themselves. Service-learning may be integrated into the curriculum in a number of ways. A new course may be developed that engages students in studying a pressing community issue and engaging in relevant community-based service. An existing course may incorporate a service component that supports the learning objectives of the course. An interdisciplinary major may involve students in on-going service activities throughout a number of its core courses.

Co-curricular programs. Service-learning programs that are part of a community service program must have an educational component. Educational components may take the form of a class for credit – for example, credit for a leadership course taught through student affairs. Alternatively, they may take the form of structured opportunities for participants to write about or discuss their experiences at regular intervals – for example, bi-monthly training and reflection seminars integrated with a student-run mentoring program. Like academic programs, co-curricular programs must establish learning objectives and demonstrate learning outcomes. Co-curricular programs should encourage students to approach their academic study with an enhanced ability to think critically and to make connections between their studies and the community and society in which they live.

A Historical Context

Higher education service-learning programs took hold as a result of the community action of the 1960s and early 1970s. The student activism of this period gave rise to student community service organizations, federal volunteer service programs, and an increased level of consciousness about social problems and issues. A core of experiential educators initiated a dialogue about the interplay between community service and student learning.

Shortly after this period, college and university community service programs experienced a decline. By the late 1970s and early 1980s, many community service programs were tucked away in remote offices on campuses. Reduced support for these programs stemmed from a variety of circumstances. They lacked connection with academics. They were vulnerable to shrinking budgets. They were too dependent upon the enthusiasm of a few key staff. They were not tied directly to the mission of the institution. They occurred amid unstable institution-community relationships.

The problems of this period were aggravated by student attitudes toward community involvement, the larger society's perceptions of students' commitments, and a general societal disengagement with addressing community needs. With an emphasis on gaining material rewards and securing jobs, many students did not associate community service with career success and personal satisfaction. Also, for many students their college experiences were filled with competing priorities and escalating costs. Without institutional support, community service fell low on the priority list.

The experiences from the previous two decades offered some important lessons:

- The community must be a partner in defining its needs.
- An educational component integrated with the service activity is necessary in order to foster student learning and to enhance the quality of service.
- Service-learning programs must be aligned with the educational mission and integrated into the everyday life of the institution in order to be sustained.

By the mid-1980s, the lessons learned enriched the dialogue among practitioners, students, and faculty. Toward the end of the decade, the evolving connection between service and study had cleared the way for the current service-learning movement.

Responses to the lessons learned came from all sectors. A new wave of student-initiated community service swept the nation, challenging the perceptions cast upon them. Faculty members and student affairs administrators developed educational models that supported service-learning.

Thoughts on Critical Reflection

Being creative with ways that encourage participants to think critically about their experiences will help capture their thoughts, ideas, concerns, and interests. Here are some suggestions:

- Writing: papers, journals, essays. Ask students to analyze their service experience through on-going writing assignments that connect the course material to the service experience.
- Issues series: lectures, readings. Develop a bi-monthly educational program that address issues affecting community change.
- Dialogues: among students, with community members, with faculty members. Enlist community members to lead discussions about the historical, philosophical, political, and sociological perspectives on various community and societal issues.
- Artistic activities: theater, music, poetry. Encourage students to express their experiences through creative methods.

Presidents of colleges and universities across the country asked their institutions to rededicate themselves to their civic and service missions. Practitioners developed principles for creating and implementing high-quality service-learning programs. Communities sought additional human and financial resources in a period of reduced social service assistance. National service re-entered the public policy agenda with vigor.

Since the late-1980s, service-learning has evolved from a little-known concept to a full-blown movement. The commitment and participation of students and practitioners, along with a recent increase in attention by college and university officials, has been an important asset in shaping the service-learning movement and elevating it to the national agenda. Passage of the National and Community Service Act of 1990 resulted in hundreds of federally funded service-learning programs across the country. Today, through both the K-12 and higher education components of the Learn and Serve America program, the Corporation for National and Community Service aims to promote service-learning by supporting efforts that meet community needs, that increase opportunities to develop committed citizens, that strengthen community partnerships, and that institutionalize service-learning policies and practices.

ACS Conference

Saturday, August 2nd, 2003

Session E: Segregation, Integration and Affirmative Action After Bollinger

Elaine Jones
President, NAACP Legal Defense & Education Fund

Christopher Landau
Kirkland & Ellis

Goodwin Liu
Professor of Law, University of California Berkeley

John Payton
Wilmer Cutler & Pickering,
Counsel for Michigan in Bollinger cases

Christopher Schroeder
Professor of Law, Duke University

Chris Schroeder, Introduction:

My name's Chris Schroeder and I'll be moderating this morning's panel, on segregation, integration, affirmative action, after the Bollinger decisions. These were the cases, among the trio prominently mentioned more than once yesterday, as being, among the pleasant surprises from this term of court. I think we're all familiar with the basics of the University of Michigan was challenged in its admission practices, both in the undergraduate college, and in the law school. Both cases went to the Supreme Court together, and were decided in a pair of opinions called Grutter and Gratz.

The undergraduate program, which had several permutations in the record, the most recent of which was the focus of Chief Justice Rehnqist's opinion, involved a "pleat" allocation system for admissions into the undergraduate college, in which the total score was materially determined in the case of minority applicants by an award of 20 points, bonus points for minority status. And the chief found in the undergraduate case that distribution - automatic distribution of 20 points was, in his words, having the effect of making the factor of race decisive for virtually every minority qualified under-represented...for every minimally qualified, under-represented minority applicant. And in a 6-3 decision the undergraduate program was invalidated.

The admissions for the law school fared better and was upheld in a 5-4 decision with chief Justice O'Connor writing the majority opinion. The distinguishing characteristic focused on by Justice O'Connor, between the two programs, rests in the fact that there was no quantitative explicit allocation of weight to the factor of race in the law school program, but rather an individualized holistic assessment of each application.

That, coupled with her determination that the goal of educational diversity in higher education was a compelling government interest, enabled her to find, even applying the strict scrutiny standard to the admissions program, that the law school program was a narrowly tailored effort to advance the compelling interest of diversity in higher education.

There are many remarkable aspects of Justice O'Connor's decision, and many questions to be raised about how one navigates the shoals of affirmative action in admissions after these two cases. That said, there was a tremendous sigh of relief among the advocates for affirmative action - admissions officers, administrators and presidents of universities all over the country who have been engaged in efforts to define careful and genuine efforts to improve the representation of disadvantaged individuals in higher education ever since the Bacchi decision in 1978, in Justice Powell's opinion appeared to have authorized exactly the kind of program that the University of Michigan Law School was following. And Justice O'Connor's opinion was a ringing endorsement of Justice Powell's 1978 opinion where he stood alone in the middle of a 4-1-4 court.

But we have a distinguished group here today to discuss some of the implications, ramifications, and internal aspects perhaps, of these two decisions. The University of Michigan is busily implementing a law school like admissions process for its undergraduate program right now in an effort to bring that program, which was invalidated in the compliance with the law school decision, as are universities all over the country.

There are also a number of follow-on questions of great weight and interest as to what the implications of the case are, both for other aspects of higher education such as minority directed scholarships and for the role that diversity based arguments might play in other areas of society, where there's an interest in some program of affirmative action.

So, with that brief background for the few of you who may not have looked at the cases yet, let me give you an even briefer introduction of our distinguished panel. There's a long form introduction and a short form introduction. We have such a distinguished group, the long form would take much too long. So, I'm going to direct your attention to the program for further information about each of our panelists. And we'll just introduce them briefly.

To my immediate right, is Chris Landau, who's a partner and litigator at Kirkland and Ellis. Has been there for 11 years?

Christopher Landau:

Yes.

Christopher Schroeder:

With much reference made yesterday to the judicial philosophy and style of Justices Scalia and Thomas, Chris is clerk for both of those individuals. So, we have someone you can talk to about where the representations that were made yesterday ring true to him.

To his immediate right, John Payton, who litigated both of these cases in the lower courts and argued the undergraduate case in the Supreme Court.

And to his right, Goodwin Liu, who is taking up residence almost as we speak at the University of California at Berkeley as an entering Professor of

Law there. And has written on the affirmative action question as well as other education related issues. And clerk for Justice Ginsburg.

So, with those very brief opening remarks and even briefer introductions...let me turn it over to the panel. We are gonna try to limit opening remarks to the 5-6 minute range. I'll then give folks who feel particularly agitated by something that's been said a chance to respond. And then, we'll move as quickly as possible to questions and general discussions involving the audience.

John Payton:

Thanks a lot Chris. I told Chris that I wanted to go first so I could put this in some larger context. And I think this case deserves the larger context. The Michigan cases, Grutter and Gratz, are big decisions. And while the details are clearly very important, and we'll get to those...I'm gonna look at the larger significance of the cases before we turn to the details.

Here's my view of the larger significance. It's been a very, very long time, since we've had a decision from the Supreme Court on race that was characterized as optimistic. Brown versus Board of Education, many of us know, was viewed as optimistic. But that optimism, I would say, quickly receded in the face of massive resistance: bussing, re-segregation, Milliken. **Freeman vs. Kurtz, Zurich vs. Jenkins**. Many of you know the rest of that litany.

Justice Powell's decision in Bacchi, which is midpoint between Brown and the Michigan cases, was clearly optimistic. There's a quote that I use from that. I used it in the oral argument in Gratz. "It's not too much to say", this is Justice Powell.... "It's not too much say, that the nation's future depends upon leaders trained through wide exposure to the ideas, and mores of students as diverse as this nation of many peoples."

That's the quote I used in the Supreme Courts. Clearly very optimisitic. And if there is any doubt about it, when he announced the decision in Bacchi from the bench, Justice Powell made it quite clear that he was inviting colleges and universities to seek that diversity for that purpose.

But, as we all know and as Chris just said, his optimism, while undeniable, was on behalf of one justice, the 4-1-4. And was seen in the context of the

rejection of the court of a remedial justification, for the use of race in admissions. And equally important, many opponents, and even supporters of affirmative action, remained unconvinced of the correctness, the truth of what Justice Powell said; that is encapsulated in that quote I just used. They doubted that having a diverse student body had educationally, important significance. They doubted that in the sense that it was important to the future of our country, on those grounds. In short, a lot of people, opponents and supporters, thought that Justice Powell was literally "making it up." And that there was just, you know, sort of a ruse, to let colleges and universities go on doing what they were doing before.

Well, I think in putting together the defense in the Michigan cases, we supplied an overwhelming case of expert testimony and evidence. That, in fact and in truth, Justice Powell was right. Our experts established the enormous educational benefits of diversity. In fact, the plaintiffs conceded those educational benefits. They argued about whether or not they were sufficient to constitute a compelling interest. But, they conceded the educational benefits.

Other colleges and universities agreed with our experts. A whole range of professional organizations including the A.B.A., filed amicus briefs on our side. Major corporations filed amicus briefs on our side, saying that it mattered to their future ability to function in the global marketplace. Students themselves, filed amicus briefs on our side; even the military agreed with us about the value of a racially and ethnically diverse student body. We had unprecedented amici key support.

In her opinion in Grutter, Justice O'Connor reviews Justice Powell's opinion in Bacchi in considerable detail. She devotes almost three pages to Justice Powell's opinion. The quote I've used, the one I like so much, the one I used at the argument, she also used. But, she changed the lead in. She drops the, "it's not too much to say", which is how Justice Powell wrote that. And she replaces the lead in, and gives the quote as follows, so instead of, it's not too much to say, this is Justice O'Connor, "Justice Powell emphasized that nothing less than the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this nation of many peoples." "Nothing less than the nation's future." That's her change. "Something we can and indeed must do, for the nation's future."

Justice O'Connor ends her discussion of Justice Powell's opinion by noting the dispute about whether or not, if Justice Powell's opinion in Bacchi, should be considered binding. And then concludes that the court need not reach that issue because, "For the reasons set out below, today we endorse Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions.

She refers to, and defers to the University of Michigan's educational judgment that, "Such diversity is essential to it's educational mission." She describes educational benefits that were talked about as substantial. She cites the expert reports that were entered into evidence at the trial. She refers to, in detail the amici and she notes that they bolstered the compelling interest. "These benefits are not theoretical, but real," she says. As major American businesses have made clear. And she refers to the military amici in some detail.

Finally, she places all of this in the context of the "overriding importance of preparing students for work and citizenship, as pivotal, pivotal to maintaining the fabric of society." Justice O'Connor then says this, "Effective participation by members of all racial and ethnic groups, in the civic life of the nation, is essential if the dream of one nation, indivisible, is to be realized."

That echoes Powell, obviously. And in case the point was missed, she restated it, immediately thereafter using the word legitimacy. "In order to cultivate a set of leaders with legitimacy, in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals, of every race and ethnicity."

In **Watts,** Chief Justice Rehnquist incorporates this entire section on the compelling interest of diversity - the entire section. So, it's true they come out differently, in the application and the narrow tailoring. On the compelling interest, they are exactly the same. Pages 15-21 are incorporated. We have had major problems relating to race. They're confounding to us. But in this area, higher education, we've learned that having a diverse student body makes us a better country. This is something we can and must do. This is optimistic. And, in issues of race, optimism and competence, the belief that we can solve a problem, are crucial. These are optimistic decisions on race. And that ought to prompt all of us to turn to the underlying problems that still afflict our country.

Applause

Goodwin Liu:

Good morning. I want to first of all thank the organizers of A.C.S. for inviting me to participate in this panel. And first, and most important thing I can say about the Grutter and the Gratz cases is really a thank you to John, and to Elaine, who's not with us. But also to, Maureen Mahoney, and all the other advocates who litigated these cases. It is really hard, I think, to overstate, the value and consequences that were at stake. And I think we all owe a tremendous debt of gratitude to the lawyers who lent their personal prestige, and talent to that effort. So, thank you, John.

Applause

Goodwin Liu:

Thank you to the brilliant lawyers…

Person in crowd, (John?):

No. More, more!

Laughter

Goodwin Liu:

There's a lot to say about the Michigan cases, and I hope the 9am wake up call doesn't foreclose some active and vibrant discussion among us all here in the room. Let me confine my prepared remarks this morning to just one aspect of these cases. And it has to do with the current state of Equal Protection Law. And in particular, it has to do with the idea of remedying societal discrimination, as a justification for affirmative action.

Now, as everyone knows, the key question in the Michigan cases was whether educational diversity is a compelling interest. And, thanks to John and Maureen, and others, we can now say, without legal ambiguity that the answer is yes. And, John laid out for us the very persuasive case I think, that

learning and living in a diverse environment is essential to good citizenship in a multi-racial, multi-ethnic world.

I certainly agree with the diversity rational. But, the fundamental nature of the rational is essentially pragmatic. That is to say that, it treats diversity as a functional asset...in education, in business, in the military. And what is missing from the argument, I think, is a notion of remedial justice. That is, an acknowledgment that present-day educational disadvantage of minority groups is traceable to historical discrimination.

I think many of you will agree that, this continues, I think, to be the most compelling moral basis for affirmative action.

You all remember Lyndon Johnson's quote in 1965, "You do not take a person who, for years, has been hobbled by chains, and liberate him, and bring him up to the starting line of life, and then say, 'you're free to compete with all the others' and still justly believe that you've been completely fair."

Indeed, I think our troubled history of racial discrimination in this country is what imbues the diversity argument with moral **authority.** After all, it's the ideas and perspectives that minority students bring to their classrooms and dormitories that are inexorably entwined where their experiences confronting the effects of social hierarchies that historically limited their educational potential, and their very person-hood.

Well, this argument was not aired in the University in the Michigan cases, and obviously it's not because John didn't think of it, but because there's precedent for closing it. After **Crosson and after Aderange,** the coll-law textbooks tell us that remedial motives for affirmative action are permissible only where the policy is remedying an institution's own discrimination, and not society's. But, of course, it's very difficult in practice to trace the effects of specific acts of discrimination and institutions, in any event have very little incentive to admit their prior wrongdoing. So, practically speaking, what this means is that, remedial justice rarely provides a legal basis for affirmative action. Even though, I think it is still the most powerful moral basis for affirmative action.

So, this divergence, I think between law, and our moral intuitions, is a troubling indicator of how far distorted equal protection doctrine has become. But, what I want to urge today, is that we shouldn't abandon the

notion of remedying societal discrimination as a dead letter, either in law, or public debate. Indeed, we shouldn't concede what is on the books now as some sort of neutral baseline of the perceived wisdom. Instead, I think we need to push back on to where the law went wrong. In fact, I would argue that if you look closely at the doctrinal evolution in that area, the issue is really not as settled as it seems.

The rejection of societal discrimination as a basis for affirmative action is commonly traced to Justice Powell's opinion in **Bacchi**. And, it's true, and sometimes forgotten, that Justice Powell articulated the diversity rational only after rejecting a broader remedial rational. But, like the diversity rational, Justice Powell's view that remedying societal discrimination is not a compelling interest, was a view that was his alone in **Bacchi.**

The four Justices to the left of Powell obviously believed that societal discrimination was an adequate predicate for affirmative action, and the four to the right didn't address it all. Indeed, this part of Justice Powell's opinion seems especially unpersuasive when it was written. Remember **Bacchi** dealt with minority students who applied to medical school in the early 1970s. Which meant that they'd attended elementary and secondary school during the late 1950s and 1960s, when many K-12 schools were blatantly resistant to desegregation.

For a university system like California's, which drew students, which continues to draw students from across the state, and all across the nation, remedying societal discrimination was about as compelling an interest as one could have imagined. The classic statement of that position is found in the government's brief, in **Bacchi.** It says, "if an institution were limited to rectifying only its own discrimination, the consequences of discrimination that spilled over from the discriminator to society at large would be irreparable. And the victims of discrimination would be doomed to suffer its consequences without even the prospect of voluntary assistance."

Now think for a second about the import of that reasoning for a state like Michigan, when a line between societal and governmental discrimination has been blurred beyond recognition, ever since the Supreme Court refused to order a full remedy for segregation in Detroit public schools, out of deference to suburban districts, whose boundaries, whose very boundaries, exist, by grace of the state.

The idea of the legal significance, rather, of societal discrimination, remained a live issue at the court for a decade after Bacchi. One year after that decision, five justices in the steelworker's case upheld, under Title VII, a race conscious hiring policy, used by a private employer to "abolish traditional patterns of racial segregation and hierarchy." And one year after the steelworker's case, the **court in Fullove** upheld a racial set-aside at Federal contracting intended to remedy the affects of past inequities stemming from racial prejudice.

Six years after that, four justices in **Weigand,** said that a desire to remedy societal discrimination could not justify laying off a white teacher with greater seniority, in order to maintain a certain percentage of minority teachers. But, the very next year, in Johnson vs. Santa Clara County, six Justices voted to uphold, under Title VII, a race conscious promotion policy, rather a gender conscious promotion policy, used by a public agency, to remedy-manifest gender imbalances in its workforce.

It was really not until **Crosson** in 1989, that five Justices on the court squarely held that remedying societal discrimination is not a compelling interest. And that a viable remedial rational must be based on strong evidence of present affects of particularized discrimination. But, even in **Crosson,** Justice O'Connor left the door slightly ajar, saying that "a state or local subdivision has the authority to eradicate the affects of private discrimination within in its own legislative jurisdiction, as long as it identifies those private, those effects, with some particularity."

And now comes Grutter. Which holds that educational diversity is a compelling interest. But, listen again, in this context, to the language that John offered you, from Justice O'Connor's opinion. She writes, "Because education is the very foundation of good citizenship," quoting Brown, "the diffusion of knowledge, and opportunity through public institutions of higher education must be accessible to all individuals, regardless of race or ethnicity. In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that a path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. Effective participation by members of all racial and ethnic groups, and the civic life of our nation, is essential if the dream of one nation, indivisible is to be realized." This is not the narrow language of functional, educational diversity. This is the language of equal access. It is the language of equal opportunity. It is remarkably a vision of a just society with no racial castes.

Now, how much of this language will stick, and what work it will actually do in the future remains to be seen. But my point today is just that we must continue to keep the idea of remedying societal discrimination alive in public and legal debate, and not treat it as a dead letter. Rest assured, that opponents of diversity do not regard the 5-4 decision in Grutter as a permanent fixture of American constitutional law. Why should we regard the 5-4 decision in **Crosson** any differently? And even if **Crosson** does remain the law, it doesn't mean that the need to remedy societal discrimination has no influence in law and policy.

In fact, it's very hard to fathom what else Justice O'Connor could have been referring to when she expressed her hope that affirmative action will not be necessary 25 years from now. Diversity, as critics often note, contains no inherent aspiration for an end to race consciousness. Instead, it's the recognition that affirmative action provides an imperfect substitute for genuine equality of opportunity. That is, an imperfect substitute for a complete leveling of the playing field that motivates the hope that affirmative action will someday end.

And finally, to those who say that remedying societal discrimination is such a vast ambition, that it has no foreseeable endpoint, I would borrow a quote from Justice Brennan, who once wrote that, "taken on its face, such a statement seems to suggest a fear of too much justice." In the 227-year history of our country, racial minorities have enjoyed equal dignity under the law for only 49 years. Half of that time was spent building public acceptance of that basic constitutional principle.

Black students at elite colleges remain three times less likely than whites to come from high-income families, in which at least one parent graduated from college. And racial gaps in educational opportunity persist even after you control for parental income and education, because of negative stereotypes, and racial disparities in accumulated wealth.

And if it seems like the cumulative affects of societal discrimination will take a long time to remedy, that is because it will. It is this quest for racial justice, a quest that has I think, really only just begun, that we must continue to emphasize and articulate to the American public, the need to remedy societal discrimination. Even if, and indeed especially if, the Supreme Court will not.

Thank you very much.

Applause

Christopher Landau:

Good morning, my name is Chris Landau, and I am the sacrificial lamb here this morning.

Laughter

But, I am delighted to be here. I think it's really terrific, and very important for the country to have a dialogue on these issues. And to have people with opposing and differing viewpoints on these fundamental issues come together, and be able to discuss these kinds of issues in a civil fashion. And I don't expect, necessarily, to get applause, and the warm welcome, that my distinguished colleagues had. But, I really am honored, to be here, to have been invited to this distinguished gathering, and to be on this terrific panel.

This morning I just wanted to share with you a few thoughts on the Gratz and Grutter cases, that come from a somewhat different perspective than the ones that we have just heard so eloquently put forth. It strikes me in reading the cases, and I am at a disadvantage, certainly, compared to John Payton, who knows the record intimately. And I must say, I am somewhat apprehensive that he will jump up at any minute and say, "No, What you just said is inconsistent with page 264 of the joint appendix."

Laughter

Christopher Landau:

So, if there any factual…

John Payton:

???

Christopher Landau:

Right, if there are any factual findings that I'm contradicting, I definitely defer to John Payton who knows the record inside and out.

It strikes me, in reading these two important cases that there really are two coherent constitutional positions in this area. The first is what I call the Scalia-Thomas position, that racial classifications under the Constitution are virtually, per se, impermissible. They're subject to strict scrutiny, and that means what it says; that, only in the most compelling circumstances are such classifications tolerated. And it doesn't matter under this view, whether the classification is deemed benevolent to the racial group at issue, or malevolent. So, under this view, Brown versus Board of Education is to be analyzed, for the constitutional perspective, no differently than Bacchi, or Grutter, or Gratz.

And, I have the sense that most of you in this room will immediately react and say, "Well, that's absurd. Those are totally different kinds of cases." But, I think you have to agree that there is at least a logical coherence to that view, whether it's right or wrong, that all racial classifications are the same. And, in the eyes of the Constitution, they are completely, and per se, or virtually per se, impermissible; subject only to strict scrutiny.

So that the upshot of that particular view is that the Constitution singles out basically this one distinction among all others that universities, public universities cannot consider. So that a university can therefore consider whether somebody is a terrific athlete, or the president of their high school coin club, or a wonderful bassoon player, but cannot consider that person's race. And, given the importance that race has taken on in our contemporary society, and has in our history, I think that would strike a lot of people as somewhat odd, or unrealistic perspective. But again, that's the perspective that the Constitution basically removes this one classification from those that are permissible for pubic universities to look at.

The other perspective that I think works as a coherent view of the Constitution is what I'll call the Ginsburg-Souter perspective. Which is that, effectively, racial classifications should be subject to a lesser scrutiny when motivated by policies of inclusion rather than exclusion. And I think Justice Ginsburg sets forth that view essentially in her dissent in the Gratz Case. Where she cites Goodwin among other authorities. And, her point there, when she says very explicitly, is that Brown versus Board of Education is an

entirely different kettle of fish than Bacchi. And, to review them under the same legal standard really doesn't make any sense.

And so, even though Justice Ginsburg joins Justice O'Connor's, and Justice Souter joins Justice O'Connor's majority opinion in Grutter, I think effectively, they are not there in terms of strict scrutiny. I think what they are adopting is a relaxed form of scrutiny for what they view as policies of inclusion rather than exclusion.

What we get though in Grutter and Gratz, is this kind of mixed double-header, that strikes me at least as somewhat untenable as an ongoing constitutional principle, and troubling. It's kind of a mix of both of those views that I just discussed. Racial classifications are defined as virtually, per se, impermissible in the opinion and certainly subject to strict scrutiny. But then the court goes on to recognize diversity as a compelling interest, governmental interest, that will satisfy strict scrutiny.

And I guess my point today is that that approach seems to me to be somewhat at war with itself. Because the whole point of the strict scrutiny, it seems to me, is that racial classifications should be wholly irrelevant. That the Constitution is color-blind, and that these kinds of distinctions are impermissible if you really take that at its face value.

Whereas, as it seems to me, the premise of diversity is really the opposite, which is that race matters, that it's appropriate, and indeed important and compelling, to take race into account. It just seems to me that logically, that is inconsistent with the whole thinking, underlying strict scrutiny, which is that essentially race should not matter, and that in fact it is not a legitimate consideration for the governments to get into.

So, I guess it strikes me that where we are now is essentially a strange place in constitutional law. Because the diversity rational, it seems to me, and I think this is really something that the previous speakers don't necessarily disagree with – the limits on the diversity rational are really quite broad. I'm not even sure there are limits on the diversity rational, in the sense that if it is indeed a compelling interest to have a racial mix in an institution, it's not clear to me at least, why you need narrow tailoring then to satisfy that. Why the government shouldn't be able to go ahead, and even impose a straight quota if that's what is necessary, or if that meets the rational?

The idea that somehow diversity is bringing different, substantive voices to the table, strikes me at least, as something that is in tension with the entire strict scrutiny analysis. And in fact I think the Court is in a strange position in the Grutter case. Because the Court nowhere says specifically that having minority voices specifically brings a substantively diverse viewpoint. In other words, that there is something identifiable as a substantive minority viewpoint. Whereas, there well may be for coin collectors, or athletes.

In fact, it was interesting, and again John knows the record here, but the Court says on page seven of the Grutter opinion, that Michigan really said precisely the opposite – that they weren't promoting diversity, because there's such a thing as a minority viewpoint, but really the opposite.

I'm quoting here from one of the experts in the Michigan case, that's quoted on page seven, "When a critical mass of under-represented minority students is present, racial stereotypes lose their force. Because non-minority students learn that there is no minority viewpoint, but rather a variety of viewpoints among minority students." So, that strikes me, at least, as kind of an odd diversity rational, because it's really saying, we need diversity to show that there's substant...we need diversity of color in the classroom to show the pluralism, among people of color, not necessarily because there is a viewpoint of people of color that is necessary.

And that's really what Justice Thomas, I think, picked up on in his dissent, saying that this is really more a question of aesthetics rather than substantive diversity. So again, it seems to me at least, that the Court is somewhat at war itself, or not at peace on the fundamental question, whether or not, having racial minorities brings a substantively diverse view and whether that's an assumption that the Constitution tolerates. Because I think the danger obviously is that it falls back into racial stereotyping. That there is a minority point of view on something, and does seems inconsistent with the general idea that race shouldn't matter under the Constitution.

In terms of the narrow tailoring - I guess I thought that's obviously going to be the real focus of cases from here on out now that the "diversity is the compelling interest" has been satisfied. Obviously, the future of litigation is going to really turn on whether particular policies are more like Gratz, or more like Grutter. And, whether the narrow tailoring is satisfied.

And, my reaction reading the decisions is that in a sense, Souter has it right in his dissent, in Gratz, where he says, "The very nature of a college's permissible practice of awarding value to racial diversity, means that race must be considered in a way that increases some applicant's chances for admission. And since college admission is not left entirely to inarticulable intuition, it is hard to see what is inappropriate in assigning some stated value to a relevant characteristic whether it be reasoning ability, writing style, running speed or minority race."

And again, I think in a sense, where we are right now is that Justice O'Connor has placed an informative on the diversity rational, that I think has necessarily expressed some unease with that by adopting, by emphasizing really, this narrow tailoring that doesn't really seem, to me, to fit with diversity very well. It seems to me to be more of a way to limit the implications of what she says, by recognizing diversity as a compelling interest, as a practical matter. And I think again, that is probably most obviously shown by the fact that, the majority opinion there suggests very strongly that this is time-limited; that it will be different after 25 years.

Certainly, it's not obvious to me why the diversity rational, if you buy that as an educational rational, should be any different 25 years in the future, than it is right now. So, I think the bottom line is this in a sense - decisions probably reflect where we, as a society, are right now. And in a sense, politically, I think the decision is easy to understand. Obviously it's gonna answer the question that I think people in this room are more interested in is - "How does it fit into the fabric of our law? And how realistic is it to think that it will survive long term in the fabric of our law?"

It's not clear to me how feasible the holistic approach, that Justice O'Connor says is necessary, is, in the context of vast admissions, like at the undergraduate level. I think that was something the university said, essentially, we're giving points because we can't do the holistic approach when you're talking about the broader numbers. So, there are obviously a lot of different cross-currents going on. It'll be interesting to see what it all plays out.

I guess, just a couple of concluding points. The moral of the story...this was introduced by Chris as a pleasant surprise, I'm not sure that it should be regarded by those of you in this room as that pleasant, in the sense that, I think it should be worrisome to all Americans, in a sense, that strict scrutiny

has gotten essentially, watered-down. And if the Court wants to come out this way, my intuition is that it would have been more honest to say, "this isn't strict scrutiny" in a sense. ""We are doing the lessened scrutiny for policies of inclusion rather than exclusion"; more the Ginsburg model.

What also struck me as worrisome, and I would expect the people in the room would agree with this, is the idea of giving deference to the discriminating entity. I think, all of us in this room would be appalled if the court had given deference to some of the Southern schools back in desegregation cases, in terms of their views of their educational mission. Certainly there was no deference given in the VMI case so, it's just we're at a strange place at constitutional law when these kinds of programs are passing strict scrutiny, but the Texas law in Lawrence is failing rational scrutiny. Again, what everyone thinks of the results in those cases, it is somewhat of an incongruous place to be.

So again, those are just my reflections on the case. I'm sure they're provocative, and I'm grateful that I haven't had any tomatoes or brick-bats thrown at me. I guess because it's Saturday morning, early. So I guess I'm lucky enough for that.

Thank you very much.

Applause

Christopher Schroeder:

Do either of you want to say anything in response or should we open the floor for questions?

John Payton (?):

Let's open it up.

Christopher Schroeder:

Okay, let's hear from you. I think there are mikes on both sides, and if you go to one of them, then we'll be able to, everybody in the room will be able to hear you.

Audience:

I actually have two questions: one is concerning legacies, the kind of affirmative action that **the ?? mentioned in his ?? (inaudible)**...has there been, or has there been contemplated thought of challenging legacies as discriminatory because, especially in the kinds of schools that Mr. Landau has mentioned, like the University of Mississippi and the University of Alabama, these empirically prove that all legacy does is lock in preferences for whites?

My second question is concerning Chief Justice Rehnquist's observation that there was a quota at the University of Michigan because the percentage of students of each race and ethnicity mirrored the applicant flow, which I've always thought is a reflection of a fair policy. A quota, one would think would mean, that you have a fixed percentage of admittance of a certain race, and that race has x percent of the class, not simply that the applicant flow would be mirrored in the selection for admission?

John Payton:

We're going to let Elaine answer all these questions.

Laughter

John Payton:

...on the legacy question. I'm not aware of a lawsuit. But I represent the University of Michigan, so if you were asking me why I haven't brought such a lawsuit, that's a strange question. But, I'm not aware of any such lawsuit. If you've been reading the coverage of the Wall Street Journal across the last year and a half, they have done some really, I'd say spectacular reporting on the question of legacies, and the impact that they have at schools all over the country.

There aren't a lot of institutions that don't want to have generational continuity. And it turns out that if you take away the ability to have generational continuity, you hurt the institution's ability to sort of define itself. You know, one of the solutions I have heard, is to say for any group of students who were in fact excluded, or their sons and daughters deemed them legacies. Just deem them legacies. If there are issues about legacy, just

make the people who didn't have the ability to become legacies, deem them legacies.

On the Chief Justice's point, I guess I take some glee out of it. You know, to the extent that a dissent, any dissent says, here is an argument that to me was completely persuasive and here it is one, two, three, four. Every time that happens and you're on the other side, you say that's just great. It's just fantastic because you lost. So, you've now made it really even harder for that argument to be made because you just said, "You know, wow this is everything conceivable you need, but you lost." So, if someone presents something just like that, you say, "Well, actually that argument was tried out and completely blown away, by five Justices of the Supreme Court."

I do agree that it was strange to say because something reflects the percentage of the applicant pool that that's a quota. Almost everything reflected a percentage in the applicant pool because the applicant pool was enormous. You know, just enormous. It wasn't like out of 20 applicants, there were six. You know, there were 25,000 applicants. And therefore, the fact that it reflected roughly the percentage in the applicant pool, I think it didn't actually establish anything. And I don't think you're likely to see much made of that.

Goodwin Liu:

I just want to add, could I add one thing Chris?

Christopher Schroeder:

Sure.

Goodwin Liu:

I'll just take on the first question. I thought, if you haven't read Justice Thomas's opinion in the Grutter Case, you really should. I think it is a fascinating piece of work. In it, one of his overall themes is a general, can be described as nothing more I think, than a railing against the elite façade of meritocracy in American higher education. And there's a passage in there where he takes on the notion of meritocracy, by pointing to precisely this - he says there's numerous exceptions to the notion of merit in selective

admissions. And he calls legacy preferences one of the unseemly, that's his word, unseemly exceptions.

I think I don't agree with Justice Thomas on very much, but there is one sort of very appealing overall thrust, I think, to his opinion. What I think it doesn't justify, of course, is why he would selectively choose to punish racial preferences as particularly suspect, given that the Constitution neither mentions race nor legacy, either of them. I mean all of, let's keep in mind that strict scrutiny, and the entire framework we're talking about here, is judge-made law. And I think that in addition he says that...

John Payton:

You have to make that point again, that the 14th Amendment doesn't have race in it.

Panelist 2:

Not mentioned in the 14th Amendment. He says he would favor a system of selection that really chooses who is capable of studying the law, and succeeding. And on that measure, I don't know what else the university's lawyers could have done to have shown that the students who conceded by all parties in the case, who were selected, minority and non-minority, were qualified. There was no dispute on that point in the Michigan cases. That the students who benefited from affirmative action were qualified to be admitted. And so, in that context, I find his insistence on his own sort of meritocratic criteria to be not violated by the affirmative action program.

Christopher Landau:

Just one last comment to hit on the legacy question. I think that's a very powerful point that it is really a strange system that allows a university to take into account all of these things - coin club, legacy, good athlete, but uniquely not race in our society. And I think the only answer to that is a view of the equal protection clause that says race is uniquely off limits. And that's essentially what Justice Thomas says. He doesn't, as Goodwin just said, he doesn't defend legacies, he just says the equal protection clause doesn't prohibit that kind of irrational, or does not allow this particular distinction, even though it allows a lot of other really stupid and strange distinctions in his view. So, there is an answer on that at least from that

perspective. Again, I'm sure a lot of folks in this room don't agree with that particular view of the protection clause.

Christopher Schroeder:

I want to take a minute to acknowledge what I'm sure you all noticed, which is our…

Laughter

…Our august panel has become even more august, with the addition of Elaine Jones. We're very grateful that you have made it. And I'm sure…

Elaine Jones:

She's not labeled as a no-show.

Christopher Schroeder:

Well, we all know you're a shrinking violet.

Laughter

Christopher Schroeder:

But if you would like to now, take a couple minutes, or just go with the stream of the flow…okay? Well then we'll take another question.

John Payton:

Can I just make one little, this just for the record here. Bacchi has no legacy issue in it. So, for the purposes of what was being reaffirmed, there's no legacy issue in Bacchi because The University of California Davis Medical School was a brand new school; did not have any legacies. And the analysis that is reaffirmed is one that doesn't have the complication of legacies in it.

Audience #2:

(low, often hard to understand) My name is **Billy Winn** and I am a law student at UVA, and I have two questions, which you may answer in either

order that you choose. The first regards Mr. Landau's strict scrutiny. Your analysis, of course, has applications of strict scrutiny. And, let me also say, obviously you dwarf me intellectually, but I am just going to try to piece together what I'm going to say, that the court used the nature of the program, or policy that invited strict scrutiny as to show the compelling interests which overcame strict scrutiny. And you saw that, and correct me if I'm wrong, you saw that to be intellectually conflicting. And if that's true, how would you otherwise overcome strict scrutiny? If you can't overcome by the program you're analyzing, I don't know how else you would overcome it?

My second question is, the entire panel, I appreciate Mr. Liu especially bringing out as he opened, the experience of black Americans, not only 100 years ago, 25 years ago, but today. And a thought has been ruminating in my head ever since I saw **Mr. Bate** talk about this case last year – is that the black applicant might actually be a better applicant because of what they've had to go through to get there. Obviously, you run into **general ??? issues,** but I would like to hear the panel address that idea…

Thank you.

Christopher Landau:

Just responding to your first question, I guess its my view, and I think this is what you're picking up on, that the strict scrutiny framework is inherently inconsistent with the view that says that racial diversity can be a compelling government interest to satisfy strict scrutiny. Because, at least my intuition is that what gets you into strict scrutiny in the first place is that race shouldn't matter. And that race, that the 14th Amendment does not generally, except in very exceptional circumstances, forbids the use of race.

So it seems odd then to say that racial diversity itself is enough to overcome that. It seems to me that if you believe that, then maybe you shouldn't be in the strict scrutiny box in the first place. It just seems to me again, that saying that you're applying strict scrutiny, and saying that racial diversity is a compelling interest to satisfy strict scrutiny strikes me as a very unstable approach.

As to what can overcome strict scrutiny - again, I think that the whole notion of strict scrutiny is that essentially it shouldn't be overcome, except in very rare circumstances. I think certainly we'd all agree that that's true. If it were

the other way around and we were looking at traditional, the long-standing Brown versus Board of Education kinds of discrimination, and the justifications that were being offered were along those lines. You know, obviously there are certain extremely compelling exigencies that satisfy strict scrutiny. But generally the idea behind strict scrutiny is that it can't be satisfied. So, that's my reaction to your first question.

John Payton:

Let me tell you how far we've come here. If we were to go back 15 years to a Republican administration, the last Bush administration, I think it would have been inconceivable that it would have embraced the concept of a racially and ethnically diverse cabinet being a good thing for the country. Okay? A racially and ethnically diverse cabinet. This presidency said that and then they did it.

When we were deciding how to defend this case, we could have simply said Justice Powell was right. His opinion still stands. But, there is no Supreme Court decision that says his opinion is gone. In fact, they have left it clearly open to reaffirm his opinion. And as a matter of logic, diversity still works.

Instead, we went out and put together an absolutely overwhelming case about this. We put in an expert report in 1998 that had 12 experts. The other side deposed them, came up with their counter-experts. The interveners came in, put in more experts; they were all deposed. At the end of all that, I think to only outsiders' surprise, not to our surprise, the plaintiffs conceded the educational benefits of diversity. They conceded it because there was nowhere to go. There was just nowhere to go. So it's not just, "gee we thought this", it's really quite unbelievable.

So, when we get to the Supreme Court, the position of the United States, clearly on the other side in this, is that actually racial and ethnic diversity is in fact a very good educational thing. But we think you can get there another way.

So here we are at strict scrutiny. Everyone, everyone has agreed that in fact, it is educationally important to the country to have a diverse student body for the country. So now you decide, "Gee, is there another means of getting there?" No. The idea of percentage plans, remember that was the hot thing? It just evaporated in front of everyone's eyes. So, you can't get there with a

race-neutral means. Can you use race to get this educationally important objective that helps the whole country? That's the strict scrutiny analysis.

Now if you say, "There are no circumstances where I ever answer 'yes' to that question, the answer is 'no.'" If you say, "very limited circumstances, where there is quite an overwhelming showing, and support of something that is really important to the whole country," I think we met it. That's where I think we are.

The issue of "Gee, what do we make of the fact that we're still scarred by race?" And therefore, what do we make of the fact that, when we're picking the students, to take the example, what do the, to take the example, African-American students bring, and should they be considered sort of more qualified because they had to overcome more things? I restated it, but I think it's something like that.

I guess I think that we're in unbelievable denial about how scarred we are as a society today about race. And the denial is getting in the way. I have a little data point for everybody, I did not use it in the case, but here it is. Thirty-five years ago, with the exception of Washington D.C., if we looked at the top 10 metropolitan areas in the United States, with the exception of Washington D.C., they were all very much, majority white. Okay? Including Detroit. Not close. Okay.

If we look at them today, they're all, with the exception of Boston, for bizarre and awful reasons, minority white. And anyone that's from Boston, you know there are enclaves, and then enclaves, and enclaves, and everybody seems to hate everybody. Okay? I mean it's unbelievable.

So we've gone to an inner-city core, of our top 10 metropolitan areas, being majority minority, and in most cases overwhelmingly. So, Detroit, which used to be 60-65% white, you know Eminem's the last white person to live in Detroit.

Laughter

Christopher Landau:

Line of the day.

Laughter

John Payton:

You know, and they're all ringed by white suburbs, and occasionally there's a black suburb there. And this leads to unbelievable ignorance, mistrust, false beliefs, just terrible things. And we're in denial about those things. The evidence really is that it is important that you undermine stereotypes that people bring, in that state of ignorance, about different racial groups. And that's why it really does matter that we're not saying there's a minority viewpoint, but there's an educational significance to being able to see a range of views.

No matter what we did, even though the plaintiffs conceded that every minority applicant was qualified – every single one – that just creeps back into the equation. It just creeps back in there. We are selecting from among qualified applicants, a student body that enhances the education for all the students. I think gee, you could say, 'there is something to the qualifications of having overcome things'. Okay, you can say that. But I think that's the same way as saying that there is something that is valuable for having the diverse student body in the first place because it's valuable to everybody.

So we didn't quantify it in that way, or even articulate it in that way at all. If you do a full file review, as they do at the law school, all of that is in the mix, no matter what.

Goodwin Liu:

Chris, can I add, you know, I want to say something about the strict scrutiny issue that Chris mentioned. And I would say that I do agree as a doctrinal, analytical matter with Chris Landau, that there is instability in the law right now. I probably draw a more sanguine conclusion from that instability, given that much of the time, for sort of folks who think like me, has been spent, playing defense against the hardening of the law in ways that we would rather not see. And so, I think instability is actually a good sign of perhaps, as John described, some reason for optimism for where the law is headed.

But, let me just point out again, remarkably, in Justice Thomas's dissent in the Grutter Case. I think he takes a position very similar to what Chris

mentioned; which is that only in very extreme circumstances can strict scrutiny be overcome. And the example that he cites is, of course, Koromatsu.

And this is sort of, I fear, I think a little bit, that is sort of where the 9/11 shadow begins to loom a little bit large over the court. Koromatsu is discussed in this opinion not as the stain that it is, on fifty, or five, six decades of American Constitutional law. Rather, it is in essence affirmed as a correct decision of the instance where strict scrutiny was properly overcome.

Even if I were to agree with Chris that there is some reason to worry whenever principles of law become somewhat unstable, I think there's much less to worry about that instability. Rather than a view of the equal protection clause which says that the desire to open the door of opportunity to traditionally excluded groups in higher education is not a compelling interest, but the cordoning off of Japanese Americans for no reason other than their ancestry is a compelling reason for the use of race. That, I think, leaves me with great, great pause.

Christopher Schroeder (?):

We'll take one here and then…

Elaine Jones:

No, I would just start an argument. We don't need to start.

Laughter

Audience??:

Panelist/Chris:

I think we'll get it.

Panelist:

It's coming.

Laughter.

Audience:

(low, hard to understand) ??? getting increasing...including among some progressives, is the notion of class-based affirmative action as a viable, or an attractive alternative to a more exclusively race-based affirmative action. I have a number of thoughts myself and wonder what your thoughts are on that and if you don't agree that it's a viable option, what your arguments ?? might be to counter what seems to be a little bit of a movement?

Panelist:

Look, this is an example of the denial I'm talking about. That "Gee, it'd really be nice if there was some way where we could just stop dealing with any of these issues of race at all. And if we could look at it as just class, because class really is race, or it's close enough. Then we can just stop talking about race. And I'd just feel better if we could just stop talking about race. How's that? So, if you're with me, let's jus stop talking about race."

Laughter

I was in a debate with Clint Bullock that was published in the "Washington Lawyer", on these issues three or four years ago. And Clint said something just like that. And I said, "Clint, look, let's talk about Colin Powell. And let's assume that wherever he lives, it's in a white community, and the families next to him look just like his; same kids, same kind of house, same kind of job, same kind of income. They're all very ,very well off. You think that race matters in that neighborhood for Colin Powell's kids? You think they're treated differently? Or, you think they're treated exactly like the white people next door? And he said, "No no. Obviously race still matters." I said, "That's right. That's not about class."

Okay, class matters in this country, but race matters, too. There is overlap, but it's not a complete overlap at all. And it is missing the point about what race is, to act like, "Gee, there's an identity here." I'm not saying that Colin Powell's kids deal with racial issues just like someone who lives in the southeast. I'm not saying that either. In certain circumstances, that may be true, but in their day-to-day lives, that's not true. Race doesn't have the same

trappings for everybody, but in fact, race still affects people, whatever their economic and social situation is in the United States.

You know at the end of the day, there are, and I think we're in denial about this too, many, many more poor white people than there are poor minorities. So, class actually isn't a substitute in any sense of that. But, do I think that issues of class ought to be considered in putting together a student body? I do. You know? Separate from race, I do. And in fact, a lot of schools do that. You know?

If there has been another significant event that has changed our education beyond what we're calling affirmative action, it's the G.I. Bill. And the G.I Bill, for reasons of class, completely changed higher education. It brought anybody who was eligible for the, you know, into higher education. It changed higher education forever. So, I agree that it's something we ought to do, but we can't do it with it being some way to push off dealing with the issues of race, which are still very fundamental.

Elaine Jones:

...And I would say for as further evidence of that, reading Justice Ginsburg's dissent in Gratz. And she makes it very clear as to all of the racial trappings that are still very prevalent in this society. And that is not to say there are not class issues. But, they are separate. One does not deal with the other. The reality is, if you look at economic issues, there are many more poor white people, just numerically in the nation, than there are African-Americans, for example. And so, if you had a class-based program, it could clearly be all white. And what have you done in terms of the racial and ethnic issue? Nothing. So, you've got to look at them. They both deserve attention. But, you cannot collapse them into one another.

John Payton:

Can I just say something else? I think that there is an issue that Chris and Goodwin were talking about that, I think you can say is about how we look at this. And it is how you define what racial and social justice is. And you can say, my definition is, we simply stop using any of those things like race or class in making any decisions at all. And I'm now going to say that that's the definition of a just society.

Or you can say, as I think **Justice O'Connor** said, that it really does matter to the legitimacy of the society that you get to see equal opportunity, and equal chances to be leaders out there in our society, and that brings some legitimacy. And that is about what happens at the end of the process, that we then have to live in as a society. And it's a different way of looking at the answers to the question of "What is social and racial justice?" But I don't think we are saying that there's a different question. It's the same question. It's just a different way of answering the same question.

Christopher Landau:

If I could just chime in one thing on that. I do think that the question raises an important point that shouldn't be overlooked. Which is that, I think it really goes to the moral Achilles heal of affirmative action, which is that...

Laughter

Christopher Landau:

No. I mean, I think it is undeniable that that is the biggest point that will come up. Which is why should these kinds of programs, particularly at elite institutions like law schools, medical schools, disproportionately benefit a very small number of blacks, and are not really addressing the broader concerns. I mean, I'm not only saying I think that that is certainly a reason that class-based affirmative action certainly has advantages over race-based affirmative action.

Elaine Jones:

And that's where Chris and I disagree. I do believe very strongly that race and ethnicity should be a broad concern in this country if they're not. And that's part of the problem with that view.

Female Audience:

(low, very, very hard to understand) Hi...**Dana Goldberg** from Rutgers ?? Law School, I want to talk about an idea I had written about at much greater length, and that is the tiers, the tiered structure ??? ...actually in the past decades has functioned more as a barrier to equality, rather than a facilitator of equality, and a facilitator of meaningful, equal protection review, so that

the main use of **suspect classification** in the past decades has been to invalidate efforts to take into consideration of race discrimination in the past, whether it has been redistricting cases, or ?? affirmative action cases. And at the same time we have ?? Where on the one hand we have this incredible deference, but on the other hand, you have a fairly regular, not constant, but regular pattern of the court exercising the ??? point of view.

So if you take that, and then you also look at prior to the announcement of strict scrutiny, prior to the real application of strict scrutiny, we had the courts striking down the racial classification, citing that, ??, there was no legitimate basis for discriminating against ??...and I wonder if you could actually time to the ??? in litigation, that the tiers may no longer function as they were originally conceived to function, and that makes me think of ??? a single standard of review, that would allow for meaningful review, contextually review, get out of some of the problems that we face with the imposition of strict scrutiny and affirmative action classifications, and try to fit more broadly and more contextually about...

Goodwin Liu:

That is a position that has been alive in the law for a long time. I believe Justice Marshall and Justice Stevens have both articulated that position in a number of, to my mind, unfortunately in dissents usually, over the course of the last 20 or so years. I think you're right. I think that the way equal protection law has sort of been structured today, essentially is, there's sort of two parts to it. There's a set of tests, and then there's their application. But, the problem is that the results today are patched more into the nature of the test, rather than the application. So by the time you announce that you're going to apply strict scrutiny, or you announce you're going to apply rational basis, you pretty much know where this train is headed.

I think that that reflects an obvious, I'm not going to impute any sinister motive to that, I think that that reflects a basic desire by judges to have rules. To have rules that confine them and discipline the way they decide cases. But I do think that it is important to have, I don't mind it, you can call it strict scrutiny, you can all it whatever you want. I don't mind that there be some type of meaningful and even stringent review, especially when it comes to a matter as sensitive as race.

But I do think to go back to back to Chris', I think very accurate analytical portrayal of the different viewpoints in the Grutter Case, I do think it's important to have the debate about whether motives of inclusion or exclusion matter when you apply strict scrutiny analysis. You can say that provides either a more compelling justification under strict scrutiny analysis, or it provides a better reason not to have the scrutiny as strict.

Whichever way you cut it, I think there is a substantive moral difference that the law should take into account as to what the purpose of the program really is. And I don't think it is a question of the bona fides of governmental decision-makers in this case. I mean there are debates about whether or not affirmative action harms or helps its beneficiaries. But nobody questions that the purpose of the program is to benefit those who are benefited. And so, I think that your question is right on target, in terms of the way in which the court has sort of packed so much, it's sort of like short-hand; packs so much of the result of any particular case, into these labels without then explaining exactly what it's doing.

John Payton:

The reason I made the opening comments about this being an optimistic decision is that I would characterize most of the cases you were referring to, as cases in which the suspicion of the use of race was so extraordinary that what the analysis was, I think, was irrelevant. It's just irrelevant. There's no really good use. All uses lead to some social bad thing. And we're so distrustful that we will say that there may be some permissible use as we strike this down. But, we're just saying that. And, I think if you read even Justice O'Connor in her past decisions about race, that's how it feels.

If you read her in Grutter, that's not how that feels at all. She's talking about things that she says, that's why I read off those things, this is good for the country, and it is said with some feeling. She re-embraces Powell, this is good for the country. And that whole approach, I think, is therefore susceptible to some optimism about what things are possible. I think you can overplay that. And the overplaying that would be to say, "Oh, we can go back and re-litigate some issues that came out another way." I'm not sure that's true. You can overplay this. It is, with respect to this, this is an optimistic decision. And I think you have to think long and hard about where this leads, if this leads to other areas that can be re-examined. But I think the

optimism is real and in stark contrast to a mood that has infused most of the cases that involve race for decades.

Audience question:

(low, very hard to understand) I'm the Dean of ?? Law School at Florida International University, and partly because of a career gone wrong, that the unwritten article, the thesis of it, I want to respond to Professor Liu.

You correctly, I think note that the Powell analysis, except leaving one thing out and I think it's an the important thing in the way we look at certain strict scrutiny analysis, and that we talk first, before talking about diversity, about the academic freedom that is being exercised by the medical school faculty UC Davis.

And I think that was an effort on his part to ground, although he never mentioned the First Amendment, I think there was an effort on his part to ground his analysis in the text of the Constitution. Because I think there is some reason to believe that compelling states interests, under strict scrutiny, are those that are grounded, somewhere in the text of the Constitution. And I want to pursue, because I agree...that in some ways, in some ways, the diversity rational is less compelling, I think not only morally, but legally, that an analysis that would look at compelling state interest, as interest grounded in the text of the Constitution.

And it does seem to me that when you talk about societal racial discrimination, or racial discrimination perpetrated by government, after government, after government, you know with the state action rationale. But the 13th, 14th, and 15th Amendments can make a very strong argument. The history of those Amendments, that racial classifications, which promotes equal access which has historically been denied, which promoted the integrated society to which those Amendments were a response, and an allocation of power in government benefits, do provide a compelling state interest. And a compelling state interest is the alleviation of remedial in some ways, but the alleviation of those kinds of racial discrimination.

Now Mr. Landau raises the question of the means necessary...Justice O'Connor used, and whether that was appropriate, or well used. Well it does seem to me there has to be a means test. And whether one goes with her analysis or a different one, that means the test should be, number one that

the inclusive and integrated, I think the classification certainly in the allocation of a governmental benefit.

And number two, that affected less than 50% of a population that's involved in some ways...one would not want, and I think that's important as a means test, to say that racial classifications are presumptively invalid. And yet, they can retain a sense of validity if they change these other objectives and never make race a primary reason for selecting a student body, by way of example, or for selecting a job force. And in that respect, it seems to be a very good idea, as a conceptual matter we go back to the remedying of discrimination as a core of the state interest in ???

Chris Schroeder (?):

We'll let you respond to that and then we're going to break.

Elaine Jones:

I'm just saying the Court could have done that here had it chosen, because the mediation evidence was all in the record. I mean the Court could have gone off on a diversity rationale, which is what it did, and grounded it in the university's First Amendment right to be educational autonomy. Could have done that, or it could have gone to a remediation route. You know, remedying historical discrimination. And because a record was developed of both of those arguments. And the Court chose which one it wanted.

Goodwin Liu:

May I thank the questioner for his question. I think it, you know, it's very insightful in terms of advancing some of the ideas that I was trying to present earlier today. I would concede that I am uneasy with the academic freedom language in Justice Powell's opinion because it rings a little bit...it has sort of a distant cousin in associational freedom, which doesn't, to my mind, jive very well with the general goal of integration and equal protection. There is a certain patina of neutrality, I guess, to the academic freedom argument that would seem to swing both ways if you will.

I mean why, if an institution sought to have an all white university and justified it on educational grounds, that somehow, we just all get along better, and we can learn better when we all get along, that that somehow

would also satisfy the 14th Amendment. I don't think it would. I'm not sure what the answer to that is. I mean there are answers that suggest that it would be very hard to prove that case in as diligent and compelling a way as John proved his case for educational diversity. But I would just rather not go down that road.

John Payton:

I think Chris raised a similar part of this point which is where does the academic freedom point go? And I think everybody acknowledges the tension. And if you look at the brief you'll see that we kind of carefully tried not to make too much of the academic freedom point.

I think the end of the point is to say that this case is really about what our values are as a country and as a nation; and that obviously there are some missions that institutions of higher education could say they choose for themselves that would be inconsistent with our national values. And therefore would not constitute any sort of entitlement to deference even in selecting the mission, if that's what they wanted to do.

But, there are all sorts of things to be worked out in the Michigan cases, as far as how some of these principles play themselves out. I think the larger issues could not be clearer about where we are with respect to diversity in higher education. And I'd say the optimism that infuses the opinions.

Christopher Schroeder:

All those other things that need to be worked out will be worked out will need to be worked out at another time. The next panel starts in ten minutes.

Applause

Westlaw.

6 No. 27 ABAJEREP 1
6 No. 27 ABA J. E-Report 1

ABA Journal E-Report
July 6, 2007

The National Pulse

SCHOOLS CAST ABOUT FOR NEW DIVERSITY PLANS

Kennedy concurrence seen to let districts explore other options

Stephanie Francis Ward

Copyright © 2007 American Bar Association; Stephanie Francis Ward

Although the U.S. Supreme Court turned down school district desegregation plans last week, schools should not shy completely from using race when selecting students for admission, lawyers say.

Support for diversity in public education is still strong, they say, even though both plans were ruled unconstitutional. Meanwhile, educators and parents on either side of last week's ruling in *Parents Involved in Community Schools v. Seattle School District*, No. 05-908, will be searching for ways to comply.

"Primary and secondary schools will need to do something very similar to what colleges and universities do--use race, but use it as one factor among a host of many other factors," says Aderson Bellegarde Francois, a professor at Washington, D.C.'s Howard University School of Law. He's also director of the school's Civil Rights Clinic, and submitted an amicus brief on its behalf, supporting the school districts.

Although Chief Justice John G. Roberts Jr. authored the plurality opinion striking down the plans, Justice Anthony M. Kennedy's concurrence will likely have the strongest role in future student admission plans.

Kennedy described the plans as "sweeping race-based classifications," but he would not join the balance of Roberts' opinion, which holds that the country should aspire to being a "color-blind" society, ignoring race entirely.

"The enduring hope is that race should not matter;" Kennedy wrote. "The reality is that too often, it does."

The opinion involves two school districts: Seattle, which at one point used race as a tiebreaker when determining high school admissions, and Jefferson County, Ky., including Louisville, which sometimes considered race when making kindergarten, first-grade and transfer assignments. Neither plan was narrowly tailored enough to achieve diversity, the court ruled.

In his concurrence, Kennedy detailed alternative plans, such as drawing attendance zones that recognize neighborhood demographics, recruiting students and faculty in a targeted fashion and tracking enrollments and performance by race. Such methods, Kennedy wrote, are race-conscious, but don't lead to differential treatment based on race classifications.

"The plurality opinion is too dismissive of the legitimate interest government has in ensuring all people have

© 2010 Thomson Reuters. No Claim to Orig. US Gov. Works.

equal opportunity regardless of their race," he said.

A dissent by Justice Stephen G. Breyer, holding that the plurality paid inadequate attention to prior cases, was joined by Justices John Paul Stevens, David H. Souter and Ruth Bader Ginsburg.

If a school admission system that follows Kennedy's examples is challenged in the Supreme Court, many say, it's likely that such a plan would get the five votes needed to be deemed constitutional.

"I think if you have a plan that puts race as one of a mix of many factors, you may have an ability to swing Kennedy over," says John K. Bush, a partner at Louisville's Greenbaum, Doll & McDonald. He submitted an amicus brief for the Louisville Area Chamber of Commerce, in support of the Jefferson County School District.

The plurality, Bush notes, leaves in place *Grutter v. Bollinger*, 539 U.S. 306, the 2003 ruling that found race could be used in higher education admissions, providing it was done to further an interest of obtaining the educational benefits of a diverse student body.

Rachel D. Godsil, who submitted an amicus brief on behalf of the National Parent Teacher Association supporting the school districts, agrees.

"Kennedy's inviting the community to come together and think creatively about how to [have diversity], without using student assignment plans," says Godsil, a law professor at Seton Hall University School of Law in Newark, N.J. "There's a suggestion that there may be a way to turn this opinion into something important, by inviting people to come together and talk about how we can achieve this laudable goal."

Others weren't so sure Kennedy would endorse future admission plans that consider race.

"His record on this issue is that he's pretty skeptical," says Goodwin Liu, a professor at University of California at Berkeley's Boalt Hall. He submitted an amicus brief supporting the school districts, on behalf of former University of California chancellors.

"I think Kennedy is struggling with the issue," says Liu, adding that Kennedy's opinion drew a distinction between classifying individual students based on race, and plans that are race-conscious in a general fashion.

"If you're going to classify kids individually based on race, you have to do a very good job of documenting how you considered all other alternatives," Liu says.

Teddy B. Gordon, a Louisville lawyer, represents Crystal D. Meredith, the parent challenging the county's school admission plan. According to Gordon, the opinion eliminates the use of any racial classifications.

"We're no longer going to have to code our kids," he says. "It was a logical progression."

To diversify public education, Gordon favors the use of neighborhood schools, or programs he refers to as traditional schools, where students and parents must follow a conduct code.

"If you put traditional schools in there, you'll get more fair, across-the-board applications, from all diversities in Louisville," he says.

Others mention admission plans based on students' socioeconomic status. According to some, such plans work well, while others support the consideration of socioeconomic status and race used together in student ad-

© 2010 Thomson Reuters. No Claim to Orig. US Gov. Works.

mission plans. There are criticisms of this as well.

"Twenty years ago, Seattle actually experimented with using socioeconomic status in school admissions and ended up with a system that was more segregated than what they started with," Francois says.

And some predict that some schools would not want to experiment with student assignment plans, because they don't want to risk litigation.

Michael E. Rosman, general counsel of Washington D.C.'s Center for Individual Rights, submitted an amicus brief on behalf of his organization, challenging both admission plans in question. Neither changed enrollment much, he says, which is why the plurality was not persuaded of either's importance.

"If you have real racial isolation, say a school is 80 to 90 percent all one race, a school is probably likely to find some social scientific justification for reducing that kind of extreme racial isolation," Rosman says. "I think it's much harder to defend a program that says 22 percent white in a given school is racially isolated, but 27 percent isn't. Particularly if the other 88 or 83 percent is not all one race."

Michael F. Madden, a partner at Seattle's Bennett, Bigelow & Leedom, represents the school district there. He says the district, which scrapped the plan in 2002 after litigation, will try to find other ways to ensure a diverse public school system. Madden has been thinking of alternatives, but declined to elaborate.

"There's going to be a lot of ink spilled on that," he says. "I think you're going to find that school boards with assignment plans using race or a racial purpose are going to take a look at what they're doing and try to access their legal risk."

6 No. 27 ABA J. E-Report 1

END OF DOCUMENT

© 2010 Thomson Reuters. No Claim to Orig. US Gov. Works.

GOODWIN LIU
Associate Dean and
Professor of Law
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

April 5, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As noted in my recent letters of March 3, March 16, and March 20, the original submission of my Senate Questionnaire on February 24 inadvertently omitted a number of items under Question 12 that were subsequently brought to my attention. These omissions and others that have become apparent since March 20 have prompted me to search anew and more comprehensively for materials responsive to the Questionnaire. With this letter, I am submitting a revised answer to Question 12 that includes additional materials I have identified.

I would like to offer a sincere and personal apology to you, to the Ranking Member, and to the entire Committee for the omissions in my original submission. In preparing my original submission, I made a good faith effort to track down all of my publications and speeches over the years. I checked my personal calendar, I performed a variety of electronic searches, and I searched my memory to produce the original list. But I have since realized that those efforts were not sufficient. In some instances, I missed items I should have found the first time. In other instances, I now realize I appeared at informal events that escaped my memory, did not appear on my calendar, did not turn up in my first set of searches, but do appear on a webpage noting the occasion. Moreover, I did not think to include various occasions when I spoke at informal seminars, brown bag lunches, or student or alumni gatherings on campus or elsewhere because I viewed those occasions as part of my day-to-day work as a faculty member, akin to teaching class or meeting with students. I now understand that those should have been included as well.

The revised answer to Question 12 also contains a description of the searches conducted in order to locate responsive material. I certainly do not intend for there to be any mystery about how the list of items was prepared. If there are other searches you would like me to conduct, please let me know, and I will be happy to do so immediately.

In addition, because only the Questionnaire itself—and not the attachments or index I provided with my original submission—was posted

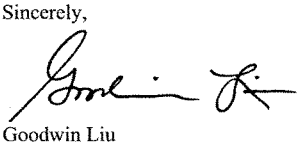
publicly, there has been some confusion as to whether relevant text and video links were disclosed. For this reason, I am providing links to the documents produced. These documents may be accessed by clicking on the relevant entry in the revised answer to Question 12. Where I do not have a responsive document relating to a particular item, I provide a weblink to a video, transcript, report, or announcement of the event in all instances where I can find one. It is my hope that this information will enable the Committee and the public to easily access the listed material.

Finally, in order to aid the Committee's consideration of these materials, I am separately attaching a list of the items in the revised answer to Question 12 that were not included in my previous submissions.

Let me assure you, as forthrightly as I can, that none of the omissions in my original submission was intentional. I fully appreciate the importance of thoroughness for the effective functioning of the Committee's process. Moreover, I believe it is in my own interest to make the most complete disclosure I possibly can. I am sorry my original submission did not include the items that have come to my attention since then, and I hope the revised answer to Question 12 rectifies the situation.

Thank you for allowing this revision to my Questionnaire, and please accept my sincere and humblest apology for the omissions in my original submission. If I find any additional responsive materials, I will of course submit them to the Committee forthwith.

Sincerely,



Goodwin Liu

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

Goodwin Liu
Nominee to be United States Circuit Judge for the Ninth Circuit
REVISED COMPLETE RESPONSE TO QUESTION 12
April 5, 2010

12. **Published Writings and Public Statements**:

To respond to the questions below, I searched my electronic calendar, electronic or physical records I have kept of speeches and presentations, my travel records, and my memory. I reviewed all such materials again in preparing this supplemental submission, this time with the broadest possible standard for what could constitute responsive material.

The material below also includes responsive results of searches for the term "Goodwin Liu" on the following websites:

1. ACLU of Northern California
2. Alliance for Excellent Education
3. American Bar Association
4. American Constitution Society
5. American Law Institute
6. California Academy of Sciences
7. Center on Reinventing Public Education, University of Washington
8. Chinese for Affirmative Action
9. Corporation for National Service
10. Covington & Burling
11. Education Law Association
12. Education Sector
13. The William and Flora Hewlett Foundation
14. Hogan & Hartson
15. Howard Rice Nemerovski Canady Falk & Rabkin
16. Kennedy School of Government
17. KQED Public Radio
18. Lawyers' Committee for Civil Rights
19. NAACP LDF
20. National Asian Pacific American Bar Association
21. National Women's Law Center
22. Nixon Peabody
23. O'Melveny & Myers
24. Providence College

25. Public Welfare Foundation
26. San Francisco Unified School District
27. Stanford Alumni Association
28. Stanford University (including the Task Force on Minority Alumni Relations and the Haas Center for Public Service)
29. Unity College
30. University of California, Berkeley (up to search item 220, at which point the responsiveness of items had diminished considerably)
31. University of Washington
32. Upward Bound
33. U.S. Department of Education
34. Yale Law Journal
35. Yale Law School
36. Yale University

The material below also includes responsive results of the following searches:

Lexis Nexis searches:
-An "all news" search for "Goodwin pre/2 Liu." Any article which referenced responsive material not previously identified was further investigated. Google, YouTube and Lexis Nexis searches on the individual materials and events were performed. If those searches produced new materials not previously identified, that material was added.

YouTube searches:
-A YouTube search for "Goodwin Liu" was performed. All responsive hits were added to this response. An individual YouTube search was conducted for every panel or speech identified on this response for which no transcript or video had been identified.

Google searches:
-A search for "Goodwin Liu -ninth -circuit" (to filter out hits related to my nomination) was conducted and produced approximately 280,000 hits. Approximately 200 of these hits were reviewed in-depth, with another approximately 100 given a cursory review. An individual Google search was performed on any speech, panel, or article identified in this response for which no video or transcript had been identified.

These searches also produced announcements of events that list or report my name as a speaker, when in fact I did not appear at the event or the event was canceled. I have not listed such events as they are not responsive to the Questionnaire.

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Scholarly Work

The Bush Administration and Civil Rights: Lessons Learned, 4 Duke J. Const. L. & Pub. Pol'y 77 (2009), available at http://www.law.duke.edu/journals/DJCLPP/index.php?action=downloadarticle&id=143

Keeping Faith with the Constitution (Oxford University Press, forthcoming 2010; American Constitution Society, 2009) (with Pamela S. Karlan and Christopher H. Schroeder), available at http://www.acslaw.org/pdf/ACS_KeepFaith_FNL.pdf

National Citizenship and the Promise of Equal Educational Opportunity, *in* The Constitution in 2020 (Jack M. Balkin & Reva B. Siegel eds., 2009)

Rethinking Constitutional Welfare Rights, 61 Stan. L. Rev. 203 (2008)

The First Justice Harlan, 96 Cal. L. Rev. 1383 (2008)

Improving Title I Funding Equity Across States, Districts, and Schools, 93 Iowa L. Rev. 973 (2008)

"History Will Be Heard": An Appraisal of the Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), available at http://www.hlpronline.com/Liu_HLPR.pdf

Interstate Inequality and the Federal Role in School Finance, *in* Holding NCLB Accountable: Achieving Accountability, Equity, and School Reform 103 (Gail L. Sunderman ed., 2008)

Seattle *and* Louisville, 95 Cal. L. Rev. 277 (2007)

Education, Equality, and National Citizenship, 116 Yale L.J. 330 (2006), available at http://www.yalelawjournal.org/pdf/116-2/Liu.pdf.

National Citizenship and Equality of Educational Opportunity, 116 Yale L.J. Pocket Part 145 (2006) (adapted from my article *Education, Equality, and National Citizenship*), available at http://www.thepocketpart.org/images/pdfs/77.pdf.

Interstate Inequality in Educational Opportunity, 81 N.Y.U. L. Rev. 2044 (2006)

How the Federal Government Makes Rich States Richer, in Education Trust, Funding Gaps 2006, at 2 (adapted from my article *Interstate Inequality in Educational Opportunity*), available at http://crab.rutgers.edu/~ccoe/courses/soe/Readings/FundingGap2006.pdf

Developments in U.S. Education Law and Policy, 2 Daito L. Rev. 17 (2006)

The Parted Paths of School Desegregation and School Finance Litigation, 24 L. & Inequality 81 (2006)

School Choice to Achieve Desegregation, 74 Fordham L. Rev. 791 (2005) (with William L. Taylor), available at http://law2.fordham.edu/publications/articles/500flspub10799.pdf

Race, Class, Diversity, Complexity, 80 Notre Dame L. Rev. 289 (2004)

Brown, Bollinger, *and Beyond*, 47 How. L.J. 705 (2004), available at http://www.law.howard.edu/dictator/media/229/how_47_3.pdf

Separation Anxiety: Congress, the Courts, and the Constitution, 91 Geo. L.J. 439 (2003) (with Hillary Rodham Clinton)

- *The Causation Fallacy:* Bakke *and the Basic Arithmetic of Selective Admissions*, 100 Mich. L. Rev. 1045 (2002)
- *Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform*, 1999 Wis. L. Rev. 1
- *Affirmative Action in Higher Education: The Diversity Rationale and the Compelling Interest Test*, 33 Harv. C.R.-C.L. L. Rev. 381 (1998)
- *Developments in Policy: The FDA's Tobacco Regulations*, 15 Yale L. & Pol'y Rev. 399, 416–29 (1996)
- *Knowledge, Foundations, and Discourse: Philosophical Support for Service-Learning*, Mich. J. Community Service Learning, Fall 1995, at 5
- *Community Colleges: Critical Partners in National and Community Service*, Trustee Quarterly, Spring 1994, at 10.
- *Service-Learning: An Overview, in* Corporation for National and Community Service, Roles for Higher Education: A Resource Guide 12 (Mar. 1994).

Editorials

- "The Next Verdict on Prop. 8," *L.A. Times*, Nov. 10, 2008, at A19
- "Finding Right Mix for School Funding," *Sacramento Bee*, Jan. 13, 2008, at E5 (with Alan Bersin and Michael Kirst)
- "The Meaning of Brown vs. the Board," *L.A. Times*, Dec. 25, 2006, at A31
- "Life and Death and Samuel Alito," *L.A. Times*, Nov. 27, 2005, at M5
- "Roberts Would Swing the Supreme Court to the Right," *Bloomberg.com*, July 22, 2005
- "Truth Is, We Do Underfund Our Schools," *S.F. Chron.*, June 23, 2005, at B9
- "A Misguided Challenge to Affirmative Action," *L.A. Times*, Dec. 20, 2004, at B11; reprinted in "Too Good To Be True," *Cal. Bar Journal*, Feb. 2005, at 8
- "Regent's Stand on UC Admissions Is on Shaky Ground," *Sacramento Bee*, Apr. 1, 2004, at B7 (with Theodore Hsien Wang and William Kidder)
- "A Moment as Big as 'Brown,' " *Wash. Post*, June 29, 2003, at B3
- "Real Options for School Choice," *N.Y. Times*, Dec. 4, 2002, at A35
- "The Myth and Math of Affirmative Action," *Wash. Post*, Apr. 14, 2002, at B1

Other

UC Berkeley Office of Educational Development, Statement of Teaching Philosophy, available at http://teaching.berkeley.edu/dta09/liu.html (2009)

"Getting Beyond the Facts: Reforming California School Finance," Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity Issue Brief (2008) (with Alan Bersin and Michael W. Kirst), available at http://www.law.berkeley.edu/files/GBTFissuebriefFINAL.pdf

"Justice Alito and the Death Penalty," American Constitution Society Issue Brief (2005) (with Lynsay Skiba), available at http://www.acslaw.org/pdf/Alito_Death_Penalty.pdf

"The Constitution in 2020," Post by Goodwin Liu (2004), available at http://constitutionin2020.blogspot.com/2004/11/post-by-goodwin-liu.html

- "From *Brown* to *Grutter* and Beyond," *Boalt Hall Transcript*, Spring/Summer 2004, at 26
- *Foreword, in* SERVICE-LEARNING: A MOVEMENT'S PIONEERS REFLECT ON ITS ORIGINS, PRACTICE, AND FUTURE at xi (Timothy K. Stanton et al. eds., 1999)
- "Origins, Evolution, and Progress: Reflections on a Movement," Feinstein Institute for Public Service, Providence College (1996); portions reprinted in *Metropolitan Universities: An International Forum*, Summer 1996, at 25
- "Service-Learning: A Paradigm Shift in Higher Education?," *NSEE Quarterly* (National Society for Experiential Education, Mt. Royal, N.J.), Fall 1995, at 8
- *National Service, The Federal Government and Higher Education: Reflections on the Corporation's Role, in* CAMPUS COMPACT, SERVICE COUNTS: LESSONS FROM THE FIELD OF SERVICE AND HIGHER EDUCATION (Melissa Smith ed., 1995)

Some of my published works may have been reprinted in other media.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Funding Student Learning: How to Align Education Resources with Student Learning Goals, School Finance Redesign Project, Center on Reinventing Public Education, University of Washington (2008), available at http://www.crpe.org/cs/crpe/download/csr_files/pub_sfrp_wrkgrp_oct08.pdf

- Final Report of the Task Force on Minority Alumni Relations, Stanford University (2004)
- Final Report of the Task Force on Minority Alumni Relations, Stanford University (1996)

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Letter to Senator Patrick Leahy and Senator Jeff Sessions in support of the confirmation of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court (2009) (I did not contribute to the preparation of this letter; I joined it as a signatory.) The text of the letter can be found at http://www.scribd.com/doc/17205204/July-8-2009-Law-Professor-Letter-in-Support-of-Sotomayor

San Francisco Unified School District, Presentation to the Ad Hoc Committee on Student Assignment (Jan. 12, 2009). I gave a presentation on the Achievement Gap and the Relationship Between Diversity and Equity. A

PowerPoint presentation I used is available at http://portal.sfusd.edu/data/epc/January%2012%202009.pdf. A description of the event is available at http://rachelnorton.com/issues/student-assignment/notes-from-ad-hoc-committee/

Constitutional Law Professors' Statement About Proposition 8 (Oct. 29, 2008) (I did not contribute to the preparation of this statement; I joined it as a signatory.) The text of the letter can be found at http://yubanet.com/california/Leading-Legal-Scholars-Reject-Prop-8-Arguments.php

Testimony Before a Joint Hearing of the California Senate and Assembly Judiciary Committees on Proposition 8 (Oct. 2, 2008)

Brief of Amici Curiae Professors of Constitutional Law in Support of Respondents, *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008) (I did not contribute to the preparation of this brief; I joined it as a signatory.)

Testimony Before the California Assembly Education Committee on AB 586 (Jan. 16, 2008)

Letter to Senators regarding the constitutionality of H.R. 1592, The Local Law Enforcement Hate Crimes Prevention Act of 2007 (2007) (I did not contribute to the preparation of this letter; I joined it as a signatory). The text of the letter can be found at http://www.acslaw.org/node/11641

Testimony Before the U.S. Senate Judiciary Committee on the Nomination of Judge Samuel A. Alito, Jr. to the U.S. Supreme Court (Jan. 10, 2006)

Lawyers' Statement on Bush Administration's Torture Memos (2004) (I did not contribute to the preparation of this statement; I joined it as a signatory.) The text of the letter is available at http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=507

Letter to President Bush urging increase in the federal education investment in the FY2005 budget (December 15, 2003) (I did not contribute to the preparation of this statement; I joined it as a signatory.) The text of the letter is available at http://www.all4ed.org/files/BushLetter_individuals.pdf

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Oct. 16, 2009: Boalt Hall Washington, D.C. Alumni Reception, Washington, D.C. I gave remarks updating Boalt alumni on recent developments at the law school. I do not have copies of any notes, transcript, or recording. An announcement of the event is available at

http://events.berkeley.edu/?event_ID=20354&date=2009-10-16&tab=all_events.

Oct. 10, 2009: Boalt Hall Alumni Reunion Weekend, Berkeley, CA. I participated in a panel titled "U.S. Supreme Court Term Review." I do not have copies of any notes, transcript, or recording. An agenda listing the event is available at http://www.law.berkeley.edu/3468.htm.

Oct. 1, 2009: Thelton E. Henderson Center for Social Justice, UC Berkeley School of Law. I gave a talk on education policy as part of the Center's Social Justice Thursday series. I do not have copies of any notes, transcript, or recording. A flyer for the event can be viewed at http://169.229.248.216/files/10-01-09_Social_Justice_Thursday_Flyer.pdf.

Aug. 10, 2009: American Sociological Association Annual Meeting, San Francisco, CA. I spoke on a panel titled "Education in Diverse Communities." A copy of my speech is attached.

June 25, 2009: ACS Bay Area Lawyer Chapter, San Francisco, CA. I participated in a discussion on my co-authored book, *Keeping Faith with the Constitution.* I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/13877.

June 19, 2009: American Constitution Society National Convention, Washington, D.C. I discussed the ideas in my co-authored book, *Keeping Faith with the Constitution*, on a panel. I also gave brief remarks at lunch. I do not have copies of any notes, transcript, or recording. A news account of the panel is available at http://abovethelaw.com/2009/06/at-the-acs-national-convention-keeping-faith-with-the-constitution/#more-782. My lunch remarks are available at http://www.acslaw.org/taxonomy/term/189.

June 9, 2009: Commonwealth Club of California, San Francisco, CA. I moderated questions and answers for a discussion titled "Preserving American Justice in Times of Economic Crisis and Controversy" with featured speaker H. Thomas Wells, President of the American Bar Association. I do not have copies of any notes or transcript. An audio recording of the event is available at http://www.commonwealthclub.org/archive/09/09-07wells-audio.html.

May 21, 2009: Commonwealth Club of California, San Francisco, CA. I moderated questions and answers for a discussion with featured speaker Vincent Warren, Executive Director of the Center for Constitutional Rights. I do not have copies of any notes or transcript. A video of the event is available at http://www.ustream.tv/recorded/1541921.

May 16, 2009: Boalt Hall Commencement, Berkeley, CA. I gave a commencement speech to the Boalt Hall Class of 2009. A copy of my speech is attached.

May 8, 2009: Berkeley Center on Health, Economic and Family Security, UC Berkeley School of Law. I gave remarks on national education policy at a roundtable entitled "Shared Responsibility, Shared Risk: Government, Markets and Social Policy in the Twenty-First Century." I do not have copies of any notes, transcript, or recording.

May 4, 2009: "Language Acquisition and Immigrant Integration: Comparing European and U.S. Experiences," Berkeley, CA. I gave a welcome to the

conference on behalf of Berkeley Law School. I do not have copies of any notes, transcript, or recording. A copy of the conference agenda is at http://www.law.berkeley.edu/files/May_4_conf_agenda3.pdf.

May 1, 2009: American Constitution Society, Washington, D.C. I spoke at an event to release my co-authored book *Keeping Faith with the Constitution*. I do not have copies of any notes, transcript, or recording. A video of highlights from the event is available at http://www.acslaw.org/keepingfaith#VIDEO.

April 24, 2009: Frickey Symposium at UC Berkeley Law School. I moderated a panel titled "What is a Constitution For?" A video is available at http://www.youtube.com/watch?v=-FhOdRm1j4Q.

Apr. 22, 2009: UC Berkeley Distinguished Teaching Award Ceremony, Berkeley, CA. I gave an award acceptance speech. A video of the event is available at http://webcast.berkeley.edu/event_details.php?seriesid=6d2c9771-e1b6-4a43-a753-54b115b6a523&p=1&ipp=15&category.

Apr. 19, 2009: Pacific Islander, Asian, Native American Law Students Banquet, Yale Law School, New Haven, CT. I gave brief remarks in accepting a law school alumni award. I do not have copies of any notes, transcript, or recording.

Apr. 18, 2009: Northern District of California Judicial Conference, Yountville, CA. I compared and contrasted the early Obama administration with the early Lincoln administration on a panel titled "Team of Rivals." I do not have copies of any notes, transcript, or recording.

Apr. 16, 2009: Blum Center for Developing Economies, Berkeley, CA. Justice Stephen Breyer gave a presentation on "International Law," and I served as a moderator and commenter. A video is available at http://www.youtube.com/watch?v=o5zaImTF92g.

Apr. 15, 2009: American Educational Research Association Annual Meeting, San Diego, CA. I presented my paper, *Improving Title I Funding Equity Across States, Districts, and Schools*, 93 Iowa L. Rev. 973 (2008), on a panel titled "Funding Public Education for Disadvantaged Students: Economic, Legal and Policy Perspectives." I relied on the published work in lieu of notes. An agenda for the event is available at http://edr.sagepub.com/cgi/reprint/38/2/146.pdf.

Apr. 4, 2009: Brennan Center for Justice Conference on "The Next Democracy," White Oak Conservation Center, FL. I appeared in a conference video, available at http://www.brennancenter.org/content/pages/the_next_democracy_interviews_white_oak#Liu.

Feb. 23, 2009: Washington University St. Louis School of Law, St. Louis, MO. I spoke on civil rights as part of the Public Interest Law and Policy Speaker Series. A video is available at http://mediasite.law.wustl.edu/mediasite/Viewer/?peid=4351a1ef4b62424b89b099d625662b16.

Jan. 30, 2009: Dale Minami Boalt Alumni Fellowship Dinner, San Francisco, CA. I gave dinner remarks urging the student audience to pursue public service. A copy of my speech is attached.

Jan. 8, 2009: American Association of Law Schools Annual Meeting, San Diego, CA. I described the mission and activities of the American Constitution Society on a panel titled "Associational Pluralism." A video of this event is available at https://memberaccess.aals.org/eWeb/DynamicPage.aspx?webcode=SesDetails&scs_key=dddb96f7-3996-4c82-bee1-0e551dcbe5d5.

Dec. 4, 2008: Law and Philosophy Seminar: "Rethinking Constitutional Welfare Rights," Georgetown Law, Washington DC. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008). I relied on a draft of the published work in lieu of notes. An announcement of the event is available at http://www.law.georgetown.edu/Faculty/events/details.cfm?EventID=267.

Nov. 17, 2008: Public Education Network Annual Conference, San Francisco, CA. I described the activities of the Obama-Biden Transition team on education policy in a session titled "Equity and Access." I do not have copies of any notes, transcript, or recording. An agenda for the event can be viewed at http://publiceducation.org/annualconference/agenda.html.

Nov. 14, 2008: American Constitution Society Conference on "The Second Founding and the Reconstruction Amendments: Toward a More Perfect Union," Philadelphia, PA. I spoke on a panel titled "The Privileges or Immunities Clause." An audio recording of the event is available at http://www.acslaw.org/node/8217.

Nov. 13, 2008: Columbia Law School, New York, NY. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008), at a legal theory workshop. I relied on a draft of the published work in lieu of notes. The event announcement is available at http://www.law.columbia.edu/faculty/fac_resources/publiclaw_lunch.

Oct. 30, 2008: University of Chicago Law School, Chicago, IL. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008), at a constitutional law workshop. I relied on a draft of the published work in lieu of notes.

Oct. 22, 2008: Duke Law School, Durham, NC. I presented my paper, *The Bush Administration and Civil Rights: Lessons Learned*, 4 Duke J. Const. L & Pub. Pol'y 77 (2009), in the "Lessons Learned Series" of the Program in Public Law. I relied on a draft of the published work in lieu of notes. An article describing my remarks and a video are available at http://www.law.duke.edu/news/story?id=2658&u=17.

Oct. 22, 2008: Duke Law School Chapter of the American Constitution Society, Durham, NC. I spoke on a program titled "Counting to Five: What the 2008 Election Will Mean for the Supreme Court." A video of this event is available at http://realserver.law.duke.edu/ramgen/fall08/students/10222008.rm.

Oct. 18, 2008: Stanford University, Palo Alto, CA. I moderated a panel discussion entitled, "Harming the Best: How Schools Affect the Black-White

Achievement Gap," as part of an event, "Justice and Educational Distribution," co-sponsored by the Bowen H. McCoy Family Center for Ethics in Society and The Spencer Foundation. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.stanford.edu/dept/EIS/justice_and_education/program.html.

Oct. 10, 2008: Multicultural Hall of Fame Induction Ceremony, Stanford University, Stanford, CA. I emceed a ceremony to honor four Stanford alumni inducted into the university's Multicultural Hall of Fame. I do not have copies of any notes or recording. A video is available at http://www.youtube.com/watch?v=0-KjlMgIgxg.

Oct. 3, 2008: Stanford Center for Opportunity Policy in Education, Stanford, CA. I gave a talk on civil rights at a conference on the forty-year anniversary of the Kerner Commission report. A copy of my lecture is available at: http://edpolicy.stanford.edu/pages/events/kerner/materials/ppts/kerner_liu.pdf.

Sept. 23, 2008: Quadrus Conference Center, Palo Alto, CA. I spoke on a panel titled "Careers Beyond the Partner Track" co-sponsored by the Asian American Bar Association, Axiom, and UC Berkeley School of Law. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://archive.constantcontact.com/fs030/1101913634762/archive/1102238968119.html.

Sept. 16, 2008: Institute for Legal Research, Forum on "Courts, Politics, and the Media," Berkeley, CA. I gave brief remarks on the need for judicial decisions to be better communicated to the public. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://berkeley.edu/news/berkeleyan/2008/09/24_greenhouse.shtml.

Aug. 20, 2008: I provided brief remarks at an introduction/welcome to the ACS chapter at Berkeley Law. I do not have copies of any notes, transcripts or recordings. An announcement of the event can be viewed at http://www.acslaw.org/node/6909.

July 23, 2008: American Constitution Society Bay Area Lawyers Chapter, San Francisco, CA. I spoke on a panel titled "The 2007-2008 Supreme Court Term: What Happened and Why It Matters." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/6952.

June 14, 2008: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "Our Enduring Constitution: Applications and Interpretations." A video is available at http://acslaw.org/node/6724.

June 12, 2008: Exploring New Horizons for Equal Educational Opportunity, Eighth Annual Quality Education Conference, Washington D.C., convened by Education Justice at Education Law Center, National Access Network at Teachers College, and Education Voters Institute. I participated in a panel discussion on the second day of this two-day conference titled "Righting *Rodriguez*: Implications of Advancing a Federal Constitutional Right to Education." I do not have copies of any notes, transcript, or recording. A

description of the panel is available at http://schoolfinance.org/conference/2008/7-14-08-Rodriguez.php3.

June 9-10, 2008: James B. Hunt Institute for Educational Leadership and Policy, Governors Education Symposium, Cary, NC. I discussed my articles, *Improving Title I Funding Equity Across States, Districts, and Schools*, 93 Iowa L. Rev. 973 (2008), and *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006). I relied on the published work in lieu of notes. A description of my remarks appears on page 9 of the Symposium Report, available at http://www.hunt-institute.org/elements/media/event-materials/GES08.PDF.

May 16, 2008: UC Santa Barbara Conference on "Realizing *Bakke*'s Legacy: Equal Opportunity and Access to Higher Education," Santa Barbara, CA. I gave remarks on diversity and higher education. A copy of my speech is attached.

May 12, 2008: University of Chicago Law School, American Constitution Society student chapter, Chicago, IL. I spoke on legal issues affecting public education at a brown bag lunch. I do not have copies of any notes, transcript, or recording. An announcement of the event can be viewed at http://www.acslaw.org/node/6516.

May 6, 2008: Grantmakers in Film and Electronic Media, Washington, D.C. I spoke on a panel discussing the documentary film *Traces of the Trade.* A video is available at http://www.archive.org/details/GrantmakersinFilmElectronicMediaTracesoftheTradeDialog.

Apr. 25, 2008: Asian Pacific Americans in Higher Education Annual Conference, San Francisco, CA. I spoke at a session on university trusteeship and described my service as a member of the Stanford Board of Trustees. I do not have copies of any notes, transcript, or recording.

Apr. 18, 2008: EdSource Forum, Palo Alto, CA. I presented my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008). I relied on the report in lieu of notes. A video and information about the event (including my presentation) are available at http://www.edsource.org/event_forum2008_video4.html.

Apr. 12, 2008: Cal Day, UC Berkeley. I moderated a panel titled "Choosing the President in 2008: Assessing the Post-Reform System." A video is available at http://webcast.berkeley.edu/event_details.php?webcastid=23057.

Apr. 12, 2008: Cal Day, UC Berkeley. I spoke on a panel titled "Restructuring School Finance." I do not have copies of any notes, transcript, or recording. A description of the panel is available at http://calday.berkeley.edu/calday/2008/elex.shtml.

Apr. 5, 2008: African-American Alumni Reunion, UC Berkeley School of Law. I moderated a panel titled "Supporting Diversity Post Prop 209." I do not have copies of any notes, transcript, or recording. An agenda for the event is available at http://www.law.berkeley.edu/alumni/reunions/aaa/program.html.

Apr. 2, 2008: UC Berkeley webcast on "Understanding California's School Funding Crisis," co-sponsored by the California Media Collaborative,

Commonwealth Club of California, and Education Writers Association, Berkeley, CA. I discussed ideas from my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008). I relied on the report in lieu of notes. I do not have copies of any transcript. A video is available at http://webcast.berkeley.edu/event_details.php?webcastid=23024.

Mar. 17, 2008: National Academy of Sciences, Workshop Series on Common Standards for K-12 Education, Washington, D.C. I spoke on "Implications of Common Standards for Adequacy Lawsuits." I do not have copies of any notes, transcript, or recording. My remarks are described in the Workshop Summary (pp. 55-58), available at http://www.nap.edu/catalog.php?record_id=12462.

Feb. 21, 2008: Thelton E. Henderson Center for Social Justice, UC Berkeley School of Law. I gave a talk on constitutional law as part of the Center's Social Justice Thursday series. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.law.berkeley.edu/files/SJThursdays-GoodwinLiu.pdf.

Feb. 8, 2008: University of Washington School of Law, American Constitution Society student chapter, Seattle, WA. I discussed my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008). I relied on a draft of the published work in lieu of notes. A newsletter entry announcing the event is available at http://www.law.washington.edu/Students/StudentNews/07-08/16Feb4.pdf.

Feb. 8, 2008: Seattle University School of Law, Seattle, WA. I discussed the ideas in my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), at a conference titled "*Brown* Undone? The Future of Integration in Seattle After *PICS v. Seattle School District No. 1*." I relied on the published work in lieu of notes. An agenda for this event is available at http://www.law.seattleu.edu/x2044.xml.

Jan. 11, 2008: Policy Analysis for California Education Seminar, Sacramento, CA. I presented my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008). I relied on the report in lieu of notes. I do not have copies of any transcript or recording. A description of the event can be found at http://pace.berkeley.edu/category/publications/page/2/.

Jan. 4, 2008: American Association of Law Schools Annual Meeting, New York, NY. I discussed the ideas in my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), on a panel titled "The *Seattle/Louisville* Ruling: Constriction or Expansion of Race-Based Policies?" I relied on a draft of the published work in lieu of notes. An agenda for this event is available at http://www.aals.org/am2008/friday/index.html.

Dec. 12, 2007: Union for Reform Judaism Biennial Conference, San Diego, CA. I gave remarks at a session examining recent Supreme Court cases in light of new appointments. I do not have copies of any notes, transcript, or recording.

A video of a portion of my remarks is available at http://www.youtube.com/watch?v=8dAmkHs1lPM.

Dec. 12, 2007: Kaiser Permanente Annual National Diversity Conference, San Francisco, CA. I discussed the current state of affirmative action law and policy on a panel titled "Affirmative Action: Past, Present, and Future." I do not have copies of any notes, transcript, or recording. A news release for this event is available at http://xnet.kp.org/newscenter/pressreleases/nat/2007/121207diversity.html.

Nov. 19, 2007: American Association of State Colleges and Universities Annual Conference, San Francisco, CA. I gave remarks on diversity in higher education. I used the same speech text as my talk at UC Santa Barbara on May 16, 2008, for which a copy is attached.

Nov. 16, 2007: Education Law Association Annual Conference, San Diego, CA. I gave brief remarks in accepting the Steven S. Goldberg Award for Distinguished Scholarship in Education Law. I do not have copies of any notes, transcript, or recording.

Nov. 2, 2007: Center for Comparative Study of Race and Ethnicity Conference on "Embracing Diversity: Making and Unmaking Race, Ethnicity and Difference in the 21st Century," Stanford, CA. I discussed changes in civil rights law and policy since *Brown* on a panel titled "Education and Equity in a Post-*Brown* Era." I do not have copies of any notes, transcript, or recording. Part of my presentation is quoted and summarized at http://news.stanford.edu/news/2007/november7/ccsre-110707.html.

Nov. 1, 2007: Thelton E. Henderson Center for Social Justice, UC Berkeley School of Law. I moderated a panel titled "Civil Rights Litigation in the Roberts Court Era," as part of a symposium titled "Reclaiming & Reframing the Dialogue on Race & Racism." A video is available at http://www.law.berkeley.edu/2690.htm.

Oct. 25, 2007: Kadish Lectures, UC Berkeley School of Law. I was a commentator on a lecture given by Robert Post entitled, "*Roe* Rage: Democratic Constitutionalism and Backlash." I do not have copies of any notes, transcript, or recording. An announcement for the event is available at http://www.law.berkeley.edu/files/KadishLectureFall2007poster2.pdf.

Oct. 9, 2007: U.S. Court of Appeals for the Ninth Circuit annual law clerk orientation, San Francisco, CA. I gave dinner remarks published as *The First Justice Harlan*, 96 Cal. L. Rev. 1383 (2008).

Oct. 5, 2007: Columbia Law School, American Constitution Society student chapter, New York, NY. I discussed my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008). I relied on a draft of the published work in lieu of notes. An article on the event is available at http://columbiaacs.blogspot.com/2007/10/school-desegregation.html.

Oct. 4, 2007: Fourth Annual High School Policy Conference: From No Child Left Behind to Every Child a Graduate, Washington, D.C., sponsored by the Alliance for Excellent Education. I spoke on a panel titled "College and Work

Readiness: Raising Standards and Improving Assessments." A video is available at http://www.all4ed.org/events/fourth_HSpolicyconference_agenda.

Oct. 4, 2007: Yale Law School, New Haven, CT. I spoke at an event titled "The Future of Civil Rights Litigation" co-sponsored by the Pacific Islander, Asian, and Native American Law Students and the Yale Civil Rights Project. I do not have copies of any notes, transcript, or recording. An announcement of the event is available at https://www.acslaw.org/node/5980.

Sept. 29, 2007: Boalt Hall Alumni Weekend. I participated in a panel titled "The First Full Year of the Roberts Supreme Court: Highlights." I do not have copies of any notes, transcript, or recording. A listing of the event is available at http://www.law.berkeley.edu/alumni/reunions/2007/program.html.

Sept. 27, 2007: ACS Bay Area Lawyer Chapter. I participated in a panel titled "The Supreme Court 2006-2007 Term: School Desegregation Cases." I do not have copies of any notes, transcript, or recording. A description of this event is available at http://www.acslaw.org/node/5407.

August 12, 2007: ABA Section on Individual Rights and Responsibilities. San Francisco, CA. I spoke at a CLE program titled "The Supreme Court and Desegregation: In the Wake of *Meredith v. Jefferson County Board of Education.*" I do not have copies of any notes, transcript, or recording. A description of this event is available at http://www.abanet.org/irr/annual2007/desegregation.html.

July 27, 2007: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "Race and the Constitution: The State of Equal Protection." Video is available at http://www.acslaw.org/node/5194.

July 24, 2007: Bar Association of San Francisco "Supreme Court Review," San Francisco, CA. I discussed major cases of October Term 2006. I do not have copies of any notes, transcript, or recording.

July 24, 2007: Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, UC Berkeley School of Law. I spoke at an event titled "The Future of School Desegregation: Implications of the recent Supreme Court decisions on race-conscious school assignment." I do not have copies of any notes, transcripts, or recordings. An announcement of the event is available at http://berkeley.edu/news/media/releases/2007/07/23_law.shtml

Apr. 21, 2007: Cal Day Panel, Berkeley. I participated in a panel discussion on the No Child Left Behind Act. I do not have copies of any notes, transcript, or recording. A description of this event is available at http://gse.berkeley.edu/admin/publications/bulletin0706/7006calday_panel.html.

Mar. 31, 2007: *Pepperdine Law Review* Symposium on "Post-*Grutter*: What Does Diversity Mean in Legal Education and Beyond?," Malibu, CA. I discussed the implications of *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003) for university admissions policies in a session titled "Diversity in Admissions." I do not have copies of any notes, transcript, or recording.

Mar. 23, 2007: San Mateo Legal Aid Society Annual Awards Luncheon, East Palo Alto, CA. I gave remarks on the meaning of *Brown v. Board of Education*. A copy of my speech is attached.

Mar. 6, 2007: UC Berkeley Graduate School of Education Colloquium, Berkeley, CA. I spoke on a panel discussing No Child Left Behind and commented on a presentation by Sandy Kress, former education advisor to President George W. Bush. I do not have copies of any notes, transcript, or recording. A news report of the event is available at http://www.dailycal.org/printable.php?id=23718.

Dec. 4, 2006: American Constitution Society, Washington, D.C. I spoke on a panel titled "The Advocates Speak: School Desegregation Cases in the Supreme Court." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/3835.

Nov. 14, 2006: ACS Bay Area Lawyer Chapter, San Francisco, CA. I spoke on a panel titled "Two School Desegregation Cases: Parents Involved in Community Schools v. Seattle, and Meredith v. Louisville." I do not have copies of any notes, transcript, or recording. An announcement of the event is available at http://www.acslaw.org/node/3698.

Oct. 31, 2006: American Constitution Society student chapter, UC Berkeley School of Law. I spoke on a panel titled "Crafting Progressive Legal Scholarship." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/3549.

Oct. 17, 2006: UC Berkeley Center for Cities & Schools, Berkeley, CA. I spoke on a panel titled "What's at Stake for Children, Families and Neighborhoods? Examining Upcoming Supreme Court Cases on Voluntary School Desegregation." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://berkeley.edu/news/media/releases/2006/10/12_schoolforum.shtml.

July 20, 2006: Bar Association of San Francisco "Supreme Court Review," San Francisco, CA. I discussed major cases of October Term 2005. I do not have copies of any notes, transcript, or recording.

June 19, 2006: Achievement Gap Initiative Research Conference, Kennedy School of Government, Cambridge, MA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006). I relied on drafts of the published work in lieu of notes. Video is available at http://www.agi.harvard.edu/Search/SearchAllVideo.php. A copy of my presentation is available at http://www.agi.harvard.edu/presentations/2006Conference/Liu.ppt.

June 18, 2006: American Constitution Society National Convention, Washington, D.C. I moderated a panel titled "Wealth Inequality." A video is available at http://www.acslaw.org/node/3012.

May 8, 2006: Mathematical Sciences Research Institute, Berkeley, CA. I presented my articles, *Interstate Inequality in Educational Opportunity*, later published at 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, later published at 116 Yale L.J. 330 (2006), at a

conference titled "Raising the Floor: Progress and Setbacks in the Struggle for Quality Mathematics Education for All." I relied on drafts of the published work in lieu of notes. Video is available at http://www.msri.org/communications/vmath/VMathVideos/VideoInfo/2560/show_video. A copy of the presentation I used is available at http://www.msri.org/calendar/attachments/workshops/388/InterstateInequalitySlides-MSRI.ppt.

Apr. 27-28, 2006: UC Berkeley School of Law, Berkeley, CA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006), at a conference titled "Rethinking *Rodriguez*: Education as a Fundamental Right." I relied on drafts of the published work in lieu of notes. I also gave a welcome and introduction to the symposium. A news release for the event is available at http://www.law.berkeley.edu/3971.htm.

Apr. 10, 2006: American Educational Research Association Annual Meeting, San Francisco, CA. I was a commenter on a keynote address by Christopher Edley on educational opportunity and civil rights. A video is available at http://www.cmcgc.com/Media/WMP/260407/63_011_files/Default.htm#noprecload=-1.

Mar. 14, 2006: American Constitution Society student chapter, UC Berkeley School of Law. I gave a short presentation on opportunities for students to become involved with the ACS and related scholarship at Berkeley Law. I do not have copies of any notes, transcriptions, or recordings. An announcement of the event is available at http://www.acslaw.org/node/2378.

Mar. 11, 2006: Daito Bunka University Law School, Tokyo, Japan. I presented my article, *Developments in U.S. Education Law and Policy*, 2 Daito L. Rev. 17 (2006), to law students and faculty. I relied on a draft of the published work in lieu of notes.

Mar. 9, 2006: National Taiwan University College of Law, Taipei, Taiwan. I gave a talk on the U.S. Supreme Court and recent appointments to law students and faculty. A copy of my speech is attached.

Mar. 4, 2006: National Asian Pacific American Conference on Law and Public Policy, Harvard Law School, Cambridge, MA. I gave a talk on the historical struggle of Asian Americans for equal citizenship and marriage equality. A copy of my speech is attached.

Feb. 15, 2006: Boalt Hall Los Angeles Alumni Chapter, Los Angeles, CA. I spoke on two panels about the Supreme Court at alumni events. I do not have copies of any notes, transcript, or recording. A description of the events is available at http://www.law.berkeley.edu/3936.htm.

Feb. 13, 2006: American Constitution Society Bay Area Lawyers Chapter, San Francisco, CA. I spoke on a panel titled "Domestic Spying: Illegal or Inevitable?" A copy of my remarks is attached.

Nov. 17, 2005: San Francisco Boalt Hall Alumni Chapter, Bingham McCutcheon, San Francisco, CA. I introduced a colleague, Professor Leti Volpp, who presented a paper entitled "The Excesses of Culture: On Asian American Citizenship and Identity." I do not have copies of any notes, transcript or

recording. A description of this event is available at http://www.law.berkeley.edu/alumni/enewsletter/index_December05.html#ExcessofCulture.

Oct. 21, 2005: Faculty Colloquium, UCLA School of Law. I presented my article, *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006). I relied on a draft of the published work in lieu of notes.

Sept. 29, 2005: Charles Hamilton Houston Institute for Race and Justice, Harvard Law School, Cambridge, MA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006). I relied on drafts of the published work in lieu of notes. A video is available at http://www.charleshamiltonhouston.org/Events/Event.aspx?id=100011.

Sept. 24, 2005: Boalt Hall Alumni Reunion, UC Berkeley School of Law. I participated in a panel discussion on the Supreme Court entitled, "Nine Scorpions in a Bottle." I do not have copies of any notes, transcript, or recording.

Sept. 22, 2005: Asian Pacific Bar Association of the Silicon Valley, Palo Alto, CA. I gave a talk titled "The Fate of Affirmative Action from the O'Connor Court to the Roberts Court" and provided an overview of key cases in the prior two decades. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://web.archive.org/web/20070721133302/www.apbasv.org/events/2005Affirmative/2005Affirmative.htm.

Sept. 20, 2005: Constitution Day, UC Berkeley School of Law. I moderated a panel titled "The Path of Constitutional Law: Continuity, Crossroads, or Crisis?" I do not have copies of any notes, transcript, or recording. An article discussing the event is available at http://www.dailycal.org/article/19581/legal_scholars_debate_updating_constitution.

Sept. 7, 2005: Faculty Club Event, UC Berkeley. I spoke on a panel titled "Where's the Supreme Court Going?" I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.berkeleyfacultyclub.com/newsletter/sep05/.

Aug. 29, 2005: Center for the Study of Law and Society, Berkeley. I presented my article, *Education, Equality, and National Citizenship*, later published at 116 Yale L.J. 330 (2006). I relied on a draft of the published work in lieu of notes. A calendar entry for the event is available at http://www.law.berkeley.edu/1237.htm.

July 30, 2005: American Constitution Society National Convention, Washington, D.C. I moderated a panel titled "The Right to Education Revisited." I described the Supreme Court decision in *San Antonio Independent School District v. Rodriguez* (1973) and introduced the panelists. I do not have copies of any notes, transcript, or recording. An agenda for the event can be viewed at http://americanconstitutionsociety.org/pdf/conventionbrochure.pdf.

June 28, 2005: Bar Association of San Francisco "Supreme Court Review," San Francisco, CA. I discussed major cases of October Term 2004. I do not have copies of any notes, transcript, or recording.

June 27, 2005: Colloquium on School Choice, Brothers of the Christian Schools, District of San Francisco, De La Salle Institute, Napa, CA. I gave remarks on the topic of school choice and state constitutions. I do not have copies of any notes, transcript, or recording.

May 12, 2005: Asian American Awards Ceremony, Stanford University, Stanford, CA. I gave brief remarks in accepting an alumni award. I do not have copies of any notes, transcript, or recording.

May 5, 2005: University of Minnesota Law School Conference on "With All Deliberate Speed: *Brown II* and Desegregation's Children," Minneapolis, MN. I presented my article, *The Parted Paths of School Desegregation and School Finance Litigation*, later published at 24 L. & Inequality 81 (2006). I relied on a draft of the published work in lieu of notes. A news article previewing the event can be viewed at http://www1.umn.edu/news/features/2005/UR_47223_REGION1.html.

Apr. 22, 2005: ACS Northern California Caucus, Hastings Law School. I participated in a roundtable discussion. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://students.law.ucdavis.edu/ACS/past-events.asp.

Apr. 14, 2005: Institute for Governmental Studies, UC Berkeley. I spoke on a panel titled "The Future of the United States Supreme Court." I do not have copies of any notes, transcript, or recording. The event is noted on page 3 of the report at http://igs.berkeley.edu/publications/par/spring2005.pdf.

Apr. 8, 2005: ACS Constitution in 2020 Conference, Yale Law School. I moderated a panel titled "Constitutional Politics in 2020." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://islandia.law.yale.edu/acs/conference/schedule/index.asp.

Mar. 11, 2005: Quality Education as a Civil Right Conference, Howard University, Washington, D.C. I spoke on a panel addressing the topic of educational equity. I do not have copies of any notes, transcript, or recording.

Oct. 16, 2004: Class in the Classroom Conference, Society of American Law Teachers, Las Vegas, NV. I presented my article, *Race, Class, Diversity, Complexity*, 80 Notre Dame L. Rev. 289 (2004). I relied on a draft of the published work in lieu of notes.

Oct. 2, 2004: Boalt Hall Alumni Reunion, UC Berkeley School of Law. I spoke on a panel of constitutional law scholars examining the most important decisions of the U.S. Supreme Court's year. I do not have copies of any notes, transcript, or recording. A listing for the event is available at http://www.law.berkeley.edu/alumni/reunions/2004/program.html.

Sept. 20, 2004: UCLA Critical Race Studies Series, UCLA School of Law. I presented my article, *Race, Class, Diversity, Complexity*, 80 Notre Dame L. Rev. 289 (2004). I relied on a draft of the published work in lieu of notes.

July 1, 2004: Supreme Court Review, American Constitution Society, Washington, D.C. I moderated a panel discussion on the major cases of October Term 2003. A transcript of the panel discussion is attached.

June 22, 2004: Legal Aid Society, Employment Law Center, San Francisco, CA. I gave remarks at a brown bag lunch discussion on the fiftieth anniversary of

Brown v. Board of Education. I do not have copies of any notes, transcript, or recording.

June 17, 2004: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "The Legacy of *Brown v. Board of Education*." A transcript of the event is available at http://www.acslaw.org/files/2004%20convention_Brown%20v%20Board's%20legacy_panel%20transcript.pdf.

June 15, 2004: American Association of Law Schools Racial Justice Workshop, Portland, OR. I presented my article, *Race, Class, Diversity, Complexity*, later published at 80 Notre Dame L. Rev. 289 (2004). I relied on a draft of the published work in lieu of notes.

May 17, 2004: *Brown*@50 Conference, New York University, New York, NY. I spoke on a panel titled "Intergenerational Town Hall Meeting" discussing the fiftieth anniversary of *Brown v. Board of Education*. I do not have copies of any notes, transcript, or recording.

Apr. 30, 2004: Stanford Minority Alumni Conference, Stanford, CA. I presented findings of the Final Report of the Task Force on Minority Alumni Relations. I relied on the published report in lieu of notes.

Apr. 13, 2004: American Educational Research Association Annual Conference, San Diego, CA. I spoke on a panel titled "Desegregation in the Legal Profession." I do not have copies of any notes, transcript, or recording.

Apr. 8, 2004: UC Berkeley School of Law, Berkeley, CA. I spoke on a panel titled "*Mendez v. Westminster*: 1946 – A California Look at *Brown v. Board of Education*" co-sponsored by the *La Raza Law Journal* and the Center for Social Justice. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://web.archive.org/web/20050413042751/www.boalt.org/LRLJ/symposium.html.

Feb. 28, 2004: Earl Warren and the Warren Court: A Fifty-Year Retrospect, UC Berkeley. I spoke on a panel titled "The Warren Court and American Legal Culture." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://169.229.248.216/files/warren_conference_complete_program.pdf.

Nov. 14, 2003: Center for Social Justice, "Rekindling the Spirit of Brown v. Board of Education: A Call to Action," UC Berkeley School of Law. I moderated a workshop titled "Challenging No Child Left Behind." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.law.berkeley.edu/files/Spring04.pdf.

Oct. 18, 2003: Boalt Hall Alumni Reunion, UC Berkeley School of Law. I spoke on a panel about recent Supreme Court cases. I do not have copies of any notes, transcript, or recording.

Sept. 11, 2003: Boalt Hall Alumni Association Annual Dinner, Berkeley, CA. I presented my article, "From *Brown* to *Grutter* and Beyond," later published at *Boalt Hall Transcript*, Spring/Summer 2004, at 26. I relied on a draft of the published work in lieu of notes.

Aug. 30, 2003: Harvard Civil Rights Project Color Lines Conference, Cambridge, MA. I spoke on a panel titled "Inequality in K-12 Educational Opportunity" and presented my co-authored article, *School Choice to Achieve Desegregation*, later published at 74 Fordham L. Rev. 791 (2005). I relied on a draft of the published work in lieu of notes. A press release for the conference is available at http://www.law.harvard.edu/news/2003/08/29_colorlines.html.

Aug. 2, 2003: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "Segregation, Integration, and Affirmative Action After *Bollinger*." A transcript is available at http://www.acslaw.org/files/2003%20convention_affirmative%20action_panel%20transcript.pdf.

June 25, 2003: American Enterprise Institute, Washington, D.C. I gave remarks at a brown bag lunch discussion on the No Child Left Behind Act. I do not have copies of any notes, transcript, or recording.

Mar. 31, 2003: Georgetown University Law Center, Washington, D.C. I spoke on a panel titled "One Step Forward, Two Steps Back? *Grutter v. Bollinger* and the Future of Affirmative Action" and analyzed the *Grutter* decision. I do not have copies of any notes, transcript, or recording.

Sept. 30, 1999: Workshop on "Foundations of Educational and Psychological Assessment," National Academy of Sciences, Washington, D.C. I discussed federal laws and policies concerning student assessment in K-12 public schools. I do not have copies of any notes, transcript, or recording.

May 20, 1995: Chandler-Gilbert Community College, Chandler, AZ. I gave a commencement speech. I used the same speech text as my speech at Unity College on May 13, 1995, for which a copy is attached.

May 13, 1995: Unity College, Unity, ME. I gave a commencement speech. A copy of my speech is attached.

Apr. 12, 1995: Education for a Responsible Society Symposium, Stanford University. I spoke on a panel sponsored by the Stanford University Center for Teaching and Learning. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.stanford.edu/dept/CTL/Newsletter/being_a_TA.pdf.

Mar. 25, 1995: Partnership for Service-Learning Twelfth Annual International Conference, New York, NY. I spoke on a panel titled "The National Movement in Service-Learning." I do not have copies of any notes, transcript, or recording. An announcement of the event is available at http://www.ipsl.org/pdfs/ARWinter1995.pdf.

Jan. 13, 1995: Colloquium on National and Community Service, American Association for Higher Education, Washington, D.C. I gave a presentation titled "Service-Learning: A Paradigm Shift in Higher Education?," later published in *NSEE Quarterly* (National Society for Experiential Education, Mt. Royal, N.J.), Fall 1995, at 8. I relied on a draft of the published work in lieu of notes.

Feb. 28, 1994: Association of Community College Trustees National Legislative Seminar, Washington, D.C. I presented my article, *Community Colleges:*

Critical Partners in National and Community Service, Trustee Quarterly, Spring 1994, at 10. I relied on a draft of the published work in lieu of notes.

Dec. 1991: Panel discussion on "The Constitution: That Delicate Balance," Fred Friendly Seminar, Williamsburg, VA. I discussed issues related to diversity and higher education. I do not have copies of any notes or transcript. A list of participants in the program is available at http://www.fredfriendly.org/programs/35/mp/. As I recall, this event was filmed, and it may have been broadcast. I have not been able to locate a copy; if I obtain one, I will produce it immediately to the Committee.

Apr. 10, 1991: Panel discussion on "Safe Speech, Free Speech, and the University," Stanford University, Stanford, CA. I discussed recent debates on campus concerning hate speech. I do not have copies of any notes or transcript. The program was described in a *New York Times* article. Walter Goodman, "Review/Television; Political Correctness Versus Open Expression on Campus," *N.Y. Times*, June 6, 1991. I have not been able to locate a copy of the broadcast; if I obtain one, I will produce it immediately to the Committee.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Peter Jamison, "The Torture Memos and Berkeley's Law-School Schedule," *SF Weekly*, Aug. 12, 2009

Jess Bravin, "Decision Reflects Court's Deep Division," *Wall Street Journal*, June 30, 2009, at A4

Ari Shapiro, "Conservatives Have 'Originalism'; Liberals Have ...?," *NPR All Things Considered*, June 23, 2009

Lydia DePillis, "Et Tu, Scalia?," *Slate*, June 22, 2009

Ariel Alexovich, "Suite Talk: ACLU Director Leaves D.C. Office," *Politico.com*, June 3, 2009

Maura Dolan, "Battles Brew As Gay Marriage Ban Is Upheld," *Los Angeles Times*, May 27, 2009, at A1

Petra Pasternak, "Prop 8 Stands, But What About the 18K Marriages?," *LegalPad Blog*, May 26, 2009

Bara Vaida, "ACLU's Fredrickson Departs for Legal Group," *Under the Influence* (*National Journal* blog), May 19, 2009

Aaron Wiener, "Supreme Court Nominee Debate Defined by Conservatives," *Washington Independent*, May 18, 2009

Joe Garofoli, "Pros and Cons of President's Potential Choices," *San Francisco Chronicle*, May 13, 2009, at A6

ACSBlog, "Podcast/Interview with Goodwin Liu on 'Keeping Faith with the Constitution,'" May 5, 2009. A video of the interview is available at http://www.acslaw.org/node/13374

David Lightman et al., "Obama Court Pick Could Sail Through," *Miami Herald*, May 2, 2009, at A5

Michael Doyle, "Souter Has Defied a Legal Stereotype," *Miami Herald*, May 2, 2009, at A5

Michael Doyle & Marisa Taylor, "Liberal or Not, Souter's Departure Will Remake Court," *McClatchy-Tribune News Service*, May 1, 2009.

Profiles of the recipients of the 2009 Distinguished Teaching Award, April 22, 2009. Audio available at http://webcast.berkeley.edu/event_details.php?seriesid=8d2830c1-fa11-4baf-8687-255c0ac42207&p=1&ipp=15&category=

"A Truly Distinguished Lot," *States News Service,* April 16, 2009

Dan Levine, "A Handful of Hopefuls Eye Ninth Circuit," *Recorder*, Mar. 18, 2009, at 1

Jess Bravin, "Rethinking Original Intent," *Wall Street Journal*, Mar. 14, 2009, at W3

Leslie A. Gordon, "Left Turn Permitted," *ABA Journal*, Mar. 2009, at 9

Berkeley Faculty Spotlight, "Learning from Leaders," Feb. 28, 2009. I do not have notes, transcript, or recording. A description of the event is available at http://ayj.berkeley.edu/node/9.

Noelle Carter, "Slow Revolution," *Los Angeles Times*, Feb. 25, 2009, at F1

Eric Lichtblau, "Obama Pick to Analyze Broad Powers of President," *New York Times*, Jan. 8, 2009, at A22

Ari Shapiro, "Balance of Power Swings to Liberal Legal Group," *NPR Weekend Edition*, Jan. 3, 2009

David Savage. "How Did They Get It So Wrong?: Left and right differ on the decisions, but each side has its 'worst' list." *ABA Journal*. January, 2009

Kara Platoni, "Finding the Golden State Mean: A Boalt Expert Offers a Daring Plan to Reform California's Education Spending," *Boalt Hall Transcript*, Fall-Winter 2008 at 13-14, available at http://www.law.berkeley.edu/files/Transcript.FallWinter2008.Short-smaller.pdf

Lisa Lerer, "Liberal Legal Group Comes to the Fore," *Politico.com*, Dec. 28, 2008

Maura Dolan, "Brown Asks Justices to Toss Prop. 8," *Los Angeles Times*, Dec. 20, 2008 at A1

James Parker, "Prop. 8 Suits Win Supreme Court Review," *Daily Californian*, Nov. 20, 2008

Maura Dolan, "Justices Will Hear Prop. 8 Challenges," *Los Angeles Times*, Nov. 20, 2008 at A1

John Simerman, "Same-Sex Marriage Headed Back to Court," *Contra Costa Times*, Nov. 6, 2008

Ben Smith, "Affirmative Action Change Under Obama?," *Politico.com*, Nov. 3, 2008

David G. Savage, "Roe vs. Wade? Bush vs. Gore? What Are the Worst Supreme Court Decisions?," *Los Angeles Times*, Oct. 23, 2008

Bob Egelko, "U.S. Supreme Court in Play After Election," *San Francisco Chronicle*, Oct. 20, 2008, at A1

Tony Mauro, "Can McCain, Obama Turn High Court?," *Legal Times*, Oct. 13, 2008, at 8

Andrew Cohen, "Berkeley Law Expert: Guantanamo Ruling Bolsters Constitutional Checks and Balances," Berkeley Law 2008 News Archive, available at http://www.law.berkeley.edu/2115.htm

Joseph Bui, "Same-Sex Couples Plan to Marry," *Daily Californian*, June 24, 2008

Amber Lee, "Anticipation over Supreme Court Ruling on Same-Sex Marriage," *KTVU Evening News*, May 14, 2008, http://www.ktvu.com/video/16269552/index.html

Zusha Elinson, "Valley Attorneys Get Political: Local Lawyers Help Candidates to Form Tech, IP Policies," *Recorder*, May 13, 2008, at 1

Peter Schrag, "California School Funding: Inadequate By Any Measure," *Sacramento Bee*, Apr. 9, 2008, at B7

Lydia Lum, "Emerging Scholars: The Class of 2008," *Diverse: Issues in Higher Education*, Jan. 10, 2008, at 24

Kendra Hamilton, "Is Right the New Left? An Analysis of Justice Clarence Thomas's Concurring Opinion in the Seattle and Louisville Cases," *Diverse Issues in Higher Education*, Aug. 23, 2007, at 27

Marcia Coyle, "Prevailing Winds: In the First Full Term with Alito, Court Took Marked Conservative Turn," *National Law Journal*, Aug. 1, 2007, at 1

Ibram Rogers, "The Weight of One Man's Opinion: While Casting the Deciding Vote in the Recent K-12 Desegregation Case, Justice Anthony Kennedy's Opinion Left Some Room to Maneuver," *Diverse Issues in Higher Education*, July 26, 2007, at 7

Shirley Dang, "Panel Tries to Explain Desegregation Ruling," *Contra Costa Times*, July 25, 2007, at A10

Mark Walsh, "Use of Race Uncertain for Schools," *Education Week*, July 18, 2007, at 1

Stephanie Frances Ward, "Schools Cast About for New Diversity Plans," ABA Journal E-Report, July 6, 2007

Josh Gerstein, "Duplicity Pervades Race-Related Measures," *New York Sun*, July 2, 2007

Bill Mears, "5-4 Votes Nudge Supreme Court to the Right," *CNN.com*, July 2, 2007

Ibram Rogers, "How the Supreme Court's Decision Yesterday Impacts Higher Ed," *Diverse Issues in Higher Education Online*, June 29, 2007

James Vicini, "Supreme Court shifts to right with Bush appointees," Reuters, June 29, 2007

Margaret Warner, "Key Decisions Mark Shift in Supreme Court," *NewsHour with Jim Lehrer*, June 29, 2007

Ellen Goodman, "The Transformation of Justice Ginsburg," *Boston Globe*, June 29, 2007, at 17A

Nina Totenberg, "High Court's New Race Ruling Echoes in Schools," *NPR Morning Edition*, June 29, 2007. A partial transcript is available at:

http://www.law.berkeley.edu/news/mediacoverage/inthenews/June-07.pdf. A full transcript is available on Nexis.

Bob Egelko, "5-4 Decision Disrupts Schools' Integration Plans," *San Francisco Chronicle*, June 29, 2007, at A21

Joan Biskupic, "Roberts Steers Court Right Back to Reagan," *USA Today*, June 29, 2007, at 8A

Brent Kendall, "State's Ban on Race Use Exceeds Court's; Opinion Won't Affect California Schools' Plans," *Los Angeles Daily Journal*, June 29, 2007

Joseph Goldstein, "Color-Blind Schools Set by Court," *New York Sun*, June 29, 2007, at 1

Mark Sherman, "Supreme Court Term Shows Shift to Right," *Washington Post*, June 29, 2007, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062901602.html

Nina Totenberg, "Supreme Court Rejects School Desegregation Plan," *NPR All Things Considered*, June 28, 2007

Warren Olney, "The United States Supreme Court and School Integration in L.A.," *Which Way, L.A.?* (KCRW radio), June 28, 2007, http://www.kcrw.com/news/programs/ww/ww070628the_united_states_su

Linda Greenhouse, "Oral Dissents Give Ginsburg a New Voice," *New York Times*, May 31, 2007, at A1

Michael Krasny, "School Integration," *KQED Forum*, May 30, 2007, http://www.kqed.org/epArchive/R705300900

Ryan Cole, "Former Bush official speaks at UC-Berkeley on education" *University Wire,* Mar. 7, 2007

Halimah Abdullah, "School Systems Still Losing Numbers Game: Neediest Don't Always Get Their Fair Share of Money," *Memphis Commercial Appeal*, Jan. 29, 2007, at A1

"More Fairness in Funding Key to Equal Opportunity," *Oakland Tribune*, Jan. 3, 2007

Linda Seebach, "If School Funding Is Rigged, It's to Benefit Those in Charge," *Rocky Mountain News*, Dec. 30, 2006, at 11C

"Report Rips Funding for Low-Income Education," *Mobile Press-Register*, Dec. 23, 2006, at B2

Grace Rauh, "Needy Students Go Without, Report Finds," *Contra Costa Times*, Dec. 22, 2006, at F4

Amit R. Paley, "Program Widens School Funding Gap, Report Says," *Washington Post*, Dec. 21, 2006, at A4

Naush Boghossian, "Wealthy Schools Get More, Report: Districts Nationwide Shortchange Poor, Minorities," *Los Angeles Daily News*, Dec. 21, 2006, at N1

Nancy Zuckerbrod, "Aid Policies Hurting Poor Students?," *Deseret Morning News*, Dec. 21, 2006, at A3

Todd Silberman, "School Funding Gaps Cited," *Raleigh News & Observer*, Dec. 21, 2006, at B7

Eleanor Chute, "Report: Education Funds Misdirected," *Pittsburgh Post-Gazette*, Dec. 21, 2006, at B3

Grace Rauh, "Low-income students left wanting," *Inside Bay Area (California),* Dec. 21, 2006

Bob Egelko, "School Integration Back Before Supreme Court," *San Francisco Chronicle*, Dec. 3, 2006, at A1

Paul Tough, "What It Takes to Make a Student," *New York Times Magazine*, Nov. 26, 2006

"UC Teachers Propose New Admissions Policy," *Monterey County Herald*, Oct. 28, 2006

Michelle Locke, "University of California Professors Propose Admissions Changes," *Associated Press*, Oct. 27, 2006

Elaine Ayala, "Kauffman Still Seeks Equality in Education," *San Antonio Express-News*, Sept. 5, 2006, at 1C

Charles Lane, "Justices to Hear Cases of Race-Conscious School Placements," *Washington Post*, June 6, 2006, at A3

Wendy Davis, "Vouchers Tested: School Vouchers Are Facing a Different Set of Legal Challenges in State Courts," *ABA Journal*, June 24, 2006

Ray Suarez, "The Alito Effect," *NewsHour with Jim Lehrer*, Feb. 21, 2006, transcript available at http://www.pbs.org/newshour/bb/law/jan-june06/alito_2-21.html

"Alito Hearings: Day Four Wrap-Up," *Pacifica Radio*, Jan. 12, 2006. I am unable to find an audio clip or transcript of the interview.

Ed Gordon, "High Court Considers Domino's Discrimination Suit," *NPR News & Notes*, Dec. 8, 2005

Daniel Eisenberg, "How Alito Looks Under the Lens," *Time Magazine*, Nov. 14, 2005, at 28

Jonathan Jones, "Alito Record on Religion a Concern," *Argus*, Nov. 2, 2005

Adam Liptak & Jonathan D. Glater, "The Paper Trail: Lucid Rulings Tackling Many of Biggest Issues," *New York Times*, Nov. 1, 2005, at A25

Sarah Donner, "Constitution Day brings week of events to UC-Berkeley," *University Wire* Sept. 15, 2005

Steven Bodzin & Mary Curtius, "Ready or Not, Constitution Day Is Near; The nation's charter gets official recognition this year, stirring more confusion than homage," *Los Angeles Times*, Aug. 26, 2005

Bob Egelko, "The President's Supreme Court Nominee," *San Francisco Chronicle*, July 20, 2005, at A13

Matt Krupnick, "Campuses Reject Polarizing Guests," *Contra Costa Times*, June 12, 2005, at F4

Stephen Phillips, "Union Joins Attack on Bush Flagship Reforms," *Times Education Supplement*, Apr. 29, 2005

Tom Hamburger, "White House Curbs Probe of Commentator's Hiring," *Los Angeles Times*, Apr. 15, 2005, at A13

Tonia Bui, "Affirmative Action Study Met with Controversy," *Daily Californian*, Feb. 17, 2005

Matt Krupnick, "New Spotlight on High Court Appointments," *Contra Costa Times*, Oct. 26, 2004, at A1

Marcia Coyle, "2003-2004 Term: Supreme Court Review, Flexing Muscle and Wisdom," *National Law Journal*, Aug. 2, 2004, at S1

Charles Lane, "Finality Seems to Elude High Court's Grasp," *Washington Post*, July 4, 2004, at A12

Michael Doyle, "Election-Year Term is Cautious One for Court," *Sacramento Bee*, July 3, 2004, at A1

Jonathan D. Glater, "Attention Wal-Mart Plaintiffs: Hurdles Ahead," *New York Times*, June 27, 2004, at 35

Margarita Bauza, "U-M Readies New Admissions Plan; More Individualized Review of Freshman Applicants Is Expected," *Detroit News*, Aug. 26, 2003, at 1A

Linda Greenhouse, "Context and the Court," *New York Times*, June 25, 2003, at A1

Peter Y. Hong, "Justices to Reconsider Race in Admissions," *Los Angeles Times*, Mar. 31, 2003, at A18

Sean Groom, "Clerking at the Supreme Court," *Washington Lawyer*, Mar. 2003, at 21

Mark Anderson and Sarah Lueck, "High Court to Consider Legality of Race-Based Admissions Rules," *Wall Street Journal*, Dec. 3, 2002, at A6. Copy attached.

Elliot Zaret, "Will *Grutter* Trump *Bakke*?," *Washington Lawyer*, Dec. 2002, at 22

"From Statistics to Soup Kitchens: Youth as Resources in the 1990s," *National Civic Review*, Mar. 22, 1994, at 120

Sue Hutchison, "Travails of the 'Stanford Man': For Some, Donald Kennedy's Brash Image Is Symbolic of the School's Arrogance," *San Jose Mercury News*, Apr. 14, 1991, at 1A

Sue Hutchison, "Stanford Students to Lobby Sacramento for Public Schools," *San Jose Mercury News*, Mar. 27, 1991, at Peninsula Extra 8

Carolyn Jung, "Stanford Out Front in Focus on Teaching: University Backs New Push with Cash," *San Jose Mercury News*, Mar. 8, 1991, at 1B

"List of 32 Rhodes Scholars Includes Two Texans," *Houston Chronicle*, Dec. 10, 1990, at A7

Art Campos, "Capital's Rhodes Scholar," *Sacramento Bee*, Dec. 10, 1990, at A1

Carl Irving, "N. Californians Named as Rhodes Scholars Are Both from Families of Achievers, with Hopes of Careers with Government in Public Service," *San Francisco Examiner*, Dec. 10, 1990, at A5

Kathryn Dettman, "Thirty-Two Rhodes Scholars Announced, Including Minister, Five from Harvard," *Associated Press*, Dec. 9, 1990

Herbert A. Michelson, "Capital Teen Completes Project at UC Lab," *Sacramento Bee*, July 6, 1987, at B2

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

Goodwin Liu
Nominee to be United States Circuit Judge for the Ninth Circuit
CONVENIENCE LIST OF NEW MATERIALS
April 5, 2010

This list contains all items in the revised Question 12 answer submitted April 5, 2010, that were not included in prior submissions. It is provided for the convenience of the Committee.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Other

UC Berkeley Office of Educational Development, Statement of Teaching Philosophy, available at http://teaching.berkeley.edu/dta09/liu.html (2009)
"The Constitution in 2020," Post by Goodwin Liu (2004), available at http://constitutionin2020.blogspot.com/2004/11/post-by-goodwin-liu.html

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

San Francisco Unified School District, Presentation to the Ad Hoc Committee on Student Assignment (Jan. 12, 2009). I gave a presentation on the Achievement Gap and the Relationship Between Diversity and Equity. A PowerPoint presentation I used is available at http://portal.sfusd.edu/data/epc/January%2012%202009.pdf. A description of

the event is available at http://rachelnorton.com/issues/student-assignment/notes-from-ad-hoc-committee/

Letter to Senators regarding the constitutionality of H.R. 1592, The Local Law Enforcement Hate Crimes Prevention Act of 2007 (2007) (I did not contribute to the preparation of this letter; I joined it as a signatory). The text of the letter can be found at http://www.acslaw.org/node/11641

Letter to President Bush urging increase in the federal education investment in the FY2005 budget (December 15, 2003) (I did not contribute to the preparation of this statement; I joined it as a signatory.) The text of the letter is available at http://www.all4ed.org/files/BushLetter_individuals.pdf

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Oct. 16, 2009: Boalt Hall Washington, D.C. Alumni Reception, Washington, D.C. I gave remarks updating Boalt alumni on recent developments at the law school. I do not have copies of any notes, transcript, or recording. An announcement of the event is available at http://events.berkeley.edu/?event_ID=20354&date=2009-10-16&tab=all_events.

Oct. 10, 2009: Boalt Hall Alumni Reunion Weekend, Berkeley, CA. I participated in a panel titled "U.S. Supreme Court Term Review." I do not have copies of any notes, transcript, or recording. An agenda listing the event is available at http://www.law.berkeley.edu/3468.htm.

Oct. 1, 2009: Thelton E. Henderson Center for Social Justice, UC Berkeley School of Law. I gave a talk on education policy as part of the Center's Social Justice Thursday series. I do not have copies of any notes, transcript, or recording. A flyer for the event can be viewed at http://169.229.248.216/files/10-01-09_Social_Justice_Thursday_Flyer.pdf.

June 25, 2009: ACS Bay Area Lawyer Chapter, San Francisco, CA. I participated in a discussion on my co-authored book, *Keeping Faith with the Constitution*. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/13877.

June 19, 2009: American Constitution Society National Convention, Washington, D.C. I discussed the ideas in my co-authored book, *Keeping Faith with the Constitution*, on a panel. I also gave brief remarks at lunch. I do not have copies of any notes, transcript, or recording. A news account of the panel is available at http://abovethelaw.com/2009/06/at-the-acs-national-convention-

keeping-faith-with-the-constitution/#more-782. My lunch remarks are available at http://www.acslaw.org/taxonomy/term/189.

June 9, 2009: Commonwealth Club of California, San Francisco, CA. I moderated questions and answers for a discussion titled "Preserving American Justice in Times of Economic Crisis and Controversy" with featured speaker H. Thomas Wells, President of the American Bar Association. I do not have copies of any notes or transcript. An audio recording of the event is available at http://www.commonwealthclub.org/archive/09/09-07wells-audio.html.

May 21, 2009: Commonwealth Club of California, San Francisco, CA. I moderated questions and answers for a discussion with featured speaker Vincent Warren, Executive Director of the Center for Constitutional Rights. I do not have copies of any notes or transcript. A video of the event is available at http://www.ustream.tv/recorded/1541921.

May 8, 2009: Berkeley Center on Health, Economic and Family Security, UC Berkeley School of Law. I gave remarks on national education policy at a roundtable entitled "Shared Responsibility, Shared Risk: Government, Markets and Social Policy in the Twenty-First Century." I do not have copies of any notes, transcript, or recording.

May 4, 2009: "Language Acquisition and Immigrant Integration: Comparing European and U.S. Experiences," Berkeley, CA. I gave a welcome to the conference on behalf of Berkeley Law School. I do not have copies of any notes, transcript, or recording. A copy of the conference agenda is at http://www.law.berkeley.edu/files/May_4_conf_agenda3.pdf.

April 24, 2009: Frickey Symposium at UC Berkeley Law School. I moderated a panel titled "What is a Constitution For?" A video is available at http://www.youtube.com/watch?v=-FhOdRm1j4Q.

Apr. 19, 2009: Pacific Islander, Asian, Native American Law Students Banquet, Yale Law School, New Haven, CT. I gave brief remarks in accepting a law school alumni award. I do not have copies of any notes, transcript, or recording.

Apr. 16, 2009: Blum Center for Developing Economies, Berkeley, CA. Justice Stephen Breyer gave a presentation on "International Law," and I served as a moderator and commenter. A video is available at http://www.youtube.com/watch?v=o5zaImTF92g.

Apr. 15, 2009: American Educational Research Association Annual Meeting, San Diego, CA. I presented my paper, *Improving Title I Funding Equity Across States, Districts, and Schools*, 93 Iowa L. Rev. 973 (2008), on a panel titled "Funding Public Education for Disadvantaged Students: Economic, Legal and Policy Perspectives." I relied on the published work in lieu of notes. An agenda for the event is available at http://edr.sagepub.com/cgi/reprint/38/2/146.pdf.

Dec. 4, 2008: Law and Philosophy Seminar: "Rethinking Constitutional Welfare Rights," Georgetown Law, Washington DC. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008). I relied on a draft of the published work in lieu of notes. An announcement of the event is

available at http://www.law.georgetown.edu/Faculty/events/details.cfm?EventID=267.

Nov. 17, 2008: Public Education Network Annual Conference, San Francisco, CA. I described the activities of the Obama-Biden Transition team on education policy in a session titled "Equity and Access." I do not have copies of any notes, transcript, or recording. An agenda for the event can be viewed at http://publiceducation.org/annualconference/agenda.html.

Nov. 13, 2008: Columbia Law School, New York, NY. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008), at a legal theory workshop. I relied on a draft of the published work in lieu of notes. The event announcement is available at http://www.law.columbia.edu/faculty/fac_resources/publiclaw_lunch.

Oct. 30, 2008: University of Chicago Law School, Chicago, IL. I presented my paper, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008), at a constitutional law workshop. I relied on a draft of the published work in lieu of notes.

Oct. 22, 2008: Duke Law School, Durham, NC. I presented my paper, *The Bush Administration and Civil Rights: Lessons Learned*, 4 Duke J. Const. L & Pub. Pol'y 77 (2009), in the "Lessons Learned Series" of the Program in Public Law. I relied on a draft of the published work in lieu of notes. An article describing my remarks and a video are available at http://www.law.duke.edu/news/story?id=2658&u=17.

Oct. 18, 2008: Stanford University, Palo Alto, CA. I moderated a panel discussion entitled, "Harming the Best: How Schools Affect the Black-White Achievement Gap," as part of an event, "Justice and Educational Distribution," co-sponsored by the Bowen H. McCoy Family Center for Ethics in Society and The Spencer Foundation. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.stanford.edu/dept/EIS/justice_and_education/program.html.

Oct. 10, 2008: Multicultural Hall of Fame Induction Ceremony, Stanford University, Stanford, CA. I emceed a ceremony to honor four Stanford alumni inducted into the university's Multicultural Hall of Fame. I do not have copies of any notes or recording. A video is available at http://www.youtube.com/watch?v=0-KjlMgIgxg.

Sept. 23, 2008: Quadrus Conference Center, Palo Alto, CA. I spoke on a panel titled "Careers Beyond the Partner Track" co-sponsored by the Asian American Bar Association, Axiom, and UC Berkeley School of Law. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://archive.constantcontact.com/fs030/1101913634762/archive/1102238968119.html.

Sept. 16, 2008: Institute for Legal Research, Forum on "Courts, Politics, and the Media," Berkeley, CA. I gave brief remarks on the need for judicial decisions to be better communicated to the public. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://berkeley.edu/news/berkeleyan/2008/09/24_greenhouse.shtml.

Aug. 20, 2008: I provided brief remarks at an introduction/welcome to the ACS chapter at Berkeley Law. I do not have copies of any notes, transcripts or recordings. An announcement of the event can be viewed at http://www.acslaw.org/node/6909.

July 23, 2008: American Constitution Society Bay Area Lawyers Chapter, San Francisco, CA. I spoke on a panel titled "The 2007-2008 Supreme Court Term: What Happened and Why It Matters." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/6952.

June 12, 2008: Exploring New Horizons for Equal Educational Opportunity, Eighth Annual Quality Education Conference, Washington D.C., convened by Education Justice at Education Law Center, National Access Network at Teachers College, and Education Voters Institute. I participated in a panel discussion on the second day of this two-day conference titled "Righting *Rodriguez*: Implications of Advancing a Federal Constitutional Right to Education." I do not have copies of any notes, transcript, or recording. A description of the panel is available at http://schoolfinance.org/conference/2008/7-14-08-Rodriguez.php3.

June 9-10, 2008: James B. Hunt Institute for Educational Leadership and Policy, Governors Education Symposium, Cary, NC. I discussed my articles, *Improving Title I Funding Equity Across States, Districts, and Schools*, 93 Iowa L. Rev. 973 (2008), and *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006). I relied on the published work in lieu of notes. A description of my remarks appears on page 9 of the Symposium Report, available at http://www.hunt-institute.org/elements/media/event-materials/GES08.PDF.

May 12, 2008: University of Chicago Law School, American Constitution Society student chapter, Chicago, IL. I spoke on legal issues affecting public education at a brown bag lunch. I do not have copies of any notes, transcript, or recording. An announcement of the event can be viewed at http://www.acslaw.org/node/6516.

Apr. 18, 2008: EdSource Forum, Palo Alto, CA. I presented my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008). I relied on the report in lieu of notes. A video and information about the event (including my presentation) are available at http://www.edsource.org/event_forum2008_video4.html.

Apr. 12, 2008: Cal Day, UC Berkeley. I moderated a panel titled "Choosing the President in 2008: Assessing the Post-Reform System." A video is available at http://webcast.berkeley.edu/event_details.php?webcastid=23057.

Apr. 12, 2008: Cal Day, UC Berkeley. I spoke on a panel titled "Restructuring School Finance." I do not have copies of any notes, transcript, or recording. A description of the panel is available at http://calday.berkeley.edu/calday/2008/elex.shtml.

Apr. 5, 2008: African-American Alumni Reunion, UC Berkeley School of Law. I moderated a panel titled "Supporting Diversity Post Prop 209." I do not

have copies of any notes, transcript, or recording. An agenda for the event is available at http://www.law.berkeley.edu/alumni/reunions/aaa/program.html.

Feb. 21, 2008: Thelton E. Henderson Center for Social Justice, UC Berkeley School of Law. I gave a talk on constitutional law as part of the Center's Social Justice Thursday series. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.law.berkeley.edu/files/SJThursdays-GoodwinLiu.pdf.

Feb. 8, 2008: University of Washington School of Law, American Constitution Society student chapter, Seattle, WA. I discussed my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008). I relied on a draft of the published work in lieu of notes. A newsletter entry announcing the event is available at http://www.law.washington.edu/Students/StudentNews/07-08/16Feb4.pdf.

Feb. 8, 2008: Seattle University School of Law, Seattle, WA. I discussed the ideas in my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), at a conference titled "*Brown* Undone? The Future of Integration in Seattle After *PICS v. Seattle School District No. 1*." I relied on the published work in lieu of notes. An agenda for this event is available at http://www.law.seattleu.edu/x2044.xml.

Jan. 11, 2008: Policy Analysis for California Education Seminar, Sacramento, CA. I presented my co-authored report, "Getting Beyond the Facts: Reforming California School Finance" (2008). I relied on the report in lieu of notes. I do not have copies of any transcript or recording. A description of the event can be found at http://pace.berkeley.edu/category/publications/page/2/.

Jan. 4, 2008: American Association of Law Schools Annual Meeting, New York, NY. I discussed the ideas in my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008), on a panel titled "The *Seattle/Louisville* Ruling: Constriction or Expansion of Race-Based Policies?" I relied on a draft of the published work in lieu of notes. An agenda for this event is available at http://www.aals.org/am2008/friday/index.html.

Dec. 12, 2007: Kaiser Permanente Annual National Diversity Conference, San Francisco, CA. I discussed the current state of affirmative action law and policy on a panel titled "Affirmative Action: Past, Present, and Future." I do not have copies of any notes, transcript, or recording. A news release for this event is available at http://xnet.kp.org/newscenter/pressreleases/nat/2007/121207diversity.html.

Nov. 16, 2007: Education Law Association Annual Conference, San Diego, CA. I gave brief remarks in accepting the Steven S. Goldberg Award for Distinguished Scholarship in Education Law. I do not have copies of any notes, transcript, or recording.

Nov. 2, 2007: Center for Comparative Study of Race and Ethnicity Conference on "Embracing Diversity: Making and Unmaking Race, Ethnicity and Difference in the 21st Century," Stanford, CA. I discussed changes in civil

rights law and policy since *Brown* on a panel titled "Education and Equity in a Post-*Brown* Era." I do not have copies of any notes, transcript, or recording. Part of my presentation is quoted and summarized at http://news.stanford.edu/news/2007/november7/ccsre-110707.html.

Nov. 1, 2007: Thelton E. Henderson Center for Social Justice, UC Berkeley School of Law. I moderated a panel titled "Civil Rights Litigation in the Roberts Court Era," as part of a symposium titled "Reclaiming & Reframing the Dialogue on Race & Racism." A video is available at http://www.law.berkeley.edu/2690.htm.

Oct. 25, 2007: Kadish Lectures, UC Berkeley School of Law. I was a commentator on a lecture given by Robert Post entitled, "*Roe* Rage: Democratic Constitutionalism and Backlash." I do not have copies of any notes, transcript, or recording. An announcement for the event is available at http://www.law.berkeley.edu/files/KadishLectureFall2007poster2.pdf.

Oct. 5, 2007: Columbia Law School, American Constitution Society student chapter, New York, NY. I discussed my article, *"History Will Be Heard: An Appraisal of the* Seattle/Louisville *Decision*, 2 Harv. L. & Pol'y Rev. 53 (2008). I relied on a draft of the published work in lieu of notes. An article on the event is available at http://columbiaacs.blogspot.com/2007/10/school-desegregation.html.

Oct. 4, 2007: Fourth Annual High School Policy Conference: From No Child Left Behind to Every Child a Graduate, Washington, D.C., sponsored by the Alliance for Excellent Education. I spoke on a panel titled "College and Work Readiness: Raising Standards and Improving Assessments." A video is available at http://www.all4ed.org/events/fourth_HSpolicyconference_agenda.

Oct. 4, 2007: Yale Law School, New Haven, CT. I spoke at an event titled "The Future of Civil Rights Litigation" co-sponsored by the Pacific Islander, Asian, and Native American Law Students and the Yale Civil Rights Project. I do not have copies of any notes, transcript, or recording. An announcement of the event is available at https://www.acslaw.org/node/5980.

Sept. 29, 2007: Boalt Hall Alumni Weekend. I participated in a panel titled "The First Full Year of the Roberts Supreme Court: Highlights." I do not have copies of any notes, transcript, or recording. A listing of the event is available at http://www.law.berkeley.edu/alumni/reunions/2007/program.html.

Sept. 27, 2007: ACS Bay Area Lawyer Chapter. I participated in a panel titled "The Supreme Court 2006-2007 Term: School Desegregation Cases." I do not have copies of any notes, transcript, or recording. A description of this event is available at http://www.acslaw.org/node/5407.

August 12, 2007: ABA Section on Individual Rights and Responsibilities. San Francisco, CA. I spoke at a CLE program titled "The Supreme Court and Desegregation: In the Wake of *Meredith v. Jefferson County Board of Education.*" I do not have copies of any notes, transcript, or recording. A description of this event is available at http://www.abanet.org/irr/annual2007/desegregation.html.

July 24, 2007: Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, UC Berkeley School of Law. I spoke at an event titled "The Future

of School Desegregation: Implications of the recent Supreme Court decisions on race-conscious school assignment." I do not have copies of any notes, transcripts, or recordings. An announcement of the event is available at http://berkeley.edu/news/media/releases/2007/07/23_law.shtml

Apr. 21, 2007: Cal Day Panel, Berkeley. I participated in a panel discussion on the No Child Left Behind Act. I do not have copies of any notes, transcript, or recording. A description of this event is available at http://gse.berkeley.edu/admin/publications/bulletin0706/7006calday_panel.html.

Dec. 4, 2006: American Constitution Society, Washington, D.C. I spoke on a panel titled "The Advocates Speak: School Desegregation Cases in the Supreme Court." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/3835.

Nov. 14, 2006: ACS Bay Area Lawyer Chapter, San Francisco, CA. I spoke on a panel titled "Two School Desegregation Cases: Parents Involved in Community Schools v. Seattle, and Meredith v. Louisville." I do not have copies of any notes, transcript, or recording. An announcement of the event is available at http://www.acslaw.org/node/3698.

Oct. 31, 2006: American Constitution Society student chapter, UC Berkeley School of Law. I spoke on a panel titled "Crafting Progressive Legal Scholarship." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.acslaw.org/node/3549.

Oct. 17, 2006: UC Berkeley Center for Cities & Schools, Berkeley, CA. I spoke on a panel titled "What's at Stake for Children, Families and Neighborhoods? Examining Upcoming Supreme Court Cases on Voluntary School Desegregation." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://berkeley.edu/news/media/releases/2006/10/12_schoolforum.shtml.

May 8, 2006: Mathematical Sciences Research Institute, Berkeley, CA. I presented my articles, *Interstate Inequality in Educational Opportunity*, later published at 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, later published at 116 Yale L.J. 330 (2006), at a conference titled "Raising the Floor: Progress and Setbacks in the Struggle for Quality Mathematics Education for All." I relied on drafts of the published work in lieu of notes. A copy of the presentation I used is available at http://www.msri.org/calendar/attachments/workshops/388/InterstateInequalitySlides-MSRI.ppt.

Apr. 27-28, 2006: UC Berkeley School of Law, Berkeley, CA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006), at a conference titled "Rethinking *Rodriguez*: Education as a Fundamental Right." I relied on drafts of the published work in lieu of notes. I also gave a welcome and introduction to the symposium. A news release for the event is available at http://www.law.berkeley.edu/3971.htm.

Mar. 14, 2006: American Constitution Society student chapter, UC Berkeley School of Law. I gave a short presentation on opportunities for students to

become involved with the ACS and related scholarship at Berkeley Law. I do not have copies of any notes, transcriptions, or recordings. An announcement of the event is available at http://www.acslaw.org/node/2378.

Feb. 15, 2006: Boalt Hall Los Angeles Alumni Chapter, Los Angeles, CA. I spoke on two panels about the Supreme Court at alumni events. I do not have copies of any notes, transcript, or recording. A description of the events is available at http://www.law.berkeley.edu/3936.htm.

Nov. 17, 2005: San Francisco Boalt Hall Alumni Chapter, Bingham McCutcheon, San Francisco, CA. I introduced a colleague, Professor Leti Volpp, who presented a paper entitled "The Excesses of Culture: On Asian American Citizenship and Identity." I do not have copies of any notes, transcript or recording. A description of this event is available at http://www.law.berkeley.edu/alumni/enewsletter/index_December05.html#ExcessofCulture.

Oct. 21, 2005: Faculty Colloquium, UCLA School of Law. I presented my article, *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006). I relied on a draft of the published work in lieu of notes.

Sept. 29, 2005: Charles Hamilton Houston Institute for Race and Justice, Harvard Law School, Cambridge, MA. I presented my articles, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. Rev. 2044 (2006), and *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006). I relied on drafts of the published work in lieu of notes. A video is available at http://www.charleshamiltonhouston.org/Events/Event.aspx?id=100011.

Sept. 24, 2005: Boalt Hall Alumni Reunion, UC Berkeley School of Law. I participated in a panel discussion on the Supreme Court entitled, "Nine Scorpions in a Bottle." I do not have copies of any notes, transcript, or recording.

Sept. 22, 2005: Asian Pacific Bar Association of the Silicon Valley, Palo Alto, CA. I gave a talk titled "The Fate of Affirmative Action from the O'Connor Court to the Roberts Court" and provided an overview of key cases in the prior two decades. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://web.archive.org/web/20070721133302/www.apbasv.org/events/2005Affirmative/2005Affirmative.htm.

Sept. 20, 2005: Constitution Day, UC Berkeley School of Law. I moderated a panel titled "The Path of Constitutional Law: Continuity, Crossroads, or Crisis?" I do not have copies of any notes, transcript, or recording. An article discussing the event is available at http://www.dailycal.org/article/19581/legal_scholars_debate_updating_constitution.

Sept. 7, 2005: Faculty Club Event, UC Berkeley. I spoke on a panel titled "Where's the Supreme Court Going?" I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.berkeleyfacultyclub.com/newsletter/sep05/.

Aug. 29, 2005: Center for the Study of Law and Society, Berkeley. I presented my article, *Education, Equality, and National Citizenship*, later published at 116 Yale L.J. 330 (2006). I relied on a draft of the published work in lieu of

notes. A calendar entry for the event is available at http://www.law.berkeley.edu/1237.htm.

July 30, 2005: American Constitution Society National Convention, Washington, D.C. I moderated a panel titled "The Right to Education Revisited." I described the Supreme Court decision in *San Antonio Independent School District v. Rodriguez* (1973) and introduced the panelists. I do not have copies of any notes, transcript, or recording. An agenda for the event can be viewed at http://americanconstitutionsociety.org/pdf/conventionbrochure.pdf.

June 27, 2005: Colloquium on School Choice, Brothers of the Christian Schools, District of San Francisco, De La Salle Institute, Napa, CA. I gave remarks on the topic of school choice and state constitutions. I do not have copies of any notes, transcript, or recording.

May 12, 2005: Asian American Awards Ceremony, Stanford University, Stanford, CA. I gave brief remarks in accepting an alumni award. I do not have copies of any notes, transcript, or recording.

May 5, 2005: University of Minnesota Law School Conference on "With All Deliberate Speed: *Brown II* and Desegregation's Children," Minneapolis, MN. I presented my article, *The Parted Paths of School Desegregation and School Finance Litigation*, later published at 24 L. & Inequality 81 (2006). I relied on a draft of the published work in lieu of notes. A news article previewing the event can be viewed at http://www1.umn.edu/news/features/2005/UR_47223_REGION1.html.

Apr. 22, 2005: ACS Northern California Caucus, Hastings Law School. I participated in a roundtable discussion. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://students.law.ucdavis.edu/ACS/past-events.asp.

Apr. 14, 2005: Institute for Governmental Studies, UC Berkeley. I spoke on a panel titled "The Future of the United States Supreme Court." I do not have copies of any notes, transcript, or recording. The event is noted on page 3 of the report at http://igs.berkeley.edu/publications/par/spring2005.pdf.

Apr. 8, 2005: ACS Constitution in 2020 Conference, Yale Law School. I moderated a panel titled "Constitutional Politics in 2020." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://islandia.law.yale.edu/acs/conference/schedule/index.asp.

Mar. 11, 2005: Quality Education as a Civil Right Conference, Howard University, Washington, D.C. I spoke on a panel addressing the topic of educational equity. I do not have copies of any notes, transcript, or recording.

Oct. 16, 2004: Class in the Classroom Conference, Society of American Law Teachers, Las Vegas, NV. I presented my article, *Race, Class, Diversity, Complexity*, 80 Notre Dame L. Rev. 289 (2004). I relied on a draft of the published work in lieu of notes.

Oct. 2, 2004: Boalt Hall Alumni Reunion, UC Berkeley School of Law. I spoke on a panel of constitutional law scholars examining the most important decisions of the U.S. Supreme Court's year. I do not have copies of any notes, transcript, or recording. A listing for the event is available at http://www.law.berkeley.edu/alumni/reunions/2004/program.html.

Sept. 20, 2004: UCLA Critical Race Studies Series, UCLA School of Law. I presented my article, *Race, Class, Diversity, Complexity*, 80 Notre Dame L. Rev. 289 (2004). I relied on a draft of the published work in lieu of notes.

June 22, 2004: Legal Aid Society, Employment Law Center, San Francisco, CA. I gave remarks at a brown bag lunch discussion on the fiftieth anniversary of *Brown v. Board of Education*. I do not have copies of any notes, transcript, or recording.

June 17, 2004: American Constitution Society National Convention, Washington, D.C. I spoke on a panel titled "The Legacy of *Brown v. Board of Education*." A transcript of the event is available at http://www.acslaw.org/files/2004%20convention_Brown%20v%20Board's%20legacy_panel%20transcript.pdf.

May 17, 2004: *Brown@50* Conference, New York University, New York, NY. I spoke on a panel titled "Intergenerational Town Hall Meeting" discussing the fiftieth anniversary of *Brown v. Board of Education*. I do not have copies of any notes, transcript, or recording.

Apr. 30, 2004: Stanford Minority Alumni Conference, Stanford, CA. I presented findings of the Final Report of the Task Force on Minority Alumni Relations. I relied on the published report in lieu of notes.

Apr. 13, 2004: American Educational Research Association Annual Conference, San Diego, CA. I spoke on a panel titled "Desegregation in the Legal Profession." I do not have copies of any notes, transcript, or recording.

Apr. 8, 2004: UC Berkeley School of Law, Berkeley, CA. I spoke on a panel titled "*Mendez v. Westminster*: 1946 – A California Look at *Brown v. Board of Education*" co-sponsored by the *La Raza Law Journal* and the Center for Social Justice. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://web.archive.org/web/20050413042751/www.boalt.org/LRLJ/symposium.html.

Feb. 28, 2004: Earl Warren and the Warren Court: A Fifty-Year Retrospect, UC Berkeley. I spoke on a panel titled "The Warren Court and American Legal Culture." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://169.229.248.216/files/warren_conference_complete_program.pdf.

Nov. 14, 2003: Center for Social Justice, "Rekindling the Spirit of Brown v. Board of Education: A Call to Action," UC Berkeley School of Law. I moderated a workshop titled "Challenging No Child Left Behind." I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.law.berkeley.edu/files/Spring04.pdf.

Oct. 18, 2003: Boalt Hall Alumni Reunion, UC Berkeley School of Law. I spoke on a panel about recent Supreme Court cases. I do not have copies of any notes, transcript, or recording.

Aug. 30, 2003: Harvard Civil Rights Project Color Lines Conference, Cambridge, MA. I spoke on a panel titled "Inequality in K-12 Educational Opportunity" and presented my co-authored article, *School Choice to Achieve Desegregation*, later published at 74 Fordham L. Rev. 791 (2005). I relied on

a draft of the published work in lieu of notes. A press release for the conference is available at http://www.law.harvard.edu/news/2003/08/29_colorlines.html.

June 25, 2003: American Enterprise Institute, Washington, D.C. I gave remarks at a brown bag lunch discussion on the No Child Left Behind Act. I do not have copies of any notes, transcript, or recording.

Apr. 12, 1995: Education for a Responsible Society Symposium, Stanford University. I spoke on a panel sponsored by the Stanford University Center for Teaching and Learning. I do not have copies of any notes, transcript, or recording. A description of the event is available at http://www.stanford.edu/dept/CTL/Newsletter/being_a_TA.pdf.

Mar. 25, 1995: Partnership for Service-Learning Twelfth Annual International Conference, New York, NY. I spoke on a panel titled "The National Movement in Service-Learning." I do not have copies of any notes, transcript, or recording. An announcement of the event is available at http://www.ipsl.org/pdfs/ARWinter1995.pdf.

Jan. 13, 1995: Colloquium on National and Community Service, American Association for Higher Education, Washington, D.C. I gave a presentation titled "Service-Learning: A Paradigm Shift in Higher Education?," later published in *NSEE Quarterly* (National Society for Experiential Education, Mt. Royal, N.J.), Fall 1995, at 8. I relied on a draft of the published work in lieu of notes.

Feb. 28, 1994: Association of Community College Trustees National Legislative Seminar, Washington, D.C. I presented my article, *Community Colleges: Critical Partners in National and Community Service*, Trustee Quarterly, Spring 1994, at 10. I relied on a draft of the published work in lieu of notes.

Dec. 1991: Panel discussion on "The Constitution: That Delicate Balance," Fred Friendly Seminar, Williamsburg, VA. I discussed issues related to diversity and higher education. I do not have copies of any notes or transcript. A list of participants in the program is available at http://www.fredfriendly.org/programs/35/mp/. As I recall, this event was filmed, and it may have been broadcast. I have not been able to locate a copy; if I obtain one, I will produce it immediately to the Committee.

Apr. 10, 1991: Panel discussion on "Safe Speech, Free Speech, and the University," Stanford University, Stanford, CA. I discussed recent debates on campus concerning hate speech. I do not have copies of any notes or transcript. The program was described in a *New York Times* article. Walter Goodman, "Review/Television; Political Correctness Versus Open Expression on Campus," *N.Y. Times*, June 6, 1991. I have not been able to locate a copy of the broadcast; if I obtain one, I will produce it immediately to the Committee.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

ACSBlog, "Podcast/Interview with Goodwin Liu on 'Keeping Faith with the Constitution,'" May 5, 2009. A video of the interview is available at http://www.acslaw.org/node/13374 .

Profiles of the recipients of the 2009 Distinguished Teaching Award, April 22, 2009. Audio available at http://webcast.berkeley.edu/event_details.php?seriesid=8d2830c1-fa11-4baf-8687-255c0ac42207&p=1&ipp=15&category=

"A Truly Distinguished Lot" *States News Service*. April 16, 2009

Berkeley Faculty Spotlight, "Learning from Leaders," Feb. 28, 2009. I do not have notes, transcript, or recording. A description of the event is available at http://ayj.berkeley.edu/node/9.

David Savage. "How Did They Get It So Wrong?: Left and right differ on the decisions, but each side has its 'worst' list." *ABA Journal*. January, 2009

Kara Platoni, "Finding the Golden State Mean: A Boalt Expert Offers a Daring Plan to Reform California's Education Spending," *Boalt Hall Transcript*, Fall-Winter 2008 at 13-14, available at http://www.law.berkeley.edu/files/Transcript.FallWinter2008.Short-smaller.pdf.

Andrew Cohen, "Berkeley Law Expert: Guantanamo Ruling Bolsters Constitutional Checks and Balances," Berkeley Law 2008 News Archive, available at http://www.law.berkeley.edu/2115.htm.

Lydia Lum, "Emerging Scholars: The Class of 2008," *Diverse: Issues in Higher Education*, Jan. 10, 2008, at 24

Ibram Rogers, "How the Supreme Court's Decision Yesterday Impacts Higher Ed," *Diverse Issues in Higher Education Online*, June 29, 2007

James Vicini, "Supreme Court shifts to right with Bush appointees," Reuters, June 29, 2007

Nina Totenberg, "High Court's New Race Ruling Echoes in Schools," *NPR Morning Edition*, June 29, 2007. A partial transcript is available at: http://www.law.berkeley.edu/news/mediacoverage/inthenews/June-07.pdf. A full transcript is available on Nexis.

Mark Sherman, "Supreme Court Term Shows Shift to Right," *Washington Post*, June 29, 2007, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062901602.html

Michael Krasny, "School Integration," *KQED Forum*, May 30, 2007, http://www.kqed.org/epArchive/R705300900

Ryan Cole, "Former Bush official speaks at UC-Berkeley on education" *University Wire*, Mar. 7, 2007

Grace Rauh, "Low-income students left wanting," *Inside Bay Area (California)*, Dec. 21, 2006

Ray Suarez, "The Alito Effect," *NewsHour with Jim Lehrer*, Feb. 21, 2006, transcript available at http://www.pbs.org/newshour/bb/law/jan-june06/alito_2-21.html.

Sarah Donner, "Constitution Day brings week of events to UC-Berkeley," *University Wire* Sept. 15, 2005

Steven Bodzin & Mary Curtius, "Ready or Not, Constitution Day Is Near; The nation's charter gets official recognition this year, stirring more confusion than homage," *Los Angeles Times*, Aug. 26, 2005

Mark Anderson and Sarah Lueck, "High Court to Consider Legality of Race-Based Admissions Rules," *Wall Street Journal*, Dec. 3, 2002, at A6. Copy attached.

GOODWIN LIU
Professor of Law
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

September 13, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire and supplemental submissions I previously filed in connection with my nomination on February 24, 2010, to be United States Circuit Judge for the Ninth Circuit. With the following exceptions, I certify that the information contained in my prior submissions is, to the best of my knowledge, true and accurate.

- I completed my service as Associate Dean of the UC Berkeley Law School in spring 2010. I remain on the faculty as a professor of law (Questions 6 & 16.a.iii).

- I am no longer a legal consultant to the San Francisco Unified School District (Questions 6, 16.a.ii, & 24).

- I am no longer chair of the board of directors of the American Constitution Society. I remain a member of the board (Questions 6 & 11).

- My co-authored book, *Keeping Faith with the Constitution*, has been republished by Oxford University Press (Question 12.a). Four copies are supplied.

- On August 21, 2010, I commented on a colleague's draft paper on Fourteenth Amendment doctrine at a Boalt Hall faculty retreat in Pacific Grove, California. I do not have copies of any notes, transcript, or recording (Question 12.d).

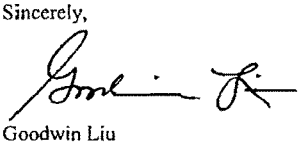
- I am supplying a syllabus for the Constitutional Law class I taught in spring 2010 (Question 19).

- The Greenlining Institute has released a video on civil rights, titled "Movement 2.0," which includes a 15 second video clip of me (available at www.greenlining.org). The original recording of me was taken as part of a student project on February 20, 2009, but I was not aware that any use

or publication had been made of it until last week. Whether or not this video is responsive to the questionnaire, I wanted to bring it to the Committee's attention.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Goodwin Liu

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

CONSTITUTIONAL LAW

Professor Goodwin Liu
Spring 2010 Syllabus

I. INTRODUCTION TO THE CONSTITUTION AND JUDICIAL REVIEW

A. What is the Constitution?

1. U.S. Constitution [xliii-lviii]
2. An example: health care reform
   a. David B. Rivkin, Jr. & Lee A. Casey, *Is Government Health Care Constitutional?*, WALL ST. J., June 22, 2009
   b. David B. Rivkin, Jr. & Lee A. Casey, *Mandatory Insurance Is Unconstitutional?*, WALL ST. J., Sept. 18, 2009

B. The Founding

1. Origins of the Constitution [8-14]
2. Federalist Nos. 10 and 51 [14-26]

C. Judicial review, judicial supremacy, judicial sovereignty

1. U.S. Constitution art. III [xlix]
2. *Marbury v. Madison* (1803) [29-43]
3. Constitutions, Democracy, and Judicial Review [43-51]
4. *Martin v. Hunter's Lessee* (1816) and notes 1-2 [52-57]
5. *McCulloch v. Maryland* (1819) [62-75]
6. Andrew Jackson's bank veto (1832)
7. Political questions: *Baker v. Carr* (1962) [129-134]

* * * *

II. CONGRESSIONAL POWER AND FEDERALISM-BASED LIMITS

A. The Commerce Clause

1. Political Constraints versus Judicial Enforcement [180-89]
2. Early cases
   a. *Gibbons v. Ogden* (1824) [173-75]
   b. *United States v. E.C. Knight Co.* (1895); *The Shreveport Rate Cases* (1914); *Champion v. Ames* (1903); *Stafford v. Wallace* (1922); and notes [189-95]; *Hammer v. Dagenhart* (1918) [177-79]
3. The New Deal
   a. The New Deal Crisis; *Schechter Poultry* (1935); *Carter Coal* (1936); and notes [195-203]
   b. *Jones & Laughlin Steel* (1937); *Darby* (1941) [203-209]; *Wickard v. Filburn* (1942) [179-80]
4. The New Federalism
   a. *Lopez* (1995) [214-24]
   b. *Morrison* (2000) [224-26]
   c. Federalism after the New Deal, *Raich* (2005) [226-31]

B. The Spending Clause

1. *United States v. Butler* (1936) [285-90]
2. *Steward Machine Co. v. Davis* (1937) [290-92]
3. Conditional Spending, Coercion, and the Political Process, notes 1-2 (*South Dakota v. Dole* (1987)) [292-94]
4. Health care reform: Randy Barnett et al., Why the Personal Mandate to Buy Health Insurance is Unprecedented and Unconstitutional (Heritage Foundation, Dec. 2009)

C. Federal regulation of States

1. *New York v. United States* (1992) [336-46]
2. *Printz* (1997) [346-49]
3. The "Anticommandeering" Principle, note 1a (*Reno v. Condon* (2000)) [349], note 3 [350-51]

D. Section 5 of the Fourteenth Amendment (see below)

* * * *

III. EQUALITY AND THE CONSTITUTION

A. Race (Part 1)

1. Slavery
    a. Slavery and the Constitution [441-43]
    b. *Prigg v. Pennsylvania* (1842) [446 (note 4)]
    c. *Dred Scott v. Sandford* (1857) [447-50]
    d. President Lincoln's first inaugural address (1861) and Emancipation Proclamation (1863)
2. The Civil War Amendments and early judicial interpretation
    a. Reconstruction and judicial reaction [451-56]
    b. *The Slaughterhouse Cases* (1873) [721-25]
    c. *Strauder v. West Virginia* (1880) [512-14]
    d. *The Civil Rights Cases* (1883) [1544-47]
    e. *Plessy v. Ferguson* (1896) [456-59]
3. *Brown* and school desegregation
    a. The Road to *Brown* [462-65]; *Brown I* (1954) [465-72]; *Brown II* (1955) [472-74]
    b. The response to *Brown* [skim 474-85]; *Cooper* (1958) [58]
    c. School desegregation and the efficacy of judicial intervention [485-88]

B. Equal protection methodology

1. *Beazer* (1979) [490-92]; The Means-Ends Nexus [504-06]
2. Purpose and fit: *Moreno* (1973), *Cleburne* (1985), *Romer* (1996) [495-500]; *Railway Express* (1949), *Williamson v. Lee Optical* (1955) [506-08]

C. Race (Part 2)

1. Origins of and rationale for strict scrutiny of racial classifications: *Korematsu* (1944), *Loving* (1967) [514-29]

2. Non-racial classifications that disadvantage racial minorities: *Washington v. Davis* (1976), *Arlington Heights* (1977) [531-36]; *Yick Wo* (1886), *Gomillion v. Lightfoot* (1960) [537-38]; *McCleskey v. Kemp* (1987) [546-53]

3. Racial classifications that benefit minorities (affirmative action): *Bakke* (1978) [553-54]; *Croson* (1989) [555-58], *Adarand* (1995) [558-66]; *Grutter* and *Gratz* (2003) [571-90]; *Parents Involved* (2007) [600-16]

D. Gender

1. *Bradwell* (1894), *Reed* (1971), *Frontiero* (1973) [619-23]

2. *Craig v. Boren* (1976) and heightened scrutiny [627-35]

3. *Mississippi University for Women v. Hogan* (1982), *VMI* (1996) [635-44]

4. "Real differences": *Nguyen* (2001) [648-52]

E. Sexual orientation

1. *Romer v. Evans* (1996) [666-75]; *Lawrence v. Texas* (2003) [675-76]

2. Same-sex marriage, strict scrutiny? [678-86]

F. Congress and civil rights enforcement

1. Commerce Clause: *Heart of Atlanta* (1964), *Ollie's BBQ* (1964) [210-13]

2. Section 5 of the Fourteenth Amendment

   a. Background [300-02]; *Katzenbach v. Morgan* (1966) [302-07]; *Boerne* (1997) [307-12]

   b. Eleventh Amendment, *Seminole Tribe* (1996) [312-13]; *Garrett* (2000) [314-19]; *Hibbs* (2003) [320-23]; *Tennessee v. Lane* (2004) [324-26]

3. Congressional power to regulate "private" action: *Jones* (1968), *Morrison* (2000) [326-28]

* * * *

IV. SUBSTANTIVE DUE PROCESS

A. Economic liberty

1. *Lochner* (1905) and liberty of contract [739-49]
2. The *Lochner* Era and its demise, *West Coast Hotel* (1937), *Carolene Products* (1938) [749-57]

B. Privacy and personhood

1. *Skinner* (1942) [762-66]
2. *Meyer* (1923), *Pierce* (1925), *Griswold* (1965) [831-43]
3. *Roe* (1973) [843-49], *Casey* (1992) [864-83]
4. *Stenberg* (2000), *Carhart* (2007) [883-98]
5. *Bowers* (1986) [911], *Lawrence v. Texas* (2003) [912-26]

* * * *

V. EXECUTIVE AUTHORITY AND SEPARATION OF POWERS

A. Foreign affairs

1. *Youngstown* (1952) [358-69]
2. *Curtiss-Wright* (1936), *Dames & Moore* (1981), *Medellin* (2008) [371-78]
3. Warmaking authority [378-81]; *Hamdi v. Rumsfeld* (2004) [381-89]
4. War on Terrorism, *Hamdan* (2006), *Boudemiene* (2008), current controversies [389-95]

B. Domestic affairs

1. *United States v. Nixon* (1974) and presidential immunity [400-04]
2. Legislative authority: Non-delegation doctrine [412-16]; *Clinton v. City of New York* (1998) [416-17]; *INS v. Chadha* (1983) [417-24]
3. Administrative agencies: *Myers* (1926), *Humphrey's Executor* (1935), *Buckley* (1976) [424-27]; *Bowsher v. Synar* (1986) [427-29]; *Morrison v. Olson* (1988) [430-36]

GOODWIN LIU
Professor of Law
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

January 5, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire and supplemental submissions I previously filed in connection with my nomination on February 24, 2010, to be United States Circuit Judge for the Ninth Circuit. I have also reviewed the September 13, 2010 letter I submitted in connection with my renomination on that date. With the following exceptions, I certify that the information contained in my prior submissions is, to the best of my knowledge, true and accurate.

- I no longer serve on the board of directors of the American Constitution Society, having completed my term of service at the end of 2010 (Questions 6 & 11).

- I no longer serve on the board of directors of the Alliance for Excellent Education, having completed my term of service at the end of 2010 (Questions 6 & 11).

- I will be teaching Contemporary Issues in Constitutional Law during the spring 2011 semester. The syllabus is not completed yet, but it will be similar to the spring 2009 syllabus for the same course, which I previously submitted to the Committee (Question 19).

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Goodwin Liu

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

GOODWIN LIU
Professor of Law
[redacted]

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Boalt Hall

January 5, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire and supplemental submissions I previously filed in connection with my nomination on February 24, 2010, to be United States Circuit Judge for the Ninth Circuit. I have also reviewed the September 13, 2010 letter I submitted in connection with my renomination on that date. With the following exceptions, I certify that the information contained in my prior submissions is, to the best of my knowledge, true and accurate.

- I no longer serve on the board of directors of the American Constitution Society, having completed my term of service at the end of 2010 (Questions 6 & 11).

- I no longer serve on the board of directors of the Alliance for Excellent Education, having completed my term of service at the end of 2010 (Questions 6 & 11).

- I will be teaching Contemporary Issues in Constitutional Law during the spring 2011 semester. The syllabus is not completed yet, but it will be similar to the spring 2009 syllabus for the same course, which I previously submitted to the Committee (Question 19).

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Goodwin Liu

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Liu, Goodwin H.	U.S. Court of Appeals for the Ninth Circuit	1/5/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
Circuit Judge - Nominee	☑ Nomination, Date 1/5/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 12/31/2010
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
UC Berkeley School of Law Berkeley, CA 94720-7200	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member, Board of Trustees	Stanford University
2. Member, Board of Directors (I previously served as Secretary and as Chair)	American Constitution Society for Law and Policy
3. Member, Board of Directors	Public Welfare Foundation
4. Member, Board of Directors	National Women's Law Center
5. Member, Board of Directors	Alliance for Excellent Education

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 8/4/09	Oxford University Press book contract - 10% royalties on first 5,000 sold (higher % thereafter), split evenly with 2 co-authors
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting	Date of Report
	Liu, Goodwin H.	1/5/2011

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	University of California - salary	$194,921.00
2. 2010	San Francisco Unified School District - legal consulting	$10,042.50
3. 2010	Public Welfare Foundation - director's fee	$6,000.00
4. 2010	University of San Diego - honorarium	$200.00
5. 2009	University of California - salary	$241,102.05
6. 2009	San Francisco Unified School District - legal consulting	$5,703.75
7. 2009	Public Welfare Foundation - director's fee	$6,000.00
8. 2009	Oxford University Press - book advance	$500.00
9. 2009	Georgetown University - honorarium	$500.00
10. 2009	University of Arkansas, Fayetteville - honorarium	$250.00
11. 2009	University of San Diego - honorarium	$200.00

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2010	University of California - salary
2. 2010	Center for American Progress - consulting
3. 2010	American Prospect - honorarium ($1,000)
4. 2009	University of California - salary
5. 2009	Center for American Progress - consulting
6. 2009	Princeton University - honorarium ($15,000)
7. 2009	San Francisco Chronicle - honorarium ($150)

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Liu, Goodwin H.	Date of Report 1/5/2011

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Liu, Goodwin H.	Date of Report 1/5/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 5 of 9

Name of Person Reporting	Date of Report
Liu, Goodwin H.	1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. - Chesapeake Core Growth	A	Dividend	K	T	Exempt				
2. - Fidelity Large Cap Stock	A	Dividend	K	T					
3. - Harbor Capitol Appreciation	A	Dividend	K	T					
4. - Vanguard PrimeCap Core	A	Dividend	L	T					
5. - Fidelity Puritan	A	Dividend	K	T					
6. - Oakmark	A	Dividend	K	T					
7. - Vangnard Value Trust Index	A	Dividend	K	T					
8. - SPDR Midcap	A	Dividend	K	T					
9. - Fidelity Low Priced Stock	A	Dividend	L	T					
10. - Royce Value Plus Service	A	Dividend	K	T					
11. - Artio International Equity A	C	Dividend	K	T					
12. - Dodge and Cox International	A	Dividend	K	T					
13. - Fidelity Money Market	A	Dividend	M	T					
14. - Fidelity Ginnie Mae	B	Dividend	K	T					
15. - Fidelity VIP Contrafund	A	Dividend	K	T					
16. - Fidelity VIP Equity-Income	A	Dividend	J	T					
17. - Fidelity VIP Mid Cap	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Liu, Goodwin H.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date Month - Day	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
18. - Fidelity Intermediate Bond	A	Dividend	J	T					
19. - Dodge and Cox Income	A	Dividend	J	T					
20. - Selected American Shares	A	Dividend	J	T					
21. - Fidelity Midcap Stock	A	Dividend	K	T					
22. - Fidelity Small Cap	A	Dividend	K	T					
23. - Fidelity Diversified International	A	Dividend	K	T					
24. - Vanguard Emerging Market Index	A	Dividend	K	T					
25. - Harbor Bond International	C	Dividend	K	T					
26. - TCW Dividend Focused N	A	Dividend	K	T					
27. - Third Avenue International Value	A	Dividend	K	T					
28. - Fidelity Inflation-Protected Bond	A	Dividend	K	T					
29. - Fidelity Capital Appreciation	A	Dividend	K	T					
30. - Fidelity Growth and Income	A	Dividend	K	T					
31. - Fidelity International Small Cap	A	Dividend	J	T					
32. - Fidelity Real Estate Investment	A	Dividend	J	T					
33. - UC Pathway 2040	A	Dividend	L	T					
34. - UC Balanced Growth	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Liu, Goodwin H.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. - Fidelity Balanced	B	Dividend	L	T					
36. - Fidelity New Market Income	A	Dividend	K	T					
37.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Liu, Goodwin H.	Date of Report 1/5/2011

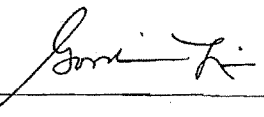
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Liu, Goodwin H.	Date of Report 1/5/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature 

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Goodwin Liu

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		127	217	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		433	679	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		520	784
Real estate owned-add schedule		975	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		64	185				
Cash value-life insurance							
Other assets itemize:							
See attached schedule		690	807				
				Total liabilities		520	784
				Net Worth	1	770	104
Total Assets	2	290	888	Total liabilities and net worth	2	290	888
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Chesapeake Core Growth	$39,987
Fidelity Large Cap Stock	19,397
Harbor Capital Appreciation	35,633
Vanguard PrimeCap Core	18,733
Fidelity Puritan	35,460
Oakmark	40,611
Vanguard Value Trust Index	26,618
SPDR Midcap	49,404
Fidelity Low Priced Stock	56,793
Royce Value Plus Service	17,072
Artio International Equity A	38,901
Dodge and Cox International	24,277
Fidelity Ginnie Mae	30,793
Total Listed Securities	$433,679
Real Estate Owned	
Personal residence (estimate)	$975,000
Real Estate Mortgages Payable	
Personal residence	$520,784
Other assets: Retirement accounts	
University of California (UC) 403(b)	
Fidelity Inflation-Protected Bond	$37,484
Fidelity Capital Appreciation	26,003
Fidelity Growth and Income	20,155
Fidelity Small Cap Stock	15,595
Fidelity International Small Cap	14,246
Fidelity Real Estate Investment	13,571
Subtotal UC 403(b)	127,054
UC 457(b) UC Balanced Growth	99,691
UC Defined Contribution Plan (DCP) Fidelity Balanced	52,306
Fidelity Annuity	
Fidelity VIP Contrafund	16,235
Fidelity VIP Equity-Income	12,403
Fidelity VIP Mid Cap	21,665
Subtotal Fidelity Annuity	50,302

Pershing IRA	
Fidelity New Markets Income	15,539
Vanguard PrimeCap Core	18,278
Fidelity Low Priced Stock	7,633
Cash/Money Market	732
Subtotal Pershing IRA	42,182
Pershing Roth IRA	
Dodge and Cox Income	12,527
Vanguard PrimeCap Core	25,048
Selected American Shares	11,151
Fidelity Midcap Stock	24,165
Fidelity Small Cap	16,963
Fidelity Diversified International	15,270
Vanguard Emerging Market Index	39,681
Cash/Money Market	121
Subtotal Pershing Roth IRA	144,926
UC 403(b) UC Pathway 2040	35,967
UC 457(b) UC Pathway 2040	35,967
UC Defined Contribution Plan UC Pathway 2040	5,716
Fidelity Roth IRA	
Fidelity Capital Appreciation	2,304
Fidelity Cash Reserves	8
Subtotal Fidelity Roth IRA	2,312
Pershing Roth IRA	
Harbor Bond International	39,094
TCW Dividend Focused N	35,066
Third Avenue International Value	20,149
Cash/Money Market	75
Subtotal Pershing Roth IRA	94,384
Total Other Assets	$690,807

Some have criticized your theory of constitutional fidelity for considering evolving norms and social understandings along with the text, principle, and precedent in interpreting the Constitution. To me, those views are well within our constitutional mainstream.

I think, for example, of Chief Justice John Marshall, who famously said in 1819, "We must never forget that it is a constitution we are expounding. This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."

Or Oliver Wendell Holmes, who wrote in 1920 that the Constitution "must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

Or Sandra Day O'Connor, who wrote in her book "Majesty of Law," "The Bill of Rights was drafted intentionally in broad sweeping terms, allowing meaning to be developed in response to the changing times and current problems."

So can you explain to us your theory of constitutional fidelity and how it is similar or different from the points these Justices were making?

Mr. LIU. Yes, certainly, Senator. Let me answer your question by first making very clear that if I were fortunate enough to be confirmed in this process, it would not be my role to bring any particular theory of constitutional interpretation to the job of an intermediate appellate judge. The duty of a circuit judge is to faithfully follow the Supreme Court's instructions on matters of constitutional interpretation, not any particular theory. And so that is exactly what I would do, is I would apply the applicable precedents to the facts of each case.

But to more directly address your questions about my writings, I would say this: The notion of evolving norms is simply a reference to—it is a way of describing how the Supreme Court has applied some of the text and principles of the Constitution to specific cases and controversies. So in some instances, the Constitution's text is very clear. For example, Article III says that you need two witnesses to convict someone of treason, not one, so that is pretty clear. But in other parts of the Constitution, it is not as precise.

And so, for example, in 1961, the Court confronted the question of whether a telephone wiretap falls within the ambit of the Fourth Amendment's definition of unreasonable searches or seizures, and the Court grappled with this because up to that point, a physical trespass had been necessary to make out a search under the Fourth Amendment. But the Court in *Katz* in 1961 says we are going to abandon that requirement because there is now a societal expectation of privacy in telephone calls. And this was not just a matter of sort of recognizing new technology. It was a matter of recognizing the social norms that had grown up around using telephones.

And so when the book makes reference to evolving norms, it is just a way of describing how references to practices like that get—how they inform the Supreme Court's elaboration of constitutional doctrine.

Senator FEINSTEIN. Thank you very much.

Senator Grassley.

Senator GRASSLEY. Professor Liu, I will take up where the Chairman just left off. You said during your last hearing, "Whatever I may have written in the books and in the articles would have no bearing on my role as a judge." So I want to focus on that comment as it relates to the book you co-authored, "Keeping Faith with the Constitution."

As you say in the book itself, your entire purpose is to propose and defend a theory of constitutional interpretation. So it is a bit difficult for me—to us—how you can now say that it would have no bearing on how you would rule as a judge.

So my first question should be fairly easy, a yes or no. Today do you still stand by your book, "Keeping Faith with the Constitution"?

Mr. LIU. Senator, I do stand by that book as an expression of my views as a scholar, but I recognize at the same time that the role of a scholar is very different than the role of a judge. And so were I confirmed to the Ninth Circuit, I would be adopting the role of the judge, which is not, as I was trying to express, not to follow any particular theory that I might have but, rather, I follow the instructions of the United States Supreme Court on matters of constitutional interpretation.

Senator GRASSLEY. Are there any arguments in that book that today you would disavow?

Mr. LIU. You know, Senator, I have not read through the book again. You know, scholars do consider and reconsider their views. But off the top of my head, I cannot think of any.

Senator GRASSLEY. In the book "Keeping Faith with the Constitution," you termed your judicial philosophy, as the Chairman just said, as one of constitutional fidelity. That phrase sounds nice, but, of course, it only sounds nice until you learn what you mean by it.

In an interview you gave to the American Constitution Society about the book, you explained in more detail your judicial philosophy. You said, "Our basic thesis is that the way the Constitution has endured is through an ongoing process of interpretation and that, where that interpretation has succeeded, it is because of not in spite of fidelity to our written Constitution."

Continuing to quote, "And what we mean by fidelity is that the Constitution should be interpreted in ways that adapt its principles and its text to the challenges and conditions of our society in every single generation."

It seems to me that all you are doing is taking a judicial philosophy that has been largely rejected by the American people and rebranding it into a new label. In your book, you define a living Constitution this way: "On this approach, the Constitution is understood to grow and evolve over time as the conditions need and values of our society change."

So my question is: How is your definition of a living Constitution different from your theory of constitutional fidelity which you described as interpreting the Constitution in ways that "adapt its principles and its text to the challenges and conditions of our society in every single generation"?

Mr. LIU. Well, Senator, what we tried to do in the book is actually to reject the notion of the living Constitution insofar as that

label has come to stand for the idea that the Constitution itself can sort of grow and evolve and morph into whatever a judge might want it to say, and that is simply wrong. I mean, the Constitution provides in Article V the only process by which the text of the Constitution can change, and we absolutely respect that.

Furthermore, I think the book fully respects the notion that the text of the Constitution and the principles that it expresses are totally fixed and enduring. Those things do not change either.

The challenge, I think, for courts when they confront cases, new cases and new conditions, is how to apply sometimes broad principles to the specific facts of a case, and in terms of this notion of adapting, let me just offer one more example.

Last year, the Supreme Court considered a case called city of *Ontario* v. *Quon*. It was an interesting case about whether or not a public employee has a reasonable expectation of privacy in text messages that are sent from a Government-issued cell phone. And the Court, interestingly, declined to decide that issue because it observed that the dynamics of communication are changing not just because we have new technology, but really because society's expectations of privacy with respect to the new technology have not fully settled. And so the Court said that workplace norms are evolving, and that it is not clear yet what kinds of expectations of privacy society is prepared to recognize as reasonable.

And so this is just another example of how it is that—you can call it evolving norms or you can just call it social conditions—inform the Court's approach to the interpretation of certain constitutional provisions.

Senator GRASSLEY. My time is up.

Madam Chairman, I am going to have to be in and out today, but I intend to return to ask some more questions.

Senator FEINSTEIN. All right. Fine. Thank you.

Here is the early bird order. It is Franken, Lee, Coons, Coburn, Blumenthal, Sessions, and Cornyn. So, Senator Franken, you are up next.

Senator FRANKEN. Thank you, Madam Chair.

Mr. Liu, I had the opportunity to speak to you in my office and read your writings, and I really believe you are one of the finest minds of your generation, and I hope that we as a Nation could be lucky enough to have you as a jurist and a public servant.

What I think is remarkable about your nomination is not its strength but its diversity of support. A lot of people have mentioned Ken Starr's letter supporting your nomination, and I will get to that in a moment. But the one that caught my eye was a lengthy blog post that went up today from University of Minnesota Professor Richard Painter. This guy is a great law professor, and he is no liberal. He worked to support the confirmations of John Roberts and Samuel Alito and served as President George W. Bush's chief ethics officer. And anyone who has any doubts about your nomination should, I think, read this article. So, Madam Chair, with your permission, I ask that the article be entered into the record.

I would ask that Richard Painter, Professor Richard Painter of the University of Minnesota, his blog post today be entered into the record.

Senator FEINSTEIN. So ordered.

Senator FRANKEN. Thank you.

[The information appears as a submission for the record.]

Senator FRANKEN. Let me just read one little thing from it. "Liu's opponents have sought to demonize him as a 'radical,' 'extremist,' and worse....However, for anyone who has actually read Liu's writings or watched his testimony, it's clear that the attacks—filled with polemic, caricature, and hyperbole—reveal very little about this exceptionally qualified, measured, and mainstream nominee."

I want everyone to think about that. This is a guy who participated in Samuel Alito's and Chief Justice Roberts' nominations for the Bush administration. And, please, I ask anyone who is considering voting against this nominee to read this blog post, please. I ask my colleagues to do that.

Let us talk about the letter from Kenneth Starr and Akhil Amar. They write, "What we wish to highlight, beyond his obvious intellect and legal talents, is his independence and openness to diverse viewpoints as well as his ability to follow the facts and the law to their logical conclusion, whatever its political valence may be."

Professor Amar and Ken Starr cite two examples to support their conclusion, one having to do with Proposition 8. With respect to that episode, they write, "Goodwin knows the difference between what the law is and what he might wish it to be, and he is fully capable and unafraid of discharging the duty to say what the law is."

Can you tell us about the events that led to Kenneth Starr and Professor Amar—what they were referring to?

Mr. LIU. Certainly. Certainly, Senator, and thank you for the generous remarks.

So as I understand it, the letter from Kenneth Starr was referring to testimony that I gave before the State Assembly and Senate Judiciary Committees, the California State committees. What had happened in California was that the California Supreme Court had issued a ruling that had invalidated laws that restricted marriage to a man and a woman. And, thereafter, the voters of California enacted an initiative, Proposition 8, which sought to constitutionalize and did constitutionalize marriage between a man and a woman as the sole definition of marriage in California.

Anticipating a legal challenge to that initiative under State law, the Assembly and Senate Judiciary Committees held a hearing in which they invited me to testify as a neutral legal expert to assess the merits of the claims that many proponents of invalidating Prop. 8 were making, that it was an improper amendment of the Constitution under the procedures prescribed by the Constitution. And I testified that Prop. 8 should be upheld under the applicable precedents that were in existence at the time.

I did also write that the Supreme Court, California Supreme Court, might have some reasons for revisiting that precedent, but under the applicable precedent it was a straightforward case—straightforward in the sense that Prop. 8 should be upheld and this was not, I suppose, a popular position with some of the advocates. But it was, I think, a correct reading of the law, and the California Supreme Court ultimately agreed.

Senator FRANKEN. Thank you. My time is up.

Thank you, Madam Chair.

Senator FEINSTEIN. Thank you very much, Senator Franken.

Senator Lee, you are up next.

Senator LEE. Thank you, and thank you, Professor Liu, for coming and bringing your family to join to us today.

I would like to start out by talking a little bit about the Commerce Clause. On page 72 of your book, "Keeping Faith with the Constitution," you wrote as follows: "The Court has declared certain subjects off limits to Federal regulation by attempting to draw a line between economic and non-economic activity"—referring presumably to the *Lopez* and *Morrison* line of cases—"a line that looks much like the old distinction between what directly affects commerce and what touches it only indirectly in its incoherence and inefficacy in advancing federalism values."

If the distinction drawn by the *Lopez* and *Morrison* cases and the standard established by those cases is ineffective and incoherent, is this something that you could and would employ as a judge?

Mr. LIU. Senator, as with all of the Supreme Court's precedents, absolutely. I mean, I would faithfully apply that standard under the guidance and instruction of the Supreme Court.

Senator LEE. But what if it is incoherent? Then what do you do?

Mr. LIU. Well, Senator, I think the Court actually grappled with that very issue in the subsequent case, the *Gonzales* v. *Raich* case, where they were posed with, I think, a similar characterization issue as to whether or not marijuana grown and used for medicinal purposes purely within local boundaries qualified as a kind of activity that could be reached under the Commerce Clause. And there I think the Court made an accommodation. It said that though this is non-economic activity, it belongs to a class of economic activity.

And so I am not sure exactly where that leaves us, but the rule that emerges from Raich seems to be that non-economic activity that belongs to a class of economic activity is reachable under the Commerce Clause.

And so I think that the only point of the book was to suggest that definitionally these things, like all distinctions in the law, when you press very hard on them, there are gray edges on the distinctions. But in the main, I think these are workable in the role that I would be filling if I were confirmed.

Senator LEE. In the wake of *Gonzales* v. *Raich*, and setting aside for a moment the exceptions identified in *Lopez* and *Morrison*, can you identify limits on Federal authority that exist outside of *Lopez* and *Morrison*?

Mr. LIU. Well, Senator, it would be difficult for me to present a hypothetical given that one never knows when an issue will actually be litigated. But let me try to answer your question by saying that my own understanding of this area begins with one basic supposition, which is that the Federal Government is a Government of limited power. The very enumeration of Congress' powers in Article I presupposes that there is that limit, and the Tenth Amendment to the Constitution makes that explicit. It says that all "powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States, respectively, or to the people." And from Madison to Hamilton to the precedents of

the Court that followed, every one of these sources confirms that basic proposition.

And so any judge that approached a Commerce Clause question would have to yield an answer to a problem that was consistent with that fundamental bedrock proposition of our system.

Senator LEE. Getting back to your statement that the distinction between economic and non-economic is drawn in *Lopez* and *Morrison* is ineffective and inefficient, is there some other way that you could have reached the same result in those cases without drawing the economic/non-economic distinction, either as to bear non-commercial gun possessions at issue in *Lopez* or acts of violence at issue in *Morrison*?

Mr. LIU. Well, I think actually the opinions themselves provide some guide to that. As I recall, the *Lopez* case just simply did not indulge what it said was the sort of piling inference upon inference in applying the substantial effects test of the doctrine. So one way to read *Lopez*, I suppose, is to say that the Court is simply unwilling to, you know, develop a chain of reasoning from mere possession of an article of commerce, to be sure—but the mere possession itself is non-economic—to the economic effects that were posited by the dissent. And that was simply too distant in the chain of, you know, linkages to get to a substantial effect.

Senator LEE. In a 2008 Stanford Law Review article, you wrote, "The problem for courts is to determine at the moment of decision whether our collective values on a given issue have converged to a degree that they can be persuasively crystallized and credibly absorbed into the legal doctrine."

Can you tell me how a judge discerns when, whether, to what extent a particular value has been persuasively crystallized so as to become part of our law?

Mr. LIU. Well, Senator, I think that—in some sense, I think that that is a kind of—what I wrote there is an unremarkable observation about the way the Supreme Court elaborates doctrine. So just to go back to the Fourth Amendment examples I was providing earlier to Senator Feinstein, what constitutes a reasonable expectation of privacy? Well, the Court undertakes, I think, an objective analysis. It does not ask what they themselves think is a reasonable expectation. They ask what society thinks. And I think that the cases are very clear that the inquiry is whether society has developed a legitimate or recognizes a legitimate or reasonable expectation. And I think they look to whatever indicators that they can in the practices—in the case of the text messaging I was describing, they looked to certain practices of employers and the expectations of the employees. And they may look to the case law as it has developed in the State courts and the Federal courts.

And so this happens, I think, all over the constitutional jurisprudence as elaborated by the Supreme Court, and so I think this is in some sense kind of a banal observation about the way the Court elaborates doctrine.

Senator LEE. I see my time has expired, so we may be able to get back to that later.

Mr. LIU. Thank you.

Senator FEINSTEIN. Thank you very much, Senator Lee.

Senator Coons.

Senator COONS. Thank you, Professor Liu, for being with us today and for your, I think, remarkable record of public service, your outstanding academic preparation, and your family's willingness to stand by you through this, I know, long process. And I am grateful for the chance to have visited with you in person, have reviewed your writings and your work, and to spend time with you in this hearing today. I think you would be a very capable jurist, and we would be blessed to have you join the Ninth Circuit. But I know there are a lot of questions that have been raised about some of your writing as an academic and then how that would or would not influence your work should you become a circuit court judge.

One article in particular, a law review article entitled "Rethinking Constitutional Welfare Rights," has been the subject of some controversy, and in that you wrote that fundamental rights can evolve over time. Could you just lay out for me what role you believe the judiciary has in evolving or recognizing the evolution of fundamental rights over time?

Mr. LIU. Certainly. That article, I think, was really an article in two parts. The first half of the article is devoted to rejecting the idea that courts have really any role in inventing rights in the social and economic realm, and that is very consistent with the instructions of the Supreme Court in this area where in case after case the Supreme Court has said that our Constitution is a charter of negative liberties and not one of positive liberties, and I would faithfully and fully apply those precedents were I confirmed in this process.

The back half of the article does recognize a limited judicial role in interpreting rights that are created by statute, so this is a crucial difference that much of the article is actually directed at the notion that policymakers are really the ones in charge when it comes to this contested area, and that what courts do is on occasion, on limited occasion, they assess the legislature's—they assess eligibility requirements or termination procedures against the dictates of the Equal Protection or Due Process Clauses. And that judicial role, too, is supported by precedent, and those precedents remain on the books. And so the role that I propose I think is fully consistent with the state of the law as it is today. And I feel prepared to fully follow that law if I were confirmed as a judge.

Senator COONS. And can you point to anything else in your scholarship to suggest that this has consistently been your view that the role of the judiciary in recognizing the evolution of rights is fairly limited and in many ways really subservient to the policymaking or the legislative role?

Mr. LIU. Absolutely. I mean, in many ways, Senator Coons, my scholarship has been devoted to the subject of education, public education, as you know, and in another article in the Yale Law Journal from 2006, I wrote, again, another piece that was about education, but directed again at the legislature, the policymakers, with the important caveats in the front of the article that said that I am not contemplating any particular judicial role here. And, in fact, I acknowledged that the Supreme Court's decision in 1973 in the *Rodriguez* case that was very much informed by principles of judicial restraint was the basic approach that I was taking in that

article, recognizing that courts have very, very limited capacity, in some instances no capacity, and no authority to wade into what are essentially political decisions. And so much of my writing has been centered on those very premises.

Senator COONS. Let me ask, if I could, one last question, Professor, about something else that has been the subject of some debate. What role, in your view, does foreign law play in any judicial interpretation or application of domestic U.S. law? What sort of authority, if any kind, does it have?

Mr. LIU. The answer is none, Senator. Foreign law has no authority in our system unless American law requires it to have authority, so in the case of a contract or treaty of some sort.

To clarify that issue, there is one paragraph of writing in my record that acknowledges that solutions for legal problems might come from other places in the world when they are common problems that constitutional democracies face. But I think all I meant by saying that was in the same way that judges look to treatises and law review articles and other sources for ideas about how to approach matters that come before them, they might look to examples from other nations, too, but there is a crucial distinction between that kind of information gathering, to the extent it is even informative, and the use of those sources as authority. No one would ever cite a law review article as legal authority that controls a certain proposition of law, and I think the same exact rule applies to any foreign precedent or foreign law that a judge might look to.

Senator COONS. Thank you.

Senator FEINSTEIN. Thank you very much, Senator Coons.

Senator Coburn.

Senator COBURN. Thank you, Madam Chairman.

At the recommendation of our Chairman today, I would like to invite you to come by my office and have a sit-down at your convenience before you are considered before the Committee. I promised the Chairman that I would do that when your nomination was discussed in the lame duck.

Earlier today, you said in your testimony that there are areas of the Constitution that are very precise, so I have a question for you. Article III, Section 2, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority." Is that precise to you?

Mr. LIU. Well, Senator——

Senator COBURN. Because the idea of preciseness is an important definition here for me.

Mr. LIU. Certainly. I mean, I think that Article III, Section 2 contains with it an absolute requirement that judges decide only cases or controversies and that they do not render advisory opinions. I think that is fairly explicit in the text of the Constitution, the provision you read.

Senator COBURN. Well, the reason I ask that question, the Chairman quoted you in terms of your statement, absolute fidelity to the law, the language, and the statutes. And your statement that has caused difficulty is the following: "The resistance to this practice"—in terms of referencing foreign law—"is difficult for me to grasp"—

I mean, these are your words—"since the United States can hardly claim to have a monopoly on wise solutions to common legal problems faced by constitutional democracies around the world."

If you have an absolute fidelity to the law, the language, and the statutes, and this is precise, how could anyone ever consider foreign law as a basis for a decision sitting on the Supreme Court or an appellate court?

Mr. LIU. Well, Senator, the Supreme Court in this area I think has largely followed the general approach that they have looked to foreign law merely as confirmatory or for ideas about how to approach a particular problem. I do not read the precedents as dictating that those sources have authority in the sense of legal, controlling, and binding authority in the interpretation of U.S. law, and it is certainly not my view that foreign law has that kind of authority.

Senator COBURN. All right. Let me give you a specific example then. Justice Stevens in *McDonald* v. *Chicago*, "The fact that our oldest allies have almost uniformly found it appropriate to regulate firearms extensively tends to weaken petitioners' submission that the right to possess a gun of one's choosing is fundamental to a life of liberty."

Do you believe that there is merit to his argument? I mean, he is now referencing foreign law in his defense of his position on that case. Is that fidelity to the language, law, and statutes? And is this precise?

Mr. LIU. Well, Senator, as I recall, Justice Stevens was in dissent in that case, and were I confirmed as a judge, I would follow the majority view.

Senator COBURN. I know. But, again, we have a Supreme Court Justice who is relying on foreign law, so it is very clear to this Senator to want to know exactly where you are given the statement that you said, that it is difficult for you to grasp that people would have trouble with the utilization of foreign law?

Mr. LIU. Well, Senator, even in Justice Stevens' dissent, if I can recall it correctly, there is no sense in which the examples he gave—and I do not have any view, because I cannot recall it very clearly, of the merits of how he used his examples. But my point simply is I do not think that even in his opinion that he is citing those sources is in any way dispositive of the legal question that came before him. And as I said, Senator, that opinion was a dissent, and if I were confirmed as a judge, I would follow not only the holding of the Supreme Court in *McDonald* v. *City of Chicago*, but one would have to absolutely follow the reasoning of the case, and that reasoning I think is dispositive.

Senator COBURN. I submitted two rounds of questions to you following our other hearing, and on many you failed to give me an answer. And I am going to run out of time, and I am going to run out of time in this hearing, to be able to do that, so I look forward to meeting with you in my office to try to get to those answers.

The other question I want to go back to is your statements about Justice Alito. You have said today that you would not—knowing what you know today and the experience that you have seen today, that you would not have included the last paragraph in your cri-

tique. Is that a case of poor judgment, do you think? Or is just a case of lack of knowledge and insight?

Mr. LIU. Senator, it was poor judgment.

Senator COBURN. Okay. Madam Chairman, I have 7 seconds left, and I have a multitude of questions, so I will try to accomplish that with the nominee in my office.

Senator FEINSTEIN. Well, thank you, and thank you very much for meeting with him. It is very much appreciated.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chairman. And thank you, Professor Liu, and most particularly to your family, for being here today. I want to commend you for the success so far in your career. Really a great American success story, going to public school in Sacramento, then to Stanford, to Oxford on a Rhodes scholarship, and then to Yale Law School, and many years of teaching, and for answering the questions today, difficult questions, so candidly and forthrightly, most especially your expression of regret for some of the comments you made about then nominee Judge Alito.

I want to say about this process that I think that you are entitled to an up-or-down vote by the U.S. Senate. But I also feel that this scrutiny has been fair, it has been searching and demanding, but I believe that this body has a responsibility to ask the kind of questions that you have been asked, and I hope that you agree that the process is a fair one in that regard.

I want to really go to what I consider to be the central question for any judge on the United States Court of Appeals, which is where you would follow, and particularly what you would follow, if your personal views, whether in your past writings or your present deeply held beliefs, conflict with the rulings and decisions of the United States Supreme Court. Is there any doubt in your mind that you would follow faithfully and consistently the rulings and the decisions of the United States Supreme Court?

Mr. LIU. Senator, there is no doubt in my mind about that, and, in fact, I would add that the approach that I have taken in my writings has been fairly consistently to acknowledge what the state of the law actually is, and then, of course, scholars are paid to critique it and to say other things about it. But it always begins with a clear acknowledgment of what the law is, and so that is what I would follow.

Senator BLUMENTHAL. And so, for example, on the question of school choice and busing, I know that you have taken some stands that would indicate your support for a broad-based school choice initiative under some circumstances, and we may disagree about it. I am not sure we do, but even if we did, there is no question in your mind, even as a supporter, for example, of school choice initiatives, school vouchers, that you would follow the rulings of the United States Supreme Court.

Mr. LIU. Absolutely I would, Senator.

Senator BLUMENTHAL. And to follow what I think is really an excellent line of questioning from Senator Lee, if the United States Supreme Court were unclear—and I think he may have used the word "incoherent," which sometimes litigators regard the United States Supreme Court as being on certain issues—what would be

your approach there? Would you also look to what the combination of precedents from the United States Supreme Court is and try to make the best sense of it and apply it as you saw it?

Mr. LIU. That is exactly what one would do and what one would have to do in the role of an intermediate appellate judge.

Senator BLUMENTHAL. And I know that one of the criticisms I have seen, having reviewed your previous testimony, has related to racial quotas. I think the statement has been made that you support racial quotas with no foreseeable endpoint. Just so we are clear, do you support racial quotas? And have you ever supported them?

Mr. LIU. I absolutely do not, Senator.

Senator BLUMENTHAL. And do you think that affirmative action plans should exist forever?

Mr. LIU. No, I do not, Senator. I think affirmative action, as it was originally conceived, it was a time-limited remedy for past wrongs, and I think that is the appropriate way to understand what affirmative action is.

Senator BLUMENTHAL. Thank you very much. My time has expired. I may have some additional questions, but, again, I want to thank you for your testimony. I am greatly impressed by it and wish you well.

Thank you.

Mr. LIU. Thank you.

Senator FEINSTEIN. Thank you, Senator Blumenthal.

Senator Sessions.

Senator SESSIONS. Thank you, Madam Chairman.

Mr. Liu, we really do not have time to go into the kind of discussions I guess we would all like to. It is awfully difficult as Senators for us to get as prepared as we would like. I think we do a pretty good job all in all.

You have gone through this before. You have answered written questions before. I just want to note that you have had no real experience practicing law or as a judge, only 2 years in private practice arguing one case, I think, on appeal, a pro bono case, but never having tried a case before a jury. You are apparently an able professor, well liked, and have advanced in the academic world.

I do believe that is a serious defect—I mean, a serious lack, at least, in any judge who goes on a court one step below the Supreme Court. So that to me is a serious matter. There is no need, I guess, to argue about it or talk about it, but it is something I have to weigh in my judgment as to whether or not you should be on the court.

Second, from your writings—and I have been on this Committee now 14 years—I consider them to be the most advanced statement of the activist judicial philosophy that I have seen. I do not think there is anyone close to that. And I think it is a little bit a demonstration of some lack of sensitivity or maybe deep practical legal experience that you have no difficulty in talking around rather direct contradictions in your writings and the positions you are taking here in the Committee on some of the questions. I think they are very clear distinctions, and I do not think they are easily breached.

With regard to the foreign law question, you suggest that yours is not an unusual view, or I would just suggest it is clearly—from the statement the Senator read, it is clearly in accord with the most aggressive foreign law citation theories and I think are unacceptable.

In your Yale Law Journal article of 2006, you wrote—you might just put that up. "Before the Fourteenth Amendment mandates equal protection, it guarantees national citizenship. This guarantee is affirmatively declared. It is not merely protected against state abridgment. Moreover, the guarantee does more than designate a legal status. Together with Section 5, it obligates the national government to secure the full membership, effective participation, equal dignity of all citizens in the national community. This obligation, I argue, encompasses a legislative duty to ensure that all children have adequate educational opportunity for equal citizenship. For familiar reasons, the constitutional guarantee of a national citizenship has never realized its potential to be a generative source of substantive rights."

Well, that is what it says. The words are pretty plain. You become a citizen of the United States, but to become generative of source of substantive rights to me takes that quite a bit further, and it basically says a judge using those words can begin to evaluate political, social policies, as you discuss in your article, and begin to make decisions on those, because you are talking about substantive rights to be found in the document itself, in that clause, that judges can act upon.

I will ask you to respond to that as to whether don't you think that is untethering a judge from the other restraints of the Constitution?

Mr. LIU. Senator, if I may, I will try to address this in four points.

First, the article says absolutely nothing about what a judge should do. The article is addressed to policymakers, and there is not a single sentence in that article that says that judges should use that language as a generative source of rights.

Second, the article acknowledges——

Senator SESSIONS. Well, who would find within that document a source of substantive rights? Legislatures do not need to use the Citizenship Clause to pass a welfare bill.

Mr. LIU. Senator, my argument in the article is merely that the legislature, Members of Congress, may—not that they have to, but that they may——

Senator SESSIONS. No, no, no. You said that constitutional provision provides—is a potential source of substantive rights, and I think that is clearly directed to the courts.

Mr. LIU. Senator, no, that is not my view, and I think the article in the very beginning explains very clearly that I avoid using the language of rights precisely because rights connote judicial enforceability, which is something that I am not interested in in that article. But if I may, Senator, make a couple more points.

It is a bit hard for me to respond to—you mentioned that there were contradictions between my record and my testimony. If there are specific instances of that, I would be happy to try to clarify that. But it is hard for me to respond to that in the abstract.

And, last, Senator——

Senator SESSIONS. I am just telling you, I have to vote. You know, I am sort of a judge here. You know, we go through this, and I have to evaluate what I am hearing. And I just would suggest to you that there are a number of contradictions in your written statements and in your testimony and written answers to the Committee's questions that I do not think adequately address the differences.

Mr. LIU. Well, Senator, it is hard for me to respond without knowing what contradictions you have in mind.

Senator SESSIONS. All right.

Mr. LIU. But the last point I would simply make is that in terms of the gaps in my experience, I acknowledge, Senator, you are correct. It is true my resume is primarily a scholarly resume. I have spent a couple years in practice under the tutelage of the likes of people like Bill Coleman, which I hope is a credit to me, but it is limited.

I do think, though, that I do bring other strengths to the role of an appellate judge. I think the role of a scholar has always been one of rigorous inquiry and the consideration, the fair consideration of arguments and counter-arguments, and the ability to listen well to all the different sides of an issue. And in terms of how I would approach the role, knowing that I have some gaps in my experience, I take some instruction from my own experience, having clerked for an appellate judge who was not on the district court before. And one thing that he always did was he always read the record of the case very, very carefully. And I think that, you know, the temptation at the appellate level, because the issues are kind of cleaned up and neat, is to just decide them as abstract matters of law. But the instruction, I think, always was to look at the record, look at the record, look at the record, because it is important to understand how a case came up the line to the appeals process. And I think I would adopt the same approach if I were fortunate enough to be confirmed.

Senator SESSIONS. Well, just briefly, Madam Chairman, in that same article—you say that it was directed only to policymakers—you use this language. You said, in your words, that the article was an attempt, "a small step toward 'reformation of thought' on how welfare rights may be recognized through constitutional adjudication"——

Mr. LIU. Senator——

Senator SESSIONS [continuing].—"in a democratic society."

Mr. LIU. I am sorry for interrupting. There are two different articles in question. The quote you are now reading is from a 2008 Stanford Law Review article. The article you had referenced previously, the one that contained the phrase "legislative duty," was from a 2006 Yale Law Journal article. And in that article there is not any reference made to a judicial role.

Senator SESSIONS. Well, it is because you say it is a source, potential source to generate substantive rights, and that can only mean by a judge, because the legislature cannot act on these matters without having to have the Citizenship Clause of the Constitution to authorize it.

I am over my time, Madam Chairman. Thank you.

Senator FEINSTEIN. Note the generosity of the Chairman.
[Laughter.]
Senator SESSIONS. You were very generous.
Senator FEINSTEIN. You are welcome.
Senator SESSIONS. And I would say you are a most able advocate for the judges from California that you believe in, and I always respect your insight. Thank you.
Senator FEINSTEIN. I wish it did some good.
[Laughter.]
Senator FEINSTEIN. Senator Cornyn.
Senator CORNYN. Thank you, Madam Chairman.
Let me go back, Professor Liu, to the statements that were referred to earlier that were the subject of your commentary about Judge Alito, and just to read those for the record because I think it helps people understand both what you said and why there is concern about it.
You said, "Judge Alito's record envisions an America where police may shoot and kill an unarmed boy to stop him from running away with a stolen purse; where Federal agents may point guns at ordinary citizens during a raid, even after no sign of resistance; where the FBI may install a camera where you sleep on the promise that it will not turn it on unless an informant is in the room; where a black man may be sentenced to death by an all-white jury for killing a white man, absent multiple regression analyses showing discrimination; and where police may search what a warrant permits and then some. This is not the America we know, nor is this the America we aspire to be."
Did I read that correctly?
Mr. LIU. You did, Senator.
Senator CORNYN. Professor Liu, this is the second time you have had a nomination hearing before this Committee, correct? The last time I believe it was April 6, 2010.
Mr. LIU. I cannot remember the exact date, Senator, but it was in April.
Senator CORNYN. I think it is thereabout. Do you know why your nomination was never called up on the floor of the Senate?
Mr. LIU. Senator, I have read various press accounts of it, but I have no direct knowledge.
Senator CORNYN. Well, you are aware that under the Senate rules, the only person who could do that would be the Majority Leader, Senator Reid.
Mr. LIU. I think I am aware of that, yes, Senator.
Senator CORNYN. Have you had a conversation with him or his staff about why he did not call your nomination up and have a vote on the U.S. Senate on your nomination before it lapsed at the end of the last Congress?
Mr. LIU. No. Not on that subject, no.
Senator CORNYN. So it is a mystery to you as to why you are having to go through this twice, and you never had an opportunity for a vote on your previous nomination.
Mr. LIU. Well, Senator, I would not perhaps say "mystery." I mean, I have read some press accounts of how vote decisions were determined in the end of the session. As I have learned through

this process, one cannot always trust press accounts, but I do have some ideas about it.

Senator CORNYN. Well, you were denied a vote on your nomination last Congress, correct?

Mr. LIU. I was, Senator.

Senator CORNYN. And the only one who could have scheduled that for a vote would have been the Majority Leader, Senator Reid, correct?

Mr. LIU. I believe that is true, yes.

Senator CORNYN. Professor Liu, you said in talking about Chief Justice John Roberts' nomination to the Supreme Court, you said, "There is no doubt that Roberts has a brilliant legal mind, but a Supreme Court nominee must be evaluated on more than legal intellect."

Is that a correct quote?

Mr. LIU. It is a correct quote?

Senator CORNYN. And you would agree that that should apply to you as well?

Mr. LIU. Absolutely, Senator. I think that the advise and consent process is in the Constitution because it is one of the checks and balances in our system, that before any judge assumes the bench for life tenure, that there ought to be a political check on that process. And so, yes, I do agree with that.

Senator CORNYN. Well, Professor Liu, the difficulty, I think, that you are encountering with some of the members of the Committee is because you have such a comprehensive set of legal writings expressing opinions on everything from the death penalty to same-sex marriage to what constitutes welfare rights protected by the U.S. Constitution and the like. You are now saying, "Wipe the slate clean because none of that has any relevance whatsoever to how I would conduct myself as a judge if confirmed by the Senate."

Is that correct?

Mr. LIU. That is correct, Senator, because my understanding of the role of an intermediate appellate judge in the hierarchy of the judicial system is to faithfully follow the instructions of the higher court, which in this case is the United States Supreme Court, as well as, I should add, circuit precedent. And so I am very comfortable and confident saying to you, Senator, that my scholarly views are not the ground on which I would base decisions if I were lucky enough to be confirmed.

It is a different case, however—you mentioned what I wrote about the Roberts' nomination. It is a different case, obviously, with respect to the United States Supreme Court because there the Justices applying the doctrine of stare decisis may, if they apply the test in that way, overturn precedent. And that is simply not something that an intermediate appellate judge has any authority to do.

Senator CORNYN. Well, Professor Liu, as I believe I said at your last nomination hearing, I believe that you have led a remarkable life, and you have accomplished a lot. You have a beautiful and supportive family, and you have a lot to be grateful for, and I know you are. But that does not mean you are qualified to serve as a member of the Federal judiciary, and, in fact, your writings and your previous testimony and the statements, some of which you

now say represented bad judgment on your part with regard to Judge Alito during previous confirmation hearings, raise some serious questions about whether you have the sort of temperament and the ability to set aside your strongly held academic and scholarly views and to be able to basically start over from scratch and ignore them.

The problem we have as members of this Committee is that we have 5-minute rounds to ask you questions. We follow it up with written questions, and you have answered most of those, I believe. The difficulty is we know this kabuki theater sometimes where nominees come into the hearing room and they profess a nomination conversion—in other words, that their previous strongly held and very articulately stated views are inoperative, and we should not pay any attention to them, and we should take at your word your ability—maybe it is your hope, maybe it is your aspiration, but we need to know whether you have the ability and you actually will, if confirmed as a judge, do as you say you would do and set all of this aside and decide based strictly on the matter of precedent and fidelity to the Constitution itself.

We have had the sad experience just in the short time I have been in the Senate where people come in and they say the sorts of things that you are saying today about how they would conduct themselves as a judge, but in practice they have either been unable or unwilling to keep that promise. And the Senate has no recourse whatsoever short of impeachment, which, as you know, is extraordinarily rare.

So I just want to explain to you—I think we owe you, in fairness, our candid views, my candid views. As I said, I think you have accomplished a lot in your life. You have a lot to be grateful for and proud of, but I am not convinced that this is the right job for you.

So with that, Madam Chairman, I will thank you.

Senator FEINSTEIN. Thank you very much.

Before recognizing Senator Klobuchar, I would like to place in the record the statement of our Chairman, Pat Leahy, and he, too, refers, Senator, to the confirmation of Professor McConnell. I would like just to quote one thing.

"Professor McConnell's own provocative writings included staunch advocacy for reexamining the First Amendment Free Exercise Clause and the Establishment Clause jurisprudence. He had expressed strong opposition to *Roe* v. *Wade* and to the clinic access law, and he had testified before Congress that he believed the Violence Against Women Act was unconstitutional. [His] writings on the actions of Federal District Court Judge John Sprizzo in acquitting abortion protesters could not be read as anything other than praise for the extra-legal behavior of both the defendants and the judge."

And he was confirmed, and members on this side gave him the benefit of the doubt.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator CORNYN. Well, Madam Chairman, I appreciate that, and I do not dispute anything you said, and I do believe Judge McConnell did what he promised to do. My only point is there is no recourse for the Committee or for the Senate voting to confirm a

nominee who does not do what they promised to do. And so that is the quandary we find ourselves in.

Senator FEINSTEIN. Well, I do not want to have a back-and-forth, but Professor Liu can promise, but he cannot do now. He can only once get appointed and then you measure that. There is no way of—he has said he would.

Senator CORNYN. And, again, thank you for allowing me to just briefly respond. We have had the experience in the case of a Supreme Court Justice who came in and in the case of the Second Amendment and the right to keep and bear arms said it was an individual right, and then subsequently wrote a decision on the Court and disavowed the very individual right that she claimed that existed under the Second Amendment. That is my only point. I am not disputing that Professor Liu may have those aspirations. He may be making a good-faith representation about his intentions.

I am just saying that you cannot ignore a body of legal scholarship and writing like this expressing strongly held views about this and just take for granted that someone will be able to completely ignore that in approaching their job as a judge. That is my only point.

Thank you.

Senator FEINSTEIN. I will continue this discussion with you sometime.

Senator CORNYN. I am sure you will.

[Laughter.]

Senator FEINSTEIN. Senator Klobuchar.

Senator KLOBUCHAR. Well, hello, Professor Liu. Welcome back.

Mr. LIU. Thank you.

Senator KLOBUCHAR. I think this is your second hearing. is that right?

Mr. LIU. Yes, it is.

Senator KLOBUCHAR. I remember talking with you then, and I was listening as Senator Cornyn spoke about these 5-minute rounds. You have had two hearings now, and you have also made yourself available to members for whatever questions that they have to meet with them in their office. Is that right?

Mr. LIU. That is true, yes.

Senator KLOBUCHAR. Well, I appreciate you making yourself so available to talk with them about any questions that they have about your ability to do this job. And I have stated before, using the Lindsey Graham standard, that I think you are more than qualified to do this job based on your background, the standard that he expressed during the Kagan and Sotomayor hearings about someone's qualities and their academic qualifications and their understanding of the law and their willingness to follow the law.

I just wanted to go back into what Senator Cornyn was just talking about, which is the difference of you work as a scholar, and I think I mentioned before that I am a graduate of the University of Chicago Law School and have seen Judge Easterbrook and Judge Posner as professors and have often thought that some of the things that they said in class or views that they expressed in scholarly journals were not necessarily what guided them as a judge when they actually had to apply the law.

Could you talk a little bit again about your view of a judge differing from the role of an advocate or scholar?

Mr. LIU. Certainly. Thank you, Senator Klobuchar.

I first want to just express that I appreciate Senator Cornyn's making transparent and plain his concerns about my nomination, and I think they are fair concerns to raise and discuss. I think this is a robust and fair process. And it enables me an opportunity, I think, to clarify that in all of my academic writings, the role that I had was that of a commentator, as it were. What a scholar does is a scholar pokes and prods and critiques. A scholar does not make much headway in the law schools by simply restating the law. And so that is why scholarship comes out the way it does. It comes out as critical, and it comes out as inventive and provocative. In fact, those are the very qualities that are rewarded in that profession.

The role of the judge is very, very different. The role of the judge is fundamentally one of being faithful to the law as it is. And I think I recognize that difference in the way I approach scholarship, which is to say that I understand what the law is first. Without grasping that essential foundation, one cannot responsibly comment on it.

And so if I am able to take one hat off and put a different hat on, the role simply changes and the nature of how you approach cases changes. It is not that Judge Easterbrook or Judge Posner or any judge who has been an academic consults their own legal writings and refreshes their recollection about what they thought as a matter of theory before deciding a case. No. What they do is they read the briefs and they read the record of the case, and they confine themselves, they discipline themselves to that process because that is the process of judging.

So that is how I understand that difference, and that is how I would approach the job.

Senator KLOBUCHAR. And I also know that there have been a lot of comments about writings and taking certain things you have said to try to demonstrate what people think might be your judicial philosophy. Do you want to describe in your own words, without just taking one sentence out of something you wrote, what your judicial philosophy is?

Mr. LIU. Sure. My judicial philosophy in a nutshell, I think, is that the courts of the United States have a very limited role in our system of Government. It is limited because the members of the judiciary hold life tenure without electoral accountability, and they are asked to review the substantive validity of democratically enacted statutes on occasion. And so that is—because we are fundamentally a democratic system, that is a role to be exercised very cautiously and in a very restrained way.

It is also, however, a very important role because the judiciary, as Hamilton told us long ago, is also an important bulwark against the tyranny of the majority. And so we have protections in the Constitution for various individual rights, and we entrust the judiciary to enforce it precisely because they are insulated from the politics of the moment.

And so it is a careful balancing act at all times, but in approaching the cases that would come before me, I would take my instruction from the United States Supreme Court in all of those cases,

and I think the Court has in the main across the broad run of cases balanced those two important prerogatives—one, the limitations of the judiciary; and, second, the important bulwark against tyranny that the judiciary serves in our system of Government.

Senator KLOBUCHAR. Thank you.

Madam Chair, if I could ask one more question, I have been managing the America Invents Act, as you know, so I missed the first round here.

I wondered what you see in my job here, as I am going to be heading up the Courts Subcommittee, and Senator Sessions is the ranking Republican. But just generally what do you see as the greatest challenges facing the Federal judiciary right now?

Mr. LIU. Well, I feel like it would be presumptuous of me even to comment on that question, having not made it to the job yet.

Senator KLOBUCHAR. You have been trying really hard, though, so you must have some thoughts on it.

Mr. LIU. You know, Senator Klobuchar, I do not have more thoughts on this than any lay person might have. I mean, I have paid attention to this process, obviously, because of my own involvement in it, and obviously I have observed many claims made about the crushing caseloads that have affected not just the Ninth Circuit but many of the circuits around the country. And so, you know, that attests, I think, the importance of this process, and some of the challenges that you will face in the years to come.

Senator KLOBUCHAR. Well, thank you very much, and, again, I just think about myself as a student in law school with Professor Easterbrook and Professor Posner, and somehow they go through this Committee and they got through the Senate, which had very ideological—many differences at that time as well, and I hope that the same will happen with you, Professor Liu. You have great credentials.

Thank you.

Mr. LIU. Thank you, Senator.

Senator FEINSTEIN. Thank you very much. That completes our first round, and I would like to put some letters into the record, which I will do.

[The letters follow:]

Senator FEINSTEIN. I understand that Senator Sessions has some questions he wishes—this is actually your third round. Why don't you go ahead?

Senator SESSIONS. Mr. Liu, again, I am a bit baffled. You talked just a moment ago about judges showing restraint, that they are cautious, that they have a limited role. But I improperly quoted this article a while ago, and you corrected me, rightly. But this is the article on "Rethinking Constitutional Welfare." You talked about judges—and this is your writing about how you think judges should perform. "The historical development and binding character about constitutional understanding demand more complex explanations than a conventional account of the courts as independent, socially detached decisionmakers that say what the law is. The enduring task of the judiciary," you say, "is to find a way to articulate constitutional law that the Nation can accept as its own."

Well, first, I think the *Marbury* v. *Madison* decision had the famous line that a judge's role is to say what the law is. But you go

quite a bit further from that in your writings, and then when asked about it, you give a statement that Justice Scalia could give about the role of a judge.

So I guess you—doesn't this go far beyond what you just said?

Mr. LIU. Senator, I think that is the first time I have been accused of channeling Justice Scalia, so I will take that——

[Laughter.]

Senator SESSIONS. Well, that was a pretty good statement.

Mr. LIU. Thank you, Senator.

Senator SESSIONS. But it is not consistent, I think, with what you wrote.

Mr. LIU. Well, Senator, I do not recall—I would be happy to look at that passage a little more carefully, if you would like.

Senator SESSIONS. Well, I did not misquote it, I do not think.

Mr. LIU. I think you quoted it accurately. I think the passage, if I recall it correct, was trying to say that judges cannot decide cases, whether it is in this area, welfare rights, or any other area, on the basis of some independent moral theory that they have about what people are entitled to, if anything. And so that statement is part of an argument I think in the article that says that what judges have to do is they have to set aside their independent moral theories and not import them into the law.

I think the Supreme Court has been absolutely clear in this particular area, the welfare rights area, that there is that danger that judges, unelected and unaccountable, based on their own conceptions of justice might try to write that into the law. And I fully respect those precedents in that article——

Senator SESSIONS. Well, you know, you mentioned a while ago, pretty easily, I thought, on the question of privacy. You said that, well, privacy is what society says it is, basically, and how do you find that? Well, you look to what sources you can.

But when you get away from respecting the limitations of the Constitution and its language, then you get into finding theories out here. Do you do polling data to determine what rights are? Or do we look to foreign law, as Justice Stevens said? You said you look to foreign law to get what advice they get, but it is our Constitution that you are interpreting, the one we adopted, not some foreign law.

So doesn't that indicate to me and to all of us that your view is that a judge indeed is free to reinterpret the meaning of the words of the Constitution and to advance what they consider to be in effect some societal value, which is unascertainable, really, by a judge in any fair and complete way?

Mr. LIU. Well, Senator, on the Fourth Amendment example, I was not actually giving my personal view about the subject. I was trying to express what the Supreme Court itself has said about the subject, and if I were an intermediate appellate judge, I would have to faithfully follow the standard of a reasonable expectation of privacy or a legitimate expectation of privacy as society recognizes it, which is the applicable standard in the Black Letter Law.

Senator SESSIONS. Well, I thank you, and I appreciate the opportunity to have this exchange. You are an able lawyer with a nimble mind and ability to articulate your position well. I would just say that I believe the values you express in your writings indicate that

you have a very activist view of the role of a judge. I think it would influence your decisionmaking. I am not unaware that the Ninth Circuit is considered to be the most liberal circuit in the country. One year, they reversed 27 out of 28 cases, and the New York Times wrote that the Ninth Circuit was considered by a majority of the court as a rogue circuit.

So I am concerned about that, but I have no doubt of your good will, your skill, your leadership ability, your academic ability, and you have a wonderful family. Thank you.

Mr. LIU. Thank you, Senator.

Senator FEINSTEIN. Senator Grassley has returned, and I know he has additional questions.

Senator Blumenthal, do you have additional questions for this witness?

Senator BLUMENTHAL. I do not, Madam Chairman. I would yield to Senator Grassley.

Senator FEINSTEIN. Fine. And then I know we are keeping the other nominees quite a time, but we will try to be quick in your hearings. I think you have probably seen that this is a very interesting hearing for this particular candidate.

Senator SESSIONS. Madam Chairman, I would offer for the record a post of Ed Whelan, a lawyer, responding to Mr. Painter's letter, Professor Painter's letter, that criticized some of his writings, and he responds, I think, effectively, to those criticisms.

Senator FEINSTEIN. That was quick. It will go into the record.

[The information appears as a submission for the record.]

Senator FEINSTEIN. Senator, would you like to take the floor?

Senator GRASSLEY. If we were to, let us just say, wipe the slate clean as to your academic writings and career, what is left to justify your confirmation?

Mr. LIU. Senator, I would hope that you would not wipe my slate clean, as it were. You know, I am what I am. My resume is a scholarly resume, and all I can say about that is that I appreciate the distinction between the roles.

I think there are important facets of being a scholar that are very beneficial to being a judge: The ability to have a broad knowledge of the law, the ability to see arguments and counter-arguments, and to be fair to those arguments, and also the ability, frankly, to listen well to the litigants' positions and to subject all the arguments to the most rigorous scrutiny. I think all of those are transferable skills from one to the other.

What is not transferable absolutely are the substantive views that one might take as a matter of legal theory. Those are left at the door. And then when one becomes a judge, one applies the law as it is to the facts of every case.

Senator GRASSLEY. You devote an entire chapter in your book to defending the Supreme Court holdings in cases like *Roe* and *Griswold* and *Lawrence*. You describe these cases collectively as "broad constellations of cases extending constitutional protection to individual decisionmaking on intimate questions of family life, sexuality, and reproduction."

You argue, and I quote further, "The rights affirmed in the cases from *Griswold* . . . to *Lawrence* enjoy widespread support and acceptance. They cannot be reconciled with an arid textualism or an

originalism that asks how the Framing generation would have resolved the precise issues. But they are wholly consistent with an approach to constitutional interpretation that reads original commitments and contemporary social contexts together. The evolution of constitutional protection for individual autonomy in certain areas of intimate decisionmaking reflects precisely the rich form of constitutional interpretation this book envisions."

So the question: Given that you argue these cases "reflect precisely the rich form of constitutional interpretation this book envisions," is it fair to say that these cases demonstrate fidelity to the Constitution under your judicial philosophy?

Mr. LIU. Well, Senator, those are cases that have been rendered by the United States Supreme Court. They are precedents of the Court, and if I were confirmed as a judge, I would fully follow them.

I do not think that there is in the writing any—it is a scholarly—what you read is a scholarly description, one scholarly description of a set of cases, and I am sure there are scholars who would disagree. But what all scholars would not disagree on, I think, is that however we might like to characterize those opinions as a matter of theory—which is what that is—the decisions speak for themselves in their own language, and any judge would have to consult not my book or any other person's book, but those decisions themselves in applying the law to the facts of any particular case.

Senator GRASSLEY. At your prior hearing, you responded to a question from Senator Cornyn by citing *Lawrence* as a case in which the Supreme Court relied on foreign law simply because it was favorable to the majority opinion's position. In doing so, did the Court "read original commitment and contemporary social contexts together"?

Mr. LIU. Senator, I am not sure, and I am not sure I understand the question.

Senator GRASSLEY. Well, I can state it again, but it is pretty simple to me. We are trying to compare what you said about original commitments and contemporary social contexts, the extent to which the *Lawrence* decision and your reliance upon foreign law was favorable to the majority opinions, how that fits in with your quote that I have.

Mr. LIU. Well, Senator, in *Lawrence*, the Supreme Court was interpreting the term "liberty" in the Due Process Clause of the Fourteenth Amendment, and in interpreting that term, the Court did look to a variety of sources, but most especially it looked to the precedents of the Court itself. The primary discussion, as I remember it, in the opinion is a discussion of how the notion of liberty had traveled through a variety of the Court's own precedents from the time of the early, I believe, 1900's all the way up through the present day.

With respect to the citation of foreign law, I think I had said in our previous hearing that they are all reasons to be skeptical as well about the use of foreign law because one has to know whether or not one is cherrypicking in a sense among the possible sources. And perhaps that was the caution that I expressed in the first time that we had this conversation about that case.

Senator GRASSLEY. This will be my last question. We have had a host of liberal academics admitting that the role was largely invented out of whole cloth. Professor Laurence Tribe has written, "One of the most curious things about *Roe* is that behind its verbal smoke screen, the substantive judgment on which it rests is nowhere to be found."

In 1985, Justice Ginsburg described *Roe* as "heavy-handed judicial intervention that was difficult to justify and appears to have provoked, not resolved, conflict."

Yale Law Professor Kermit Roosevelt, who wrote a book entitled "The Myth of Judicial Activism," said, "As constitutional argument, *Roe* is barely coherent. The Court pulled its fundamental right to choose more or less from the constitutional ether."

Edward Lazarus, a former law clerk to Justice Blackmun, wrote, "As a matter of constitutional interpretation, even the most liberal jurisprudes, if you administer truth serum, will tell you it is basically indefensible."

And, you know, we could go on and on, but my question to you is this: Do you still believe that *Roe* and its progeny demonstrate what you term "constitutional fidelity"?

Mr. LIU. Senator, *Roe* is a precedent of the Court. It has been reaffirmed as recently, I believe, as 1992 in the *Casey* opinion by the Court. As a precedent of the Court, it is entitled to the respect that the precedents of the Supreme Court are entitled to. And in the case of an intermediate appellate judge, if I were fortunate enough to be confirmed, that means that *Roe* is a controlling case under the case law. So I would have to apply it faithfully if I were confirmed.

Senator GRASSLEY. And so you are saying that it demonstrates what you have terms "constitutional fidelity"?

Mr. LIU. Senator, the Supreme Court has said that it is an appropriate decision under the United States Constitution. As an intermediate appellate judge, I am obligated to respect that.

Senator GRASSLEY. Thank you, Professor Liu.

Senator FEINSTEIN. I know this is tough, and I want to thank you. I want to thank you for your bright mind. I want to thank you for your scholastic intuition and judgment and knowledge.

I thought the answer to Senator Grassley's last question showed that you also have courage of your views, and I thank you for that. I actually think you will be a fine—if you get there, a fine appellate court judge. And I think this is really hard because you see the polarization that exists. Whether we can overcome it or not, I do not know. I hope members will meet with you separately. I was delighted to hear that Senator Coburn agreed to do so. That means a great deal to me.

One of my concerns—and I just want to spell it out—has been that our Federal judiciary is made up of the best we can get, the intellectual and legal giants of our time, and that we not dumb it down. If you are able to make it, one thing I am sure of: You will not dumb it down.

So thank you very much for being here, and you are now excused.

Mr. LIU. Thank you, Senator Feinstein.

Senator FEINSTEIN. We will ask the next panel to come up, please. Perhaps I should swear you all in.

Do you affirm that the oath you are about to take, that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHARP. I do.

Mr. DALTON. I do.

Judge CECCHI. I do.

Judge SALAS. I do.

Senator FEINSTEIN. Substitute "testimony" for "oath." I think this hearing is getting a bit long.

I do not believe that this will be a lengthy hearing. We have had an opportunity to review your records. The Senators introducing you I think were very complete and gave us a very good view of your background.

I have one question that I would like to ask each one of you to answer, and that is this: You have heard a lot earlier about stare decisis. That is precedent. And I do not know whether you have run into this in your careers or not. But I do know that people come up here and say, oh, they agree with the doctrine of stare decisis and they will abide by it, and then they go on the court—and this has happened even with the Supreme Court—and they do exactly the opposite. So I would like to ask you that question for the record. Stare decisis essentially ensures that our law will be stable, predictable, and well reasoned over time.

So have you encountered this doctrine so far in your career? And how will this doctrine influence your work as a district judge, if you are confirmed?

We will begin with you, Mr. Sharp, please.

STATEMENT OF KEVIN HUNTER SHARP, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF TENNESSEE

Mr. SHARP. Well, thank you, Chairman Feinstein, and thank you, Ranking Member Grassley, for having us here.

My thoughts about this, my philosophy on this, starts from the point of a great respect for the law and a great respect for our system. And our system of justice only works to the extent that the judges in that system follow precedent and strictly follow the rules. If judges start to exercise will instead of judgment, the system breaks down. And it loses—the system loses respect from those people that have to work within this system.

So, absolutely, as a judge, if fortunate enough to be confirmed, I would strictly follow the precedents set down by the circuit courts and the Supreme Court of the United States.

Senator FEINSTEIN. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Kevin Hunter Sharp

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Middle District of Tennessee

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Drescher & Sharp, P.C.
   1720 West End Avenue, Suite 300
   Nashville, Tennessee 37203

4. **Birthplace**: State year and place of birth.

   1963; Memphis, Tennessee

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   2009, Austin Peay State University; no degree received
   1990 – 1993, Vanderbilt University School of Law; J.D., 1993
   1988 – 1990, Christian Brothers College; B.S., 1990
   1987 – 1988, Mesa Community College; A.A., 1988
   1986, Santa Monica Community College; no degree received
   1981, State Technical Institute at Memphis; no degree received

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003 – Present
Drescher & Sharp, P.C.
1720 West End Avenue, Suite 300
Nashville, Tennessee 37203
Shareholder/Partner

2003
Preston & Sharp, P.C.
216 19th Avenue North
Nashville, Tennessee 37203
Shareholder

1997 – 2003
Stokes, Bartholomew, Evans & Petree, P.A.
424 Church Street, Suite 2800
Nashville, Tennessee 37219
Shareholder/Partner (2001 – 2003)
Associate (1997 – 2000)

1996 – 1997
Office of Compliance, U.S. Congress
Adams Building, LA 200
110 Second Street, S.E.
Washington, D.C. 20540
Attorney, General Counsel's Office

1991 – 1996
Stokes & Bartholomew, P.A.
424 Church Street, Suite 2800
Nashville, Tennessee 37219
Associate (1993 – 1996)
Law Clerk (1992 – 1993)
Summer Associate (Summer 1991 & Summer 1992)

Summer 1992
Burch Porter & Johnson
130 North Court Avenue
Memphis, Tennessee 38103
Summer Associate

Summer 1991
Hanover, Walsh, Jalenak & Blair (now Harris Shelton Hanover Walsh, PLLC)
One Commerce Square, Suite 2700
Memphis, Tennessee 38103
Summer Associate

Other Affiliations (uncompensated)

2009 – present
Nashville's Priorities
1720 West End Avenue
Nashville, Tennessee 37203
President/Founder

2004 – present
ALS Association, Tennessee Chapter
4825 Trousdale Drive, #107
Nashville, TN 37220
Board of Trustees (2004 – present)
President (2008 – 2009)

2009
Health Research Insights, Inc. (no longer operating)
P.O. Box 682467
Franklin, Tennessee 37068
Board Member

2004 – 2009
Tennessee Lawyers' Fund for Client Protection
221 4th Avenue N., Suite 300
Nashville, Tennessee 37219
Board Member

1994 – 2004
Girl Scout Council of Cumberland Valley
1129 Trotwood Avenue
Columbia, Tennessee 38401
Board Member (2001 – 2004)
General Counsel (1994 – 2004)

1999 – 2000
Nashville Opportunities Industrialization Center, Inc.
460 10th Circle North
Nashville, Tennessee 37203
Board Member

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I registered for Selective Service while in high school. Following graduation from high school, I enlisted in the United States Navy. I served in the U.S. Navy from April 1982 through March 1986. For most of my service, I was stationed at NAS Barbers Point, Hawaii, where I specialized in in-flight communications aboard the P-3 Orion. I achieved the rank of Petty Officer Third Class (AT3) and received a Good Conduct Medal and an Honorable Discharge at the conclusion of my service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Best Lawyers in America – Labor and Employment Law (2011)
Fellow, American Bar Foundation (2010)
Best Lawyers in America (2008 – 2010)
Mid-South Super Lawyers (2007 – 2010)
Nashville Business Journal's Best of the Bar (2003, 2005 – 2009)
Muscular Dystrophy Association – Most Prominent Legal Leader (2007)
Who's Who in American Law (13th Ed. 2003 – 2004)
Fellow, Nashville Bar Foundation (2003)
"AV" rating by Martindale-Hubbell (2000)
Weldon B. White Scholar, Vanderbilt University School of Law (1992)
Appellate Advocacy Award, Vanderbilt University School of Law (1991)
Alumni Academic Achievement Award (presented to student with the highest cumulative G.P.A.), Christian Brothers College (1990)
Delta Sigma Pi Scholarship Key (presented to Business School student with highest G.P.A.), Christian Brothers College (1990)
Certificate of Excellence in Management (presented by the Business School faculty), Christian Brothers College (1990)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
- Section of Litigation
- Section of Labor & Employment
- Employment Rights & Responsibilities Committee
- Equal Employment Opportunity Committee
- Ethics & Professionalism Committee
- Labor & Employment Law Section Mentoring Program

Nashville Bar Association
- Employment & Civil Rights Committee
- Ethics & Professionalism Committee
- Federal Court Committee
- Minority Opportunities Committee

Tennessee Bar Association
Labor & Employment Law Section
Middle Tennessee Delegate to Section's 2006 Executive Council
Disability Law Section
Federal Practice Section
Access to Justice Committee
Tennessee Bar Association Leadership Law Class of 2005

Tennessee Board of Professional Responsibility
Disciplinary Hearing Committee Member (2000 – 2006)

Tennessee Lawyers' Fund for Client Protection
Board Member (2004 – 2009)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Tennessee, 1993

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2010
United States Court of Appeals for the Sixth Circuit, 1994
United States District Court for the Middle District of Tennessee, 1994
United States District Court for the Western District of Tennessee, 2003
United States District Court for the Eastern District of Tennessee, 2010
Tennessee Supreme Court, 1993

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

United States Naval Institute (2010 – present)

The Society for Military History (2009 – present)

Sixth Marine Division Association
Lineal Descendant Member (2007 – present)

National Employment Lawyers Association (2006 – present)

ALS Association, Tennessee Chapter
Board of Trustees (2004 – present)
President (2008 – 2009)
Strategic Planning Working Group, ALS Association, National (2008)

Richland Country Club (2003 - present)

Girl Scout Council of Cumberland Valley
Board Member (2001 – 2004)
General Counsel (1994 – 2004)

Nashville Opportunities Industrialization Center, Inc.
Board Member and Legal Counsel (1999 – 2000)

Special Olympics of Tennessee (although I have not officially served within the organization, I do volunteer during the local and/or area competition each year).

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations above currently discriminate on the basis of race, sex, or religion, or national origin. Prior to a by-law change in 1928, Richland Country Club did not allow female members. Although there is no documentation in the club's records evidencing an official policy of discrimination based on race, I suspect that, like many other Southern country clubs, at one time it limited its membership to white males. I have spoken to the current president and vice-president, as well as the club's membership director and a former club president from the 1970s. Each also suspects that there may have been an unwritten rule decades ago limiting membership based on race, but Richland has not engaged in any discriminatory membership practices during their time as members, which spans more than 40 years.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

From October 2009 to April 2010, I actively used an account on the microblogging site Twitter, under the username "ksharp122." The vast majority of my posts were links to news articles, or "re-tweets" of the posts of others. The page is located at http://twitter.com/ksharp122, and a copy of all of my posts is supplied.

When You are Facing Cutbacks or Layoffs, Nashville Business Journal, July 10, 2009. Copy supplied.

Letters to the Editor, The Tennessean, Aug. 4, 2006, at 18A. Copy supplied.

In October 2006, I briefly ran a blog about employment law at SharpEmploymentLaw.com. I authored three posts on the blog. Two of the three posts are supplied. After a diligent search, I have been unable to locate the third entry. The site is no longer active.

Although I searched my files and the Internet to compile this list, there may be other publications I have been unable to remember or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

January 4, 2010 and January 8, 2010: As president of Nashville's Priorities, I sent two e-mails to my organization's supporters urging them to take action against the proposed creation of a new convention center. Copies supplied.

While at the Office of Compliance in 1996 to 1997, I assisted in the preparation of the Office's reports to the House and Senate on the Legislative Branch's compliance with the Occupational Safety and Health Act and the Americans with Disabilities Act. Copies of the Report on Initial Inspections of Facilities for Compliance with the Americans with Disabilities Act Standards Under Section 210 and the Report on Initial Inspections of Facilities for Compliance with Occupational Safety and Health Standards Under Section 215 are supplied.

I was also the primary drafter of the initial ADA Title II and Title III regulations and had significant input in the drafting of the OSH Act regulations as applied to Congress under the Congressional Accountability Act of 1995. The proposed regulations were published in the Congressional Record for September 19, 1996. A copy of the regulations is supplied.

Although I searched my files and the Internet to compile this list, there may be other reports, memoranda, or policy statements to which I contributed that I have been unable to remember or identify.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

January 11, 2010: I spoke at a public hearing held by the Metro County Council. I made remarks asking the Council to hold a public vote before deciding whether to build a new convention center. I have been unable to locate a recording, transcript or notes from this event, but press coverage is supplied.

October 7, 2009: As president of Nashville's Priorities, I sent an e-mail to the County Council members urging them to engage in a public dialogue about the proposed convention center. Copy supplied.

I had some participation in the Tennessee Bar Association Access to Justice (ATJ) Committee's report on pro bono requirements for practicing lawyers. While I was not a member of the ATJ Pro Bono Reporting Working Group, I occasionally offered comments to the group's work as they circulated it among the full ATJ Committee. The ATJ Committee's work on pro bono requirements was eventually adopted by the Tennessee Supreme Court. A copy of the working group's recommendation is supplied.

Although I searched my files and the Internet to compile this list, there may be other testimony, official statements, or other communications relating to public policy or legal interpretation that I have been unable to remember or identify.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

January 6, 2010 and December 19, 2009: As president of Nashville's Priorities, I spoke to neighborhood groups about the mayor's proposed convention center project. Copies of the PowerPoint presentations and press coverage of the events are supplied. In addition to these two presentations, I made several others using essentially the same material and with nearly identical visual presentations. For each event, I changed the first slide to acknowledge the Metro Council Member in whose district I was speaking and the date of the presentation.

October 21, 2008: I presented "Recent Trends in Employment Law" at the Nashville Bar Association's "Back to School" CLE program. I have presented at other CLE programs several times over the years, but have been unable to determine the dates of those presentations, and I have no notes, transcripts or recordings of them.

In the mid-1990s, I recall participating in an employment law update for clients of my then-law firm. I do not recall the specific dates. I have no notes, transcript, or recordings.

Also in approximately the mid-1990s, I also recall speaking on Tennessee law regarding non-competition agreements and I presented a seminar for a private company on the interrelationship between the ADA, FMLA and state workers compensation law. I have been unable to locate the written material presented.

Although I searched my files and the Internet to compile this list, there may be other speeches or talks I have given that I have been unable to remember or identify.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched my files and Internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could, but it is still possible there are some I was not able to locate. Copies of each of these articles are supplied.

Stephen George, *Convention Center Crusader*, Nashville City Paper, Apr. 25, 2010. Copy supplied.

Michael Cass, *Nashville Convention Center Construction Chief Sees Big Picture, Details*, The Tennessean, Feb. 2, 2010. Copy supplied.

Michael Cass, *Opposition to New Nashville Convention Hall Keeps Eyes on Process*, The Tennessean, Jan. 25, 2010. Copy supplied.

Michael Cass, *Nashville Center Approved*, Knoxville News-Sentinel, Jan. 21, 2010, at 11. Copy supplied.

Chris Cannon, *Metro Council Approves New Convention Center*, Channel 5 News Web Site, Jan. 19, 2010. Copy supplied. Related video story is posted at http://www.newschannel5.com/Global/story.asp?S=11848678.

Convention Center Approved, Plans Move Forward, WKRN News Web Site, Jan. 19, 2010. Copy supplied.

Joey Garrison, *Council Approves Funding for Convention Center*, Nashville City Paper, Jan. 19, 2010. Copy supplied.

Michael Cass, *Convention Center Advocacy Group Discloses Donor List*, The Tennessean In Session Blog, Jan. 19, 2010. Copy supplied.

Convention Center Draws Facebook Support, Petition Opposition, WKRN News Web Site, Jan. 18, 2010. Copy supplied.

Joey Garrison, *Anti-Convention Center Petitions to be Delivered Before Vote*, Nashville City Paper, Jan. 18, 2010. Copy supplied.

Michael Cass, *Hall is On Track for Approval*, The Tennessean, Jan. 17, 2010. Copy supplied.

Deanna Lambert, *Last-Minute Push for Public Vote on Convention Center*, WSMV News, Jan. 16, 2010. Copy supplied. Related video story posted at http://www.wsmv.com/video/22264351/index.html.

Michael Cass, *Convention Center News and Notes*, The Tennessean In Session Blog, Jan. 12, 2010. Copy supplied.

Supporters, Opponents React to Channel 4's Music City Center Poll, WSMV News, Jan. 8, 2010. Copy supplied. Related video story posted at http://www.wsmv.com/video/22205441/index.html. A video of my full interview on the poll is posted at http://www.wsmv.com/video/22190243/index.html.

Brandon Gee, *Music City Center Impact Projected at $135 Million*, Nashville Business Journal, Jan. 6, 2010. Copy supplied.

Michael Cass, *Anti-Convention Center Petition Goes Online*, The Tennessean In Session Blog, Jan. 4, 2010. Copy supplied.

Michael Cass, *Nashville Convention Center Attacks Get Personal*, The Tennessean, Jan. 3, 2010. Copy supplied.

Michael Cass, *1st Hall Didn't Tap Taxpayers*, The Tennessean, Jan. 1, 2010. Copy supplied.

Joey Garrison, *Convention Center Revenue Stream in Question*, Nashville City Paper, Dec. 31, 2009. Copy supplied.

Michael Cass, *Real Debate, Fake Names: Blog Commenters Battle Over Convention Center*, The Tennessean, Dec. 28, 2009. Copy supplied.

Michael Cass, *Anti-Kevin Sharp Petition on its Way to the White House*, The Tennessean In Session Blog, Dec. 22, 2009. Copy supplied.

Brandon Gee, *Petition Tit-for-Tat in Music City Center Fight?*, Nashville Business Journal, Dec. 18, 2009. Copy supplied.

Nancy Amons, *Convention Center Fight Gets Personal*, WSMV News, Dec. 18, 2009. Copy supplied. Related video story posted at http://www.wsmv.com/video/22026122/index.html.

Ken Whitehouse, *MCC Battle Spills Over Into Judicial Appointments Process*, Nashvillepost.com, Dec. 17, 2009. Copy supplied.

Michael Cass, *Group Calls for Public Vote on Proposed Nashville Convention Center*, The Tennessean, Dec. 15, 2009. Copy supplied.

Brandon Gee, *Update: Petition-Seekers Being Disingenuous, Samuels Says*, Nashville Business Journal, Dec. 14, 2009. Copy supplied.

Petition Seeks Public Vote on Music City Center, Nashville Business Journal, Dec. 14, 2009. Copy supplied.

Michael Cass, *Nashville's Priorities to Seek Public Vote on Convention Center*, The Tennessean, Dec. 14, 2009. Copy supplied.

Nancy Amons, *Group Hopes for Convention Center Public Vote*, WSMV News, Dec. 14, 2009. Copy supplied.

Blake Farmer, *Nashville's Priorities Petitions for Vote on Convention Center*, WPLN News, Dec. 14, 2009. Copy supplied.

Nashville's Priorities Launches Petition Drive, Nashville's Priorities Blog, Dec. 14, 2009. Copy supplied.

Joey Garrison, *Is the Proposed Convention Center in the Bag?*, Nashville City Paper, Dec. 13, 2009. Copy supplied.

Michael Cass, *Convention Center Boosters Attack Opponents Over "Dirty Tricks"*, The Tennessean In Session Blog, Dec. 10, 2009. Copy supplied.

Nancy Amons, *Tourist Tax Loss an Issue Regarding Convention Center*, WSMV News, Dec. 9, 2009. Copy supplied. Related video story posted at http://www.wsmv.com/video/21919615/index.html.

Michael Cass, *Medical Mart Vision Unveiled for Nashville Convention Center*, The Tennessean, Dec. 1, 2009. Copy supplied.

Nashville's Priorities Welcomes the Downtown Medical Mart!, Nashville's Priorities Blog, Nov. 30, 2009. Copy supplied.

Michael Cass, *Nashville Convention Center Groups Take Fight to the Public*, The Tennessean, Nov. 25, 2009. Copy supplied.

Brandon Gee, *Council Sets Meetings on Convention Center Financing*, Nashville Business Journal, Nov. 24, 2009. Copy supplied.

Michael Cass, *Nashville's Priorities Acknowledges Convention Center Phone Poll, Denies Anything "Sinister"*, The Tennessean In Session Blog, Nov. 23, 2009. Copy supplied.

Critic of Convention Hall Coaches Concerned Citizens, The Tennessean, Nov. 10, 2009, at NaN. Copy supplied.

Nashville Convention Hall Backers Trust in Tourism, The Tennessean, Nov. 6, 2009. Copy supplied.

Will Hall Max Out Metro's Credit?, The Tennessean, Oct. 25, 2009, at NaN. Copy supplied.

Michael Cass, *Critics Say Convention Center Plan Puts Nashville at Risk*, The Tennessean In Session Blog, Oct. 15, 2009. Copy supplied.

Gaylord Gave $8,500 to Convention-Hall Critics Group, The Tennessean, Oct. 2, 2009, at NaN. Copy supplied.

"Nashville's Priorities" Taking on the Music City Center, SEIU Local 205 Blog, Sept. 30, 2009. Copy supplied.

Group Wants Dialogue on Hall, The Tennessean, Sept. 28, 2009, at NaN. Copy supplied.

Law Firms Court Clients with Flat Fees, The Tennessean, Aug. 16, 2009. Copy supplied.

Firms Work to Ensure Health Costs' Accuracy, The Tennessean, May 4, 2009. Copy supplied.

Walker Duncan & Kyle Swenson, *Nashville at Law: AmSurg Sues Over Incomplete Policy Application*, Nashville City Paper, Mar. 23, 2009. Copy supplied.

Tennessee Work Discrimination Claims Swell, AP Alert – Tennessee, Mar. 14, 2009. Copy supplied.

Getahn Ward, *Faith in the Workplace*, Liberty Magazine, Nov.-Dec. 2007. Copy supplied.

Janell Ross, *Ex-VU Student Sues College, Professor, Charges Him with Sexual Harassment*, The Tennessean, Aug. 14, 2007. Copy supplied.

Paul Kuharsky, *Pacman Won't Wrestle*, The Tennessean, Aug. 11, 2007. Copy supplied.

Ed Green, *Area Employers Feeling Effects from Downfall of Tennessee Benefits Firm*, Business First of Louisville, Oct. 9, 2006. Copy supplied.

Janell Ross, *Chapter 11 Status Forced on 1Point*, The Tennessean, Sept. 28, 2006, at 1E. Copy supplied.

Janell Ross, *Anxiety Spreads Among Benefits Firm's Clients*, The Tennessean, Sept. 24, 2006, at A1. Copy supplied.

Dave Raiford, *Benefits of Staying Small(er)*, Nashville Business Journal, Sept. 8, 2006. Copy supplied.

Sanford, Wittels & Heisler Announces White Employees at Whirlpool Confirm Class Action Claims of Racially Hostile Work Environment, Business Wire, July 13, 2005. Copy supplied.

Judge Finds Bosch Automotive Purposely Timed Lay Off of Henderson Plant Workers to Avoid Paying Benefits, Business Wire, June 2, 2005. Copy supplied.

Chip Cirillo, *Ex-Counselor Files Discrimination Suit*, The Tennessean, May 13, 2004, at 2C. Copy supplied.

Joe Morris, *Partners Draw on Individual Strengths to Form New Firm*, Nashville Business Journal, Nov. 21, 2003, at 47. Copy supplied.

Bush Bernard, *New Law Firm Plays It Straight with Name*, The Tennessean, Sept. 29, 2003, at 1E. Copy supplied.

Elbert David, *Fired Worker Alleges Bias in Lawsuit*, Des Moines Register, Aug. 29, 2003, at 6D. Copy supplied.

Fleetguard Plans New Georgia Plant, The Tennessean, Aug. 29, 2003, at 6E. Copy supplied.

Judge Orders Co-op to Pay $428,490 in Firing, Daily News Journal, Apr. 3, 1999. Copy supplied.

In addition to the interviews listed above, I appeared in several television news stories between December 2009 and January 2010, discussing my opposition to the Nashville Convention Center construction project. The following is a list of the dates and airtimes that I appeared in these stories. I have been unable to obtain any recording, transcript, or other material unless otherwise indicated:

WKRN
Jan. 20, 2010 at 04:01:32
Jan. 19, 2010 at 22:00:32 (Copy supplied)
Jan. 19, 2010 at 21:58:32
Dec. 15, 2009 at 06:43:53
Sept. 29, 2009 at 16:31:32 (Copy supplied)

WSMV
Jan. 16, 2010 at 22:12:27
Jan. 16, 2010 at 18:04:45

News Channel 5
Dec. 3, 2009 at 16:59:32
Sept. 29, 2009 at 22:10:44
Sept. 29, 2009 at 18:48:08

WZTV Fox 17
Jan. 19, 2010 at 22:00:19
Jan. 19, 2010 at 21:03:00
Jan. 11, 2010 at 21:07:45

On January 5, 2010 and in late 2009, I appeared on a local television show called Open Line, which airs on the local CBS affiliate – WTVF (News Channel 5+). The program is an hour-long viewer call-in show about topics of local interest. My interview segments involved discussions of the pros and cons of the proposed Nashville convention center. News Channel 5+ only retains video of shows for 60 to 90 days before they are recycled, so I was unable to obtain any copies.

On October 28, 2009, I was a guest on the Ralph Bristol Show, a local morning radio program, during which we discussed the proposed Nashville convention center. I attempted to obtain audio of the interview, but was unable to do so. I have no notes, transcript, or recording.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Since 1988, I have volunteered for activities in support of the Tennessee Democratic Party and various candidates for elected office. I have been a member of the Tennessee Democratic Party Finance Council, the Governor's Roundtable and the Davidson County Young Democrats. More specifically, I have volunteered for the campaigns and committees listed below. Except as indicated, my involvement was limited to placing yard signs, organizing rallies, knocking on doors, handing out literature, and other tasks of that nature.

Al Gore for President (1988); Bill Clinton for President (1992, 1996); Rep. Harold Ford, Sr. for Congress (1992); Guthrie Castle for Congress (1992); Mayor Bill Morris for Governor (legal counsel to the campaign and Middle Tennessee coordinator) (1994); Phil Bredesen for Governor (placing calls to Morris supporters seeking their support in the general election) (1994); Democratic National Committee, Community Service Division (1996); Gloria Dumas for Davidson County General Sessions Judge (managed campaign – 1997; Treasurer/Manager – 2005); Harold Ford, Jr., for Senate (volunteer Finance Committee) (2006); Carter Todd for Nashville Metro Council (volunteer campaign manager) (2008); Bill Richardson for President (volunteer Finance Council) (2008).

Additionally, in 1998, I managed the successful retention campaign of Judge A.A. Birch for Tennessee Supreme Court, for which I received a nominal stipend.

16. **Legal Career:** Answer each part separately.

    a. Describe chronologically your law practice and legal experience after graduation from law school including:

        i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

        I did not serve as a clerk to a judge.

        ii. whether you practiced alone, and if so, the addresses and dates;

        I have never practiced alone.

        iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

        1993 – 1996
        Stokes & Bartholomew, P.A.
        424 Church Street, Suite 2800
        Nashville, Tennessee 37219
        Associate

1996 – 1997
Office of Compliance, U.S. Congress
Adams Building, LA 200
110 Second Street, S.E.
Washington, D.C. 20540
Attorney, General Counsel's Office

1997 – 2003
Stokes, Bartholomew, Evans & Petree, P.A.
424 Church Street, Suite 2800
Nashville, Tennessee 37219
Associate (1997 – 2000)
Shareholder/Partner (2001 – 2003)

2003
Preston & Sharp, P.C.
216 19th Avenue North
Nashville, Tennessee 37203
Shareholder

2003 – present
Drescher & Sharp, P.C.
1720 West End Avenue, Suite 300
Nashville, Tennessee 37203
Shareholder/Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my legal career as an associate with the law firm of Stokes & Bartholomew in 1993. From 1993 to 1996, I primarily wrote briefs, conducted legal research and provided litigation support within the firm's Litigation Section. During this time I also assisted in the post-conviction appeal of a capital murder case. Due to my interest in labor and employment law, I was often assigned to work on employment-related cases, but my experience with the firm included representing corporate entities and individuals in all manner of state and federal litigation.

In 1996, I was hired as one of four attorneys to work with the General Counsel of the new Office of Compliance in the U.S. Congress in Washington, D.C. The Office of Compliance was created to administer and enforce the Congressional Accountability Act (CAA) of 1995, which made workplace safety, health, and labor rights laws applicable to the Legislative Branch. My primary responsibilities were over the public accommodation provisions of the Americans with Disabilities Act (ADA), as well as Occupational Safety & Health (OSH) and Labor–Management Relations investigations and enforcement. I was also part of the team that conducted the inspections of Capitol Hill for ADA and OSH Act compliance and I assisted in the drafting of the subsequent congressional reports on legislative branch compliance with those provisions. Finally, during my time with the Office of Compliance, I drafted the proposed initial ADA Title II and Title III regulations as applied to Congress under the Congressional Accountability Act of 1995, and I participated in the investigation of unfair labor practice charges during the first-ever union representation election on Capitol Hill.

I returned to Stokes & Bartholomew (which later became Stokes Bartholomew Evans & Petree) in 1997 and rejoined the firm's Litigation Section. I also co-chaired the firm's Employment Law Practice Group. My primary responsibilities were representing large and small businesses in state and federal litigation as well as providing general business advice. In 2003, I decided to leave the larger firm practice and start my own practice so I could work more closely with individuals and could represent plaintiffs in employment and civil rights-related matters. My typical litigation today involves prosecuting federal and state discrimination, harassment and retaliation claims; public accommodation actions under the ADA; and retirement and welfare benefit claims under ERISA. I am involved in the prosecution of qui tam claims and regularly represent individuals and businesses in contract negotiations, personnel matters, probate disputes, protection of copyrights, non-competition litigation and general business disputes.

During my career, I have served as Special Disciplinary Counsel to the Tennessee Supreme Court and on the Disciplinary Hearing Committee for the Tennessee Board of Professional Responsibility. For six years, I served as a Board Member of the Tennessee Lawyers' Fund for Client Protection (TLFCP). The TLFCP is an organization created by the Tennessee Supreme Court to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing clients a portion of losses caused by attorney misconduct.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my 17-year legal career, I have represented a diverse array of clients – from the federal government during my time with the Office of Compliance to large publicly traded companies during my years with a larger law firm. Although I continue to occasionally represent large public and privately held companies, since 2003, my typical clients have been individuals who need help navigating the judicial system. I have focused much of my practice on litigation on behalf of small businesses and individual plaintiffs in employment-related disputes.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

In private practice, I estimate that approximately 80–90% of my law practice involves litigation or other form of dispute resolution, whether before courts or state/federal administrative agencies. Because the vast majority of my litigation occurs in federal court and is primarily driven by motion practice, I appear in court only occasionally. During my time with the Office of Compliance, my role was not primarily as a litigator.

i. Indicate the percentage of your practice in:
   1. federal courts: 70%
   2. state courts of record: 20%
   3. other courts:
   4. administrative agencies: 10%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings:

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have been sole or lead counsel in 11 cases. I tried five cases as associate counsel. In addition, I have handled to decision approximately 30 trial-like hearings before Administrative Law Judges with the Tennessee Department of Labor, Employment Security Division.

i. What percentage of these trials were:
   1. jury: 45%
   2. non-jury: 55%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I participated in the preparation of a petition for certiorari, reply brief, and supplemental brief in the case of *Alexander v. Bosch Automotive Systems, Inc.*, 232 Fed. Appx. 491 (6th Cir. 2007). Our petition was denied. Copies of those briefs are supplied.

I also participated in the preparation of a brief in opposition to certiorari in *Riccardi v. Vanderbilt University Medical Center*, 363 Fed. Appx. 350 (6th Cir. 2010). The petition was denied. Copy supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Alexander v. Bosch Auto. Sys.*, 3:01-cv-00060 (M.D. Tenn), Hon. Aleta A. Trauger, 2001 – 2005.

I served as lead counsel to approximately 39 individual plaintiffs in an ERISA action against their former employer and the union that represented them during their employment. I managed the two more senior lawyers working with me on the case. The plaintiffs' claims were based upon the company's violation of Section 510 of ERISA. Plaintiffs claimed that the timing of their layoff by Bosch was an effort by the company to avoid paying "plant closing" benefits as required by the UAW Collective Bargaining Agreement. There was also a claim against the UAW for failure to carry out its duty of fair representation. A settlement was reached with the UAW. The case was tried on the Section 510 issue before Judge Trauger during a multi-day bench trial. Following proof, Judge Trauger ruled in favor of the plaintiffs. Bosch appealed and the judgment was overturned by the Sixth Circuit on an issue of available remedies under Section 502 of ERISA. *Alexander v. Bosch Auto. Sys., Inc.*, 232 Fed. Appx. 491 (6th Cir. 2007). We filed a petition for certiorari to the Supreme Court of the United States, which was denied.

Co-Counsel
Joseph Y. Longmire, Jr.
103 Bluegrass Commons Boulevard
Hendersonville, TN 37075
(615) 824-3761

Larry Dean Wilks
509 West Court Square
Springfield, TN 37172
(615) 384-8444

Opposing Counsel
Randall A. Constantine
Mazursky Constantine LLC
999 Peachtree Street, Suite 1500
Atlanta, GA 30309
(404) 888-8877

Gary R. Kessler and Ann B. Hale-Smith
Irvin & Kessler, LLC
Two Securities Centre
3500 Piedmont Road NE, Suite 750
Atlanta, GA 30305
(404) 237-1020

Robert J. Mendes
MGLAW, PLLC
2525 West End Avenue
14th Floor, Suite 1475
Nashville, TN 37203
(615) 846-8000

Samuel Morris
Godwin, Morris, Laurenzi & Bloomfield, PC
P.O. Box 3290
50 N. Front Street, Suite 800
Memphis, TN 38173-0290
(901) 528-1702

2. *Riccardi v. Vanderbilt Univ. Med. Ctr.*, 3:06-cv-00605 (M.D. Tenn.), Hon. Thomas Wiseman, 2006 – present.

I served as lead counsel to defendant Dr. Robert Kessler in a sexual harassment and retaliation claim brought against Vanderbilt University and Dr. Kessler. I filed a counterclaim on behalf of Dr. Kessler for, among other things, defamation and assault and battery. Following the court's rulings on motions for summary judgment, which were granted in part and denied in part, the University settled with the plaintiff. My client, however, remained adamant that he was innocent and wished to proceed to trial. Following a multi-day trial, the jury rejected plaintiff's claims and returned a verdict in favor of my client on his defamation and assault/battery counter-claims for $2,025,000 in compensatory damages and $950,000 in punitive damages. The court granted plaintiff a remittitur to $500,000 total compensatory and punitive damages. On appeal, the Sixth Circuit upheld the verdict on the counter-claim, and remanded a portion of the case back to trial on plaintiff's remaining claim of retaliation related to two research grants on which she was not included. 363 Fed. Appx. 350 (6th Cir. 2010). That portion of the case is still pending and plaintiff is proceeding *pro se*. Plaintiff also filed a petition for certiorari in the Supreme Court of the United States, which we opposed, and it was denied in October 2010. After remand, plaintiff filed a motion to set aside the prior judgment under F.R.C.P. Rule 60, which was denied by the district court. Plaintiff appealed the Rule 60 denial to the Sixth Circuit. I filed a brief in response on October 26, 2010. A decision is still pending.

Opposing Counsel
Douglas S. Johnston, Jr.
Barrett, Johnston & Parsley
217 Second Avenue, North
Nashville, TN 37201
(615) 244-2202

Kathryn E. White
Epstein, Becker & Green, P.C.
One Landmark Square, Suite 1800
Stamford, CT 06901
(203) 326-7408

William D. Frumkin
Sapir & Frumkin, LLP
399 Knollwood Road, Suite 310
White Plains, NY 10603
(914) 328-0366

3. *Peacock v. Pace Int'l Union Pension Fund Plan*, 3:06-cv-00703 (M.D. Tenn.), Hon. William J. Haynes, Jr., 2006 – 2008.

I served as lead counsel representing the plaintiffs, Mr. Peacock and his spouse, in a claim to determine their rights under the Pace Pension Plan. Mr. Peacock was divorced from his first wife, but still had matters related to the divorce pending in Louisiana state court. His ex-wife died and the couple had not executed a Qualified Domestic Relations Order dealing with the pension funds. Mr. Peacock had remarried and his second wife had her own interests in the pension funds. The administrator of the ex-wife's estate was seeking the retirement accounts as part of the corpus of the estate. In an effort to protect the interests of Mr. Peacock and his new spouse, I filed a declaratory judgment action in Tennessee federal court. Ultimately, the district court granted our summary judgment motion, ruling that any claim by the estate under Louisiana law was preempted by ERISA.

Opposing Counsel for Defendant Pace Union, Pension Fund and 401(k)
Jeffrey S. Swyers
Slevin & Hart
1625 Massachusetts Avenue, NW, Suite 450
Washington, DC 20036
(202) 797-8700

Patrick M. Barrett , III
Barrett Law Office, P.A.
2021 Richard Jones Road, Suite 300
Nashville, TN 37215
(615) 463-4000

William Michael Hamilton
Provost, Umphrey Law Firm, LLP
2021 Richard Jones Road, Suite 300
Nashville, TN 37215
(615) 242-0199

Opposing Counsel for Defendant Succession of Alice Peacock

Andrea Vieau Timpa and Marc D. Winsberg
Schonekas, Winsberg, Evans & McGoey, L.L.C.
650 Poydras Street, Suite 2105
New Orleans, LA 70130
(504) 680-6050

Edmund J. Schmidt, III
Law Offices of David Randolph Smith & Edmund J. Schmidt, III
1913 21st Avenue, South
Hillsboro Village
Nashville, TN 37212
(615) 742-1775

John R. Wingo
Frost, Brown & Todd, LLC
424 Church Street, Suite 1600
Nashville, TN 37219
(615) 251-5550

4. *Cooper v. Cent. Parking Corp.*, 3:05-cv-00632 (M.D. Tenn.), Hon. Todd Campbell, 2005 – 2007.

I served as co-counsel in this case, which involved an Americans with Disabilities Act violation under the Title III (Public Accommodations) provision claim. My co-counsel had extensive experience in Title III issues and I handled the litigation aspects of the case. Our clients were three individuals with disabilities that required them to use wheelchairs for mobility. Because of the placement and setup of the payment kiosks in unattended parking lots, they were not able to use the lots in question because the automatic payment systems were situated in such a way that they could not make the necessary payments by credit card or cash. Ultimately, we were able to reach a settlement with the defendant in which the corporation agreed to remove and replace the kiosks and make the parking lots accessible to individuals with disabilities.

Co-Counsel
J. Page Garrett
5133 Harding Road, Suite 112
Nashville, TN 37205
(877) 624-5108

Opposing Counsel
Charles J. Mataya
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203
(615) 244-2582

Luther Wright, Jr.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
SunTrust Building
401 Commerce Street, Suite 1200
Nashville, TN 37219
(615) 254-1900

5. *Barrett v. Whirlpool Corp.*, 3:06-cv-00017 (M.D. Tenn.), Hon. Aleta A. Trauger, 2006 – 2009.

I served as co-counsel in this case of retaliation under Title VII of the Civil Rights Act of 1964. Although the case had gone up on appeal to the Sixth Circuit and several of the original plaintiffs were excluded from trial, we were able to proceed on the claim of Ms. Nickens. Ms. Nickens, who is Caucasian, alleged that she was retaliated against by other white employees after she opposed harassing conduct directed at African-American employees at Whirlpool. Following a week-long trial, the jury returned a verdict in favor of the defendant.

Co-Counsel
David W. Sanford and Grant Morris
Sanford, Wittels & Heisler, LLP
1666 Connecticut Avenue, NW, Suite 310
Washington, DC 20009
(202) 742-7777

Edward D. Chapin
Chapin Wheeler, LLP
550 West C Street, Suite 2000
San Diego, CA 92101
(619) 241-4810

Opposing Counsel
Timothy K. Garrett
Bass, Berry & Sims
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200

Jeffrey S. Hiller
Littler Mendelson, P.C.
21 E. State Street, Suite 1600
Columbus, OH 43215

Keith C. Hult, Garrison L. Phillips, and Adam Carl Wit
Littler Mendelson, P.C.
200 N. LaSalle Street, Suite 2900
Chicago, IL 60601
(312) 372-5520

6. *EEOC v. Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc.*, 2:05-cv-02717 (W.D. Tenn.), Hon. S. Thomas Anderson, 2005 – 2008.

Along with co-counsel, I represented eight African-American members of the plumbers union in Shelby County who were assigned to work for Tri-State Plumbing on the construction of the FedEx Forum in Memphis, Tennessee. During the course of their employment they were subjected to racial harassment and were treated less favorably than white employees when given job assignments and overtime. After the clients filed charges with the EEOC, the Commission decided to prosecute the cases and we filed as intervenors. We remained significantly involved in the prosecution of the clients' claims through the discovery process and took the lead during mediation. We were ultimately able to settle the case with the help of a mediator.

Co-Counsel
Carson L. Owen
Equal Employment Opportunity Commission
1407 Union Avenue, Suite 621
Memphis, TN 38104
(901) 544-0133

Michael R. Marshall
Evans Petree Bogatin, P.C.
1661 International Place Drive, Suite 300
Memphis, TN 38120
(901) 525-6781

Opposing Counsel
David A. Velander
105 South Sherrin Ave.
Louisville, KY 40207
(502) 896-2301

Timothy P. Taylor
Godwin Morris Laurenzi & Bloomfield, P.C.
Morgan Keegan Tower
50 North Front Street, Suite 800
Memphis, TN 38103
(901) 528-1702

Mediator
Allen S. Blair
Harris Shelton Hanover Walsh, PLLC
One Commerce Square, Suite 2700
Memphis, TN 38103
(901) 525-1455

7. *Seismic Sound, Inc. v. Wells Fargo Bank*, 3:04-ap-00012 (Bankr. M.D. Tenn.), Hon. Keith M. Lundin, 2004.

   I served as counsel to Seismic Sound in what began as a breach of contract/collections matter by Wells Fargo in the U.S. District Court for the Southern District of New York. Seismic had previously entered into a financing arrangement with Terminal Marketing Company/Terminal Finance whereby Seismic Sound sold its recording equipment for a lump sum and then leased the equipment back in order to get immediate operating capital for the business. At the end of the lease term, Seismic would buy back its equipment for a nominal charge. After Seismic executed the Sale/Lease Back Agreement and provided Terminal with the initial lease payment, Terminal failed to purchase the equipment and assigned the paper to Wells Fargo. When Seismic refused to continue making lease payments, Wells Fargo commenced an action in New York federal court and obtained a summary judgment on the issue of liability under the lease/note although no hearing had been held on the issue of damages. In the interim, Seismic Sound filed for bankruptcy in Tennessee, and I instituted an adversary proceeding against Terminal Marketing, Wells Fargo, and others. The case was transferred from New York to the Middle District of Tennessee. During the course of discovery it was uncovered that Wells Fargo knew or should have known prior to the assignment that Terminal was in breach of these agreements. The case was settled.

   Opposing Counsel
   Peter J. Barrett
   1111 E. Main Street, Suite 800
   Richmond, VA 23219
   (804) 644-1700

8. *HealthStream, Inc. v. Emergency Med.*, 3:01-cv-00675 (M.D. Tenn.), Hon. Aleta A. Trauger, 2001 – 2003.

   I served as lead counsel to HealthStream, Inc., in the prosecution of copyright infringement and violation of a non-compete agreement claims. I directed the drafting and filing of the documents and evidence necessary to obtain a temporary restraining order. Following the granting of our motion for a TRO, I supervised and participated in the discovery process and was lead counsel at the hearings in the case. In or around September 2001, the parties entered into a Consent Order and Judge Trauger retained jurisdiction over the case to enforce the terms of the agreement. In January 2002, the case was reopened as part of a Show Cause motion filed by HealthStream. After additional briefing by the parties and a hearing before Judge Trauger, the defendants were held in contempt for their violations of the previous Order and liquidated damages of $570,000 plus costs and attorneys' fees were awarded to my client.

Opposing Counsel
Eugene N. Bulso, Jr.
Leader, Bulso & Nolan, PLC
414 Union Street, Suite 1740
Nashville, TN 37219
(615) 780-4110

9. *Wargo v. Echosphere Corp.*, AAA Arbitration, Barbara J. Moss, 2004 – 2006.

I was lead counsel for Mr. Wargo, who was terminated from his employment when he was unable to immediately return to work following surgery. I filed the claim for violation of Title I of the ADA. Mr. Wargo's surgery was for the removal of his lung following his diagnosis with lung cancer. His employer, relying upon its "no-fault" absent from work policy, refused to reasonably accommodate his disability and ultimately fired my client. Following a trial before Barbara Moss in accordance with the American Arbitration Association Employment Arbitration Rules, a judgment was entered in favor of Mr. Wargo and the company was ordered to pay damages.

Arbitrator
Barbara Jean Moss
Norris & Norris, PLC
424 Church Street, Suite 1300
Nashville, TN 37219
(615) 627-3959

Opposing Counsel
Charles Eric Stevens
Miller & Martin, LLP
One Nashville Place, Suite 1200
150 Fourth Avenue, North
Nashville, TN 37219
(615) 244-9270

10. *Drulman v. CareerBuilder, LLC*, 3:07-cv-00024 (M.D. Tenn.), Hon. John T. Nixon, 2007.

I served as lead counsel to the plaintiff, who alleged she was terminated from her employment in violation of Title VII of the Civil Rights Act of 1964. The allegations revolved around plaintiff's claim that her supervisor, a devout Catholic, disapproved of events in plaintiff's personal life that were not consistent with the teachings of the Catholic Church. Following written discovery and the taking of key depositions, we believed we had direct evidence that plaintiff's failure to follow traditional church doctrine led to her termination. The defendant settled the case without a trial.

Opposing Counsel
Michael Ferrell and Michael J. Gray
Jones Day
77 W. Wacker Drive
Chicago, IL 60601
(312) 782-3939

Julie J. Furer
Schiff Hardin LLP
6600 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606
(312) 258-5689

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Although much of my current practice involves representing individuals in civil rights matters, I have experience in the interpretation and drafting of regulations through my work with the Office of Compliance, where I also assisted in the inspection of the Capitol for occupational safety and health compliance and Americans with Disabilities Act compliance. I have handled matters on behalf of large public companies, sole proprietorships and non-profit entities such as Highland Rim Economic Corporation, which among other things, operates the Head Start program in rural middle Tennessee. I served ten years as volunteer legal counsel to the Cumberland Valley Girl Scout Council. Furthermore, I actively participated as a board member for the Lawyers' Fund for Client Protection, an organization created by the Tennessee Supreme Court to promote public confidence in the administration of justice and the integrity of the legal profession as a whole by reimbursing at least a portion of losses caused by instances of dishonest conduct of lawyers licensed to practice law in Tennessee.

I served on the Tennessee Board of Professional Responsibility Disciplinary Hearing Panel from 2000 to 2006. In this capacity, I reviewed and approved findings and recommendations for disciplinary action or for no action by the investigators; in one instance, I was part of a three-member panel in which an attorney challenged the staff findings and recommendation. In 2001, I acted as Special Disciplinary Counsel to the Supreme Court of Tennessee, in which capacity I investigated and reported to the Tennessee Supreme Court on an ethical complaint against a member of the Board of Professional Responsibility.

I have performed no lobbying activities.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    Except for the purchase of my stock in the law firm of Drescher & Sharp, P.C. should I be confirmed, I have no other anticipated receipt of future benefits based upon current or prior financial or business interests.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If I am confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the Court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I am confirmed, I would recuse myself in any case involving my father-in-law, who is a practicing attorney with the Nashville law firm of Waller Lansden Dortch & Davis, PLLC. I would also recuse myself in any case in which I was directly involved while in private practice or in which my firm was involved while I was a member of the firm. In addition, for a period of time I would recuse myself in any case involving my former law firm.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will evaluate all matters involving actual or potential conflicts of interest within the framework of the Code of Conduct for United State Judges and all other applicable ethical canons and statutory provisions, and then act in accordance with same, up to and including recusal where warranted.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have always taken my obligations as an attorney seriously and responded accordingly to the privilege bestowed upon me to practice law in this state. In addition to the time I have given to non-profit entities by performing free legal services, I have consistently taken pro bono unemployment compensation appeals referred to me through the Nashville Bar Association Pro Bono Program. I have also served on the Access to Justice Committee of the Tennessee Bar Association, which has worked to ensure TBA members are aware of and fulfilling their duties to provide free legal service to the community.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In late November 2008, I contacted Representative Jim Cooper expressing an interest in being considered by the President for the open U.S. District Court seat in the Middle District of Tennessee. Shortly thereafter, Congressman Cooper's office sent me a package of material outlining the general information that would be needed by the White House before considering a presidential nomination.

Over the next couple of weeks I also contacted Senator Lamar Alexander and Senator Bob Corker's offices telling them of my interest in the position. On December 23, 2008, I met with Rep. Cooper in his Nashville office to discuss the position and the selection process. Following that meeting and over the next several months, I stayed in contact with Mr. Cooper's office about the process and forwarded additional supporting information. Over the next year or so, I had occasional conversations with Rep. Cooper or members of his staff about my paperwork and/or the process.

Since June 21, 2010, I have been in contact with pre-nomination officials at the U.S. Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C., on August 5, 2010. On November 17, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.



FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Sharp, Kevin H.	U.S. District Court for the Middle District of Tennessee	11/17/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
United States District Court Judge	☑ Nomination, Date 11/17/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 10/31/2010
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Drescher & Sharp, P.C. 1720 West End Avenue Suite 300 Nashville, TN 37203	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	President	Drescher & Sharp, P.C.
2.	President	Nashville's Priorities
3.	Trustee	Trust No. 1
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2008	Drescher & Sharp, P.C. - salary	$153,419.00
2.	2009	Drescher & Sharp, P.C. - salary	$87,336.00
3.	2010	Drescher & Sharp, P.C. - salary	$78,000.00
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2009	Self-employed media training
2.	2009	McCarthy Jones & Woodard - board member compensation
3.	2009	Charitable Trust - Trustee fee
4.	2010	Broker South Real Estate Partners - real estate commission
5.	2010	Self-employed media training
6.	2010	McCarthy Jones & Woodard - board member compensation
7.	2010	Charitable Trust - Trustee fee

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 5 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Pinnacle Bank (cash accounts)	B	Interest	K	T	Exempt				
2. Avenue Bank (cash accounts)	B	Interest	L	T					
3. McCarthy Jones & Woodard, LLC	G	Distribution	M	U					
4. Eakin Partners Real Estate Fund II	A	Dividend	K	W					
5. GBT Dollar General TX Fund	D	Distribution	L	W					
6. Power in Faith, LLC	A	Distribution	J	W					
7. Federated Capital Reserves		None	L	T					
8. Pershing Govt. Account (Sweep account)	A	Int./Div.	J	T					
9. Prudential DCA (Sweep Account)	B	Int./Div.	J	T					
10. Rogers Int'l Raw Material Fund		None	K	T					
11. AF-Capital Income Builder (A)	B	Int./Div.	K	T					
12. AF-Intermediate Bond Fund of America (A)	C	Int./Div.	K	T					
13. AF-New Perspective Fund (A)	A	Int./Div.	J	T					
14. AF-The Growth Fund of America (A)	A	Int./Div.	K	T					
15. Barclays Bank PLC 8.125% Spon ADR PREF	C	Int./Div.	K	T					
16. Blackrock All Cap Global Resources (A)	A	Int./Div.	K	T					
17. Blackrock GNMA Portfolio (A)	A	Int./Div.	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Blackrock Global Financial Services (A)	A	Int./Div.	J	T					
19. Blackrock Global Opportunities Fund (A)	A	Int./Div.	K	T					
20. Blackrock Global Resources Fund (A)		None	J	T					
21. Blackrock US Opportunities Fund (A)		None	K	T					
22. Prudential Dryden Total Return Bond (A)	A	Int./Div.	J	T					
23. First Eagle Sogen Global Fund (A)	A	Int./Div.	K	T					
24. First Eagle Sogen Gold Fund (A)	A	Int./Div.	J	T					
25. Prudential Jennison Natural Resources Fund (A)	A	Int./Div.	K	T					
26. Rydex Managed Futures Strategy Fund (A)		None	K	T					
27. The Hartford Capital Appreciation Fund (A)		None	K	T					
28. The Hartford Capital Appreciation II (A)		None	K	T					
29. Thornburg Global Opportunities (A)	B	Int./Div.	K	T					
30. Allianz Reward Franklin Income Securities	B	Int./Div.	J	T					
31. Allianz Reward Mutual Shares Securities	A	Int./Div.	J	T					
32. Allianz Reward Templeton Growth Securities	A	Int./Div.	J	T					
33. Prudential ASF Academic Strategies AA Port		None	L	T					
34. Adv Dis Unit 259 Natural Resources UIT	A	Int./Div.							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Adv Dis Unit 262 High 50 Dividend Strategy UIT	C	Int./Div.							
36. AF-American High Income Trust (A)	A	Int./Div.							
37. AF-Washington Mutual Investors Fund (A)	A	Int./Div.							
38. Jennison Financial Services Fund (A)	A	Int./Div.							
39. Trust #1									
40. - Pinnacle Bank (cash account)	A	Interest	K	T					
41. ABA 401(k) Balanced Fund		None	J	T					
42. ABA 401(k) Stable Asset Return Fund		None	J	T					
43. ABA 401(k) All Cap Index Equity Fund		None	J	T					
44. ABA 401(k) International All Cap Equity Fund		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less P =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	I =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Sharp, Kevin H.	Date of Report 11/17/2010

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Kevin Sharp

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		125	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		801	409	Notes payable to relatives		100	000
Unlisted securities – see schedule		327	500	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence home equity loan		200	000
Real estate owned – personal residence		820	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance							
Other assets itemize:							
- ABA Retirement Holdings		15	666				
				Total liabilities		300	000
				Net Worth	1	864	575
Total Assets	2	164	575	Total liabilities and net worth	2	164	575
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor		20	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Allianz Reward Franklin Income Securities	$ 5,259
Allianz Reward Mutual Shares Securities	5,189
Allianz Reward Templeton Growth Securities	6,755
American Funds Capital Income Builder (A)	49,381
American Funds Intermediate Bond Fund of America (A)	47,558
American Funds New Perspective Fund (A)	6,432
American Funds The Growth Fund of America (A)	37,435
Barclays Bank PLC 8.125% Spon ADR PREF	26,070
Blackrock All Cap Global Resources (A)	23,259
Blackrock Global Financial Services (A)	11,475
Blackrock Global Opportunities Fund (A)	34,365
Blackrock Global Resources Fund (A)	12,897
Blackrock GNMA Portfolio (A)	31,410
Blackrock US Opportunities Fund (A)	34,445
Federated Capital Reserves	81,299
First Eagle Sogen Global Fund (A)	24,371
First Eagle Sogen Gold Fund (A)	14,901
Jennison Natural Resources Fund (A)	51,361
Pershing Govt. Account (Sweep Account)	9,637
Prudential Dryden Total Return Bond (A)	10,625
Prudential AST Academic Strategies AA Portfolio	86,562
Rogers International Raw Material Fund	43,695
Rydex Managed Futures Strategy Fund (A)	42,576
The Hartford Capital Appreciation Fund (A)	23,388
The Hartford Capital Appreciation II (A)	31,228
Thornburg Global Opportunities (A)	49,836
Total Listed Securities	$ 801,409

Unlisted Securities	
Drescher & Sharp, P.C	$ 20,000
Eakin Partners Real Estate Fund II	22,500
GBT Dollar General Texas Fund	100,000
McCarthy, Jones & Woodard, LLC (4%)	180,000
Power in Faith, LLC	5,000
Total Unlisted Securities	$ 327,500

ABA Retirement Holdings	
All Cap Index Equity Fund	$ 4,500
Balanced Fund	7,000
International All Cap Equity Fund	2,800
Stable Asset Return Fund	1,366
Total ABA Retirement Holdings	$ 15,666

AFFIDAVIT

I, **KEVIN HUNTER SHARP**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11-15-10
(DATE)

(NAME)

AMY W. SCOTT
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Amy W. Scott
(NOTARY)

My Commission Expires: 7/7/14

[redacted]

1720 West End Avenue
Suite 300
Nashville, TN 37203
Telephone: (615) 425-7111
Facsimile: (615) 425-7110

www.dsattorneys.com

January 5, 2011

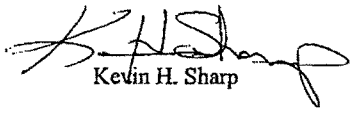
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on November 17, 2010, to be United States District Judge for the Middle District of Tennessee. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Kevin H. Sharp

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

2010
REV. (7/2010)

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Sharp, Kevin H.	U.S. District Court for the Middle District of Tennessee	1/5/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Court Judge	☑ Nomination, Date 1/5/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 12/31/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Drescher & Sharp, P.C. 1720 West End Avenue Suite 300 Nashville, TN 37203	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting Individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. President	Drescher & Sharp, P.C.
2. President	Nashville's Priorities
3. Trustee	Trust No. 1
4. Board member	ALS Association, Tennessee
5.	

II. AGREEMENTS. *(Reporting Individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Sharp, Kevin H.	Date of Report 1/5/2011

III. NON-INVESTMENT INCOME. *(Reporting Individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Drescher & Sharp, P.C. - salary	$87,336.00
2.	2010	Drescher & Sharp, P.C. - salary	$101,000.00
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2010	Broker South Real Estate Partners - real estate commission
2.	2010	Self-employed media training
3.	2010	McCarthy Jones & Woodard - board member compensation
4.	2010	Trust # 2 - Trustee fee

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Sharp, Kevin H.	Date of Report 1/5/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Sharp, Kevin H.	1/5/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Pinnacle Bank (cash accounts)	B	Interest	K	T	Exempt				
2. Avenue Bank (cash accounts)	B	Interest	L	T					
3. McCarthy Jones & Woodard, LLC	F	Distribution	M	U					
4. Eakin Partners Real Estate Fund II	A	Dividend	K	W					
5. GBT Dollar General TX Fund	D	Distribution	L	W					
6. Power in Faith, LLC	A	Distribution	J	W					
7. Drescher & Sharp, P.C.		None	K	V					
8. Federated Capital Reserves		None	L	T					
9. Pershing Govt. Account (Sweep account)	A	Int./Div.	J	T					
10. Prudential DCA (Sweep Account)	B	Int./Div.	J	T					
11. Rogers Int'l Raw Material Fund		None	K	T					
12. AF-Capital Income Builder (A)	B	Int./Div.	K	T					
13. AF-Intermediate Bond Fund of America (A)	B	Int./Div.	K	T					
14. AF-New Perspective Fund (A)	A	Int./Div.	J	T					
15. AF-The Growth Fund of America (A)	A	Int./Div.	K	T					
16. Barclays Bank PLC 8.125% Spon ADR PREF	B	Int./Div.	K	T					
17. Blackrock All Cap Global Resources (A)	A	Int./Div.	K	T					

1. Income Gain Codes: (See Columns D1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Sharp, Kevin H.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
18. Blackrock GNMA Portfolio (A)	B	Int./Div.	K	T					
19. Blackrock Global Financial Services (A)	A	Int./Div.	J	T					
20. Blackrock Global Opportunities Fund (A)	A	Int./Div.	K	T					
21. Blackrock Global Resources Fund (A)	A	Int./Div.	J	T					
22. Blackrock US Opportunities Fund (A)	A	Int./Div.	K	T					
23. Prudential Dryden Total Return Bond (A)	A	Int./Div.	J	T					
24. First Eagle Sogen Global Fund (A)	A	Int./Div.	K	T					
25. First Eagle Sogen Gold Fund (A)	A	Int./Div.	J	T					
26. Prudential Jennison Natural Resources Fund (A)	A	Int./Div.	L	T					
27. Rydex Managed Futures Strategy Fund (A)		None	K	T					
28. The Hartford Capital Appreciation Fund (A)		None	K	T					
29. The Hartford Capital Appreciation II (A)		None	K	T					
30. Thornburg Global Opportunities (A)	A	Int./Div.	L	T					
31. Allianz Reward Franklin Income Securities		None	J	T					
32. Allianz Reward Mutual Shares Securities		None	J	T					
33. Allianz Reward Templeton Growth Securities		None	J	T					
34. Prudential AST Academic Strategies AA Port		None	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C3)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Sharp, Kevin H.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Adv Dis Unit 259 Natural Resources UIT	A	Int./Div.							
36. Trust # 2									
37. - CBL & Assoc. PPTYS INC	C	Dividend	M	T					
38. Pinnacle Bank cash account (Trust #1)	A	Interest	K	T					
39. ABA 401(k) Balanced Fund		None	J	T					
40. ABA 401(k) Stable Asset Return Fund		None	J	T					
41. ABA 401(k) All Cap Index Equity Fund		None	J	T					
42. ABA 401(k) International All Cap Equity Fund		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	O =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Sharp, Kevin H.	Date of Report 1/5/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part VII

The value code "V" used for Drescher & Sharp, P.C., item 7, Part VII, is based on an agreed upon value of the shares in the professional corporation as established by the board.

Only my spouse is a trustee on Trust # 2. I have no involvement. She and I are both trustees on Trust # 1.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Sharp, Kevin H.	Date of Report 1/5/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Kevin Sharp

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		125	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		839	669	Notes payable to relatives		100	000
Unlisted securities – see schedule		327	500	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence home equity loan		200	000
Real estate owned – personal residence		820	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance							
Other assets itemize:							
- ABA Retirement Holdings		15	666				
				Total liabilities		300	000
				Net Worth	1	902	835
Total Assets	2	202	835	Total liabilities and net worth	2	202	835
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor		20	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Allianz Reward Franklin Income Securities	$ 5,400
Allianz Reward Mutual Shares Securities	5,369
Allianz Reward Templeton Growth Securities	6,943
American Funds Capital Income Builder (A)	49,355
American Funds Intermediate Bond Fund of America (A)	46,655
American Funds New Perspective Fund (A)	6,716
American Funds The Growth Fund of America (A)	39,323
Barclays Bank PLC 8.125% Spon ADR PREF	25,700
Blackrock All Cap Global Resources (A)	26,697
Blackrock Global Financial Services (A)	11,674
Blackrock Global Opportunities Fund (A)	36,055
Blackrock Global Resources Fund (A)	15,721
Blackrock GNMA Portfolio (A)	29,941
Blackrock US Opportunities Fund (A)	37,548
Federated Capital Reserves	84,844
First Eagle Sogen Global Fund (A)	25,826
First Eagle Sogen Gold Fund (A)	16,030
Prudential Jennison Natural Resources Fund (A)	58,333
Pershing Govt. Account (Sweep Account)	9,637
Prudential Dryden Total Return Bond (A)	10,276
Prudential AST Academic Strategies AA Portfolio	88,374
Rogers International Raw Material Fund	47,366
Rydex Managed Futures Strategy Fund (A)	43,677
The Hartford Capital Appreciation Fund (A)	24,998
The Hartford Capital Appreciation II (A)	33,689
Thornburg Global Opportunities (A)	53,522
Total Listed Securities	$ 839,669

Unlisted Securities	
Drescher & Sharp, P.C	$ 20,000
Eakin Partners Real Estate Fund II	22,500
GBT Dollar General Texas Fund	100,000
McCarthy, Jones & Woodard, LLC (4%)	180,000
Power in Faith, LLC	5,000
Total Unlisted Securities	$ 327,500

ABA Retirement Holdings	
All Cap Index Equity Fund	$ 4,500
Balanced Fund	7,000
International All Cap Equity Fund	2,800
Stable Asset Return Fund	1,366
Total ABA Retirement Holdings	$ 15,666

Mr. Dalton.

STATEMENT OF ROY BALE DALTON, JR., NOMINEE TO BE DISTRICT JUDGE FOR MIDDLE DISTRICT OF FLORIDA

Mr. DALTON. Thank you. I thank the Chairman. Thank you also to the Ranking Member, Senator Grassley.

Madam Chairman, I can tell you that as a practicing lawyer there are few things that are more frustrating, having been at the bar for 34 years, than a judge who deviates from stare decisis and ventures off into land that is uncharted. It certainly strips the process of predictability, and I think as my colleague says, certainly undermines confidence and credibility in the courts.

Senator FEINSTEIN. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Roy Bale "Skip" Dalton, Jr.

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Middle District of Florida

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Dalton & Carpenter, P.A.
   720 Rugby Street, Suite 120
   Orlando, Florida 32804

4. **Birthplace**: State year and place of birth.

   1952; Jacksonville, Florida

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1975 – 1976, University of Florida Levin College of Law; J.D., 1976
   1974 – 1975, Florida State University College of Law; no degree
   1970 – 1974, University of Florida, B.A. (High Honors), 1974

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2003 – Present
   Dalton & Carpenter, P.A.
   720 Rugby Street, Suite 120
   Orlando, Florida 32804
   Principal

2004 – Present
The Carlyle Appellate Law Firm
20 La Grande Boulevard,
The Villages, Florida 32159
Of Counsel

2005
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510
Counsel to United States Senator Mel Martinez

2001 – 2003
Dalton & Paul, P.A.
720 Rugby Street, Suite 100
Orlando, Florida 32804
Principal

1999 – 2001
Gray, Harris & Robinson, P.A.
300 East Pine Street, Suite 401
Orlando, Florida 32801
Of Counsel

1999 – 2001
Roy B. Dalton, Jr., P.A. (The Dalton Law Firm)
715 Vassar Street
Orlando, Florida 32804
Principal

1989 – 1998
Martinez, Dalton, Dellecker, Wilson & King, P.A.
(f/k/a Martinez & Dalton, P.A. & Martinez, Dalton & Provencher, P.A.)
719 Vassar Street
Orlando, Florida 32804
Principal

1986 – 1989
Dalton & Provencher, P.A.
17 East Pine Street
Orlando, Florida 32801
Principal

1984 – 1986
Hurt, Parrish & Dalton, P.A.
1000 East Robinson Street
Orlando, Florida 32802
Principal

1982 – 1984
Roy B. Dalton, Jr., P.A.
17 East Pine Street
Orlando, Florida 32802
Principal

1977 – 1982
Dean, Ringers, Morgan & Lawton, P.A.
200 East Robinson Street
Orlando, Florida 32801
Principal (1980 – 1982)
Associate (1977 – 1980)

1977
Miller & Sweat, P.A.
124 Florida Avenue
Lakeland, Florida 33802
Clerk/Associate

Summer 1974
18th Judicial Circuit of Florida
301 North Park Avenue
Sanford, Florida 32771
Research Assistant / Clerk to Judge Dominic J. Salfi

Other Affiliations (uncompensated except as noted)

2006 – Present
Florida Fellowship Foundation
801 North Orange Avenue, Suite 800
Orlando, Florida 32801
Director

1999 – Present
Rugby Property, LLC
1127 Overbrook Drive
Orlando, Florida 32804
Managing Partner (compensated)

2006 – 2010
Seaside National Bank & Trust
201 South Orange Avenue, Suite 1350
Orlando, Florida 32801
Director & Chair, Credit Policy Committee

2000 – 2007
Downtown Orlando 2000, Inc.
720 Rugby Street, Suite 200
Orlando, Florida 32804
President

1999 – 2007
Dalton Hotel, Ltd.
720 Rugby Street, Suite 200
Orlando, Florida 32804
Managing Partner (compensated)

1998 – 2007
Dalton Hotel Corporation
720 Rugby Street, Suite 200
Orlando, Florida 32804
President / Chief Executive Officer (compensated)

1997 – 2007
Cathedral Church of St. Luke
130 North Magnolia Avenue
Orlando, Florida 32801
Chancellor (Attorney)

2003 – 2007
Interlachen Country Club
2245 Interlachen Court
Winter Park, Florida 32792
Director (2003 – 2007)
President (2005 – 2007)
Vice President (2004 – 2005)

2000 – 2002
Central Florida Tourist Development Council
201 South Rosalind Street
Orlando, Florida 32801
Board Member

1998 – 2001
Dalton Investments, L.C.
720 Rugby Street, Suite 200
Orlando, Fl 23804
Principal (compensated)

1997 – 2001
University of Florida Law Center Association
Frederick G. Levin College of Law
University Avenue
Gainesville, Florida 32611
Trustee

1993 – 1999
Sports Partners, Inc.
715 Vassar Street
Orlando, Florida 32804
Principal (compensated)

1992 – 1997
University of Florida Gator Boosters, Inc.
Gale Lemerand Drive
Ben Hill Griffin Stadium
Gainesville, Florida 32611
Director

1992 – 1993
College Park Little League
No physical address
Director/Vice President

1985 – 1991
Academy of Florida Trial Lawyers (now known as Florida Justice Association)
218 South Monroe Street
Tallahassee, Florida 32301
Director

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. military. I registered for selective service upon turning 18.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Lawyer of the Year, *Best Lawyers in America* (2010)
"*Best Lawyers in America,*" Woodward & White (1995 – 2010)
"*Florida's Top Lawyers,*" Florida Monthly Magazine (2006 – 2010)
"*Florida's Super Lawyer,*" Law & Politics, Media, Inc. (2006 – 2010)
"*Florida Legal Elite,*" Florida Trend Magazine (2006 – 2009)
"*The Cities Best Lawyers,*" Orlando Magazine (March 2009)
Fellow, American College of Trial Lawyers (since 1997)
Life Fellow, Florida Bar Foundation (since May 21, 1993)
Diplomat, American Board of Trial Advocates (1989 – Present)
Board Certified, Civil Trial Practice, The Florida Bar (1983 – Present)
25th Year Recognition for Board Certification (May 31, 2008)
Board Certified, Civil Trial Practice, National Board of Trial Advocacy (1983 – Present)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
American Board of Trial Advocates
American Association for Justice (f/k/a American Trial Lawyers Association)
Central Florida Trial Lawyers
The Florida Bar
- Fifth District Court of Appeals Judicial Nomination Committee (1987 – 1988)
  - Member (1987 – 1998) & Chair (1989 – 1990)
- Ninth Judicial Circuit Grievance Committee
  - Member (1990 – 1991) & Chair (1992 – 1993)
- Civil Rules Committee

Florida Bar Foundation
Florida Justice Association (f/k/a Academy of Florida Trial Lawyers)
- Director (1985 – 1991)
- Chair, Committee for Continuing Legal Education (1993 – 1994)
- Chair, Lawsuit Liaison Committee (1989 – 1990)
- Chair, Public Relations Committee (1988 – 1989)
- Chair, Standard Jury Instruction Committee (1987 – 1988)
- Chair, Membership Committee (1986 – 1987)

Florida Supreme Court Committee on Civil Jury Instructions (1994 – 1999)
National Board of Trial Advocacy
Orange County Bar Association
- Medical / Legal Committee
- Judicial Relations Committee

Supreme Court Historical Society
Trial Lawyers for Public Justice

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Florida, 1977

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1980
United States Court of Appeals for the Fifth Circuit, 1978
United States Court of Appeals for the Eleventh Circuit, 1981
United States District Court for the Middle District of Florida, 1977
United States District Court for the Northern District of Florida, 1982
United States District Court for the Southern District of Florida, 1982
United States Court of Federal Claims, 2001

In July 2005, my membership with the United States District Court for the Middle District of Florida lapsed for inadvertently failing to remit my renewal dues. This was brought to my attention in 2008 and I was readmitted September 3, 2008. I am not aware of any other lapse in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alpha Tau Omega Fraternity, University of Florida
Board of Trustees, Alpha Omega Chapter (2004 – 2007)
Airplane Owners and Pilots Association (2009 – Present)
Central Florida Flagship Council, University of Florida
Chairman (2008 – Present)
Central Florida Tourist Development Council
Board of Directors (2000 – 2002)
City of Orlando Municipal Planning Board (1993 – 1998)
Chairman (1996 – 1997)
Vice-Chairman (1995 – 1996)

Florida Fellowship Foundation
Director (2006 – Present)
Martinez Orange County Convention Center Expansion Task Force (1998 – 1999)
Million Dollar Advocates Forum (1993 – Present)
Orange County Library Systems
Board of Trustees (1992 – 1994)
University of Florida Gator Boosters
Board of Directors (1992 – 1997)
University of Florida Law Center Association
Trustee Emeritus (2001 – 2006)
Trustee (1997 – 2001)

Recreational Clubs
Country Club of Orlando (1989 – 1994)
Florida State Golf Association (1998 – Present)
Board of Directors (2004 – 2007)
Interlachen Country Club (1991 – Present)
President (2005 – 2007)
Vice President (2004 – 2005)
Board of Directors (2003 – 2004)
Sage Valley Golf Club (2007 – Present)
The Citrus Club (1980 – 1982)
The Gilchrist Club (2004 – Present)
The University Club (1983 – 1988 and 1999 – 2008)
United States Golf Association (1983 – Present)
Wade Hampton Golf Club (1990 – 2001)

PTAs & Children's Sports
Boy Scouts of America
Committee Member, Troop 200, Chickasaw District (1991 – 2003)
Assistant Scoutmaster, Troop 200 (1994 – 2000)
Co-Den Leader, Webelo Den "Scorpions," Pack 207 (1990)
College Park Little League
Director and Vice-President (1992 – 1993)
Minors Division Coach (1993)
College Park Girls Softball Coach (1989 – 1997)
College Park Youth Soccer League Coach (1985 – 1990)
Edgewater High School Parent Teacher Association (1994 – 2003)
Lake Silver Elementary School Parent Teacher Association (1985 – 1996)
Robert E. Lee Middle School Parent Teacher Association (1991 – 1996)
YMCA Youth Basketball Coach (1993)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Boy Scouts of America is an organization for boys only. College Park Girls Softball team is an organization for girls only. Alpha Tau Omega is a college fraternal organization for men only. In 1989, I joined the Country Club of Orlando which, at that time, had no African American members. The club maintained it had an open admissions policy and I was assured that efforts were being made to diversify the membership, which I strongly encouraged. I was unsatisfied with the club's pace to achieve diversity and resigned my membership in 1994. The club subsequently added a number of African American members, the first of whom was sponsored for membership by my friend and current law partner, Darrell Carpenter. The University Club of Orlando was originally chartered in 1926 as a social club for men only. When I joined in 1983, it was primarily an athletic/lunch facility. I resigned in 1988 as a result of the club's resistance to admitting women to membership. That policy was eliminated in 1992. I rejoined in 1998 and resigned in 2008. I am aware of no other current or former discrimination by the organizations of which I have been a member.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

General Counsel to a U.S. Senator, APPELLATE INSIDER (Carlyle Appellate Law Firm, Fl.), Spring 2006. Copy supplied.

Client Comment, Video Law Services, Inc. website, Mar. 31, 2005. Copy supplied.

Testimonial, CFO Strategic Partners website, May 30, 2003. Copy supplied.

Public-Relations Swipe (Editorial), ORLANDO SENTINEL, Jan. 7, 2003, at A12. Copy supplied.

Board of Governors Candidates, THE FLORIDA BAR NEWS, Feb. 15, 1998, at 4. Copy supplied.

Lawyer: If I Were Doctor, I'd Have Shown Compassion (Editorial), ORLANDO SENTINEL, Dec. 6, 1992, at G3. Copy supplied.

Roy Bale Dalton, Jr. & Brian T. Wilson, *Exclusion of Witnesses & Limitations on Testimony*, in FLORIDA CIVIL TRIAL PRACTICE (3rd ed.1984, revised 4th ed.1990). Copies supplied.

Ads Can Bias Juries, Hurt Plaintiffs, ORLANDO BUSINESS JOURNAL, unknown date, approx. 1990. Copy supplied.

Trial Lawyers Have Earned Right to Stand Proud (Editorial), THE ORLANDO SENTINEL, May 4, 1988, at A15. Copy supplied.

I searched my files and publicly available Internet sources to create a response to this question as comprehensive as possible, but there may be other published material I have been unable to recall or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I chaired the Martinez Orange County Convention Center Expansion Task Force. In May 1999, the Task Force submitted a report to the Orange County Board of County Commissioners summarizing its findings, including a recommendation that the proposed expansion to the Convention Center was appropriate. The report was drafted through a collaborative effort and not individually authored. Report supplied.

Having searched my records and my memory, I have not identified other responsive reports, memoranda, or policy statements.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

December 11, 2009: I was a signatory to a Petition for a Rule Establishing an Actual Innocence Commission that was sent to the Supreme Court of Florida. Petition supplied.

November 21, 2006: I addressed the Orange County Municipal Planning Board to express concerns about a re-zoning application. Minutes supplied.

August 18, 2005: As General Counsel to U.S. Senator Mel Martinez, I gave a presentation to statewide office staff entitled, "Ethical Considerations and Senate Ethics Rules." Presentation slides supplied.

August 14, 2001: I presented an overview of the Martinez Convention Center Commission's mission and achievements to the Orange County Board of County Commissioners. Minutes supplied.

October 9, 2000: I offered comments at an Orange County City Council Meeting in support of an amendment to the Community Redevelopment Plan. Minutes supplied.

May 11, 1999: I addressed the Orange County Board of County Commissioners as Chairman of the Martinez Convention Center Commission and gave an overview of the Commission's mission and recommendations. Minutes supplied.

From December 31, 1995 to July 7, 1998, I served as a member of the City of Orlando Municipal Planning Board and may have offered comments and/or questioned presenters to that body. I do not have minutes available.

Having searched my records, memory and publicly available Internet sources, I have not identified any other testimony, official statements, or other communications relating to matters of public policy or legal interpretation.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

December 9 – 11, 2007: Florida Juvenile Defenders (Barry University School of Law, Orlando, FL). I served as a faculty member for this three-day Trial Skills Training Program. I have no notes, transcripts, or recording.

February 10 – 12, 2006: American College of Trial Lawyers, Criminal Justice Center (Gainesville, Florida). I served as a National Trial Competition Judge. I have no notes, transcripts, or recording.

September 12, 2003: Stetson University College of Law (St. Petersburg, Florida). I gave a presentation entitled, "Understanding Different Roles in Mediation." Presentation slides supplied.

May 8, 1997: Academy of Florida Trial Lawyers (Gainesville, Florida). I gave a presentation entitled, "Demonstrative Evidence." Program materials supplied.

November 18, 1993: Academy of Florida Trial Lawyers (Orlando, Florida). I gave a presentation entitled, "Nuts & Bolts of the Auto Case." Notes supplied.

September 21, 1993: Academy of Florida Trial Lawyers (Orlando, Florida). I gave a presentation entitled, "Dealing with Workers' Compensation Liens and Other Immunities." Notes supplied.

November 11, 1992: Academy of Florida Trial Lawyers (Aventura, Florida). Dr. Amy Singer and I gave a presentation entitled, "Voir Dire." Materials supplied.

November 9, 1990: Academy of Florida Trial Lawyers (Fort Lauderdale, Florida). I gave a presentation entitled, "Jury Selection and the Psychology of a Trial." Materials supplied.

July 1990 (exact date unknown): Orange County Bar Association (Orlando, Florida). I gave a presentation entitled, "Strategy & Timing of Settlement Offers in Personal Injury Cases." I have no notes, transcripts, or recording. The address of the Association is 880 N. Orange Ave., Orlando, FL 32801.

March 1990: (exact date unknown): Academy of Florida Trial Lawyers (Orlando, Florida). I gave a presentation entitled, "Winning the Case in Opening-New Methods, Old Reliables." I have no notes, transcripts, or recording. The address of the Academy (now known as Florida Justice Association) is 218 S. Monroe St., Tallahassee, FL 32301.

October 1989 (exact date unknown): Valencia Community College (Orlando, Florida). I gave a presentation entitled, "The People's Law School." I have no notes, transcripts, or recording. The address of the College is P.O. Box 3028, Orlando, FL 32802.

October 1988: (exact date unknown): Academy of Florida Trial Lawyers (Miami, Florida). I moderated a discussion entitled, "Law, Protection for the Citizen." I have no notes, transcripts, or recording. The address of the Academy (now known as Florida Justice Association) is 218 S. Monroe St., Tallahassee, FL 32301.

February 1988: (exact date unknown): Academy of Florida Trial Lawyers (Tampa, Florida). Robert Spohrer, Lewis S. Edison, Jr., and I gave a presentation entitled, "Board Certification Study & Review Course for the Florida Bar Civil Trial Advocacy Board Certification Exam for the National Board of Trial Advocacy." I have no notes, transcripts, or recording. The address of the Academy (now known as Florida Justice Association) is 218 S. Monroe St., Tallahassee, FL 32301.

November 1987: (exact date unknown): Academy of Florida Trial Lawyers (Orlando, Florida). I gave a presentation entitled, "Industrial Site Accidents." I

have no notes, transcripts, or recording. The address of the Academy (now known as Florida Justice Association) is 218 S. Monroe St., Tallahassee, FL 32301.

May 6, 1986: Civil Law Program at Judicial Educational Conference (Orlando, Florida). I gave a presentation entitled, "Equitable Distribution of Tort Claim Proceeds—Workers Compensation Lien." I have no notes, transcripts, or recording. I have no address for the host organization.

At some point in time, I gave a presentation entitled, "Common Elements to All Effective Cross Examination." Materials supplied. I do not recall the date, group or location and after a thorough search of all available records am unable to provide more detail.

At some point in time, I gave a presentation entitled, "Cross Examination of the Accident Reconstruction / Seatbelt Witness from the Plaintiff's Perspective." Materials supplied. I do not recall the date, group or location and after a thorough search of all available records am unable to provide more detail.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Bob Mervine, *Eola Lakeside Project Ready To Try, Try Again*, ORLANDO BUSINESS JOURNAL, Dec. 18, 2006. Copy supplied.

William March & Keith Epstein, *Taxpayers Treat Mel Martinez and Staff to Orlando Retreat*, TAMPA TRIBUNE, Aug. 24, 2005, at 1. Copy supplied.

Julie Kay, *A New Try at Bipartisan Cooperation*, DAILY BUSINESS REVIEW, Aug. 22, 2005, at 1. Copy supplied.

Dan Tracy, *Orange County Convention Center: Is Bigger Better?*, ORLANDO SENTINEL, Apr. 17, 2005, at A1. Copy supplied.

Steve Bousquet, *Making History on Their Terms*, ST. PETERSBURG TIMES, Oct. 24, 2004, at 1A. Copy supplied.

Steve Ellman, *This Year's Model: As a Senate Candidate, Mel Martinez Supports Malpractice Damage Caps and Other Lawsuit Restrictions*, DAILY BUSINESS REVIEW, Oct. 18, 2004, at 8. Copy supplied.

Bob Mervine, *Embassy Suites Revamps Lobby, Adds Meeting Space*, ORLANDO BUSINESS JOURNAL, Aug. 13, 2004, at 5. Copy supplied.

Steve Bousquet & Bill Adair, *Martinez: Refugee, Lawyer, Politician*, ST. PETERSBURG TIMES, July 18, 2004, at 1A. Copy supplied.

Steve Bousquet, *Martinez Defends His Past With Exclusive Club*, ST. PETERSBURG TIMES, July 16, 2004, at 1A. Copy supplied.

Chad Watt, *CFO Strategic To Roll Out Franchise Opportunities*, ORLANDO BUSINESS JOURNAL, May 7, 2004, at 5. Copy supplied.

Bob Mervine, *Rivers, Embassy Suites Go Separate Ways*, ORLANDO BUSINESS JOURNAL, Sept. 26, 2003, at 3. Copy supplied.

Todd Pack, *Business Slump Hits Crowded Hotel Market*, ORLANDO SENTINEL, Apr. 29, 2002, at 14. Copy supplied.

Jack Snyder, *CNL Real Estate Empire Built on Careful Choices*, ORLANDO SENTINEL, Feb. 24, 2002, at H1. Copy supplied.

Mark Schlueb & David Damron, *Redoing Arena Doesn't Please All Downtown*, ORLANDO SENTINEL, July 11, 2001, at D1. Copy supplied.

Staff, *Downtown Development, Small Business Style*, FIRST MONDAY (Orlando, FL), Apr. 2001, at 18. Copy supplied.

Scott Maxwell, *Magic Quietly Backtrack on Arena*, ORLANDO SENTINEL, Apr. 13, 2001, at C1. Copy supplied.

Mel Martinez: A Promise Kept, ATO PALM, Spring 2001. Copy supplied.

Rob Gurwitt, *Mel Martinez: Up from Orlando*, GOVERNING, Feb. 2001, at 128. Copy supplied.

Jon Steinman, *Questions Fly Today for Martinez*, ORLANDO SENTINEL, Jan.17, 2001, at A1. Copy supplied.

Curtis Krueger, *Bush Cabinet: Housing Nominee's Rise Began in Borrowed Home*, ST. PETERSBURG TIMES, Jan. 17, 2001, at 1A. Copy supplied.

Geraldine Baum, *The Presidential Transition: HUD Nominee Martinez Fills Several Bills*, L.A. TIMES, Dec. 21, 2000, at A32. Copy supplied.

Jon Steinman, *Storybook Life Adds Chapter*, ORLANDO SENTINEL, Dec. 20, 2000, at A12 (re-published in CHICAGO TRIBUNE on Dec. 21, 2000 and FT. LAUDERDALE SUN-SENTINEL on Dec. 20, 2000). Copy supplied.

Dan Tracy, *With New Arena Unlikely, Magic Focus on Old One*, ORLANDO SENTINEL, Dec. 2, 2000, at A1. Copy supplied.

Jerry Jackson, *Popular Restaurateur Brings Island Fare to Downtown Hotel*, ORLANDO SENTINEL, Sept. 4, 2000, at 3. Copy supplied.

Gwyneth Shaw, *Beggar Limits Still Likely As Dreams Crystallize*, ORLANDO SENTINEL, July 19, 2000, at A1. Copy supplied.

Gwyneth Shaw, *Orlando Image Is Put to A Vote*, ORLANDO SENTINEL, July 17, 2000, at B1. Copy supplied.

Dan Tracy, *Downtown Blueprint Dazzles*, ORLANDO SENTINEL, June 16, 2000, at A1. Copy supplied.

Gwyneth Shaw, *Downtown Revival Limping*, ORLANDO SENTINEL, June 15, 2000, at D1. Copy supplied.

Tim Barker, *There's Lots of Room at the Inns*, ORLANDO SENTINEL, Apr. 9, 2000, at A1. Copy supplied.

Dan Tracy, *Gordy, Hood Vie for Power*, ORLANDO SENTINEL, Feb. 20, 2000, at A1. Copy supplied.

Dan Tracy, *Gordy To Run Against Hood*, ORLANDO SENTINEL, Nov. 1, 1999, at C1. Copy supplied.

Staff, *First Democrat Declares Bid for McCollum Seat*, CONGRESSDAILY, June 8, 1999. Copy supplied.

Michael Griffin, *Chapin Will Run For House*, ORLANDO SENTINEL, June 5, 1999, at D1 (quote re-published in ROLL CALL on June 10, 1999). Copy supplied.

Staff, *Back From The Dead?*, ORLANDO SENTINEL, May 10, 1999, at 1. Copy supplied.

Michael Griffin, *2nd Contender for McCollum Seat*, ORLANDO SENTINEL, May 6, 1999, at D3 (quote re-published in BULLETIN'S FRONTRUNNER on May 6, 1999). Copy supplied.

Catherine Hinman, *Convention Center Plan Stalls*, ORLANDO SENTINEL, May 4, 1999, at B1. Copy supplied.

Jack Snyder, *Downtown Orlando to Get Another Hotel*, ORLANDO SENTINEL, Apr. 29, 1999, at B1. Copy supplied.

Catherine Hinman, *Orange Feels Time Crunch on Expo*, ORLANDO SENTINEL, Apr. 20, 1999, at B1. Copy supplied.

Catherine Hinman, *Questions Surround Expo Proposal*, ORLANDO SENTINEL, Apr. 13, 1999, at B1. Copy supplied.

Pat Beall, *Question This*, ORLANDO BUSINESS JOURNAL, Apr. 1999. Copy supplied.

Tim Barker, *2003 Space Deadline Looms Over Expansion Committee*, ORLANDO SENTINEL, Mar. 29, 1999, at 10. Copy supplied.

Tim Barker, *Martinez Group Turns Eyes to Convention Center Plans*, ORLANDO SENTINEL, Feb. 20, 1999, at C9. Copy supplied.

Sherri Owens, *Billboard Companies Look for Signs of Compromise*, ORLANDO SENTINEL, May 3, 1998, at K1. Copy supplied.

Scott Newman, *Johnson Goes Out on Top*, TIMES UNION (Albany, NY), Nov. 6, 1997, at C1. Copy supplied.

David Ginsburg, *Angelos Apparently Close to Decision on Johnson*, ASSOCIATED PRESS, Nov. 4, 1997. Copy supplied.

Joe Strauss, *No Angelos Tip in O's 'Jump Ball,'* BALTIMORE SUN, Nov. 2, 1997, at 1C. Copy supplied.

Joe Strauss, *Gillick Tries To Close Gap in O's Rift*, BALTIMORE SUN, Oct. 31, 1997, at 1D. Copy supplied.

Mark Maske, *Johnson, Angelos Talk*, WASHINGTON POST, Oct. 31, 1997, at D01. Copy supplied.

Kevin Seifert, *Angelos, Johnson Talk by Phone*, WASHINGTON TIMES, Oct. 31, 1997, at B2. Copy supplied.

Joe Strauss, *Johnson: 'I'm Not a Quitter,'* BALTIMORE SUN, Oct. 30, 1997, at 1D (quote re-published by ASSOCIATED PRESS on Oct. 30, 1997). Copy supplied.

Mark Maske, *Johnson Likely to Resign or Be Fired*, WASHINGTON POST, Oct. 30, 1997, at B1. Copy supplied.

Kevin Seifert, *Angelos Still Undecided About Johnson*, WASHINGTON TIMES, Oct. 30, 1997, at B1. Copy supplied.

Thom Loverro, *Angelos Needs to Face Facts*, WASHINGTON TIMES, Oct. 30, 1997, at B6. Copy supplied.

Murray Chass, *Johnson Again Jousts With Orioles*, N.Y. TIMES, Oct. 29, 1997, at C8 (quote re-published by ASSOCIATED PRESS on Oct. 29, 1997). Copy supplied.

Mark Maske, *Angelos Might Fire Johnson Over Fine of Alomar*, WASHINGTON POST, Oct. 29, 1997, at C1. Copy supplied.

Kevin Seifert, *Johnson Asks O's for Contract Extension or Buyout*, WASHINGTON TIMES, Oct. 29, 1997, at B1. Copy supplied.

Staff, *Johnson Seeking New Deal or Buyout*, STAR LEDGER (NEWARK, NJ), Oct. 29, 1997, at 54. Copy supplied.

Staff, *Johnson's Demands*, ORLANDO SENTINEL, Oct. 29, 1997, at C8. Copy supplied.

Staff, *Orioles' Johnson Wants New Deal*, ASSOCIATED PRESS, Oct. 28, 1997. Copy supplied.

Joe Strauss, *Johnson: Extension or Buyout*, BALTIMORE SUN, Oct. 28, 1997, at 1D (quote re-published by ASSOCIATED PRESS and CAPITAL (Annapolis, MD) on Oct. 28, 1997). Copy supplied.

Joe Kilsheimer, *Teenagers Spin Web Into Cash, Business*, ORLANDO SENTINEL, Sept. 18, 1996, at B1. Copy supplied.

Paul Dillon, *Pixelstorm Brews at Edgewater High School*, ORLANDO BUSINESS JOURNAL, June 7, 1996, at 4. Copy supplied.

William Jordan, Manufacturer of Auto Lift Kit Found Liable for Wrongful Death of 16 Year Old, VERDICTS, SETTLEMENTS & TACTICS, June 1996, at 265. Copy supplied.

Alex Finkelstein, *Local Firm Wins $3 Million Award in Suit Alleging Defective Truck Lift*, ORLANDO BUSINESS JOURNAL, May 3, 1996, at 5. Copy supplied.

Diane Rodgers, 2 Families Each Win $1.5 Million, Palatka Daily News, Mar. 29, 1996, at 1A. Copy supplied.

Mary Hladky, *The Art of the Argument*, Broward DAILY BUSINESS REVIEW, Feb. 23, 1996, at A10. Copy supplied.

Buster Olney, *Johnson Says O's Deal Is Imminent*, BALTIMORE SUN, Oct. 25, 1995, at 1D. Copy supplied.

Jack Curry, *Showalter Return in '95 is Hinted By Michael*, NY TIMES, Oct. 19, 1995, at 17. Copy supplied.

Mike Oliver, *Top Court's "Impact Rule" Bars Relief for Mental Anguish of HIV Misdiagnosis*, ORLANDO SENTINEL, Apr. 5, 1995, at A10 (re-published in MIAMI HERALD on Apr. 5, 1995, and SEATTLE TIMES on Apr. 16, 1995). Copy supplied.

Vicki Vaughan, *Lawsuit Legislation Has Many Fearful*, ORLANDO SENTINEL, Mar. 13, 1995, at 17. Copy supplied.

Debbie Salamone, *Victim or Predator? – Zink Jury Now Chooses*, ORLANDO SENTINEL, July 26, 1994, at C1. Copy supplied.

Tom Leithauser, *State Drops 2 Sex Charges Against Doctor*, ORLANDO SENTINEL, June 10, 1994, at A1. Copy supplied.

Debbie Salamone, *Doctor Accused of Misconduct Rebuked*, ORLANDO SENTINEL, Feb. 6, 1994, at B1. Copy supplied.

Tom Leithauser, *Deal Would End State's Case Against Doctor*, ORLANDO SENTINEL, Feb. 3, 1994, at A1. Copy supplied.

Editor, *Pit Embankment Collapses: Attractive Nuisance: Failure to Fence, Post Warnings: Wrongful Death: Postverdict Settlement*, ATLA LAW REPORTER, Sept. 1993. Copy supplied.

Derek Catron, *Burnell, Klusman Eyeing Stetson Job*, ORLANDO SENTINEL, Mar. 4, 1993, at D4. Copy supplied.

Derek Catron, *Job-Seekers Flood Hatters*, ORLANDO SENTINEL, Mar. 9, 1993, at C3. Copy supplied.

Staff, *The Year in Quotes*, ORLANDO SENTINEL, Jan. 1, 1993, at 7. Copy supplied.

Jerry Crasnick, *Cincinnati Reds*, SPORTING NEWS (Baltimore, MD), Nov. 2, 1992, at 22. Copy supplied.

Jill J. Spitz, *Family Settles Suit in Boy's Death at Pit*, ORLANDO SENTINEL, Oct. 24, 1992, at 1. Copy supplied.

Mike Bass, *Valentine Boosts Johnson with Reds*, CINCINNATI POST, Oct. 24, 1992, at 1C. Copy supplied.

John Erardi, *Reds May Add 7th Candidate*, CINCINNATI ENQUIRER, Oct. 23, 1992. Copy supplied.

Tom Verducci, *Davey a Non-Person*, NEWSDAY (New York), Oct. 11, 1992, at 7. Copy supplied.

John Fay, *Davey Johnson On Call—Waiting for Reds*, CINCINNATI ENQUIRER, Oct. 11, 1992. Copy supplied.

Janet Graham, *The Manager's Special: Ex-Met Johnson Contacts Reds*, CINCINNATI POST, Oct. 9, 1992, at 1C. Copy supplied.

Jill J. Spitz, *Family May Never See Payment in Boy's Death*, ORLANDO SENTINEL, Sept. 20, 1992, at 1. Copy supplied.

Jill J. Spitz, *$1.25 Million Awarded in Boy's Death*, ORLANDO SENTINEL, Sept. 4, 1992, at 1. Copy supplied.

Beth Lebenson, *Jury Finds City at Fault for Death*, DAILY COMMERCIAL (Lake County), Sept. 4, 1992, at A1. Copy supplied.

Beth Lebenson, *Trial Opens With Fingers Pointing*, DAILY COMMERCIAL (Lake County), Aug. 28, 1992, at B1. Copy supplied.

Allen Bartlett, *Trial Begins in Boy's Death at Borrow Pit*, ORLANDO SENTINEL, Aug. 28, 1992, at 1. Copy supplied.

Jim Runnels, *Parents Sue City in Pit Death*, ORLANDO SENTINEL, Feb. 20, 1991, at 1. Copy supplied.

Adam Yeomans, *Next Witness: Computer Animation*, ORLANDO SENTINEL, Jul 1, 1990, at D1. Copy supplied.

Michael Griffin, *Orange Will Write Rule on Car Rentals*, ORLANDO SENTINEL, May 22, 1990, at B1. Copy supplied.

Mike Oliver, *6 Remain in the Running for Spot on Appeal Court*, ORLANDO SENTINEL, Oct. 12, 1989, at C4. Copy supplied.

Susan Beck, *Disney's In-House Team: Flexing Mickey's Muscle*, THE AMERICAN LAWYER, Sept. 1989, at 7. Copy supplied.

Shirish Date, *New Judges Will Help Ease Heavy Appeal Caseload*, ORLANDO SENTINEL, Sept. 18, 1989, at B3. Copy supplied.

Harry Straight, *Judge Cuts Award in Lawsuit; Case Stems from 2 Ironworkers Injured in 1985*, ORLANDO SENTINEL, Aug. 7, 1989, at 13. Copy supplied.

Lynne Bumpus-Hooper, *Panel Nominates 3 to Fill New Slot on Appeal Court*, ORLANDO SENTINEL, Oct. 1, 1998, at D8. Copy supplied.

Lynne Bumpus-Hooper, *Judgeship Attracts 10 Candidates*, Orlando Sentinel, Sept. 17, 1988, at B1. Copy supplied.

Shanna Flowers, *Jury Decides on $1.5 Million Award*, ORLANDO SENTINEL, June 11, 1988, at D3. Copy supplied.

Shanna Flowers, *Trial to Find Role of Officer*, ORLANDO SENTINEL, May 31, 1988, at 1. Copy supplied.

Editor, *Mining Accident: Negligence in Testing Equipment: Failure to Warn, Install Warning Device: Finger Amputation: Jury Verdict*, ATLA LAW REPORTER, Oct. 1987. Copy supplied.

Terry Osinski, *2-Year-Old's Spirit Heals Fire's Wounds*, ORLANDO SENTINEL, Jan. 23, 1987, at C1. Copy supplied.

Editor, *Truck Owner, Driver Liability: Negligent Maintenance: Stretch Trailer Closes and Traps Man Beneath Frame: Head Injuries*, ATLA LAW REPORTER, Nov. 1986. Copy supplied.

Editor, *Truck Rollover: Front Wheel Falls Off Truck: Owner Liability: Tire Repair Company Liability: Passenger's Quadriplegia: Settlement*, ATLA Law Reporter, Oct. 1986. Copy supplied

Dan Tracy, *Trial Blitz Helps But Backlog of Federal Cases Still Growing*, ORLANDO SENTINEL, July 30, 1986, at D3. Copy supplied.

Dan Tracy, *Jurors Give $1 Million to Trailer Victim*, ORLANDO SENTINEL, July, 26, 1986, at D1. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___%

civil proceedings: ___%
criminal proceedings: ___%

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In 1992, I was appointed by Orlando Mayor Glenda Hood to serve as a member of Orange County Library System Board of Trustees, on which I served until 1994.

On December 31, 1993, I was appointed by Orlando Mayor Glenda Hood to the City of Orlando Municipal Planning Board. I served from December 31, 1993 until July 7, 1998, during which time I was Vice Chair from August 15, 1995 until July 16, 1996 and Chairman from August 20, 1996 until September 16, 1997.

In 1998, I was appointed to serve as Chairman of the Orange County Convention Center Expansion Task Force by Orange County Chairman Mel Martinez. I served until 1999.

In 2000, I was appointed to serve as a member of the Central Florida Tourist Development Council by Orange County Mayor Richard Crotty. I served until 2002.

I have not held any elected public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a paid position with any political campaign organization or political entity. Over the past 20 years, I have volunteered for various activities and fund-raising events on behalf of candidates for elected office. I served as Central Florida Finance Chair for the Bill McBride for Governor Campaign in 2002; Co-Finance Chair for the Campaign of Richard Crotty for Re-election as Orange County Mayor; Campaign Finance Committee Member for Linda Chapin for Congress in 2000; Campaign Finance Committee Member for my former law partner, Mel Martinez in his campaign for U.S. Senate in 2004; Campaign Finance Committee Member for Buddy Dyer, Candidate for Mayor of Orlando in 2008; Campaign Finance Committee Member for Bill Nelson for U.S. Senate in 2000 and 2006; and Central Florida Finance Committee Member for Obama for America/Obama Victory Fund in 2007 and 2008.

After a careful search of my records and publicly available Internet sources, I am unable to locate any other information which might be responsive. I have from time to time made political contributions or attended fundraising functions for various candidates for political office and may have been considered a member of a "finance committee", but I cannot recall any other than those listed here.

I have not served in any elected or appointed positions with any political party.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge upon graduation from law school.

ii. whether you practiced alone, and if so, the addresses and dates;

I practiced law alone from 1982 to 1985 as Roy B. Dalton, Jr., P.A., located at 17 East Pine Street, Orlando, Florida 32804.

From 1999 until 2001, I again practiced law alone as the Dalton Law Firm, located at 715 Vassar Street, Orlando, Florida 32804.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1977 – 1982
Dean, Ringers, Morgan & Lawton, P.A.
200 East Robinson Street
Orlando, Florida 32801
Associate (1977 – 1980)
Principal (1980 – 1982)

1982 – 1984
Roy B. Dalton, Jr., P.A.
17 East Pine Street
Orlando, Florida 32802
Principal

1984 – 1987
Hurt, Parrish & Dalton, P.A.
1000 East Robinson Street
Orlando, Florida 32802
Principal

1987 – 1989
Dalton & Provencher, P.A.
17 East Pine Street
Orlando, Florida 32801
Principal

1989 – 1998
Martinez, Dalton, Dellecker, Wilson & King, P.A.
(f/k/a Martinez & Dalton, P.A. & Martinez, Dalton & Provencher, P.A.)
719 Vassar Street
Orlando, Florida 32804
Principal

1999 – 2001
Roy B. Dalton, Jr., P.A. (Dalton Law Firm)
715 Vassar Street
Orlando, Florida 32804
Principal

1999 – 2001
Gray, Harris & Robinson, P.A.
300 East Pine Street, Suite 401
Orlando, Florida 32801
Of Counsel

2001 – 2003
Dalton & Paul, P.A.
720 Rugby Street, Suite 100
Orlando, Florida 32804
Partner

2003 – Present
Dalton & Carpenter, P.A.
720 Rugby Street, Suite 120
Orlando, Florida 32804

2004 – Present
The Carlyle Appellate Law Firm
20 La Grande Boulevard
The Villages, Florida 32159
Of Counsel

2005 – 2006
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510
Counsel to United States Senator Mel Martinez

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

During my first five years of practice (1977 to 1982), I worked almost exclusively in the area of insurance defense trial practice. I represented various insurance companies in the defense of claims for personal injury and wrongful death. From 1982 until 1998 my primary area of practice was the representation of plaintiffs with claims for personal injury and/or wrongful death. From 1999 to present, my practice has been slightly more diverse, including civil litigation, governmental relations, appellate practice, and business practice primarily representing individuals. From time to time, I have served as counsel to professionals such as physicians, attorneys, professional athletes, and members of the clergy who required professional legal advice on various matters. For the past seven years I

have been associated in the practice of law with my close friend Darrell Carpenter.

In 1999, I reduced the scope of my trial practice to pursue a real estate opportunity and developed a 167-room Embassy Suites Hotel in downtown Orlando. That project was completed in October of 2000 and was operated by a real estate management company that I formed. The hotel project was sold in February 2007. I have also developed two smaller commercial office projects as an adjunct to my law practice.

In addition to my Orlando trial practice, in 2004 I became Of Counsel with The Carlyle Appellate Law Firm located in Lake County, Florida, where I handle appellate matters.

From May 2005 until January 2006, I served as counsel to United States Senator Mel Martinez in his Washington, D.C. office. In that capacity, I was responsible for a wide range of duties including overseeing personnel, reviewing substantive correspondence, composing military bereavement letters, drafting and reviewing proposed legislation, ensuring office compliance with Senate Ethics Rules, preparing briefings on various nominations and committee hearings, and the preparation of a Strategic Plan.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical clients include individuals or families who have suffered a loss due to the negligence of others, as well as professionals, individuals, and businesses who are engaged in litigation and require personal counsel to represent their interests when there may be questions regarding the availability or adequacy of insurance proceeds. I have also represented from time to time professionals and individuals who are, or may be, involved in litigation or who have business disputes or potential claims which arise as a result of their practice or business operations. My appellate practice clients are varied as are the types of issues and areas of law, ranging from inverse condemnation proceedings to constitutional issues to real estate boundary disputes.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice has been almost entirely litigation. I have appeared in court frequently throughout my practice.

i. Indicate the percentage of your practice in:
   1. federal courts: 15%
   2. state courts of record: 80%
   3. other courts: 2%
   4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over the course of my career, I have tried to verdict approximately 75 cases in which I was sole counsel. There are a number of cases early in my career that I tried as associate counsel or second chair, but I have no accurate records to ascribe a particular number.

i. What percentage of these trials were:
   1. jury: 95%
   2. non-jury: 5%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. St. John v. American Motors Corp., Ninth Judicial Circuit Court of Florida (Hon. Cecil Brown (deceased))

This matter involved two young men who were horribly burned when the 1974 AMC Ambassador in which they were riding was struck from behind by a tractor-trailer on Interstate 4 in Orlando, Florida. The victims sued both AMC raising product liability claims, and the driver of the tractor-trailer and his employer, raising negligence claims. I assisted in the defense of both the driver of the tractor-trailer and his employer. This case was very significant at the time it was tried because of the complexity of the product liability claims and the issues regarding contribution and indemnity among the various parties. In early 1981, the matter proceeded to trial. My clients' claims were ultimately settled during jury deliberations and a verdict was rendered against AMC in favor of both plaintiffs.

Co-counsel: Goble D. Dean (deceased).

Opposing counsel: David King, Esq., P.O. Box 1631, Orlando, Florida 32802, Tel. (407) 422-2472; Fred Peed, Esq., 836 South Lake Adair Boulevard, Orlando, Florida 32804 (407-425-5653); Alan Grant (deceased); and Monroe McDonald (deceased).

2. Florida v. Zink, Case No. 94-1913; Ninth Judicial Circuit Court of Florida (Hon. Alice Blackwell White)

This well-publicized case involved an Orlando pediatric orthopedic surgeon who was alleged to have taken inappropriate clinical photographs of his young male patients. I served as co-counsel, representing Dr. Zink during the trial in 1994. I handled the examination and cross-examination of all medical witnesses and conducted the closing arguments. At the conclusion of a five-week trial, the jury returned a verdict acquitting my client on all charges.

Co-counsel: James Russ, 18 West Pine Street, Orlando, Florida 32801, Tel. (407) 849-6050; Kirk Kirkconnell, P.O. Box 2728, Winter Park, Florida 32790, Tel. (407) 644-7600.

Opposing counsel: Robin Wilkerson, last known address, c/o Orange County State Attorney's Office 250 North Orange Avenue, Orlando, Florida 32802, Tel. (407) 836-2400; Willie G. May, 627 Plumwood Drive, Altamonte Springs, Florida 32714, Tel. (407) 774-3305.

3. Fitzgerald v. City of Mount Dora, Case No. 91-391-CA-01, Fifth Judicial Circuit Court of Florida (Hon. Jerry Lockwood.)

This case involved the wrongful death of an 11-year-old boy, Troy Fitzgerald, who suffocated when the bank of a sand retention pit behind his home collapsed as he was playing with his younger sister. I represented the parents, as lead counsel, in an action against the City of Mount Dora, the owner of the pit, the construction company who built

the pit, and the engineers who had designed it. There were complex legal issues involved in this case regarding liability and sovereign immunity. At trial in 1992, a jury returned a verdict in favor of our clients in the amount of approximately $1.3 million dollars, which was reported to be the largest jury verdict for the death of a child in Lake County, Florida. The jury also rejected the defense of comparative fault on the part of the parents based on a claim of negligent supervision of their child. The summation that I delivered in this case was later included in a Continuing Legal Education audio series entitled, "The Masters Series."

Co-Counsel: Mel R. Martinez, 450 South Orange Avenue, Suite 250, Orlando, Florida 32801, Tel. (407) 718-8168

Opposing Counsel: Yates Rumbley, 2627 Rose Isle Circle, Orlando, Florida 32803, Tel. (407) 463-3866; David Corso, P.O. Box 712, Orlando, Florida 32802, Tel. (407) 843-2111; Jon Derrevere, 2005 Vista Parkway, Suite 210, West Palm Beach, Florida 33411, Tel. (561) 684-3222; Bob Jack, 201 East Pine Street, Suite 1500, Orlando, Florida 32801, Tel. (407) 839-0120.

4. Judy v. Tri-State Motor Transit Co., Case No. 84-588-CIV-ORL, United States District Court for the Middle District of Florida (Hon. Patricia Fawsett), reported at 844 F.2d 1496 (11th Cir. 1988).

This case involved a trucker who suffered massive head injuries when he stopped to help another driver. There was a significant legal issue as to whether plaintiff was a co-employee of the other driver, as they were both under contract to the same trucking company. I was lead counsel for the plaintiff. After trial in July 1986, the jury returned a verdict in favor of my client in the amount of $1.8 million dollars, reduced to $1.134 million for comparative fault. Despite having previously denied a motion for summary judgment, the trial court entered judgment notwithstanding the verdict because the plaintiff was deemed to be a co-worker of the other driver, as they were both under contract to the same trucking company. In addition to being trial counsel, I also briefed and argued the case on appeal before the Eleventh Circuit Court of Appeals. This case was significant in that it raised complex federal issues related to choice of laws and immunity from tort claims arising in the context of an employment relationship.

Opposing counsel: Yates Rumbley, 2627 Rose Isle Circle, Orlando, Florida 32803, Tel. (407) 463-3866.

5. Faulk v. Superior Industries, Case No. 94-5013-CA 53, Seventh Judicial Circuit Court of Florida (Hon. Stephan L. Boyles), reported at Superior Industries v. Faulk, 695 So.2d 376 (Fla. Dist. Ct. App. 1997).

In this case, 16-year-old Bucky Faulk purchased and installed an after-market automotive product manufactured by Superior Industries, Inc. to convert his truck into a high rider. Investigation and discovery revealed that the lift blocks were made from a cheap pop metal that was prone to fail when stressed. When the left front lift block fractured on the

evening of April 28, 1993, Faulk lost control of his vehicle and died in the ensuing accident. His friend, Michael Hopper, suffered life-changing injuries. I served as lead counsel for the plaintiffs.

Combined claims for death and personal injury were brought against the manufacturer and retailer. Numerous procedural complexities developed during the course of the trial in this multi-party products litigation, not the least of which was an irregularity involving a juror who saw portions of a televised special showcasing these products the night before closing arguments. After a lengthy trial in February 1996, a jury returned a verdict favorable to the plaintiffs. The action was subsequently settled after the Court of Appeals remanded for a new trial.

Co-counsel: Yvonne Yegge, 1101 Wilkinson Street, Orlando, Florida 32803, Tel. (407) 592-0179.

Opposing counsel: Robert Bonner, 260 Wekiva Springs Road, Suite 2000, Longwood, Florida 32779, Tel. (407) 872-7774.

6. Byrd v. Lohr, Case No. 83-2376-CA-10-P, Seventh Judicial Circuit Court of Florida (Hon. Joseph Davis, Jr.), reported at 488 So. 2d 138 (Fla. Dist. Ct. App. 1986); Lohr v. Byrd, 522 So. 2d 845 (Fla. 1988).

This case involved a claim for personal injury arising from an automobile accident in which the defendant driver was intoxicated and died as a consequence of injuries sustained in the crash. I served as lead counsel for the plaintiff for trial and on appeal. After trial in November 1984, the jury awarded both compensatory damages and punitive damages against the estate of the defendant driver. After a remittitur by the trial court, the Fifth District Court of Appeals affirmed the award of punitive damages against the estate. The Florida Supreme Court reversed, ruling that punitive damages are not permitted against the estate of a deceased tortfeasor. This was an issue of statewide application and was of significance to both the plaintiff and defense bar.

Opposing counsel. Stephan W. Carter, c/o Orange County Civil Courts Building, Room 330, Orlando, Florida 32801, Tel. (407) 836-2087.

Richard A. Sherman, 1777 South Andrews Avenue, Suite 302, Ft. Lauderdale, Florida 33316, Tel. (954) 525-5885.

7. Allen v. Haines City, Case No. 86-1356, Tenth Judicial Circuit Court of Florida (Hon. Dennis P. Maloney), reported at City of Haines City v. Allen, 509 So. 2d 982 (Fla. Dist. Ct. App. 1987).

This matter arose out of a high-speed pursuit by a police officer resulting in a collision that killed 3 innocent bystanders and seriously injured a fourth. I was lead counsel for the plaintiff. After a two-week trial in June 1988, the jury returned a verdict in favor of all plaintiffs. Subsequent to the verdict, we successfully lobbied the Florida Legislature

for the passage of a claims bill to provide compensation to my client and his family and the estates of the three victims who died. Claims bills are rarely successful and this was a significant victory on behalf of these families.

Co-Counsel: Henry Valenzuela, 100 North Tampa Street, Suite1825, Tampa, Florida 33602, Tel. (813) 272-1000.

Opposing counsel: Sid Crawford, P.O. Box 5947, Lakeland, Florida 33807, Tel. (863) 644-8929; Louis Williams, P.O. Box 2836, Lakeland, Florida 33806, Tel. (813) 682-8492.

8. Schmidt v. Builder's Shoring & Scaffolding Equip. Co., Ninth Judicial Circuit Court of Florida (Hon. Cecil Brown (deceased)), reported at Builder's Shoring & Scaffolding Equip. Co. v. Schmidt, 411 So. 2d 1004 (Fla. Dist. Ct. App. 1982).

I served as counsel for the defendant scaffolding company in this case, which involved personal injury from scaffolding collapse. The case involved fairly complicated issues relating to product liability law, proximate causation, contribution and indemnity. After trial in November 1980, the jury returned a verdict in favor of the plaintiff. On appeal, the Court of Appeals reversed the verdict on the grounds that the evidence was insufficient, as a matter of law, to sustain a verdict based on strict liability and that the verdict as rendered was inconsistent.

Opposing counsel: James C. Fisher, 658 Glades Circle, Apartment 112, Altamonte Springs, Florida 32714, Tel. (407) 869-9389.

9. Lunsford v. W.R. Grace, Case No. GCG 85-3347, Tenth Judicial Circuit Court of Florida (Hon. John Dewell).

I represented the plaintiff in this case, who was a millwright who lost most of the fingers on his dominant hand in an industrial accident at a phosphate mine. After trial in Junr 1987, the jury returned a verdict of $1.01 million dollars. Although the trial court later reduced the verdict to approximately $500,000, the case was significant because it demonstrated the need for certain changes in the mining workplace which, if implemented, would result in a much safer work environment for all employees. These safety features (including better visibility for placement of rail car on/off switches) were later instituted.

Opposing Counsel: Don Jacobsen, who has since been appointed to the Circuit bench in Polk County. P.O. Box 9000, Bartow, Florida 33831, Tel. (863) 534-4649.

10. Fallen v. Black, Case No. 87-896-CIV-ORL-19, United States District Court for the Middle District of Florida; (Hon. Robert Mehrige (visiting)), reported at Black v. Fallen, 920 F.2d 778 (11th Cir. 1991).

This case involved two young ironworkers, one of whom lost an arm and the other suffered back injuries in an industrial accident that occurred during the erection of a power plant in Orlando. I served as lead counsel for both plaintiffs, both at trial and subsequently on appeal. After trial in June 1989, the jury found in favor of the plaintiffs on liability and awarded damages of $2.75 million dollars, reduced by 50% for comparative fault. The Eleventh Circuit Court of Appeals later affirmed.

Opposing counsel: Lora Dunlap (deceased); John Briggs (trial), 600 Highland Avenue, Windermere, Florida 34786, Tel. (407) 876-1708; John Fisher (appeal), 20 North Orange Avenue Suite 1500, Orlando, Florida 32802 Tel. (407) 843-2111.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activity I have pursued in the commercial business arena included resolving major business and estate issues among the survivors of a large multi-million-dollar closely-held Florida corporation. Following the death of the founder, a series of disputes arose amongst the surviving family members over the control of day-to-day operations of one of the largest closely-held retail distributors of alcoholic beverages in the nation. I represented the controlling family interest and ultimately prevailed in developing a resolution that allowed them to continue to operate the statewide business of the company and to subsequently set aside provisions of a trust agreement which provided that operations be conducted by an unwieldy three-party group of trustees. This representation was significant because it involved resolution of a business dispute among family members that had the potential to destroy an extremely successful business, together with family relationships, if not settled in an amicable way. The stakes were high in both monetary and emotional terms. The legal issues were complex, ranging from planning for estate taxes, gifting issues, probate and trusts and claims of breach of fiduciary duty among corporate officers and directors. My responsibility as lead counsel included negotiation, identification of significant legal and business issues, assembling a team of professionals including tax and estate specialists, business valuation experts and providing overall coordination of the work product and input of each.

In the product liability arena, I represented two young children who suffered serious brain injuries when their rear seat belts malfunctioned in an automobile accident which also killed their father. A product liability action was instituted against Chrysler for deficiencies in the design of the rear seat restraint mechanism of the 1986 Jeep Cherokee. This was product liability litigation at its most intense level. The defendants were represented by excellent lawyers with significant experience in the defense of automotive design defect cases. After significant discovery and expenditure of time and money we reached a multimillion dollar settlement of the claims due in no small measure to the

enormous amount of investigative and pretrial preparation. Shortly after this case was resolved, the children's mother was diagnosed with a malignant brain tumor. Without these funds, the long-term fate of these children would be in serious jeopardy.

From May of 2005 to January 2006, I took a leave of absence from my law practice to work in the United States Senate as counsel to United States Senator Mel Martinez. Sen. Martinez had been my law partner for 10 years before he entered public service. During my tenure in the Senate my duties were wide ranging. I worked closely with the Chief of Staff, Senior Director, and all of the legislative assistants and correspondents. I reviewed all requests for co-sponsorship of legislation, drafted and reviewed proposed legislation, drafted all military bereavement correspondence and provided advice and direction on compliance with Senate Ethics Rules. I also prepared the briefing packages and background research for the Senator on the nomination of John Roberts to be Chief Justice of the United States and Samuel Alito to be Associate Justice of the Supreme Court of the United States. I prepared the Senator for his personal interview with these nominees and participated in both interviews.

Beginning in 1993, I represented Major League Baseball manager Davey Johnson in a series of contract negotiations with the Cincinnati Reds, the Baltimore Orioles, and the Los Angeles Dodgers (and in related media contracts). Johnson had led the New York Mets to a World Series victory over the Boston Red Sox in 1986.

Lobbying Activities

In 2000, I represented Highwood Properties, a real estate investment trust, in connection with its effort to secure an agreement with the Orange County government to develop a high-rise office building in downtown Orlando. I met with staff members of the Orange County government to assess the space needs of county administration and their current office space/facility location and leasing expense. I also met with various county commissioners to explore their views on the need for consolidating government office space.

In 2009, I represented Schuff Steel International in connection with its interest in a competitive bid for the steel contract associated with the construction of the new arena in downtown Orlando for the Orlando Magic. I had numerous contacts with the project manager for the Orlando Magic. Schuff was ultimately awarded the contract.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no plans, commitments, or agreements to pursue outside employment, with or without compensation during my service with the court if confirmed.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       In confirmed, I would initially be conflicted from any case in which my current law partner appears. Because he practices almost entirely in state court, a conflict for this reason will be extremely rare. While I would carefully review each case for a conflict or appearance of a conflict of interest, I do not anticipate any other conflicts upon becoming a judge.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       If confirmed, I will handle all matters involving actual or potential conflicts through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    At the request of the Association of Trial Lawyers, beginning in March 2003, I represented a local Orlando woman before the Victims Compensation Fund and Special Master in connection with the loss of her daughter in the collapse of the World Trade Center. This case required a significant commitment of time.

    From 1998 to 2007, I served pro bono as Chancellor of the Cathedral Church of St. Luke and represented the Church as its general counsel in all types of legal matters including the acquisition of two large parcels of real estate adjacent to the church property. Time expended in connection with this representation averaged 10 to 15 hours per month for a period of ten years.

    For the first 20 years of my practice, I accepted two pro bono cases per year as part of the Orange County Bar Legal Aid Offices. I served primarily as guardian ad litem to children in the juvenile justice system who were victims of abuse or neglect or otherwise in need of counsel. These cases were varied in terms of time and effort required.

26. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

        I met with White House Counsel Gregory Craig on May 5, 2009, in follow-up to an application I had submitted in October 2007 to the Florida Federal Judicial Nominating Commission.

        On May 20, 2009, I submitted an application to the 55 members of a newly constituted Florida Federal Judicial Nominating Commission, commissioned by Senator Nelson in connection with this vacancy. On July 21, 2009, I interviewed with the Middle District Conference of the Judicial Nominating Commission in Orlando. On July 23, 2009, I was notified by the Judicial Nominating Commission that my name, along with two others, was being submitted to Senators Nelson and Martinez. On August 1, 2009, I interviewed with Senator Nelson and Senator Martinez at Senator Nelson's Orlando office. Subsequently,

Senator Nelson notified me that he was submitting my name, along with two others, to the White House for consideration in connection with the nomination.

On April 2, 2010, I received a call from Senator Nelson's office and was told to expect a call from the Department of Justice. Since April 6, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office and the Department of Justice on May 13, 2010. The President submitted my nomination to the Senate on November 17, 2010.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
DALTON, ROY B.	U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA	11/17/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. DISTRICT JUDGE	☑ Nomination, Date 11/17/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 10/31/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
P.O. BOX 540116 ORLANDO, FL 32854	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	PARTNER	RUGBY PROPERTY, LLC
2.	SHAREHOLDER	DALTON & CARPENTER, PA
3.	BOARD OF DIRECTORS	SEASIDE NATIONAL BANK
4.	TRUSTEE	TRUST #1
5.	TRUSTEE	TRUST #2
6.	TRUSTEE	TRUST #3
7.	TRUSTEE	TRUST #4

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2008	DALTON & CARPENTER, PA - SALARY	$108,250.00
2.	2009	DALTON & CARPENTER, PA - SALARY	$93,594.00
3.	2010	DALTON & CARPENTER, PA - SALARY	$1,250.00
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS — *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. MET LIFE - COMMON STOCK	A	Dividend	J	T	Exempt				
2. RUGBY PROPERTY, LLC: (PASSIVE INVESTMENT AS GENERAL PARTNER)									
3. - SEASIDE BANK ACCOUNT		None	K	T					
4. - RENTAL PROPERTY #1 (ORLANDO, FL) $1,400,000	G	Rent	P1	W					
5. - RENTAL PROPERTY #2 (PENSECOLA, FL) $880,000	E	Rent	O	W					
6. ITB PREMIUM FUND I, LTD - LIMITED INTEREST (NO CONTROL)	G	Distribution	O	U					
7. DALTON MELNYK VENTURES LLC - LIMITED INTEREST (NO CONTROL)		None	J	U					
8. DALTON & CARPENTER, PA:									
9. - NEW TRADITIONS ACCOUNT		None	L	T					
10. - NEW TRADITIONS MONEY MARKET ACCOUNT	A	Interest	K	T					
11. REDAN CAPITAL PARTNERS - LIMITED PARTNER	D	Distribution							
12. GOVERNMENT PERSONNEL MUTUAL WHOLE LIFE	A	Interest	J	T					
13. SEASIDE BANK ACCOUNTS	A	Interest	K	T					
14. JOHN HANCOCK GUARANTEED UNIVERSAL LIFE POLICY		None	M	T					
15. LORD ABBETT (IRA #1) (MONEY MARKET ACCOUNT)	A	Interest	K	T					
16. IRA #2									
17. - LIMITED PARTNERSHIP INTEREST IN ITB PREMIUM FUND II, LTD.	F	Distribution	M	U					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 5 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (Includes those of spouse and dependent children: see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. WORKING INTEREST - BALDWIN, CLAY COUNTY, TX	A	Royalty	J	W					
19. WORKING INTEREST - BUTLER, PALO PINTO COUNTY, TX	A	Royalty	J	W					
20. WORKING INTEREST - CATO #1, HARDEMAN COUNTY, TX	D	Royalty	J	W					
21. WORKING INTEREST - GIBSON #1, COTTLE COUNTY, TX	C	Royalty	J	W					
22. WORKING INTEREST - GIBSON A-1, COTTLE COUNTY, TX	B	Royalty	J	W					
23. WORKING INTEREST - HAMILTON #2, PALO PINTO COUNTY, TX	A	Royalty	J	W					
24. WORKING INTEREST - LYTLE UNIT, HARDEMAN COUNTY, TX	A	Royalty	J	W					
25. WORKING INTEREST - MAYFIELD, CLAY COUNTY, TX	A	Royalty	J	W					
26. WORKING INTEREST - MCLELLAN-SWOFFORD, HARDEMAN COUNTY, TX	B	Royalty	J	W					
27. WORKING INTEREST - MCNEESE WEST, HARDEMAN COUNTY, TX	B	Royalty	J	W					
28. WORKING INTEREST - MINSHEW UNIT, HARDEMAN COUNTY, TX	B	Royalty	J	W					
29. WORKING INTEREST - SMITH EAGLE CREEK #1, NOLAN COUNTY, TX	B	Royalty	J	W					
30. WORKING INTEREST - SMITH EAGLE CREEK #2, NOLAN COUNTY, TX	A	Royalty	J	W					
31. WORKING INTEREST - SOUTHERN COTTON, HARDEMAN COUNTY, TX	E	Royalty	J	W					
32. WORKING INTEREST - STELL #2, CLAY COUNTY, TX	A	Royalty	J	W					
33. WORKING INTEREST - WORD #5, HARDEMAN COUNTY, TX	A	Royalty	J	W					
34. WORKING INTEREST - WORD A-2, HARDEMAN COUNTY, TX	B	Royalty	J	W					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	D =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 6 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. WORKING INTEREST - YOUNG, HARDEMAN COUNTY, TX	C	Royalty	J	W					
36. TRUST #1 (Y):									
37. - FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									
38. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
39. - CITIGROUP INC COMMON STOCK (Y)									
40. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
41. - SELECTED AMERICAN MUTUAL FUND (Y)									
42. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
43. - BRIDGEWAY AGGRESSIVE MUTUAL FUND (Y)									
44. - KEELEY SMALL CAP VALUE MUTUAL FUND (Y)									
45. - BRANDES INSTITUTIONAL MUTUAL FUND (Y)									
46. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
47. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
48. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
49. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
50. TRUST #2 (Y):									
51. - FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
52. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
53. - CITIGROUP INC COMMON STOCK (Y)									
54. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
55. - SELECTED AMERICAN MUTUAL FUND (Y)									
56. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
57. - BRIDGEWAY AGGRESSIVE MUTUAL FUND (Y)									
58. - FBR SMALL CAP FUND MUTUAL FUND (Y)									
59. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
60. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
61. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
62. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
63. TRUST #3 (Y):									
64. - FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									
65. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
66. - BEST BUY CO INC COMMON STOCK (Y)									
67. - MONSANTO CO COMMON STOCK (Y)									
68. - NEWS CORP LIMITED COMMON STOCK (Y)									

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 8 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
69. - POTASH CORP SASK INC COMMON STOCK (Y)									
70. - CITIGROUP INC COMMON STOCK (Y)									
71. - KRAFT FOODS INC COMMON STOCK (Y)									
72. - AUTOLIV INC COMMON STOCK (Y)									
73. - DR PEPPER SNAPPLE GROUP COMMON STOCK (Y)									
74. - AKZO NOBEL NV ADR COMMON STOCK (Y)									
75. - BARRICK GOLD CORP COMMON STOCK (Y)									
76. - BP PLC COMMON STOCK (Y)									
77. - DIAGEO PLC COMMON STOCK (Y)									
78. - GLAXOSMITHKLINE PLC COMMON STOCK (Y)									
79. - S A P AKTIENGESELL ADR COMMON STOCK (Y)									
80. - TOTAL FINA S A ADR COMMON STOCK (Y)									
81. - TOYOTA MOTOR CORP COMMON STOCK (Y)									
82. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
83. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
84. - VANGUARD PRIMECAP FUND MUTUAL FUND (Y)									
85. - FBR SMALL CAP FUND MUTUAL FUND (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 9 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
87. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
88. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
89. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
90. TRUST #4 (Y):									
91. - FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									
92. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
93. - MONSANTO CO COMMON STOCK (Y)									
94. - NEWS CORP LIMITED COMMON STOCK (Y)									
95. - POTASH CORP SASK INC COMMON STOCK (Y)									
96. - CITIGROUP INC COMMON STOCK (Y)									
97. - KRAFT FOODS INC COMMON STOCK (Y)									
98. - AUTOLIV INC COMMON STOCK (Y)									
99. - DR PEPPER SNAPPLE GROUP COMMON STOCK (Y)									
100. - AKZO NOBEL NV ADR COMMON STOCK (Y)									
101. - BARRICK GOLD CORP COMMON STOCK (Y)									
102. - BP PLC COMMON STOCK (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 10 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
103. - DIAGEO PLC COMMON STOCK (Y)									
104. - GLAXOSMITHKLINE PLC COMMON STOCK (Y)									
105. - S A P AKTIENGESELL ADR COMMON STOCK (Y)									
106. - TOTAL FINA S A ADR COMMON STOCK (Y)									
107. - TOYOTA MOTOR CORP COMMON STOCK (Y)									
108. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
109. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
110. - VANGUARD PRIMECAP FUND MUTUAL FUND (Y)									
111. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
112. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
113. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
114. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
115. THREE SHORES BANCORPORATION, COMMON STOCK		None	M	T					
116. BROKERAGE ACCOUNT #1:									
117. - ALTRIA GROUP INC COMMON STOCK	A	Int./Div.	J	T					
118. - AMERICAN CAPITAL WORLD BOND FUND MUTUAL FUND	B	Int./Div.							
119. - AT&T INC COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 11 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	11/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
120. - BCE INC COMMON STOCK	A	Int./Div.	J	T					
121. - BECTON DICKINSON & CO COMMON STOCK	A	Int./Div.	J	T					
122. - BERKLEY W R CORP COMMON STOCK	A	Int./Div.	J	T					
123. - BLACKROCK MUNI FUND CL I #50 MUTUAL FUND	A	Int./Div.	L	T					
124. - BRISTOL MYERS SQUIBB CO COMMON STOCK	A	Int./Div.	J	T					
125. - CENTURYLINK INC COMMON STOCK	A	Int./Div.	J	T					
126. - CHEVRON CORPORATION COMMON STOCK	A	Int./Div.	J	T					
127. - COCA COLA CO COMMON STOCK	A	Int./Div.	J	T					
128. - CONOCOPHILLIPS COMMON STOCK	A	Int./Div.	J	T					
129. - DOMINION RES INC VA NEW COMMON STOCK	A	Int./Div.	J	T					
130. - DUKE ENERGY HLDG CORP COMMON STOCK	A	Int./Div.	J	T					
131. - EXELON CORP COMMON	A	Int./Div.	J	T					
132. - EXXON MOBIL CORP COMMON STOCK	A	Int./Div.	J	T					
133. - GLAXOSMITHKLINE PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
134. - HARBOR INTERNATIONAL FUND MUTUTAL FUND	A	Int./Div.							
135. - HCP INC COMMON STOCK	A	Int./Div.	J	T					
136. - HEINZ H J CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 12 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
137. - JOHNSON & JOHNSON COMMON STOCK	A	Int./Div.	J	T					
138. - KIMBERLY CLARK CORP COMMON STOCK	A	Int./Div.	J	T					
139. - KRAFT FOODS INC CL A COMMON STOCK	A	Int./Div.	J	T					
140. - LIFE PARTNERS HOLDINGS INC COMMON STOCK	A	Int./Div.							
141. - LILLY ELI & CO COMMON STOCK	A	Int./Div.	J	T					
142. - MARKET VECTORS ETF TR AGRIBUSINESS EXCHANGE TRADED FUND	A	Int./Div.	K	T					
143. - MCDONALDS CORP COMMON STOCK	A	Int./Div.	J	T					
144. - MEDTRONIC INC COMMON STOCK	A	Int./Div.	J	T					
145. - MICROSOFT CORP COMMON STOCK	A	Int./Div.	J	T					
146. - PAYCHEX INC COMMON STOCK	A	Int./Div.	J	T					
147. - PHILIP MORRIS INTL INC COMMON STOCK	A	Int./Div.	J	T					
148. - PIMCO COMMODITY REALRETURN STRATEGY MUTUAL FUND	D	Int./Div.	M	T					
149. - PROCTER & GAMBLE CO COMMON STOCK	A	Int./Div.	J	T					
150. - PROGRESS ENERGY INC COMMON STOCK	A	Int./Div.	J	T					
151. - REYNOLDS AMERN INC COMMON STOCK	A	Int./Div.	J	T					
152. - ROYAL DUTCH SHELL PLC SPON ADR B COMMON STOCK	A	Int./Div.	J	T					
153. - SOUTHERN CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$30,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 13 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
154. - SYSCO CORP COMMON STOCK	A	Int./Div.	J	T					
155. - T ROWE PRICE INTERNATIONAL BOND MUTUTAL FUND	A	Int./Div.							
156. - TEMPLETON GLOBAL BOND FUND-AD MUTUTAL FUND	B	Int./Div.	L	T					
157. - THORNBURG INTERNATIONAL VALUE MUTUAL FUND	B	Int./Div.	K	T					
158. - UNILEVER PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
159. - VANGUARD GNMA FUND #36 MUTUAL FUND	C	Int./Div.							
160. - VANGUARD GNMA FUND -ADM #536 MUTUAL FUND	C	Int./Div.	M	T					
161. - VANGUARD INTER TERM T/E MUTUAL FUND	D	Int./Div.	M	T					
162. - VANGUARD INTERM TERM T/E FUND #42 MUTUAL FUND	A	Int./Div.							
163. - VANGUARD LIMITED TERM T/E FUND #31 MUTUTAL FUND	A	Int./Div.	K	T					
164. - VERIZON COMMUNICATIONS INC COMMON STOCK	A	Int./Div.	J	T					
165. - VODAFONE GROUP PLC NEW SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
166. - WAL MART STORES INC COMMON STOCK	A	Int./Div.	J	T					
167. - WALGREEN CO COMMON STOCK	A	Int./Div.	J	T					
168. - WESTERN UN CO COMMON STOCK	A	Int./Div.	J	T					
169. - JANUS OVERSEAS FUND CLASS T #1054 MUTUTAL FUND		None	K	T					
170. - NOVARTIS AG SPONSORED ADR COMMON STOCK		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 14 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
171. - SPDR GOLD TR GOLD SHS MUTUAL FUND		None	J	T					
172. - THREE SHORES BANCORPORATION COMMON STOCK		None	M	T					
173. - TOTAL S A SPONSORED ADR COMMON STOCK		None	J	T					
174. - SPECTRA ENERGY CORP COMMON STOCK		None	J	T					
175. BROKERAGE ACCOUNT #2:									
176. - ALTRIA GROUP INC COMMON STOCK	A	Int./Div.	J	T					
177. - AMERICAN CAPITAL WORLD BOND FUND MUTUAL FUND	B	Int./Div.							
178. - AMERICAN FUNDS - FUNDAMENTAL INVESTORS MUTUAL FUND	A	Int./Div.	K	T					
179. - AT&T INC COMMON STOCK	A	Int./Div.	J	T					
180. - BAY AREA INFRASTRUCTURE FING AUTH MUNICIPAL BOND	C	Int./Div.	L	T					
181. - BCE INC COMMON STOCK	A	Int./Div.	J	T					
182. - BECTON DICKINSON & CO COMMON STOCK	A	Int./Div.	J	T					
183. - BERKLEY W R CORP COMMON STOCK	A	Int./Div.	J	T					
184. - BLACKROCK MUNI FUND CL I #50 MUTUAL FUND	A	Int./Div.	K	T					
185. - BP PLC SPON ADR COMMON STOCK	A	Int./Div.							
186. - BRISTOL MYERS SQUIBB CO COMMON STOCK	A	Int./Div.	J	T					
187. - CALIFORNIA ST DEPT WTR RES PWR MUNICIPAL BOND	B	Int./Div.							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 15 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
188. - CALIFORNIA ST UNIV REV SYSTEMWIDE MUNICIPAL BOND	B	Int./Div.	K	T					
189. - CEDAR PARK TEX UTIL SYS REV REF MUNICIPAL BOND	B	Int./Div.	K	T					
190. - CENTURYLINK INC COMMON STOCK		None	J	T					
191. - CHEVRON CORPORATION COMMON STOCK	A	Int./Div.	J	T					
192. - COCA COLA CO COMMON STOCK	A	Int./Div.	J	T					
193. - COLORADO WTR RES & PWR DEV AUTH MUNICIPAL BOND	C	Int./Div.							
194. - COLUMBIA S C CTFS PARTN TOURISM DEV MUNICIPAL BOND	C	Int./Div.	L	T					
195. - CONOCOPHILLIPS COMMON STOCK	A	Int./Div.	J	T					
196. - CONSOLIDATED EDISON INC COMMON STOCK		None	J	T					
197. - DEUTSCHE TELEKOM AG SPONSORED ADR COMMON STOCK	A	Int./Div.							
198. - DOMINION RES INC VA NEW COMMON STOCK	A	Int./Div.	J	T					
199. - DUKE ENERGY HLDG CORP COMMON STOCK	A	Int./Div.	J	T					
200. - ENERGY NORTHWEST WASH ELEC REV MUNICIPAL BOND	C	Int./Div.	L	T					
201. - EXELON CORP COMMON		None	J	T					
202. - EXXON MOBIL CORP COMMON STOCK		None	J	T					
203. - FAIRHOLME FUND MUTUAL FUND	A	Int./Div.							
204. - FRANKLIN IND CMNTY MULTI SCH B FIRST MUNICIPAL BOND	C	Int./Div.	L	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	I =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 16 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
205. - FRISCO TEX INDPT SCH DIST SER A MUNICIPAL BOND	C	Int./Div.	K	T					
206. - GEORGIA MUN ELEC AUTH PWR REV MUNICIPAL BOND	A	Int./Div.							
207. - GLAXOSMITHKLINE PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
208. - HAWAII ST SER CL FGIC TCRS MUNICIPAL BOND	D	Int./Div.	L	T					
209. - HCP INC COMMON STOCK	A	Int./Div.	J	T					
210. - HEALTH CARE REIT INC COMMON STOCK	A	Int./Div.	J	T					
211. - HEINZ H J CO COMMON STOCK	A	Int./Div.	J	T					
212. - JACKSONVILLE FLA SALES TAX REV SALES MUNICIPAL BOND		None	L	T					
213. - JOHNSON & JOHNSON COMMON STOCK	A	Int./Div.	J	T					
214. - KELLER TEX INDPT SCH DIST RFDG MUNICIPAL BOND	C	Int./Div.	K	T					
215. - KIMBERLY CLARK CORP COMMON STOCK	A	Int./Div.	J	T					
216. - LILLY ELI & CO COMMON STOCK	A	Int./Div.	J	T					
217. - MARYLAND ST RFDG MUNICIPAL BOND	C	Int./Div.	L	T					
218. - MASSACHUSETTS ST HEALTH & EDL FACS MUNICIPAL BOND	C	Int./Div.	K	T					
219. - MCDONALDS CORP COMMON STOCK	A	Int./Div.	J	T					
220. - MEDTRONIC INC COMMON STOCK		None	J	T					
221. - METROPOLITAN TRANSN AUTH N Y REV MUNICIPAL BOND	B	Int./Div.	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 17 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
222. - MIAMI DADE CNTY FLA PUB SVC TAX REV MUNICIPAL BOND	C	Int./Div.	K	T					
223. - MICROSOFT CORP COMMON STOCK	A	Int./Div.	J	T					
224. - NASSAU CNTY N Y INTERIM FIN AUTH MUNICIPAL BOND	B	Int./Div.	K	T					
225. - NATOMAS UNI SCH DIST CALIF ELECTION MUNICIPAL BOND	B	Int./Div.	K	T					
226. - NEW JERSEY ST CTFS PARTN EQUIP LEASE MUNICIPAL BOND	C	Int./Div.	L	T					
227. - NEW YORK CMNTY BANCORP INC COMMON STOCK	A	Int./Div.	J	T					
228. - NEW YORK N Y CITY TRANSITIONAL FIN MUNICIPAL BOND	B	Int./Div.	K	T					
229. - NEW YORK ST DORM AUTH REVS REF SECD MUNICIPAL BOND	D	Int./Div.	L	T					
230. - NOVARTIS AG SPONSORED ADR COMMON STOCK		None	J	T					
231. - PALMER TEX INDPT SCH DIST MUNICIPAL BOND	D	Int./Div.							
232. - PAYCHEX INC COMMON STOCK		None	J	T					
233. - PENNSYLVANIA ST SECOND SER MUNICIPAL BOND	A	Int./Div.							
234. - PHILIP MORRIS INTL INC COMMON STOCK	A	Int./Div.	J	T					
235. - PHOENIX ARIZ CIVIC IMPT CORP TRANSIT MUNICIPAL BOND	C	Int./Div.	K	T					
236. - PICKERINGTON OHIO LOC SCH DIST SCH MUNICIPAL BOND		None	L	T					
237. - PIMCO COMMODITY REALRETURN STRATEGY MUTUAL FUND	B	Int./Div.	J	T					
238. - PROCTER & GAMBLE CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 18 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
239. - PROGRESS ENERGY INC COMMON STOCK	A	Int./Div.	J	T					
240. - REYNOLDS AMERN INC COMMON STOCK	A	Int./Div.	J	T					
241. - RHODE IS ST & PROVIDENCE PLANTATIONS MUNICIPAL BOND	B	Int./Div.	K	T					
242. - ROYAL DUTCH SHELL PLC SPON ADR B COMMON STOCK	A	Int./Div.	J	T					
243. - SEATTLE WASH RFDG MUNICIPAL BOND	C	Int./Div.	L	T					
244. - SOUTHERN CO COMMON STOCK	A	Int./Div.	J	T					
245. - SYSCO CORP COMMON STOCK	A	Int./Div.	J	T					
246. - T ROWE PRICE INTERNATIONAL BOND MUTUTAL FUND	A	Int./Div.							
247. - TELEFONICA S A SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
248. - TEMPLETON GLOBAL BOND FUND-AD MUTUTAL FUND		None	L	T					
249. - TOTAL S A SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
250. - ULSTER CNTY N Y PUB IMPT MUNICIPAL BOND	B	Int./Div.							
251. - UNILEVER PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
252. - UNIVERSITY COLO ENTERPRISE SYSREV MUNICIPAL BOND	C	Int./Div.	L	T					
253. - UNIVERSITY HOUSTON TEX UNIV REVS MUNICIPAL BOND	C	Int./Div.	L	T					
254. - VAN BUREN TWP MICH LOC DEV FIN AUTH MUNICIPAL BOND	D	Int./Div.	L	T					
255. - VANGUARD GNMA FUND #36 MUTUAL FUND	B	Int./Div.	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
3. Value Method Codes (See Column C2)
Q =Appraised
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 19 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-80 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
256. - VANGUARD INTER TERM T/E MUTUAL FUND	D	Int./Div.	L	T					
257. - VANGUARD LARGE CAP INDEX MUTUAL FUND	B	Int./Div.	K	T					
258. - VANGUARD SHORT TERM INMT GRADE MUTUTAL FUND	C	Int./Div.	L	T					
259. - VANGUARD SMALL-CAP INDEX FD -INV #48 MUTUAL FUND	A	Int./Div.	K	T					
260. - VERIZON COMMUNICATIONS INC COMMON STOCK	A	Int./Div.	J	T					
261. - VODAFONE GROUP PLC NEW SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
262. - WAL MART STORES INC COMMON STOCK		None	J	T					
263. - WALGREEN CO COMMON STOCK	A	Int./Div.	J	T					
264. - WESTERN UN CO COMMON STOCK		None	J	T					
265. - YAVAPAI CNTY ARIZ UN HIGH SCH MUTUTAL FUND		None	L	T					
266. - HOLLYWOOD FLA WTR & SWR REV WTR AND SWR REF AND IMPT 4.00%	A	Int./Div.	L	T					
267. - SPDR GOLD TR GOLD SHS MUTUAL FUND		None	J	T					
268. - ST CHARLES ILL PK DIST GO BDS 2.00% DTD 02/09/2010 DUE 12/		None	K	T					
269. - THREE SHORES BANCORPORATION COMMON STOCK		None	K	T					
270. - SPECTRA ENERGY CORP COMMON STOCK		None	J	T					
271. - YACKTMAN FUND COMMON STOCK		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 20 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

1) PART I (POSITIONS): MR. DALTON RESIGNED FROM THE BOARD OF DIRECTORS OF SEASIDE NATIONAL BANK ON APRIL 21, 2010.

2) PART I (POSITIONS): MR. DALTON WAS OFFICIALLY REMOVED AS TRUSTEE OF ALL FOUR TRUSTS ON JUNE 21, 2010.

3) PART I (POSITIONS): MR. DALTON HAS BEEN A SHAREHOLDER IN DALTON & CARPENTER, PA SINCE ITS INCEPTION IN 2003. THIS S-CORPORATION HAS PRODUCED NET LOSSES FOR 2009 AND 2010; THEREFORE, NO INCOME FROM THIS S-CORPORATION (OTHER THAN THE SALARY RECEIVED BY MR. DALTON AS AN EMPLOYEE) IS LISTED IN PART III.A. (NON-INVESTMENT INCOME).

4) PART I (POSITIONS): MR. DALTON HOLDS A LIMITED PARTNERSHIP INTEREST IN THE FOLLOWING ENTITIES:
A - ITB PREMIUM FUND I, LTD.
B - DALTON MELNYK VENTURES
C - REDAN CAPITAL (THIS ENTITY WAS DISSOLVED ON JUNE 30, 2010)
HIS POSITION IN THESE ENTITIES IS NOT LISTED IN PART I DUE TO THE LIMITED NATURE OF HIS RESPONSIBILITIES. THESE PARTNERSHIP INTERESTS ARE INSTEAD REPORTED AS ASSETS HELD WHICH ARE DISCLOSED IN PART VII (INVESTMENTS AND TRUSTS).

5) PART VII, (INVESTMENTS AND TRUSTS): THE ROYALTY INCOME DISCLOSED IN COLUMN B FOR EACH WORKING INTEREST IS GROSS INCOME FROM THE SPECIFIC OIL WELL.

FINANCIAL DISCLOSURE REPORT Page 21 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 11/17/2010

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Roy Dalton

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		36	750	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities—see schedule	2	678	574	Notes payable to relatives			
Unlisted securities—see schedule	2	341	126	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned—see schedule	2	725	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		441	000	- Home equity line of credit		468	117
Cash value-life insurance		177	745				
Other assets itemize:							
- Dalton & Carpenter, P.A. (miscellaneous equipment and furnishings)		35	000				
				Total liabilities		468	117
				Net Worth	7	967	078
Total Assets	8	435	195	Total liabilities and net worth	8	435	195
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		755	087	Are any assets pledged?	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	YES		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Abbott Laboratories stock	$ 1,232
Altria Group Inc. stock	3,508
American Funds Fundamental Investors Class F-2	23,026
AT&T Inc. stock	5,590
Bay Area Infrastructure Financing Auth. California State Payment Acceleration Notes	52,519
BCE Inc. stock	4,356
Becton Dickinson & Co. stock	8,685
BlackRock Municipal Insured Institutional Fund	129,468
Bristol Myers Squibb Co. stock	5,784
Calif. State Univ. Systemwide Revenue Series A bonds	27,534
Cedar. Park, Texas Utility System Revenue bonds	26,701
CenturyLink Inc. stock	3,931
Chevron Corp. stock	4,873
Cincinnati Financial Corp. stock	1,355
Coca Cola Co. stock	3,924
Columbia SC CTFS Partnership Tourism bonds	52,770
ConocoPhillips stock	3,801
Consolidated Edison Inc. stock	2,188
Dominion Resources Inc. stock	4,824
Duke Energy Holding Corp. stock	4,571
Energy Northwest Washington Electric Revenue Columbia General Station Series F bonds	55,086
Eli Lilly & Co. stock	4,541
Exelon Corp. stock	11,430
Exxon Mobil Corp. stock	15,891
Franklin IN Community Multi Sch B First Meeting bonds	56,780
Frisco Texas Independent School District Series A bonds	31,171
GlaxoSmithKline plc (ADR) stock	5,231
Hawaii State Ser CL-FGIC-TCRS bonds	50,945
HCP Inc. stock	2,557
Health Care REIT Inc. stock	2,351
H.J Heinz Co. stock	5,451
Hollywood FL Water & Sewer Revenue bonds	53,108
Hospitality Properties Trust stock	1,209
Jacksonville FL Sales Tax Revenue bonds	53,753
Janus Overseas Fund Class T	46,615
Johnson & Johnson stock	20,397
Keller TX Independent School District bonds	31,171
Kimberly Clark Corp. stock	5,384
Kraft Foods Inc. stock	3,550
Lorillard Inc. stock	1,280

Market Vectors Agribusiness (ETF)	22,905
Maryland State Rfdg bonds	52,839
Massachusetts State Health & Edl Facs Bonds s	26,130
McDonalds Corp. stock	5,988
Medtronic Inc. stock	8,490
MTA (NY) Transportation Revenue bonds	26,134
Miami-Dade County, FL Public Service Tax Rev. bonds	25,198
Microsoft Corp. stock	12,213
Nassau County Interim Finance Authority bonds	32,999
Nationwide Health Properties Inc. stock	1,429
Natomas Unified Sch. Dist. CA Capital Appreciation Election 2002 Series B bonds	26,628
NJ CTFS Partner Equip.Lease Purchase Series A bonds	66,392
New York Community Bancorp, Inc. stock	2,235
NY, NYC Transitional Refunded Future Tax bonds	34,674
NY State Dorm Auth Revs Ref-Secd Hosp-Catskill Regl	54,868
Novartis AG (ADR) stock	13,734
Paychex Inc. stock	5,825
Philip Morris International Inc. stock	4,564
Phoenix AZ Civic Improvement Corp. Transit Rev. bonds	32,597
Pickerington OH Local School District bonds	53,560
PIMCO Commodity Real Return Strategy	123,978
Proctor & Gamble Co. stock	14,558
Progress Energy Inc. stock	3,150
Reynolds American Inc. stock	3,636
Rhode Island Construction and Improvement bonds	31,362
Royal Dutch Shell plc (ADR) stock	5,724
Scana Corp. stock	1,429
Seattle WA Refunding bonds	67,415
Senior Housing Properties Trust stock	1,314
Southern Co. stock	5,491
SPDR Gold Trust shares	15,782
Spectra Energy Corp. stock	6,965
St. Charles IL Park District GO bonds	49,945
Sysco Corp. stock	6,481
Telefonica S.A. (ADR) stock	1,866
Templeton Global Bonds Fund	126,250
Thornburg International Value Fund	43,212
Total S.A. (ADR) stock	3,432
Unilever plc (ADR) stock	2,902
University Colorado Enterprise Sys Rev bonds	53,867
University Houston TX Revs Cons Series A bonds	51,986
Van Buren Twp Mich Loc Dev Fin Tax Increment bonds	55,532
Vanguard GNMA Fund	153,178
Vanguard Intermediate-Term Tax-Exempt Fund	201,009
Vanguard Limited-Term Tax-Exempt Fund	15,018
Vanguard Large Cap Index Fund –Inv	40,294

Vanguard Short-Term Investment-Grade Fund –Inv	96,876
Vanguard Small Cap Index Fund –Inv	22,301
Verizon Communications Inc. stock	10,556
Vodafone Group plc (ADR)	5,254
Wal-Mart Stores Inc. stock	11,105
Walgreen Co. stock	7,250
Western Union Co. stock	6,860
Windstream Corp. stock	1,633
W.R. Berkeley Corp. stock	6,605
Yacktman Fund	34,288
Yavapai County AZ Union High Sch. Improvement bonds	52,127
Total Listed Securities	$ 2,678,574

Unlisted Securities	
Corda Corporation	$ 24,836
ITB Premium Fund I, Ltd.	946,250
ITB Premium Fund II, Ltd.	135,205
Lord Abbett U.S. Government Money Market Fund	15,835
Rugby Property, LLC	795,000
Three Shores Bancorporation	424,000
Total Unlisted Securities	$ 2,341,126

Real Estate Owned	
Personal residence	$ 2,000,000
Family residence	500,000
Residential rental property	225,000
Total Real Estate Owned	$ 2,725,000

AFFIDAVIT

I, **ROY BALE DALTON, JR.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Nov 15, 2010
(DATE)

(NAME)

(NOTARY) 11/15/2010

SUSAN E. ALLRED
MY COMMISSION # DD 761820
EXPIRES: June 25, 2012
Bonded Thru Notary Public Underwriters

DALTON & CARPENTER, P.A. A PROFESSIONAL ASSOCIATION OF LAWYERS

DARRELL F. CARPENTER
TRIAL PRACTICE, PERSONAL INJURY, WRONGFUL DEATH

ROY B. DALTON, JR.
BOARD CERTIFIED CIVIL TRIAL LAWYER

TELEPHONE (407) 843-8470
FACSIMILE (407) 425-1856
REPLY TO:
POST OFFICE BOX 540116
ORLANDO, FLORIDA 32854-0116

January 5, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on November 17, 2010 to be United States District Judge for the Middle District of Florida. Incorporating the information listed below, I certify that the information contained in my prior submissions, is to the best of my knowledge, true and accurate.

- Membership in Florida Justice Association (formerly Academy of Florida Trial Lawyers) ended 10/14/09 (Question 9).
- I resigned from membership at Sage Valley Golf Club effective 01/01/11 (Question 11).

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

ROY BALE DALTON, JR.

RBD/sa
Enclosures

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
DALTON, ROY B.	U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA	1/5/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. DISTRICT JUDGE	☑ Nomination, Date 1/5/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 12/15/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
P.O. BOX 540116 ORLANDO, FL 32854	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	PARTNER	RUGBY PROPERTY, LLC
2.	SHAREHOLDER	DALTON & CARPENTER, PA
3.	BOARD OF DIRECTORS	SEASIDE NATIONAL BANK
4.	TRUSTEE	TRUST #1
5.	TRUSTEE	TRUST #2
6.	TRUSTEE	TRUST #3
7.	TRUSTEE	TRUST #4

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	DALTON & CARPENTER, PA - SALARY	$93,594.00
2.	2010	DALTON & CARPENTER, PA - SALARY	$1,250.00
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. MET LIFE - COMMON STOCK	A	Dividend	J	T	Exempt				
2. RUGBY PROPERTY, LLC: (PASSIVE INVESTMENT AS GENERAL PARTNER)									
3. - SEASIDE BANK ACCOUNT		None	J	T					
4. - RENTAL PROPERTY #1 (ORLANDO, FL) $1,400,000	G	Rent	P1	W					
5. - RENTAL PROPERTY #2 (PENSACOLA, FL) $880,000	D	Rent	O	W					
6. ITB PREMIUM FUND I, LTD - LIMITED INTEREST (NO CONTROL)	G	Distribution	O	U					
7. DALTON MELNYK VENTURES LLC - LIMITED INTEREST (NO CONTROL)		None	J	U					
8. DALTON & CARPENTER, PA:									
9. - NEW TRADITIONS ACCOUNT		None	L	T					
10. - NEW TRADITIONS MONEY MARKET ACCOUNT	A	Interest	K	T					
11. REDAN CAPITAL PARTNERS - LIMITED PARTNER	D	Distribution							
12. GOVERNMENT PERSONNEL MUTUAL WHOLE LIFE	A	Interest	J	T					
13. SEASIDE BANK ACCOUNTS	A	Interest	K	T					
14. JOHN HANCOCK GUARANTEED UNIVERSAL LIFE POLICY		None	M	T					
15. LORD ABBETT (IRA #1) (MONEY MARKET ACCOUNT)	A	Interest	K	T					
16. IRA #2									
17. - LIMITED PARTNERSHIP INTEREST IN ITB PREMIUM FUND II, LTD.	F	Distribution	M	U					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 5 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. WORKING INTEREST - BALDWIN, CLAY COUNTY, TX	A	Royalty	J	W					
19. WORKING INTEREST - BUTLER, PALO PINTO COUNTY, TX	A	Royalty	J	W					
20. WORKING INTEREST - CATO #1, HARDEMAN COUNTY, TX	C	Royalty	J	W					
21. WORKING INTEREST - GIBSON #1, COTTLE COUNTY, TX	B	Royalty	J	W					
22. WORKING INTEREST - GIBSON A-1, COTTLE COUNTY, TX	A	Royalty	J	W					
23. WORKING INTEREST - HAMILTON #2, PALO PINTO COUNTY, TX	A	Royalty	J	W					
24. WORKING INTEREST - LYTLE UNIT, HARDEMAN COUNTY, TX	A	Royalty	J	W					
25. WORKING INTEREST - MAYFIELD, CLAY COUNTY, TX	A	Royalty	J	W					
26. WORKING INTEREST - MCLELLAN-SWOFFORD, HARDEMAN COUNTY, TX	A	Royalty	J	W					
27. WORKING INTEREST - MCNEESE WEST, HARDEMAN COUNTY, TX	B	Royalty	J	W					
28. WORKING INTEREST - MINSHEW UNIT, HARDEMAN COUNTY, TX	B	Royalty	J	W					
29. WORKING INTEREST - SMITH EAGLE CREEK #1, NOLAN COUNTY, TX	A	Royalty	J	W					
30. WORKING INTEREST - SMITH EAGLE CREEK #2, NOLAN COUNTY, TX	A	Royalty	J	W					
31. WORKING INTEREST - SOUTHERN COTTON, HARDEMAN COUNTY, TX	D	Royalty	J	W					
32. WORKING INTEREST - STELL #2, CLAY COUNTY, TX	A	Royalty	J	W					
33. WORKING INTEREST - WORD #5, HARDEMAN COUNTY, TX	A	Royalty	J	W					
34. WORKING INTEREST - WORD A-2, HARDEMAN COUNTY, TX	A	Royalty	J	W					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 6 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

	A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35.	WORKING INTEREST - YOUNG, HARDEMAN COUNTY, TX	A	Royalty	J	W					
36.	TRUST #1 (Y):									
37.	- FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									
38.	- FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
39.	- CITIGROUP INC COMMON STOCK (Y)									
40.	- AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
41.	- SELECTED AMERICAN MUTUAL FUND (Y)									
42.	- T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
43.	- BRIDGEWAY AGGRESSIVE MUTUAL FUND (Y)									
44.	- KEELEY SMALL CAP VALUE MUTUAL FUND (Y)									
45.	- BRANDES INSTITUTIONAL MUTUAL FUND (Y)									
46.	- OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
47.	- AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
48.	- VANGUARD HEALTH CARE MUTUAL FUND (Y)									
49.	- CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
50.	TRUST #2 (Y):									
51.	- FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 7 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing Instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
53. - CITIGROUP INC COMMON STOCK (Y)									
54. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
55. - SELECTED AMERICAN MUTUAL FUND (Y)									
56. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
57. - BRIDGEWAY AGGRESSIVE MUTUAL FUND (Y)									
58. - FBR SMALL CAP FUND MUTUAL FUND (Y)									
59. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
60. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
61. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
62. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
63. TRUST #3 (Y):									
64. - FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									
65. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
66. - BEST BUY CO INC COMMON STOCK (Y)									
67. - MONSANTO CO COMMON STOCK (Y)									
68. - NEWS CORP LIMITED COMMON STOCK (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 8 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. - POTASH CORP SASK INC COMMON STOCK (Y)									
70. - CITIGROUP INC COMMON STOCK (Y)									
71. - KRAFT FOODS INC COMMON STOCK (Y)									
72. - AUTOLIV INC COMMON STOCK (Y)									
73. - DR PEPPER SNAPPLE GROUP COMMON STOCK (Y)									
74. - AKZO NOBEL NV ADR COMMON STOCK (Y)									
75. - BARRICK GOLD CORP COMMON STOCK (Y)									
76. - BP PLC COMMON STOCK (Y)									
77. - DIAGEO PLC COMMON STOCK (Y)									
78. - GLAXOSMITHKLINE PLC COMMON STOCK (Y)									
79. - S A P AKTIENGESELL ADR COMMON STOCK (Y)									
80. - TOTAL FINA S A ADR COMMON STOCK (Y)									
81. - TOYOTA MOTOR CORP COMMON STOCK (Y)									
82. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
83. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
84. - VANGUARD PRIMECAP FUND MUTUAL FUND (Y)									
85. - FBR SMALL CAP FUND MUTUAL FUND (Y)									

1. Income Gain Codes: (See Columns D1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 9 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
87. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
88. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
89. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
90. TRUST #4 (Y):									
91. - FLORIDA BANK OF COMMERCE COMMON STOCK (Y)									
92. - FLORIDIAN FINANCIAL GROUP COMMON STOCK (Y)									
93. - MONSANTO CO COMMON STOCK (Y)									
94. - NEWS CORP LIMITED COMMON STOCK (Y)									
95. - POTASH CORP SASK INC COMMON STOCK (Y)									
96. - CITIGROUP INC COMMON STOCK (Y)									
97. - KRAFT FOODS INC COMMON STOCK (Y)									
98. - AUTOLIV INC COMMON STOCK (Y)									
99. - DR PEPPER SNAPPLE GROUP COMMON STOCK (Y)									
100. - AKZO NOBEL NV ADR COMMON STOCK (Y)									
101. - BARRICK GOLD CORP COMMON STOCK (Y)									
102. - BP PLC COMMON STOCK (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 10 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	1/5/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
103. - DIAGEO PLC COMMON STOCK (Y)									
104. - GLAXOSMITHKLINE PLC COMMON STOCK (Y)									
105. - S A P AKTIENGESELL ADR COMMON STOCK (Y)									
106. - TOTAL FINA S A ADR COMMON STOCK (Y)									
107. - TOYOTA MOTOR CORP COMMON STOCK (Y)									
108. - AMERICAN FUNDS GROWTH MUTUAL FUND (Y)									
109. - T ROWE PRICE FINANCIAL SERVICES MUTUAL FUND (Y)									
110. - VANGUARD PRIMECAP FUND MUTUAL FUND (Y)									
111. - OAKMARK INTERNATIONAL MUNUTAL FUND (Y)									
112. - AMERICAN FUNDS NEW WORLD FUND C MUTUAL FUND (Y)									
113. - VANGUARD HEALTH CARE MUTUAL FUND (Y)									
114. - CHARLES SCHWAB MONEY MARKET ACCOUNT (Y)									
115. THREE SHORES BANCORPORATION, COMMON STOCK		None	M	T					
116. BROKERAGE ACCOUNT #1:									
117. - ALTRIA GROUP INC COMMON STOCK	A	Int./Div.	J	T					
118. - AT&T INC COMMON STOCK	A	Int./Div.	J	T					
119. - BCE INC COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 11 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
120. - BECTON DICKINSON & CO COMMON STOCK	A	Int./Div.	J	T					
121. - BERKLEY W R CORP COMMON STOCK	A	Int./Div.	J	T					
122. - BLACKROCK MUNI FUND CL I #50 MUTUAL FUND	A	Int./Div.	K	T					
123. - BRISTOL MYERS SQUIBB CO COMMON STOCK	A	Int./Div.	J	T					
124. - CENTURYLINK INC COMMON STOCK	A	Int./Div.	J	T					
125. - CHEVRON CORPORATION COMMON STOCK	A	Int./Div.	J	T					
126. - COCA COLA CO COMMON STOCK	A	Int./Div.	J	T					
127. - CONOCOPHILLIPS COMMON STOCK	A	Int./Div.	J	T					
128. - CONSOLIDATED EDISON INC COMMON STOCK	A	Int./Div.	J	T					
129. - DOMINION RES INC VA NEW COMMON STOCK	A	Int./Div.	J	T					
130. - DUKE ENERGY HLDG CORP COMMON STOCK	A	Int./Div.	J	T					
131. - EXELON CORP COMMON	A	Int./Div.	J	T					
132. - EXXON MOBIL CORP COMMON STOCK	A	Int./Div.	J	T					
133. - GLAXOSMITHKLINE PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
134. - HCP INC COMMON STOCK	A	Int./Div.	J	T					
135. - HEALTH CARE REIT INC COMMON STOCK	A	Int./Div.	J	T					
136. - HEINZ H J CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000 J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000 K =$15,001 - $50,000 O =$500,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000 L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000 M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 12 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
137. - JOHNSON & JOHNSON COMMON STOCK	A	Int./Div.	J	T					
138. - KIMBERLY CLARK CORP COMMON STOCK	A	Int./Div.	J	T					
139. - KRAFT FOODS INC CL A COMMON STOCK	A	Int./Div.	J	T					
140. - LILLY ELI & CO COMMON STOCK	A	Int./Div.	J	T					
141. - MARKET VECTORS ETF TR AGRIBUSINESS EXCHANGE TRADED FUND		None	K	T					
142. - MCDONALDS CORP COMMON STOCK	A	Int./Div.	J	T					
143. - MEDTRONIC INC COMMON STOCK	A	Int./Div.	J	T					
144. - MICROSOFT CORP COMMON STOCK	A	Int./Div.	J	T					
145. - NEW YORK COMMUNITY BANCORP INC COMMON STOCK	A	Int./Div.	J	T					
146. - PAYCHEX INC COMMON STOCK	A	Int./Div.	J	T					
147. - PHILIP MORRIS INTL INC COMMON STOCK	A	Int./Div.	J	T					
148. - PIMCO COMMODITY REAL RETURN STRATEGY MUTUAL FUND	D	Int./Div.	M	T					
149. - PROCTER & GAMBLE CO COMMON STOCK	A	Int./Div.	J	T					
150. - PROGRESS ENERGY INC COMMON STOCK	A	Int./Div.	J	T					
151. - REYNOLDS AMERN INC COMMON STOCK	A	Int./Div.	J	T					
152. - ROYAL DUTCH SHELL PLC SPON ADR B COMMON STOCK	A	Int./Div.	J	T					
153. - SOUTHERN CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 13 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
154. - SYSCO CORP COMMON STOCK	A	Int./Div.	J	T					
155. - TEMPLETON GLOBAL BOND FUND-AD MUTUTAL FUND	B	Int./Div.	L	T					
156. - THORNBURG INTERNATIONAL VALUE MUTUAL FUND	A	Int./Div.	K	T					
157. - UNILEVER PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
158. - VANGUARD GNMA FUND #36 MUTUAL FUND	A	Int./Div.							
159. - VANGUARD GNMA FUND -ADM #536 MUTUAL FUND	C	Int./Div.	M	T					
160. - VANGUARD INTER TERM T/E MUTUAL FUND	C	Int./Div.	M	T					
161. - VANGUARD LIMITED TERM T/E FUND #31 MUTUTAL FUND	A	Int./Div.	J	T					
162. - VERIZON COMMUNICATIONS INC COMMON STOCK	A	Int./Div.	J	T					
163. - VODAFONE GROUP PLC NEW SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
164. - WAL MART STORES INC COMMON STOCK	A	Int./Div.	J	T					
165. - WALGREEN CO COMMON STOCK	A	Int./Div.	J	T					
166. - WESTERN UN CO COMMON STOCK	A	Int./Div.	J	T					
167. - JANUS OVERSEAS FUND CLASS T #1054 MUTUTAL FUND		None	K	T					
168. - NOVARTIS AG SPONSORED ADR COMMON STOCK		None	J	T					
169. - SPDR GOLD TR GOLD SHS MUTUAL FUND		None	J	T					
170. - THREE SHORES BANCORPORATION COMMON STOCK		None	M	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only)	S =Assessment V =Other	T =Cash Market W =Estimated	

FINANCIAL DISCLOSURE REPORT Page 14 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
171. - TOTAL S A SPONSORED ADR COMMON STOCK		None	J	T					
172. - SPECTRA ENERGY CORP COMMON STOCK	A	Int./Div.	J	T					
173. - ENCANA CORP COMMON STOCK		None	J	T					
174. BROKERAGE ACCOUNT #2:									
175. - ALTRIA GROUP INC COMMON STOCK	A	Int./Div.	J	T					
176. - AMERICAN FUNDS - FUNDAMENTAL INVESTORS MUTUAL FUND	A	Int./Div.	K	T					
177. - AT&T INC COMMON STOCK	A	Int./Div.	J	T					
178. - BAY AREA INFRASTRUCTURE FING AUTH MUNICIPAL BOND	B	Int./Div.	L	T					
179. - BCE INC COMMON STOCK	A	Int./Div.	J	T					
180. - BECTON DICKINSON & CO COMMON STOCK	A	Int./Div.	J	T					
181. - BERKLEY W R CORP COMMON STOCK	A	Int./Div.	J	T					
182. - BLACKROCK MUNI FUND CL I #50 MUTUAL FUND	A	Int./Div.	K	T					
183. - BRISTOL MYERS SQUIBB CO COMMON STOCK	A	Int./Div.	J	T					
184. - CALIFORNIA ST DEPT WTR RES PWR MUNICIPAL BOND	A	Int./Div.							
185. - CALIFORNIA ST UNIV REV SYSTEMWIDE MUNICIPAL BOND	B	Int./Div.	K	T					
186. - CEDAR PARK TEX UTIL SYS REV REF MUNICIPAL BOND	B	Int./Div.	K	T					
187. - CENTURYLINK INC COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 15 of 21

Name of Person Reporting	Date of Report
DALTON, ROY B.	1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
188. - CHEVRON CORPORATION COMMON STOCK	A	Int./Div.	J	T					
189. - COCA COLA CO COMMON STOCK	A	Int./Div.	J	T					
190. - COLORADO WTR RES & PWR DEV AUTH MUNICIPAL BOND	B	Int./Div.							
191. - COLUMBIA S C CTFS PARTN TOURISM DEV MUNICIPAL BOND	C	Int./Div.	L	T					
192. - CONOCOPHILLIPS COMMON STOCK	A	Int./Div.	J	T					
193. - CONSOLIDATED EDISON INC COMMON STOCK	A	Int./Div.	J	T					
194. - DOMINION RES INC VA NEW COMMON STOCK	A	Int./Div.	J	T					
195. - DUKE ENERGY HLDG CORP COMMON STOCK	A	Int./Div.	J	T					
196. - ENERGY NORTHWEST WASH ELEC REV MUNICIPAL BOND	B	Int./Div.	L	T					
197. - EXELON CORP COMMON	A	Int./Div.	J	T					
198. - EXXON MOBIL CORP COMMON STOCK	A	Int./Div.	J	T					
199. - FRANKLIN IND CMNTY MULTI SCH B FIRST MUNICIPAL BOND	B	Int./Div.	L	T					
200. - FRISCO TEX INDPT SCH DIST SER A MUNICIPAL BOND	B	Int./Div.	K	T					
201. - GLAXOSMITHKLINE PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
202. - HAWAII ST SER CL FGIC TCRS MUNICIPAL BOND	C	Int./Div.	L	T					
203. - HCP INC COMMON STOCK	A	Int./Div.	J	T					
204. - HEALTH CARE REIT INC COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 16 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
205. - HEINZ H J CO COMMON STOCK	A	Int./Div.	J	T					
206. - JACKSONVILLE FLA SALES TAX REV SALES MUNICIPAL BOND	B	Int./Div.	L	T					
207. - JOHNSON & JOHNSON COMMON STOCK	A	Int./Div.	J	T					
208. - KELLER TEX INDPT SCH DIST RFDG MUNICIPAL BOND	B	Int./Div.	K	T					
209. - KIMBERLY CLARK CORP COMMON STOCK	A	Int./Div.	J	T					
210. - KRAFT FOODS INC COMMON STOCK		None	J	T					
211. - LILLY ELI & CO COMMON STOCK	A	Int./Div.	J	T					
212. - MARYLAND ST RFDG MUNICIPAL BOND	B	Int./Div.	L	T					
213. - MASSACHUSETTS ST HEALTH & EDL FACS MUNICIPAL BOND	B	Int./Div.	K	T					
214. - MCDONALDS CORP COMMON STOCK	A	Int./Div.	J	T					
215. - MEDTRONIC INC COMMON STOCK	A	Int./Div.	J	T					
216. - METROPOLITAN TRANSN AUTH N Y REV MUNICIPAL BOND	B	Int./Div.	K	T					
217. - MIAMI DADE CNTY FLA PUB SVC TAX REV MUNICIPAL BOND	B	Int./Div.	K	T					
218. - MICROSOFT CORP COMMON STOCK	A	Int./Div.	J	T					
219. - NASSAU CNTY N Y INTERIM FIN AUTH MUNICIPAL BOND	B	Int./Div.	K	T					
220. - NATOMAS UNI SCH DIST CALIF ELECTION MUNICIPAL BOND	B	Int./Div.	K	T					
221. - NEW JERSEY ST CTFS PARTN EQUIP LEASE MUNICIPAL BOND	C	Int./Div.	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P1 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 17 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
222. - NEW YORK CMNTY BANCORP INC COMMON STOCK	A	Int./Div.	J	T					
223. - NEW YORK N Y CITY TRANSITIONAL FIN MUNICIPAL BOND	B	Int./Div.	K	T					
224. - NEW YORK ST DORM AUTH REVS REF SECD MUNICIPAL BOND	C	Int./Div.	L	T					
225. - NOVARTIS AG SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
226. - PALMER TEX INDPT SCH DIST MUNICIPAL BOND	C	Int./Div.							
227. - PAYCHEX INC COMMON STOCK	A	Int./Div.	J	T					
228. - PHILIP MORRIS INTL INC COMMON STOCK	A	Int./Div.	J	T					
229. - PHOENIX ARIZ CIVIC IMPT CORP TRANSIT MUNICIPAL BOND	B	Int./Div.	K	T					
230. - PICKERINGTON OHIO LOC SCH DIST SCH MUNICIPAL BOND	B	Int./Div.	L	T					
231. - PIMCO COMMODITY REALRETURN STRATEGY MUTUAL FUND	A	Int./Div.	J	T					
232. - PROCTER & GAMBLE CO COMMON STOCK	A	Int./Div.	J	T					
233. - PROGRESS ENERGY INC COMMON STOCK	A	Int./Div.	J	T					
234. - REYNOLDS AMERN INC COMMON STOCK	A	Int./Div.	J	T					
235. - RHODE IS ST & PROVIDENCE PLANTATIONS MUNICIPAL BOND	B	Int./Div.	K	T					
236. - ROYAL DUTCH SHELL PLC SPON ADR B COMMON STOCK	A	Int./Div.	J	T					
237. - SEATTLE WASH RFDG MUNICIPAL BOND	B	Int./Div.	L	T					
238. - SOUTHERN CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 18 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mo/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
239. - SYSCO CORP COMMON STOCK	A	Int./Div.	J	T					
240. - TEMPLETON GLOBAL BOND FUND-AD MUTUTAL FUND	B	Int./Div.	L	T					
241. - TOTAL S A SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
242. - UNILEVER PLC SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
243. - UNIVERSITY COLO ENTERPRISE SYSREV MUNICIPAL BOND	C	Int./Div.	L	T					
244. - UNIVERSITY HOUSTON TEX UNIV REVS MUNICIPAL BOND	B	Int./Div.	L	T					
245. - VAN BUREN TWP MICH LOC DEV FIN AUTH MUNICIPAL BOND	C	Int./Div.	L	T					
246. - VANGUARD GNMA FUND #36 MUTUAL FUND	A	Int./Div.	K	T					
247. - VANGUARD INTER TERM T/E MUTUAL FUND	C	Int./Div.	L	T					
248. - VANGUARD LARGE CAP INDEX MUTUAL FUND	A	Int./Div.	K	T					
249. - VANGUARD SHORT TERM INMT GRADE MUTUTAL FUND	C	Int./Div.	L	T					
250. - VANGUARD SMALL-CAP INDEX FD -INV #48 MUTUAL FUND	A	Int./Div.	K	T					
251. - VERIZON COMMUNICATIONS INC COMMON STOCK	A	Int./Div.	J	T					
252. - VODAFONE GROUP PLC NEW SPONSORED ADR COMMON STOCK	A	Int./Div.	J	T					
253. - WAL MART STORES INC COMMON STOCK	A	Int./Div.	J	T					
254. - WALGREEN CO COMMON STOCK	A	Int./Div.	J	T					
255. - WESTERN UN CO COMMON STOCK	A	Int./Div.	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 19 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
256. - WINDSTREAM CORP COMMON STOCK	A	Int./Div.	J	T					
257. - YAVAPAI CNTY ARIZ UN HIGH SCH MUTUTAL FUND	A	Int./Div.	L	T					
258. - HOLLYWOOD FLA WTR & SWR REV WTR AND SWR REF AND IMPT 4.00%	A	Int./Div.	L	T					
259. - SPDR GOLD TR GOLD SHS MUTUAL FUND		None	J	T					
260. - ST CHARLES ILL PK DIST GO BDS 2.00% DTD 02/09/2010 DUE 12/	A	Int./Div.	K	T					
261. - THREE SHORES BANCORPORATION COMMON STOCK		None	K	T					
262. - SPECTRA ENERGY CORP COMMON STOCK	A	Int./Div.	J	T					
263. - VACKTMAN FUND COMMON STOCK		None	K	T					
264. - ENCANA CORP COMMON STOCK		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 20 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

1) PART I (POSITIONS): MR. DALTON RESIGNED FROM THE BOARD OF DIRECTORS OF SEASIDE NATIONAL BANK ON APRIL 21, 2010.

2) PART I (POSITIONS): MR. DALTON WAS OFFICIALLY REMOVED AS TRUSTEE OF ALL FOUR TRUSTS ON JUNE 21, 2010.

3) PART I (POSITIONS): MR. DALTON HAS BEEN A SHAREHOLDER IN DALTON & CARPENTER, PA SINCE ITS INCEPTION IN 2003. THIS S-CORPORATION HAS PRODUCED NET LOSSES FOR 2010; THEREFORE, NO INCOME FROM THIS S-CORPORATION (OTHER THAN THE SALARY RECEIVED BY MR. DALTON AS AN EMPLOYEE) IS LISTED IN PART III.A. (NON-INVESTMENT INCOME).

4) PART I (POSITIONS): MR. DALTON HOLDS A LIMITED PARTNERSHIP INTEREST IN THE FOLLOWING ENTITIES:
A - ITB PREMIUM FUND I, LTD.
B - DALTON MELNYK VENTURES
C - REDAN CAPITAL (THIS ENTITY WAS DISSOLVED ON JUNE 30, 2010)
HIS POSITION IN THESE ENTITIES IS NOT LISTED IN PART I DUE TO THE LIMITED NATURE OF HIS RESPONSIBILITIES. THESE PARTNERSHIP INTERESTS ARE INSTEAD REPORTED AS ASSETS HELD WHICH ARE DISCLOSED IN PART VII (INVESTMENTS AND TRUSTS).

5) PART VII. (INVESTMENTS AND TRUSTS): THE ROYALTY INCOME DISCLOSED IN COLUMN B FOR EACH WORKING INTEREST IS GROSS INCOME FROM THE SPECIFIC OIL WELL.

FINANCIAL DISCLOSURE REPORT Page 21 of 21	Name of Person Reporting DALTON, ROY B.	Date of Report 1/5/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Roy Dalton

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		19	818	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities—see schedule	2	606	426	Notes payable to relatives			
Unlisted securities—see schedule	2	354	379	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned—see schedule	2	725	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		441	000	- Home equity line of credit		478	117
Cash value-life insurance		177	745				
Other assets itemize:							
- Dalton & Carpenter, P.A. (miscellaneous equipment and furnishings)		35	000				
				Total liabilities		478	117
				Net Worth	7	881	251
Total Assets	8	359	368	Total liabilities and net worth	8	359	368
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		750	968	Are any assets pledged?	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	YES		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Abbott Laboratories stock	$ 1,299
Altria Group Inc. stock	3,787
American Funds Fundamental Investors Class F-2	23,887
AT&T Inc. stock	6,321
Bay Area Infrastructure Financing Auth. California State Payment Acceleration Notes	51,980
BCE Inc. stock	5,094
Becton Dickinson & Co. stock	9,550
BlackRock Municipal Insured Institutional Fund	57,600
Bristol Myers Squibb Co. stock	6,449
Calif. State Univ. Systemwide Revenue Series A bonds	26,860
Cedar. Park, Texas Utility System Revenue bonds	26,261
CenturyLink Inc. stock	4,945
Chevron Corp. stock	5,721
Cincinnati Financial Corp. stock	1,662
Coca Cola Co. stock	4,661
Columbia SC CTFS Partnership Tourism bonds	51,986
ConocoPhillips stock	4,558
Consolidated Edison Inc. stock	2,451
Dominion Resources Inc. stock	5,173
Duke Energy Holding Corp. stock	4,861
Encana Corp. stock	4,458
Energy Northwest Washington Electric Revenue Columbia General Station Series F bonds	54,131
Eli Lilly & Co. stock	5,059
Exelon Corp. stock	13,841
Exxon Mobil Corp. stock	17,172
Franklin IN Community Multi Sch B First Meeting bonds	54,879
Frisco Texas Independent School District Series A bonds	30,988
GlaxoSmithKline plc (ADR) stock	6,010
Hawaii State Ser CL-FGIC-TCRS bonds	50,601
HCP Inc. stock	2,655
Health Care REIT Inc. stock	2,301
H.J Heinz Co. stock	6,278
Hollywood FL Water & Sewer Revenue bonds	52,676
Hospitality Properties Trust stock	1,207
Jacksonville FL Sales Tax Revenue bonds	53,305
Janus Overseas Fund Class T	46,700
Johnson & Johnson stock	20,460
Keller TX Independent School District bonds	30,988
Kimberly Clark Corp. stock	5,951
Kraft Foods Inc. stock	6,894
Lorillard Inc. stock	1,398

Market Vectors Agribusiness (ETF)	22,797
Maryland State Rfdg bonds	52,516
Massachusetts State Health & Edl Facs Bonds s	25,983
McDonalds Corp. stock	6,543
Medtronic Inc. stock	8,674
MetLife stock	3,141
MTA (NY) Transportation Revenue bonds	25,983
Miami-Dade County, FL Public Service Tax Rev. bonds	25,195
Microsoft Corp. stock	12,755
Nassau County Interim Finance Authority bonds	32,626
Nationwide Health Properties Inc. stock	1,342
Natomas Unified Sch. Dist. CA Capital Appreciation Election 2002 Series B bonds	26,494
NJ CTFS Partner Equip.Lease Purchase Series A bonds	64,418
New York Community Bancorp, Inc. stock	2,657
NY, NYC Transitional Refunded Future Tax bonds	33,996
NY State Dorm Auth Revs Ref-Secd Hosp-Catskill Regl	54,048
Novartis AG (ADR) stock	13,981
Paychex Inc. stock	6,357
Philip Morris International Inc. stock	5,109
Phoenix AZ Civic Improvement Corp. Transit Rev. bonds	31,785
Pickerington OH Local School District bonds	52,939
PIMCO Commodity Real Return Strategy	126,096
Proctor & Gamble Co. stock	14,892
Progress Energy Inc. stock	3,397
Reynolds American Inc. stock	4,134
Rhode Island Construction and Improvement bonds	31,194
Royal Dutch Shell plc (ADR) stock	6,535
Scana Corp. stock	1,574
Seattle WA Refunding bonds	65,815
Senior Housing Properties Trust stock	1,287
Southern Co. stock	6,070
SPDR Gold Trust shares	16,029
Spectra Energy Corp. stock	7,173
St. Charles IL Park District GO bonds	49,926
Sysco Corp. stock	6,422
Telefonica S.A. (ADR) stock	1,841
Templeton Global Bonds Fund	124,116
Thornburg International Value Fund	44,101
Total S.A. (ADR) stock	3,746
Unilever plc (ADR) stock	3,508
University Colorado Enterprise Sys Rev bonds	53,445
University Houston TX Revs Cons Series A bonds	51,623
Van Buren Twp Mich Loc Dev Fin Tax Increment bonds	54,976
Vanguard GNMA Fund	149,317
Vanguard Intermediate-Term Tax-Exempt Fund	180,536
Vanguard Limited-Term Tax-Exempt Fund	14,816

Vanguard Large Cap Index Fund –Inv	42,259
Vanguard Short-Term Investment-Grade Fund –Inv	95,543
Vanguard Small Cap Index Fund –Inv	24,232
Verizon Communications Inc. stock	11,913
Vodafone Group plc (ADR)	5,790
Wal-Mart Stores Inc. stock	11,117
Walgreen Co. stock	7,946
Western Union Co. stock	7,235
Windstream Corp. stock	2,058
W.R. Berkeley Corp. stock	6,530
Yacktman Fund	35,093
Yavapai County AZ Union High Sch. Improvement bonds	51,744
Total Listed Securities	$ 2,606,426

Unlisted Securities	
Corda Corporation	$ 24,836
ITB Premium Fund I, Ltd.	957,856
ITB Premium Fund II, Ltd.	136,851
Lord Abbett U.S. Government Money Market Fund	15,836
Rugby Property, LLC	795,000
Three Shores Bancorporation	424,000
Total Unlisted Securities	$ 2,354,379

Real Estate Owned	
Personal residence	$ 2,000,000
Family residence	500,000
Residential rental property	225,000
Total Real Estate Owned	$ 2,725,000

Judge Cecchi.

STATEMENT OF HON. CLAIRE C. CECCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge CECCHI. Yes, thank you, Senator, for——

Senator FEINSTEIN. Is your mic on? Just pull it a little closer.

Judge CECCHI. It is on. Can you hear me now?

Senator FEINSTEIN. Yes.

Judge CECCHI. Okay. Thank you, Senators, for convening this hearing and certainly thank you for chairing it as well.

As a magistrate judge, I deal with this issue on a daily basis, and I apply the law to the facts. I am very scrupulous in my application of existing precedent, and it provides stability to the court, it provides confidence in those who are appearing before me, and it is the rule of law which governs what I do every day. And if I were so fortunate to proceed in this process, I would continue to do so.

Senator FEINSTEIN. Thank you very much.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Claire Claudia Chadirjian Cecchi (formerly Claire Claudia Chadirjian)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of New Jersey

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: United States District Court for the District of New Jersey
   Martin Luther King, Jr. Federal Building & U.S. Courthouse
   50 Walnut Street
   Newark, New Jersey 07102

   [redacted]

4. **Birthplace**: State year and place of birth.

   1964; Queens, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1986 – 1989, Fordham University School of Law; J.D., 1989

   1982 – 1986, Barnard College, Columbia University; B.A. (*cum laude*), 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – present
United States District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102
United States Magistrate Judge

2004 – 2006
McElroy, Deutsch, Mulvaney & Carpenter
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Partner (2005 – 2006)
Of Counsel (2004 – 2005)

1997 – 2004
Carpenter, Bennett & Morrissey
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Partner (2001 – 2004)
Associate (1997 – 2001)

1996
Robinson, Lapidus & Livelli
One Newark Center, 19th Floor
Newark, New Jersey 07102
Associate

1992 – 1996
Robinson, St. John & Wayne
One Newark Center, 19th Floor
Newark, New Jersey 07102
Associate

1989 – 1992
Office of the Corporation Counsel, City of New York
100 Church Street
New York, New York 10007
Assistant Corporation Counsel (Real Estate Litigation Division)

Summer 1988
Newman, Schlau, Fitch and Burns
14 Wall Street, 22nd Floor
New York, New York 10005
Summer Associate

Spring 1988
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Student Clerk to the Honorable Kevin Thomas Duffy (uncompensated)

Summer 1987
United States Court of Appeals for the Second Circuit
Office of the Staff Counsel, Civil Appeals Management Plan
500 Pearl Street
New York, New York 10007
Student Intern (uncompensated)

Other Affiliations

2003 – 2006
Historical Society of the U.S. District Court for the District of New Jersey
c/o Office of the Clerk, U.S. District Court
50 Walnut Street
Newark, New Jersey 07102
Director (uncompensated)

In addition, in 1998 I formed Claire C. Cecchi, Inc. with my husband with the intention of establishing a retail ceramics shop. The company conducted *de minimis* exploratory business, and was dissolved in 2002.

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have not registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

"40 Under 40," *New Jersey Law Journal* (2002)
Gulbenkian Merit Scholarship, Fordham University School of Law

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
American Bar Foundation, Fellow
Association of the Federal Bar, District of New Jersey

Essex County Bar Association
Historical Society of the U.S. District Court for the District of New Jersey
Director (2003 – 2006); Advisor (2006 – present)
New Jersey State Bar Association
Civil Trial Bar Section
Federal Trial Practice Section
Labor and Employment Law Section
Products Liability & Toxic Torts Section
New York State Bar Association
Torts, Insurance, and Compensation Law Section
William J. Brennan/Arthur T. Vanderbilt Inn of Court (limited participation)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Connecticut, 1990
New Jersey, 1990
New York, 1990

In September 2007, I was late in paying my New Jersey Bar dues because the fee notice was sent to my prior law firm and I had already begun service as a United States Magistrate Judge. I promptly paid the dues when I learned that they were owed and was reinstated to good standing in less than a month. There has been no other lapse in membership.

b. List all courts in which you have been admitted to practice, including dates or admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Second Circuit, 1994
United States Court of Appeals for the Third Circuit, 2002
United States District Court for the District of New Jersey, 1990
United States District Court for the Eastern District of New York, 1992
United States District Court for the Northern District of New York, 1998
United States District Court for the Southern District of New York, 1992

There has been no lapse in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school.

Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.
Barnard Alumnae Association (1986 – present)
Barnard Business and Professional Women, Inc. (approximately 2003)
Catskill Mountain Foundation (2002 – 2003)
The Club at Windham Mountain (2009 – present)
Essex Fells Country Club (family privileges) (2005 – present)
Fordham Law School Alumni Association (1994 – present)
Junior League of Montclair-Newark (1998 – 2006)
Newark Museum (1999 – 2004)

In addition to the organizations listed above, I have been termed a "member" by cultural organizations that use the term to reflect payment of admission fees and by non-profit organizations that use the term based on the fact of a charitable contribution alone. The organizations in this category that I recall are the following: The American Museum of Natural History (2009 – 2010); The New York Botanical Gardens (2005 – 2007); The Bronx Zoo (2008 – 2009); The Intrepid Sea, Air and Space Museum (2010 – 2011); The Liberty Science Center (2008 – 2009); and The Mountaintop Arboretum (2009 – 2011).

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above has discriminated on the basis of race, sex, religion or national origin during the time I have been a member. I am not aware of any instance of former discrimination.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Co-author, *New Jersey Workers' Compensation Act, Americans with Disabilities Act and Family Leave Act of 1993: Understanding Their Overlapping Requirements*, New Jersey Business and Industry Association, Nov. 21, 1997. Copy supplied.

Lady Justice: A Controversial Artistic Depiction, Nunc Pro Tunc (Newsletter of the Historical Society of the U.S. District Court for the District of New Jersey), Volume V, Issue 2, Summer 2003 (reprinted in Volume IX, Issue 1, Feb. 2007). Copy supplied.

Thoughts from Our Magistrate Judges, Nunc Pro Tunc (Newsletter of the Historical Society of the U.S. District Court for the District of New Jersey), Volume X, Issue 1, Feb. 2008. Copy supplied.

I do not recall other publications, though there may be some I have been unable to remember or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None of which I am aware.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None of which I am aware.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files and publicly-available information in seeking to list below all speeches or talks I have delivered. There may, however, be others I have been unable to remember or identify. In particular, since becoming a judge, I have sought to participate in educational programs for attorneys and non-attorneys when asked.

New Jersey Institute for Continuing Legal Education, "Practice before United States Magistrate Judges," Panel Member (January 10, 2007). Audio supplied.

New York Intellectual Property Law Association, Continuing Legal Education, "Litigation Oral Argument Workshop," Moderator (November 16, 2007). I have no notes, transcript, or recording. The address of the Association is 485 Kinderkamack Road, 2nd Floor, Oradell, NJ 07649. Coverage of the program in the Association's newsletter is supplied.

New Jersey Institute for Continuing Legal Education, "Practice before United States Magistrate Judges," Panel Member (January 16, 2008). Audio supplied.

United States District Court for the District of New Jersey, Take Your Child to Work Day, Host (April 16, 2008). I have no notes, transcript, or recording.

MDAdvantage Continuing Medical Education Seminar, Mock Trial Judge (November 7, 2008). I have no notes, transcript, or recording. The address of MDAdvantage is 2 Princess Road, Suite 2, Lawrenceville, NJ 08648.

The Association of the Federal Bar of New Jersey, "Federal Practice for New Jersey State Court Practitioners," Panel Member (November 13, 2008). I have no notes, transcript, or recording. The address of the Association is P.O. Box 172, West Allenhurst, NJ 07711.

New Jersey Institute for Continuing Legal Education, "E-Discovery for Litigators and Transactional Attorneys," Panel Member (February 24, 2009). Audio supplied.

Rutgers Business Law Journal and Rutgers-Newark School of Law, "*E-discovery 101: Overview of E-Discovery Rule Amendments, New Amendments, Recent Case Law of Interest, and Why Zubulake Is Still the Best E-Discovery Example from Which to Learn*," Panel Member (April 2, 2009). I have no notes, transcript, or recording. The address of the Law Journal is 123 Washington Street, Newark, NJ 07102.

United States District Court for the District of New Jersey, Summer Intern/Law Clerk Education Program, Director and Moderator (Summer 2009). I have no notes, transcript, or recording.

Meeting of the District of New Jersey Lawyers' Advisory Committee, Appeared and discussed amending Local Civil Rule 301.1(c): *Compensation to Mediators* (October 20, 2009). Meeting minutes supplied.

New York Intellectual Property Law Association, Continuing Legal Education, "Civility in Litigation," Speaker (November 5, 2009). Notes supplied.

New Jersey Institute for Continuing Legal Education, "Practice before United States Magistrate Judges," Panel Member (January 25, 2010). Audio supplied.

United States District Court for the District of New Jersey, Take Your Child to Work Day, Host (April 22, 2010). I have no notes, transcript, or recording.

Mock Trial for Essex Fells, New Jersey Public School Sixth-Graders, Host (June 3, 2010). I have no notes, transcript, or recording.

United States District Court for the District of New Jersey, Summer Intern/Law Clerk Education Program, Director and Moderator (Summer 2010). I have no notes, transcript, or recording.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None of which I am aware.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In April 2006, I was appointed a United States Magistrate Judge for the District of New Jersey. My term expires in May 2014. I preside over all pre-trial proceedings, including discovery, non-dispositive motion practice and settlement negotiations in civil cases. Where all parties consent, I preside over civil actions in full. In addition, I preside over the initial phase of all criminal matters, including initial appearances and bail hearings, and over certain criminal matters, including petty offenses and misdemeanors, in full.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

None.

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___%

civil proceedings: ___%
criminal proceedings: ___%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Altana Pharma AG v. Teva Pharm. USA, Inc.*, No. 04-cv-2355 (JLL)

This consolidated action consisted of five Hatch-Waxman cases brought by Plaintiffs Altana Pharma AG and Wyeth alleging infringement of U.S. Patent No. 4,758,579. The '579 patent is directed to the compound pantoprazole, the active ingredient in Protonix, Plaintiffs' blockbuster anti-ulcer drug. Pantoprazole belongs to a class of compounds known as proton pump inhibitors that inhibits the secretion of gastric acid in the stomach. The drug accounts for nearly $2 billion in yearly sales and 10% of Wyeth's profits. I presided over pre-trial proceedings in this case from 2006 through the time of trial in 2010. During that time, I ruled on or resolved a large number of fact and expert discovery disputes, including those involving issues of privilege, testimony of withdrawn experts and bifurcation of related antitrust claims. I held numerous status conferences, hearings and oral arguments and ruled on multiple motions to amend. In addition, at the close of discovery, I pre-tried this matter and entered a Final Pre-trial Order. A jury liability trial (for two defendants who had launched generic products) and a bench liability trial (for a non-launching defendant) were conducted by the district judge. Plaintiffs prevailed in both the jury and bench trials. The liability phase of the matter is complete, however, the parties will be resuming damages discovery in the near future.

Counsel for Plaintiffs was William J. Heller (formerly a Partner at McCarter & English, LLP), Senior Vice President & General Counsel, New York Football Giants, Inc., Timex Performance Center, 1925 Giants Drive, East Rutherford, New Jersey 07073, Tel: (201) 935-2501. Counsel for Defendants was Michael E. Patunas, Lite DePalma Greenberg, LLC, Two Gateway Center, 12th Floor, Newark, New Jersey 07102, Tel: (973) 623-3000.

2. *West v. IDT Corp. & IDT Telecom, Inc.*, No. 01-cv-4372 (WHW)

Plaintiff, a telecommunications executive, brought suit against a telecommunications company for breach of a two-page handwritten employment agreement. The agreement provided for a $1 million salary and the purchase of the executive's intellectual property and competing telecommunications business. I was assigned pre-trial management responsibilities in this case in 2008. Prior to that point, there had been two appeals of the district judge's granting of summary judgment in favor of the defendants and a trial on a portion of the plaintiff's claims. The trial resulted in a $1.5 million verdict for the plaintiff on his *quantum meruit* claim, which was ultimately vacated. Immediately thereafter, I held a Final Pre-trial Conference in order to prepare the parties for a second trial and

entered a Final Pre-trial Order. The matter was tried for a second time by the district judge and a jury verdict was returned in favor of the plaintiff in the amount of $10 million. Defendants immediately expressed their intention to appeal. In an effort to broker a final resolution of the parties' claims, I presided over several full-day mediation sessions. As a result of those mediations, I successfully settled this decade-old protracted litigation.

Counsel for Plaintiff was Joseph R. Scholz, McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102, Tel: (973) 639-6999. Counsel for Defendants was Donald A. Robinson, Robinson, Wettre & Miller, LLC, One Newark Center, 19th Floor, Newark, New Jersey 07102, Tel: (973) 690-5400.

3. *Nat'l Grp. for Commc'ns & Computers v. Lucent Technologies Int'l, Inc.*, No. 00-86 (JLL)

Plaintiff, a Saudi Arabian telecommunications company, filed suit against AT&T (subsequently known as Lucent Technologies) for breach of a subcontract agreement whereby Plaintiff was to act as AT&T's subcontractor in connection with the expansion of telecommunications services in Saudi Arabia. The subcontract was for approximately $75 million and required Plaintiff to perform design and engineering services, civil construction work and to purchase and install certain telecommunications equipment. Plaintiff alleged that AT&T breached the agreement by implementing a competing telecommunications network and persuading the Saudi Arabian government to use that competing network. Plaintiff also alleged AT&T wrongfully terminated the agreement and failed to pay Plaintiff monies owed of over $72 million. In response, AT&T asserted that Plaintiff failed to adequately perform under the contract. The matter was referred to me for pre-trial supervision. I ruled on several applications pertaining to discovery issues, including the substitution of defendant's expert. As a result of several lengthy mediation sessions over which I presided, I settled this case.

Counsel for Plaintiff was W. Cameron Beard, Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York 10174, Tel: (212) 885-5268. Counsel for Defendant was Richard E. Donovan, Kelley Drye & Warren LLP, 101 Park Ave, New York, New York 10178, Tel: (212) 808-7756.

4. *Pactiv Corp. v. Perk-Up, Inc.*, No. 08-cv-5072 (DMC)

Plaintiff, a manufacturer of take-out food containers, brought suit against a former business partner turned competitor alleging patent infringement, trade dress infringement and breach of contract. Defendants counterclaimed for, among other things, an alleged antitrust violation based on Section Two of the Sherman Act and alleged sham patent litigations. I managed the pre-trial proceedings, which entailed holding numerous status conferences and hearing various applications,

including one related to the bifurcation of antitrust discovery. 'As a result of a lengthy mediation session over which I presided, I settled this matter.

Counsel for Plaintiffs was David E. DeLorenzi, Gibbons, P.C., One Gateway Center, Newark, New Jersey 07102, Tel: (973) 596-4743. Counsel for Defendants was Peter N. Wang, Foley & Lardner, LLP, 90 Park Avenue, New York, New York 10016, Tel: (212) 338-3401.

5. *J.H. Reid Gen. Contractor v. Conmaco/Rector, LP*, No. 08-cv-6034 (WHW)

Plaintiff, a heavy highway and bridge contractor, brought suit against the manufacturer and distributor of a hydraulic pile hammer, a highly specialized piece of construction machinery used for extremely large-scale projects such as bridge construction. Plaintiff brought claims for breach of the warranties of merchantability and fitness for a particular purpose. Plaintiff asserted that Defendants' allegedly defective hammer caused the delayed completion of a significant bridge construction project. I presided over pre-trial proceedings in this matter. Under that umbrella, I ruled on a motion for leave to file an amended answer and various discovery applications. As a result of an all-day mediation session over which I presided, and which was attended by principals from the United States and Asia, I settled the case.

Counsel for Plaintiff were Marc D. Haefner, Kevin J. Coakley, and Christine Intromasso Gannon, Connell Foley, LLP, 85 Livingston Avenue, Roseland, New Jersey 07068, Tel: (973) 535-0500. Counsel for Defendants was Robert C. Brady, Gibbons, P.C., One Gateway Center, Newark, New Jersey 07102, Tel: (973) 596-4617.

6. *Buck Consultants, Inc. v. Glenpointe Assocs.*, No. 03-cv-454 (JLL)

Plaintiff, a commercial tenant, brought suit against its landlord for the alleged wrongful denial of a proposed sublease. The property at issue involved a high-value commercial space and a lucrative sublease. The matter was referred to me for pre-trial supervision. To carry out that role, I held numerous status and settlement conferences. I ruled on various applications and heard the parties' discovery disputes. After dispositive motion practice, the remaining issue in the case was whether Defendant's denial of the proposed sublease was undertaken in bad faith. At that point, I held a lengthy Final Pre-trial Conference with the parties and entered a Final Pre-trial Order. The district judge held a bench trial and the parties appealed his decision on the bad faith issue to the Third Circuit. The parties ultimately agreed to withdraw their appeals and the case closed.

Counsel for Plaintiff was B. John Pendelton, Jr., DLA Piper, 300 Campus Dr., Suite 100, Florham Park, NJ 07932, Tel: (973) 520-2561. Counsel for Defendant were David M. Kohane and Michael S. Meisel, Cole, Shotz, Meisel, Forman &

Leonard PA, Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Tel: (201) 489-3000.

7. *Cupid Founds., Inc. v. Jupi Corp.*, No. 07-cv-5506 (JLL)

Plaintiff, a garment manufacturer, brought suit alleging that a competitor infringed U.S. Patent No. 7,228,809. The '809 patent relates to shapewear, having finished edges, and the methods for the production of such garments. The matter was referred to me for pre-trial supervision. In carrying out that role, I held several conferences and hearings, and ruled on numerous discovery issues including whether or not discovery should precede the parties' claim construction hearing and whether the disclosure of confidential discovery should be limited to outside counsel and retained outside experts. I also addressed a motion for leave to file an amended answer. I referred the matter to mediation with a former district judge and the case ultimately settled.

Counsel for Plaintiff was Paul Hilger Kochanski, Lerner, David, Littenberg, Krumholz & Mentlik, LLP, 600 South Avenue West, Westfield, New Jersey 07090, Tel: (908) 518-6314. Counsel for Defendant was Mark M. Rottenberg, Rottenberg Lipman Rich, PC, Park 80 West, Plaza One, Saddle Brook, New Jersey 07665, Tel: (201) 490-2022.

8. *Chao v. Raceway Petroleum, Inc.*, Civil Action No. 06-cv-3363 (JLL)

This matter was brought by the United States Secretary of Labor against Defendants, a chain of gas stations, for violations of the Fair Labor Standards Act (FLSA). The Secretary alleged that Defendants violated the FLSA by failing to pay over 1,000 current and former employees overtime wages for hours worked in excess of forty each week. I presided over pre-trial proceedings in this case from 2006 through the time of trial in 2010. I held numerous conferences and hearings. I ruled on multiple discovery applications, including a motion pertaining to the informant's privilege. I held a Final Pre-trial Conference and entered the Final Pre-trial Order for the case. Thereafter, I ruled on a motion *in limine* regarding whether surveillance video tapes of the gas stations, which were not produced in discovery, could be used during trial. The case was tried in February 2010 and settled during the trial.

Counsel for Plaintiff was Diane Wade, U.S. Dept. Of Labor, 201 Varick Street, New York, New York 10014, Tel: (646) 264-3650. Counsel for Defendants was Christopher H. Lowe, Seyfarth Shaw, LLP, 620 Eighth Avenue, New York, New York 10018-1405, Tel: (212) 218-5523.

9. *Hoffman-La Roche, Inc. v. Mylan, Inc.*, No. 09-1692 (WJM)

Plaintiff Hoffman-La Roche brought suit alleging that a generic pharmaceutical manufacturer infringed U.S. Patent No. 5,472,949 by filing an Abbreviated New

Drug Application (ANDA) that sought FDA approval to engage in the marketing and sale of generic versions of Plaintiff's anti-cancer drug, Xeloda. The active ingredient in Xeloda is capecitabine. Xeloda is approved by the FDA for the treatment of breast and colorectal cancer and was the first oral chemotherapy drug approved for the treatment of cancer in the United States. It generates more than $1 billion in yearly sales. In their ANDA, the generic manufacturer asserted that the '949 patent is invalid, unenforceable and/or not infringed by its generic copy of capecitabine. I presided over this case from its inception through July 2010. During that time, I held numerous conferences with the parties and ruled on a multitude of discovery issues. Such issues include the manner by which the inventors of the '949 patent – all of whom reside in Japan – were to be deposed and whether Defendants' invalidity contentions must identify a 'lead compound.' In July 2010, an additional magistrate judge was appointed in our district and this case was reassigned in connection with the redistribution of cases after his appointment.

Counsel for Plaintiff was Sheila McShane, Gibbons P.C., One Gateway Center, Newark, New Jersey 07102, Tel: (973) 596-4637. Counsel for Defendants was Arnold B. Calmann, Saiber LLC, One Gateway Center, 10th Floor, Newark, New Jersey 07102, Tel: (973) 645-4828.

10. *Novartis Pharm. Corp. v. Roxane Labs., Inc.*, No. 08-cv-2272 (JLL)

In this matter, Novartis alleged that two generic pharmaceutical manufacturers infringed U.S. Patent Nos. 5,840,763, 5,866,581 and 5,916,893 by filing an Abbreviated New Drug Application (ANDA) seeking FDA approval to engage in the commercial manufacture, use and sale of generic versions of Novartis' lucrative drug, Famvir. The active ingredient in Famvir is famciclovir. Famvir is approved by the FDA for the treatment of shingles, genital herpes and oral herpes. It generates more than $150 million in yearly sales. In their ANDA, the generic pharmaceutical manufacturers asserted that the patents at issue are invalid, unenforceable and/or not infringed by their generic copy of famciclovir. Two cases involving the same parties and patents (but different dosages) were consolidated into this matter for pre-trial purposes. Those cases are *Teva Pharm. USA, Inc. v. Novartis Pharm. Corp., et al.*, Civil Action No. 05-cv-2881 (JLL) and *Novartis Pharm. Corp., et al. v. Roxane Labs., Inc.*, Civil Action No. 08-cv-1204 (JLL). During the pre-trial proceedings in this case, I held multiple conferences, hearings and oral arguments with the parties. I ruled on numerous discovery issues, including whether the parties must utilize the Hague Convention to secure the depositions of the foreign inventors on the patents at issue and the extent of fact and expert discovery that should precede the claim construction hearing. I also ruled on multiple motions to amend the pleadings. Discovery in this matter concluded in 2010. At that time, one generic defendant settled out of the case. Thereafter, Novartis and the remaining defendant filed a motion for claim construction, which was decided by the district judge. The parties recently

filed motions for summary judgment, which remain pending before the district judge.

Counsel for Plaintiff were Jonathan M.H. Short, McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102, Tel: (973) 848-5394; and Simon Roberts, Fitzpatrick, Cella, Harper & Scinto, 30 Rockefeller Plaza, New York, New York 10112, Tel: (212) 218-2547. Counsel for Defendants were Jason B. Lattimore, Latham & Watkins, LLP, One Newark Center, 16th Floor, Newark, New Jersey 07102, Tel: (973) 639-7536; Kenneth G. Schuler, Latham & Watkins, LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606, Tel: (312) 876-7700; and Michael E. Patunas, Lite DePalma Greenberg, LLC, Two Gateway Center, 12th Floor, Newark, New Jersey 07102, Tel: (973) 623-3000.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Altana Pharma AG v. Teva Pharm. USA, Inc.*, No. 04-cv-2355 (JLL), (CM/ECF Docket Entry No. 144) (D.N.J. Mar. 29, 2007) (copy attached)

Counsel for Plaintiffs was William J. Heller (formerly a Partner at McCarter & English, LLP), Senior Vice President & General Counsel, New York Football Giants, Inc., Timex Performance Center, 1925 Giants Drive, East Rutherford, New Jersey 07073, Tel: (201) 935-2501. Counsel for Defendants was Michael E. Patunas, Lite DePalma Greenberg, LLC, Two Gateway Center, 12th Floor, Newark, New Jersey 07102, Tel: (973) 623-3000.

2. *Pitocco v. Novartis Pharm. Corp.*, No. 07-cv-4723 (JLL), 2009 WL 5149252 (D.N.J. Dec. 17, 2009)

Counsel for Plaintiff were Christopher A. Seeger, Seeger Weiss LLP, One William Street, New York, New York 10004, Tel: (212) 584-0700; and David R. Buchanan, Seeger Weiss LLP, 550 Broad Street, Suite 920, Newark, New Jersey 07102, Tel: (973) 639-9100. Counsel for Defendants was Ethan D. Stein, Gibbons, PC, One Pennsylvania Plaza, New York, New York 10119, Tel: (212) 613-2041.

3. *Maiellano v. World Travel Grp., Inc.*, No. 06-cv-5835 (JLL), 2009 WL 605264 (D.N.J. Mar. 9, 2009)

Counsel for Plaintiffs was Diana Gomprecht, Epstein, Becker & Green, PC, 250 Park Avenue, New York, New York 10177, Tel: (212) 351-4503. Counsel for Defendant was William I. Strasser, Strasser & Associates, P.C., 7 East Ridgewood Avenue, Paramus, New Jersey 07652, Tel: (201) 445-9001.

4. *Demmick v. Cellco P'ship*, No. 06-cv-2163 (JLL), 2008 WL 750547 (D.N.J. Mar. 19, 2008)

Counsel for Plaintiffs was Stephen L. Dreyfuss, Hellring Lindeman Goldstein & Seigal, One Gateway Center, Newark, New Jersey 07102, Tel: (973) 621-9020. Counsel for Defendants were Heather V. Taylor and William T. Reilly, McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102, Tel: (973) 622-4444.

5. *Peerless Ins. Co. v. Ambi-Rad, Ltd.*, No. 07-cv-5402 (JLL), 2009 WL 790898 (D.N.J. Mar. 23, 2009)

Counsel for Plaintiff was Mark S. Labe, Baumann, Lynes & Viscomi, 155 Passaic Avenue, Fairfield, New Jersey 07004, Tel: (973) 808-9881. Counsel for Defendants were Michael Joshua Needleman, Chartwell Law Offices, The Bell Atlantic Tower, 1717 Arch Street, Philadelphia, Pennsylvania 19103, Tel: (215) 972-5404; and Robert Zimmerer, Zimmerer, Murray & Conyngham, Esqs., Plaza Two, Park 80 West, Saddle Brook, New Jersey 07663, Tel: (201) 845-7077.

6. *Coldwell Banker Real Estate LLC v. Exec. Residential Consultants, Inc.*, No. 09-cv-5513 (JLL), 2010 WL 1991456 (D.N.J. May 14, 2010)

Counsel for Plaintiff were Ronald A. Giller and Elior Daniel Shiloh, Gordon & Rees, LLP, 18 Columbia Turnpike, Suite 220, Florham Park, New Jersey 07932, Tel: (973) 549-2500; and Sarir Zandi, Gordon & Rees, LLP, 90 Broad Street, 23rd Floor, New York, New York 10004, Tel: (212) 269-5500. Counsel for Defendants were Gregory J. Sullivan, Hartsough, Kenny, Chase & Sullivan, 3812 Quakerbridge Road, Hamilton, New Jersey 08619, Tel: (609) 588-9800; and Richard F. Collier, Jr., Collier & Basil, PC, 29 Thanet Road, Suite 201, P.O. Box 3720, Princeton, New Jersey 08543, Tel: (609) 924-2213.

7. *Carbajo v. J.C. Penney Co., Inc.*, No. 09-cv-5661 (JLL), 2010 WL 2348704 (D.N.J. June 9, 2010)

Counsel for Plaintiffs was John M. Vlasac, Jr., Vlasac & Schmaruk, LLC, 467 Middlesex Avenue, Metuchen, NJ 08840, Tel: (732) 494-3600. Counsel for Defendants was Robert S. Moscow, II, McElroy, Deutsch, Mulvaney & Carpenter, LLC, 1300 Mount Kemble Avenue, Morristown, NJ 07962, Tel: (973) 425-8759.

8. *Solk v. Buffalo Acad. of Sci.*, No. 08-cv-1653 (JLL), 2009 WL 2969655 (D.N.J. Sept. 15, 2009)

Counsel for Plaintiffs was Robert J. DeGroot, 56 Park Place, Newark, New Jersey 07102, Tel: (973) 643-1930. Counsel for Defendant was Bernard Schenkler,

Damon & Morey, LLP, Avant Building Suite 1200, 200 Delaware Avenue, Buffalo, New York 41202, Tel: (716)856-5500.

9. *Days Inn Worldwide, Inc. v. Investment Props. of Brooklyn Ctr., LLC*, No. 08-cv-390 (JLL), 2009 WL 3153277 (D.N.J. Sept. 25, 2009)

Counsel for Plaintiff was David S. Sager, Day Pitney, LLP, P.O. Box 1945, Morristown, New Jersey 07962, Tel: (973) 966-8121. Counsel for Defendants was Vijayant Pawar, 35 Airport Road, Suite 330, Morristown, New Jersey 07960, Tel: (973) 267-4800.

10. *212 Marin Blvd., LLC v. Chicago Title Ins. Co.*, No. 09-cv-6366 (JLL), 2010 WL 3169280 (D.N.J. July 8, 2010)

Counsel for Plaintiffs were Stephen M. Plotnick and Herbert J. Stern, Stern & Kilcullen, LLC, 75 Livingston Avenue, Roseland, New Jersey 07068, Tel: (973) 535-1900. Counsel for Defendant were Aviva Y. Wein, Herrick Feinstein LLP, 210 Carnegie Center, Suite 102, Princeton, New Jersey 08540, Tel: (609) 452-3855; and Paul H. Schafhauser, Herrick Feinstein LLP, One Gateway Center, 22nd Floor, Newark, New Jersey 07102, Tel: (973) 274-2098.

e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, certiorari has not been requested in any of my cases.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None of my Reports and Recommendations has ever been rejected by a district judge. In addition, none of my opinions or orders has ever been reversed by a district judge.

In *Sheinberg v. Sorensen*, a case in which I exercise consent jurisdiction, I denied Plaintiffs' motion for recertification of the Plaintiff class. *Sheinberg v. Sorensen*, No. 00-cv-6041 (CCC), 2008 WL 928121 (D.N.J. Apr. 4, 2008). The class had been previously decertified by a former magistrate judge due to various errors made by Plaintiffs' counsel during the litigation. I found new class counsel continued to make the same sorts of errors and omissions cited in the original decertification opinion and I denied the motion for recertification. On appeal, the Third Circuit vacated my decision based on a procedural issue that counsel for both parties had not raised before me. The case was remanded for further proceedings. *Sheinberg v. Sorensen*, 606 F.3d 130 (3d. Cir. 2010).

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a magistrate judge, I issue orders on non-dispositive matters or orders on dispositive matters in consent cases and I issue reports and recommendations on all dispositive matters referred to me. My non-dispositive orders range from discovery matters, motions to amend the pleadings, motions to extend the discovery schedule and other miscellaneous civil motions. I issue hundreds of such orders in any given year. Very few of those orders are published, although I have filed all of my orders and opinions with our court's Electronic Case Filing system. With respect to dispositive motions referred to me by the district judge, those reports and recommendations are published electronically. In addition, the majority of my decisions addressing substantive issues are published electronically on Westlaw and LexisNexis.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I follow the federal recusal statutes and the Code of Conduct for United States Judges. In addition, I participate in our Court's automatic recusal system by which I maintain with the Clerk's Office a standing recusal list of individuals, entities, and law firms. I review and update the list on a regular basis. If a case is assigned to me involving a party or lawyer on the recusal list, it is automatically reassigned to another judge. Notably, my husband is a partner at a law firm in our State. He is on my standing recusal list and I recuse myself from any case involving his firm.

There has only been one instance in which I was asked to recuse beyond my standing recusal list. In *Role v. Local 3 P.M. & S.E. Union*, No. 08-cv-6011 (DMC) (D.N.J.), the *pro se* Plaintiff filed a motion for recusal of myself and the district judge assigned to the case, the Hon. Dennis M. Cavanaugh, U.S.D.J. Judge Cavanaugh denied the motion, finding that the Plaintiff had failed to articulate a valid basis for recusal and was merely a dissatisfied litigant. Thereafter, our district was assigned a new magistrate judge who assumed case management responsibilities on all of Judge Cavanaugh's cases, including the *Role* matter.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices other than judicial office. I have not had any unsuccessful candidacies or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not participated in any political campaigns, been a member of any political party or election committee, or held a position therein.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1989 – 1992
Office of the Corporation Counsel, City of New York
100 Church Street
New York, New York 10007
Assistant Corporation Counsel (Real Estate Litigation Division)

1992 – 1996
Robinson, St. John & Wayne
One Newark Center, 19th Floor
Newark, New Jersey 07102
Associate

1996
Robinson, Lapidus & Livelli
One Newark Center, 19th Floor
Newark, New Jersey 07102
Associate

1997 – 2004
Carpenter, Bennett & Morrissey
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Associate (1997 – 2001)
Partner (2001 – 2004)

2004 – 2006
McElroy, Deutsch, Mulvaney & Carpenter
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Of Counsel (2004 – 2005)
Partner (2005 – 2006)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Prior to my time on the bench, I served as a certified mediator on the New Jersey Roster of Mediators for the New Jersey State Courts System.

As a Magistrate Judge, I conduct settlement conferences nearly every week. I have settled hundreds of cases in that capacity. The following is a description of ten of the most significant cases I have settled.

1. Mediated to a $15 million settlement the breach of contract claims brought by a subcontractor retained to perform engineering, design and construction work in connection with the expansion of telecommunications services in a foreign country against a major American telecommunications company.

2. Mediated to a nearly $1 million settlement the excessive force claims brought by an individual for injuries arising out of two gunshot wounds to her back (which ultimately resulted in her paralysis) against a police department and individual officer defendants.

3. Mediated to a $3 million settlement the claims brought by an executive against his employer for damages arising out of the alleged breach of his employment agreement.

4. Mediated to settlement the Lanham Act claims brought by a manufacturer of dietary supplements against a manufacturer of allegedly infringing products.

5. Mediated to a $4 million settlement the sexual harassment, gender discrimination and retaliation claims of two female police officers brought against a local police department and several individual officer defendants.

6. Mediated to a nearly $2 million settlement the breach of warranty claims brought by a contractor against the manufacturer and distributor of allegedly defective construction equipment for damages arising out of the delayed completion of a multi-million dollar construction project.

7. Mediated to a $1.5 million settlement the tortious interference and breach of contract claims brought by a manufacturer of automobile windshield wipers against its exclusive distributor for breach of a distributorship agreement.

8. Mediated to settlement the patent and trademark infringement claims brought by an Italian manufacturer of specialty cookware against a manufacturer of allegedly infringing products.

9. Mediated to settlement the copyright claims brought by a commercial photographer against a clothing retailer and a major credit card company for the unauthorized and unlicensed use of his photographs in an advertisement published in a rewards catalogue.

10. Mediated to settlement the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) claims brought by the operator of commuter rail passenger services against other rail service providers for damages arising out of the cleanup of environmental contamination of a local railyard.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

After graduating law school, I was appointed an Assistant Corporation Counsel in the Real Estate Litigation Department of the Office of the Corporation Counsel, City of New York. In that capacity, I defended the City of New York in cases involving municipal bidding laws, construction law, development and zoning laws, and constitutional challenges to municipal programs and development projects. I also brought cases on behalf of the City in connection with the financing of public housing.

After leaving the New York City Corporation Counsel's Office, I entered private practice with Robinson, St. John & Wayne and its successor firm, Robinson Lapidus & Livelli. At that point, my practice became a general one, with an emphasis on securities litigation. I spent a considerable portion of my time defending First Jersey Securities, Inc. in a complex securities fraud action brought by the Securities and Exchange Commission. I also represented brokerage houses and individual brokers in securities actions before administrative bodies. In the criminal field, I assisted in the defense of a criminal tax fraud action prosecuted in the District of New Jersey.

In 1997, I left the Robinson firm to join Carpenter, Bennett & Morrissey. At Carpenter (which merged with another firm and became known as McElroy, Deutsch, Mulvaney & Carpenter), I engaged in a general litigation practice in both the state and federal courts, handling matters ranging from toxic tort, product liability, commercial and construction/surety law claims, to employment, antitrust and patent lawsuits.

While at Carpenter, typical cases I litigated included the defense of international chemical companies against workplace exposure claims brought through individual suits as well as proposed class actions for medical monitoring. Other cases I defended involved allegations of environmental contamination by thousands of homeowners in a residential community located near a former war munitions plant. While at the Carpenter firm, I was part of the defense trial team in two such cases, which were tried before juries in the New Jersey Superior Court, Passaic County, against E.I. du Pont de Nemours and Company.

During my time at Carpenter, I was also active with complex construction cases, representing sureties in cases nationwide concerning the validity and enforcement of guarantees and bonds. I defended workplace assault cases and discrimination suits involving allegations of age, race and national origin discrimination. I also defended product liability claims in diverse categories including mechanical equipment, cleaning solvents and personal care products. In addition, I litigated claims for patent infringement, focusing in the area of household appliances.

Although most of my cases were on behalf of corporate defendants, I also represented plaintiffs, both individuals and corporations. My representation of plaintiffs spanned from the negotiation and drafting of severance agreements for individual clients to the litigation of commercial/contract claims on behalf of large corporations. As for *pro bono* matters, I was appointed as counsel by the court in criminal and parental rights cases.

I was also a State Court approved mediator and was active with numerous referrals from the court on mediation matters, which included commercial, construction and employment claims.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As noted above, during my tenure at the Corporation Counsel's office, I represented the City of New York and its various public agencies. While in private practice, I represented large corporations and individuals, primarily on the defense side.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Throughout my practice from 1989 to 2006, I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 40 %
   2. state courts of record: 55 %
   3. other courts:
   4. administrative agencies: 5 %

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 97 %
   2. criminal proceedings: 3 %

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried one case to conclusion as chief counsel. I tried three cases to conclusion as associate counsel.

i. What percentage of these trials were:
   1. jury: 50 %
   2. non-jury: 50 %

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Agnes v. E.I. du Pont de Nemours & Co.*, Civil Action Nos. 98-1405 (DMC), 98-3446 (DMC), 98-2639 (DMC), 99-740 (DMC), 99-4056 (DMC), 00-475 (DMC) (consolidated actions), United States District Court for the District of New Jersey, Hon. Dennis M. Cavanaugh

This case was brought by more than 500 Plaintiffs who owned neighboring properties to a site once operated by my client, Defendant E.I. du Pont de Nemours & Co, as a World War I and World War II era munitions plant. The Plaintiffs claimed that they were injured by soil and groundwater contamination that had resulted from du Pont's operation of the plant. The Plaintiffs sought damages for personal injury and property damage and the establishment of a medical monitoring program. After extensive fact and expert discovery, I successfully settled this case on behalf of du Pont in 2004. (Although this matter settled in 2004, there has been recent motion practice directed to the settlement.)

Counsel for Plaintiffs were Michael J. Marotte, Schenck, Price, Smith & King, LLP, 220 Park Avenue, P.O. Box 991, Florham Park, New Jersey 07932, Tel: (973) 539-1000; and Leonard Z. Kaufmann, Cohn, Lifland, Pearlman, Herrman & Knopf, LLP, Park 80 Plaza West One, Saddle Brook, New Jersey 07663, Tel: (201) 845-9600.

2. *Naftali v. E.I. du Pont de Nemours & Co.*, Docket No. PAS-L-364-98, Superior Court of New Jersey, Law Division, Passaic County, Hon. Frank M. Donato

This case was brought by more than 1,800 Plaintiffs who owned neighboring properties to a site once operated by my client, Defendant E.I. du Pont de Nemours & Co., as an explosives manufacturing plant. The Plaintiffs sought to recover damages for personal injury and property damages and the establishment of a medical monitoring fund. Like *Agnes*, the Plaintiffs here claimed that they were injured by soil and groundwater contamination which resulted from my client's operation of the plant. I was part of the team that tried the claims of ten Plaintiffs in a trial that lasted more than two months. At the conclusion of the evidence, the Court dismissed all punitive damages claims. My client won a defense verdict on one Plaintiff's claim for current illness. The jury returned modest personal injury awards for three Plaintiffs, and remained deadlocked on the remaining claims, which were ultimately settled.

Counsel for Plaintiffs was Michael Lombardi, Lombardi & Lombardi, P.A., 1862 Oak Tree Road, P.O. Box 2065, Edison, New Jersey 08818, Tel: (732) 906-1500. Counsel for Co-defendant LeanderWoods was Kevin P. Harrington, Harrington & Lombardi, 508 Hamburg Turnpike, Wayne, New Jersey 07470, Tel: (973) 790-8900.

3. *SEC v. First Jersey Securities, Inc.*, Civil Action No. 85-8585 (RO), United States District Court for the Southern District of New York, Hon. Richard Owen

I was part of the trial team defending First Jersey Securities, Inc., a broker-dealer, in a significant and substantively complex securities fraud action brought by the Securities and Exchange Commission (SEC). After conducting a multi-year investigation of First Jersey, the SEC brought suit against it for excessive mark-ups on the sale of components of bundled securities. Discovery was intensive, with millions of documents produced and countless discovery and substantive motions before the court. The case culminated in a thirteen-week bench trial. The trial court's decision is reported at *SEC v. First Jersey Securities, Inc.*, 890 F. Supp. 185 (S.D.N.Y. 1995). The Second Circuit's decision affirming the trial court is reported at *SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450 (2d Cir. 1996).

Counsel for Plaintiff was Christian J. Mixter, Morgan Lewis, 1111 Pennsylvania Avenue NW, Washington, D.C. 20004, Tel: (202) 739-5575.

4. *SEB S.A. v. Sunbeam Corp.*, Civil Action No. 98-1050 (WGB), United States District Court for the District of New Jersey, Hon. William G. Bassler

Plaintiff, a French corporation, brought suit against my client, Sunbeam Corporation, for infringement of patents to certain models of deep fryers. The fryers at issue were designed, manufactured and supplied to my client, Sunbeam, by Pentalpha Enterprises, a subsidiary of Global-Tech Appliances, Inc. Plaintiff also named Pentalpha and Global-Tech as defendants. On behalf of Sunbeam, I filed cross-claims against Pentalpha and Global-Tech for indemnification and breach of warranty. After discovery and considerable motion practice directed to the cross-claims, Plaintiff settled with all defendants. At that point, the only remaining issue in the case involved my client's claims for indemnification against the co-defendants. I then filed a motion to transfer the venue of this case to the United States District Court for the Southern District of Florida. The motion was granted, the case was transferred and the New Jersey docket closed, whereupon I ceased involvement in the case.

Counsel for Plaintiff was William Dunnegan, Dunnegan LLC, 350 Fifth Avenue, Suite 4908, New York, New York 10118, Tel: (212) 332-8300. Counsel for Co-Defendants Wing Shing Int'l Ltd. (BVI), Pentalpha Enterprises Ltd., and Global-Tech Appliances, Inc., was David M. Kohane, Cole, Schotz, Meisel, Forman, & Leonard, PA, Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Tel: (201) 489-3000.

5. *Diversified Fin. Servs., Inc. v. E.I. du Pont de Nemours & Co.*, Docket No. L-6328-97, Superior Court of New Jersey, Law Division, Passaic County, Hon. W. Hunt Dumont

Plaintiff, an owner of neighboring property once used by my client, Defendant E.I. du Pont de Nemours & Co., as an explosives manufacturing plant, sought damages for alleged environmental contamination of his property. The Plaintiff claimed that a groundwater plume (an area of groundwater below his property that was contaminated with volatile organic compounds) had devalued his property. The case was tried to a jury, and at the conclusion of the evidence, Judge Dumont dismissed the Plaintiff's claim. The Appellate Division affirmed and the New Jersey Supreme Court denied certification.

Counsel for Plaintiff was Samuel D. Bornstein, Kinnelon Professional Complex, 170 Kinnelon Road, Kinnelon, New Jersey 07405, Tel: (201) 587-1117.

6. *Ramos v. PSE&G, RTE, Absolute Fire Protection, Emergency One, City of Newark and the State of New Jersey*, Docket No. L-014884-95, Superior Court of New Jersey, Law Division, Essex County, Hon. Julio M. Fuentes

Plaintiff, a firefighter, climbed an aerial ladder while fighting a fire and came into contact with high voltage power lines that were not de-energized. Plaintiff suffered personal injuries and brought suit against a local power company, alleging it negligently failed to deactivate the power lines in a timely manner. Plaintiff also brought claims against my client, RTE Corporation, alleging that RTE negligently manufactured and designed the transformer located in the vicinity of the fire. After extensive fact discovery, including numerous depositions, all claims against my client were dismissed with prejudice.

Counsel for Plaintiff was Patrick Whalen, 249 East Front Street, Trenton, New Jersey 08611, Tel: (609) 393-6970.

7. *Artis v. E.I. du Pont de Nemours & Co.*, Docket No. L-3797-00, Superior Court of New Jersey, Passaic County, Law Division, Hon. Susan L. Reisner

This case was brought by a proposed class of approximately 200 retired and former employees of a Rohm & Haas chemical manufacturing plant in Paterson, New Jersey. The Plaintiffs alleged that various chemical manufacturers, including my client, Defendant E.I. du Pont de Nemours & Co., manufactured and/or distributed hazardous chemicals to the Rohm & Haas plant between 1946 and 1990, and sought damages arising out of workplace exposure to the chemicals. The Plaintiffs asserted that exposure to these solvents caused them to be at increased risk for bladder cancer and sought the establishment of a medical monitoring program. After extensive fact and expert discovery and motion practice, a settlement was fashioned whereby medical monitoring would be

provided by the Plaintiffs' employer, Rohm & Haas. I then settled du Pont out of the matter.

Counsel for Plaintiffs was Steven H. Wodka, 577 Little Silver Point Road, P.O. Box 66, Little Silver, New Jersey 07739, Tel: (732) 530-2815. Counsel for Co-Defendants was James D. Pagliaro, Morgan, Lewis & Bockius, 1701 Market St., Philadelphia, Pennsylvania 19103, Tel: (215) 963-5668.

8. *In Re the Application of William A. Gross Const. Assoc., Inc. v. Gotbaum*, No. 2123, 10379/90. Decision reported at 150 Misc. 2d 478, 568 N.Y.S.2d 847 (N.Y. Sup. Ct., Queens Cnty., March 5, 1991), Hon. Fred J. Santucci

In this case, I successfully defended the New York City Parks Commissioner in an action involving the rejection of a public bid for the renovation of one of the largest public playgrounds in New York. The trial court's decision is now a leading case on a municipality's right to reject non-conforming construction bids.

Counsel for Petitioner was Michael A. Haskel, Mantell & Haskel (now known as Law Offices of Michael A. Haskel), 167 Willis Avenue, Mineola, New York 11501, Tel: (516) 294-0250. Counsel for Co-respondent Audax Construction Corp. was Joseph A. Baum, Pliskin, Rubano & Baum, 13711 Northern Boulevard, Flushing, New York 11354, Tel: (718) 539-2100.

9. *Sitar v. Ivax Corp.*, Docket No. L-4523-96, Superior Court of New Jersey, Union County, Law Division, Hon. Edward W. Beglin, Jr.

I defended my client, Ivax Corporation, against a former employee's claims that he was owed substantial bonus monies beyond what was paid to him in a severance agreement. I ultimately settled this case and a related case pending in Florida.

Counsel for Plaintiff was Earl M. Bennett, Husqvarna-North America Legal Affairs, 739 Statesville Road, Charlotte, North Carolina 28269, Tel: (704) 597-5000.

10. *Borsche v. Morton Int'l, Inc.*, Docket No. MID-L-3080-97, Superior Court of New Jersey, Middlesex County, Law Division, Hon. Richard P. Plechner

Plaintiff, a chemical operator employed at Morton International, a dye manufacturer, brought suit for damages arising out of workplace exposure to hazardous chemicals. The Plaintiff alleged that various chemical manufacturers, including my clients, du Pont and American Cyanamid Company, manufactured and/or distributed hazardous chemicals to Morton International. The Plaintiff asserted that he was exposed to these chemicals during his employment and that

such exposure caused him to develop bladder cancer. After discovery and motion practice, I successfully settled the case on behalf of my clients.

Counsel for Plaintiff was Steven H. Wodka, 577 Little Silver Point Road, P.O. Box 66, Little Silver, New Jersey 07739-0066, Tel: (732) 530-2815.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Prior to becoming a judge, I spent my legal career as a litigator and the cases described above were representative of my practice.

I have not performed any lobbying activities on behalf of any clients or organizations.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught a class at an institution of higher learning or a law school. However, for the past several years, I have participated as a speaker at various legal education programs through the New Jersey Institute for Continuing Legal Education, Rutgers University School of Law and the New York Intellectual Property Law Association.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans, commitments or agreements to pursue outside employment, with or without compensation, if I am confirmed to be a United States District Judge.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        My husband is a partner at the law firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., based in Roseland, New Jersey. As a U.S. Magistrate Judge, I presently recuse myself and, if confirmed to the District Court, would continue to recuse myself on all cases involving any lawyer in his firm.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

        I would resolve any potential conflict of interest by adhering to 28 U.S.C. Section 455, the Code of Conduct for United States Judges, and all applicable policies and procedures of the United States Courts. I would recuse myself in any matter in which my spouse or I hold a financial interest or have a sufficiently close connection with counsel or the parties (business or social). In the event of uncertainty, I would err on the side of disqualification.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    As a United States Magistrate Judge, I am not permitted to represent clients, pro bono or otherwise. However, I am a regular contributor to various continuing legal education seminars. In addition, I participate in programs designed to introduce youth to the legal community. To that end, I have hosted Bring Your Child to Work Day programs for the district court and a mock trial for a local sixth-grade class. Prior to my time on the bench,

I volunteered a considerable amount of my personal time to a variety of charitable organizations through the Junior League, such as Orphans with Aids, Human Needs Food Pantry, The Angel Connection and the Salvation Army.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Our senior senator, Senator Frank Lautenberg, empanelled a selection committee comprised of attorneys in New Jersey and members of his staff to assist him with his recommendation to the President. In September 2009, I interviewed with members of the committee. Thereafter, in October 2009, I interviewed with Senator Lautenberg at his New Jersey office. In February 2010, I interviewed with Senator Robert Menendez and a member of his staff. Subsequently, Senators Lautenberg and Menendez advised me that they had recommended me to the President.

Since August 12, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on September 29, 2010. On December 1, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
CECCHI, CLAIRE C.	US DISTRICT COURT-NJ	12/1/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
US DISTRICT COURT JUDGE	☑ Nomination, Date 12/1/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 11/24/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Martin Luther King Jr Fed Bldg 50 Walnut Street Newark, NJ 07102	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 12/1/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2009	CARELLA, BYRNE, CECCHI, BRODY, OLSTEIN & AGNELLO - WAGES
2.	2010	CARELLA, BYRNE, CECCHI, BRODY, OLSTEIN & AGNELLO - WAGES
3.		
4.		
5.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 12/1/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Bank of America	401k loan	K
2.	Citibank	Unsecured credit lines	O
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 12/1/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Bank of America - Checking accounts	A	Interest	J	T	Exempt				
2. Citibank - Checking accounts	A	Interest	N	T					
3. Morgan Stanley Bank - Cash	A	Interest	J	T					
4. Northwestern Mutual Ins Cash Value	A	Interest	L	T					
5. Guardian Whole Life	A	Interest	K	T					
6. 401(k) #1 - Lines 7 & 8									
7. - Davis NY Venture Fund	A	Dividend	K	T					
8. - American Growth Fund	A	Dividend	K	T					
9. SEP #1 - Lines 10 & 11									
10. - Liquid Asset Fund (Cash account)	A	Dividend	J	T					
11. - Morgan Stanley Bank (Cash account)	A	Dividend	K	T					
12. 401(k) #2 - Lines 13 & 14									
13. - Columbia Core Bond	C	Dividend	L	T					
14. - Columbia Large Cap Growth	A	Dividend	M	T					
15. Carella, Byrne, Cecchi, Brody, Olstein & Agnello, PC		None	P1	W					
16. Mark Pharmaceutical (Unlisted Security)		None	J	T					
17. Brokerage #1 - Lines 18 - 24									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 12/1/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
18. - Western Asset Money Mkt	A	Int./Div.	J	T					
19. - Vanguard Total Stock Market etf	C	Dividend	M	T					
20. - Blackrock High Yield Bond Port	B	Int./Div.	K	T					
21. - Lazard Emerging Markets Equity Port	A	Int./Div.	K	T					
22. - Principal FDS-Pref Sec Cl I	C	Int./Div.	K	T					
23. - Prudential Short-term Corp Bond Fund	B	Int./Div.	K	T					
24. - Thornburg International Value Fund	A	Int./Div.	K	T					
25. Trust 1- See Note in Part VIII		None	J	T					
26.									
27.									
28.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting	Date of Report
	CECCHI, CLAIRE C.	12/1/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

PART VII. INVESTMENTS AND TRUSTS:

Line 25. Trust 1 - Spouse is trustee of trust which as of report date had no value.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting	Date of Report
	CECCHI, CLAIRE C.	12/1/2010

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Claire C. Cecchi

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Claire Cecchi

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		400	347	Notes payable to banks-secured (auto)		100	367
U.S. Government securities				Notes payable to banks-unsecured		637	427
Listed securities – see schedule		621	450	Notes payable to relatives			
Unlisted securities – see schedule	4	010	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	661	054
Real estate owned – see schedule	4	450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize: 401k loan		31	404
Autos and other personal property		211	000				
Cash value-life insurance		103	663				
Other assets itemize:							
- Thrift Savings Plan		105	868				
				Total liabilities	2	430	252
				Net Worth	7	472	076
Total Assets	9	902	328	Total liabilities and net worth	9	902	328
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts – spouse is secondary guarantor to law firm credit line	1	170	000	Are any assets pledged? (Add schedule)	NO		
Legal Claims				Are you defendant in any suits or legal actions?	NO		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	NO		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Growth Fund of America R3	$ 26,190
BlackRock High Yield Bond Fund	15,926
Columbia Core Bond Z	93,610
Columbia Large Cap Growth Z	187,362
Davis New York Venture A	36,046
Lazard Emerging Markets Equity Fund	31,160
Principal FDS Preferred Securities Fund	39,146
Prudential Short-Term Corporate Bond Fund	25,494
Thornburg International Value Fund	27,195
Vanguard Total Stock Market ETF	134,191
Western Asset Money Market Fund	5,130
Total Listed Securities	$ 621,450
Unlisted Securities	
Carella Byrne PC	$ 4,000,000
Mark Pharmaceuticals, Inc.	10,000
Total Unlisted Securities	$ 4,010,000
Real Estate Owned	
Personal residence	$ 1,700,000
Vacation home	2,750,000
Total Real Estate Owned	$ 4,450,000
Real Estate Mortgages Payable	
Personal residence	$ 1,028,930
Vacation home	632,124
Total Real Estate Mortgages Payable	$ 1,661,054

AFFIDAVIT

I, Claire C. Cecchi, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 29, 2010

(DATE)

(NAME)

(NOTARY)

Susan A. Travis
Notary Public of New Jersey
My Commission Expires
March 23, 2015
ID No. 2175648

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
CLAIRE C. CECCHI
UNITED STATES MAGISTRATE JUDGE

Martin Luther King Jr., Federal Bldg.
& U.S. Courthouse
50 Walnut Street, Room 2064
Newark, NJ 07102
973-645-6664

January 5, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on December 1, 2010, to be United States District Judge for the District of New Jersey. I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Claire C. Cecchi

cc:
The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
CECCHI, CLAIRE C.	US DISTRICT COURT-NJ	01/05/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
US DISTRICT COURT JUDGE	☑ Nomination, Date 01/05/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 01/03/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Martin Luther King Jr Fed Bldg 50 Walnut Street Newark, NJ 07102	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 01/05/2011

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2010	CARELLA, BYRNE, CECCHI, BRODY, OLSTEIN & AGNELLO - WAGES
2.	2011	CARELLA, BYRNE, CECCHI, BRODY, OLSTEIN & AGNELLO - WAGES
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 01/05/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Bank of America	401k loan	K
2.	Citibank	Unsecured credit lines	O
3.	American Express	Credit Card	K
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
CECCHI, CLAIRE C.	01/05/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Bank of America - Checking accounts	A	Interest	J	T	Exempt				
2. Citibank - Checking accounts	A	Interest	N	T					
3. Morgan Stanley Bank - Cash	A	Interest	J	T					
4. Northwestern Mutual Ins Cash Value	A	Interest	L	T					
5. Guardian Whole Life	A	Interest	J	T					
6. 401(k) #1 - Lines 7 & 8									
7. - Davis NY Venture Fund	A	Dividend	K	T					
8. - American Funds-American Growth Fund	A	Dividend	K	T					
9. SEP #1 - Lines 10 & 11									
10. - Morgan Stanley-Liquid Asset Fund	A	Dividend	J	T					
11. - Morgan Stanley Bank (Cash account)	A	Dividend	K	T					
12. 401(k) #2 - Lines 13 & 14									
13. - Columbia Core Bond Z	C	Dividend	L	T					
14. - Columbia Large Cap Growth Z	A	Dividend	M	T					
15. Carella, Byrne, Cecchi, Brody, Olstein & Agnello, PC		None	P1	W					
16. Mark Pharmaceutical (Unlisted Security)		None	J	T					
17. Brokerage #1 - Lines 18 - 24									

1. Income Gain Codes. (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 01/05/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. - Western Asset Money Mkt	A	Int./Div.	J	T					
19. - Vanguard Total Stock Market etf	C	Dividend	M	T					
20. - Blackrock High Yield Bond Port	B	Int./Div.	K	T					
21. - Lazard Emerging Markets Equity Port	A	Int./Div.	K	T					
22. - Principal FDS-Pref Sec Cl I	C	Int./Div.	K	T					
23. - Prudential Short-term Corp Bond Fund	B	Int./Div.	K	T					
24. - Thornburg International Value Fund	A	Int./Div.	K	T					
25. Trust 1- See Note in Part VIII		None	J	T					
26.									
27.									
28.									

1. Income Gain Codes. (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 01/05/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

PART VII. INVESTMENTS AND TRUSTS:

Line 25. Trust 1 - Spouse is trustee of trust which as of report date had no value.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting CECCHI, CLAIRE C.	Date of Report 01/05/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Claire C. Cecchi

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Claire Cecchi

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		335	164	Notes payable to banks-secured (auto)		98	189
U.S. Government securities				Notes payable to banks-unsecured		646	584
Listed securities – see schedule		674	607	Notes payable to relatives			
Unlisted securities – see schedule	4	010	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	643	927
Real estate owned – see schedule	4	450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize: 401(K) Loan		29	906
Autos and other personal property		211	000				
Cash value-life insurance		110	417				
Other assets itemize:							
- Thrift Savings Plan		108	206				
				Total liabilities	2	418	606
				Net Worth	7	480	788
Total Assets	9	899	394	Total liabilities and net worth	9	899	394
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts – spouse is secondary guarantor to law firm credit line	1	700	000	Are any assets pledged? (Add schedule)	NO		
Legal Claims				Are you defendant in any suits or legal actions?	NO		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	NO		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Growth Fund of America R3	$ 27,972
BlackRock High Yield Bond Fund	16,030
Columbia Core Bond Z	97,951
Columbia Large Cap Growth Z	217,232
Davis New York Venture A	39,171
Lazard Emerging Markets Equity Fund	32,213
Principal FDS Preferred Securities Fund	38,367
Prudential Short-Term Corporate Bond Fund	25,036
Thornburg International Value Fund	28,304
Vanguard Total Stock Market ETF	144,976
Western Asset Money Market Fund	7,355
Total Listed Securities	$ 674,607
Unlisted Securities	
Carella Byrne PC	$ 4,000,000
Mark Pharmaceuticals, Inc.	10,000
Total Unlisted Securities	$ 4,010,000
Real Estate Owned	
Personal residence	$ 1,700,000
Vacation home	2,750,000
Total Real Estate Owned	$ 4,450,000
Real Estate Mortgages Payable	
Personal residence	$ 1,016,764
Vacation home	627,163
Total Real Estate Mortgages Payable	$ 1,643,927

Judge Salas.

STATEMENT OF HON. ESTHER SALAS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge SALAS. Good afternoon, Madam Chairwoman, and also to Senator Grassley. I want to thank the entire Committee for giving us this opportunity. Thank you so much.

I, too, as a magistrate judge face this very issue every day when I go into work, and I took an oath, and I stand by that oath. I follow the law, only the law. I apply the law to the facts that are before me, and I do not allow anything else, my personal opinion, anything else, to come and cloud my judgment. So, of course, I believe that precedent is paramount, and I would continue to do my job, and I would continue to live by my oath.

Senator FEINSTEIN. Thank you very much.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Esther Salas (married name, Esther Anderl)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of New Jersey

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States District Court for the District of New Jersey
   Martin Luther King, Jr. Federal Building
   50 Walnut Street
   Newark, New Jersey 07102

   [redacted]

4. **Birthplace**: State year and place of birth.

   1968; Los Angeles, California

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1991 – 1994, Rutgers University School of Law; J.D., 1994

   1987 – 1991, Rutgers University; B.A., 1991

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – Present
United States District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building
50 Walnut Street
Newark, New Jersey 07102
United States Magistrate Judge

1997 – 2006
Office of the Federal Public Defender
1002 Broad Street
Newark, New Jersey 07102
Assistant Federal Public Defender

1995 – 1997
Garces & Grabler, P.C.
415 Watchung Avenue
Plainfield, New Jersey 07060
Associate

1994 – 1995
Superior Court of New Jersey, Essex County Vicinage
Historic Courthouse
470 Martin Luther King, Jr. Boulevard
Newark, New Jersey 07102
Law Clerk to the Honorable Eugene J. Codey, Jr., J.S.C.

1992 – 1994
Office of the Prosecutor, Essex County
50 West Market Street
Newark, New Jersey 07102
Legal Intern

Other Affiliations (uncompensated)

2003 – Present
District Court Historical Society
Martin Luther King, Jr. Federal Building
50 Walnut Street
Newark, New Jersey 07102
Member, Board of Directors

2003 – 2006
New Jersey Lawyer
One Constitution Square
New Brunswick, New Jersey 08901
Member, Board of Directors

2002 – 2006
Association of Criminal Defense Lawyers of New Jersey
P.O. Box 180
West Allenhurst, New Jersey, 07711
Trustee

2001 – 2002
Hispanic Bar Association of New Jersey
P.O. Box 25562
Newark, New Jersey 07101
President

2000 – 2006
Hispanic Bar Foundation of New Jersey
No current address as entity is inactive
President (2005 – 2006)
Trustee (2000 – 2004)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I have not registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Hispanic Business Magazine, named one of the "Top 100 Influentials" (2009)
   Whipple Memorial Award, Association of Criminal Defense Lawyers of New Jersey (2008)
   Honoree, Hispanic Bar Association of New Jersey Scholarship Gala (2007)
   Super Lawyer (2005 and 2006)
   New Jersey Monthly's Top 50 Female Super Lawyers (2006)
   Marie Slocum Memorial Scholarship Recipient, Rutgers University School of Law (1991)
   Dean's List, Rutgers University (1988)
   Political Science Honor Society, Rutgers University (1988)
   Golden Key National Honor Society, Rutgers University (1988)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Association of Criminal Defense Lawyers of New Jersey
Trustee (2002 – 2006)
Education & Seminars Committee
Membership Committee
Association of the Federal Bar of New Jersey
Federal Magistrate Judges Association
Hispanic Bar Association of New Jersey
President (2001 – 2002)
Hispanic Bar Foundation of New Jersey
President (2005 – 2006)
Trustee (2002 – 2004)
Historical Society of the U.S. District Court for the District of New Jersey
Member, Board of Directors (2007 – Present)
New Jersey State Bar Association
Membership and Public Relations Committee Co-Chair (2003 – 2005)
New Jersey Supreme Court
Committee on Women in the Courts
Committee on Minority Concerns
U.S. District Court for the District of New Jersey
Federal Public and Community Defender Committee
Committee on Civil Pro Se Litigation

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Jersey, 1994
Pennsylvania, 1995 (presently on inactive status)

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2005
United States District Court for the District of New Jersey, 1995

In addition, I was admitted to practice before the United States Court of Appeals for the Third Circuit in 1997 by virtue of being and during my service as an Assistant Federal Public Defender. I did not separately seek admission to the court.

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

District Court Historical Society, Board of Directors (2003 – present)
Goddard Parent Organization, Co-Chair (2001 – 2002)
Governor's Hispanic Advisory Council for Policy Development (2002 – 2003)
New Jersey Lawyer, Board of Directors (2002 – 2006)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the organizations listed above do not currently discriminate, and did not formerly discriminate, on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

A Tribute to Our Magistrate Judges, Nunc Pro Tunc, Volume X, Issue 1, Feb. 2008. Copy supplied.

"*Trailblazers*," Nunc Pro Tunc, Volume VII, Issue 1, June 2004. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I served as a member of Governor James McGreevey's Hispanic Advisory Council on Policy Development. On October 27, 2003, the Council released a report entitled, *Latinos and the State of New Jersey: A Promising Partnership for a Better Future*. Copy supplied.

In March 2002, while I served as a member of the New Jersey Supreme Court Committee on Minority Concerns, the Committee released a 2000-2002 Report. Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I helped prepare a March 13, 2006 letter from the Federal Public and Community Defenders to Judge Ricardo Hinojosa on proposed amendments being considered by the United States Sentencing Commission. Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

After a thorough review of my records and the internet, I have listed all presentations that I am able to identify. Although I have maintained records since 2006, there may be other presentations during and prior to that time that I have been unable to locate and/or recall. For example, I have regularly given talks at Rutgers University since the mid-1990s; I have listed those events that I have been able to identify, but there were others for which I do not recall the date and for which I have no written materials.

August 4, 2010: Judge, New Jersey Law and Education Empowerment Project (NJLEEP), Summer Law Institute Mock Trial Competition, Seton Hall University School of Law. I have no notes, transcript or recording. The address of the organization is Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

June 10, 2010: Speaker, Lowenstein Sandler Diversity Initiatives Committee, Summer Associate – Sixth Annual Dinner. I have no notes, transcript or recording. Law firm coverage of the event is supplied.

June 10, 2010: Speaker, Legal Services of New Jersey, Federal Practice Training. I have no notes, transcript, or recording. The address of the organization is 100 Metroplex Drive, Suite 402, P.O. Box 1357, Edison, New Jersey 08818.

June 8, 2010: Keynote Speaker, American Board of Trial Advocates, Inaugural ABOTA Trial College at Princeton University. Notes supplied.

May 26, 2010: Speaker, Nativity Mission School, Day in Federal Court with Honorable Maryanne Trump Barry. I have no notes, transcript or recording. The address of the courthouse is Federal Square, Newark, New Jersey 07102.

May 11, 2010: Speaker, Caldwell College, "United States Courts, the Structure and Function." I have no notes, transcript or recording. The address of the college is 120 Bloomfield Avenue, Caldwell, New Jersey 07006.

April 23, 2010: Panelist, American Bar Association, 2010 ABA Section of Litigation Annual Conference CLE, "Magistrates Panel on Discovery Issues." I believe the panel may have been videotaped, but I have been unable to obtain a copy. If I am able to obtain a copy, I will supply it. The address of the Association is 321 North Clark Street, Chicago, IL 60654.

April 22, 2010: Panelist, Hispanic Bar Association of New Jersey, Gibbons Diversity Initiative. Notes supplied.

April 21, 2010: Speaker, Union City High School, Twelfth Annual Career Day, School-to-Career Initiative. I have no notes, transcript or recording. The address of the school is 2500 Kennedy Boulevard, Union City, New Jersey 07087.

April 15, 2010: Keynote Speaker, New Jersey Law and Education Empowerment Project (NJLEEP) & Hispanic Bar Association of New Jersey, Community Law Day. Notes supplied.

March 25, 2010: Panelist, Association of the Federal Bar of New Jersey, Thirty-Fourth Annual United States District Court Judicial Conference, Issues in E-Discovery. I have no notes, transcript or recording. The address of the Association is 707 Bendermere Avenue, Interlaken, New Jersey 07712.

March 4, 2010: Panelist, New York University School of Law, Judicial Clerkship Roundtable. I have no notes, transcript or recording. The address of the School of Law is 40 Washington Square South, New York, New York 10012.

January 25, 2010: Panelist, New Jersey Institute for Continuing Legal Education, Federal Practice Training, "Practice Before a United States Magistrate Judge." Audio supplied.

October 22, 2009: Panelist, Association of Latin American Law Students, Rutgers School of Law, "Obama and Sotomayor: The Age of Minority Leadership." Notes supplied.

October 16, 2009: Speaker, Latino Job Service Employer Committee, Twelfth Annual Rising Star Awards Gala Reception, Accepted Lifetime Achievement Award on behalf of Justice Sonia Sotomayor. Notes supplied.

September 24, 2009: Keynote Speaker, Hispanic Bar Association of New Jersey Young Lawyers Division, Career Alternatives and Opportunities in a Changing Economic Environment: "So you have a law degree! Now what?" I have no notes, transcript or recording. The address of the Bar Association is P.O. Box 25562, Newark, New Jersey 07101.

September 22, 2009: Panelist, New Jersey Intellectual Property Law Association, Patent Law and Pharmaceuticals Symposium, "Ethics and E-Discovery." I have no notes, transcript or recording. The address of the Association is P.O. Box 693, Westfield, New Jersey 07091.

September 4, 2009: Panelist, Hispanic National Bar Association, 34th Annual Convention and First Judicial Summit, "Litigation Track: The Right Way to Settle: Ethical and Disclosure Considerations in the Settlement Context." I have no notes, transcript or recording. The address of the Association is 800 Rio Grande Boulevard NW, Albuquerque, New Mexico 87104.

August 7, 2009: Panelist, Rutgers University School of Law, Minority Student Program, Minority Law Student Lecture. I have no notes, transcript or recording. The address of the School of Law is 123 Washington Street, Newark, New Jersey 07102.

July 29, 2009: Judge, New Jersey Law and Education Empowerment Project (NJLEEP), Summer Law Institute Mock Trial Competitions. I have no notes, transcript or recording. The address of the organization is Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

July 9, 2009: Keynote Speaker, Hispanic National Bar Foundation, New Jersey Regional Event. Notes supplied.

June 16, 2009: Panelist, Legal Services of New Jersey, Federal Practice Training, "Practice Before a United States Magistrate Judge." I have no notes, transcript or recording. The address of the organization is 100 Metroplex Drive, Suite 402, P.O. Box 1357, Edison, New Jersey 08818.

May 14, 2009: Panelist, New Jersey State Bar Association, "Tales from the Top: Unraveling Work-Life Balance Issues," Work-Life Balance Task Force. Notes provided.

April 2, 2009: Keynote Speaker, New Jersey Law and Education Empowerment Project (NJLEEP). I have no notes, transcript or recording. The address of the organization is Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

March 7, 2009: Panelist, Hispanic National Bar Association, Mid-Year Conference, "Diversity and Access to Justice: Perspectives from the Bench and Bar." I have no notes, transcript or recording. The address of the Association is 800 Rio Grande Boulevard NW, Albuquerque, New Mexico 87104.

February 24, 2009: Panelist, Rutgers University School of Law, Law Student Lecture, Black Law Students Association, Association of Latin American Law Students, and Asian Pacific Law Students Association. I have no notes, transcript, or recording. The address of the School of Law is 123 Washington Street, Newark, New Jersey 07102.

February 4, 2009: Speaker, Nativity Mission School, Day in Federal Court with the Honorable Maryanne Trump Barry. I have no notes, transcript or recording. The address of the school is 204 Forsyth Street, New York, New York 10002.

November 12, 2008: Speaker, Union City High School, Bilingual Motivational Program Lecture. I have no notes, transcript or recording. The address of the school is 2500 Kennedy Boulevard, Union City, New Jersey 07087.

October 20, 2008: Speaker, Lincoln Early School, Latino Heritage Month Celebration. I have no notes, transcript or recording. The address of the School is 51 West Englewood Avenue, Englewood, New Jersey 07631.

October 15, 2008: Panelist, Rutgers University School of Law, Minority Student Program, Minority Law Student Lecture. I have no notes, transcript or recording. The address of the School of Law is 123 Washington Street, Newark, New Jersey 07102.

July 29, 2008: Judge, New Jersey Law and Education Empowerment Project (NJLEEP), Summer Law Institute Mock Trial Competitions. I have no notes, transcript or recording, but NJLEEP newsletter coverage is supplied. The address of the organization is Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

June 17, 2008: Panelist, Legal Services of New Jersey, "Practice in Federal Court." I have no notes, transcript or recording. The address of the organization is 100 Metroplex Drive, Suite 402, P.O. Box 1357, Edison, New Jersey 08818.

May 21, 2008: Panelist, Council of Urban Professionals, Federal Judges Panel. I have no notes, transcript or recording. The address of the Council is 55 Exchange Place, Suite 501, New York, New York 10005.

May 8, 2008: Speaker, Association of Criminal Defense Lawyers of New Jersey, Recipient of the Honorable Lawrence A. Whipple Memorial Award. I have no notes, transcript or recording. The address of the Association is 510 Corlies Avenue, Allenhurst, New Jersey 07052.

April 9, 2008: Keynote Speaker, New Jersey Law and Education Empowerment Project (NJLEEP), Community Law Day. Notes supplied.

March 29, 2008: Panelist, Hispanic Bar Association of New Jersey, Women's Leadership & Advocacy Conference, "Judicial Remedies." I have no notes, transcript or recording. The address of the Bar Association is P.O. Box 25562, Newark, New Jersey 07101.

March 26, 2008: Keynote Speaker, Essex County College, WISE Women's Center, Women's History Month Program. I have no notes, transcript or recording. The college's newsletter coverage of the event is supplied. The address of the College is 303 University Avenue, Newark, New Jersey 07102.

January 16, 2008: Panelist, New Jersey Institute for Continuing Legal Education, "Practice Before U.S. Magistrate Judges." Notes and audio supplied.

January 15, 2008: Panelist, Seton Hall University School of Law, Women's Law Forum. I have no notes, transcript or recording. The address of the School of Law is One Newark Center, Newark, New Jersey 07102.

November 2, 2007: Panelist, Emerson High School, First Annual Motivational Program. I have no notes, transcript or recording. The address of the School is 318 18th Street, Union City, New Jersey 07087.

September 27, 2007: Panelist, United States Attorney's Office for the District of New Jersey, Seventeenth Annual Hispanic Heritage Program. I have no notes, transcript or recording. The address of the Office is 970 Broad Street, Newark, New Jersey 07102.

June 23, 2007: Panelist, Hispanic Bar Association of New Jersey, Annual Gala Event. I have no notes, transcript or recording. The address of the Association is P.O. Box 25562, Newark, New Jersey 07101.

February 22, 2007: Keynote Speaker, Association of Latin American Law Students (ALALS), Rutgers University School of Law, Tenth Annual Fiesta Con Sabor. Notes supplied.

February 1, 2007: I reported on my experience with electronic discovery at the meeting of the Lawyers' Advisory Committee. Minutes supplied.

January 18, 2007: Speech, Investiture Ceremony of United States Magistrate Judge Esther Salas. Transcript supplied.

January 10, 2007: Panelist, New Jersey Institute for Continuing Legal Education, "Practice Before United States Magistrate Judges." Audio supplied.

October 12, 2006: Panelist, United States Attorney's Office for the District of New Jersey, Sixteenth Annual Hispanic Heritage Program. I have no notes, transcript or recording. The address of the Office is 970 Broad Street, Newark, New Jersey, 07102

January 2006: Speaker, Association of Criminal Defense Lawyers, 2006 Seminar for CJA Panel Attorneys, New Jersey Law Center. I have no notes, transcript or recording. The address of the Association is 510 Corlies Avenue, Allenhurst, New Jersey 07052.

2006: Keynote Speaker, Horizon Blue Cross Blue Shield of New Jersey, First Annual Hispanic Affinity Group Luncheon. Notes supplied.

October 23, 2003: Panelist, New Jersey Supreme Court Committee on Women in the Courts, "Survival, Empowerment and Growth: The Legal Landscape." Transcript supplied.

June 8, 2003 (air date): Panelist, Channel My9, Hispanic Horizons State Funding and Latino Judges. I have been unable to obtain a copy of this broadcast. If I am able to do so, I will supply it. The address of Channel My9 is 9 Broadcast Plaza, Secaucus, New Jersey 07096.

April 22, 2003: Speaker, Hispanic Bar Association of New Jersey, Press Conference on Governor McGreevey's State Supreme Court nominee. I have no notes, transcript or recording. The address of the Association is P.O. Box 25562, Newark, New Jersey 07101.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Since assuming my judicial position in 2006, it has not been my practice to give interviews. I have searched my personal records and conducted an internet search for any and all interviews in which I have personally been quoted. I have noted the following publications but there may be others that I have been unable to locate.

Jeff Whelen, *From Poor Roots, A Judge Grows*, Star-Ledger, Oct. 9, 2007. Copy supplied.

Charles Toutant, *Salas, Former Public Defender, is New Magistrate Judge in Newark*, 186 N.J.L.J. 713 (Nov. 20, 2006). Copy supplied.

Guy Sterling, *Ex-Worker Admits to Role in Royalty Scheme: More Than $1M Taken from Songwriters Guild and Given to Her Kin*, Star-Ledger, Sept. 8, 2006, at 34. Copy supplied.

Staff, *Crime Doesn't Pay (Except in This Case)*, Asbury Park Press, Apr. 20, 2006. Copy supplied.

MichaelAnn Knotts, *Warning to McGreevey; Hispanic Voters May Stay Home*, New Jersey Lawyer, Volume 12, Number 17, Apr. 28, 2003, at 3. Copy supplied.

Michael Booth, *Judges Mentioned as Successors to Stein on N.J. Supreme Court*, 168 N.J.L.J. 341 (Apr. 29, 2002). Copy supplied.

Maria Vogel-Short, *Her Goal for the Year: More Hispanic Judges*, New Jersey Lawyer, Volume 11, Number 7, Feb. 18, 2002, at 4. Copy supplied.

Barbara Fitzgerald, *After a Slow Climb, Hispanics Gather Power*, New York Times, Jan. 20, 2002, at 1. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On November 3, 2006, I was appointed and sworn in as a United States Magistrate Judge for the United States District Court for the District of New Jersey.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have not presided over any cases that have gone to verdict.

i. Of these, approximately what percent were:

jury trials:	0 %
bench trials:	0 %
civil proceedings:	0 %
criminal proceedings:	0 %

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *New Jersey Dep't of Envtl. Prot. v. Am. Thermoplastics Corp.*, Civil Action No. 98-0478 (WHW/ES) (D.N.J. June 15, 2009) (consent decree entered). In 1998, the United States Environmental Protection Agency (EPA) filed an action against twenty-four potentially responsible parties for recovery of response costs at the Combe Fill South Landfill Superfund Site (the "Site") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). During the same period of time, the New Jersey Department of Environmental Protection ("NJDEP") and the Administrator of the New Jersey Spill Compensation Fund filed an action against many of the same parties. Both actions were consolidated and the direct defendants brought contribution claims against 382 third parties, including federal entities alleged to have arranged to dispose of waste at the Site. Although there had been two rounds of settlements between various parties in 2003 and 2005, the bulk of the matter remained active for close to ten years. After presiding over more than thirty lengthy conferences, the parties, with my direct assistance, were able to reach a global settlement of all matters. This required an in-depth knowledge of the law and complex subject matter. The Consent Decree resolved the environmental claims by the State plaintiffs and the United States against all of the remaining defendants and all of the parties third-partied by the direct defendants.

Counsel for Plaintiff NJDEP:

Mary Ellen Halloran
Office of the New Jersey Attorney General
R.J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
(609) 984-4931

Counsel for Consolidated Plaintiffs:	Steven Richard Baer United States Department of Justice Environmental and Natural Resources Division P.O. Box 7611 Washington, DC 20044 (202) 514-2794
Liaison Counsel for Original and Certain Third Party Defendants:	Eric B. Rothenberg O'Melveny and Myers, LLP Times Square Tower 7 Times Square New York, NY 10036 (212) 326-2003
Ad Hoc Direct Defendants Group:	John A. McKinney Counsel for Mennen Wolff & Samson, P.C. One Boland Drive West Orange, NJ 07052 (973) 530-2036
Ad Hoc Direct Defendants Group:	Andrew P. Foster Counsel for Pfizer / Warner-Lambert Drinker Biddle, LLP One Logan Square 18th and Cherry Streets Philadelphia, PA 19103 (215) 988-2512
Counsel for Waste Management Of New Jersey, Inc. & CMW Chemical Services, LLC:	Pamela S. Goodwin Saul Ewing, LLP 750 College Road East, Suite 100 Princeton, NJ 08540 (609) 452-3109
Liaison Counsel for Transporter Group:	David Katzenstein McGivney & Kluger, P.C. 23 Vreeland Road, Suite 220 Florham Park, NJ 07932 (973) 822-1110

Liaison Counsel for Connecticut And New Jersey Municipalities:	Gregory J. Coffey Coffey & Associates 465 South Street Morristown, NJ 07960 (973) 539-4500
Counsel for Certain Municipal Defendants:	Ellen A. Silver Carlton T. Spiller Greenbaum Rowe Smith & Davis, LLP Metro Corporate Campus I Post Office Box 5600 Woodbridge, NJ 07095 (732) 549-5600
Counsel for Occidental:	Larry D. Silver Langsam Stevens & Silver, LLP 1616 Walnut Street, Suite 1700 Philadelphia, PA 19103 (215) 732-3255
Counsel for Defendants/Third-Party Plaintiffs Compaction System Corporation of Connecticut, Inc. and Compaction Systems Corporation (a New Jersey Corporation):	Jeffrey M. Pollock Fox Rothschild, LLP Princeton Pike Corporate Center 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7660
Liaison Counsel for Third-Party Generators:	David F. Michelman 811 Church Road, Suite 117-A Cherry Hill, NJ 08002 (215) 557-9440
Liaison Counsel for Breakaway Third-Party Generator Group:	D.J. Camerson Bressler, Amery & Ross, P.C. Morristown, NJ 07962 (973) 514-1200

2. *Scheck Mech. Corp. v. PSEG Fossil, LLC*, Civil Action No. 05-02065 (HAA/ES) (D.N.J. dismissed Dec. 12, 2007). In this multi-million dollar contract dispute, the defendant hired plaintiff to install piping and mechanical systems at defendant's place of business. Although plaintiff was paid for completion of the project, plaintiff brought suit to recover damages that it incurred as a result of delays. Defendant maintained that the claim was frivolous because the parties had allegedly entered into a lump sum, fixed contract price. Despite an unsuccessful mediation attempt one year earlier, the parties came in for a lengthy conference. Prior to the conference, each side submitted a settlement position and

presented their respective positions through the use of a PowerPoint presentation. The case was successfully settled.

Counsel for Plaintiff:	Charles Francis Kenny, Jr. Peckar & Abramson, Esqs. 70 Grand Avenue River Edge, NJ 07661 (201) 343-3434
Counsel for Defendant:	Julian W. Wells Riker, Danzig, Scherer, Hyland & Perretti, LLP One Speedwell Avenue Morristown, NJ 07962 (973) 538-0800

3. *Estate of Jose Luis Ives v. Jaramillo*, Civil Action No. 05-03522 (PGS/ES) (D.N.J. dismissed Feb. 25, 2008). This matter involved the death of Jose Luis Ives, Jr., which resulted from an altercation with an off-duty Weehawken police officer. Ives' estate sued the defendants for assault, battery, negligence, negligent hiring and retention, violation of his civil rights in violation of 42 U.S.C. § 1983, wrongful death and survivorship. After several in-person conferences with the parties, at which I addressed the legal hurdles that surrounded the plaintiff's case against the municipal defendants, the case ultimately settled.

Counsel for Plaintiff:	Anthony C. Mack 60 Park Place, Suite 1104 Newark, NJ 07102 (973) 624-7800
Counsel for Defendant Jaramillo:	Dina M. Mastellone Genova, Burns & Vernoia Eisenhower Parkway – Plaza II Livingston, NJ 07039 (973) 533-0777
Counsel for Defendants Director Wells and Township of Weehawken:	William T. Connell Dwyer, Connell & Lisbona 100 Passaic Avenue Fairfield, NJ 07004 (973) 276-1800

4. *Raetsch v. Lucent Techs., Inc.*, Civil Action No. 05-05134 (PGS/ES) (D.N.J. June 3, 2010) (order preliminarily approving class action settlement). Plaintiffs, retired, long-service employees of AT&T, sued defendant for allegedly violating the terms of the pension plan and the medical and dental plans covering retired

management employees of Lucent (and its predecessor, AT&T), and for allegedly violating the fiduciary, prohibited transaction and anti-inurement provisions of ERISA by making improper reductions in their program of retiree medical and dental benefits. As a result of numerous discovery related motions, I brought the parties in to address any discovery-related issues. Following the case management conference, and despite having fully briefed motions for class certification and summary judgment, at my direction the parties began engaging in settlement discussions. I subsequently held multiple lengthy settlement conferences. The case was settled and the Honorable Peter G. Sheridan, U.S.D.J. approved the settlement and closed the case on November 8, 2010.

Counsel for Plaintiffs:

Alan M. Sandals
Scott P. Lempert
Sandals & Associates, P.C.
One South Broad Street, Suite 1850
Philadelphia, PA 19107
(215) 825-4000

Counsel for Defendant:

Howard Shapiro
Proskauer Rose, LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130
(504) 310-4088

Robert Rachal
Proskauer Rose, LLP
909 Poydras Street, Suite 1100
New Orleans, LA 70112
(504) 310-4088

5. *Eisai Co., Ltd. v. Teva Pharm. USA, Inc.*, Civil Action No. 05-05727 (GEB/ES 2009 WL 4666937 (D.N.J. Dec. 8, 2009). In this consolidated Hatch-Waxman action, plaintiff alleged that the defendant infringed upon U.S. Patent No. 4,895,841. Since the matter was originally filed in 2005, I have rendered various orders and opinions with respect to numerous motions (which are listed in my response to Question 13(b)). The matter is currently stayed through and including November 25, 2010, pursuant to the Honorable Chief Judge Garrett Brown's Order dated July 19, 2010.

Counsel for Plaintiff:

William J. Heller
Mark Anania
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street, P.O. Box 652
Newark, NJ 07102
(973) 622-4444

Bruce M. Wexler
Paul, Hastings, Janofsky & Walker, LLP
75 E. 55th Street – First Floor
New York, NY 10022
(212) 318-6000

Counsel for Defendant:

Michael E. Patunas
Lite, DePalma, Greenberg & Rivas, LLC
Two Gateway Center – 12th Floor
Newark, NJ 07102
(973) 623-3000

Francis Lynch
Charles Sanders
Goodwin Procter
53 State Street, Exchange Place
Boston, MA 02109
(617) 570-1000

6. *Ford Motor Co. v. Edgewood Props. Inc.*, Civil Action No. 06-1278 (GEB/ES), 257 F.R.D. 418 (D.N.J. 2009). This multi-party action has presented an assortment of discovery-related issues. Although the facts are hotly debated by the parties, the case arose from the demolition of an automobile assembly plant owned by Ford Motor Company (plaintiff and counterclaim defendant). Edgewood Properties, Inc. (defendant and counterclaimant) agreed to remove excess concrete from the demolition site for use in the development of its various residential properties. I have helped the parties resolve and have ruled on various discovery disputes since this action was filed in 2006. Although the matter is still pending, I regard this case as one of my most significant because many of the issues that have presented themselves for resolution have been highly complex. For example, I have had to decide matters that relate to whether plaintiff waived work product protection when it used information gathered during an interview with a witness in December 2008. It should be noted that there are motions currently pending before me in this matter.

Counsel for Plaintiff/Third Party Defendant Ford Motor Land Development Corp.:

John McGahren
Stephanie Rebecca Feingold
Patton Boggs, LLP
One Riverfront Plaza, Sixth Floor
Newark, NJ 07102
(973) 848-5600

Counsel for Defendants/Third-Party Plaintiffs Edgewood Properties, Inc.:	Alan Wasserman Wilentz, Goldman & Spitzer, P.C. 90 Woodbridge Center Drive, Suite 900 Woodbridge, NJ 07095 (732) 636-8000
Third-Party Defendant EQ Northeast, Inc.:	James Stewart Lowenstein Sandler, P.C. 65 Livingston Avenue Roseland, NJ 07068 (973) 597-2500
Third-Party Defendant MIG/Alberici, LLC:	Martha N. Donovan Norris, McLaughlin & Marcus, P.A. 721 Route 202-206, P.O. Box 5933 Bridgewater, NJ 08807 (908) 722-0700

7. *Spears v. Don Bosco Prep. High Sch.*, Civil Action No. 06-03610 (WJM/ES (D.N.J. dismissed June 3, 2009). In this personal injury action, plaintiff Charles Spears, III, a freshman at Don Bosco Preparatory High School, was seriously injured during an accident that occurred while he attended the school's freshman baseball team practice. Due to inclement weather, the practice was held at an indoor facility called The Home Run Factory, which was owned and operated by Don Bosco's freshmen Baseball Coach, Michael Bellovich. During practice, Spears was struck in the eye and face by a ball delivered from a pitching machine and, as a result, suffered permanent, serious injury. Although the matter presented a host of counter-claims and cross-claims, I conducted numerous settlement conferences and the matter was successfully settled.

Counsel for Plaintiff:	Jeffrey Carton Meiselman, Denlea, Packman, Carton & Eberz, P.C. 1311 Mamaroneck Avenue White Plains, NY 10605 (914) 517-5000
Counsel for Defendant and Third-Party Plaintiff, Don Bosco Preparatory High School:	Jaqueline DeGregorio Weiner Lesniak, LLP 629 Parsippany Road, P.O. Box 0438 Parsippany, NJ 07054 (973) 403-1100

Counsel for Defendants and Third-Party Plaintiffs, The Home Run Factory and Michael Bellovich:	Robert Zimmerer Zimmerer, Murray & Conyngham, Esqs. Plaza One, Park 80 West Saddle Brook, NJ 07663 (201) 845-7077
Counsel for Defendant and Third-Party Plaintiff, Michael Bellovich:	Joseph Manning Marshall, Dennehey, Warner, Coleman & Goggin, P.C. 425 Eagle Rock Avenue, Suite 302 Roseland, NJ 07068
Counsel for Third-Party Defendant, John Bykowsky:	Vincent E. Reilly Coughlin Duffy, LLP 350 Mt. Kemble Avenue P.O. Box 1917 Morristown, NJ 07962 (973) 267-6442
Counsel for Third-Party Defendants, Matthew Gaine, Angela Gaine and John T. Gaine:	Jae Y. Lee Harwood Lloyd, LLC 130 Main Street Hackensack, NJ 07601 (201) 487-1080
Counsel for Third-Party Defendant, Stephen Montalto:	Jane A. Rigby McElroy, Deutsch, Mulvaney & Carpenter, LLP Three Gateway Center 100 Mulberry Street Newark, NJ 07102 (973) 565-2065

8. *L-3 Commc'ns Mobile-Vision v. ICOP Digital, Inc.*, Civil Action No. 08-3475 (PGS/ES) (D.N.J. Nov. 9, 2009) (dismissal order entered). This case was the lead in a series of cases involving alleged infringement of a patent entitled, "Wireless Microphone for Use with an In-Car Video System," which was assigned to Mobile-Vision. Through my efforts, the parties were able to reach a global settlement which resolved four active cases in total: *L-3 Commc'ns Mobile-Vision v. ICOP Digital, Inc.*, Civil Action No. 08-3475 (PGS/ES); *L-3 Commc'ns Mobile-Vision v. Safety Vision, LP*, Civil Action No. 08-3477 (PGS/ES); *L-3 Commc'ns Mobile-Vision v. Enforcement Video, LLC*, Civil Action No. 08-3478 (PGS/ES); *L-3 Commc'ns Mobile-Vision v. Enforcement Video, LLC*, Civil Action No. 08-3479 (PGS/ES). After a global settlement of the above four matters was reached, in principle, I presided over intense negotiations over the language of the settlement agreement.

Counsel for Plaintiffs:	Franklin John Caldwell, Jr. Maglio, Christopher, Toale & Pitts 1751 Mound Street, 2nd Floor Sarasota, FL 34236 (941) 952-5242
	Joseph R. Condo Woodcock Washburn, LLP Cira Centre, 12th Floor 2929 Arch Street Philadelphia, PA 19401 (215) 564-8977
	Stuart H. Mayer Mayer & Williams, PC 251 North Avenue West, 2nd Floor Westfield, NJ 07090 (908) 518-7700
Counsel for Defendant:	Thomas W. Sweet 49 Route 202, P.O. Box 835 Far Hills, NJ 07931 (908) 658-3111

9. *In re Extradition of Aquino*, 697 F. Supp. 2d 586 (D.N.J. Mar. 4, 2010). I presided over an application for extradition, pursuant to 18 U.S.C. § 3184. Mr. Aquino, a former Philippine National Police officer, had been charged with a double murder in the Philippines in November 2000. He subsequently fled to the United States and was charged with espionage in 2005. He pleaded guilty in 2006 to possessing secret documents containing information related to the national defense. The Government's request for extradition was hotly contested and generated substantial media coverage. After reviewing all briefs and conducting oral argument, I granted the Government's motion to extradite Mr. Aquino.

Counsel for Defendant:	Mark Berman Hartmann, Doherty, Rosa, Berman & Bulbulia, P.C. 65 Route 4 East River Edge, NJ 07661 (201) 441-9056

Counsel for the Government:

Eric Todd Kanefsky
Office of the United States Attorney
District of New Jersey
970 Broad Street, Fifth Floor
Newark, NJ 07102
(973) 645-2746

10. *Gianfredi v. Hilton Hotels Corp., Inc.*, Civil Action No. 08-5413, 2010 WL 1381900 (PGS/ES), 2010 WL 1381900 (D.N.J. Apr. 5, 2010). This matter involved a slip and fall accident at the Caribe Hilton San Juan Hotel in Puerto Rico. Plaintiff brought an action against Hilton International of Puerto Rico d/b/a Caribe Hilton San Juan (HIPR) and Hilton Hotels Corporation (HHC). The central issues were whether the Court had personal jurisdiction over HIPR and whether plaintiffs could maintain a cause of action against HHC. At the direction of the District Judge, the parties engaged in extensive jurisdictional discovery, over which I presided, and submitted formal motions to dismiss. Resolving these motions required a highly fact-sensitive analysis of general and specific personal jurisdiction, which included an assessment of the Hilton's revenues and advertising practices, including its internet presence. I recommended that the District Court grant HIPR's motion to dismiss for lack of personal jurisdiction and HHC's motion to dismiss for failure to state a claim. On April 22, 2010, the District Court issued an order adopting my report and recommendation.

Counsel for Plaintiff:

Arthur L. Porter, Jr.
Fischer, Porter, Thomas & Reinfeld
180 Sylvan Avenue, Second Floor
Englewood Cliffs, NJ 07632
(201) 569-5959

Counsel for Defendants:

Paul K. Leary, Jr.
Cozen O'Connor
457 Haddonfield Road, Suite 300
P.O. Box 5459
Cherry Hill, NJ 08002
(215) 665-6911

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Eisai Co., Ltd. v. Teva Pharm. USA, Inc.*, 247 F.R.D. 445 (D.N.J. 2007)

Counsel for Plaintiff:	William J. Heller Mark Anania McCarter & English, LLP Four Gateway Center 100 Mulberry Street P.O. Box 652 Newark, NJ 07102 (973) 622-4444 Bruce M. Wexler Paul, Hastings, Janofsky & Walker, LLP 75 E. 55th Street – First Floor New York, NY 10022 (212) 318-6000
Counsel for Defendant:	Michael E. Patunas Lite, DePalma, Greenberg & Rivas, LLC Two Gateway Center – 12th Floor Newark, NJ 07102 (973) 623-3000 Francis Lynch Charles Sanders Goodwin Procter 53 State Street, Exchange Place Boston, MA 02109 (617) 570-1000

2. *Eisai Co., Ltd. v. Teva Pharm. USA, Inc.*, 247 F.R.D. 440 (D.N.J. 2007)

Counsel for Plaintiff:	William J. Heller Mark Anania McCarter & English, LLP Four Gateway Center 100 Mulberry Street P.O. Box 652 Newark, NJ 07102 (973) 622-4444

	Bruce M. Wexler Paul, Hastings, Janofsky & Walker, LLP 75 E. 55th Street – First Floor New York, NY 10022 (212) 318-6000
Counsel for Defendant:	Michael E. Patunas Lite, DePalma, Greenberg & Rivas, LLC Two Gateway Center – 12th Floor Newark, NJ 07102 (973) 623-3000
	Francis Lynch Charles Sanders Goodwin Procter 53 State Street, Exchange Place Boston, MA 02109 (617) 570-1000

3. *Ford Motor Co. v. Edgewood Props., Inc.*, 257 F.R.D. 418 (D.N.J. 2009)

Counsel for Plaintiff/Third Party Defendant Ford Motor Land Development Corp.:	John McGahren Stephanie Rebecca Feingold Patton Boggs, LLP One Riverfront Plaza, Sixth Floor Newark, NJ 07102 (973) 848-5600
Counsel for Defendants/Third-Party Plaintiffs Edgewood Properties, Inc.:	Alan Wasserman Wilentz, Goldman & Spitzer, P.C. 90 Woodbridge Center Drive Suite 900 Woodbridge, NJ 07095 (732) 636-8000
Third-Party Defendant EQ Northeast, Inc.:	James Stewart Lowenstein Sandler, P.C. 65 Livingston Avenue Roseland, NJ 07068 (973) 597-2500
Third-Party Defendant MIG/Alberici, LLC:	Martha N. Donovan Norris, McLaughlin & Marcus, P.A. 721 Route 202-206, P.O. Box 5933 Bridgewater, NJ 08807 (908) 722-0700

4. *Mack Boring & Parts Co. v. Novis Marine, Ltd.*, Civil Action No. 06-2692, 2008 WL 5136955 (D.N.J. Dec. 5, 2008)

Counsel for Plaintiff:	Timothy Ignatius Duffy Joseph C. Amoroso Coughlin Duffy, LLP 350 Mount Kemble Avenue P.O. Box 1917 Morristown, NJ 07962 (973) 267-0058
Counsel for Defendant:	Jeremiah L. O'Leary Lisa R. Bouckenooghe Robert F. Cossolini Finazzo, Cossolini, O'Leary, Meola & Hager, LLC 36 Cattano Avenue, Ste. 500 Morristown, NJ 07960 (973) 343-4963

5. *Collezione Europa U.S.A., Inc. v. Amini Innovation Corp.*, Civil Action No. 06-4929, 2009 WL 2634648 (D.N.J. Aug. 26, 2009)

Counsel for Plaintiff:	Thomas Michael Walsh Trenk, DePasquale, Webster, Della, Fera & Sodono, P.C. 347 Mount Pleasant Avenue, Ste. 300 West Orange, NJ 07052 (973) 243-8600
Counsel for Defendant:	Janyce M. Wilson Ascione & Wilson 226 St. Paul Street Westfield, NJ 07090 (908) 654-8000

6. *Gibbs v. Massey*, Civil Action No. 07-3604, 2009 WL 838138 (D.N.J. Mar. 26, 2009)

Counsel for Plaintiff:	Gregg S. Sodini Sodini & Spina, LLC 500 Harding Road Freehold, NJ 07728 (732) 431-1100

Counsel for Defendant:	Michael P. Collins Bond, Schoeneck & King, PLLC 330 Madison Avenue New York, NY 10017 (646) 253-2318

7. *Roy v. Brahmbhatt*, Civil Action No. 07-5082, 2008 WL 5054096 (D.N.J. Nov. 26, 2008)

Counsel for Plaintiff:	Joseph C. Nuzzo Law Offices of Joseph C. Nuzzo, Esq. 1700 Route 23 North, Suite 210 Wayne, NJ 07470 (973) 633-7111
Counsel for Third-Party Defendant:	Dennis J. Drasco Kevin J. O'Connor Lum, Drasco, & Positan, LLC 103 Eisenhower Parkway Roseland, NJ 07068 (973) 403-9000
Counsel Defendants:	Albert Buzzetti Albert Buzzetti & Associates 467 Sylvan Avenue Englewood Cliffs, NJ 07632 (201) 816-3733 Feng Li American Legal Services Group 1719 Route 10 East, Suite 318 Parsipany, NJ 07054 (973) 590-5110

8. *Roy v. Brahmbhatt*, Civil Action No. 07-5082, 2009 WL 1575276 (D.N.J. June 4, 2009)

Counsel for Plaintiff:	Joseph C. Nuzzo Law Offices of Joseph C. Nuzzo, Esq. 1700 Route 23 North, Suite 210 Wayne, NJ 07470 (973) 633-7111

Counsel Defendant:	Feng Li American Legal Services Group 1719 Route 10 East, Suite 318 Parsipany, NJ 07054 (973) 590-5110

9. *Pegasus Blue Star Fund, LLC v. Canton Prods., Inc.*, Civil Action No. 08-1533, 2009 WL 331413 (D.N.J. Feb. 10, 2009)

Counsel for Plaintiff:	Alan Wasserman Louis J. Seminski, Jr. Wilentz, Goldman & Spitzer, P.C. 90 Woodbridge Center Drive, Suite 900 Woodbridge, NJ 07095 (732) 636-8000
Counsel for Defendants:	Eric R. Breslin Duane Morris, LLP 744 Broad Street Suite 1200 Newark, NJ 07102 (973) 424-2063

10. *Gianfredi v. Hilton Hotels Corp., Inc.*, Civil Action No. 08-5413, 2010 WL 1381900 (D.N.J. Apr. 5, 2010)

Counsel for Plaintiffs:	Arthur L. Porter, Jr. Fischer, Porter, Thomas & Reinfeld, P.C. 180 Sylvan Avenue – Second Floor Englewood Cliffs, NJ 07632 (201) 569-5959
Counsel for Defendants:	Paul K. Leary, Jr. Cozen O'Connor 457 Haddonfield Road, Suite 300 P.O. Box 5459 Cherry Hill, NJ 08002 (856) 910-5000

e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, certiorari has not been requested or granted in any of my cases.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was

affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

The following cases involve decisions by the District Court not to adopt my recommendations.

Kuropatkin v. TRT Int'l Ltd., Civil Action No. 09-5512, 2010 WL 2035822 (D.N.J. May 21, 2010): This breach of contract and negligence action arose out of an agreement whereby Defendant TRT International agreed to ship plaintiff's automobiles and other personal effects from the United States to Russia. Plaintiff originally filed the action against TRT and Defendant FedEx Corporation and it was subsequently removed to federal court pursuant to 28 U.S.C §1441(b) on the basis of federal question jurisdiction. Defendant alleged that the Convention for the Unification of Certain Rules for International Carriage by Air signed in Warsaw in 1929, as amended at the Hague, 1955, codified at 49 United States Code, Section 40105 (the Warsaw Convention) applied in the instant matter. Plaintiff maintained that the damage to the property in question did not occur during the carriage by air, and filed a Motion to Remand. Since there was evidence in the record that the goods arrived at the Moscow facility and were destroyed nine days later, I issued a Report & Recommendation granting plaintiff's motion. The District Court judge declined to adopt the recommendation. Plaintiff appealed the matter to the Third Circuit Court of Appeals. Thereafter, I successfully settled the matter and the appeal has been dismissed.

Eisai Co., Ltd. v. Teva Pharm. USA, Inc., 557 F. Supp. 2d 490 (D.N.J. 2008): In this consolidated Hatch-Waxman action, I granted plaintiff's motion to strike portions of defendant's Amended Answer, namely, the affirmative defense of inequitable conduct. The Honorable Judge Ackerman reversed my decision and held that the motion to strike should have been denied because defendant, contrary to my holding, adequately alleged the affirmative defense at issue.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

In my capacity as a Magistrate Judge, I routinely issue orders on non-dispositive matters. Those orders can range from matters involving scheduling to more complex matters, such as motions to amend the pleadings and/or sanction motions. If the issues are dispositive in nature, then my orders must be done on a report and recommendation basis. It should be noted that any and all orders issued by me are filed with our court's Electronic Case Filing (ECF) system. Since I assumed my position in 2006, the court has been utilizing the ECF system and I have no control over which opinions are designated as unpublished.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Williams v. Paterson Bd. of Educ., Inc., No. 2:09-cv-02999 (PGS/ES). On October 1, 2010, I denied a motion by pro se plaintiff Deonca Williams seeking that I recuse myself pursuant to 28 U.S.C. § 144 or § 455. Following two in-person status conferences, plaintiff filed her recusal motion alleging that I (1) expressed my opinion concerning the outcome of the case; (2) expressed personal knowledge and familiarity with the disputed evidentiary facts; (3) treated plaintiff in an aggressive manner; and (4) wished to suppress the evidence and testimony. As is customary with any motion that is filed in this court, the defendant was permitted to oppose the recusal motion. This is the only time a litigant has requested that I recuse myself.

In keeping with the federal recusal statutes and the Code of Conduct for United States Judges, I review every new file assigned to me to ensure that no conflict of interest exists before handling the matter. Furthermore, I maintain a standing recusal list with the Clerk's Office. Currently on my recusal list are my husband,

Mark A. Anderl, and his two law partners, David Oakley and Ricardo Del Rio. My husband's firm, Anderl, Oakley and Del Rio, P.C., is a small criminal defense firm. As is required, I have and will continue to recuse myself, if confirmed, from all cases in which my husband's firm is assigned or retained. Also included on my recusal list is a prior colleague of mine, Carol Gillen, who is my mentee.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Since being sworn in as a United States Magistrate Judge on November 3, 2006, I have not engaged in any political activity. Approximately five years ago, my husband held a fundraiser in our home for Senator Robert Menendez.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

In 1994-1995, I clerked for the Honorable Eugene J. Codey, Superior Court of New Jersey, Essex County Vicinage.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1995 – 1997
Garces & Grabler, P.C.
415 Watchung Avenue
Plainfield, New Jersey 07060
Associate

1997 – 2006
Office of the Federal Public Defender
1002 Broad Street
Newark, New Jersey 07102
Assistant Federal Public Defender

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Since assuming the position of United States Magistrate Judge in 2006, I have conducted numerous settlement conferences and successfully settled hundreds of cases. Although I have previously referenced some of my most significant settlements in response to Question 13(c), below are ten additional significant cases that I have settled.

1. *Zauderer v. Lumbermans Mut. Cas. Corp.*, Civil Action No. 2:05-cv-01241 (GEB/ES) (D.N.J. dismissed on May 20, 2010). In this breach of employment contract and employment discrimination case, the plaintiff alleged a host of violations under state and federal statutory law against his former employer. With my direct assistance, the parties reached a settlement in May 2010.

2. *Kovacs v. Rutgers Univ.*, Civil Action No. 2:05-cv-02970 (PGS/ES) (D.N.J. dismissed on June 30, 2008). Plaintiff sued and alleged that defendant had violated his right to freedom of speech as guaranteed by the First Amendment. Plaintiff claimed that he suffered an adverse employment consequence, which resulted in his wrongful termination. After a series of motions, the parties came before me for three lengthy settlement conferences. A settlement was finalized and a stipulation of dismissal was entered by the District Court.

3. *Swaminathan v. Piscataway Bd. of Educ.*, Civil Action No. 2:06-02714 (DMC/ES) (D.N.J. dismissed on Nov. 23, 2009). This action arose from plaintiff's employment with the Piscataway Board of Education as a school teacher at Conackamack Middle School. Plaintiff alleged that the Board, the Board's Superintendent, and the School's Principal unlawfully took an adverse employment action against her on the basis of racial animus, in violation of state and federal statutory law. Defendants claimed both that they had a legitimate non-discriminatory reason for

taking the adverse employment action, and that they did not possess any racial animus toward plaintiff. After numerous settlement conferences, and with my immediate control over all proceedings, the matter was successfully settled.

4. *D'Aurizio v. Fair Lawn Bd. of Educ.*, Civil Action No. 06-4350 (PGS/ES) (D.N.J. dismissed Nov. 21, 2008). Plaintiffs were owners of eight residential homes located adjacent to defendant's property. The defendant discovered upon the removal of two underground fuel storage tanks that gasoline constituents had been released and had contaminated the surrounding soil. Plaintiffs sued, alleging that as a result of a "continuing release of hazardous substances" from defendant's maintenance yard, their properties had been damaged and the value of all their homes had been diminished. In light of defendant's budgetary constraints, I was able to fashion a settlement which required staging of payments. The case was successfully settled.

5. *Parker v. Rutgers Univ.*, Civil Action No. 07-0773 (PGS/ES) (D.N.J. dismissed May 14, 2009). Plaintiff sued a former employer, asserting claims for discriminatory failure to promote and discriminatory discharge in violation of the federal Age Discrimination in Employment Act and the New Jersey Law Against Discrimination. The parties came before me in two separate settlement conferences and the matter was successfully settled.

6. *Kitchen Kaboodle, Inc. v. Ovation Cabinetry, Inc.*, Civil Action No. 08-5317 (PGS/ES) (D.N.J. dismissed July 13, 2009). Plaintiff, a retail business engaged in the design, sale and installation of custom residential kitchen cabinetry, alleged that it formed an agreement with defendant to display, carry, sell and install the latter's line of premium custom kitchen cabinetry and vanities. According to plaintiff, defendant delivered defective kitchen cabinetry and subsequently failed to remediate any and all defects. As a result, plaintiff originally brought this action in the Superior Court of New Jersey, which was then removed to federal court. Following numerous conferences, the case eventually settled.

7. *Krurapp Commc'ns Inc. v. Kidsville News!, Inc.*, Civil Action No. 08-5832 (PGS/ES) (D.N.J. dismissed Oct. 15, 2009). Global settlement included resolution of *Kidsville News, Inc. v. Krurapp Commc'ns Inc.*, Civil Action No. 08-6112 (PGS/ES). Krurapp and Kidsville News!, Inc. ("KVN") entered into a licensing agreement for Krurapp to use KVN's Kisdville News! trademark and for use of KVN content for Krurapp's free, monthly child-oriented newspaper. The parties disagreed on a non-compete provision within the agreement. The matters came before me and the cases were successfully settled.

8. *Derose v. WTW USA, LLC*, Civil Action No. 08-4903 (PGS/ES) (D.N.J. dismissed May 17, 2010). Plaintiffs brought suit, alleging breach of contract, breach of the covenant of good faith and fair dealing, and in the alternative, quantum merit. Despite defendant's intention to file a Motion to Compel Arbitration, I persuaded the parties to conduct limited discovery for the purposes of engaging in mediation. The parties settled the matter before me without having to engage in full blown discovery and without the necessity of filing formal motions.

9. *Montoya v. Borough of Roselle Park*, Civil Action No. 09-2371 (SDW/ES) (D.N.J. dismissed May 4, 2010). Plaintiff brought suit, alleging that the Borough of Roselle Park and police officers from the Borough unlawfully detained, harassed, assaulted, arrested and charged her with resisting arrest and obstruction of the administration of law. The facts of this case were troubling in that plaintiff initially volunteered to translate for the victim, who had been hit by a motor vehicle. The investigation immediately after the accident consumed more time than the plaintiff had to offer since she had child care responsibilities. There was a factual dispute as to whether the plaintiff refused to cooperate with the defendants, but there was no doubt that she was arrested, handcuffed and charged with purposely preventing or attempting to prevent a public servant from lawfully performing his duties, in violation of New Jersey Statute Annotated 2C:29-2A(1). The settlement negotiations were emotionally charged but the case was successfully settled.

10. *United States v. Quality Formulation Labs., Inc.*, Civil Action No. 09-3211 (JAG/ES) (D.N.J. dismissed Feb. 1, 2010). Following extensive inspections of defendant's facility, the United States Food and Drug Administration ("FDA") issued a Warning Letter that cited a series of violations including, but not limited to, insanitary conditions and labeling violations. Defendant maintained that it had brought the facility into compliance and although it did not oppose entering into a consent decree, the defendant was opposed to an up-front and indefinite shut down of the company's operations. Plaintiff moved for immediate summary judgment. After extensive negotiating, the parties, with my direct assistance, finalized the terms and conditions of the Consent Decree which was entered by the District Court.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my career as an associate for the law firm of Garces & Grabler, P.C. in October 1995. For the most part, my practice consisted of criminal defense and appellate work. In addition to state and municipal criminal

matters, the firm would occasionally assign me to handle matrimonial, immigration and worker's compensation matters. Apart from my law related responsibilities, I was assigned to manage the firm's Trenton office.

In September 1997, I was hired by the Office of the Federal Public Defender for the District of New Jersey. In my capacity as an Assistant Federal Public Defender, I represented indigent clients in federal criminal matters. I researched and drafted motions for discovery and evidentiary hearings as well as sentencing memoranda, and I appeared frequently in federal court. I also handled all appellate responsibilities, including argument before the Court of Appeals, on cases I had been assigned for trial.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Garces & Grabler, P.C., I primarily represented individuals who were charged with either state or municipal crimes.

At the Office of the Federal Public Defender for the District of New Jersey, I represented indigent clients who qualified for court-appointed counsel. The types of charges varied, but since all individuals were facing federal charges, I was often required to work with many federal agencies. Throughout my nine years at the Federal Public Defender's Office, I represented hundreds of clients and appeared exclusively in federal court. I second-chaired two trials in the District of New Jersey and was lead counsel in a matter tried before a magistrate judge.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 9%
   3. other courts: 1%
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 5%
   2. criminal proceedings: 95%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried four cases in courts of record. I was associate counsel for three of the matters and sole counsel for one.

i. What percentage of these trials were:
   1. jury: 75%
   2. non-jury: 25%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

All of the following cases were litigated in the United States District Court for the District of New Jersey.

1. *United States v. Holloway*, Criminal No. 04-394 (DMC): I represented the defendant from May 27, 2005 to September 2, 2005. Mr. Holloway was charged in a Superseding Indictment with being a felon in possession of a firearm and conspiracy to distribute narcotics. As lead attorney, I assumed an active role in the extensive investigation of the matter. After numerous field visits and motions to compel personnel files and other relevant documents, I was able to uncover certain major discrepancies contained in the official police report. My investigation revealed that a number of officers involved in Mr. Holloway's arrest had been indicted by a Grand Jury in Essex County, New Jersey. Specifically, the officers were accused of engaging in acts of official misconduct, including theft, tampering with public records and falsifying police reports as part of an ongoing conspiracy to steal money from criminal suspects. As a direct result of my

investigation, it was revealed that one of the officers directly involved in Mr. Holloway's arrest had been indicted. That officer's alleged criminal activity fell squarely within the time frame at issue in our case. Furthermore, police records supported Mr. Holloway's version of the events and after numerous meetings with the United States Attorney's Office, all charges against Mr. Holloway were dismissed. The Honorable Dennis M. Cavanaugh, U.S.D.J., presided over the case and signed the Order for Dismissal in September 2005.

Assistant United States Attorney: Kevin G. Walsh
United States Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07102
(973) 645-2909

2. *United States v. Agent*, Criminal No. 05-553 (WJM): I represented the defendant from July 20, 2005 to March 10, 2006. Mr. Agent was charged with knowingly and intentionally distributing five grams or more of cocaine base. Mr. Agent pled guilty before the Honorable William J. Martini, U.S.D.J. At sentencing, I moved for a departure from the advisory guideline range on the grounds that Mr. Agent's guideline range was dramatically increased by the "powder/crack disparity." Furthermore, I argued that the career offender provisions of the guidelines were also disproportionally impacted by the disparity. My motion was critical since the primary basis for the departure motion was made prior to the Commission's amendment to Section 2D1.1 of the guidelines which took effect on November 1, 2007. Judge Martini, in an exercise of his discretion, granted Mr. Agent a departure from the advisory guideline range of 188 to 235 months, and, instead, imposed a 60-month sentence.

Assistant United States Attorney: Milagros Camacho
United States Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07102
(973) 645-2700

3. *United States v. Martinez-Bernal*, Criminal No. 04-117 (JAG): I represented the defendant from September 17, 2003 to October 21, 2005. Mr. Martinez-Bernal pled guilty to knowingly and intentionally distributing fifty grams or more of cocaine base. At his original sentencing hearing, the District Court refused to downwardly depart and sentenced Mr. Martinez-Bernal to 96 months. I appealed the matter in light of the decision by the United States Supreme Court in *United States v. Booker*, 543 U.S. 220 (2005). On October 21, 2005, the Honorable Joseph A. Greenaway, Jr., U.S.D.J., granted Mr. Martinez-Bernal's request for a *Booker* variance, reducing his original sentence of 96 months to 75 months.

Assistant United States Attorney: Rachael Hill
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

4. *United States v. Ford*, Criminal No. 99-620 (NHP): I represented the defendant from October 19, 1999 to June 20, 2000. Ms. Ford had pled guilty to knowingly and intentionally importing narcotics into the United States. At the sentencing, the government argued that Ms. Ford did not satisfy the requirements of United States Sentencing Guideline, Section 5C1.2 (Safety Valve), and therefore was subject to the mandatory minimum sentence of 60 months. After reviewing the sentencing submissions and hearing oral arguments, The Honorable Nicholas H. Politan, U.S.D.J., granted Ms. Ford a two-level Safety Valve reduction, imposing a sentence of 48 months.

Assistant United States Attorney: Michael F. Buchanan
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

5. *United States v. Starling*, Criminal No. 01-093 (DMC): I represented the defendant from February 16, 2001 to April 13, 2006. Mr. Starling faced charges out of the District of New Jersey and the Southern District of New York. The three-count information out of the District of New Jersey charged Mr. Starling with major fraud against various governmental agencies. The District of New Jersey information also charged Mr. Starling with submitting false documents to the United States Department of the Navy and to the United States Postal Services. The Southern District of New York, in a three-count information, charged Mr. Starling with mail fraud against the Port Authority of New York and New Jersey. Having attended numerous meetings at the Office of the United States Attorney for the District of New Jersey and Southern District of New York, I was able to coordinate the global plea and sentencing before the Honorable Dennis M. Cavanaugh, U.S.D.J. Although he was facing considerable jail time, Mr. Starling was sentenced to a three-year probationary term.

Assistant United States Attorney: Richard Constable
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

6. *United States v. Cravo*, Criminal No. 05-052 (JCL): I represented the defendant from June 17, 2004 to January 24, 2005. Mr. Cravo was indicted for maliciously damaging and destroying, and attempting to damage and destroy, by means of fire, real property. Since it appeared that the matter would not resolve itself in a guilty plea, over the course of several months, I prepared the matter for trial. Mr. Cravo, in a surprise turn of events,

decided to enter a guilty plea to the one-count indictment. The Honorable John C. Lifland, U.S.D.J., sentenced Mr. Cravo to the mandatory minimum term of imprisonment of 60 months.

Assistant United States Attorney:

R. Joseph Gribko
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

7. *United States v. Cruz*, Criminal No. 01-292 (JWB): I represented the defendant from April 25, 2001 to April 17, 2003. Mr. Cruz pled guilty to knowingly and intentionally distributing fifty grams or more of cocaine base, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A). At sentencing, I moved for a downward departure on the ground that Mr. Cruz's criminal history score and guideline range as a career-offender overstated his actual criminal past and offense conduct. At sentencing, the Honorable John W. Bissell, U.S.D.J., refused to grant a departure and sentenced Mr. Cruz to 262 months. An appeal was taken and oral argument was granted by the Third Circuit Court of Appeals (No. 02-2884) on February 28, 2003. On April 17, 2003, Mr. Cruz's appeal was dismissed by the Third Circuit for lack of jurisdiction.

Assistant United States Attorney:

Gail R. Zweig
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

8. *United States v. Dillard*, Criminal No. 03-844 (KSH): I represented the defendant from October 19, 2004 to June 20, 2007. In a multi-count indictment, Mr. Dillard, along with numerous co-defendants, was charged with conspiracy to deal in firearms without a license, in violation of Title 18, United States Code, Section 371, and dealing in firearms without a license, in violation of Title 18, United States Code, Sections 922(a)(1) and (2). While I represented him, Mr. Dillard became extremely ill and was no longer able to assist in our preparation for trial. Since the government would not consent to sever Mr. Dillard's charges from the rest of the defendants, I formally moved to sever his case. The request was based, in large part, on Mr. Dillard's fitness to stand trial. After a very contentious hearing, the Honorable Katharine S. Hayden, U.S.D.J., granted Mr. Dillard's motion to sever on August 14, 2006. Mr. Dillard passed away on October 10, 2006, and was never tried on the charges contained in the Third Superseding Indictment.

Assistant United States Attorneys:

Marc Agnifilo
Serina M. Vash
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

9. *United States v. Glenn*, Criminal No. 97-562 (JAG): I represented the defendant from September 24, 1997 to July 2, 1998. Mr. Glenn was charged in a Three Count Superseding Indictment with knowingly and with the intent to cause death and serious bodily injury, taking by force an automobile. Count Two charged that Mr. Glenn was a felon in possession of a firearm. The third and final count charged that Mr. Glenn used a firearm in relation to the crime of carjacking. Along with lead counsel, Chester Keller, I tried the case before a jury and Mr. Glenn was convicted on Count Two of the indictment. He was sentenced on July 1, 1998 by the Honorable Joseph A. Greenaway, Jr., U.S.D.J., and received the statutory maximum of 120 months. An appeal was filed on Mr. Glenn's behalf (No. 98-6169), and the Third Circuit affirmed the District Court's sentence on March 22, 1999.

Assistant United States Attorney: Sherry Hutchins-Henderson
United States Attorney's Office
970 Broad Street, Suite 502
Newark, NJ 07102
(973) 645-2700

10. *United States v. Montalvo*, Criminal No. 99-241 (JWB): I represented the defendant from May 6, 1999 to July 30, 2001. Ms. Montalvo pled guilty to knowingly and intentionally distributing five grams or more of cocaine base. Ms. Montalvo was facing a lengthy prison term and she had lost custody of her children due to her severe addiction to narcotics. In the course of representing her, I was able to secure treatment for her in a long term in-patient facility. The intense in-patient treatment proved to be life-altering for Ms. Montalvo. After successfully completing the program, she was able to secure full-time employment and eventually regain custody of her children. At sentencing, I sought a downward departure based on Ms. Montalvo's extraordinary post-conviction rehabilitation (and her extraordinary acceptance of responsibility). The Honorable John W. Bissell, U.S.D.J., sentenced Ms. Montalvo to time served.

Assistant United States Attorneys: Lee Vilker
Matthew S. Queler
United States Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07102
(973) 645-2700

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Most of the litigation matters I have handled throughout my career related to criminal defense. Many of these matters were resolved by way of plea bargaining and without the necessity of a trial. There are no other legal activities which I have pursued.

With respect to lobbying activities, I have never been involved in any such activities.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    None. I have never formally taught at any institution of higher learning and/or law school.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    No, I do not intend to pursue outside employment.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, my current computerized recusal list would remain in place and I would periodically review and, if necessary, update the list with our Clerk's Office. As is required, I will recuse myself from any case being handled by my husband's law firm, Anderl Oakley & Del Rio, P.C. Additionally, I will continue to place Carol Gillen on my recusal list. Ms. Gillen, an Assistant Federal Public Defender, is someone who I have mentored and I consider her a close friend. I will continue to review matters that come before me and I may elect to recuse myself from any matters involving certain lawyers from either Garces & Grabler, P.C. or the Office of the Federal Public Defender for the District of New Jersey. As matters are assigned to me, I will review the parties and attorneys listed to ensure that there are no conflicts of interest.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Since assuming my position as a United States Magistrate Judge in 2006, I have been guided by the directives mandated by the federal recusal statutes and the Code of Conduct for United States Judges. In the event that I am confirmed, I will continue to follow those directives to ensure that I resolve any potential conflict of interest appropriately. For matters in which I am unsure, in addition to complete disclosure to all parties, I will seek counsel from the Committee on Codes of Conduct of the Judicial Conference of the United States.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Throughout my professional career, I have made it a point to reach out to the community, and I have participated throughout the years in programs that seek to empower urban youth to achieve academic and professional success. The New Jersey Law and Education Empowerment Project (NJLEEP) is one such program that targets children, grades eight to twelve, from underserved neighborhoods in northern New Jersey. Children are selected to participate in the program and the program aims to help the children develop habits necessary for lasting success. I remain committed to offering my time, commitment and services to programs like NJLEEP. I also have returned to my high school in Union City, New Jersey for various programs in an effort to serve as a mentor to children currently enrolled at the school. My commitment to causes aimed at combating the rapidly growing high school dropout epidemic is one that has been and will remain a constant in my life.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Prior to August 2009, I expressed my interest in pursuing an appointment to the District Court to both of my United States Senators. In August 2009, I was contacted by a representative of Senator Frank Lautenberg inquiring into whether I was interested in being considered for a District Court judgeship for the District of New Jersey. Having expressed such an interest, I met with Senator Lautenberg's selection group on September 11, 2009. Subsequently, I met with Senator Lautenberg and his Chief of Staff on October 26, 2009. On February 15, 2010, I met with Senator Robert Menendez and his Chief Counsel. On February 17, 2010, I wrote to White House Counsel Robert Bauer to express my interest in am appointment to the United States District Court for the District of New Jersey. I enclosed an informational packet for Mr. Bauer's review.

Since August 25, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on October 7, 2010. On December 1, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
SALAS, ESTHER	U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY	12/01/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
DISTRICT COURT JUDGE	☑ Nomination, Date 12/01/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 11/10/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
4024 MARTIN LUTHER KING JR FED BUILDING & US COURT HOUSE 50 WALUNUT ST NEWARK NJ 07102	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☑ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	
3.	
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 12/01/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2009	SHAREHOLDER, ANDERL & OAKLEY PC, ATTORNEY - SALARY
2.	2009	SHAREHOLDER, ANDERL & OAKLEY PC, ATTORNEY - S CORP INCOME
3.	2010	SHAREHOLDER, ANDERL & OAKLEY PC, ATTORNEY - SALARY
4.	2010	SHAREHOLDER, ANDERL & OAKLEY PC, ATTORNEY - S CORP INCOME

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 12/01/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
SALAS, ESTHER	12/01/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. ANDERL & OAKLEY PC		None	N	V	Exempt				
2. ANDERL & OAKLEY PC IRA #1	A	Dividend	M	T					
3. -OPPENHEIMER EQUITY FUND B									
4. -OPPENHEIMER EQUITY FUND A									
5. -OPPENHEIMER MAIN ST B									
6. -OPPENHEIMER MAIN ST A									
7. AMER FDS-EUROPAC GROWTH A	A	Dividend	J	T					
8. AMERICAN FDS-GROWTH FD OF AMERICA A	A	Dividend	J	T					
9. AMERICAN FDS-SMALLCAP WORLD A	A	Dividend	J	T					
10. AMERICAN FDS - FUNDAMENTAL INV A	A	Dividend	J	T					
11. AMERICAN FDS-CAP WORLD G&I A	A	Dividend	J	T					
12. AMERICAN FDS-AMER BALANCED FD A	A	Dividend	J	T					
13. AMERICAN FDS-CASH MANAGEMENT A (Y)									
14. PNCBANK (CHECKING)	A	Interest	J	T					
15. PNCBANK (SAVINGS)	A	Interest	J	T					
16. PNCBANK (CD)	B	Interest	L	T					
17.									

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 12/01/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

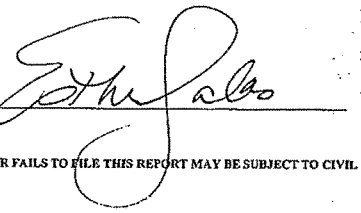
PART VII. INVESTMENTS AND TRUSTS
ITEM 1. ANDERL & OAKLEY PC - VALUE OF SPOUSE'S 50% INTEREST IN HIS LEGAL PRACTICE IS ESTIMATED TO BE 50% OF THE 2009 TOTAL REVENUES EARNED BY THE CORPORATION.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 12/01/2010

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature 

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Esther Salas

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		62	816	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		148	675	Notes payable to relatives			
Unlisted securities – Anderl & Oakley PC		291	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		145	078
Real estate owned – personal residence		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		140	000	- Thrift Savings Plan loan		34	104
Cash value-life insurance							
Other assets itemize:							
- Thrift Savings Plan		206	351				
				Total liabilities		179	182
				Net Worth	1	119	660
Total Assets	1	298	842	Total liabilities and net worth	1	298	842
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds American Balanced Fund A	$ 1,497
American Funds Capital World Growth and Income Fund A	950
American Funds Europac Growth Fund A	1,181
American Funds Fundamental Investors A	4,507
American Funds Smallcap World Fund-A	1,169
American Funds The Growth Fund of America-A	956
Oppenheimer Equity Fund, Inc. A	13,371
Oppenheimer Equity Fund, Inc. B	20,946
Oppenheimer Main Street Fund A	39,993
Oppenheimer Main Street Fund B	64,105
Total Listed Securities	$ 148,675

AFFIDAVIT

I, **ESTHER SALAS**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 29, 2010
(DATE)

(NAME)

(NOTARY)

KIMBERLY DARLING
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 5, 2013

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
ESTHER SALAS
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
ROOM 2037
NEWARK, NJ 07101
973-297-4887

January 5, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I filed in connection with my nomination on December 1, 2010, to be a United States District Judge for the District of New Jersey. Incorporating the additional information listed below, I certify that the information contained in the Senate Questionnaire, is, to the best of knowledge, true and accurate.

Q.12.d.: Copies, transcripts or recordings of all speeches or talks:

Prior to my nomination and Your Honor's receipt of my Questionnaire, I had requested copies of videos and/or recordings from various entities that were responsible for programs in which I had participated as a speaker or panelist. However, despite my best efforts, I did not obtain the requested copies until after my initial materials were submitted. As such, please note that I have provided video recordings for the following three presentations.

- June 10, 2010: Speaker, Legal Services of New Jersey, Federal Practice Training.
- June 16, 2009: Panelist, Legal Services of New Jersey, Federal Practice Training, "Practice Before a United States Magistrate Judge."
- June 17, 2008: Panelist, Legal Services of New Jersey, "Practice in Federal Court."

Q.13.b.: Citations:

The following is a list of citations to opinions that need to be included in my Senate Questionnaire:

- *Ford Motor Co. v. Edgewood Props.*, Civil Action No. 06-1278, 2010 U.S. Dist. LEXIS 130866 (D.N.J. Dec. 10, 2010).

- *Marucci v. Twp. of W. Orange*, Civil Action No. 10-2163, 2010 U.S. Dist. LEXIS 123567 (D.N.J. Nov. 4, 2010).

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Esther Salas
U.S. Magistrate Judge

cc:
The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
SALAS, ESTHER	U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY	01/05/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
DISTRICT COURT JUDGE	☑ Nomination, Date 01/05/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 12/28/2010
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
4024 MARTIN LUTHER KING JR FED BUILDING & US COURT HOUSE 50 WALUNUT ST NEWARK NJ 07102	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 01/05/2011

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income – *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2010	SHAREHOLDER, ANDERL & OAKLEY PC, ATTORNEY - SALARY
2.	2010	SHAREHOLDER, ANDERL & OAKLEY PC, ATTORNEY - S CORP INCOME
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 01/05/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 01/03/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (3) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
1. ANDERL & OAKLEY PC		None	N	V	Exempt				
2. ANDERL & OAKLEY PC IRA #1	A	Dividend	M	T					
3. -OPPENHEIMER EQUITY FUND B									
4. -OPPENHEIMER EQUITY FUND A									
5. -OPPENHEIMER MAIN ST B									
6. -OPPENHEIMER MAIN ST A									
7. AMER FDS-EUROPAC GROWTH A	A	Dividend	J	T					
8. AMERICAN FDS-GROWTH FD OF AMERICA A	A	Dividend	J	T					
9. AMERICAN FDS-SMALLCAP WORLD A	A	Dividend	J	T					
10. AMERICAN FDS - FUNDAMENTAL INV A	A	Dividend	J	T					
11. AMERICAN FDS-CAP WORLD G&I A	A	Dividend	J	T					
12. AMERICAN FDS-AMER BALANCED FD A	A	Dividend	J	T					
13. AMERICAN FDS-CASH MANAGEMENT A (Y)									
14. PNCBANK (CHECKING)	A	Interest	J	T					
15. PNCBANK (SAVINGS)	A	Interest	J	T					
16. PNCBANK (CD)	B	Interest	K	T					
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000 J =$15,000 or less N =$250,001 - $500,000 P2 =$25,000,001 - $50,000,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000 K =$15,001 - $50,000 O =$500,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000 L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000 M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 01/05/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

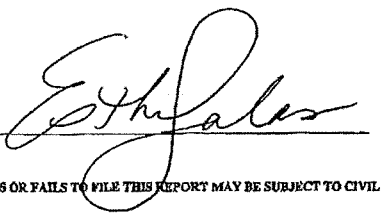
PART VII. INVESTMENTS AND TRUSTS
ITEM 1. ANDERL & OAKLEY PC - VALUE OF SPOUSE'S 50% INTEREST IN HIS LEGAL PRACTICE IS ESTIMATED TO BE 50% OF THE 2009 TOTAL REVENUES EARNED BY THE CORPORATION.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting SALAS, ESTHER	Date of Report 01/05/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature 

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Esther Salas

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		49	843	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		156	959	Notes payable to relatives			
Unlisted securities – Andert & Oakley PC		291	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		132	938
Real estate owned – personal residence		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		140	000	- Thrift Savings Plan loan		33	310
Cash value-life insurance							
Other assets itemize:							
- Thrift Savings Plan		210	462				
				Total liabilities		182	420
				Net Worth	1	091	202
Total Assets	1	298	264	Total liabilities and net worth	1	298	264
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds American Balanced Fund A	$ 1,542
American Funds Capital World Growth and Income Fund A	958
American Funds Europac Growth Fund A	1,188
American Funds Fundamental Investors A	4,728
American Funds Smallcap World Fund-A	1,203
American Funds The Growth Fund of America-A	997
Oppenheimer Equity Fund, Inc. A	14,377
Oppenheimer Equity Fund, Inc. B	22,004
Oppenheimer Main Street Fund A	42,881
Oppenheimer Main Street Fund B	67,081
Total Listed Securities	$ 156,959

I would like to give each of you an opportunity to introduce your family so that it can be recorded in the record.

Mr. Sharp.

Mr. SHARP. Thank you, Senator. I have with me here today a number of family and friends. First, my wife, Holly Sharp, is here; my daughter Sydney, who is a student at Oldfield School in Baltimore and was fortunate to get out of class today. My mother, Annette Sharp, is here from Memphis, Tennessee. My mother-in-law, Ashley Conner; my brother-in-law, Forrest Conner; sister-in-law, Stephanie Conner. A good friend and long-time law partner, Jay Drescher made the trip from Nashville, along with my friend of some 20 years, former Congressman Bob Clement from Nashville; Ken Larish; and Kurt Schaefer who I practiced law with a number of years ago, who now practices here. He had to leave, went to another event, but former Secretary of Labor, Bill Brock, showed up to wish me well, and I appreciate that.

Senator FEINSTEIN. Thank you. Thank you very much.

Mr. Dalton.

Mr. DALTON. Thank you, Senator Feinstein. Senator Nelson was kind enough to previously introduce my family, so I will not repeat that.

Senator FEINSTEIN. You will pass.

Mr. DALTON. Except to say that my father, who is buried up the road at Arlington National Cemetery, I know is here with me in spirit, and so the gang is all here and they honor me with their presence.

Senator FEINSTEIN. Thank you.

Judge Cecchi.

Judge CECCHI. Thank you. And, again, in addition to thanking the Committee, I would like to thank Senator Lautenberg and Senator Menendez for their support and their kind words today. It is certainly much appreciated.

And with me today I have a number of friends and family, and I would like to introduce them, starting with the smallest first: my son, James, who is 7 years old, who is very happy to be here today. I have my husband, James Cecchi, and I have my mother, Helen Chadirjian; my brother, also a lawyer, Michael Chadirjian. I have dear friends David Baron, John Agnello, Debbie Agnello, and I have my top-notch staff, my career law clerk, Melissa Reilly, and my judicial assistant, Dina Daggett.

And I would also like to raise the memory of my father, Michael Chadirjian, and my father-in-law, James Cecchi, who both had a tremendous influence on my life, and I wish they could be here to share this moment with me.

Thank you.

Senator FEINSTEIN. Thank you very much.

Judge Salas.

Judge SALAS. Yes, thank you. I wanted to thank the Senators as well, Senator Menendez and Senator Lautenberg. I want to thank the President for his nomination, and I am humbled by his nomination and his support.

I have my family as well here, and here is my husband, Mark Anderl; my son, Daniel Mark, who is really excited, and he wanted me to make sure, Madam Chairwoman, that you knew that he got

permission from his principal to be here, Sister Mary Louise. So he is not going to get in trouble.

Senator FEINSTEIN. That is excellent. We would not want him here any other way. And I can tell he is very proud of you. He has a big smile on his face.

Judge SALAS. My brother, Carlos Salas, is here. My sister, Julie Fabiny, is here. Her daughter, my niece, Hannah Fabiny. I have three dear friends that traveled very far, one on the red-eye from San Diego, my friend Juanita Sanchez. I also have Allison Ecko here, and I also have Jane Gerrity Schneidman. Not present are a number of family and friends watching on the webcast, and I could not name them all, but they know who they are and I thank them for their support.

I just finally want to say that the one person who is not here is my mother, and she was too ill to travel. But she is here in spirit.

Senator FEINSTEIN. Thank you. Thank you very much.

Senator?

Senator GRASSLEY. I have just one question for each of you. They kind of follow the same theme, but they are a little bit different approach, and none of them are meant to catch you off guard, and I will refer to Professor Liu to some extent in my questions, and it does not matter whether you have ever read any of his stuff or not. It is just kind of a basis for a philosophical question that I would like to get an answer from each of you, so I will start with Mr. Sharp.

Professor Liu supports, quote-unquote, a social needs-based view of the living Constitution. He has said, "The problem for the courts is to determine at the moment of decision whether our collective values on a given issue have converged to a degree that can be persuasively crystallized and credibly observed into a legal doctrine."

Do you believe it is proper for a judge to consider "our collective values on a given issue" when interpreting the Constitution?

Mr. SHARP. Thank you for the question, Senator. The short answer is no, I do not. As a district court judge, the job of that judge, if I am fortunate enough to be confirmed, would be to look at the language of the statute or the law that needs to be interpreted or applied to the facts in front of me, what the Supreme Court has said about that, what the Sixth Circuit has said about that, or what the other circuits have said about that. And that is where it ends, applying that law to this set of facts, and the other analysis should not play into it.

Senator GRASSLEY. Okay. Mr. Dalton, on the issue of using foreign law interpreting the U.S. Constitution, Professor Liu has said, "The U.S. Supreme Court has cited foreign authority in cases limiting the death penalty and invalidating criminal laws against homosexuals, sodomy among others. The resistance to this practice is difficult for me to grasp since the United States can hardly claim to have a monopoly on wise solutions to common legal problems faced by constitutional democracies around the world."

So do you agree with a statement like that, whether Professor Liu made it or anybody else made it?

Mr. DALTON. Thank you, Senator Grassley. I am a practicing lawyer and not a constitutional scholar, but I can tell you that, in

my view, international law should play no role in the interpretation or application of the laws of the United States.

Senator GRASSLEY. Okay. And, Ms. Cecchi, Professor Liu wrote a book in which he proposed and defended a theory of interpreting the Constitution that he calls "constitutional fidelity." He described his philosophy in an interview with the American Constitution Society, and you have heard me say this twice now, if you were here during the other hearing, and I assume you might have been. He said, "And what we mean by fidelity is that the Constitution should be interpreted in ways that adapt its principles and its text to the challenges and conditions of our society in every single generation."

Now, whether Professor Liu said that or anybody else, the question is: Do you agree with the statement "the Constitution should be interpreted in ways that adapt its principles and its text to the challenges and conditions of our society in every single generation"?

Judge CECCHI. Thank you very much for the question. While I am not familiar with his works, I do understand the issue that we are addressing here. And I do not agree with the position he has taken. What I would advocate, what I do every day, is I examine the provision that I need to examine, and I anchor myself in the words of the document. And if I were reviewing the Constitution, I would be looking at the Constitution, its exact wording. I would be looking at any Supreme Court precedent that has interpreted that provision to look for guidance as to any interpretive tools. And I would be faithfully trying to determine the intent of the Framers when they drafted that document.

Senator GRASSLEY. Thank you. And for Ms. Salas, Professor Liu has said, "Constitutional meaning is a function of both text and context. The relevant context includes public values and social understandings as reflected in the statutes, common law, and other parts of the legal landscape."

Do you believe it is proper for the courts to consider "public values and social understandings" when interpreting the Constitution?

Judge SALAS. To put it simply, Senator Grassley, no. I think you have to look at the Constitution and the laws. You have to look at the plain meaning of them. You have to look at precedent. I am always guided by precedent, and I would, if I am fortunate enough to be confirmed, always follow precedent, follow the mandates of the Supreme Court and of the Third Circuit, and that is what I would limit myself to.

Senator GRASSLEY. Thank you all very much, and thank you, Madam Chairman.

Senator FEINSTEIN. You are welcome. You are welcome.

The record will be open for 1 week for Senators who have questions for the record, and I want to thank our witnesses today, wish you good luck, and thank you all, ladies and gentlemen.

The hearing is adjourned.

[Whereupon, at 5:03 p.m., the Committee was adjourned.]

[The Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Claire C. Cecchi
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Charles Grassley

1. **Do you believe that our federal government is one of limited and enumerated powers?**

   Response: Yes. The Constitution and the Tenth Amendment are clear that the federal government is one of limited and enumerated powers. The Supreme Court has affirmed this principle.

2. **Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances?**

   Response: Yes. When Congress enacts a law in contravention of the Constitution, a judge must either invalidate the act or limit its application.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe the most important attribute of a judge is the ability to be fair and impartial in the application of the law to the facts, to treat all litigants with respect and to provide a full and fair opportunity to be heard. I believe I possess that attribute.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe that a judge must be respectful, courteous and patient, and approach each matter with an objective and impartial stance. I believe I meet this standard.

5. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: In a case of first impression, if there were no controlling precedent, I would carefully review any analogous Supreme Court and Circuit Court precedent. I would also review any applicable statutory or constitutional provisions that may address the issue.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: If confirmed as a district judge, I would be bound to apply the precedent of the Supreme Court or the Court of Appeals. I would not use my own judgment of the merits.

8. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: As a magistrate judge, I am familiar with the caseload in our federal courts and the importance of the efficient administration of justice. Judges play a significant role in the pace of litigation and must ensure that cases are properly managed and proceed expeditiously. If confirmed, I would continue my practice of intervening in matters early on to identify, streamline and resolve issues. From the inception of a case, I would encourage settlement and mediation. I would issue pretrial scheduling orders, promptly decide motions and set firm trial dates. At all times, I would work with counsel to ensure that the cases assigned to me are proceeding in a timely and effective manner.

9. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. I believe that judges play a significant role in controlling the pace and conduct of litigation. As outlined in my response to Question 8, I would set appropriate schedules, promptly decide motions, set trial dates and encourage early resolution through settlement discussions.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional when Congress has exceeded its constitutional authority. If confirmed, I would follow the precedent of the Supreme Court and the Court of Appeals for the Third Circuit in considering such an issue.

11. **Please describe with particularity the process by which these questions were answered.**

Response: After I received the questions on March 9, 2011, I prepared responses on March 10, 2011. I then reviewed my responses with representatives of the Department of Justice, finalized my responses and authorized their transmittal to the Committee.

12. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Roy B. Dalton, Jr.
Nominee to be United States District Judge for the Middle District of Florida
to the Written Questions of Senator Charles Grassley

1. **Although you have been a practicing attorney for over 30 years, you have had very little experience when it comes to criminal law. What steps do you plan to take, if confirmed, to prepare yourself to handle criminal cases, which will comprise a substantial portion of your docket?**

   Response: I am well acquainted with the federal judges serving in my district. They are a great resource and I will do all I can to learn from their many years of collective experience. In addition, the Federal Judicial Center has a wide range of resources available to provide a new judge with ongoing education in areas where they might lack experience in private practice. I will avail myself of all these resources in order to augment my lack of experience in both criminal law and elsewhere.

2. **You have spent your entire career as an advocate. How do you anticipate making the transition from advocate to a neutral arbiter?**

   Response: Although I have not had any experience as a judge, I have served in a number of positions where I was an arbiter or consensus builder. I have served as a designated member of arbitration panels in claims for uninsured motorist benefits where the panel listened to evidence, weighed arguments and rendered decisions. Additionally, I have served as chairman of various committees such as the Florida 5th District Court of Appeal Judicial Nominating Commission and the 9th Circuit Grievance Committee where my responsibilities included weighing facts and listening to arguments before making a decision. I recognize the distinction between advocacy for a client or cause and the role of arbiter and feel confident I can assume the role of a fair and impartial arbiter if I am confirmed as a district judge.

3. **At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says." Do you agree with Justice Scalia?**

   Response: I am not aware of the context of Justice Scalia's statement. As a district judge I am bound to interpret the Constitution in accordance with controlling precedent from the 11th Circuit and the Supreme Court of the United States.

4. **Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances?**

   Response: Yes. When an act of Congress exceeds the bounds of its constitutional authority, it is the obligation of the judicial branch to fulfill its constitutional role of providing a check and balance on acts of the legislature.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: When I served as chair of the Judicial Nominating Commission for the 5th District Court of Appeal, and again in my role as counsel to then Senator Mel Martinez in the Senate, we utilized the acronym I.I.I.T. for evaluating candidates for judgeships. A candidate should possess integrity, intellect, impartiality and temperament in addition to the appropriate educational and professional experience criteria. I believe that my professional and personal background demonstrate these qualities.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must have patience, perseverance and a commitment to treat all who come into court as litigants, lawyers, jurors, witnesses or court personnel with civility and respect. I believe I have a record of civility, respect and cooperation in working with opposing counsel, the bench and members of the community in my years of private practice and that I will carry these qualities to the district court if I am fortunate enough to be confirmed.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In the absence of controlling precedent I would look to the text of the statute, regulation or constitutional authority initially and then to any analogous authority from the 11th Circuit, the Supreme Court or other federal circuits. To the extent that this inquiry was not sufficient it may be appropriate to look at the historical information surrounding the passage of the legislative act to develop insight into legislative intent.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: As a district judge I would be obligated to follow the law as determined by the 11th Circuit or the Supreme Court and, if confirmed, I would do so.

10. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a practicing lawyer I am well aware of the need for litigants to have their cases handled in a fair but timely manner. I would expect to be hands on in terms of case management conferences, setting reasonable but proactive schedules for case progress and using all available alternative dispute resolution mechanisms available to move cases to resolution in an efficient manner by either settlement or trial.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. Judges have an important role in controlling the pace of litigation. If confirmed, I would educate myself on the methods used by the most effective sitting trial judges, both in the middle district and elsewhere, to develop a detailed pre-trial scheduling order with definitive deadlines for discovery, expert disclosure, pre-trial motions, dispositive motions, referral to mediation and the establishment of firm, predictable trial dates.

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Powers enumerated to the Congress under the Constitution are limited. When an act of Congress exceeds its constitutional authority it is appropriate for the courts to declare the act unconstitutional.

13. Please describe with particularity the process by which these questions were answered.

Response: Questions were received on March 9, 2011. Answers were prepared on March 10, 2011. I discussed my responses with a Justice Department official, finalized my responses and authorized their communication to the Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Goodwin H. Liu
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Given you writings on the constitutional interpretation employed in *District of Columbia v. Heller*, I previously asked whether you believed the right to bear arms was a fundamental right. You responded that, although you have analyzed the *Heller* opinion, you could not answer my question. Now that the Court has decided *McDonald v. Chicago*, do you personally agree with the Court's majority opinion that the right to bear arms is fundamental?**

   Response: The Supreme Court in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), held that the Due Process Clause of the Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the states. The Court reached this holding by determining that the right to keep and bear arms is a fundamental right deeply rooted in our nation's history and tradition. *See id.* at 3036-44. If confirmed, I would faithfully follow the Supreme Court's holding that the right to keep and bear arms is a fundamental right. I have not previously expressed any view on the question decided in *McDonald*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so now.

   a. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

      Response: In *District of Columbia v. Heller*, the Supreme Court said that "the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.... [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. 570, 626-27 (2008); *see McDonald*, 130 S. Ct. at 3047 (quoting *Heller*). Moreover, noting the "historical tradition of prohibiting the carrying of dangerous and unusual weapons," the Court recognized "another important limitation on the right to keep and carry arms"—namely, "the sorts of weapons protected [are] those in common use at the time." *Heller*, 554 U.S. at 627 (internal quotation marks and citations omitted). *Heller* addressed the scope of the Second Amendment right in relation to the federal government; *McDonald* held that the Second Amendment right has the same scope in relation to the states.

   b. **Do you agree that the *McDonald* decision left certain questions unanswered – such as what are protected places – that lower court judges will have to decide?**

Response: *McDonald* reaffirmed the Court's statement in *Heller* that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" are not cast into doubt by the Court's decisions. 130 S. Ct. at 3047 (quoting *Heller*, 554 U.S. at 626). The Supreme Court has not indicated whether there are places other than schools and government buildings that qualify as "sensitive places" within the meaning of *Heller*. To the extent that issue is raised in litigation, lower court judges will have to address it.

c. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: The Supreme Court stated its holding in *Heller* as follows: "In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." 554 U.S. at 635. The Court in *McDonald* stated its holding similarly: "In *Heller*, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense.... We ... hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*."). While the Court has not said that the Second Amendment right is limited only to possession of a handgun for self-defense in the home, it has not had occasion to determine what the Second Amendment right encompasses beyond possession of a handgun for self-defense in the home.

2. I asked you previously whether you personally believed the U.S. Constitution guarantees same-sex couples the right to have their relationships recognized as marriages by states. You responded that it was "a question upon which you had not previously expressed a view." As a law professor in California and a participant in the Prop 8 litigation, have you really never expressed a view on this issue, even in casual conversation?

Response: I joined an amicus brief filed in the California Supreme Court in 2007, arguing that state laws prohibiting same-sex marriage violated the California Constitution. The California Supreme Court invalidated those laws in May 2008; six months later, the voters of California passed Proposition 8. I have not participated in any litigation concerning Proposition 8. In October 2008 testimony before the California Assembly and Senate Judiciary Committees, I predicted (correctly) that Proposition 8 would be upheld under applicable state constitutional law precedents. As to the validity of Proposition 8 under *federal* constitutional law, I explained that it is "an open question" under *Romer v. Evans*, 517 U.S. 620 (1996), and *Lawrence v. Texas*, 539 U.S. 558 (2003), and I predicted (incorrectly) that "Prop. 8 will not be invalidated under federal law in the near future." That is the extent of any views I have expressed on whether the U.S. Constitution guarantees same-sex couples the right to have their relationships recognized as marriages by states.

a. If you have expressed a view, please disclose that view?

Response: Please see the response above.

Responses of Goodwin H. Liu
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Charles Grassley

1. **Senator Feinstein asked you to explain your judicial philosophy of constitutional fidelity, and its consideration of "evolving norms and social understandings along with the text, principle, and precedent in interpreting the Constitution." Referring to *Katz*, you explained that "this was not just a matter of sort of recognizing new technology. It was a matter of recognizing the social norms that had grown up around using telephones."**

   a. **Did the Court consider "evolving norms and social understandings" when it decided *Roe*?**

      Response: Yes. The Supreme Court undertook an historical inquiry into the evolution of English common law, English statutory law, state common law and statutes, and the positions of professional medical, public health, and legal associations, among other sources, in deciding whether the right asserted in *Roe* "can be deemed 'fundamental' or 'implicit in the concept of ordered liberty.' " Roe v. Wade, 410 U.S. 113, 129-47, 152 (1973) (quoting Palko v. Connecticut, 302 U.S. 319, 325 (1937)).

   b. **If so, was such consideration appropriate?**

      Response: Yes. The historical inquiry in *Roe* is generally consistent with the Supreme Court's approach in a wide range of substantive due process cases. The Court has said that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) (internal quotation marks and citations omitted). In "examining our Nation's history, legal traditions, and practices," *id.* at 710, the Court has looked first and foremost to the practices of the states, both historical, *see id.* at 710-11, 715-16, and contemporary, *see id.* at 716-19. The Court has also looked to the English common law and to colonial practices. *Id.* at 711-14. If confirmed, I would faithfully follow the Court's precedents. In describing the Court's approach in this area, I have written that "[i]n order to keep faith with the text and principles of the Constitution, judicial decisions have interpreted its guarantee of liberty in light of our society's evolving traditions and shared understandings of personal identity, privacy, and autonomy." Keeping Faith with the Constitution 98 (2009).

   c. **Please describe how the Court should endeavor to uncover and recognize social norms.**

      Response: I believe judges may not rely on their personal or subjective beliefs in uncovering or recognizing social norms. In many areas of constitutional law, the

Supreme Court has set forth legal standards that require consideration of social norms, and the Court has appropriately made clear that such consideration is an objective, not subjective, inquiry. In some areas, the Court has instructed judges to consider societal norms by applying an objective standard of reasonableness. *See, e.g.*, Bobby v. Van Hook, 130 S. Ct. 13, 16 (2009) (analyzing Sixth Amendment claims of ineffective assistance of counsel based on "an objective standard of reasonableness in light of prevailing professional norms"); Bond v. United States, 529 U.S. 334, 338 (2000) (analyzing Fourth Amendment claims of unreasonable search or seizure by inquiring "whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable"). In other areas, the Court has looked to state and federal legislation as objective indicators of societal norms, *see, e.g.*, Atkins v. Virginia, 536 U.S. 304, 313-17 (2002) (examining state and federal laws in deciding whether the Eighth Amendment prohibits execution of persons who are mentally retarded), or to well-established social facts, *see, e.g.*, District of Columbia v. Heller, 554 U.S. 570, 629 (2008) (holding that the Second Amendment protects those weapons "in common use at the time" and that "handguns are the most popular weapon chosen by Americans for self-defense in the home"). In these and other areas, I would faithfully follow the applicable standards and instructions for objective inquiry set forth by the Supreme Court if I were confirmed.

2. **At your hearing, I asked about a chapter of your book in which you defended, in your words, a "constellation of cases extending constitutional protection to individual decision making on intimate questions of family life, sexuality, and reproduction." Your book then argues that these cases, "from *Griswold* . . . to *Lawrence*" are "wholly consistent with an approach to constitutional interpretation that reads original commitments and contemporary social contexts together. The evolution of constitutional protection for individual autonomy in certain areas of intimate decision making reflects precisely the rich form of constitutional interpretation this book envisions." I asked whether these cases, given that they "reflect precisely the rich form of constitutional interpretation this book envisions," demonstrate fidelity to the Constitution. You did not answer. Rather, you said only that they are precedents of the Court that you would follow. I am not asking whether you would follow precedent. I am not asking whether you personally agree with those precedents. I am not asking whether you would employ, as a judge, the judicial philosophy you have advocated. I am asking only if you are willing to confirm what your book suggests. Do you believe *Roe* and its progeny demonstrate fidelity to the Constitution?**

   Response: Yes. In describing *Roe*, its progeny, and its precursors, I have written that the methodology of those cases "keep[s] faith with the text and principles of the Constitution." Keeping Faith with the Constitution 98 (2009).

3. **During your first hearing, you said, "I think foreign precedent can be cited in the same way that a Law Review article might be cited, which is simply to say, judges can collect ideas from anyplace that they find it persuasive." You went on to draw a**

distinction between citing foreign law for "authority," as opposed to merely looking to foreign law for "ideas or guidance."

a. Please explain the rationale for the claim that "judges can collect ideas from any place that they find it persuasive."

Response: My statement was intended to mean that I believe there is nothing inappropriate about judges having a well-informed and broad-minded perspective on the legal issues that come before them. Indeed, the Supreme Court has regularly cited books and law review articles to support or illuminate aspects of its legal reasoning. *See, e.g.*, District of Columbia v. Heller, 554 U.S. 570 (2008) (citing a multitude of books and law review articles bearing on the text and history of the Second Amendment).

b. Please explain how the distinction you draw is meaningful.

Response: When the Court cites a law review article to support or illuminate an aspect of its legal reasoning, no one would say that the Court has treated the law review article as a binding legal authority in its decision. I believe foreign law should be treated the same way: just as law review articles have no legal authority in the process of adjudication, foreign law also has no legal authority in the process of adjudication.

c. Even if the distinction you draw is meaningful, please explain why judges should look to foreign law for "ideas or guidance" at all. In what way is foreign law relevant?

Response: In limited circumstances, foreign law can be a source of ideas, just as treatises and law review articles can be sources of ideas. I have written that foreign law may provide ideas on how to address "common legal problems faced by constitutional democracies around the world." *Developments in U.S. Education Law and Policy*, 2 Daito L. Rev. 17, 27 (2006). The corollary is that any value that foreign law might have as a source of ideas is circumscribed by differences in the legal, political, and social culture of other nations compared to our own.

4. **Prior to your nomination, you made your views on same-sex marriage well known. You joined a brief in the California Supreme Court - a brief which relied primarily on federal law - challenging California's ban on same-sex marriage. You signed a letter concluding the legal arguments of those who supported Prop. 8 were false. You authored a letter in the *L.A. Times* arguing that permitting domestic partnerships, and not same-sex marriage, was an unacceptable "separate-but-equal regime." Yet, in a written response to Senator Coburn, you would not state whether you believe the federal Constitution confers a right to same-sex marriage. In fact, you indicated you have never expressed a view on this issue.**

a. Do you believe the federal Constitution confers a right to same-sex marriage?

Response: I have not previously expressed any view on whether the federal Constitution confers a right to same-sex marriage, and because that issue may come before me as a judge if I am confirmed, I believe it is not appropriate for me to do so now.

b. The first argument in your brief to the California Supreme Court was entitled "Constitutional Interpretation Appropriately Takes Into Account Changes in Social Circumstances and Cultural Understanding." Do you stand by that argument?

Response: Yes.

c. In *Keeping Faith with the Constitution*, you wrote that "the history of litigation over the right to marry" is an example of how "changes in social understandings often, and rightly, change how constitutional principles are applied." (emphasis added). Regardless of your view on whether the Constitution confers a right to same-sex marriage, what sources should a judge utilize to determine "social understandings" regarding same-sex marriage?

Response: Because the question of how, if at all, courts should determine social understandings regarding same-sex marriage may come before me as a judge if I am confirmed, I believe it is not appropriate for me to answer this question.

d. Assuming a judge is capable to accurately discerning "social understandings," please explain how a judge should take them into account when considering the constitutionality of same-sex marriage?

Response: Because the question of how, if at all, courts should take into account social understandings regarding same-sex marriage may come before me as a judge if I am confirmed, I believe it is not appropriate for me to answer this question.

5. At your first hearing, you argued that the job of a law scholar "is to probe, criticize, invent, and be creative," but the role of a judge is different. Your sworn testimony before the Senate Judiciary Committee during consideration of now-Justice Alito's nomination was one of the few opportunities you have had to set aside your role as a law professor and instead offer a neutral and objective assessment. You have characterized that testimony as "unduly harsh" and an exercise of "poor judgment." Considering this, how can the Committee be assured that you will set aside your strongly held views, if confirmed?

Response: I believe there are three reasons the Committee can be assured that, if confirmed, I will set aside my own views and render decisions impartially based on the

facts and applicable law in each case. First, I demonstrated this ability when a committee of the California Legislature asked me to testify on Proposition 8 as a neutral legal expert in October 2008. Although I personally opposed Proposition 8, I testified (correctly) that Proposition 8 could not be overturned by the California Supreme Court under applicable state constitutional law precedents. Second, my scholarly writings demonstrate my ability to objectively state and apply the law. Where my writings have criticized current law or proposed a different approach, I have been careful to state the law accurately and to distinguish clearly between what the law is and what I might want it to be. My writings recognize this crucial difference, and if confirmed, I would faithfully follow what the law is and not what I might want it to be. Third, I fully understand and respect the difference between the role of a scholar and the role of a judge. Although both roles require fairness, open-mindedness, and intellectual rigor, they are fundamentally different in that a judge, unlike a scholar, has an absolute duty to follow the law, even when it leads to an outcome with which he personally disagrees.

I wish to add one clarification on the question as stated above. My acknowledgment of "poor judgment" pertains to one paragraph of the seventeen pages of testimony I submitted and not to the testimony as a whole. Apart from that paragraph, the rest of my testimony involved careful and thorough analysis of legal opinions that Justice Alito had written before his confirmation to the Supreme Court.

6. **In response to a question from Senator Feinstein, you said that references in your book to "evolving norms" were merely descriptions of how evolving norms "inform the Supreme Court's elaboration of constitutional doctrine." Likewise, you said "the notion of evolving norms is simply a reference to – it is a way to describe how the Supreme Court has applied some of the text and principles of the Constitution to specific cases and controversies." You have also argued repeatedly that the theory of constitutional interpretation you defend in your book will not influence your decisions as a judge. Instead, you will simply follow your understanding of Supreme Court precedent and instruction. If your book, and what you call "constitutional fidelity," is merely an attempt to describe Supreme Court precedent, and if you would follow your best understanding of that precedent, why is it not fair to conclude that your decisions would reflect the judicial philosophy you propose and defend, "constitutional fidelity"?**

   Response: If confirmed, I would not seek to apply my own theory of constitutional interpretation or any other because it is not the proper role of a circuit judge to decide specific cases or controversies on the basis of any general theory of constitutional interpretation. Instead, I would faithfully follow the precedents of the Supreme Court, including any instructions in such precedents on the proper way to interpret specific constitutional provisions in a particular case.

7. **Senator Franken quoted from a blog post that argued your "opponents have sought to demonize [you] as a radical, extremist, and worse." Do you believe those who oppose your nomination have "sought to demonize [you] as a radical, extremist, and worse"?**

Response: Although I am aware that some opponents of my nomination have used various labels to characterize me or my scholarly views, I do not know whether they have "sought to demonize" me. In general, I believe the Advice and Consent requirement in Article II is an essential part of our Constitution's checks and balances. Accordingly, I believe it is appropriate that there be full and fair debate on judicial nominees before they are voted on by the Senate.

8. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is the ability and unwavering commitment to apply the law impartially to the facts of each case. I believe I possess that attribute.

9. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I understand judicial temperament to encompass several qualities, most importantly impartiality, open-mindedness, collegiality, patience, fairness, and the treatment of all persons with dignity and respect. I believe I possess those qualities.

10. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

11. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: When an inferior court judge hears a case of first impression or otherwise confronts an issue on which there is no controlling precedent, Supreme Court precedent is still relevant and constrains the decision-making process. Thus, even in a novel case, a circuit judge must take his guidance from the Supreme Court and lacks authority to improvise his own approach to deciding legal issues. *See, e.g.*, United States v. Nevils, 598 F.3d 1158 (9th Cir. 2010) (en banc) (applying *Jackson v. Virginia*, 443 U.S. 307 (1979), to sustain federal conviction for being a felon in possession of a firearm and ammunition); Bull v. City & County of San Francisco, 595 F.3d 964 (9th Cir. 2010) (en banc) (applying the Supreme Court's Fourth Amendment precedents to uphold the strip search policy of the county jail system). In addition to Supreme Court precedent, I would consult relevant circuit precedent as well as any decisions by sister circuits on the issue.

In a statutory case, I would look first to the text and structure of the statute. If there is ambiguity in the statute, then I would faithfully follow the Supreme Court's approach to seeking other evidence of legislative purpose. I would also consult relevant circuit precedent as well as any decisions by sister circuits on the issue.

12. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: If confirmed, I would faithfully apply Supreme Court and circuit precedent even if I believed that the precedent was erroneous. A circuit judge may never deviate from Supreme Court precedent, and a circuit judge may not deviate from circuit precedent when serving on a three-judge panel unless doing so is required by an intervening Supreme Court precedent. Although circuit precedent may be reconsidered through the *en banc* process, the process should not be used frequently given the importance of maintaining stability in the law. *See* Fed. R. App. P. 35(a) ("An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance.").

13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional when the statute exceeds the limits of Congress's enumerated powers or when the statute otherwise violates a provision of the Constitution. The Supreme Court has said that acts of Congress carry a presumption of constitutionality, *see, e.g.*, Bowen v. Kendrick, 487 U.S. 589, 617 (1988), and that courts should avoid deciding the constitutionality of an act of Congress when "a construction of the statute is fairly possible by which the question may be avoided," Zadvydas v. Davis, 533 U.S. 678, 689 (2001) (internal quotation marks and citation omitted). If confirmed, I would faithfully follow the Supreme Court's precedents.

14. In response to a question regarding Prop. 8, you testified, "I did also write that the Supreme Court, California Supreme Court, might have some reasons for revisiting that precedent..." Under what circumstances, if any, do you believe an appellate court should overturn precedent within its circuit?

Response: A three-judge panel of a circuit court may not overturn circuit precedent. Circuit precedent may be overturned only through the *en banc* process. The *en banc* process should not be used frequently given the importance of maintaining stability in the law. *See* Fed. R. App. P. 35(a) ("An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."). In deciding whether to overturn circuit precedent, an *en banc*

court should consider the factors in the doctrine of *stare decisis*: whether the precedent is unworkable; whether the precedent has been relied upon such that overruling it would create special hardships or serious inequities; whether the precedent's reasoning has been eroded by intervening legal developments so that it is no longer persuasive; and whether facts have changed in a way that has eroded the precedent's applicability or justification. In addition, it is sometimes necessary for an *en banc* court to overturn precedent when the *en banc* court is deciding an issue on which circuit precedents are in conflict.

15. Please describe with particularity the process by which these questions were answered.

Response: I prepared a complete draft of my answers and then discussed the draft with a member of the U.S. Department of Justice. I prepared a final draft of my answers and sent them to the Justice Department for submission to the Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Goodwin H. Liu
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Mike Lee

1. **On page 3 of *Keeping Faith with the Constitution*, you wrote, "[C]onstitutional interpretation is not a task for the judiciary alone. Thus it is neither surprising nor illegitimate that judicial doctrine often incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice."**

   a. **You mention social movements. How is a judge to determine which social movements merit incorporation into the understanding of the Constitution?**

      Response: The role of a judge is to decide cases impartially on the basis of the facts and applicable law, not to determine which social movements merit incorporation into the understanding of the Constitution. Social movements can lead to the development of factual findings, historical research, legislation, and legal arguments that courts may objectively evaluate in deciding a constitutional issue. For example, my writings have observed that the women's movement produced federal antidiscrimination legislation that shaped the Supreme Court's analysis of how the Equal Protection Clause applies to gender discrimination. *See* Keeping Faith with the Constitution 54-55 (2009). In that example, and at all times, the judge's role is to engage in legal analysis of the materials in a particular case, not to pick or choose which social movements should inform his or her understanding of the Constitution.

   b. **At any given time, there are myriad social movements that enjoy substantial support, but may conflict or even be diametrically opposed in their views and objectives. How is a judge to decide which of the various competing social movements should influence his or her Constitutional interpretation and to what degree?**

      Response: The role of a judge is to decide cases impartially on the basis of the facts and applicable law, not to decide which of various competing social movements should influence his or her interpretation of the Constitution. Social movements can lead to the development of factual findings, historical research, legislation, and legal arguments that courts may objectively evaluate in deciding a constitutional issue. But the judge's role is always to engage in legal analysis of the materials in a particular case, not to pick or choose which social movements should inform his or her understanding of the Constitution.

   c. **Could a small, determined group change the meaning of the Constitution by instigating a social movement?**

Response: No. A social movement can lead to the development of factual findings, historical research, legislation, and legal arguments that courts may objectively evaluate in deciding a constitutional issue. But a social movement by itself cannot change the meaning of the Constitution unless it results in an amendment to the Constitution through the procedures in Article V.

2. **On page 45 of your book, you wrote, "In interpreting the Constitution, the Court . . . considers social practices, evolving norms, and practical consequences in order to give concrete, everyday meaning to text and principle."**

   a. **How is a judge to determine which evolving norms and social practices to consider when interpreting the Constitution? Are these the norms of the majority? A significant minority? Are these the norms of Peoria or Los Angeles?**

   Response: If confirmed, I would take my instruction on issues of constitutional interpretation from the Supreme Court precedents applicable to each case. In some areas, the Court has instructed judges to consider societal norms and practices by applying an objective standard of reasonableness. *See, e.g.*, Bobby v. Van Hook, 130 S. Ct. 13, 16 (2009) (analyzing Sixth Amendment claims of ineffective assistance of counsel based on "an objective standard of reasonableness in light of prevailing professional norms"); Bond v. United States, 529 U.S. 334, 338 (2000) (analyzing Fourth Amendment claims of unreasonable search or seizure by inquiring "whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable"). In other areas, the Court has looked to state and federal legislation as objective indicators of societal norms, *see, e.g.*, Atkins v. Virginia, 536 U.S. 304, 313-17 (2002) (examining state and federal laws in deciding whether the Eighth Amendment prohibits execution of persons who are mentally retarded), or to well-established social facts, *see, e.g.*, District of Columbia v. Heller, 554 U.S. 570, 629 (2008) (holding that the Second Amendment protects those weapons "in common use at the time" and that "handguns are the most popular weapon chosen by Americans for self-defense in the home"). In these and other areas, I would faithfully follow the applicable standards and instructions for objective inquiry set forth by the Supreme Court if I were confirmed.

   b. **How does a judge come into possession of sufficient objective information to determine the nature and substance of these social practices and evolving norms?**

   Response: In each of the doctrinal areas mentioned in the previous response, the Court undertakes an objective inquiry into social norms and practices in applying a constitutional standard. For example, when analyzing Sixth Amendment claims of ineffective assistance of counsel, the Court has said that "[r]estatements of professional standards," such as American Bar Association

guidelines, "can be useful as 'guides' to what reasonableness entails" if "they describe the professional norms prevailing when the representation took place." *Van Hook*, 130 S. Ct. at 16. When analyzing how the Fourth Amendment applies to new technology, the Court has looked to state and institutional privacy policies. *See, e.g.*, City of Ontario v. Quon, 130 S. Ct. 2619, 2629-30 (2010). If confirmed, I would faithfully follow the Supreme Court's instructions on how to acquire sufficient objective information to correctly apply constitutional standards in these and other areas.

3. **On page 98 of *Keeping Faith with the Constitution*, you wrote, "[J]udicial decisions have interpreted [the Constitution's] guarantee of liberty in light of our society's evolving traditions and shared understandings of personal identity, privacy, and autonomy."**

   a. **Whose evolving traditions and shared understandings should a judge consider?**

   Response: The above-quoted sentence is from a discussion in the book about the Supreme Court's application of the Due Process Clause. The Court has said that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) (internal quotation marks and citations omitted). In "examining our Nation's history, legal traditions, and practices," *id.* at 710, the Court has looked first and foremost to the practices of the states, both historical, *see id.* at 710-11, 715-16, and contemporary, *see id.* at 716-19. The Court has also looked to the English common law and to colonial practices. *Id.* at 711-14. If confirmed, I would faithfully follow the instructions of the Supreme Court's substantive due process cases in determining whose traditions and understandings to consider when analyzing a constitutional liberty claim.

   b. **At any given time, traditions and understandings vary widely from region to region, from state to state, from urban to rural. How does a judge decide on which traditions and understandings to base his interpretation of the Constitution?**

   Response: If confirmed, I would faithfully follow the instructions of the Supreme Court's substantive due process cases in deciding which traditions and understandings to consider when analyzing a constitutional liberty claim.

4. **In a 2009 interview at the Brennan Center event, "The Next Democracy," you said,**

   "Conservatives have, I think, been remarkably successful in using language about strict construction of the Constitution or originalism as a way of

reading the Constitution to try to reduce constitutional interpretation, or adjudication more generally, into something formulaic and mechanical that you can hold judges accountable for. I think that's nice in theory, but the reality is, every judge really knows and every lawyer really knows, is that the job, of course, really involves, fundamentally, acts of judgment, especially in the hard cases. And how do people come at their judgments? Well, I think, in our system, they have come at it through a variety of ways that, over time, represents the gradual accretion of precedent, principle, lessons learned from experience, and an awareness of the evolving norms and social understandings of our country." . . . "Judges can rightly take [such things] into account" . . . "I would hope that the Obama administration would appoint judges who are broad minded in their view of the kinds of sources that are legitimate to take into account."

a. **Isn't the identification of shared understandings, social movements, evolving norms, and collective values dependent on the particular judge making the "act of judgment"?**

   Response: The subjective or personal beliefs of a particular judge have no role in the faithful discharge of judicial duty, and the consideration of societal norms and understandings in judging is not inconsistent with this idea. In the areas of constitutional law where the Supreme Court has required judges to consider societal norms and understandings, the Court has made clear that such consideration is an objective, not subjective, inquiry. *See, e.g.*, Bobby v. Van Hook, 130 S. Ct. 13, 16 (2009) (analyzing Sixth Amendment claims of ineffective assistance of counsel based on "an objective standard of reasonableness in light of prevailing professional norms"); Ashcroft v. ACLU, 535 U.S. 564, 575 (2002) (analyzing whether material is obscene and thus unprotected by the First Amendment "from the perspective of the average person, applying contemporary community standards."); Bond v. United States, 529 U.S. 334, 338 (2000) (analyzing Fourth Amendment claims of unreasonable search or seizure by inquiring "whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable"); Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) ("[T]he Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition ....").

b. **It appears that you were talking about the job of all judges, not just Justices of the Supreme Court. If "every judge really knows" that acts of judgment are involved in the hard cases, and judges come at those acts of judgment through "lessons learned from experience" and "an awareness of the evolving norms and social understandings of our country," does this mean that you would consider evolving norms and social understandings in your acts of judgment? Please explain.**

Response: If confirmed, I would consider evolving norms and social understandings only to the extent that applicable Supreme Court precedent required me to do so in analyzing a particular constitutional issue.

5. **In a 2003 *Georgetown Law Journal* article, you wrote, referring to the Constitution, "Our fundamental law has shown a remarkable capacity to absorb new meanings and new commitments . . . forged from passionate dialogue and debate, vigorous dissent, and sometimes disobedience." Do you believe that the Constitution's meaning is changed by passionate dialogue or disobedience?**

Response: No. It is one of our nation's virtues that Americans believe deeply in our Constitution and vigorously debate its meaning. But passionate dialogue or disobedience by itself cannot change the meaning of the Constitution unless it results in an amendment to the Constitution through the procedures in Article V. Passionate dialogue or disobedience can lead to the development of factual findings, historical research, legislation, and legal arguments that courts may objectively evaluate in deciding a constitutional issue.

6. **On page 5 of your 2009 book, *Keeping Faith with the Constitution*, you wrote, "[N]either originalism nor strict construction has proven to be a persuasive or durable methodology, not least because they cannot explain many of the basic constitutional understandings we now take for granted." Do you believe that originalism is an illegitimate methodology for interpreting the Constitution?**

Response: If confirmed, I would take my instruction on issues of constitutional interpretation from the Supreme Court precedents applicable to each case, and not from my personal views about originalism or any other theory of constitutional interpretation. My writings have said that "the original understanding of a particular constitutional provision, no less than the text of the provision itself, is an important consideration in constitutional interpretation." Keeping Faith with the Constitution 37 (2009). Further, my writings have endorsed originalism "if originalism is understood to mean a commitment to the underlying principles that the Framers' words were publicly understood to convey, as opposed to the Framers' expectations of how those principles would have applied at the time they were adopted." *Id.* at 35. However, my writings have rejected originalism when it is understood to require judges to "adhere to a historically fixed understanding of ... how the Framing generation would have applied [the Constitution's] principles to specific situations." *Id.* at 36.

7. **A Sept 2009 post on the *ACSblog* reads, "For too long, liberals, progressives and moderates have been defensive about how the Constitution should be interpreted. But an examination of the document itself and the way its principles have been applied . . . reveals that the progressive view is, in fact, the one that prevailed." Would you characterize yourself as an advocate of the "progressive view"?**

Response: I would characterize myself as a person who is committed to the actual values and principles that exist in our Constitution, whether they are labeled "progressive," "moderate," or "conservative."

8. **In a speech given in May 2006 at the National Taiwan University Law School, you said, "[A] liberal judge is one who is more likely to protect individual rights against government power, except property rights; more likely to read the constitutional right of equality broadly to protect disadvantaged groups; more likely to favor federal government power over state power; and more likely to favor checks and balances to limit assertions of power by the President."**

   a. **Does your definition of a "liberal judge" accurately describe what your tendencies would be in applying law to facts, if were you to be appointed a judge?**

      Response: No. If confirmed, I would apply the law to the facts of each case objectively and impartially, with fidelity to applicable precedents.

   b. **If so, do you believe that a judge should have a political leaning?**

      Response: I do not believe a judge should have a political leaning.

   c. **If not, which specific part do you not tend towards? Protecting individual rights against government power? A broad reading of the right of equality to protect disadvantaged groups? Favoring federal power over state power? Favoring checks and balances?**

      Response: If confirmed, I believe it would be inappropriate to decide cases on the basis of any of those "tendencies" as opposed to the facts and applicable law in each case.

9. **In your chapter of *The Constitution in 2020*, you wrote, "We should not use the concept of citizenship to deny education to noncitizen children, not least because the Equal Protection Clause extends to 'persons,' not only to citizens." While people can and do disagree on the policy aspect of providing education to noncitizen children, do you believe that the Constitution requires the government to provide education to noncitizen children?**

   Response: The Supreme Court has held under the Equal Protection Clause that a state may not deny free public education to children who are here illegally if the state provides such education to other children. *See* Plyler v. Doe, 457 U.S. 202 (1982). The Court qualified its holding by saying that a state's prerogative to deny public education to children who are here illegally might be different if such denial were supported by congressional policy. *See id.* at 224-26. I would faithfully follow the Court's precedent if I were confirmed.

I have written that "we should not use the concept of citizenship to deny education to noncitizen children," citing *Plyler* to support the proposition that "the Equal Protection Clause extends to 'persons,' not only to citizens." *National Citizenship and the Promise of Equal Educational Opportunity* 130 & n.22, *in* The Constitution in 2020 (Jack M. Balkin & Reva B. Siegel eds., 2009). I have not previously expressed any view specifically on whether noncitizen children who are here illegally have a constitutional right to public education, and because I would serve as an inferior court judge who is duty-bound to apply Supreme Court precedent faithfully and impartially if I am confirmed, I believe it would not be appropriate for me to do so now.

10. In a 2006 *San Antonio Express News* article, you said, "The federal constitution guarantees to every person equal citizenship. I don't think that means just legal status . . . [C]itizenship, in a broader sense, is the ability to be a fully able, participating member of society." In your view, what rights are fundamental to being a "fully able participating member of society"?

Response: My writings have emphasized the role of education, as well as other supports that promote political and economic participation, in enabling all individuals to become full, participating members of our society. *See Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006). I expressly avoid characterizing those supports as "rights" because the term suggests judicial enforceability. *See id.* at 339. Instead, my proposals are "chiefly directed at Congress," and they come from the perspective of "a 'conscientious legislator' who seeks in good faith to effectuate the core values of the Fourteenth Amendment, including the guarantee of national citizenship." *Id.*

Responses of Goodwin H. Liu
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Jeff Sessions

On several occasions before this Committee, you have said that whatever you have written as an academic would have no bearing on how you would rule if confirmed as a judge. I find that difficult to understand, given that several of your most important academic writings, by your own admission, are directed at judges and how they, in your view, should approach the law. (Senator Cornyn, Question for the Record #23). However, during your most recent hearing, you were willing to answer Senator Blumenthal's questions on specific issues, *e.g.*, whether you "support racial quotas" ("I absolutely do not, Senator.") and whether you believe "affirmative action plans should exist forever" ("No, I do not, Senator. . . ."). Having provided your views on specific issues, I would ask that, in responding to the following questions, you provide the same type of direct and concrete responses that you provided to Senator Blumenthal.

1. **Following your hearing in the 111th Congress, I asked you several questions about your testimony in opposition to Justice Alito's nomination, which you summarized as being concerned with some of Justice Alito's decisions as a lower court judge "in the area in which individual rights come up against assertions of government power."**

   a. **Question 1(a)(i) asked if you thought the Supreme Court's holding in *Wickard v. Filburn*, 317 U.S. 111 (1942) posed troubling concerns "in the area in which individual rights come up against assertions of government power." Your reply recited the holding of *Wickard* and stated that "*Wickard* is a precedent of the Supreme Court and I would follow it faithfully if I were confirmed."**

      That answer did not respond to my question, so in my letter of May 10, 2010, I provided you a second opportunity to answer. Your response stated that your role as a judge "would not be to evaluate or opine on the correctness of Supreme Court cases or doctrines" and that you did not "believe it is appropriate for [you] now, as a nominee to serve as an inferior court judge, to critique or speculate on the correctness of *Wickard v. Filburn*."

      I do not believe Question 1(a)(i) asked you to critique the correctness of the decision, but rather to opine on whether the case raised "troubling concerns in the area in which individual rights come up against assertions of government power." Please take this opportunity to answer that question.

      Response: In *Wickard*, the plaintiff challenged the wheat quota in the Agricultural Adjustment Act as a deprivation of property without due process of law in violation of the Fifth Amendment. This was an individual rights claim against an assertion of government power. If confirmed, I would not characterize this claim, or any claims that come before me, as either "troubling" or "not

troubling." Instead, I would give each claim asserted by a litigant full, fair, and impartial consideration under the applicable law.

b. **Question 1(a)(ii) did ask whether you believe *Wickard* was correctly decided. This is a topic that has been discussed much in the legal academy and in the media, and I do not believe that answering this question would impair your ability to apply a precedent that you have admitted remains binding on the Ninth Circuit. Please take this opportunity to answer this question.**

Response: *Wickard* is a precedent of the Supreme Court, and I would follow it faithfully if I were confirmed. I have not previously expressed any view on the correctness of *Wickard*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

As my letter explained, where I have expressed views about a particular case or doctrine in my scholarly work, I have not hesitated to discuss those views when answering oral and written questions throughout the confirmation process. Senator Blumenthal's questions asked about issues that I have addressed in my scholarly work. In particular, my writings accept that racial quotas are unconstitutional and that affirmative action plans must have a stopping point. *See* Brown, Bollinger, *and Beyond*, 47 How. L.J. 705, 761, 762 (2004); *Affirmative Action in Higher Education: The Diversity Rationale and the Compelling Interest Test*, 33 Harv. C.R.-C.L. L. Rev. 383, 389 (1998).

c. **Question 1(b)(ii) asked if you thought the Supreme Court's holdings in *Kelo v. City of New London*, 545 U.S. 469 (2005) posed troubling concerns "in the area in which individual rights come up against assertions of government power." You replied by stating that, as a lower court judge, you would be bound to apply *Kelo* as a valid precedent of the Supreme Court.**

Your answer did not reply to my question, so I gave you another opportunity to answer in my letter to you of May 10, 2010. You again replied that "*Kelo v. City of New London* is a precedent of the Court that I will be duty-bound to apply faithfully and impartially if I am confirmed." I appreciate your willingness to commit to follow precedent, but your answer did not respond to my question. The question did not ask you to comment on the correctness of that precedent or on its continued vitality as a precedent. It asked only if that precedent raised a certain tension between individual property rights and the assertion of government power to confiscate private property for the purpose of implementing an economic development plan. Please take this opportunity to answer my question.

Response: *Kelo* did address a tension between individual property rights and the assertion of government power to confiscate private property for the purpose of implementing an economic development plan. It was a case where an individual rights claim was asserted against an exercise of government power. If confirmed

as a judge, I would not characterize this claim, or any claims that come before me, as either "troubling" or "not troubling." Instead, I would give each claim asserted by a litigant full, fair, and impartial consideration under the applicable law.

d. **Question 1(b)(ii) did ask whether you believe *Kelo* was correctly decided. This is a topic that has been discussed much in the legal academy, and both critics and supporters from across the ideological spectrum have expressed concern with the opinion and its rationale. Furthermore, some judges have criticized *Kelo* in subsequent opinions, while still applying that case as a binding precedent. Please take this opportunity to answer this question.**

Response: *Kelo* is a precedent of the Supreme Court, and I would follow it faithfully if I were confirmed. I have not previously expressed any view on the correctness of *Kelo*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

2. **In Question for the Record 10(b), which I submitted to you following your hearing in the 111th Congress, I asked whether you believed *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), which held school choice programs that included religious schools along with secular schools do not violate the Establishment Clause, was correctly decided. You responded by stating that "*Zelman* is a precedent of the Supreme Court, and [you] would follow it faithfully if [you] were confirmed" and stating that one of your law review articles treated *Zelman* as settled law. You gave a similar response when I gave you a second chance to answer this question in my May 10, 2010 letter. I do not believe either of your answers responded to my question. Please provide an answer at this time.**

Response: *Zelman* is a precedent of the Supreme Court, and I would follow it faithfully if I were confirmed. I have not previously expressed any view on the correctness of *Zelman*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

3. **In Question for the Record 13, which I submitted to you following your previous hearing, I asked you for your personal position on a number of issues related to constitutional law. In response to seven of the subparts of Question 13, you responded by stating that the case in question was a precedent of the Supreme Court that you would faithfully follow if confirmed. I appreciate that commitment to precedent, but I specifically stated in my question that I was not asking whether you would follow the applicable Supreme Court precedents. Instead, I was seeking your own view on the legal principle in issue. Therefore, I provided you a second opportunity to answer questions 13(b), 13(d), 13(e), 13(f), 13(g), 13(h) and 13(i) when I wrote you on May 10, 2010. You responded to my letter as follows:**

> **"If I am confirmed, my role as a circuit judge would not be to evaluate or opine on the correctness of Supreme Court cases or doctrines, but to apply the law faithfully and impartially to the facts of each case. (b) *District of***

***Columbia v. Heller*, (d) *Boumediene v. Bush*, (e) *Lee v. Weisman*, (f) *Morrison v. Olson*, (g) the Court's precedents concerning obscene speech, (h) *Kennedy v. Louisiana*, and (i) *Gonzales v. Carhart* are precedents of the Court that I will be duty-bound to apply faithfully and impartially if I am confirmed."**

Again, I appreciate that you understand these are precedents of the Supreme Court and that you would be duty-bound to follow them if you were to be confirmed to the Ninth Circuit. However, I was seeking your own personal legal views on these cases. I was not asking for your policy preferences or political viewpoints, but for your personal judgment on legal questions. Please take this opportunity to provide responses to these questions:

a. **Question 13(b): Do you believe that the Court's Second Amendment decision in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) was correctly decided?**

Response: I have not previously expressed any view on the correctness of *Heller*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

b. **Question 13(d): Do you believe that the Court's decision in *Boumediene v. Bush*, 553 U.S. 723 (2008), which conferred constitutional habeas rights on aliens detained as enemy combatants at Guantanamo, was correctly decided?**

Response: I have not previously expressed any view on the correctness of *Boumediene*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

c. **Question 13(e): Do you believe that the Court's decision in *Lee v. Weisman*, 505 U.S. 577 (1992), which held that a nonsectarian invocation at a public school graduation violated the Establishment Clause, was correctly decided?**

Response: I have not previously expressed any view on the correctness of *Lee v. Weisman*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

d. **Question 13(f): Do you believe that the Court's decision in *Morrison v. Olson*, 487 U.S. 654 (1988), which ruled that the independent counsel statute did not violate the constitutional separation of powers, was correctly decided?**

Response: I have not previously expressed any view on the correctness of *Morrison v. Olson*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

e. **Question 13(g): Do you believe that the Constitution, properly interpreted, confers a right to engage in obscene speech?**

Response: The Supreme Court has said that "[o]bscene speech ... long been held to fall outside the purview of the First Amendment," Ashcroft v. ACLU, 535 U.S. 564, 574 (2002), and I would faithfully follow the Court's precedents if I were confirmed. I have not previously expressed any view on whether the Constitution confers a right to engage in obscene speech, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

f. **Question 13(h): In 2008, the Supreme Court ruled in *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008) that the death penalty for the crime of raping a child always violates the Eighth Amendment. Do you believe that the Court reached the correct ruling?**

Response: I have not previously expressed any view on the correctness of *Kennedy v. Louisiana*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

g. **Question 13(i): In 2007, the Supreme Court in *Gonzales v. Carhart*, 550 U.S. 124 (2007), by a vote of 5 to 4, rejected a facial challenge to the Federal Partial-Birth Abortion Act, but left open the possibility that as-applied challenges could be brought to narrow the scope of the Act's application. Do you believe that the Court's ruling in *Gonzales v. Carhart* was correctly decided?**

Response: I have not previously expressed any view on the correctness of *Gonzales v. Carhart*, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so.

4. **In Question for the Record 18(b), which I sent you following your last hearing, I asked whether, like Professor Mark Tushnet, you believed the "state action doctrine" should be abolished. You responded to my question by stating that "[t]he Supreme Court has consistently affirmed the state-action doctrine as a key limitation on federal power and an important safeguard of individual liberty" and that you "would faithfully follow the Court's precedents if [you] were confirmed."**

Although I was glad to hear once again that you would be committed to following the Court's precedents if confirmed, your response did not answer my original question. Therefore, I posed this question to you again in my letter of May 10, 2010. In response to that letter, you stated your view of the role of an intermediate appellate court judge and answered again that "[t]he state action doctrine is governed by precedents of the Court that [you] will be duty-bound to apply faithfully and impartially if [you are] confirmed." This answer does not respond to my question. Please take this opportunity to provide a responsive answer to this question.

Response: I have not previously expressed any view on whether the state-action doctrine should be abolished, and for the reasons stated in my letter to you of May 12, 2010, I do not believe it would be appropriate for me to do so. My writings have not questioned the

well-settled Supreme Court doctrine that state action is necessary for a judicial finding of state liability under the Fourteenth Amendment.

5. **When Chief Justice Roberts was nominated to the Supreme Court, you wrote an article in which you criticized Justice Roberts because**

> **"[b]efore becoming a judge, he belonged to the Republican National Lawyers Association and the National Legal Center for the Public Interest, whose mission is to promote (among other things) 'free enterprise,' 'private ownership of property,' and 'limited government.' These are code words for an ideological agenda hostile to environmental, workplace, and consumer protections.**

a. **Please explain why you thought it was a problem for a judge to have policy preferences in support of free markets, private property and limited government, all three of which were written or spoken about favorably by almost all of the founding fathers of this country.**

Response: Free enterprise, private property, and limited government are cornerstones of America's prosperity and success as a free society, and I do not believe it is a problem for a judge to be committed to those values as they are expressed in our Constitution. A judge, however, should not commit himself to those values as a matter of "policy preferences." *Cf.* Lochner v. New York, 198 U.S. 45 (1905).

b. **In response to written questions from this Committee about this statement following your hearing last Congress, you said that you were "objecting to one organization's use of those values in opposition to government efforts to ensure that our free market system is a fair, sustainable, and level playing field." Please explain why you thought it was troubling that someone had been appointed to the Supreme Court that felt differently about that matter than you do.**

Response: For over seven decades, the Supreme Court has held that government efforts to ensure that our free market system is a fair, sustainable, and level playing field are consistent with, and not in opposition to, the Constitution's commitments to private property and limited government. My writings have discussed the Court's approach in this area as an example of fidelity to the Constitution. *See* Keeping Faith with the Constitution 65-72 (2009).

6. **In your article "Education, Equality, and National Citizenship" you discussed the meaning of the Citizenship Clause of the Fourteenth Amendment, arguing that**

> **"the duty of government cannot be reduced to simply providing the basic necessities of life. . . . Beyond a minimal safety net, the legislative agenda of equal citizenship should extend to systems of support and opportunity that,**

like education, provide a foundation for political and economic autonomy and participation. The main pillars of the agenda would include basic employment supports such as expanded health insurance, child care, transportation subsidies, job training, and a robust earned income tax credit."

a. If equal participation was the goal of the Citizenship Clause, then why did the authors not choose to include any language related to "equality" or "participation" in the Clause, instead choosing language that addressed only the legal status of citizenship?

Response: The Citizenship Clause overruled *Dred Scott v. Sandford*, 60 U.S. 393 (1857), and extends national citizenship to all persons born or naturalized in the United States and subject to the jurisdiction thereof. A notion of equality or equal participation is implicit in the Fourteenth Amendment's declaration of a single national citizenship. The Civil Rights Act of 1866, whose declaration of national citizenship was a precursor to the Fourteenth Amendment's Citizenship Clause, confirms this point: "[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color ... shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property ... as is enjoyed by white citizens ...." *See* Education, Equality, and National Citizenship, 116 Yale L.J. 330, 356-57 & n.106 (2006).

b. Do you still maintain that Congress has a constitutional obligation to provide citizens with "health insurance, child care, transportation subsidies, job training, and a robust earned income tax credit"?

Response: The Supreme Court has generally held that the Constitution does not obligate Congress or the states to provide citizens with social or economic benefits, and I would faithfully follow the Court's precedents if I were confirmed.

In the article that includes the quotation above, I state that "the approach to constitutional meaning I take here is that of a 'conscientious legislator' who seeks in good faith to effectuate the core values of the Fourteenth Amendment, including the guarantee of national citizenship." Education, Equality, and National Citizenship, 116 Yale L.J. 330, 339 (2006). The article argues that a legislature seeking to effectuate the principle of equal citizenship should consider a range of policies to support political and economic participation. *See id.* at 407. The article makes clear that the legislative duties I propose do not give rise to individual rights and are not enforceable in court. *See id.* at 338-39.

7. In your 2008 article "Rethinking Constitutional Welfare Rights" you said:

"[t]he historical development and binding character of our constitutional understanding demand more complex explanations than a conventional account of the courts as independent, socially detached decision makers that 'say what the law is.' The enduring task of the judiciary . . . is to 'find a way to articulate constitutional law that the nation can accept as its own.'"

Alexander Hamilton's view of the role of the Judiciary was stated in Federalist Number 78, where he wrote that "The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment." I believe that was the role envisioned by Chief Justice Marshall when he wrote in *Marbury v. Madison* that "[i]t is emphatically the province and duty of the Judicial Department to say what the law is."

a. Are you able to identify any writing, speech or other evidence that members of the founding-era public understood the task of the judiciary as being "to 'find a way to articulate constitutional law that the nation can accept as its own'"?

Response: In context, that phrase in my 2008 law review article was used to distinguish and reject a conception of judges as philosopher-kings who interpret the Constitution in light of their preferred moral theory. *See Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203, 227-28 (2008). The article used the phrase to indicate that judges must ground constitutional doctrine in our nation's own legal texts, traditions, and practices as they develop in response to the needs and challenges of our society over time. This view is consistent with Chief Justice Marshall's admonition that courts, in interpreting our Constitution, must recognize that it is "intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs." McCulloch v. Maryland, 17 U.S. 316, 415 (1819).

b. How does a judge determine what statements of constitutional law "the nation can accept as its own'"?

Response: My article used the phrase to mean that judges must ground constitutional doctrine in our nation's own legal texts, traditions, and practices, and not in any abstract moral or political theory.

c. If the original meaning of a constitutional provision conflicts with the constitutional principles the nation can accept as its own, is it the task of the judiciary to look to sources beyond the original meaning of the text in order to find an acceptable reading?

Response: In describing the actual practice of constitutional adjudication throughout American history, I have written that "judges generally look to a

variety of sources to elucidate the meaning of the Constitution. These sources include the document's text, history, structure, and purposes, as well as judicial precedent. They also include contemporary social practices, evolving public understandings of the Constitution's values, and the societal consequences of any given interpretation. The latter sources of meaning, no less than the former, are legitimate components of the methodology that courts use when applying the Constitution's general principles to present-day problems." Keeping Faith with the Constitution 33-34 (2009). The Supreme Court has looked to sources beyond the original meaning of the Constitution in cases such as *Katz v. United States*, 389 U.S. 347 (1967), and *Brown v. Board of Education*, 347 U.S. 483 (1954). *See* Keeping Faith 26-28, 47-51 (discussing those cases). If confirmed, I would faithfully follow the Court's precedents, including any instructions in such precedents on the proper way to interpret specific constitutional provisions in a particular case.

8. **At your hearing last Congress, you discussed originalism as a method of constitutional interpretation with Senator Klobuchar. During that discussion, you said:**

> **"If originalism is taken to mean that the original understanding of the constitutional provision is the sole touchstone of decision and decisive sole touchstone for interpreting the Constitution, I would simply observe that the Supreme Court, throughout its history, has never adhered to that methodology."**

I agree that the Supreme Court has, at many times in its history, rendered opinions that departed from the original meaning of the Constitution.

a. **I think that one case that did so was *Plessy v. Ferguson,* the case that approved separate-but-equal discrimination against African-Americans. Do you agree that case departed from the original meaning of the Equal Protection Clause of the Fourteenth Amendment?**

Response: I have not had occasion to examine whether *Plessy v. Ferguson* departed from the original meaning of the Equal Protection Clause, although I am aware of scholarly work arguing that *Plessy* was wrong on originalist grounds in upholding racial segregation on common carriers. *See, e.g.*, Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947, 981-82, 1120-31 (1995); Earl M. Maltz, *"Separate But Equal" and the Law of Common Carriers in the Era of the Fourteenth Amendment*, 17 Rutgers L.J. 553, 564-68 (1986). It is a separate issue whether racial segregation in other contexts, such as public schools, departs from the original meaning of the Equal Protection Clause. In *Brown v. Board of Education*, the Supreme Court—after ordering the parties to brief the original meaning of the Fourteenth Amendment as it relates to school segregation—unanimously concluded that the original understanding is "[a]t best ... inconclusive." 347 U.S. 483, 489 (1954). Citing this statement in

Brown, I have written that "for over half a century, a scholarly consensus across the ideological spectrum has recognized that *Brown* cannot be explained on originalist grounds. Even the most ambitious and labored effort to reconcile *Brown* with originalism comes up short for reasons lucidly elaborated by one of the nation's leading civil rights historians." Keeping Faith with the Constitution 50 & nn.14-16 (2009) (citing McConnell, *supra*, and Michael J. Klarman, Brown, *Originalism, and Constitutional Theory: A Response to Professor McConnell*, 81 Va. L. Rev. 1881 (1995), among other sources).

b. I think another case was *Grutter v. Bollinger*, the case that upheld using race in law school admissions decisions. Do you agree that case departed from the original meaning of the Equal Protection Clause?

Response: I have not had occasion to examine whether *Grutter v. Bollinger* departed from the original meaning of the Equal Protection Clause, although I am aware of scholarly work arguing that affirmative action is consistent with the Fourteenth Amendment's original intent. *See, e.g.*, Eric Schnapper, *Affirmative Action and the Legislative History of the Fourteenth Amendment*, 71 Va. L. Rev. 753 (1985). Neither the majority nor the dissenting opinions in *Grutter* examined the original meaning of the Equal Protection Clause.

9. During your above-referenced discussion with Senator Klobuchar, you went on to say that:

> **"If originalism is taken to mean instead that the original meaning, and of course the text of the Constitution, are very important considerations that any judge, in interpreting a provision of the Constitution, must look to, [then] absolutely. . . . in many cases, that could be determinative. But it is not, in some sense, the sole or ultimate touchstone against which all other considerations must yield."**

a. Aside from precedent, can you provide an example of other factors in addition to the text and original meaning of the Constitution that would be relevant to constitutional interpretation?

Response: If confirmed, I would take my instruction on issues of constitutional interpretation from the Supreme Court precedents applicable to each case, and not from my scholarly writings. In describing the actual practice of constitutional adjudication throughout American history, I have written that "judges generally look to a variety of sources to elucidate the meaning of the Constitution. These sources include the document's text, history, structure, and purposes, as well as judicial precedent. They also include contemporary social practices, evolving public understandings of the Constitution's values, and the societal consequences of any given interpretation. The latter sources of meaning, no less than the former, are legitimate components of the methodology that courts use when

applying the Constitution's general principles to present-day problems." Keeping Faith with the Constitution 33-34 (2009).

b. You said that the original meaning of the Constitution could be determinative in many cases. Assume there is no precedent controlling a case and we can determine the original meaning of a constitutional provision. Can you name a situation where the original meaning of a provision is not determinative under those circumstances?

Response: Although the Fourteenth Amendment was not originally intended to prohibit gender discrimination, *see* U.S. Const. amend. XIV, § 2 (reducing apportionment of any state that denies the franchise to its "male citizens"); *The Originalist*, California Lawyer, Jan. 2011, at 33 (quoting Justice Scalia's statement that the Fourteenth Amendment "doesn't" prohibit discrimination on the basis of sex: "Nobody ever thought that that's what it meant. Nobody ever voted for that."), the Supreme Court has held that the Equal Protection Clause prohibits various forms of discrimination on the basis of sex. *See, e.g.*, United States v. Virginia, 518 U.S. 515 (1996); Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (1982); Craig v. Boren, 429 U.S. 190 (1976); Frontiero v. Richardson, 411 U.S. 677 (1973).

10. In a 2006 article in the *Los Angeles Times* you discussed the reasoning of *Brown v. Board of Education*, saying that "the target of *Brown's* reasoning was not racial classification, but the use of race to separate and thereby stigmatize and subordinate minority schoolchildren." Is it fair to say that you do not believe the Equal Protection Clause requires governments to be "color blind," meaning that they do not rely on race as a basis for treating similarly-situated individuals differently?

Response: The Supreme Court has not endorsed colorblindness as an absolute requirement of the Equal Protection Clause; it has held that no racial classification may be used in governmental decision-making unless it is narrowly tailored to promote a compelling interest. *See, e.g.*, Parents Involved in Community Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007); Grutter v. Bollinger, 539 U.S. 306 (2003); Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995). If confirmed, I would faithfully follow the Court's precedents in this area. My writings have agreed with the Court's strict scrutiny standard for evaluating racial classifications and with the Court's decision in *Grutter* upholding limited and carefully circumscribed consideration of race in selective university admissions. *See* Seattle *and* Louisville, 95 Cal. L. Rev. 277, 280-81 (2007); Brown, Bollinger, *and Beyond*, 47 How. L.J. 705, 706 (2004); *The Causation Fallacy:* Bakke *and the Basic Arithmetic of Selective Admissions*, 100 Mich. L. Rev. 1045, 1097-99 (2002); Segregation, Integration, and Affirmative Action After *Bollinger* (American Constitution Society panel, 2003) (transcript at 30).

11. John Adams once said that people have "rights antecedent to all earthly government—Rights that cannot be repealed or restrained by human laws—Rights derived from the Great Legislator of the Universe." Our founding fathers, like

Adams, believed that rights were derived from man's creator, and were merely protected by the Constitution from wrongful government deprivation. From what source do you believe constitutional rights originate?

Response: The Declaration of Independence states "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." I understand that statement to mean that in our legal tradition, those rights ("Life, Liberty and the pursuit of Happiness") existed prior to the ratification of the Constitution. In addition, the Supreme Court has said that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right" that was "inherited from our English ancestors." District of Columbia v. Heller, 554 U.S. 570, 599 (2008) (internal quotation marks and citation omitted). Other constitutional rights, such as the Fourteenth Amendment's citizenship guarantee and the Fifteenth and Nineteenth Amendments' prohibitions on race and gender discrimination in voting, have been understood as positive enactments in response to our nation's historical experience. *See* U.S. Const. amend. XIV, § 1 (overruling Dred Scott v. Sandford, 60 U.S. 393 (1857)); U.S. Const. amend. XIX, § 1 (overruling Minor v. Happersett, 88 U.S. 162 (1875)); South Carolina v. Katzenbach, 383 U.S. 301, 308-09 (1965) (discussing origins of the Fifteenth Amendment).

12. **Recently, Federal District Judge Roger Vinson held that a portion of President Obama's healthcare bill—the portion requiring every American Citizen to purchase at least a certain level of health insurance—was unconstitutional because it exceeded the power granted to Congress under the Commerce Clause. Judge Vinson's decision was based, in large part, on his conclusion that "if Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain for it would be difficult to perceive any limitation on federal power, and we would have a Constitution in name only."**

    a. **Do you agree with Professor Charles Fried's testimony before this Committee that Congress can force people to purchase goods and services that Congress believes, for policy reasons, would benefit commerce?**

    Response: Because Professor Fried's testimony bears on the constitutionality of the health care legislation, and because that issue could come before me if I were confirmed, I believe it is not appropriate for me to answer this question.

    b. **Do you believe Congress can force every individual American to purchase a product based on the idea that the inactivity of many has an effect on interstate commerce?**

    Response: Because this question bears on the constitutionality of the health care legislation, and because that issue could come before me if I were confirmed, I believe it is not appropriate for me to answer this question.

c. **If the Court were to uphold Congress's claim of power under the Commerce Clause to force every individual American to purchase health insurance coverage because the mere fact of that individual's existence had some remote impact on interstate commerce, could you articulate any workable and meaningful limitation on Congress's authority under the Commerce Clause?**

Response: Because this question bears on the constitutionality of the health care legislation, and because that issue could come before me if I were confirmed, I believe it is not appropriate for me to answer this question.

13. **At your hearing last Congress, you were asked about your extensive involvement with the American Constitution Society, including as a founding member. In response to a question from Senator Kyl, you described the organization dedicated to "certain basic principles in our Constitution: genuine equality, liberty, access to the courts, and a broad commitment to the rule of law."**

a. **Could you explain what you meant by "genuine equality"? Does that mean absolute legal equality, or does it allow for affirmative action programs and other programs that give preferences to some racial groups over others?**

Response: I have discussed the meaning of equality as a constitutional value in Keeping Faith with the Constitution 47-63 (2009), and my writings have agreed with Supreme Court precedent holding that affirmative action policies that are narrowly tailored to serve a compelling interest are consistent with the principle of equality in our Constitution, *see* Brown, Bollinger, *and Beyond*, 47 How. L.J. 705 (2004).

b. **In 2007, this Committee considered the nomination of Judge Leslie Southwick, a highly-respected nominee for the Fifth Circuit. One of my colleagues in the majority on this Committee was very interested in that nominee's involvement with the Federalist Society, a Constitutional debate society that does not take positions on political issues. At one point in the hearing, my colleague said: "You were a member of the Federalist Society and wrote articles for the Federalist Society. Could you describe to me why you joined the organization and what you think it represents?" So, that is my question to you: You were a member of the American Constitution Society from its inception, you were a member of its board, and you wrote a book for the organization. Could you describe to me why you joined that organization and what you think it represents?**

Response: The American Constitution Society is an organization dedicated to the fundamental values in our Constitution, including individual rights and liberties, genuine equality, access to justice, democracy, and the rule of law. I joined the organization because I believe in those values.

c. The mission statement of the American Constitution Society says the following:

> **"In recent years, an activist Conservative legal movement has gained influence—eroding [the Constitution's] enduring values and presenting the law as a series of sterile abstractions. This new orthodoxy, which threatens to dominate our courts and our laws, does a grave injustice to the American vision."**

Do you believe there is "an activist Conservative legal movement" which "does a grave injustice to the American vision?"

Response: I have not expressed any view on whether there exists "an activist conservative legal movement," although I am aware of scholarly work on the subject. *See* Steven M. Teles, The Rise of the Conservative Legal Movement: The Battle for Control of the Law (2008). I have written that "judicial activism ... appropriately characterizes many decisions of judicial conservatives in recent years." Keeping Faith with the Constitution 40 (2009).

d. Last year, the American Constitution Society published a paper by Professor Alan B. Morrison entitled "The Right and Wrong Kinds of Judicial Activism." Professor Morrison wrote that his theory on judicial activism is as follows:

> **"it is most appropriate for the Court to intervene and overturn legislative decisions when there is some reason to believe that our system of representative government has not worked and that the protections that the Constitution is supposed to afford are lacking. The most common circumstance of appropriate intervention is to safeguard rights of a racial or other minority that were not adequately represented in the political process."**

Do you agree with that statement?

Response: I agree with the statement insofar as it reflects the role of the judiciary described by Alexander Hamilton in Federalist No. 78 and by the Supreme Court in *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). However, I do not agree with the statement insofar as it suggests that judicial activism is ever "right" or that courts should somehow prioritize those cases where "our system of representative government has not worked" or where "rights of a racial or other minority ... were not adequately represented in the political process." I believe it is the judiciary's duty to carefully consider all constitutional claims properly within its jurisdiction and to declare the law impartially in all cases and controversies.

e. **In 2009, the American Constitution Society published a paper on the future of Fourth Amendment jurisprudence entitled "The Roberts Court and the Future of the Exclusionary Rule" by Professor Susan Bandes, which said the following:**

> **"The Reagan-era Justice Department, led by Attorney General Edwin Meese, spearheaded the first frontal attack on the exclusionary rule. Under the current Supreme Court, these efforts may finally come to fruition. Chief Justice John Roberts and Justice Samuel Alito, both of whom served in the Meese Justice Department, are now part of a four-member voting block (with Justices Antonin Scalia and Clarence Thomas) that, to all appearances, is busily laying the groundwork for abandoning the exclusionary rule. They lack only a reliable fifth vote."**

Do you think that is an accurate statement?

Response: I do not know whether the current Supreme Court "is busily laying the groundwork for abandoning the exclusionary rule." I am aware that the Supreme Court has limited the applicability of the exclusionary rule in recent cases, *see, e.g.*, Herring v. United States, 555 U.S. 135 (2009); Hudson v. Michigan, 547 U.S. 586 (2006), and that Justice Kennedy has said "the continued operation of the exclusionary rule, as settled and defined by our precedents, is not in doubt," *Hudson*, 547 U.S. at 603 (Kennedy, J., concurring in part and concurring in the judgment). If confirmed, I would faithfully follow the Court's precedents in this area.

Responses of Esther Salas
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Charles Grassley

1. **The Supreme Court Committee on Minority Concerns, of which you were a member, expressed a desire to place more minorities in the New Jersey Court system. You have expressed similar concerns as former president of the Hispanic Bar Association, including disappointment that the Governor failed to nominate Zulima Farber to the New Jersey Supreme Court.**

    a. **What impact do you believe race or ethnicity has on judicial decisions?**

    Response: I do not believe race or ethnicity has any impact on judicial decisions.

    b. **Do you agree that a judge should aspire to be impartial regardless of who may be a party before the court—regardless of wealth, race, gender or privilege?**

    Response: Yes, a judge has an absolute duty to remain impartial in any matter before the court.

2. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people."**

    a. **Do you believe judges should ever base their decisions on a desired outcome, or solely on the law and facts presented?**

    Response: A judge must never decide on a matter before the court based on his/her desired outcome but must strictly adhere to precedent and the facts presented.

    b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?**

    Response: No, I do not believe a judge should consider his or her own values or policy preferences in determining what the law means.

3. **During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

    Response: Yes.

4. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe a judge must be fair, evenhanded and decisive. In carrying out his or her duties, a judge must remain impartial and committed to following the law. As a United States Magistrate Judge for the past four years, I have demonstrated that I possess these attributes.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should remain open minded and should never prejudge any matter that comes before the court. A judge should carefully review all materials submitted and consider the law and the facts when rendering decisions. Finally, a judge should treat all litigants that come before the court with respect and dignity. For the last four years I have met these standards, and if fortunate enough to be confirmed, I will remain true to these convictions.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: I am committed to following precedent. As a District Judge I would follow the law as set forth by the Supreme Court and the Third Circuit and would refrain from interjecting my personal beliefs when evaluating any matter before me.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: First and foremost, I would look to available Supreme Court and Third Circuit precedents in analogous settings. In matters concerning statutory interpretation, I would examine the plain language of the text, consider the legislative history and look to whatever precedential guidance is available.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

   Response: A judge must adhere to precedent on questions of law in order to ensure certainty, consistency and stability in the administration of justice. As a trial judge, I would apply the law to the facts before me, and nothing else.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a Magistrate Judge for the last four years, I have had to confront the pressures of managing a heavy caseload. Should I be fortunate enough to be confirmed as a District Judge, I would utilize the skills that I have acquired in the last four years and approach management of my docket in the same manner. In collaboration with the Magistrate Judge(s) assigned to work with me, I would carefully analyze the docket and determine which matters were ripe for dispositive consideration. I would continue to utilize the Magistrate Judges in a manner that has proven to be effective in our district. As a District Judge, I would afford all matters the proper attention and due consideration necessary to effectively and efficiently ensure that cases on my docket are moved through the system.

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe judges have a role in controlling the pace and conduct of litigation of those matters before the court. Judges should be mindful that every litigant has a right to have their matter efficiently and fairly managed by the court. With that in mind, a judge should make great efforts to rule on matters before him or her with care and urgency. This requires both the skillful management of the matter at the pretrial stage, in conjunction with attentiveness by the district judge throughout the life of the matter.

As for the conduct, judges play a critical role in assuring that all litigants before the court remain professional and dignified. The judge starts by setting an example from the bench and the court should require that civility is maintained.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: In considering a constitutional challenge to a statute, a judge must assess whether the statute violates the Constitution or if Congress exceeded its authority under the Constitution in enacting the statute under review. The District Judge must be guided by precedent when carefully determining whether to declare a statute enacted by Congress unconstitutional.

12. Please describe with particularity the process by which these questions were answered.

Response: Having carefully considered each question, I drafted my responses which were reviewed by representatives of the Department of Justice. The final responses were forwarded to the Department of Justice for submission to the Senate Judiciary Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Esther Salas
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Jeff Sessions

1. **According to your questionnaire, you participated in the drafting of a March 13, 2006 letter to the U.S. Sentencing Commission from Federal Community and Public Defenders. Please explain for the Committee your role and work on this letter.**

Response: I played no role in the drafting of the March 13, 2006 letter. I did help prepare it by conducting research on various proposed amendments and preparing a background memorandum for the Federal Defender Sentencing Guidelines Committee (hereinafter referred to as Defender Committee) for their review. Finally, I recall participating in conference calls with the Defender Committee.

2. **Among the sentencing guidelines opposed in the letter were new increased sentences for hoaxes, including hoax calls to military families conveying false information "about the death, injury, capture, or disappearance of a member of the Armed Forces." The letter proposed a very low base offense level of six (half of what the Commission recommended), as well as "an invited downward departure, if the offense did not involve an expression of intent to injure a person or property."**

   a. **Isn't it true that under your proposal, a hoax caller who intended to harass a military family would face no meaningful risk of jail time (zero to six months in the probation range)?**

Response: Having reviewed the Defender Committee's proposal, it is possible for a hoax caller convicted of harassing a military family, where there was no "intent to injure a person or property," to receive a probationary sentence. However, there are many factors that a sentencing court must consider before rendering any sentence in a criminal matter. The sentencing judge must first determine the appropriate guideline range, then consider all statutory factors mandated by 18 United States Code, Section 3553(a). The sentencing judge must also review the final presentence report and consider any and all aggravating and mitigating factors. It is important to note that if the hoax caller had a criminal history which resulted in a higher criminal history category, the hoax caller could receive a jail sentence.

   b. **Do you disagree with the Commission's decision to refer the hoax statute to the same guideline that governs threats?**

Response: As a judge my role is limited and I would afford a great deal of deference to the United States Sentencing Guidelines. It is the Commission's job to set forth the appropriate guidelines and it is not my place to agree or disagree with any of the Commission's decisions.

3. **The letter also objected to the proposed Commission guidelines for criminals who materially support the development, use, or threatened use of a nuclear weapon or other weapon of mass destruction. Among other objections, the letter proposed a downward departure for those convicted of materially supporting the development of a nuclear or other weapon. Do you not believe those who are convicted of intentionally and materially supporting the illegal development of rogue nuclear weapons deserve strict accountability and the highest available sentence?**

Response: Our system of justice requires that individuals convicted of a crime in a court of law must be accountable for their conduct. As a District Judge, I would not have a preconceived notion of what type of sentence a defendant should or should not receive. Rather, a sentencing judge must consider all appropriate factors in determining the sentence in any criminal matter. However, if the facts were such that the aggravating factors clearly outweighed the mitigating factors and the advisory guideline range recommended a sentence at or near the statutory maximum, I would have no difficulty in following the advisory guideline range.

4. **The letter also objected to proposed stepped-up guideline enhancements for those who destroy or damage veterans' memorials or a national cemetery. According to the letter, these proposed enhancements, which were in the range of four to six guideline levels, were "too high." In fact, the letter opined that existing sentences for these offenses were "too high already." But under the guidelines in effect at the time of your letter, a defendant who vandalized a national cemetery plot would be sentenced based on an Offense Level of 8, which yields a zero to six month term of imprisonment and pretty much guarantees probation. Do you personally believe a probation sentence is "too high" for someone who vandalizes a national cemetery?**

Response: If fortunate enough to be confirmed as a District Judge, I would refrain from interjecting my personal beliefs when presiding over any matter. In all sentencing proceedings, I would look to the Guidelines in order to determine the advisory guideline range. Then I would consider the statutory factors set forth in Section 3553(a) along with a thorough review of the final presentence report before making any determination as to the appropriate sentence.

5. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: The Supreme Court has held that the death penalty does not constitute cruel and unusual punishment within the meaning of the Eighth Amendment. Accordingly, I would have no difficulty in enforcing the law in all aspects, including and not limited to, the death penalty.

6. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes, the Supreme Court has held the death penalty is constitutional and is an acceptable form of punishment. Accordingly, I would follow precedent as it related to the death penalty.

Responses of Kevin H. Sharp
Nominee to be United States District Judge for the Middle District of Tennessee
to the Written Questions of Senator Charles Grassley

1. **You have been very active in politics over the course of your career. There is certainly nothing wrong with your participation in the political process. But, your political history may concern future litigants, should you be confirmed.**

   a. **Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?**

      Response: Yes.

   b. **What assurances or evidence can you provide the Committee and future litigants that you will be fair to all who appear before you, if confirmed?**

      Response: As a private citizen I have been engaged in the political process; however, during my involvement I always tried to conduct myself with the utmost integrity and respect for those with differing opinions on a particular candidate or issue. Above all else, my involvement was based upon a respect for the system and the role of participants in the governing process. As a lawyer, I have tried to apply that same level of integrity and respect to the judicial process and my role in that process. If confirmed, I would fulfill my duties as a district court judge consistently and objectively, following the precedent of the Supreme Court and the Court of Appeals without regard to ideology or personal motivation.

2. **If confirmed, federal criminal cases will comprise a substantial portion of your docket. However, you have very little experience in this area of the law. What steps do you plan to take to prepare yourself to handle criminal cases?**

   Response: My legal career has been primarily in the federal judicial system, so although I lack criminal experience I do have a firm grasp of the federal rules and practice. I also understand the importance of thorough preparation for any case that may come before me should I be confirmed. To that end, I will take advantage of the comprehensive written and classroom material on the criminal component of the job offered through the Federal Judicial Center, as well as the materials generated by Chief Judge Todd Campbell for use in the Middle District of Tennessee. I will also work closely with the other judges and staff in the Middle District to ensure that I am completely prepared to exercise my duties in both the criminal and civil docket.

3. **You have spent your entire career as an advocate. How do you anticipate making the transition from advocate to a neutral arbiter?**

   Response: I believe my prior roles, whether advocating for the defense or the plaintiff, a company or an individual, or acting as a neutral in the Office of Compliance, have positioned me to analyze issues from every angle and perspective. I have a great respect

for the institution, and I understand the role of a judge in that system. Furthermore, it is axiomatic that the judicial system only works when members of the court exercise judgment and not will, and that respect for the courts only exists when the participants in the system feel as if they received a fair and impartial hearing. I am committed to maintaining the integrity and impartiality that are the hallmarks of our judicial system.

4. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe the most important attribute of a judge is to maintain impartiality toward, and respect for, the law and the participants in the judicial system. I believe I possess those qualities.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe the appropriate temperament of a judge is to be thoughtful, respectful, open-minded and impartial. Although each of these qualities overlap to a certain extent, the most important elements are thoughtfulness and respect for both the rule of law and the participants in the legal system. I believe I meet each of these standards.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: When reviewing a case of first impression, I would look first to the language of the statute or law. I would also review and analyze any analogous U.S. Supreme Court or Court of Appeals rulings, and if available, any similar district court opinions. Legislative history or purpose, if available, might also provide guidance on a case of first impression.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: The role of a district court judge is to apply the law as defined by the Supreme Court or the Court of Appeals to the case or controversy presented. I would carry out that duty regardless of any personal beliefs.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to manage my caseload by initially working closely with the parties to set reasonable but firm scheduling deadlines, and where appropriate, to integrate the magistrate judges into the management process to ensure the parties stay on track. I will also frequently conduct a review of my cases to ensure that they are progressing toward resolution and are being handled consistent with the policies and procedures established by the Chief Judge of the Middle District.

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. If confirmed, I would work with the parties to set reasonable and firm deadlines for completion of the various stages of litigation and frequently review matters before me to ensure compliance. I would further work to minimize and quickly resolve any interim issues such as discovery disputes, incorporating magistrate judge assistance where appropriate. Also, I would work closely with my staff to make certain that those items ripe for dispositive resolution are handled expeditiously and that trials are conducted efficiently with careful attention to the mandates of due process and equity.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It would be appropriate to declare all or part of a congressional action unconstitutional if a statute violates the plain meaning of a constitutional provision or Supreme Court/Circuit Court interpretation of a particular provision of the Constitution.

12. Please describe with particularity the process by which these questions were answered.

Response: I received these written questions on Wednesday evening, March 9, 2011. I reviewed the questions carefully and prepared my responses. I then shared and discussed my written answers with representatives of the Department of Justice. After finalizing my responses, I forwarded them to the Department of Justice for transmittal to the Senate Judiciary Committee on my behalf.

13. Do these answers reflect your true and personal views?

Response: Yes.

SUBMISSIONS FOR THE RECORD

Yale Law School

AKHIL REED AMAR · *Sterling Professor of Law*

March 19, 2010

Senator Patrick J. Leahy, Chairman
Senator Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6225

Dear Chairman Leahy and Ranking Member Sessions:

Enclosed please find a copy of a joint letter written by myself and Dean Ken Starr in reference to the nomination of Goodwin Liu to serve on the U.S. Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Akhil Reed Amar

P.O. BOX 208215, NEW HAVEN, CONNECTICUT 06520-8215 · TELEPHONE 203 432-4838 · FACSIMILE 203 432-4871
COURIER ADDRESS 127 WALL STREET, NEW HAVEN, CONNECTICUT 06511 · EMAIL AKHIL.AMAR@YALE.EDU

March 19, 2010

Senator Patrick J. Leahy, Chairman
Senator Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6225

Dear Chairman Leahy and Ranking Member Sessions:

As your Committee considers the nomination of Goodwin Liu to serve on the U.S. Court of Appeals for the Ninth Circuit, it is our privilege to speak to his qualifications and character, and to urge favorable action on his nomination in the discharge of your constitutional duties of advice and consent. In short, Goodwin is a person of great intellect, accomplishment, and integrity, and he is exceptionally well-qualified to serve on the court of appeals. The nation is fortunate that he is willing to leave academia to engage in this important form of public service.

The Committee is no doubt familiar with Goodwin's personal story as the son of immigrants from Taiwan and his sterling record of achievements and accolades. We know Goodwin as a fellow teacher and scholar of the law; we have read some of his writings, and we have seen him speak in academic and public settings. What we wish to highlight, beyond his obvious intellect and legal talents, is his independence and openness to diverse viewpoints as well as his ability to follow the facts and the law to their logical conclusion, whatever its political valence may be. These are the qualities we expect in a judge, and Goodwin clearly possesses them.

Two examples help make the point. First, Goodwin (and his co-author Bill Taylor) wrote an article in *Fordham Law Review* in 2005 defending the use of school vouchers to provide better educational opportunities for children trapped in failing schools. The article provides a careful and candid review of the evidence on how vouchers have worked in practice, and it responds to the critics of vouchers in a direct and forceful way. We are fairly sure that this piece did not win Goodwin any friends in the liberal establishment, but it reflected his sincerely reasoned view about one way to improve the life chances of some of our most disadvantaged children. Goodwin's commitment to this issue brought him to Pepperdine in 2006 for a meeting organized by Clint Bolick, then president of the Alliance for School Choice. Given how far apart he and Clint are on other issues, Goodwin's enthusiastic participation in that meeting demonstrates his willingness to find common ground even with people who have quite different beliefs from his own.

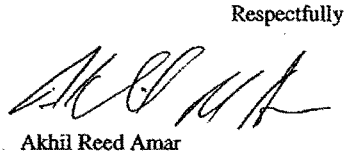
A second example hits closer to home for one of us. In 2008, Goodwin joined an amicus brief by constitutional law professors in support of the plaintiffs who challenged California's marriage laws in the state supreme court. The court ruled for the plaintiffs, but in November 2008 the voters of California effectively reversed that ruling by enacting Proposition 8, a state constitutional amendment that limits marriage to opposite-sex couples. In October 2008, before Proposition 8 passed, Goodwin was called to testify at a joint

hearing of the California Assembly and Senate Judiciary Committees on the legal issues raised by Proposition 8. He was asked to testify as a neutral legal expert (indeed, he was the sole witness tapped for that role), and on the core issue that later became the subject of a state constitutional challenge, Goodwin correctly forecasted that Proposition 8 would be upheld by the California Supreme Court under applicable precedents. Again, Goodwin's position, which he also stated in a *Los Angeles Times* editorial, could not have pleased his friends who sought to invalidate Proposition 8. But, as the example shows, Goodwin knows the difference between what the law is and what he might wish it to be, and he is fully capable and unafraid of discharging the duty to say what the law is.

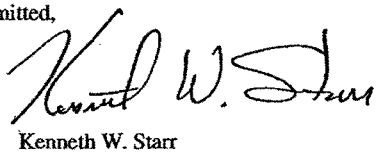
As his academic colleagues, we would add a further point. Given what we know of Goodwin, it seems no accident that he was asked by his dean (literally before the ink was dry on his tenure review) to assume the role of associate dean. If Berkeley is like other law schools, the duties of that position include planning the curriculum and, importantly, serving as something of a catch-all for faculty requests and complaints. His appointment to that role is additional evidence of his reputation for collegiality, fairness, and good judgment.

In sum, you have before you a judicial nominee with strong intellect, demonstrated independence, and outstanding character. We recognize that commentators on all sides will be drawn to debate the views Goodwin has expressed in his writings and speeches. In the end, however, a judge takes an oath to uphold and defend the Constitution, and in the case of a circuit judge, fidelity to the law entails adherence to Supreme Court precedent and (apart from the en banc process) adherence to circuit precedent as well. Thus, in our view, the traits that should weigh most heavily in the evaluation of an extraordinarily qualified nominee such as Goodwin are professional integrity and the ability to discharge faithfully an abiding duty to follow the law. Because Goodwin possesses those qualities to the highest degree, we are confident that he will serve on the court of appeals not only fairly and competently, but with great distinction. We support and urge his speedy confirmation.

Respectfully submitted,



Akhil Reed Amar
Sterling Professor of Law
and Political Science
Yale Law School



Kenneth W. Starr
Duane and Kelly Roberts Dean
and Professor of Law
Pepperdine University School of Law

CHAIR
Benjamin H. Hill, III
Suite 3700
101 East Kennedy Boulevard
Tampa, FL 33602-5156

FIRST CIRCUIT
Lisa G. Arrowood
28 State Street
Boston, MA 02109

SECOND CIRCUIT
Beth L. Kaufman
60 East 42nd Street
New York, NY 10165-0023

THIRD CIRCUIT
Robert C. Heim
Cira Center
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
E. Fitzgerald Parnell, III
Suite 2300
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
David W. Clark
Suite 400
One Jackson Place
188 East Capitol Street
Jackson, MS 39201

SIXTH CIRCUIT
W. Anthony Jenkins
Suite 4000
500 Woodward Avenue
Detroit, MI 48226

SEVENTH CIRCUIT
Stephan Landsman
25 East Jackson Boulevard
Chicago, IL 60604

EIGHTH CIRCUIT
David L. Brown
8th Floor
Fleming Building
218 Sixth Avenue
Des Moines, IA 50309-4013

NINTH CIRCUIT
Joanne M. Garvey
17th Floor
4 Embarcadero Center
San Francisco, CA 94111-4158

Alan Van Etten
Suite 770
Pauahi Tower
1003 Bishop Street
Honolulu, HI 96813

TENTH CIRCUIT
Paul T. Moxley
11th Floor
111 East Broadway
Salt Lake City, UT 84111-5225

ELEVENTH CIRCUIT
Ramón A. Abadin
Suite 1208
9155 South Dadeland Boulvard
Miami, FL 33156-2739

D.C. CIRCUIT
Carolyn H. Williams
725 12th Street, N.W.
Washington, DC 20005-5901

FEDERAL CIRCUIT
Joseph M. Potenza
Suite 1200
1100 13th Street, N.W.
Washington, DC 20005-4056

BOARD OF GOVERNORS
LIAISON
C. Timothy Hopkins
428 Park Avenue
Idaho Falls, ID 83402

STAFF COUNSEL
Denise A. Cardman
202-662-1761
cardmand@staff.abanet.org

Please respond to:
Benjamin H. Hill, III, Esq.
Hill Ward Henderson
101 E. Kennedy Blvd., Suite 3700
Tampa, Florida 33602
Tel: (813) 227-8420
Fax: (813) 221-2900
Email: bhill@hwhlaw.com

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

VIA EMAIL AND FIRST CLASS MAIL

January 20, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Re-Nominations of Nominees for Federal Courts

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary was advised that the 111th Congress adjourned without confirming forty three nominees for Federal Court positions. On January 5, 2011, the President re-nominated 42 of the 43. Since that time, the Federal Judiciary Committee has had an opportunity to review the ratings previously given to the 42 pending nominees. After a review of each of the forty two nominees, the Committee has decided that the ratings previously given are reaffirmed. Accordingly, I am enclosing a list of the forty two nominees and the prior ratings which are now considered to be the current ratings of the Federal Judiciary Committee.

Should you have questions or require additional information, please advise.

Sincerely,

Benjamin H. Hill, III
Chair

Cc: The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq.(via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275(via email) on January 20, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Benjamin L. Cardin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons

Minority:

Hon. Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Tom Coburn
Hon. Jeff Sessions

2011-05-18 14:39:25 FROM: AFL-CIO/202-637-5058 TO: Senator Patrick Leahy;Senator Patrick Leahy

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

RICHARD L. TRUMKA
PRESIDENT

ELIZABETH H. SHULER
SECRETARY-TREASURER

ARLENE HOLT BAKER
EXECUTIVE VICE-PRESIDENT

LEGISLATIVE ALERT!

(202) 637-5057

May 18, 2011

Dear Senator:

I am writing on behalf of the AFL-CIO in support of the nomination of Professor Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit. Professor Liu is extraordinarily well-qualified and I urge you to vote for cloture, and to vote for his confirmation.

Professor Liu has had a stellar academic and professional career. He was a Rhodes Scholar and Supreme Court clerk before joining the faculty of the University of California Berkeley Law School (Boalt Hall), where he earned tenure and was promoted to Associate Dean within five years. Professor Liu's academic publications and legal work demonstrate his thoughtful approach to difficult issues and careful analysis of all sides of every argument. His keen intellect and impressive understanding of the law was on display during his confirmation hearings before the Senate Judiciary Committee.

The federal courts of appeals play a critically important role in enforcing a broad array of rights and protections for American workers, including their right to minimum wages and overtime compensation, their right to a safe workplace, their right to a workplace free discrimination on grounds of race, gender, age, disability, or other prohibited factors, and their right to form a union and engage in collective bargaining with their employers over their pay and working conditions. Increasingly, the federal courts of appeal are the final word on key legal questions, given how few cases the U.S. Supreme Court hears each year. It is imperative, therefore, that nominees to the federal courts of appeal be individuals of distinction who understand the important role of the courts in upholding and enforcing key statutory and constitutional rights, and who have a demonstrated commitment to these principles.

The AFL-CIO is certain that Professor Liu will ensure that litigants before him are given a fair day in court. I urge the Senate to swiftly to confirm the nomination of Professor Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit.

Sincerely,

William Samuel, Director
Government Affairs Department

A A A B A

April 14, 2010

The Honorable Jon Kyl
Committee Member
Committee on the Judiciary
United States Senate
730 Hart Senate Office Building
Washington, D.C. 20510
FAX: 202-224-2207

Re.: Arizona Asian American Bar Association Support of the Nomination of Goodwin H. Liu to the U.S. Court of Appeal for the Ninth Circuit

Dear Senator Kyl:

I write on behalf of the Arizona Asian American Bar Association (AAABA) regarding the nomination of University of California Berkeley School of Law Associate Dean and Professor Goodwin H. Liu to serve on the United States Court of Appeals for the Ninth Circuit. AAABA is pleased to support the confirmation of Professor Liu to the Ninth Circuit.

Professor Liu's confirmation is historic for the Asian Pacific American community because there are currently no Asian Pacific American judges among the approximately 175 active federal appellate court judges nationwide. Professor Liu joins Judge Denny Chin, nominee to the U.S. Court of Appeals for the Second Circuit, as the second Asian Pacific American nominated to the federal appellate courts by the President. If confirmed, Professor Liu would be the only Asian Pacific American among the 25 active federal appellate court judges in the Ninth Circuit. That statistic is particularly troubling given that over 12% of the population of the Ninth Circuit is Asian Pacific American. Moreover, only four Asian Pacific Americans have ever served as federal appellate court judges and it has been over five years since there has been an active Asian Pacific American federal appellate court judge.

Professor Liu is well qualified to serve as a federal appellate court judge because he has a wide range of legal experiences and a talented legal mind. Professor Liu graduated with distinction from Stanford University, Oxford University, and Yale Law School and he is a Rhodes Scholar, a former Supreme Court clerk, and a member of the American Law Institute. At U.C. Berkeley School of Law, Professor Liu quickly earned tenure and promotion to Associate Dean and has garnered awards for his scholarship and teaching.

PRESIDENT:
Melissa S. Ho
VICE PRESIDENT:
Bryce A. Suzuki
SECRETARY:
Amanda Ho
TREASURER:
Briana Chua
BOARD OF DIRECTORS:
Alysson Abe
Randy Aoyama
Patrick Black
Emily Chang
George Chen
JoAnn Garcia
Mingyi Kang
Leonardo Loo
Eileen Sullivan
J. Walters
EX OFFICIO:
Art M. Lee

Professor Liu also has experience in both the public and private sectors. Before law school, he spent two years at the Corporation for National Service in Washington, D.C., helping to launch the AmeriCorps program. As Senior Program Officer for Higher Education, Liu led the agency's effort to build community service programs at colleges and universities nationwide. Between his clerkships, Liu returned to government service as a Special Assistant to the Deputy Secretary at the U.S. Department of Education. In that capacity, he advised the Secretary and Deputy Secretary on a range of legal and policy issues, including the development of guidelines to implement a $134 million congressional appropriation in 2000 to help turn around low-performing schools. Professor Liu was also an attorney with the corporate litigation practice of O'Melveny & Myers in Washington, D.C.

Professor Liu's confirmation is also important because his story is a source of inspiration for all Asian Pacific Americans. Born in Augusta, Georgia, to Taiwanese doctors recruited to work in the United States by American medical institutions seeking assistance in serving underserved areas, Professor Liu's story is the American Dream. Professor Liu's family eventually settled in Sacramento, California, where Professor Liu attended public schools. Remarkably, Professor Liu did not learn to speak English until kindergarten because his parents worried that he and his brother would acquire an accent if they were taught at home. During high school, Professor Liu had the unique opportunity to serve as a page in the U.S. House of Representatives, thanks to the sponsorship of Congressman Robert Matsui. It was his first real exposure to law and politics, and it sparked a deep interest in government that eventually drew him to the law.

Professor Liu is a talented and experienced judicial nominee whose confirmation will bring intellect and objectivity to his service as a judge on the U.S. Court of Appeals for the Ninth Circuit. We proudly support his nomination and urge his speedy confirmation.

Sincerely,

Melissa Ho
President
Arizona Asian American Bar
Association

cc:

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

ASIAN AMERICAN JUSTICE CENTER
MEMBER OF ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE

CONFIRM GOODWIN H. LIU,
NOMINEE TO THE U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT

May 18, 2011

Dear Senator:

The Asian American Justice Center ("AAJC"), a member of the Asian American Center for Advancing Justice, is dedicated to advancing human and civil rights for Asian Americans and to build and promote a fair and equitable society for all. AAJC urges you to vote "yes" on cloture and "yes" on the confirmation of Goodwin H. Liu. Professor Liu has the necessary experience, integrity, intellect, and judgment that will make him an outstanding Circuit Court judge.

AAJC is a national leader on issues of particular importance to the Asian American community. AAJC works closely with its three affiliates: the Asian Pacific American Legal Center in Los Angeles, the Asian Law Caucus in San Francisco, and the Asian American Institute in Chicago. AAJC also has a network of over 120 community-based organizations in 25 states and the District of Columbia.

Professor Liu has outstanding experience and credentials that make him extremely well-qualified to serve in the Ninth Circuit. A distinguished graduate of Stanford University, Oxford University, and Yale Law School, Professor Liu is a Rhodes Scholar and former Supreme Court clerk. Professor Liu has also demonstrated his commitment to public service as a key education policy advisor for the Corporation for National Services and U.S. Department of Education. Professor Liu has also worked in the private sector as part of the litigation practice of O'Melveny & Meyers.

Since 2003, Professor Liu has been a professor at UC Berkeley School of Law, where he quickly earned tenure and promotion to Associate Dean in five years. As a professor, he was awarded UC Berkeley's most prestigious award for teaching in 2009 and has been recognized as an expert on educational and constitutional law.

AAJC believes Asian Pacific Americans are severely underrepresented as judges in the federal courts. Out of approximately 875 federal Article III judges, only 14 are Asian Pacific Americans.

While we applaud last year's confirmation of Judge Denny Chin to the Second Circuit, he is the only Asian Pacific American serving among the approximately 175 active federal appellate court judges. Prior to Judge Chin's confirmation, it had been over five years since there had been an active Asian Pacific American federal appellate court judge and

only four Asian Pacific Americans had ever served as federal appellate court judges. If confirmed, Professor Liu would be the only Asian Pacific American among the 25 active federal appellate court judges in the Ninth Circuit, a region where 1 in 10 residents is an Asian Pacific American.

Professor Liu's background is an inspiring story for all Asian Pacific Americans. He was born in Augusta, Georgia, to Taiwanese doctors recruited to work in the United States by American medical institutions seeking assistance in serving underserved areas. Living in Georgia and then Florida in the late 1960s and early to mid-1970s, Professor Liu did not learn to speak English until kindergarten because his parents worried that he and his brother would acquire an accent if they were taught at home.

Professor Liu is a mainstream nominee who is open-minded about different opinions and ideas as demonstrated by his support from a diverse group of people, including prominent conservatives such as former federal appellate court judge and Whitewater prosecutor Ken Starr, former Republican Congressman Tom Campbell, Ford Administration Transportation Secretary William T. Coleman, Jr., and school choice advocate Clint Bolick.

Professor Liu is an outstanding and qualified judicial candidate who will bring intellect and objectivity to his service as a judge on the U.S. Court of Appeals for the Ninth Circuit. Accordingly, we strongly support Goodwin H. Liu for the U.S. Court of Appeals for the Ninth Circuit and urge you to vote for cloture and his confirmation. Thank you for your consideration.

Sincerely,

Karen K. Narasaki
President and Executive Director

NATIONAL OFFICERS
John Delloro, AFT
President
Luisa Blue, SEIU
1st Vice President
Matt Finucane, NEA
2nd Vice President
Johanna Hester, UDWA/AFSCME
Treasurer
Lila Chui, AFT
Secretary

EXECUTIVE BOARD
Mary Anne Ahtye, AFT/UESF
Shwe Aung, SIU
Rolando Balagtas, APWU
Luisa Blue, SEIU
David Carpio, AFL-CIO
May Chen, Workers United
Helen Chin, AFT
Richard Chu, IAMAW
Lila Chui, AFT
John Delloro, AFT
Tina Diep, SEIU
Cynthia Doeun, SEIU
Virginia Eng, AFT
Matt Finucane, NEA
Guy Fujimura, ILWU
Wesley Furtado, ILWU
John Garrett, AFGE
Ying Gee, UAW
Kim Geron, CFA
Sumi Haru, SAG
Dian Herrman, AFSCME
Johanna Hester, UDWA/AFSCME
Alex Hing, UNITE HERE
Jenny Ho, UFCW
David Keicher, AFL-CIO
Donna Kekauoha, LIUNA
Tracy Lai, AFT
Ken Liu, CWU
Lonway Moy, IBEW
Van S. Nguyen, CIR/SEIU
Raahi Reddy, UAW
Ahmed Shakir, AFSCME
Maria Somma, USW
Levin Sy, IFPTE
Joan Takano, HGEA/AFSCME
Norman Ten, SEIU
Ben Toyama, IFPTE
Maf Misbah Uddin, AFSCME
Kent Wong, AFT

NATIONAL OFFICE
Malcolm Amado Uno
Executive Director
Anna Stuart
Executive Assistant

APALA
ASIAN PACIFIC AMERICAN LABOR ALLIANCE, AFL-CIO

March 18, 2010

The Honorable Patrick J. Leahy, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Goodwin H. Liu to the United States Court of Appeals for the Ninth Circuit

Dear Senators Leahy and Sessions:

It is an honor and pleasure to submit a letter of support on behalf of the Asian Pacific American Labor Alliance (APALA), AFL-CIO for Professor Goodwin H. Liu's nomination to the Ninth Circuit Court of Appeals. Briefly, APALA is the first and only national organization for Asian American and Pacific Islander union members to advance worker, immigrant and civil rights.

As you may know, Professor Liu's nomination to the Ninth Circuit Court of Appeals is historic in that there are currently no Asian Pacific Americans on the federal appellate court. More importantly, Professor Liu's qualifications, intellectual curiosity and commitment to fairness are demonstrated in his body of work.

Professor Liu's life story is an inspiration to many. The child of immigrant parents, Professor Liu did not learn English until he started kindergarten out of his parent's fear that he would acquire an accent if taught at home. He went on to become his high school valedictorian, a graduate from Stanford University, obtained his Master's Degree at Oxford University as a Rhodes Scholar and attended Yale Law School.

Professor Liu's distinguished career, which spans academia and the federal government as a public servant, is equally impressive. He served at UC Berkeley's School of Law, one of the top public universities in the country, and as Special Assistant to the Deputy Secretary at the U.S. Department of Education. It is APALA's belief that these accomplishments will carry over to a successful career in the federal appellate court.

815 16th Street NW, Washington, DC 20006 • PHONE (202) 508-3733 • FAX (202) 508-3716 • EMAIL apala@apalanet.org • WEB www.apalanet.org

Finally, judges in the Ninth Circuit Court of Appeals routinely preside over claims and issues that strongly impact working families. Thus, it is imperative that judges are able to fairly assess and interpret our laws in a manner that promotes equity and the goals of our legal system. We believe Professor Liu has the qualifications and experience necessary to be a fair judge for the Ninth Circuit Court of Appeal. Thus, strongly recommend that his nomination be voted out of committee unanimously, and confirmed by the full Senate without further delay.

Sincerely,



John Delloro
APALA National President

GOLDWATER
INSTITUTE
in defense of liberty

CENTER FOR CONSTITUTIONAL LITIGATION

January 20, 2010

Hon. Jon Kyl
U. S. Senate
730 Hart Senate Office Building
Washington, DC 20510

RE: Nomination of Goodwin Liu to Ninth Circuit

Dear Jon:

I hope the new year is off to a good start for you.

I understand that the President will send to the Senate the nomination of Goodwin Liu to serve on the U.S. Court of Appeals for the Ninth Circuit. He is associate dean and professor of law at Boalt Hall at the University of California, and a former Rhodes Scholar and clerk to Justice Ruth Bader Ginsburg. Although Prof. Liu and I differ on some issues, I strongly support his nomination.

I have known Prof. Liu for several years, since reading an influential law review article he co-authored with William Taylor of the Citizens' Commission on Civil Rights supporting school choice as a solution to the crisis of inner-city public education. It took a great deal of courage and integrity for Prof. Liu and Mr. Taylor to take such a strong and public position. Subsequently, Prof. Liu participated in a program hosted by the Alliance for School Choice bringing together diverse supporters of expanded educational opportunities.

Having reviewed several of his academic writings, I find Prof. Liu to exhibit fresh, independent thinking and intellectual honesty. He clearly possesses the scholarly credentials and experience to serve with distinction on this important court.

Thank you for considering my comments, and I hope our paths cross soon. With all best wishes.

Very sincerely,

Clint Bolick | DIRECTOR

Goldwater Institute | 500 East Coronado Rd., Phoenix, AZ 85004 | *Phone* (602) 462-5000 | *Fax* (602) 256-7045

May 17, 2011

The Honorable Harry Reid
United States Senator
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
United States Senator
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Reid and Senator McConnell:

We are a bipartisan group of eight business leaders who write in our personal capacities in support of University of California law professor Goodwin Liu's nomination to the Ninth Circuit Court of Appeals. We know Goodwin from his service on the Stanford University Board of Trustees, and having observed his character and intellect in the intimate setting of a high-level fiduciary board, we have no doubt that he would make a superb federal judge.

The Stanford Board of Trustees is the university's governing body. It is the custodian of the university's endowment and properties, and it sets the annual budget, appoints the president, and determines policies for operation and control of the university. Election to the board involves a rigorous screening process that considers an individual's temperament, collegiality, professional accomplishments, leadership abilities, and judgment, among other qualities. The 32 current trustees include leading venture capitalists, foundation and university presidents, and more than a dozen chairmen or CEOs of major corporations and private equity firms. The board meets five times a year for two days at a time, so board members get to know each other quite well.

Goodwin's election as a trustee is indicative of his professional stature and integrity, as well as his record of public service. Through the careful and confidential scrutiny involved in the board's screening process, Goodwin emerged as a person widely admired for his intellect, fairness, and ability to work well with people of differing views.

On the board, Goodwin has lived up to his reputation. Across a wide range of complex issues, Goodwin routinely asks thoughtful and incisive questions. He is good at thinking independently and zeroing in on important issues that need attention. Even in a room full of highly accomplished leaders, Goodwin is impressive. He is insightful, constructive, and a good listener. Moreover, he possesses a remarkably even temperament; his demeanor is unfailingly respectful and open-minded, never dogmatic or inflexible. Given these qualities, it was no surprise that he was asked to chair the board's Special Committee on Investment Responsibility after serving just one year of his five-year term.

In short, Goodwin's strengths are exactly what we expect in a judge: objectivity, independence, collegiality, respect for differing views, sound judgment. Goodwin possesses these qualities on top of the brilliant legal acumen that is well-established by his professional record and the judgment of those most familiar with his scholarly work.

The confirmation of exceptionally qualified nominees like Goodwin should not be a partisan issue. We believe Goodwin deserves the support of Senators from both parties; at the least, he deserves a timely up-or-down vote. We are pleased to join the diverse range of individuals who endorse Goodwin's nomination and urge his swift confirmation.

Sincerely,

Mariann Byerwalter
Chairman
JDN Corporate Advisory LLC

Hamid R. Moghadam
Chairman and CEO
AMB Property Corporation

Steven A. Denning
Chairman
General Atlantic LLC

Ruth Porat
Executive Vice President and Chief
Financial Officer
Morgan Stanley

John A. Gunn
Chairman
Dodge & Cox

Ram Shriram
Founding Board Member
Google, Inc.

Frank D. Lee
CEO
Dragonfly Sciences, Inc.

Jerry Yang
Co-Founder and Chief Yahoo
Yahoo!, Inc.

(All titles listed for identification purposes only)

California Correctional
Peace Officers
Association
CCPOA
REPRESENTING
CDCR PEACE OFFICERS
"THE TOUGHEST
BEAT IN THE STATE"

755 Riverpoint Dr., Ste. 200 • West Sacramento, CA 95605-1634 • (916) 372-6060

March 17, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9516

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9102

Re: Support for the Nomination of Professor Goodwin Liu for a Seat on the US Court Of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Sessions:

I write on behalf of the California Correctional Peace Officers' Association (CCPOA) concerning the above. CCPOA is pleased to support the confirmation of Professor Goodwin Liu to the Ninth Circuit.

CCPOA represents roughly 30,000 peace officers employed by the State of California and its California Department of Corrections and Rehabilitation. Our members include parole agents, youth counselors, and correctional officers, and it has correctly been said that in dealing with incarcerated adult offenders and youth offenders our members walk "the toughest beat in the state."

Historically, our organization has supported both Republicans and Democrats. Our members and our organization's leaders care deeply about criminal justice issues and the constitutional rights of all citizens, including crime victims and peace officers. We have done our "due diligence" with reference to the background, qualifications, and philosophy of Professor Goodwin Liu. We are confident that he will further the cause of justice and follow the law and Constitution for all parties that come before his Court, again including crime victims and peace officers.

We are, again, pleased to support his confirmation.

Very truly yours,

Mike Jimenez,
President

SENT VIA FACSIMILE: 2 pages

March 26, 2010

Sen. Patrick Leahy, Chairman
Sen. Jeff Sessions, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Goodwin Liu for U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Sessions:

The undersigned California District Attorneys have the responsibility for prosecuting violations of the criminal law within our respective counties. For many years, our ability to enforce the law and protect the citizens of our jurisdictions has been hampered by erroneous decisions of the United States Court of Appeals for the Ninth Circuit. This court has been far out of the judicial mainstream, as indicated by its frequent and often summary reversal by the Supreme Court, at a rate far above the national average.

The Supreme Court cannot reverse all of the Ninth Circuit's errors, however. Despite the efforts of Congress to rein in the federal courts with the 1996 passage and subsequent amendment of the Antiterrorism and Effective Death Penalty Act, miscarriages of justice remain routine. This is particularly true in the most heinous of crimes, those where a jury has unanimously decided that only the death penalty is sufficient punishment.

Under no circumstances should any judicial nominee be confirmed to the Ninth Circuit who would take that court even further in the wrong direction. Regrettably, the President has sent to the Senate just such a nominee. The paper written by Goodwin Liu in opposition to the nomination of Justice Samuel Alito shows that he would vote to reverse nearly every death sentence. He exaggerates minor issues in jury instructions that no one at trial thought were problems, while simultaneously brushing off the brutal facts of heinous crimes as inconsequential. He jumps to the conclusion that prosecutors are guilty of racism on scant evidence and despite the considered judgment of the state trial court to the contrary. The paper and its implications are discussed more fully in the letter of the Criminal Justice Legal Foundation submitted to the committee in this matter.

Professor Liu's paper demonstrates beyond serious question that his views on criminal law, capital punishment, and the role of the federal courts in second-guessing state decisions are fully aligned with the judges who have made the Ninth Circuit the extreme outlier that it presently is. We urge the Judiciary Committee and the full Senate to reject this nomination.

Sincerely,

Will Richmond
District Attorney
Alpine County

Todd D. Riebe
District Attorney
Amador County

John R. Poyner
District Attorney
Colusa County

Michael D. Riese
District Attorney
Del Norte County

Vernon Pierson
District Attorney
El Dorado County

Michael Keitz
District Attorney
Madera County

Rod Pacheco
District Attorney
Riverside County

Gerald Benito
District Attorney
Shasta County

Elizabeth Egan
District Attorney
Fresno County

Ed Berberian
District Attorney
Marin County

Jan Scully
District Attorney
Sacramento County

David W. Paulson
District Attorney
Solano County

Robert Holzapfel
District Attorney
Glenn County

Robert H. Brown
District Attorney
Mariposa County

Candice Hooper
District Attorney
San Benito County

Birgit Fladager
District Attorney
Stanislaus County

Arthur Maillet
District Attorney
Inyo County

Gary Woolverton
District Attorney
Modoc County

Michael A. Ramos
District Attorney
San Bernardino County

Carl V. Adams
District Attorney
Sutter County

Edward R. Jagels
District Attorney
Kern County

George Booth
District Attorney
Mono County

Bonnie Dumanis
District Attorney
San Diego County

Gregg Cohen
District Attorney
Tehama County

Ronald L. Calhoun
District Attorney
Kings County

Dean Flippo
District Attorney
Monterey County

James Willett
District Attorney
San Joaquin County

Michael B. Harper
District Attorney
Trinity County

Jon Hopkins
District Attorney
Lake County

Clifford Newell
District Attorney
Nevada County

Gerald T. Shea
District Attorney
San Luis Obispo County

Phillip J. Cline
District Attorney
Tulare County

Robert M. Burns
District Attorney
Lassen County

Tony Rackauckas
District Attorney
Orange County

Ann Bramsen
Acting District Attorney
Santa Barbara County

Gregory D. Totten
District Attorney
Ventura County

Steve Cooley
District Attorney
Los Angeles County

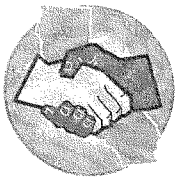
Bradford R. Fenocchio
District Attorney
Placer County

Lawrence R. Allen
District Attorney
Sierra County

Jeffery W. Reisig
District Attorney
Yolo County

J. Kirk Andrus
District Attorney
Siskiyou County

Patrick J. McGrath
District Attorney
Yuba County



California Labor Federation AFL-CIO www.workingcalifornia.org

Headquarters: 600 Grand Ave
Suite 410
Oakland, CA 94610-3561
510.663.4000 tel
510.663.4099 fax

1127 11th St
Suite 425
Sacramento, CA 95814-3809
916.444.3676 tel
916.444.7693 fax

3303 Wilshire Blvd
Suite 415
Los Angeles, CA 90010-1798
213.736.1770 tel
213.736.1777 fax

March 19, 2010

The Honorable Jeff Sessions
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Nomination of Goodwin H. Liu
to the United States Court of Appeals for the Ninth Circuit

Dear Senator Sessions:

President Obama has stated that he will seek to appoint to the federal bench individuals who are dedicated to the rule of law, who honor our constitutional traditions, and who respect the integrity of the judicial process and the appropriate limits of the judicial role. Professor Goodwin H. Liu, a Californian, is such a person. The California Labor Federation, representing 1.4 million working families, wholeheartedly supports his nomination to the Ninth Circuit Court of Appeals.

Professor Liu's upbringing represents the American Dream. His parents emigrated from Taiwan with little money but worked hard to make the most of the opportunities that America offered. Professor Liu and his older brother did not learn English until they started kindergarten. Yet, he graduated high school in Sacramento as valedictorian. After graduating from Stanford and obtaining a Master's Degree at Oxford University as a Rhodes Scholar, he attended Yale Law School, where he was editor of the Yale Law Journal. He clerked for Judge David S. Tatel on the U.S. Court of Appeals for the D.C. Circuit and with Justice Ruth Bader Ginsburg on the U.S. Supreme Court. These are remarkable accomplishments for a first generation American.

He has a strong belief in the importance of giving back to society. Although he was a biology major in college and was admitted to top medical schools such as Harvard and the University of California at San Francisco, Professor Liu's involvement in student government and as a summer school teacher for low-income youth moved him toward law and public service. He has worked extensively on creating public service opportunities, and while working for the federal government, assisted in the start of the AmeriCorps program.

Professor Liu has had a distinguished academic career at the University of California-Berkeley School of Law. He is highly regarded by his students, and greatly respected by his peers. In 2009, Professor Liu received UC Berkeley's Distinguished Teaching Award, the

university's most prestigious award for teaching excellence, and he was selected that year by the graduating class to be a commencement speaker. He has published numerous scholarly treatises.

Professor Liu's background and life experiences show that he would be an excellent jurist. As a Supreme Court Justice recently noted, it is important for the courts to have people with varied backgrounds and many different experiences sitting on the bench. The court is enriched by such jurists, and Professor Liu would bring a fresh view to the Ninth Circuit.

The courts are regularly presented with claims that affect working families, such as the failure to pay overtime; discrimination based on race, gender, disability or other grounds; the improper use of pension fund assets; and attacks on their unions by employers unhappy with their union's efforts to organize and represent more workers. Judges need to fairly assess these claims, and to interpret the Nation's laws in a manner that promotes the goals of those laws. We believe that Professor Liu will be such a judge.

In sum, we believe that Professor Liu has the skills, temperament and qualifications to be a first-rate judge. He would be an outstanding addition to the Ninth Circuit Court of Appeals. We strongly urge that his nomination be voted out of committee unanimously, and confirmed without delay by the Senate.

Sincerely,

Art Pulaski
Executive Secretary-Treasurer

AP:em

opeiu3afl(31)em

Appointment of Federal Judges

Chinese American Citizens Alliance encourages the Senate to ratify nominations of highly qualified judges of Chinese American and Asian Pacific Islander American ancestry to the Federal bench in a reasonable, timely manner.

In President Obama's administration so far, Hon. Dolly Gee, Hon. Jacqueline Nguyen have been appointed to the Central District of California, and Hon. Denny Chin has been appointed to the Court of Appeals, Second Circuit, one of the highest positions ever attained by a person of Asian American background.

However, two other nominations of note have apparently become stalled. Both have had their hearings and have been voted out of the Judiciary Committee with strong majorities. These are:
Hon. Goodwin Liu, for Court of Appeals, Ninth Circuit, and
Hon. Edward Chen, for U.S. District Court, Northern District, California.

Selection of highly qualified, intelligent judges such as these men should be a bipartisan matter. They have vowed before Congress to uphold the existing law. Completing their appointments will greatly enriched the diversity of the Federal judicial system. The differing backgrounds and perceptions they will bring while upholding and interpreting the given law will strengthen the vitality and continuity of our judicial system.

According, we firmly urge all Senators on both sides of the aisle to join and complete the appointments of Liu and Chen, and other deserved federal judicial nominations reflecting diversity, as they arise.

1044 Stockton St. San Francisco, CA.. Web: www.CACAnational.org; EditorCACA@aol.com; (505) 298-1727: Carolyn. (05/10)

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

Jesse H. Choper

University of California, Berkeley
School of Law
Berkeley, California 94720
Tel: 510.642.0339
Fax: 510.643.2673
Email: jchoper@law.berkeley.edu

April 7, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I write to support the confirmation of my colleague Goodwin Liu to serve on the U.S. Court of Appeals for the Ninth Circuit. As leading scholars and lawyers across the political spectrum have observed; Liu is a person of outstanding intellect, unblemished character, and admirable judicial temperament. In this letter, I wish to underscore Liu's sterling qualifications and address concerns that have been raised about his writings. I do so on the basis of my close association with him over the past seven years and my unusual degree of familiarity with his record, as explained below.

The Committee is by now familiar with Liu's background as the son of immigrants, product of California public schools, Rhodes Scholar, graduate of Stanford, Oxford, and Yale Law School, and United States Supreme Court law clerk. The Committee is also aware of Liu's experience in government, law practice, and academia, and the honors and accolades he has won for his teaching and scholarship. The fact that Liu earned tenure, promotion to Associate Dean, and election to the American Law Institute—all after less than five years as a professor—speaks to the exceptionally high regard that his colleagues, both at Berkeley and the profession, have for his integrity, judgment, and legal acumen.

Liu has written extensively on constitutional law and education law and policy, and I understand that the Committee and the public will be examining his writings closely in the weeks ahead. I am concerned, however, that a small but vocal group has sought to depict Liu as a radical judicial activist by inaccurately describing his record. This caricature of Liu as someone outside the mainstream of American jurisprudence is both incorrect and unfair.

I believe I am especially qualified to offer this perspective, not only because I am one of Liu's colleagues at Boalt in the field of constitutional law, but also because I chaired his tenure committee two years ago. In that role, I undertook a detailed and comprehensive review of Liu's writings. I have spent a substantial amount of time examining his articles and book chapters, and I am very familiar with his record and with the rigorous peer evaluations of his work. This made evident to me and to my colleagues at Berkeley and beyond that Liu is a superb teacher and scholar with carefully considered and nuanced views. In addressing a wide range of issues, Liu demonstrates rigor, independence, fair-mindedness, and—most importantly for present purposes—sincere respect for the proper role of courts in a constitutional democracy.

I have been dismayed and disappointed that some commentators have portrayed Liu as a liberal extremist when his record is so plainly to the contrary. His writings indicate that he would be relatively moderate and pragmatic, and an especially fair jurist, one with a clear understanding of the limited role that courts should occupy. Indeed, when one looks across the entire body of his work in his principal area of expertise, education law and policy, it is telling that so much of it is directed at legislators and policymakers and not at courts—a reflection, I believe, of his appreciation for the appropriate limits of judicial authority. Some of the responses to Liu's nomination have misunderstood, either deliberately or otherwise, his writings. For example:

Welfare rights. Some commentators have said that Liu believes judges can and should invent constitutional rights to social welfare goods such as education, housing, subsistence, and health care. The claim is based on a 2009 law review article that Liu wrote just before earning tenure.[1]

In fact, the article makes precisely the opposite point. Liu's "conception of the judicial role does not license courts to declare rights to entirely new benefits or programs not yet in existence."[2] Welfare rights, Liu says, "cannot be reasoned into existence by courts on their own."[3] The main thrust of the article is to reject the view, advanced by legal scholars in the 1960s and 1970s, that courts can read into the Constitution a theory of distributive justice. Instead, Liu argues for "legislative supremacy" in defining welfare rights.[4] For example, he says, there is "no role for courts" to question Congress's decision in the 1996 welfare reform law to end the sixty-year-old entitlement of poor families to cash assistance.[5]

The judicial role that Liu describes in the article is a modest one. When equal protection or due process challenges have been brought to eligibility criteria or benefits restrictions in a given program, courts have ordinarily decided such cases applying rationality review. That is standard doctrine. Liu would not authorize courts to go further to declare substantive rights to programs or benefits that the legislature has not created, and he notes that "it is not the case that any legislation providing a needed welfare good instantly gives rise to a cognizable right."[6] Liu also makes clear that even when courts hear challenges to eligibility criteria or restrictions on benefits, the legislature ordinarily retains the final word.[7] As the article shows, judicial review of this sort is supported by Supreme Court precedent, and it has been embraced by Justices such as Lewis Powell, hardly a left-wing radical.[8]

Affirmative action. Other commentators have said that Liu believes racial quotas are permissible and even required under the Constitution and that judges should remedy societal discrimination regardless of the duration of the remedy or its effects on innocent people. These claims are simply untrue.

Liu's writings consistently affirm the Supreme Court doctrine that racial classifications for whatever purpose are highly suspect under the Equal Protection Clause.[9] His writings on affirmative action focus on university admissions, and his views are largely consistent with existing precedent. In particular, Liu's writings affirm the unconstitutionality of racial quotas, the need for individualized review of every applicant, and the requirement that affirmative action have a termination point.[10]

Liu has disagreed with current doctrine insofar as he believes that affirmative action may be used to remedy societal discrimination.[11] But that view is hardly radical, putting Liu in the company of people like Richard Nixon, Gerald Ford, and Colin Powell. Moreover, I have no doubt that Liu, if confirmed, would set aside his own view and follow Supreme Court precedent on this as well as any other issue.

Liu has written that "affirmative action is not unqualifiedly good, nor is it unqualifiedly bad."[12] Even as he has lauded the increasing diversity of our top universities, he has recognized the risk that affirmative action may improperly stereotype minority and non-minority persons.[13] He has repeatedly affirmed that affirmative action must not unduly burden innocent individuals, exactly as current law instructs.[14] And he has called attention to the fact that affirmative action is not a policy that does much to help low-income students of all races.[15] These views do not put Liu outside the mainstream.

Capital punishment. Some commentators have said that Liu is hostile to the death penalty. But nowhere in Liu's record has he ever questioned the morality or constitutionality of the death penalty. The claim is apparently based on a 2005 paper by Liu and a co-author that raised concerns about then-Judge Samuel Alito's opinions on the Third Circuit rejecting claims of legal error in four capital cases.[16] In one, Judge Alito's view was reversed by the Supreme Court.[17] In another, his view was reversed by his own court.[18] In a third, Judge Alito's dissenting position was rejected by a panel majority of two judges, both former federal prosecutors appointed to the bench by President Reagan.[19] In only one of the four cases did Judge Alito's view prevail.[20] Because Liu's concerns in each case were shared by many other judges, both Republican and Democratic appointees, it is clear that Liu's 2005 paper does not make him an outlier on this issue.

School desegregation. Some commentators have said that Liu supports racial quotas in the assignment of students to public schools. The claim is based on a 2005 article in which Liu and his co-author urge school choice, including vouchers, to foster racial diversity in public schools.[21]

I am unable to find any language in this article—or any other article he has written—indicating that Liu supports racial quotas. The 2005 article proposes federal and state funding incentives to reward charter schools that "reflect the racial and socioeconomic diversity of the metropolitan area ... where they are located."[22] In this regard, Liu's views are similar to those of Justice Kennedy, whose opinion in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) said that "having classrooms that reflect the racial makeup of the surrounding community" is one of "our highest aspirations" and that "achiev[ing] a diverse student population" in K-12 schools is a compelling interest under the Equal Protection Clause.[23] Further, Liu's 2005 article makes clear that metropolitan demographics do not define rigid quotas for school enrollments; they are instead flexible goals that permit variation.[24] In the higher education context, the Supreme Court has held that such flexibility is a key factor that distinguishes a permissible admissions policy from an impermissible quota.[25] In short, Liu's proposal, whatever its merits, is certainly not radical or extreme.

Constitutional interpretation. Other commentators have expressed concern that Liu believes that judges should look to "evolving norms and social understandings" in interpreting the Constitution. In the book, *Keeping Faith with the Constitution*, Liu and his co-

authors write that "fidelity to the Constitution requires judges to ask not how its general principles would have been applied in 1789 or 1868, but rather how those principles should be applied today in order to preserve their power and meaning in light of the concerns, conditions, and evolving norms of our society."[26]

Of course, there is no true "answer" to whether this view is correct. But one thing is clear: Liu's interpretive approach is part of mainstream legal thought, at least as much as originalism is. Disagreements over how the Constitution should be interpreted are familiar and unlikely ever to be resolved; the debate itself is part of our legal tradition. Though not without the inherent limits of any method of constitutional interpretation, Liu's position reflects the statements and practices of many of our most eminent jurists, including Louis Brandeis, Benjamin Cardozo, Oliver Wendell Holmes, and John Marshall.[27] And it echoes the language of key Supreme Court precedents ending racial segregation, establishing constitutional protections against gender discrimination, and authorizing Congress to regulate the national economy.[28] These points are discussed with care and clarity in his book.

* * *

Having read Liu's writings, I do not necessarily agree with every element of his views on these issues or others. However, when evaluated against the range of ideas in contemporary Supreme Court jurisprudence, Liu's perspectives—whether one agrees with them or not—are well within the legal mainstream. Moreover, no matter what views he has taken as a scholar, I am confident that, if confirmed to the Ninth Circuit, he will not seek to enforce his views as law. Rather, to the extent that any person can predict the future, I feel assured that he will faithfully discharge his obligation to follow Supreme Court and circuit precedent. In this regard, Liu will follow in a fine tradition of many legal scholars who have served with distinction on the federal bench.

In sum, Goodwin Liu is a judicial nominee with outstanding qualifications, an inspiring life story, and deep respect for the judiciary's limited but important role in our constitutional democracy. I urge his speedy confirmation.

Sincerely,



Jesse H. Choper

Notes

[1] Goodwin Liu, *Rethinking Constitutional Welfare Rights*, 61 Stan. L. Rev. 203 (2008).

[2] *Id.* at 252.

[3] *Id.* at 247.

[4] *Id.* at 265

[5] *Id.* at 264 n.324.

[6] *Id.* at 245.

[7] *Id.* at 265 (urging "ultimate deference to legislative supremacy"); *id.* at 266 ("courts must defer to legislative judgments").

[8] *See id.* at 255-66 & n.297.

[9] *See* Goodwin Liu, Seattle *and* Louisville, 95 Cal. L. Rev. 277, 280-81 (2007) ("[R]ace-conscious school assignment is not immune to the risk of racial stereotyping and other harms associated with government decision-making based on race. Strict scrutiny ensures that those harms are minimized or avoided."); Goodwin Liu, *Affirmative Action in Higher Education: The Diversity Rationale and the Compelling Interest Test*, 33 Harv. C.R.-C.L. L. Rev. 381, 383 (1998).

[10] *See* Goodwin Liu, *The Causation Fallacy:* Bakke *and the Basic Arithmetic of Selective Admissions*, 100 Mich. L. Rev. 1045, 1102 (2002); Goodwin Liu, Brown, Bollinger, *and Beyond*, 47 How. L.J. 705, 761, 762 (2004).

[11] *See* Liu, Brown, Bollinger, *and Beyond*, 47 How. L.J. at 759-63.

[12] Liu, *Causation Fallacy*, 100 Mich. L. Rev. at 1102.

[13] *See id.* at 1097-98, 1099 ("an admissions process that uses racial preferences as a means of enhancing educational diversity runs the risk of stereotyping white applicants," and "the risk of improper stereotyping ... raises valid constitutional concerns that have been recognized by the Supreme Court"); *id.* at 1100 ("in my view the assumption of inferiority [of minority applicants] fostered by racial preferences may well be the most powerful objection to affirmative action"); Liu, Seattle *and* Louisville, 95 Cal. L. Rev. at 280-81 (endorsing strict scrutiny of racial classifications because of "the risk of racial stereotyping").

[14] *See* Liu, *Causation Fallacy*, 100 Mich. L. Rev. at 1097-99; Liu, Brown, Bollinger, *and Beyond*, 47 How. L.J. at 762 (race-conscious admissions policies designed to remedy societal discrimination " 'must not unduly burden individuals who are not members of the favored racial and ethnic groups' " (citing *Grutter v. Bollinger*, 123 S. Ct. 2325, 2345 (2003))).

[15] *See* Goodwin Liu, *Race, Class, Diversity, Complexity*, 80 Notre Dame L. Rev. 289 (2004).

[16] Goodwin Liu and Lynsay Skiba, Judge Alito and the Death Penalty (Dec. 2005), available at http://www.acslaw.org/pdf/Alito_Death_Penalty.pdf.

[17] *See id.* at 8-10 (discussing Rompilla v. Horn, 355 F.3d 233 (3d Cir. 2004), *rev'd*, Rompilla v. Beard, 545 U.S. 374 (2005)).

[18] *See id.* at 6-8 (discussing Riley v. Taylor, 237 F.3d 300 (3d Cir.), *vacated*, 277 F.3d 261 (3d Cir. 2001) (en banc)).

[19] *See id.* at 3-6 (discussing Smith v. Horn, 120 F.3d 400 (3d Cir. 1997) (opinion by Cowen, J., joined by Mansmann, J.)).

[20] *See id.* at 10-12 (discussing Flamer v. Delaware, 68 F.3d 736 (3d Cir. 1995) (en banc) (consolidated with *Bailey v. Snyder*)). Judge Alito's view prevailed over a dissent by four judges, including two Republican-appointed former federal prosecutors.

[21] Goodwin Liu & William L. Taylor, *School Choice to Achieve Desegregation*, 74 Fordham L. Rev. 791 (2005).

[22] *Id.* at 808.

[23] Parents Involved in Comm. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 782, 797-98 (2007) (Kennedy, J., concurring in part and concurring in the judgment).

[24] *See* Liu & Taylor, *School Choice*, 74 Fordham L. Rev. at 809.

[25] *See* Grutter v. Bollinger, 539 U.S. 306, 335-36 (2003).

[26] Goodwin Liu, Pamela S. Karlan & Christopher H. Schroeder, Keeping Faith with the Constitution 25 (2009).

[27] *See id.* at 26-28 (quoting Justice Brandeis), 71-72 & n.31 (quoting Justice Cardozo), 1 (quote Justice Holmes), 3 (quoting Chief Justice Marshall).

[28] *See id.* at 47-72.

O

O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
LONDON
LOS ANGELES
NEWPORT BEACH

1625 Eye Street, NW
Washington, D.C. 20006-4001
TELEPHONE (202) 383-5300
FACSIMILE (202) 383-5414
www.omm.com

NEW YORK
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
SINGAPORE
TOKYO

OUR FILE NUMBER

WRITER'S DIRECT DIAL
(202) 383-5325

WRITER'S E-MAIL ADDRESS
wcoleman@omm.com

11 March, 2011

VIA FACSIMILE 202-224-3479

The Honorable Patrick J. Leahy
Chairman
Committee on Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I enjoyed very much coming to your party the other night. It was a real pleasure and your wife certainly added additional enthusiasm to the evening.

I am very much interested in seeing that Goodwin Liu gets confirmed as a U.S. Court of Appeals Judge for the 9th Circuit. He is awfully bright and very able. As I understand it, he was born in a country in the Far East but has American citizenship. He has been a scholar all of his life and apparently wrote an article which somewhat questions a particular court decision. I am pretty sure that Goodwin Liu has a talent and legal ability that if a particular issue came before him in the 9th Circuit, he would pay attention to all of the briefs and oral arguments. Since in the original court he would be one of three judges, it is possible that if there is some issue which is contrary to what most judges think, that the other two judges would vote the other way. If that didn't happen in the 9th Circuit, there still might well be the right to appeal to the remaining judges on the 9th Circuit and of course if the Circuit decides the case a certain way, the Supreme Court no doubt would review it and I am pretty sure that unless he was correct on the law, that the Court would overrule the decision of the 9th Circuit.

The main point of this letter is that I hope you give serious consideration to voting to approve Mr. Liu as a judge for the 9th Circuit as I think he would make an outstanding judge.

"Take care...."

Sincerely,

William T. Coleman, Jr.

WTC, Jr.:ses

DC1:823397.1

O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
LONDON
LOS ANGELES
NEWPORT BEACH

1625 Eye Street, NW
Washington, D.C. 20006-4001
TELEPHONE (202) 383-5300
FACSIMILE (202) 383-5414
www.omm.com

NEW YORK
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
SINGAPORE
TOKYO

OUR FILE NUMBER

WRITER'S DIRECT DIAL
(202) 383-5325

WRITER'S E-MAIL ADDRESS
wcoleman@omm.com

29 April, 2010

VIA FACSIMILE 202-228-3954

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Re: ***Nomination of Goodwin Liu for the U.S. Court of Appeals for the Ninth Circuit***

Dear Senator Feinstein:

I understand that the President of the United States has nominated Goodwin Liu to be a member of the U.S. Court of Appeals for the Ninth Circuit. It is my understanding he has already had his hearing before your Committee and it is possible that on Monday or early next week there could be a vote by your Committee on whether you will forward his nomination to the full Senate. I would appreciate it if you would take this action. I have known Goodwin Liu for many years as after he finished Yale Law School and then clerked for a Justice on the Supreme Court of the United States he worked at O'Melveny & Myers LLP in the Washington office for several years and did a tremendous job. Unfortunately for our office he made the decision that he would like to pursue a career a law professor and he soon joined the faculty of the University of California-Berkeley Law School and is an outstanding Associate Dean and Professor of Law there. I think he will make a tremendous Judge for the Ninth Circuit and I hope your Committee, when it next meets, will send his nomination to the Senate for final action.

If you have time this week I would like to visit with you, or you can give me a call.

"Take care....."

Sincerely,

William T. Coleman, Jr.
Senior Partner and The Senior Counselor
of O'MELVENY & MYERS LLP

WTC, Jr.:ses

DC1:803140.1

CAPALF CONFERENCE OF ASIAN PACIFIC AMERICAN LAW FACULTY

Board of Directors

Anupam Chander
Professor
University of California, Davis
School of Law

Robert Chang
Professor and Director,
Fred T. Korematsu Center for Law
& Equality
Seattle University School of Law

Gabriel "Jack" Chin
Chester H. Smith Professor of Law
University of Arizona
James E. Rogers College of Law

Rose Cuison Villazor
Associate Professor
Hofstra University
School of Law

Cynthia Ho
Vickrey Research Professor of Law
Loyola University of Chicago
School of Law

Susan Kuo
Associate Professor
University of South Carolina
School of Law

Daniel P. Tokaji
Associate Professor
The Ohio State University
Moritz College of Law

March 4, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Federal Judicial Nomination of Goodwin H. Liu, U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Sessions:

Professor Goodwin H. Liu is a person of great intellect, accomplishment, and integrity, and he is exceptionally well-qualified to serve on the federal judiciary. We write on behalf of the Conference of Asian Pacific American Law Faculty (CAPALF), the nation's leading organization of Asian American law professors. We are proud to endorse with great enthusiasm President Barack Obama's nomination of Berkeley School of Law Goodwin H. Liu for the U.S. Circuit Court of Appeals for the Ninth Circuit.

Professor Liu joined the Berkeley Law faculty in 2003 and quickly established himself as an outstanding scholar and teacher. In 2008, he earned tenure and promotion to Associate Dean, and was elected to the American Law Institute. An expert on constitutional and education law and policy, Liu is one of the nation's leading authorities on the subject of educational equity. His writings on school choice, school finance, and desegregation focus on the needs of America's most disadvantaged students, and his articles appear in many top law journals. His 2006 article in the Yale Law Journal, "Education, Equality, and National Citizenship," won the Education Law Association's inaugural Steven S. Goldberg Award for Distinguished Scholarship in Education Law.

Professor Liu's work is widely accepted and has gained praise from Republicans. Clint Bolick, director of constitutional litigation at the Goldwater Institute and national expert on state-based school choice programs said, "Having reviewed several of his academic writings, I find Prof. Liu to exhibit fresh, independent thinking and intellectual honesty. He clearly possesses the scholarly credentials and experience to serve with distinction on this important court." Tom Campbell, former Dean of the Haas School of Business at UC Berkeley, former Congressman (R-CA), and current Republican California Senatorial candidate said, "Liu will bring scholarly distinction and a strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit."

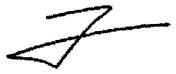
In addition to his career in academia, Professor Liu has a distinguished background in the private sector and in the government. Professor Liu clerked for Justice Ruth Bader Ginsburg and D.C. Circuit Court of Appeals Judge David S. Tatel prior to becoming a member of the appellate practice at O'Melveny & Myers where he filed numerous appellate court briefs and argued before the U.S. Court of Appeals for the D.C. Circuit. Walter E. Dellinger, chair of O'Melveny's appellate practice, said Professor Liu was "widely respected in law practice for his superb legal ability, his sound judgment, and his warm collegiality."

Professor Liu was also Special Assistant to the Deputy Secretary of the U.S. Department of Education, where he served as an advisor on legal and policy issues, including the development of guidelines to implement a $134 million Congressional appropriation for the purpose of turning around low-performing schools. U.S. Secretary of Education and former South Carolina Governor Richard Riley called Professor Liu "the 'go-to' person for important projects and complex issues because of his ability to see the big picture while also mastering the details of legal and policy problems." Lastly Professor Liu served as a Senior Program Officer for Higher Education, Corporation for National Service, where he directed a $12.5 million federal program to assist colleges and universities in integrating community service with academic study.

It should also be noted that President's Obama's nomination of Professor Liu is of significance to the Asian American community. Out of approximately 175 active federal appellate court judges, there are currently none who are Asian American. Professor Liu joins Judge Denny Chin, nominee to the Second Circuit Court of Appeals as the second Asian Pacific American nominated to the court of appeals by the President. There has not been an Asian American on the Ninth Circuit since Judge Wallace Tashima who took senior status in 2004.

We could not imagine a person more suited for the federal bench. Professor Liu would bring exceptional qualifications and valuable experience in government, law practice, and academia to his service as a judge on the U.S. Court of Appeals for the Ninth Circuit. The American Bar Association rated Professor Liu unanimously well qualified based on his integrity, professional competence, and judicial temperament. We urge his swift confirmation.

Sincerely,



Frank H. Wu
Chancellor and Dean Designate
University of California Hastings College of the Law
frankhwu@mac.com
+1 202.487.5775

On behalf of the Board of Directors of the Conference of Asian Pacific American Law Faculty

cc: Mr. Robert Bauer, Esq.
Ms. Susan Davies, Esq.
White House Counsel's Office

Senator Dianne Feinstein
Senator Barbara Boxer

CAPAC
CONGRESSIONAL
ASIAN
PACIFIC
AMERICAN
CAUCUS

Congressman Michael M. Honda • 1713 Longworth HOB • Washington, D.C. 20515
Tel: 202.225.2631 • Fax: 202.225.2699 • honda.house.gov/capac

Executive Board

Chair
Rep. Michael M. Honda

Vice-Chair
Rep. Eni Faleomavaega

Secretary
Rep. Madeleine Z. Bordallo

Sen. Daniel K. Akaka
Sen. Daniel K. Inouye
Rep. Xavier Becerra
Rep. Anh "Joseph" Cao
Rep. Judy Chu
Rep. Al Green
Rep. Mazie K. Hirono
Rep. Doris O. Matsui
Rep. Gregorio Sablan
Rep. Bobby Scott
Rep. David Wu

Associate Members

Rep. Gerald Connolly
Rep. John Conyers, Jr.
Rep. Joseph Crowley
Rep. Bob Filner
Rep. Raul M. Grijalva
Rep. Barbara Lee
Rep. Zoe Lofgren
Rep. Betty McCollum
Rep. Jerry McNerney
Rep. Laura Richardson
Rep. Lucille Roybal-Allard
Rep. Janice Schakowsky
Rep. Jackie Speier
Rep. Pete Stark
Rep. Lynn Woolsey

March 23, 2010

Hon. Patrick J. Leahy
Chairman
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Hon. Jeff Sessions
Ranking Member
Senate Judiciary Committee
326 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions,

On behalf of the Congressional Asian Pacific American Caucus (CAPAC), I write to provide CAPAC's strong endorsement of President Obama's nomination of Goodwin Liu for the United States Court of Appeals for the Ninth Circuit. CAPAC is a bipartisan, bicameral caucus, comprised of 29 Members of Congress who advocate on behalf of the Asian American and Pacific Islander (AAPI) community.

Judicial diversity is an important priority for CAPAC, and as such the caucus has endorsed Asian American, Pacific Islander, and other diverse candidates for the judicial bench, including Professor Goodwin Liu. Currently, there are no Asian Americans and Pacific Islanders (AAPIs) serving as a federal appellate court judge. With Liu's distinguished background and the lack of diversity in the appellate courts, CAPAC strongly supports his nomination.

Liu is currently Associate Dean and Professor at the University of California Berkeley School of Law, and is highly qualified for this appointment. He is an acclaimed education and constitutional law scholar, winning the Education Law Association's Steven S. Goldberg Award for Distinguished Scholarship in Education Law in 2007, and the UC Berkeley Distinguished Teaching Award in 2009. I have personally worked with him for many years, particularly in ensuring access and equity in our education system. Not only is he a leader in the Asian American and Pacific Islander community, he has proven himself in the legal profession, with support from renowned legal minds from a diversity of ideological backgrounds.

Prior to joining the Berkeley faculty in 2003, Liu was an associate at O'Melveny & Myers in Washington, D.C. He clerked for Justice Ruth Bader Ginsburg in the October 2000 Term, and for Judge David S. Tatel on the Court of Appeals for the D.C. Circuit from 1998-1999. Between his clerkships, Liu served as a Special Assistant to the Deputy Secretary at the U.S. Department of Education. He has also worked for the Corporation for National Service, where he helped launch the AmeriCorps program.

Liu was born in Augusta, Georgia, to parents who emigrated from Taiwan, and he grew up in Sacramento where he attended public schools. Liu earned a B.S. from Stanford University in 1991, an M.A from Oxford in 2002, where he studied as a Rhodes Scholar, and a J.D. from Yale Law School in 1998.

The Members of CAPAC strongly urge you to confirm Professor Goodwin Liu as an appellate judge on the Ninth Circuit Court of Appeals. He is a legal scholar of the highest caliber and his appointment would be an important step in addressing the underrepresentation of Asian Americans and Pacific Islanders in the federal judiciary.

Sincerely,

Michael Honda

Michael M. Honda
Chair, CAPAC

THE CONSTITUTION PROJECT

Safeguarding Liberty, Justice & the Rule of Law

March 2, 2011

Senator Patrick Leahy, Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Nomination of Goodwin Liu for U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We are Co-Chairs of the Constitution Project's Death Penalty Committee. As we wrote in our letter of April 9, 2010, we take no position on whether the Senate should confirm Professor Liu. However, we take issue with those who, during the Senate Judiciary Committee's consideration of Professor Liu's nomination to the U.S. Court of Appeals for the Ninth Circuit last year, distorted his work on the death penalty, claiming that he is an anti-death penalty, would-be judicial activist. In fact, we applaud his admirable commitment to ensuring the constitutional rights of those facing the death penalty or sentenced to death.

As a former governor of Texas who oversaw the executions of 19 condemned criminals, and a former Florida Supreme Court justice who upheld numerous death sentences and, before that, headed the Dade County capital crimes prosecution unit, we are well-acquainted with the death penalty and its application. We decry the baseless claim that Professor Liu's commitment to upholding constitutional safeguards, such as competent counsel, a fair trial, and full judicial review, is anything other than appropriate -- indeed vital -- for any judge, particularly in capital cases where a person's life hangs in the balance.

Professor Liu's critics from the Criminal Justice Legal Foundation claimed in a March 23, 2010, letter that he opposes the death penalty and would use his position as a judge to subvert state and federal law to achieve this hidden agenda. They based this accusation on a single paper that Professor Liu co-authored in 2005, examining Supreme Court Justice Samuel Alito's opinion in five capital cases he considered during his tenure on the Third Circuit Court of Appeals.

Contrary to the critics' claim, Professor Liu's analysis is not based on anti-death penalty fervor, nor does it question the propriety or constitutionality of the death penalty. Rather, it reflects his belief that appellate judges in capital cases must carefully examine the record for serious error and overturn convictions that are obtained in violation of the defendant's due process rights. In fact, explaining why he did not examine one of Judge Alito's decisions, Professor Liu observes that sometimes an opinion upholding a death sentence may "involve[] fairly straightforward issues," where no constitutional violations occur.

Professor Liu's evaluation is rooted in an appropriate dedication to ensuring that every person is afforded the fundamental rights that give legitimacy to our criminal justice system.

Despite what his critics might have us believe, the only conclusion a reader can fairly reach about Professor Liu and his views on the death penalty is that, as Liu says himself, "capital cases require judges to exercise utmost care in ensuring due process of law."

Professor Liu's views on this issue are well within the mainstream. Of the five cases Professor Liu examined, Judge Alito was the lone dissenter or in the minority in two cases and had his opinion overturned by the United States Supreme Court in a third case. In the two cases in which Judge Alito's opinion prevailed, there was legitimate disagreement, prompting four of his colleagues to dissent. Whether one agrees or disagrees with his conclusions in a particular case, far from being radical, Professor Liu finds himself in the company of a number of well-respected Supreme Court justices and Third Circuit judges.

The Constitution Project and its Death Penalty Committee are in full agreement with Professor Liu when it comes to vigorously protecting due process rights. As our report *Mandatory Justice: The Death Penalty Revisited* explains, we believe this nation can move beyond the political and philosophical divisions that currently consume the death penalty debate. This belief is borne out in the fact that our committee comprises former judges, prosecutors, victims' advocates, and defense lawyers who have diverse views on the death penalty. Regardless of each committee member's views on capital punishment, we all have profound concerns that the administration of capital punishment is deeply flawed and believe that all persons facing the death penalty are entitled to the fundamental rights guaranteed by the Constitution. Like our committee, this country can come together through the shared belief that our criminal justice system will only work if the procedural safeguards and fundamental fairness enshrined in our Constitution are vigilantly upheld in the administration of the death penalty.

The attacks on Professor Liu's fidelity to the Constitution and its protections of liberty as somehow anti-death penalty surely do not qualify as reasons for any Senator to oppose his confirmation.

Sincerely,

Gerald Kogan
Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Mark White
Former Governor of Texas; Former Attorney General of Texas; Former Secretary of State of Texas; Former Assistant Attorney General of Texas

cc: Senate Judiciary Committee

The Constitution Project

BOARD OF DIRECTORS

Virginia E. Sloan
President

Stephen F. Hanlon
Holland & Knight LLP
Chair

Mickey Edwards
Woodrow Wilson School of Public and International Affairs

Morton H. Halperin
Open Society Policy Center

Timothy K. Lewis
Schnader Harrison Segal & Lewis LLP

Paul C. Saunders
Cravath, Swaine & Moore LLP

William S. Sessions
Holland & Knight LLP

POLICY ADVISORY COMMITTEE

Christopher Caine
Mercator XXI

Peter B. Edelman
Georgetown University Law Center

Colonel Dean M. Esserman
Providence, R.I. Police Department

Rosemary B. Freeman
PublicWorks

Thomas A. Gottschalk
Kirkland & Ellis LLP

David A. Keene
American Conservative Union

Abner J. Mikva
University of Chicago School of Law

Alberto Mora
Mars, Incorporated

Corey Owens
United Food and Commercial Workers International Union

L. Michael Seidman
Georgetown University Law Center

Suzanne E. Spaulding
Bingham McCutchen LLP

Roger Wilkins
George Mason University

Hubert Williams
Police Foundation

Affiliations listed for identification purposes only

I. Scott Messinger
Chief Operating Officer

April 9, 2010

Senator Patrick Leahy, Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Nomination of Goodwin Liu for the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Sessions:

We are Co-Chairs of the Constitution Project's Death Penalty Committee. While we take no position on whether the Senate should confirm Professor Liu, we take issue with those who have distorted Professor Liu's work on the death penalty, claiming that he is an anti-death penalty, would-be judicial activist. In fact, we applaud his admirable commitment to ensuring the constitutional rights of those facing the death penalty or sentenced to death.

As a former governor of Texas who oversaw the executions of 19 condemned criminals, and a former Florida Supreme Court justice who upheld numerous death sentences and, before that, headed the Dade County capital crimes prosecution unit, we are well-acquainted with the death penalty and its application. We decry the baseless claim that Professor Liu's commitment to upholding constitutional safeguards, such as competent counsel, a fair trial, and full judicial review, is anything other than appropriate -- indeed vital -- for any judge, particularly in capital cases where a person's life hangs in the balance.

Professor Liu's critics from the Criminal Justice Legal Foundation claim in a March 23, 2010, letter that he opposes the death penalty and would use his position as a judge to subvert state and federal law to achieve this hidden agenda. They base this accusation on a single paper that Professor Liu co-authored in 2005, examining Supreme Court Justice Samuel Alito's opinion in five capital cases he considered during his tenure on the Third Circuit Court of Appeals.

Contrary to the critics' claim, Professor Liu's analysis is not based on anti-death penalty fervor, nor does it question the propriety or constitutionality of the death penalty. Rather, it reflects his belief that appellate judges in capital cases must carefully examine the record for serious error and overturn convictions that are obtained in violation of the defendant's due process rights. In fact, explaining why he did not examine

one of Judge Alito's decisions, Professor Liu observes that sometimes an opinion upholding a death sentence may "involve[] fairly straightforward issues," where no constitutional violations occur.

Professor Liu's evaluation is rooted in an appropriate dedication to ensuring that every person is afforded the fundamental rights that give legitimacy to our criminal justice system. Despite what his critics might have us believe, the only conclusion a reader can fairly reach about Professor Liu and his views on the death penalty is that, as Liu says himself, "capital cases require judges to exercise utmost care in ensuring due process of law."

Professor Liu's views on this issue are well within the mainstream. Of the five cases Professor Liu examined, Judge Alito was the lone dissenter or in the minority in two cases and had his opinion overturned by the United States Supreme Court in a third case. In the two cases in which Judge Alito's opinion prevailed, there was legitimate disagreement, prompting four of his colleagues to dissent. Whether one agrees or disagrees with his conclusions in a particular case, far from being radical, Professor Liu finds himself in the company of a number of well-respected Supreme Court justices and Third Circuit judges.

The Constitution Project and its Death Penalty Committee are in full agreement with Professor Liu when it comes to vigorously protecting due process rights. As our report *Mandatory Justice: The Death Penalty Revisited* explains, we believe this nation can move beyond the political and philosophical divisions that currently consume the death penalty debate. This belief is borne out in the fact that our committee comprises former judges, prosecutors, victims' advocates, and defense lawyers who have diverse views on the death penalty. Regardless of each committee member's views on capital punishment, we all have profound concerns that the administration of capital punishment is deeply flawed and believe that all persons facing the death penalty are entitled to the fundamental rights guaranteed by the Constitution. Like our committee, this country can come together through the shared belief that our criminal justice system will only work if the procedural safeguards and fundamental fairness enshrined in our Constitution are vigilantly upheld in the administration of the death penalty.

The attacks on Professor Liu's fidelity to the Constitution and its protections of liberty as somehow anti-death penalty surely do not qualify as reasons for any Senator to oppose his confirmation.

Sincerely,

Gerald Kogan
Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Mark White
Former Governor of Texas; Former Attorney General of Texas; Former Secretary of State of Texas; Former Assistant Attorney General of Texas

cc: Senate Judiciary Committee



April 23, 2010

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9102

Dear Senator Sessions:

On behalf of the 80-20 Initiative, by far the largest Asian American political organization with over 700,000 individuals and families on our e-mail list, I write in support of Goodwin Liu for appointment to the 9th Circuit Court of Appeals.

Prof. Liu is a nationally recognized scholar in education and constitutional law, who has been unanimously rated "Well Qualified" (its highest rating) for the bench by the American Bar Association. In addition, he is active in his community, including service in various community organizations.

As a scholar, Prof. Liu has not been afraid to speak his mind honestly, or to consider positions that might be considered controversial. Now, Republicans are unfairly imputing his scholarly integrity as a mark of judicial activism. Those who so simplistically tie a scholar's attempts to wrestle with issues with the way he will rule on the bench should look to the example of Felix Frankfurter, a prominent New Dealer and Harvard Law School professor, who was a model of judicial restraint on the Supreme Court.

Similarly, whatever positions Prof. Liu has taken as an academic will not necessarily reflect his judicial rulings. Rather, one should look to Goodwin Liu's integrity as a scholar who takes original positions, as a lawyer who strongly advocates for his clients, and a citizen who cares for his community.

Regarding a specific issue, the death penalty, Prof. Liu has stated that he will consider death penalty cases on the merits. Moreover, he has stated that he will follow the court's existing jurisprudence on the death penalty.

A judge's qualifications are honesty and respect for the law. Politics has no place in it.

We implore you and you colleagues of the Senate to consider Prof. Liu on his merits.

Sincerely,



S. B. Woo
Founding President of 80-20 Initiative
on behalf 80-20 Board
(sbw@udel.edu; www.80-20initiative.net)

Cc: The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9516

April 13, 2010

Senator Patrick Leahy, Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Nomination of Goodwin Liu for U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Sessions:

We are former judges and prosecutors -- including former judges for the United States Courts of Appeal, former United States Attorneys, and former state judges and prosecutors -- who have had significant experience in the criminal justice system, including with capital punishment. Some of us support the death penalty; others of us oppose it. However, all of us are alarmed by certain recent, baseless attacks against Professor Goodwin Liu, President Obama's nominee to the United States Court of Appeals for the Ninth Circuit. These attacks, related to statements by Professor Liu regarding the death penalty, have been so erroneous and improper that we felt compelled to correct the record prior to the Committee's April 16th hearing to consider Professor Liu's nomination.

In its March 23, 2010, letter to the Committee, the Criminal Justice Legal Foundation ("CJLF") concluded that if confirmed, Professor Liu would advance his "anti-death penalty agenda" by ruling against prosecutors in every capital case brought before him. CJLF bases this conclusion on a six-year old memorandum Professor Liu co-authored in response to Justice Alito's nomination to the Supreme Court (the "Alito Memorandum"). Citing CJLF's analysis, which we regard as erroneous in many significant aspects, a group of California district attorneys has urged the Committee to reject Professor Liu's nomination. In our view, these conclusions are absolutely incorrect and unsupported by Professor Liu's record. Moreover, we believe, the rhetoric surrounding the criticism of his nomination has reached an unacceptable level, beyond what is appropriate in a civil, spirited debate.

Nowhere in the Alito Memorandum does Professor Liu state that he is opposed to the use of capital punishment or that he would not uphold death sentences as required by law. Nor are we aware of any of his other writings or public statements that reflect such a position. In fact, explaining why he did not examine one of Judge Alito's decisions, Professor Liu observed that sometimes an opinion upholding a death sentence may "involve[] fairly straightforward issues," where no constitutional violations occurred.

An examination of Professor Liu's record by attorney John A. Freedman at the law firm Arnold & Porter LLP confirms our conclusions. Mr. Freedman analyzed both the Alito Memorandum and the CJLF's letter discussing the memorandum. In stark contrast to CJLF's conclusions, he found that "Professor Liu takes no position on the death penalty... other than to state that he believes 'the Supreme Court has the ultimate responsibility for ensuring fairness in the administration of the death penalty.' This is an unremarkable position." We have provided a copy of his full analysis for the Committee's review following this letter.

Professor Liu has expressed a belief that every United States judge must exercise the utmost care to ensure that the fundamental due process rights of persons accused of crimes are protected. While our individual views about the propriety of the death penalty may vary, we all believe that it is the appropriate role of an appellate judge to ensure that these due process rights have not been violated and that every defendant is afforded a fair trial. This is especially true in death penalty cases, where the nature of the punishment is uniquely irreversible.

We applaud Professor Liu's commitment to ensuring the constitutional rights of defendants facing the death penalty. Contrary to his critics' claims, his commitment to the Constitution is commendable and vital for anyone seeking a position in what is often the court of last resort for individuals seeking to protect their constitutional rights.

Sincerely,

Rebecca A. Betts
United States Attorney, Southern District of West Virginia (1994-2001)

Robert C. Bundy
United States Attorney, District of Alaska (1994-2001)

J. Joseph Curran
Attorney General, State of Maryland (1987-2007)

Michael H. Dettmer
United States Attorney, Western District of Michigan (1994-2001)

Robert DelTufo
Attorney General, State of New Jersey (1990-1993)
United States Attorney for the District of New Jersey (1977-1980)

W. Thomas Dillard
United States Attorney, Northern District of Florida (1983-1986)
United States Attorney, Eastern District of Tennessee (1981)

Hon. Bruce J. Einhorn
United States Immigration Judge (Ret.) (1990-2007)
Special Prosecutor and Chief of Litigation, United States Department of Justice Office of Special Investigations (1979-1990)

Prof. Bennett L. Gershman
Prosecutor, Manhattan District Attorney's Office (1967-1972)

Hon. John J. Gibbons
United States Circuit Judge (Ret.), United States Court of Appeals for the Third Circuit (1970-1990); Chief Judge (1987-1990)

Daniel F. Goldstein
Assistant United States Attorney, District of Maryland (1976-1982)

Hon. Isabel Gomez
Judge (Ret.), Fourth Judicial District of Minnesota (1984-2006)

Hon. Joseph Grodin
Associate Justice (Ret.), California Supreme Court (1982-1987)
Chief Justice (Ret.), California Court of Appeals (1981-1982)
Associate Justice (Ret.), California Court of Appeals (1979-1981)

Hon. Shirley M. Hufstedler
United States Circuit Judge (Ret.), United States Court of Appeals for the Ninth Circuit (1968-1979)
United States Secretary of Education (1979-1981)
Associate Justice (Ret.), California Court of Appeal (1966-1968)
Judge (Ret.), Los Angeles County Superior Court (1961-1966)

Prof. Bruce R. Jacob
Former Assistant Attorney General, State of Florida

Hon. Nathaniel R. Jones
United States Circuit Judge (Ret.), United States Court of Appeals for the Sixth Circuit (1979-2002)
Assistant United States Attorney, Northern District of Ohio (1962-1967)

Miriam Krinsky
Assistant United States Attorney, Central District of California (1987-2002); Chief, Criminal Appellate Section (1992-2002); Chief, General Crimes Section (1991-1992)
Chair, Solicitor General's Appellate Working Group (2000-2002)

Kenneth J. Mighell
United States Attorney, Northern District of Texas (1977-1981)

Sam D. Millsap
District Attorney, Bexar County, San Antonio, Texas (1982-1987)

Thomas Campbell Morrow
Assistant State's Attorney, Dade County, Florida (1979-1980)
Assistant Attorney General, Maryland Criminal Investigations Division (1978-1979)
Assistant State's Attorney, Baltimore County (1975-1978)

Hon. William A. Norris
United States Circuit Judge (Ret.), Ninth Circuit Court of Appeals (1980-1997)

Hon. Stephen M. Orlofsky
United States District Judge (Ret.), District of New Jersey (1996-2003)
United States Magistrate Judge (Ret.), District of New Jersey (1976-1980)

A. John Pappalardo
United States Attorney, District of Massachusetts (1992-1993)

James H. Reynolds
United States Attorney, Northern District of Iowa (1976-1982)
United States Attorney, District of South Dakota by Special Appointment of Attorney General (1978-1979)

James K. Robinson
United States Attorney, Eastern District of Michigan (1977-80)
Assistant Attorney General, Criminal Division, United States Department of Justice (1998-2001)

Thomas P. Sullivan
United States Attorney, Northern District of Illinois (1977-81)
Co-Chair, Illinois Governor's Commission on Capital Punishment

Hon. Joseph D. Tydings
United States Senator, (D-MD) (1965-1971)
United States Attorney, District of Maryland (1961-1963)

James J. West
United States Attorney, Middle District of Pennsylvania (1985-1993)
First Assistant United States Attorney, Middle District of Pennsylvania (1983-1985)
Assistant United States Attorney, Western District of Pennsylvania (1974-1979)

cc: Senate Judiciary Committee

Response to Criminal Justice Legal Foundation March 23, 2010 Analysis

John A. Freedman, Arnold & Porter LLP

On March 23, 2010, the Criminal Justice Legal Foundation submitted a letter to the Senate Judiciary Committee purporting to analyze the death penalty "record" of Professor Goodwin Liu. This analysis is based entirely on a paper Professor Liu co-authored in December 2005 entitled "Judge Alito and the Death Penalty." That analysis noted that then-Judge Alito had participated in ten capital cases during his time on the Third Circuit Court of Appeals, and analyzed the five cases where there was "strong disagreement between Judge Alito and his colleagues."

Of the five decisions analyzed in Professor Liu's paper, then-Judge Alito wrote dissenting minority opinions in two (*Riley v. Taylor*, 277 F.3d 2001 (3d Cir. 2001) (en banc) and *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997)), and was reversed by the Supreme Court in a third (*Rompilla v. Beard*, 125 S. Ct. 2456 (2005)). Accordingly, CLJF's declaration that Professor Liu "would have voted to reverse" the capital sentences in these decisions actually indicates that Liu's views on the constitutional errors found to exist in these cases were consistent with a majority of judges on the Third Circuit or the Supreme Court at the time these cases were considered.

Moreover, the primary conclusions drawn by the CJLF from this paper – that Professor Liu is "intensely hostile to capital punishment," that he will look "for any excuse to overturn a [capital] sentence," and "will vote for the murderer on every remotely debatable point" – are entirely unsupported by the analysis. Rather, Professor Liu takes no position on the death penalty in this paper, or in his other writings, other than to state that he believes "the Supreme Court has the ultimate responsibility for ensuring fairness in the administration of the death penalty." This is an unremarkable position.

The following is a summary of the five cases discussed in Professor Liu's paper, as well as CJLF's commentary on Professor Liu's analysis.

1. *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997).

The majority decision in *Smith* was written by Judge Cowen (a former state prosecutor appointed to the Third Circuit by President Reagan) and joined by Judge Mansmann (another former state prosecutor appointed to the Third Circuit by President Reagan). The decision affirmed the findings of a federal district judge (Judge Harvey Bartle, a former Pennsylvania state Attorney General appointed by President George H.W. Bush) that the state trial judge improperly instructed the jury that the defendant could be convicted for first degree murder as an accomplice without specifically finding beyond a reasonable doubt that he intended to commit a murder. This error was compounded by repeated statements of the prosecutor during closing argument that the jury need not consider whether the defendant actually killed the decedent in order to convict. The majority found that the error in instructions, combined with the

prosecutors' comments, violated the defendant's due process rights, and remanded with directions that the defendant be released "unless the Commonwealth retries him."

CJLF's analysis of this case is limited to the point that the defendant's lawyers failed to object at the time to the jury instruction or on direct appeal to the state court. CJLF's assertion that "Professor Liu did not mention these facts" is incorrect – Professor Liu discussed these issues at pages 5 and 6 of his paper, noting that the majority decision rejected Judge Alito's argument on this point, because the government had failed to argue that the defendant did not preserve his objection.

2. *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001) (*en banc*).

Riley was an *en banc* decision written by Judge Sloviter. The majority of active Third Circuit judges found that a grant of *habeas corpus* was appropriate both because (a) there had been a violation of *Batson v. Kentucky*, 476 U.S. 79 (1986), because the prosecutor struck all of the prospective African-American jurors from the jury; and (b) the prosecutor made inappropriate remarks during the sentencing phase to the effect that the jury was not making a final decision because the verdict would be "automatically reviewed by the Supreme Court."

CJLF describes this case as one where "false allegations" of racism were made, and criticizes Professor Liu for "a propensity to indict and convict prosecutors of racism on flimsy evidence and to disregard the evidence to the contrary." These claims are without merit. Professor Liu never accused the prosecutors of racism. With regard to the *Batson* claim, the Third Circuit concluded that: (a) the prosecutor stuck every prospective African-American juror from the *Riley* jury; (b) the prosecutor's office in question had struck every other prospective African-American juror in the three other first degree murder trials that occurred within a year of the *Riley* trial; and (c) two of the three *Riley* prospective jurors who were struck gave virtually identical responses to white jurors who were allowed to sit. In light of this record, the Third Circuit noted it was not "necessary to have a sophisticated analysis by a statistician to conclude there is little chance of randomly selecting four consecutive all white juries." Professor Liu's analysis of this case in the article is consistent with these conclusions and CJLF does not address any of these facts.

With regard to the prosecutor's remark, the Third Circuit found it was "misleading as to the scope of appellate review" and "misled the jury to minimize its role in the sentencing process," in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). This aspect of the Professor Liu's analysis is not discussed in CJLF's letter.

3. *Rompilla v. Horn*, 355 F.3d 233 (3d Cir. 2004) *reversed sub nom. Rompilla v. Beard*, 125 S.Ct. 2455 (2005).

Rompilla was a 2-1 panel decision written by then-Judge Alito rejecting a claim that the defendant had failed to receive effective assistance of counsel in conjunction with the sentencing phase of his trial where defense counsel failed to develop or present evidence (i) that the defendant was subject to severe child abuse including being locked by his father in "a small wire

mesh dog pen that was filthy and excrement filled" and being beaten with "fists, leather straps, belts, and sticks," and (ii) that the defendant suffered from "organic brain damage, an extreme mental disturbance impairing several of his cognitive functions" and that these issues may have been caused by fetal alcohol syndrome.

The Supreme Court reversed then-Judge Alito's opinion in 2005, with Justice O'Connor calling the Third Circuit opinion "objectively unreasonable" under "clearly established" law. Professor Liu cited this language in his article. CJLF does not mention this case in its March 23, 2010 letter.

4-5. *Flamer v. Delaware* and *Bailey v. Snyder*, 68 F.3d 736 (3d Cir. 1995) (*en banc*) (consolidated for appeal).

This was an *en banc* decision concerning two consolidated cases written by Judge Alito, which rejected an argument that two capital sentences should be vacated where the Delaware Supreme Court had subsequently found that one of the "aggravating" factors relied upon by the jury in sentencing these defendants to death was unconstitutionally vague. Judge Alito concluded that the juries had found sufficient other "aggravating" factors to support the sentences.

CJLF's analysis criticizes Professor Liu for failing to discuss the facts of the underlying crime, and states that his analysis of *Flamer* "demonstrates a propensity to overturn capital sentences on grounds that have little or nothing to do with the reliability of the verdict and that depend on changes in the rules made long after trial." Neither of these conclusions is supported by Professor Liu's analysis. Judge Alito's decision barely discusses the underlying facts concerning the defendants' crime, and accordingly, it is gratuitous to criticize Professor Liu on this basis. (CJLF does not discuss the facts particular to *Bailey* in its March 23, 2010 letter, and focused on the *Flamer* facts instead.)

Professor Liu's analysis summarizes the two competing lines of Supreme Court cases that the Third Circuit considered. Professor Liu also notes that the trial judge in the case had given the jury interrogatories which included the unconstitutionally vague language and accordingly could have potentially "focus[ed] the jury's attention on the statutory aggravating factor." Professor Liu also notes both that the dissent had made this point and that Judge Alito stated that the majority "strongly disapproved of the practice" of using an interrogatory in these circumstances because it is "potentially misleading and injects unnecessary confusion into the jury's deliberation." There is nothing in this analysis that suggests a "propensity to overturn capital sentences."

March 1, 2011

Senator Patrick Leahy, Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Nomination of Goodwin Liu for U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Sessions:

We are former judges and prosecutors -- including former judges for the United States Courts of Appeal, former United States Attorneys, and former state judges and prosecutors -- who have significant experience in the criminal justice system, including with capital punishment. Some of us support the death penalty; others of us oppose it. However, as we wrote in our letter of April 13, 2010, all of us are alarmed by the baseless attacks against Professor Goodwin Liu, President Obama's nominee to the United States Court of Appeals for the Ninth Circuit, that were made during the consideration of his nomination by the Senate Judiciary Committee last year. These attacks, related to statements by Professor Liu regarding the death penalty, were so erroneous and improper that we feel compelled to correct the record prior to the consideration of Professor Liu's nomination by the Senate Judiciary Committee in the current Congress.

In its March 23, 2010, letter to the Committee, the Criminal Justice Legal Foundation ("CJLF") concluded that if confirmed, Professor Liu would advance his "anti-death penalty agenda" by ruling against prosecutors in every capital case brought before him. CJLF bases this conclusion on a six-year old memorandum Professor Liu co-authored in response to Justice Alito's nomination to the Supreme Court (the "Alito Memorandum"). Citing CJLF's analysis, which we regard as erroneous in many significant aspects, a group of California district attorneys urged the Committee to reject Professor Liu's nomination. These conclusions are absolutely incorrect and unsupported by Professor Liu's record. Moreover, we believe, the rhetoric that surrounded criticism of his nomination during the 111th Congress reached an unacceptable level, beyond what is appropriate in a civil, spirited debate.

Nowhere in the Alito Memorandum does Professor Liu state that he is opposed to the use of capital punishment or that he would not uphold death sentences as required by law. Nor are we aware of any of his other writings or public statements that reflect such a position. In fact, explaining why he did not examine one of Judge Alito's decisions, Professor Liu observed that sometimes an opinion upholding a death sentence may "involve[] fairly straightforward issues," where no constitutional violations occurred.

An examination of Professor Liu's record by attorney John A. Freedman at the law firm Arnold & Porter LLP confirms our conclusions. Mr. Freedman analyzed both the Alito Memorandum and the CJLF's letter discussing the memorandum. In stark contrast to CJLF's conclusions, he found that "Professor Liu takes no position on the death penalty... other than to state that he believes 'the Supreme Court has the ultimate responsibility for ensuring fairness in

the administration of the death penalty.' This is an unremarkable position." We have provided a copy of his full analysis for the Committee's review following this letter.

Professor Liu has expressed a belief that every United States judge must exercise the utmost care to ensure that the fundamental due process rights of persons accused of crimes are protected. While our individual views about the propriety of the death penalty may vary, we all believe that it is the appropriate role of an appellate judge to ensure that these due process rights have not been violated and that every defendant is afforded a fair trial. This is especially true in death penalty cases, where the nature of the punishment is uniquely irreversible.

We applaud Professor Liu's commitment to ensuring the constitutional rights of defendants facing the death penalty. Contrary to his critics' claims, his commitment to the Constitution is commendable and vital for anyone seeking a position in what is often the court of last resort for individuals seeking to protect their constitutional rights.

Sincerely,

Rebecca A. Betts
United States Attorney, Southern District of West Virginia (1994-2001)

Robert C. Bundy
United States Attorney, District of Alaska (1994-2001)

J. Joseph Curran
Attorney General, State of Maryland (1987-2007)

Michael H. Dettmer
United States Attorney, Western District of Michigan (1994-2001)

Robert DelTufo
Attorney General, State of New Jersey (1990-1993)
United States Attorney for the District of New Jersey (1977-1980)

W. Thomas Dillard
United States Attorney, Northern District of Florida (1983-1986)
United States Attorney, Eastern District of Tennessee (1981)

Hon. Bruce J. Einhorn
United States Immigration Judge (Ret.) (1990-2007)
Special Prosecutor and Chief of Litigation, United States Department of Justice Office of Special Investigations (1979-1990)

Prof. Bennett L. Gershman
Prosecutor, Manhattan District Attorney's Office (1967-1972)

Hon. John J. Gibbons
United States Circuit Judge (Ret.), United States Court of Appeals for the Third Circuit (1970-1990); Chief Judge (1987-1990)

Daniel F. Goldstein
Assistant United States Attorney, District of Maryland (1976-1982)

Hon. Isabel Gomez
Judge (Ret.), Fourth Judicial District of Minnesota (1984-2006)

Hon. Joseph Grodin
Associate Justice (Ret.), California Supreme Court (1982-1987)
Chief Justice (Ret.), California Court of Appeals (1981-1982)
Associate Justice (Ret.), California Court of Appeals (1979-1981)

Hon. Shirley M. Hufstedler
United States Circuit Judge (Ret.), United States Court of Appeals for the Ninth Circuit (1968-1979)
United States Secretary of Education (1979-1981)
Associate Justice (Ret.), California Court of Appeal (1966-1968)
Judge (Ret.), Los Angeles County Superior Court (1961-1966)

Prof. Bruce R. Jacob
Former Assistant Attorney General, State of Florida

Hon. Nathaniel R. Jones
United States Circuit Judge (Ret.), United States Court of Appeals for the Sixth Circuit (1979-2002)
Assistant United States Attorney, Northern District of Ohio (1962-1967)

Miriam Krinsky
Assistant United States Attorney, Central District of California (1987-2002); Chief, Criminal Appellate Section (1992-2002); Chief, General Crimes Section (1991-1992)
Chair, Solicitor General's Appellate Working Group (2000-2002)

Kenneth J. Mighell
United States Attorney, Northern District of Texas (1977-1981)

Sam D. Millsap
District Attorney, Bexar County, San Antonio, Texas (1982-1987)

Thomas Campbell Morrow
Assistant State's Attorney, Dade County, Florida (1979-1980)
Assistant Attorney General, Maryland Criminal Investigations Division (1978-1979)
Assistant State's Attorney, Baltimore County (1975-1978)

Hon. William A. Norris
United States Circuit Judge (Ret.), Ninth Circuit Court of Appeals (1980-1997)

Hon. Stephen M. Orlofsky
United States District Judge (Ret.), District of New Jersey (1996-2003)
United States Magistrate Judge (Ret.), District of New Jersey (1976-1980)

A. John Pappalardo
United States Attorney, District of Massachusetts (1992-1993)

James H. Reynolds
United States Attorney, Northern District of Iowa (1976-1982)
United States Attorney, District of South Dakota by Special Appointment of Attorney General (1978-1979)

Thomas P. Sullivan
United States Attorney, Northern District of Illinois (1977-81)
Co-Chair, Illinois Governor's Commission on Capital Punishment

Hon. Joseph D. Tydings
United States Senator, (D-MD) (1965-1971)
United States Attorney, District of Maryland (1961-1963)

James J. West
United States Attorney, Middle District of Pennsylvania (1985-1993)
First Assistant United States Attorney, Middle District of Pennsylvania (1983-1985)
Assistant United States Attorney, Western District of Pennsylvania (1974-1979)

cc: Senate Judiciary Committee

Response to Criminal Justice Legal Foundation March 23, 2010 Analysis

John A. Freedman, Arnold & Porter LLP

On March 23, 2010, the Criminal Justice Legal Foundation submitted a letter to the Senate Judiciary Committee purporting to analyze the death penalty "record" of Professor Goodwin Liu. This analysis is based entirely on a paper Professor Liu co-authored in December 2005 entitled "Judge Alito and the Death Penalty." That analysis noted that then-Judge Alito had participated in ten capital cases during his time on the Third Circuit Court of Appeals, and analyzed the five cases where there was "strong disagreement between Judge Alito and his colleagues."

Of the five decisions analyzed in Professor Liu's paper, then-Judge Alito wrote dissenting minority opinions in two (*Riley v. Taylor*, 277 F.3d 2001 (3d Cir. 2001) (en banc) and *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997)), and was reversed by the Supreme Court in a third (*Rompilla v. Beard*, 125 S. Ct. 2456 (2005)). Accordingly, CLJF's declaration that Professor Liu "would have voted to reverse" the capital sentences in these decisions actually indicates that Liu's views on the constitutional errors found to exist in these cases were consistent with a majority of judges on the Third Circuit or the Supreme Court at the time these cases were considered.

Moreover, the primary conclusions drawn by the CJLF from this paper – that Professor Liu is "intensely hostile to capital punishment," that he will look "for any excuse to overturn a [capital] sentence," and "will vote for the murderer on every remotely debatable point" – are entirely unsupported by the analysis. Rather, Professor Liu takes no position on the death penalty in this paper, or in his other writings, other than to state that he believes "the Supreme Court has the ultimate responsibility for ensuring fairness in the administration of the death penalty." This is an unremarkable position.

The following is a summary of the five cases discussed in Professor Liu's paper, as well as CJLF's commentary on Professor Liu's analysis.

1. *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997).

The majority decision in *Smith* was written by Judge Cowen (a former state prosecutor appointed to the Third Circuit by President Reagan) and joined by Judge Mansmann (another former state prosecutor appointed to the Third Circuit by President Reagan). The decision affirmed the findings of a federal district judge (Judge Harvey Bartle, a former Pennsylvania state Attorney General appointed by President George H.W. Bush) that the state trial judge improperly instructed the jury that the defendant could be convicted for first degree murder as an accomplice without specifically finding beyond a reasonable doubt that he intended to commit a murder. This error was compounded by repeated statements of the prosecutor during closing argument that the jury need not consider whether the defendant actually killed the decedent in order to convict. The majority found that the error in instructions, combined with the

prosecutors' comments, violated the defendant's due process rights, and remanded with directions that the defendant be released "unless the Commonwealth retries him."

CJLF's analysis of this case is limited to the point that the defendant's lawyers failed to object at the time to the jury instruction or on direct appeal to the state court. CJLF's assertion that "Professor Liu did not mention these facts" is incorrect – Professor Liu discussed these issues at pages 5 and 6 of his paper, noting that the majority decision rejected Judge Alito's argument on this point, because the government had failed to argue that the defendant did not preserve his objection.

2. *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001) (*en banc*).

Riley was an *en banc* decision written by Judge Sloviter. The majority of active Third Circuit judges found that a grant of *habeas corpus* was appropriate both because (a) there had been a violation of *Batson v. Kentucky*, 476 U.S. 79 (1986), because the prosecutor struck all of the prospective African-American jurors from the jury; and (b) the prosecutor made inappropriate remarks during the sentencing phase to the effect that the jury was not making a final decision because the verdict would be "automatically reviewed by the Supreme Court."

CJLF describes this case as one where "false allegations" of racism were made, and criticizes Professor Liu for "a propensity to indict and convict prosecutors of racism on flimsy evidence and to disregard the evidence to the contrary." These claims are without merit. Professor Liu never accused the prosecutors of racism. With regard to the *Batson* claim, the Third Circuit concluded that: (a) the prosecutor stuck every prospective African-American juror from the *Riley* jury; (b) the prosecutor's office in question had struck every other prospective African-American juror in the three other first degree murder trials that occurred within a year of the *Riley* trial; and (c) two of the three *Riley* prospective jurors who were struck gave virtually identical responses to white jurors who were allowed to sit. In light of this record, the Third Circuit noted it was not "necessary to have a sophisticated analysis by a statistician to conclude there is little chance of randomly selecting four consecutive all white juries." Professor Liu's analysis of this case in the article is consistent with these conclusions and CJLF does not address any of these facts.

With regard to the prosecutor's remark, the Third Circuit found it was "misleading as to the scope of appellate review" and "misled the jury to minimize its role in the sentencing process," in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). This aspect of the Professor Liu's analysis is not discussed in CJLF's letter.

3. *Rompilla v. Horn*, 355 F.3d 233 (3d Cir. 2004) *reversed sub nom. Rompilla v. Beard*, 125 S.Ct. 2455 (2005).

Rompilla was a 2-1 panel decision written by then-Judge Alito rejecting a claim that the defendant had failed to receive effective assistance of counsel in conjunction with the sentencing phase of his trial where defense counsel failed to develop or present evidence (i) that the defendant was subject to severe child abuse including being locked by his father in "a small wire

mesh dog pen that was filthy and excrement filled" and being beaten with "fists, leather straps, belts, and sticks," and (ii) that the defendant suffered from "organic brain damage, an extreme mental disturbance impairing several of his cognitive functions" and that these issues may have been caused by fetal alcohol syndrome.

The Supreme Court reversed then-Judge Alito's opinion in 2005, with Justice O'Connor calling the Third Circuit opinion "objectively unreasonable" under "clearly established" law. Professor Liu cited this language in his article. CJLF does not mention this case in its March 23, 2010 letter.

4-5. *Flamer v. Delaware* and *Bailey v. Snyder*, 68 F.3d 736 (3d Cir. 1995) (*en banc*) (consolidated for appeal).

This was an *en banc* decision concerning two consolidated cases written by Judge Alito, which rejected an argument that two capital sentences should be vacated where the Delaware Supreme Court had subsequently found that one of the "aggravating" factors relied upon by the jury in sentencing these defendants to death was unconstitutionally vague. Judge Alito concluded that the juries had found sufficient other "aggravating" factors to support the sentences.

CJLF's analysis criticizes Professor Liu for failing to discuss the facts of the underlying crime, and states that his analysis of *Flamer* "demonstrates a propensity to overturn capital sentences on grounds that have little or nothing to do with the reliability of the verdict and that depend on changes in the rules made long after trial." Neither of these conclusions is supported by Professor Liu's analysis. Judge Alito's decision barely discusses the underlying facts concerning the defendants' crime, and accordingly, it is gratuitous to criticize Professor Liu on this basis. (CJLF does not discuss the facts particular to *Bailey* in its March 23, 2010 letter, and focused on the *Flamer* facts instead.)

Professor Liu's analysis summarizes the two competing lines of Supreme Court cases that the Third Circuit considered. Professor Liu also notes that the trial judge in the case had given the jury interrogatories which included the unconstitutionally vague language and accordingly could have potentially "focus[ed] the jury's attention on the statutory aggravating factor." Professor Liu also notes both that the dissent had made this point and that Judge Alito stated that the majority "strongly disapproved of the practice" of using an interrogatory in these circumstances because it is "potentially misleading and injects unnecessary confusion into the jury's deliberation." There is nothing in this analysis that suggests a "propensity to overturn capital sentences."

March 23, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9516

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9102

Re: Federal Judicial Nomination of Goodwin H. Liu, U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Sessions:

We are a bipartisan group of 22 leaders in education law, policy, and research who support the nomination of Professor Goodwin Liu to be a judge on the U.S. Court of Appeals for the Ninth Circuit. Your committee will undoubtedly receive much commentary about Professor Liu's scholarly work in constitutional law. We write to highlight his scholarship and reputation in the field of education law and policy. Collectively, we have read his work in this area; we have seen him speak at many panels and conferences; and some of us have worked closely with him on research projects or on policy issues when he served in the U.S. Department of Education. Based on his record, we believe Professor Liu is a careful, balanced, and intellectually honest scholar with outstanding academic qualifications and the proper temperament to be a fair and disciplined judge.

Professor Liu is one of the nation's leading experts on educational equity. His scholarly work on topics such as school choice, school finance, desegregation, and affirmative action is unified by a deep and abiding concern for the needs of America's most disadvantaged students. In analyzing problems and proposing solutions, Professor Liu's writings are thorough, pragmatic, and scrupulously attentive to facts and evidence. His work is nuanced and balanced, not dogmatic or ideological. For example:

- He has argued for more resources for low-performing schools while also advocating greater opportunities, including school vouchers, to enable disadvantaged students to choose better schools.

- He has argued for greater equity in school finance while also urging reforms that would loosen regulations and increase local control over spending decisions.

- He has praised the No Child Left Behind Act for focusing education policy on achievement outcomes and inequities while also urging reforms to ameliorate the Act's unintended negative consequences.

- He has argued that the Fourteenth Amendment guarantee of national citizenship encompasses a duty to provide adequate education while emphasizing that the responsibility for enforcement belongs to Congress, not the judiciary.

- He has written in support of affirmative action while also emphasizing that affirmative action primarily benefits middle- and high-income minorities and does not do enough to promote socioeconomic diversity.

We do not necessarily agree with all of Professor Liu's views. But we do agree that his record demonstrates the habits of rigorous inquiry, open-mindedness, independence, and intellectual honesty that we want and expect our judges to have. His writings are meticulously researched and carefully argued, and they reflect a willingness to consider ideas on their substantive merits no matter where they lie on the political spectrum. Moreover, we are confident in Professor Liu's ability to decide cases based on the facts and the law, regardless of his policy views. His scholarship amply demonstrates that kind of intellectual discipline, and our high regard for his work is widely shared. Indeed, the Education Law Association selected Professor Liu in 2007 to be the first-ever recipient of the Steven S. Goldberg Award for Distinguished Scholarship in Education Law.

In short, Professor Liu is exceptionally qualified to serve on the federal bench. He would make an outstanding judge, and we urge his speedy confirmation.

Sincerely,

Cynthia G. Brown
Vice President for Education Policy, Center for American Progress Action Fund

Michael Cohen
President, Achieve, Inc.; Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 1999–2001

Christopher T. Cross
Chairman, Cross & Joftus LLC; Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 1989–91

Linda Darling-Hammond
Charles E. Ducommun Professor of Education, Stanford University

/S/

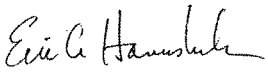
James Forman Jr.
Professor of Law, Georgetown University Law Center; Co-Founder and Board Chair, Maya Angelou Public Charter School*



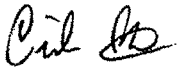
Patricia Gándara
Professor of Education and Co-Director of The Civil Rights Project/Proyecto Derechos Civiles, UCLA

/S/

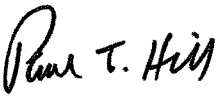
James W. Guthrie
Senior Fellow and Director of Education Policy Studies, George W. Bush Institute



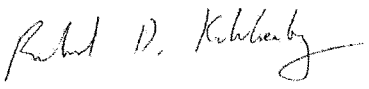
Eric A. Hanushek
Paul and Jean Hanna Senior Fellow, Hoover Institution, Stanford University



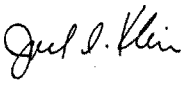
Frederick M. Hess
Director of Education Policy Studies
American Enterprise Institute



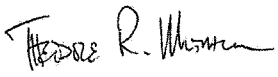
Paul Hill
John and Marguerite Corbally Professor and Director of the Center on Reinventing Public Education, University of Washington



Richard D. Kahlenberg
Senior Fellow, The Century Foundation*



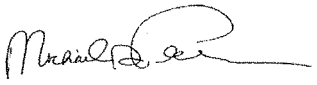
Joel I. Klein
Chancellor, New York City Department of Education; Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 1997–2001



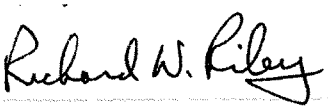
Ted Mitchell
President and Chief Executive Officer, NewSchools Venture Fund



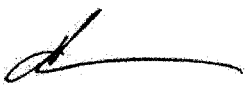
Gary Orfield
Professor of Education, Law, Political Science, and Urban Planning and Co-Director of The Civil Rights Project/Proyecto Derechos Civiles, UCLA



Michael J. Petrilli
Vice President for National Programs and Policy, Thomas B. Fordham Institute; Research Fellow, Hoover Institution, Stanford University; Associate Assistant Deputy Secretary, Office of Innovation and Improvement, U.S. Department of Education, 2001–05



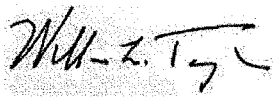
Richard W. Riley
Partner, Nelson Mullins Riley & Scarborough LLP; U.S. Secretary of Education, 1993–2001; Governor of South Carolina, 1979–87



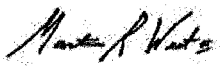
Andrew J. Rotherham
Co-Founder and Publisher, Education Sector

/S/

James E. Ryan
William L. Matheson & Robert M. Morgenthau Distinguished Professor of Law, University of Virginia School of Law



William L. Taylor
Chairman, Citizens' Commission on Civil Rights



Martin R. West
Assistant Professor of Education, Harvard University



Judith A. Winston
Principal, Winston Withers & Associates, 2002-2009; General Counsel, U.S. Department of Education, 1999–2001, 1993–97



Bob Wise
President, Alliance for Excellent Education; Governor of West Virginia, 2001–2005; Member, U.S. House of Representatives, 1983–2001

(* affiliation listed for identification purposes only)

March 5, 2010

Senator Patrick Leahy
United States Senate

Dear Senator Leahy,

I am writing in support of the nomination of Goodwin Liu to the Ninth Circuit Court of Appeals.

When I retired as Professor of English after forty years on the Berkeley faculty I was able to indulge my long-standing interest in constitutional law, and for several years attended courses and seminars in the subject, offered by a number of Berkeley School of Law faculty. Among the many distinguished teachers I listened to and learned from, Professor Goodwin Liu stood out for his comprehensive, balanced, and probing analyses of Supreme Court decisions, their contexts and traditions.

So impressed was I by Professor Liu's abilities that when I learned that he was being considered for tenure I wrote, unsolicited, a letter to the Dean urging his promotion. (I should add that, as an indication of my bona fides, I informed the Dean that I had served as a Dean and also as member and chair of the campus Academic Personnel Committee, which reviews all advancement and promotion cases for Berkeley faculty).

Not long after, I learned that Professor Liu has been nominated for the campus Distinguished Teaching Award, and wrote enthusiastically in support. This is the highest honor the Berkeley faculty awards for teaching, and I was delighted when Professor Liu was given the award.

What I admired about Professor Liu's teaching was, among other qualities, the clarity of his thinking, his comprehensive grasp of the basic issues in specific cases, his ability to identify and explain those issues, and his equally valuable ability to relate them to relevant social, economic, and political contexts. His mastery of such matters extended to the history of the Court and its role in American society, so that students were always provided with materials necessary to understand how that role developed. In short, he does not rest his analysis on the traditional "case" system of legal instruction, but recognizes a responsibility for shaping for his students an idea of the place of the law in the education of citizens.

What shone through his lectures and remarks at all times is his profound commitment to the rule of law and his utter dedication to its importance in the continued health of our democratic republic.

I urge you to give his nomination your most serious consideration. In my judgment, he would be an outstanding addition to the federal judiciary.

Yours respectfully,

Donald M. Friedman

FRCAction™
The Legislative Action Arm of FAMILY RESEARCH COUNCIL

Tony Perkins
President

May 19, 2011

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

On behalf of Family Research Council Action (FRCA), the legislative arm of the Family Research Council, and the families we represent, I want to encourage you to vote NO on cloture for the confirmation of Goodwin Liu to the U.S. Ninth Circuit Court of Appeals. Mr. Liu is unfit for appointment to this lifetime position because, as his record repeatedly demonstrates, his own politics and personal agenda are too deep-seated to arbitrate cases fairly and impartially based on the Constitution. FRCA will score this vote in our scorecard for the First Session of the 112th Congress.

A preponderance of evidence suggests that Goodwin Liu possesses a controversial, if not stridently dangerous, view of the Constitution. In a 2006 article entitled "Education, Equality, and National Citizenship," Liu suggested that the Constitution, "assigns equal constitutional status to negative rights against government oppression and positive rights to government assistance on the ground that both are essential to liberty." As characterized in a Washington Times editorial: "Mr. Liu's goal was to create a judicially enforceable, constitutional right to welfare."

Mr. Liu elaborates his activist judicial philosophy further in a 2008 Stanford Law Review article advocating for a judicial role in establishing constitutional welfare rights—i.e., "affirmative rights," to education, shelter, subsistence, health care, etc.—a reality that can not exist without first abrogating current rights—i.e., property rights. Unsurprisingly, this is the same view held by President Obama. Despite this view, even Justice Sonia Sotomayor during her confirmation hearings wisely rejected the notion of "affirmative rights" as constitutionally untenable.

Mr. Liu has worn political disdain for Supreme Court nominees on his sleeve, as when he recklessly attacked John Roberts and Samuel Alito. In the case of Roberts, he wrote in an op-ed that "[h]is legal career is studded with activities unfriendly to civil rights, abortion rights, and the environment." As for Alito, Liu testified that then-Judge Alito was "at the margin, not the mainstream," and that the America envisioned by his record on the bench, "is not the America we know. Nor is it the America we aspire to be." These unfounded charges were dismissed by judicial experts on both sides of the aisle. Roberts and Alito were confirmed with bi-partisan support.

Neither does Mr. Liu hide his personal agenda, as when he offered an amicus brief to the California Supreme Court in which he and others argued that the state's ban on same-sex marriage (approved twice by the voters of California) was unconstitutional.

As is clear from his record, Mr. Liu's interpretation of the Constitution is so thoroughly enmeshed in his personal and political agenda there is little assurance he can disentangle his personal opinions from the law to the degree necessary for executing the duties of the 9th Circuit Court of Appeals impartially. We urge you to oppose the confirmation of Goodwin Liu. FRCA will score this vote in our scorecard for the First Session of the 112th Congress.

Sincerely,

Thomas McClusky
Senior Vice President

Statement of Senator Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary

On the Nominations of:

Goodwin Liu, to be United States Circuit Judge for the Ninth Circuit
Kevin Hunter Sharp, to be United States District Judge for the Middle District of Tennessee
Roy Bale Dalton, Jr., to be United States District Judge for the Middle District of Florida
Claire C. Cecchi, to be United States District Judge for the District of New Jersey
Esther Salas, to be United States District Judge for the District of New Jersey

March 2, 2011

Madam Chair,

On today's agenda are four District Court nominations, and a United States Circuit Judge for the Ninth Circuit. I join you in welcoming the nominees as well as their families and friends.

I will not repeat the biographical information of our nominees, but would note that all of our nominees have some sort of prior federal experience. I commend them for their public service.

This week, we confirmed two more nominees to vacancies in the federal judiciary – both judicial emergencies. We have now confirmed seven nominees during this new Congress, which has only been in session for 19 days. We have taken positive action, in one way or another, on more than half of the 52 judicial nominees submitted during this Congress. So we are moving forward, as I indicated I would do, on consensus nominees.

The primary purpose of this hearing is to review the nomination of Goodwin Liu, nominated to be United States Circuit Judge for the Ninth Circuit. I thank the Chairman for favorably responding to my request for this hearing. I made the request in order to provide the nominee an

opportunity to address the many concerns which have been raised, and to allow new members of the Committee to question and evaluate the nominee.

While much of this hearing will be focused on Mr. Liu, I do not want our District Judge nominees to feel slighted in any way. Their nominations are important, and I will look forward to their testimony as well.

With regard to Mr. Liu, the committee twice reported his nomination on a 12-7 vote. In addition, the nomination has been returned to the President on more than one occasion. Concerns raised during his prior hearing and in written questions include his writings and speeches; his judicial philosophy; the public statements, including testimony before this committee; his judicial temperament; and limited experience.

I am concerned about his understanding or appreciation of the proper role of a judge in our system of checks and balances. I want to make certain, as with all nominees, that personal agendas or political ideology will not be brought into the courtroom.

It is ironic that in commenting on the Roberts nomination, Mr. Liu said, "... the nomination ... is a seismic event that threatens to deepen the nation's red-blue divide. Instead of choosing a consensus candidate [the President] has opted for a conservative thoroughbred who, if confirmed, will likely swing the court sharply to the right on many critical issues."

If confirmed, I am concerned that Mr. Liu will deepen the divide on the Ninth Circuit, and move that court even further to the left. Opinions he could author would mean his ideology and judicial philosophy will seep beyond Berkeley, California. His potential rulings will affect individuals throughout the nine-state Circuit, including places like Bozeman, Montana; Boise, Idaho; and Anchorage Alaska.

The Senate has a right to determine the qualifications of judicial nominees. The burden is on a nominee appearing before this committee to demonstrate he or she is suitable for a lifetime appointment to the Court. I would note that in his previous appearance, and in response to

written questions, Mr. Liu failed to provide responsive answers to our questions. I hope that performance is not repeated today.

Madam Chairman, I ask unanimous consent that the balance of my statement, regarding the District Court nominees, be entered into the record. I look forward to reviewing their testimony and responses to written questions, which I will submit for the record.

Judge Claire C. Cecchi has been nominated to be United States District Judge for the District of New Jersey. Judge Cecchi graduated from Barnard College/Columbia University in 1986, and then from Fordham University School of Law in 1989. Judge Cecchi's first position out of law school was the Office of Corporation Counsel for the City of New York. From 1992 to in 2006, she worked in private practice in Newark, New Jersey. She was appointed as United States Magistrate Judge for the District of New Jersey in April 2006.

Judge Esther Salas also presently serves as a United States Magistrate Judge for the District of New Jersey, having been appointed in November 2006. She is nominated to be a United States District Judge for the District of New Jersey.
Judge Salas received her undergraduate and law degrees from Rutgers University. Upon graduation, she served as a law clerk for Judge Eugene Cody of the Superior Court of New Jersey. After her clerkship, Judge Salas worked at the firm of Garces & Grabler. In September 1997, she began working for the Office of the Federal Public Defender as an assistant public defender.

Roy Bale Dalton, Jr. is nominated to be United States District Judge for the Middle District of Florida. He is a graduate of the University of Florida and the University of Florida Levin College of Law. Mr. Dalton has spent the bulk of his legal career in private practice, both as a solo practitioner and in firms. He was a law partner with our former colleague, Senator Mel Martinez. Mr. Dalton also spent time as Counsel to Senator Martinez. He presently is a principal at Dalton & Carpenter, P.A. In addition to his role at Dalton & Carpenter, he is also Of Counsel at The Carlyle Appellate Law Firm, where he handles a number of appellate matters.

Kevin Hunter Sharp is nominated to be United States District Judge for the Middle District of Tennessee. Mr. Sharp served in the United States Navy, from 1982 to 1986. He received his B.S. from Christian Brothers College in 1990. After graduating from Vanderbilt University School of Law, he began his legal career as an Associate with Stokes & Bartholomew, P.A. From 1996 to 1997, Mr. Sharp worked as an attorney for the U.S. Congressional Office of Compliance in Washington, D.C. In 1997, he returned to Stokes, Bartholomew, Evans & Petree, P.A. as an Associate, becoming a Partner in 2001. In 2003, he was a Shareholder at Preston & Sharp, P.C. Since 2003, Mr. Sharp has been a Shareholder and Partner at Drescher & Sharp, P.C.

Román D. Hernández

September 3, 2010

Via Electronic Mail

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
326 Russell Senate Office Building
Washington, DC 20510

Re: HNBA Endorsement of Goodwin Liu as candidate for U.S. Court of Appeals for the Ninth Circuit

Dear Senators Leahy and Sessions:

On behalf of the Hispanic National Bar Association (HNBA), I write to recommend Goodwin Liu as a candidate for the U.S. Court of Appeals for the Ninth Circuit. The HNBA is a non-profit, non-partisan association that represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, law students, and legal professionals in the United States and Puerto Rico. The HNBA has 42 affiliated local bar associations from different jurisdictions around the country, including numerous affiliates in California. As required by its *Policies and Procedures Governing Judicial Endorsements* (2008), prior to and in conjunction with this endorsement, the HNBA conducted appropriate due diligence. We have considered Mr. Liu's background and qualifications carefully and in the context of the requirements for the U.S. Court of Appeals.

Based on our peer review, it is evident that Mr. Liu is qualified to become the next jurist for the U.S. Court of Appeals for the Ninth Circuit. Former supervisors and current colleagues all believe that Mr. Liu not only possesses the intelligence and thoroughness that will be required for the position, but also has deep respect for the judiciary's role in our country. Mr. Liu also combines a broad range of public and private sector experience as current Associate Dean at Boalt Hall, University of California at Berkeley as well as a former Special Assistant to the Deputy Secretary of the U.S. Department of Education. Among members of the legal community

interviewed, our due diligence revealed a unanimous, unqualified opinion that Mr. Liu is an excellent choice for the Ninth Circuit. He has earned a reputation for her superior intellect and exceptional analytical and writing skills; moreover, his experience demonstrates that he is an outstanding leader and mediator. Further, Mr. Liu has proven his dedication and commitment through his multiple community endeavors.

In addition to Mr. Liu's professional accomplishments, his story epitomizes the American Dream. Through hard work and dedication, Mr. Liu, a son of Taiwanese immigrants, became the first in his family to attend law school at Yale. Prior to this significant accomplishment, Mr. Liu attended Stanford University and also earned a master's degree in philosophy and physiology at Oxford University while on a Rhodes Scholarship. Upon graduating from Yale Law School, Mr. Liu then clerked for Judge David Tatel on the U.S. Court of Appeals for the D.C. Circuit and then went on to clerk at the U.S. Supreme Court for Justice Ruth Bader Ginsburg during the October 2000 Term.

Our due diligence revealed that Mr. Liu is competent, well-prepared, hard-working and ethical. The public information as well as private conversations held with people that are acquainted with Mr. Liu reveal a highly competent individual with integrity and a strong moral character. Although Mr. Liu has no judicial experience *per se*, his intellect, experience, and temperament demonstrate the skills and qualities desirable in a federal judge. Dean Liu would make an excellent judge for the Court of Appeals for the Ninth Circuit.

Accordingly, the HNBA recommends Mr. Liu's candidacy as Judge to the U.S. Court of Appeals for the Ninth Circuit. We stand ready to assist in your deliberations should there be any questions. Please feel free to contact me through our national office at (202) 223-4777 or directly at (503) 796-2935. Thank you for your consideration.

Sincerely,

Román D. Hernández
HNBA National President

cc: Ms. Diana Sen, HNBA President-Elect
Mr. Robert Raben, Chair, HNBA Committee on Judicial Endorsements
Mr. Donald Urrabazo, HNBA Region XVIII President
Ms. Zuraya Tapia, HNBA Executive Director

The Huffington Post

Richard Painter

Former Bush White House Chief Ethics lawyer

Posted: March 2, 2011 08:39 AM

Qualified, Measured, and Mainstream: Why the Senate Should Confirm Goodwin Liu

This afternoon, over a year after he was first nominated by President Obama to the Ninth Circuit federal court of appeals, University of California law professor Goodwin Liu will go before the Senate Judiciary Committee for his second confirmation hearing. There will be few surprises, since Liu already gave 3.5 hours of testimony last April followed by 98 pages of written answers to Senators' questions. But at least the hearing will remove any further excuse for delaying an up-or-down vote on Liu's nomination.

Liu's opponents have sought to demonize him as a "radical," "extremist," and worse. National Review Online's Ed Whelan has led the charge with a "one-stop repository" of attacks on Liu. However, for anyone who has actually read Liu's writings or watched his testimony, it's clear that the attacks--filled with polemic, caricature, and hyperbole--reveal very little about this exceptionally qualified, measured, and mainstream nominee.

Liu is not the first nominee to go through a barrage of unfair attacks. Louis Brandeis, the first Jewish American to join the Supreme Court, had a nasty Senate confirmation hearing in 1916. The Clarence Thomas confirmation hearing was another debacle; Senators caricatured and attacked the nominee instead of discussing his ideas about judging. President George W. Bush's nominee to the D.C. Circuit, Miguel Estrada, was attacked by critics who had preconceived notions about how a Hispanic jurist should think about the law. He eventually withdrew.

Having worked on the confirmations of John Roberts and Samuel Alito as the chief White House ethics lawyer under President Bush, I've done my share of vetting judicial candidates and fighting the confirmation wars. I didn't know much about Liu before his nomination to the Ninth Circuit. But I became intrigued by the attention the nomination generated, and I wondered if his Republican critics were deploying the same tactics the Democrats had used to attack Republican nominees. They were. If anything, the attacks on Liu have been even more unfair than attacks on past nominees. Based on my own review of his record, I believe it's not a close question that Liu is an outstanding nominee whose views fall well within the legal mainstream. That conclusion is shared by leading conservatives who are familiar with Liu's record.

This post brings together a variety of material about Liu:

- First, I review Liu's background, qualifications, and key endorsements.

- Second, I highlight two letters from respected authorities that shed important light on Liu's scholarly record.
- Third, I provide several responses to various attacks on Liu.
- Fourth, I address Liu's opposition to the Supreme Court confirmations of Roberts and Alito, two Justices whom I vigorously supported as a Bush administration lawyer and whom I believe were outstanding additions to the Court.

These materials summarize why Liu is an excellent choice for the federal bench. But even if you read this entire post, nothing substitutes for reading Liu's writings or watching his testimony for yourself. That is how I reached the conclusion that Liu deserves an up-or-down vote in the Senate and ought to be confirmed.

By now, many are familiar with Liu's background and qualifications. The son of Taiwanese immigrants, Liu didn't learn English until kindergarten. He grew up in Sacramento and attended public schools. He graduated from Stanford, Oxford, and Yale Law School. He is a Rhodes Scholar. He clerked at the U.S. Supreme Court. He worked in government and private practice before becoming an award-winning teacher and scholar at UC Berkeley. He earned tenure in five years and was appointed Associate Dean of the law school. He's been elected to the American Law Institute and to numerous boards, including the Stanford Board of Trustees. He is 40 years old.

The ABA gave Liu its highest rating of Unanimously Well-Qualified. FOX News anchor and legal analyst Megyn Kelly said "his qualifications are unassailable." The New York Times called him "An Exceptional Nominee." Liu's life story reflects the American Dream. He would become only the second Asian American currently serving on a federal appeals court and the only Asian American in active service on the Ninth Circuit, whose jurisdiction is home to over 40 percent of our nation's Asian American population. In addition, Liu would fill a "judicial emergency" vacancy.

Given Liu's outstanding qualifications, it is no wonder his critics resort to claiming that he is "radical" and "extreme" by selectively quoting and misinterpreting his law review articles. I decided to read Liu's writings and see for myself what all the fuss was about. I offered my conclusions in a Los Angeles Times op-ed:

There are some left-wing ideologues on law faculties, but UC Berkeley's Goodwin Liu is not one of them. He is a fine choice for the federal bench.... This political spat over a single appellate judge makes no sense if one looks at Liu's academic writings and speeches, which reflect a moderate outlook.... From all of the law review articles, speeches and other material Liu has submitted, it is quite clear that he is a moderate liberal, that he is open to ideas championed by libertarians and conservatives, and that he is intelligent and capable of being a good judge. Liu respects the law, which is what we should expect of a judge.

But don't take my word for it. Here is what former Whitewater prosecutor Ken Starr said in a letter endorsing Liu, which discussed testimony that Liu gave in 2008 correctly predicting that the California Supreme Court would uphold Proposition 8, a voter-approved ban on same-sex marriage, under applicable state precedents:

Goodwin's position ... could not have pleased his friends who sought to invalidate Proposition 8. But, as the example shows, Goodwin knows the difference between what the law is and what he might wish it to be, and he is fully capable and unafraid of discharging the duty to say what the law is.

Goodwin is a person of great intellect, accomplishment, and integrity, and he is exceptionally well-qualified to serve on the court of appeals.... [His record shows] his independence and openness to diverse viewpoints as well as his ability to follow the facts and the law to their logical conclusion, whatever its political valence may be.

And here is what Goldwater Institute lawyer Clint Bolick--a key architect of current lawsuits challenging President Obama's health care legislation--said in his endorsement letter, which highlighted a law review article in which Liu supports school vouchers:

It took a great deal of courage and integrity for Prof. Liu ... to take such a strong and public position.... Having reviewed several of his academic writings, I find Prof. Liu to exhibit fresh, independent thinking and intellectual honesty. He clearly possesses the scholarly credentials and experience to serve with distinction on this important court.

Liu's Republican supporters also include William T. Coleman, Jr., former Secretary of Transportation under President Ford and one of President Bush's appointees to the Court of Military Commission Review (Liu is a "bright, intelligent and understanding person" and "will become an outstanding judge on the Ninth Circuit."); John Yoo, former Justice Department attorney under President Bush ("for a Democratic nominee, he's a very good choice."); and Tom Campbell, former congressman, law professor, and business school dean ("Goodwin will bring scholarly distinction and a strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit.").

If you want to confirm the judgment of these leading conservatives, I suggest that you read Liu's writings for yourself. If you do, you will find that Liu is thoughtful, measured, and well within the legal mainstream. Strident efforts to demonize Liu reflect the tiresome tit-for-tat of confirmation politics (which Republicans have rightly decried in the past) rather than any insight into the kind of judge Liu would be.

For concise overviews of Liu's scholarly record, I suggest two items. The first is a letter by Professor Jesse Choper, one of the nation's leading constitutional law scholars. Choper is widely regarded as having a middle-of-the-road perspective, neither liberal nor conservative. Because he chaired Liu's tenure review, he had occasion to read and evaluate all of Liu's writings. With numerous citations to Liu's published work, the letter carefully responds to mischaracterizations of Liu's writings on welfare rights, affirmative action, capital punishment, school desegregation, and constitutional interpretation. Here is what Choper concluded:

I have been dismayed and disappointed that some commentators have portrayed Liu as a liberal extremist when his record is so plainly to the contrary. His writings indicate that he would be relatively moderate and pragmatic, and an especially fair jurist, one with a clear understanding of

the limited role that courts should occupy. Indeed, when one looks across the entire body of his work in his principal area of expertise, education law and policy, it is telling that so much of it is directed at legislators and policymakers and not at courts--a reflection, I believe, of his appreciation for the appropriate limits of judicial authority....

[W]hen evaluated against the range of ideas in contemporary Supreme Court jurisprudence, Liu's perspectives--whether one agrees with them or not--are well within the legal mainstream. Moreover, no matter what views he has taken as a scholar, I am confident that, if confirmed to the Ninth Circuit, he will not seek to enforce his views as law. Rather, to the extent that any person can predict the future, I feel assured that he will faithfully discharge his obligation to follow Supreme Court and circuit precedent. In this regard, Liu will follow in a fine tradition of many legal scholars who have served with distinction on the federal bench.

The second item is a bipartisan letter by 22 leaders in education law and policy, Liu's primary area of scholarship. (Two-thirds of Liu's academic publications address education law or policy.) Although this letter has not received much attention, people in the education field will tell you that Liu's supporters are A-list names who span a broad ideological range--from conservative heavyweights like Eric Hanushek of the Hoover Institution, Frederick Hess of the American Enterprise Institute, and James Guthrie of the George W. Bush Presidential Center; to centrist reformers like former New York City schools chancellor Joel Klein and former Bush education official Michael Petrilli; to moderate liberals like former U.S. Secretary of Education Richard Riley and affirmative action critic Richard Kahlenberg. The letter describes Liu's nuanced positions on school finance, affirmative action, school vouchers, and other issues, and concludes:

... Professor Liu's writings are thorough, pragmatic, and scrupulously attentive to facts and evidence. His work is nuanced and balanced, not dogmatic or ideological....

... [H]is record demonstrates the habits of rigorous inquiry, open-mindedness, independence, and intellectual honesty that we want expect our judges to have. His writings are meticulously researched and carefully argued, and they reflect a willingness to consider ideas on their substantive merits no matter where they lie on the political spectrum. Moreover, we are confident in Professor Liu's ability to decide cases based on the facts and the law, regardless of his policy views. His scholarship amply demonstrates that kind of intellectual discipline, and our high regard for his work is widely shared.

Given the ferocity of education politics, it speaks volumes that Liu enjoys the respect of such an ideologically diverse and high-powered group.

Now, you can believe the top experts in the areas of Liu's scholarship and prominent conservatives such as Ken Starr and Clint Bolick--or you can believe National Review Online's

Ed Whelan. I know where I would put my marbles. As discussed below, Whelan's anti-Liu repository invents a series of myths about Liu with no basis in reality.

1. **Myth**: Liu believes judges "may legitimately invent constitutional rights to a broad range of social 'welfare' goods, including education, shelter, subsistence, and health care."

Reality: Not true. In a 2008 law review article, Liu argued precisely the opposite: welfare rights, he wrote, "cannot be reasoned into existence by courts on their own." Consistent with Supreme Court precedent, Liu explained that only legislators--not judges--may "declare rights to entirely new benefits or programs not yet in existence." Liu's writings treat welfare and education as primarily legislative not judicial responsibilities, as I and others have explained. His 2008 article endorsed "legislative supremacy" in these areas; for example, Liu said there is "no role for courts" to question Congress's 1996 decision to end welfare entitlements for poor families. As the New York Times reported, the only judicial role that Liu endorsed "focused on small-scale disputes over Congressionally enacted programs--like 'invalidating statutory eligibility requirements'--not creating welfare programs based on judicial fiat." As Jesse Choper observed, "judicial review of this sort is supported by Supreme Court precedent, and it has been embraced by Justices such as Lewis Powell, hardly a left-wing radical."

In short, Whelan is simply wrong to say that Liu believes judges may legitimately invent constitutional welfare rights. And the fact that Whalen disagrees with the limited judicial role that Liu endorses does not mean Liu is a liberal extremist. It just means Whalen disagrees with Liu and with some of our nation's most distinguished jurists on this issue.

2. **Myth**: Liu believes in a "freewheeling constitutional approach" that allows people "to redefine the Constitution to mean whatever they want it to mean."

Reality: No, he doesn't. Liu co-authored a 2009 book titled *Keeping Faith with the Constitution*, which emphasized "the fixed and enduring character of [the Constitution's] text and principles" and rejected the idea that "the Constitution can come to mean whatever a sufficient number of people think it ought to mean." Instead, Liu endorsed the common-sense view that courts interpreting the Constitution must ask not how its general principles would have been applied in 1789 when it was first ratified or in 1868 when the Fourteenth Amendment was adopted, but rather how those principles should be applied today in light of the conditions and challenges facing each generation. That is the approach taken in cases like *Brown v. Board of Education*, where a unanimous Supreme Court said "we cannot turn the clock back to 1868" in deciding the constitutionality of school segregation. Instead, the Court said "we must consider public education in the light of its full development and its present place in American life" in the course of reaching its historic decision to ban racial segregation in public schools.

Far from being radical, Liu's view probably comports with the intent of the framers who bequeathed the Constitution to their descendants with the intent that it be a useful document. Few if any of our ancestors would have intended that we run our businesses, farm our land, educate our children, or live our lives exactly the way they did, even if they did intend that the Constitution give us principles of self-government that would last for generations. Liu's

perspective may be more realistic than that of some of his opponents; his view is certainly not radical.

Reviewing Liu's book, Jesse Choper writes:

Liu's interpretive approach is part of mainstream legal thought, at least as much as originalism is. Disagreements over how the Constitution should be interpreted are familiar and unlikely ever to be resolved; the debate itself is part of our legal tradition. Though not without the inherent limits of any method of constitutional interpretation, Liu's position reflects the statements and practices of many of our most eminent jurists, including Louis Brandeis, Benjamin Cardozo, Oliver Wendell Holmes, and John Marshall. And it echoes the language of key Supreme Court precedents ending racial segregation, establishing constitutional protections against gender discrimination, and authorizing Congress to regulate the national economy.

Again, the fact that Whelan disagrees with Liu does not mean Liu is a radical. It just means Whelan, who believes "originalism [is] the genuinely faithful method of constitutional interpretation," finds it hard to tolerate mainstream views that differ from his own.

3. **Myth**: "Liu is a supporter of racial quotas in the schools, and he supports school choice only insofar as it furthers that goal."

Reality: Not true. In a 2005 law review article, Liu endorsed school choice initiatives, including charter schools and vouchers, that enable disadvantaged children to attend good schools, whether public, private, or religious. Given the intensity of liberal opposition to school vouchers, conservatives such as Ken Starr and Clint Bolick have rightly praised Liu's article for showing "courage," "integrity," and "independence."

In the article, Liu proposed rewarding schools whose enrollments roughly reflect the racial and socioeconomic diversity of their surrounding communities. Whelan says this shows Liu supports racial quotas, but I find that hard to believe. If Liu's position is tantamount to supporting quotas, why would Clint Bolick--one of America's most vigilant foes of racial quotas (whom Whelan "deeply admire[s]")--praise Liu's article and endorse his nomination? In fact, Liu's position is similar to what Justice Kennedy said in a 2007 school desegregation case: "having classrooms that reflect the racial makeup of the surrounding community" is one of "our highest aspirations," and "[a] compelling interest exists in avoiding racial isolation ... [and] achiev[ing] a diverse student population." Justice Kennedy, however, does not support racial quotas, and Liu doesn't either.

4. **Myth**: Liu supports "racial quotas forever."

Reality: Of course he doesn't. In a 2003 panel discussion, Liu endorsed "the idea of remedying societal discrimination as a justification for affirmative action." He also spelled out this view in a 2004 law review article, where he endorsed the diversity rationale upheld in *Grutter v. Bollinger* but also argued for reconnecting affirmative action to its historic remedial purpose. As Jesse Choper observed, "that view is hardly radical, putting Liu in the company of people like Richard Nixon, Gerald Ford, and Colin Powell." Whelan says Liu's position authorizes racial quotas in

perpetuity, citing an opinion by Justice Powell. But again, Liu doesn't support quotas. And far from endorsing race-conscious remedies "forever," Liu wrote in his article: "Whereas 'diversity' entails no inherent aspiration for an end to race-consciousness, a desire to remedy discrimination and its vestiges logically motivates the hope that affirmative action will some day end." In other words, Liu believes--quite reasonably--that the eventual termination of affirmative action more logically follows from a remedial rationale than from the diversity rationale upheld by the Supreme Court in Grutter.

5. **Myth**: Liu supports "reparations for slavery" and a "grandiose reparations project."

Reality: This attack is so absurd it barely merits a response. In a 2008 panel, Liu and others discussed a documentary film about a New England family's role in the slave trade. Because seeing is believing, I urge you to watch the video and decide for yourself whether Liu supports (or even mentions) reparations. To the extent Liu discussed solutions for racial inequality, here is what he said:

... [I]nstead of looking for the single national strategy, which is what everybody always looks for, think about what you can do on a much smaller scale in much smaller communities, around specific problems that people face, whether it's in their schools, in their workplaces, access to health care, in their housing--whatever it may be.

6. **Myth**: Liu supports "direct judicial imposition of interdistrict racial-balancing orders" in public schools.

Reality: This is simply not true. In a 2004 law review article and in a 2004 panel discussion, Liu criticized Milliken v. Bradley, the 1974 case in which the Supreme Court held, 5-4, that remedies for de jure segregation of Detroit's public schools may not extend to suburban districts to which many whites had fled. But Liu's criticism of Milliken, a case decided 37 years ago, hardly means he is a present-day supporter of court-ordered busing. In fact, Liu acknowledged in a 2005 article that "*Milliken* seems firmly embedded in the law." That article, as well as a 2002 New York Times op-ed, gives us a clear sense of how Liu would address current segregation between urban and suburban districts: He urges policy solutions, not judicial intervention; in particular, he supports interdistrict school choice.

7. **Myth**: Liu supports "using foreign law to redefine the Constitution."

Reality: No, he doesn't. In a 2006 law review article, Liu wrote that "the United States can hardly claim to have a monopoly on wise solutions to common legal problems faced by constitutional democracies around the world." When asked about this statement at his confirmation hearing, Liu said:

I do not believe foreign law should control in any way the interpretation of United States law, whether it's the United States Constitution or a statute.... I think foreign precedent can be cited in the same way that a law review article might be cited, which is simply to say, judges can collect ideas from any place that they find it persuasive. But there's a very important difference, Senator, and one that I take very seriously, between looking for guidance or ideas versus looking for

authority. And authority is the basis on which cases are decided, not ideas or other forms of guidance.

In his responses to Senators' written questions, Liu wrote that "foreign law can be a source of ideas, just as treatises and law review articles can be sources of ideas," but "foreign law has no legal authority in the interpretation of U.S. law, including the U.S. Constitution, unless U.S. law so provides." For at least two decades, this view has been endorsed by a Supreme Court majority, including Justice Kennedy and Justice O'Connor. It is hardly radical.

8. **Myth**: Liu supports "the invention of a federal constitutional right to same-sex marriage."

Reality: I don't know Liu's position on whether there's a federal constitutional right to same-sex marriage. That's because nothing in Liu's record addresses that issue. In 2007, Liu joined an amicus brief by 17 law professors arguing that California laws against same-sex marriage violate the California Constitution. Whelan says "the brief argues that because California's definition of marriage violates the equal-protection guarantee of the federal Constitution, it follows that it violates the state Constitution." That is a creative reading of what the brief actually argued. It urged the California Supreme Court to "rely solely on California, rather than federal, constitutional law," and it discussed federal cases "to illustrate" a "methodology for interpreting the California Constitution." If the brief were truly an argument under the U.S. Constitution, one would expect to see substantial analysis of major precedents like Romer and Lawrence--yet the brief scarcely mentions those cases. In short, the brief was submitted in a case that sought to resolve a contentious issue under state law (where it should be resolved), and it is about how the California Supreme Court should interpret the California Constitution, not the U.S. Constitution.

More could be said in response to these and other attacks on Liu, but you get the picture. The attacks are rife with extravagant and tendentious readings of Liu's record, and they are based on selective quotations of Liu's writings that even then don't prove the point. Liu is hardly the "ideologue" he is portrayed to be, even if some of his critics are.

Finally, I should address Liu's opposition to the confirmations of Chief Justice Roberts and Justice Alito. As a lawyer in the Bush White House, I worked to get those Justices confirmed. Obviously I don't agree with Liu's opposition to those nominations.

It is critically important, however, that people feel free to speak their minds about Supreme Court and other judicial nominations without fear of retribution. I don't agree with Liu's criticisms of Roberts or Alito, just as I don't agree with Whelan's criticisms of Liu. But their views should be allowed and tested in the marketplace of ideas, not silenced by fear of political retaliation. If Ed Whelan were to be nominated for the federal bench by a future President (probably not this one), I would want to hear about his own judicial philosophy. Whelan's opposition to Liu would be irrelevant, and I would have very little respect for anybody who would seek to make it relevant.

Liu's opposition to the Alito nomination has garnered the most attention. Some have claimed that a 2005 issue brief, in which Liu raised concerns about then-Judge Alito's opinions in death penalty cases, showed that Liu is "intensely hostile to capital punishment" and thus unfit for the bench. This groundless attack prompted former Republican Congressman Bob Barr to write that "Liu's views on the death penalty have been distorted.... [H]is views on due process for criminal defendants certainly are not radical. A more accurate reading of Liu's analysis reveals simply his commitment to the Constitution and to a fair criminal justice system." Dozens of former judges and prosecutors (here, here, and here) joined Barr in defending Liu. At his confirmation hearing, Liu stated unequivocally: "I would have no difficulty or objection of any sort, personal or legal, to enforcing the law as written with respect to the death penalty."

Suspected, not actual, opposition to the death penalty is a particularly inappropriate ground for opposing the confirmation of a federal judge. Many lawyers, including myself, are members of churches and other religious organizations that are opposed to the death penalty or that urge their members in public life to be very cautious about use of the death penalty. Some people may be so categorically opposed to the death penalty that they cannot serve as judges in a country that endorses capital punishment. But it is critically important that candidates for judicial office be assessed in accordance with what they actually think on this issue, not what others think they think.

Other critics have focused on Liu's testimony before the Senate Judiciary Committee at Justice Alito's confirmation hearing in 2006. In 17 pages of testimony, Liu analyzed over 50 opinions that Alito wrote on the Third Circuit in cases concerning individual rights versus government power, and he observed that Alito sided with the government more often than other Republican-appointed appellate judges nationwide. Liu's substantive legal analysis has gotten almost no attention because whether one agrees with it or not, it clearly qualifies as responsible commentary. Instead, Liu's critics have seized on the concluding paragraph of his testimony, the one that begins "Judge Alito's record envisions an America where police may shoot and kill an unarmed boy to stop him from running away with a stolen purse ...."

This paragraph appears to be Liu's attempt to conclude his testimony with a dramatic coda. But the coda was unfortunate and unnecessary because it did not add anything new to Liu's substantive analysis. It used provocative language to narrow Alito's vast record down to a handful of controversial opinions, each of which had already been analyzed in Liu's testimony. (For example, the "stolen purse" case refers to *Tennessee v. Garner*, the subject of a 1984 memo that Alito wrote as a Justice Department lawyer.) In his written responses to Senators' questions, Liu admitted that the paragraph was "unduly harsh and provocative" and that it "has an ad hominem quality that is unfair and hurtful to the nominee.... For these reasons, I regret having written this passage, and I would omit it if I had the opportunity to rewrite my testimony."

No one paid much attention to what Liu said about Alito at the time, but now it is one of the arguments made against his confirmation. I understand why the passage has irked Liu's opponents; it was unnecessarily dramatic and unduly provocative, as Liu concedes. But does this statement really show--against the weight of his full testimony as well as the thousands of pages of measured and thoughtful writings in his record and Liu's own 3½-hour confirmation hearing--that Liu is intemperate, radical, or extreme? The judicial confirmation process should subject

every nominee to careful scrutiny. But at the end of the day, the process must not descend into a retaliatory game of "gotcha." Liu should be confirmed not because he is perfect, but because his record *considered in its totality* demonstrates his qualifications, temperament, and ability to faithfully discharge his duty as a judge.

In sum, Liu is eminently qualified. He has support from prominent conservatives. He would fill a judicial emergency vacancy, and he would add important diversity to the bench. He is pragmatic and open-minded, not dogmatic or ideological, as his support for school vouchers shows.

Many, though by no means all, of his scholarly views do not align with conservative ideology or with the policy positions of many elected officials in the Republican Party. (This might not have been the case thirty years ago, but many moderates have since left the Republican Party.) Nevertheless, his views are part of the American legal mainstream. The independence, rigor, and fair-mindedness of his writings support a confident prediction that he will be a dutiful and impartial judge.

It has been more than a year since Liu was first nominated. His candidacy has been thoroughly debated. The Senate should vote on Liu's nomination, and it should vote to confirm.

Richard W. Painter is the S. Walter Richey Professor of Corporate Law at the University of Minnesota. From 2005 to 2007, he served as the chief White House ethics lawyer for President George W. Bush. Contact: rpainter@umn.edu, (612) 626-9707.

May 18, 2011

The Honorable Saxby Chambliss
United States Senator
416 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Johnny Isakson
United States Senator
131 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Chambliss and Senator Isakson:

I am a retired physician in Augusta and have lived in Georgia for over 50 years. In addition, I am a loyal Republican and a proud supporter of both of you in your successful Senate campaigns.

I am not one who often writes his elected representatives, but I am moved to write you today about Professor Goodwin Liu, a judicial nominee who awaits a confirmation vote in the Senate. As you may know, Goodwin was born in Augusta at the Eugene Talmadge Memorial Hospital, where I founded and directed the Medical College of Georgia's Kidney Transplant Program over 40 years ago. I know this because I hired his father, Dr. Wen-Pen Liu, as a surgical fellow in the program in 1969.

Dr. Liu and his wife, Yang-Ching, lived in Augusta for four years, and they became my close personal friends. Although the Liu's came to Augusta for the kidney transplant fellowship, their decision to settle here reflected a much bigger life decision. You see, Dr. Liu and his wife grew up in Taiwan, and they had considered moving back after the fellowship. But because of the deteriorating political situation in Taiwan—the country was then under martial law—the Lius decided to make a permanent home in the United States, where they would have greater freedom and opportunity. It was as big a decision as anyone can make in life, and one that would indelibly alter their own future and their children's.

The Lius arrived in Augusta with little money. They lived in a small apartment, and they were frugal and very hardworking. They were still learning English, and I'm sure they missed having a community that shared their language and culture. But they were cheerful, open-minded, and receptive to their new environment. We shared many meals and outings together, and they and their two sons, Kingsway and Goodwin, became a part of our community. We were sorry to see them leave in 1973.

The Lius moved to a rural town in Florida for four years and eventually settled in California where they live today. Goodwin's older brother, Kingsway, went to college at Harvard and then Harvard Medical School. He is now a surgeon in Fremont, California.

Goodwin, as you know, went to Stanford and became a Rhodes Scholar. He graduated from Yale Law School and became a law clerk at the U.S. Supreme Court. He is now a law professor and has earned many accolades in his field. I often think of how proud Dr. Liu and his wife must be of their children, and how momentous their decision to come to America was.

When I reflect on the Liu family's journey, it makes me so proud of this country and our beloved state of Georgia because it is proof of all the values we hold dear. In America, two modest immigrant parents, with hard work and devotion to education, can give their children a life that is imbued with freedom and boundless in its possibilities.

As you prepare to vote on Goodwin's nomination to the bench, I hope you will take this background into consideration. I understand some Senators want to block Goodwin's appointment because they disagree with his academic views. But I worry that would send the wrong message.

Our country has always been a place where people who work hard and play by the rules can succeed at whatever they choose. Goodwin is a success story, and his qualifications are outstanding. I can't think of many people of his background who have made it as far as he has in the legal profession. I am proud of him and his family, and I believe most Americans would be proud if he became a judge. I hope you will support his confirmation. At a minimum, I hope you will help end debate on Goodwin's nomination so he can get the vote he deserves. Those of us in Georgia who helped the Lius get started in this country will be watching.

Sincerely,

Arthur L. Humphries, M.D.

cc: Dr. Wen-Pen Liu
Professor Goodwin Liu

May 16, 2011

The Honorable Lamar Alexander
United States Senator
455 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Alexander:

I write in support of the federal appeals court nomination of UC Berkeley law professor Goodwin Liu, whom I came to know when I served as General Counsel of the U.S. Department of Education under President George W. Bush from 2001 to 2005. From my personal experience working with Goodwin on various K-12 education issues, I believe he is an exceptionally qualified and fair-minded nominee who is worthy of your support.

As you know, Goodwin served as a key advisor to Secretary Richard Riley from 1999 to 2000. I arrived at the U.S. Department of Education one year later. By then, Goodwin had completed a Supreme Court clerkship and was working in private law practice. During that period, and even after he became a law professor in 2003, he volunteered his time and expertise on several occasions to help me and my staff sort through legal issues that he had worked on during the previous administration. In those interactions, Goodwin's efforts were a model of bipartisan cooperation. He brought useful knowledge and careful lawyerly perspectives that helped our administration to achieve its goals.

One example was a set of guidelines we developed to ease restrictions on single-sex education. Goodwin provided me with helpful background on the Department's prior efforts to address this issue and alerted me to the potential sticking points. When we published our draft guidelines, Goodwin offered several comments that helped to refine the careful balance we sought between increasing educational flexibility and protecting students from unlawful discrimination. He approached the issue with perceptive analysis, lawyerly detail, and an institutional perspective informed by his prior service in the Department. Instead of favoring either side of the ideological debate over same-sex education, Goodwin was primarily interested in "getting it right" on the law. That made his perspective extremely valuable to me in my role as General Counsel.

As a teacher and scholar, Goodwin's primary area of expertise is education law and policy. Over two-thirds of his academic publications focus on this subject, and his writings provide further evidence that his approach to complex issues is based on facts and reasoning, not ideology. For example, Goodwin wrote a 2005 law review article supporting school vouchers and charter schools as options for students trapped in low-performing schools. As Chairman of the D.C. Public Charter School Board, I can attest to the fierce politics surrounding school choice, and the position Goodwin took in his article is strongly opposed by many liberals. But Goodwin defended his position by carefully analyzing the empirical research on voucher programs and charter schools. Like his legal advice on same-sex schooling, his article is short on ideology and long on facts and reasoning. Moreover, the claim by some critics that his article endorses racial quotas is entirely off-base. Goodwin opposes racial quotas, and his article supports the use of vouchers and charter schools to enhance racial and socioeconomic diversity in ways consistent with the law.

Because I know from personal experience that Goodwin is smart, fair, and intellectually honest, it came as no surprise to me that his nomination has been endorsed by leading conservatives such as Ken Starr and Clint Bolick, both of whom have praised his work on school choice. Goodwin also has the support of prominent conservatives in the education research and policy community such as Eric Hanushek at the Hoover Institution, Jim Guthrie at the George W. Bush Presidential Library, and Frederick Hess at the American Enterprise Institute. The attached letter, signed by 22 education leaders from across the political spectrum, is impressive evidence of how widely Goodwin is respected and admired.

Some Republican Senators have urged a filibuster because of liberal views expressed in Goodwin's writings. However, if disagreement with Goodwin's scholarly work presents the kind of "extraordinary circumstances" that justify a filibuster, then I fear we are on a path to endless confirmation gridlock. I don't agree with everything Goodwin has said or written. But I am convinced, based on his record and my own experiences working with him, that he is thoughtful, fair-minded, and well-qualified to be an appellate judge. There are no "extraordinary circumstances" warranting a filibuster here.

Throughout your Senate career, you have risen above confirmation politics by following the principle that all nominees deserve an up-or-down vote. And you have voted for well-qualified Democratic nominees even when you have disagreed with their substantive views. Your voice of reason has kept excessive partisanship out of the confirmation process, and opposing judicial filibusters is ultimately in our party's best interests. I urge you to stay with that principled approach and vote to confirm Goodwin Liu.

Sincerely,



Brian W. Jones
Founder & President, Latimer Education, Inc.
Former General Counsel, U.S. Department of Education (2001–05)

cc: Matt Sonnesyn, Chief of Staff
David Cleary, Legislative Director

Senator Dianne Feinstein
Senator Barbara Boxer

Judicial Watch

Because no one is above the law!

March 24, 2010

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
United States Senate
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

Judicial Watch is a non-partisan, educational foundation that advocates for transparency, accountability, and transparency in government, politics, and the law. Judicial Watch is America's largest and most effective government watchdog, with nearly 200,000 active supporters who are committed to the rule of law.

We have grave concerns about the pending nomination of Goodwin Liu to be United States Circuit Judge for the Ninth Circuit.

In a book he co-authored, *Keeping Faith with the Constitution*, Mr. Liu suggests that the Constitution should be interpreted using the "evolving norms and traditions of our society." This activist theory for interpreting the Constitution would substitute the whims of individual judges over the text and original meaning of the U.S. Constitution. A copy of this book is available here (http://www.acslaw.org/keepingfaith).

Mr. Liu joined an amicus brief that suggests that the Constitution's equal protection clause requires allowing same-sex couples to marry. Brief of Amici Curiae Professors of Constitutional Law In Support of Respondents Challenging the Marriage Exclusion, *In Re Marriage Cases*, Case No. S147999 (CA Supreme Court)[1] Mr. Liu has

[1] *See In Re Marriage Cases*, Case No. S147999 (CA Supreme Court) <http://data.lambdalegal.org/pdf/legal/inre_ca_ba_20070928_supreme_professors-sullivan-and-karlan.pdf> accessed March 23, 2010.

a radical and expansive view of judicially-enforceable rights to "welfare,"[2] and seems to oppose the notion that the Constitution is colorblind.[3]

Also of concern is Mr. Liu's lack of practical legal experience. Mr. Liu has practiced law for just a little over ten years. Judicial nominees ought to have significant practical experience as a lawyer or a judge, especially nominees for appellate seats.

Judicial Watch requests that the Committee thoroughly examine Mr. Liu's record and judicial philosophy. The rule of law is harmed when activist judges substitute their own will for the plain text and meaning of the U.S. Constitution. The Committee should be prepared to oppose his nomination if such an examination confirms that he embraces an activist judicial philosophy.

Thank you.

Sincerely,

Thomas Fitton
President

cc: Senate Judiciary Committee Members
By: Fax and Mail

[2] *See* Liu Goodwin, "Rethinking Constitutional Welfare Rights," *Stanford Law Review,* November 2008 <http://findarticles.com/p/articles/mi_hb3435 /is_200811/ai_n32305705/.> accessed March 23, 2010.

[3] *See* Liu Goodwin, "The meaning of Brown vs. the Board," *Los Angeles Times,* December 25, 2006 <http://www.latimes.com/news /opinion/la-oe-liu25dec25,0,382863.story ?coll=la-opinion-center> accessed March 23, 2010.

The Leadership Conference on Civil and Human Rights

1629 K Street, NW
10th Floor
Washington, DC
20006

202.466.3311 voice
202.466.3435 fax
www.civilrights.org

The Leadership Conference

CONFIRM GOODWIN LIU TO THE 9TH CIRCUIT

May 13, 2010

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the confirmation of Professor Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit. Professor Liu's stellar background, his intellectual honesty and independence, and his utmost respect for the Constitution and its values all make him an outstanding candidate. We urge the Senate Judiciary Committee and the full Senate to confirm Professor Liu without delay.

Professor Liu's credentials are truly outstanding. The son of Taiwanese immigrants who instilled in him a tremendous commitment to democracy and an abiding love of education, Liu graduated from his high school as a co-valedictorian, graduated Phi Beta Kappa from Stanford University, and subsequently studied in Oxford University as a Rhodes Scholar. At Yale Law School, he distinguished himself by serving as an editor of the Yale Law Journal and through numerous awards for his oral advocacy and writing skills. Following law school, he served as a law clerk for both Judge David Tatel on the U.S. Court of Appeals for the D.C. Circuit and Justice Ruth Bader Ginsburg on the Supreme Court, interrupting his clerkships only for a stint with the U.S. Department of Education in which he worked on policies affecting disadvantaged children.

In 2003, after several years in private practice with the prominent law firm O'Melveny & Myers, Liu joined the faculty of the University of California, Berkeley School of Law (Boalt Hall). Within five years, he earned tenure and was promoted to Associate Dean. At the same time, he has remained active as a practicing attorney and a policy advisor, and has written extensively on education, constitutional law, and a number of other issues.

Professor Liu's writings and other legal work show that he takes a highly thoughtful approach to difficult issues, carefully analyzing all sides of arguments and reaching conclusions based on well-established law rather than political ideology. He consistently displays the highest level of intellectual honesty,

The Leadership Conference

independent thinking, and commitment to fairness – meaning that litigants before him will feel certain, regardless of the outcome, that they were given a fair day in court. It is no wonder that his nomination has garnered strong support, from across the political and ideological spectrum, among those who know him best.

We hope you will support Professor Liu's prompt confirmation, and that you will reject the efforts by some ideological extremists to tarnish his outstanding reputation. Thank you for your consideration. If you have any questions, please feel free to contact Senior Counsel Rob Randhava at (202) 466-6058.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 2, 2011

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
March 2, 2011

The Judiciary Committee welcomes Professor Goodwin Liu of California back to the Committee for a second hearing on his nomination to fill a judicial emergency vacancy on the Ninth Circuit. We are holding this unusual second hearing at the request of the Republican Members of the Committee. I hope that in having Professor Liu back before us, even after he answered hundreds of questions last year and even after his nomination was twice reported favorably by the Committee, all Members of the Committee will keep an open mind in evaluating his qualifications for the Federal bench. We also welcome Kevin Sharp, Roy Dalton, Jr., Claire Cecchi and Esther Salas, who have been nominated to fill vacancies on district courts in Tennessee, Florida, and New Jersey. All have the support of their home state Senators who are here today to introduce them.

I thank Senator Feinstein for chairing this important hearing and for her strong and consistent efforts on behalf of Professor Liu's long-pending nomination. I also want to commend our Ranking Republican, Senator Grassley, who has worked with me on each of the judicial nominations that President Obama renominated this January. I have accommodated his request to hold this second hearing on Professor Liu's nomination. We also expect to be able to move forward with Judiciary Committee consideration of the renominations of two district court nominees, Edward Chen of California and Jack McConnell of Rhode Island, in the next few weeks. We have already favorably reported 15 judicial nominations reported by the Committee last year, but who were blocked from receiving a Senate vote before the last Congress adjourned. I look forward to debating and voting on these nominations without delay so that we can begin to make progress to address the judicial vacancies crisis that is putting at serious risk the ability of all Americans to have a fair hearing in court.

Professor Liu first appeared before the Committee at a hearing last April that was twice delayed, once to accommodate a Republican request and a second time when Republicans employed a seldom-used procedural rule at the last minute to prevent him from appearing even after he and his family had traveled from across the country. Regrettably, even though his hearing was delayed, the attacks on Goodwin Liu and his record were not. Republican Senators declared themselves "disappointed" as soon as he was nominated and immediately began claiming that he

was "far outside the mainstream of American jurisprudence."

These attacks were instantaneous and have continued, painting a caricature of Professor Liu at odds with his reputation as a well-respected constitutional law professor with sterling credentials. This caricature has also ignored Professor Liu's extensive responses to the Committee in the more than 100 questions he answered during a three-hour hearing last April, and in the more than 200 follow-up questions sent to him by Republican Senators following that hearing.

Senator Feinstein was correct to note at Professor Liu's first hearing that he has an extraordinary legal mind and is a person of integrity. No fair-minded person who watched his testimony last year can or should question his qualifications, talent or character, all of which are first rate. Nobody can doubt his temperament. He answered every question. He assured this Committee that he understands the role of a judge and the need for a judge to follow the law and adhere to the rule of law. He met and exceeded every standard we have used to measure judicial nominees. He met every test the Senators on this Committee threw at him. I have no doubt he will meet any test the Committee throws at him today.

Goodwin Liu is rightfully admired by legal thinkers and academic scholars from across the political spectrum. Professor Liu has spent his career in public service, private practice and as a teacher since receiving degrees from Stanford University and Yale Law School. He is a Rhodes Scholar. After law school, Professor Liu clerked for D.C. Circuit Judge David Tatel and Supreme Court Justice Ruth Bader Ginsburg.

His parents, wife, children, friends and community are justifiably proud of him and look forward to his confirmation to the Court of Appeals. The son of Taiwanese immigrants, Professor Liu would bring much-needed diversity to the Federal bench. There is currently only one active Asian Pacific American Federal appeals court judge in the country -- Judge Denny Chin of the Second Circuit, who was confirmed last year.

I hope that this second hearing for Professor Liu proves to be an opportunity for Senators on the Committee to treat him more fairly and to give serious and open-minded consideration to his nomination. It is a new opportunity to walk back from the reflexive opposition Republican Senators demonstrated from the outset of Professor Liu's nomination. Without an open mind, these hearings—in particular this second hearing—become merely a source of delay and opportunity for a preemptive set of closing statements rather than the important component of the confirmation process that they should be.

I also hope that no member of this Committee seeks to trap Professor Liu by putting him in the impossible position of asking questions they know he should not—must not—answer to avoid prejudging cases that might come before him as a judge. Instead of demanding a level of specificity about how Professor Liu might rule as a judge, that Senators on both sides of the aisle have deemed inappropriate for prior judicial nominees to answer, I hope that Senators will be willing to credit his answers that he will follow the law and his reassurances that he understands the role of the judge.

I again urge Senators to approach this nomination the way I approached Professor Michael

McConnell's nomination when President Bush nominated him to the Tenth Circuit. He was another widely-regarded law professor, who appeared before our Committee as a nominee championed by the Senior Senator from Utah, Senator Hatch. Like Professor Liu, Professor McConnell from the University of Utah was nominated to a Federal appeals court without having first served as a judge. He was one of two dozen such nominations confirmed after being nominated by President Bush. Professor McConnell's own provocative writings included staunch advocacy for reexamining the First Amendment Free Exercise Clause and the Establishment Clause jurisprudence. He had expressed strong opposition to Roe v. Wade and to the clinic access law, and he had testified before Congress that he believed the Violence Against Women Act was unconstitutional. Professor McConnell's writings on the actions of Federal District Court Judge John Sprizzo in acquitting abortion protesters could not be read as anything other than praise for the extra-legal behavior of both the defendants and the judge.

I had concerns that Professor McConnell would turn out to be a conservative activist on the Tenth Circuit. I was concerned about his refusal to take responsibility for his harsh criticism of the Supreme Court's decision in the Bob Jones case. But I put faith in Professor McConnell's assurances that he understood the difference between his role as a teacher and advocate, and his future role as a judge. He assured us that he respected the doctrine of stare decisis, and that as a Federal appeals court judge, he would be bound to follow Supreme Court precedent. And I valued Senator Hatch's support of him.

I supported the confirmation of Professor McConnell, as did other Democratic Senators. He was reported favorably by this Committee, and he was confirmed to the Tenth Circuit by voice vote in the Senate just one day after his nomination was reported. Now that he is back again before the Committee, I challenge the Republican members of this Committee to treat Professor Liu with that same fairness.

I have no doubt that Professor Liu will again demonstrate to the Committee a command of the law and devotion to it. I have no doubt that he will again show that he understands the role of the judge and how it differs from his career as an advocate and an academic. The litmus test for judicial nominations must not be whether their writings and speeches share the same judicial philosophy as the Republican Senators or Democratic Senators. Professor Liu's understanding of constitutional law, from well before his nomination a target of the far right, falls well within the mainstream of American legal thought. Nothing I have read or heard from Professor Liu gives me any reason to doubt his conviction about the critical importance of the rule of law as the guiding principle of judicial decision-making. As a professor he has done what great professors do—challenge our view of the law. But he has left no doubt that as a judge he would do what great judges do in applying the law fairly to each case.

I hope Republican Senators will give the same weight to Professor Liu's assurances that he understands the proper role of a judge that we did to Professor McConnell's identical assurances. I hope that after this second hearing and his third time being considered by the Committee that the Senate will finally be able to consider this extraordinary nominee.

# # # # #

LIBERTY COUNSEL
ACTION.

Post PO Box 540629
Orlando, FL 32854
Telephone: 877•810•1776
Liberty@libertyalliance.org

1015 Fifteenth St. NW, Suite 1100
Washington, DC 20005
Telephone: 877•810•1776
Facsimile: 202•289•7474

Post Office Box 190
Forest, VA 24551
Telephone: 877•810•1776
LibertyCounselAction.org

Reply to: Washington, DC

March 9, 2011

Chairman Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Chuck Grassley
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 2051

Re: Nomination of Goodwin Liu

Dear Chairman Leahy and Ranking Member Grassley:

Liberty Counsel Action, on behalf of more than 750,000 members nationwide, would like to express its opposition to the nomination of Goodwin Liu for the United States Court of Appeals for the Ninth Circuit. Liberty Counsel Action's members are concerned about political activism in the judicial branch and are interested in ensuring individuals who receive lifetime appointments to federal courts are committed to the United States Constitution. It is for this reason that LCA will include a full Senate vote on Goodwin Liu in its Congressional Scorecard.

As you know, President Barack Obama has again nominated Goodwin Liu for the United States Court of Appeals for the Ninth Circuit. As you consider Liu, Liberty Counsel Action encourages you to consider his ideology and judicial philosophy, and when you vote regarding whether to report the nomination and have it placed on the Senate's Executive Calendar, we ask that you vote no.

Goodwin Liu has no experience as a trial attorney and actually only practiced law for about two years. Additionally Liu's ideology and judicial philosophy are disconcerting to say the least. In fact, Goodwin Liu is an unapologetic judicial activist. Rather than construing the Constitution in accordance with the intent of its drafters, Liu argues that constitutional scrutiny "requires adaptation" because of the "evolving norms of our society."

Liu's concept of the Constitution is so misguided he has stated that when adjudicating questions involving social values and concerns, courts should look to "public policies, institutions, and practices as well as predictive judgment," rather than to the Constitution and related legislation. Liu has even confounded the Constitution to the extent of propagating the idea that individuals have a constitutional right to welfare.

Liu not only lacks sufficient understanding of the Constitution to sit on the Ninth Circuit, but he is also decidedly biased on a number of issues. This is evident based on his association with organizations like the American Constitution Society, the ACLU, the National Women's Law Center, and the Chinese for Affirmative Action. He has also been vocal on a number of issues, including same-sex marriage and abortion, denouncing the California Marriage Amendment and advocating for abortion, including federally funded abortion.

Confirming Liu would only add more chaos in a circuit that is already overturned more than any other circuit in the nation (in one term 94% of the Ninth Circuit cases reviewed by the Supreme Court were overturned). Liberty Counsel Action asks that you weigh Liu's inexperience, lack of understanding about the Constitution, and obvious biases in considering his nomination.

Your vote is one of the most important and lasting votes a senator can make, and to prevent an individual like Goodwin Liu from legislating from the bench is a key purpose of the "advice and consent" process and the duty of the Senate Judiciary Committee. Thus, should the Senate Judiciary Committee report Liu's nomination, Liberty Counsel Action will include the full Senate vote on its Congressional Scorecard.

Sincerely,

Mandi Campbell
Director of Public Policy

This is a letter from 81 of Liu's former classmates at Yale Law School

May 12, 2010

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9516

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9102

Dear Members of the Judiciary Committee:

We write in our personal capacities on behalf of our law school classmate, Professor Goodwin Liu, who recently testified before your committee as a judicial nominee for the U.S. Court of Appeals for the Ninth Circuit.

We were Goodwin's classmates at Yale Law School. Attending law school can be an intense experience, during which classmates get to know each other intimately through sharing, debating, and challenging each other's thoughts, reasoning, and views on many aspects of the law. We studied, worked, and learned alongside Goodwin for three years, and had the opportunity to observe and know him as few others could. The portrait of Goodwin that emerged from our experience with him is one of an extremely smart and hardworking colleague, widely respected equally for his intellect as for his open-mindedness, ability to understand all sides of an issue, and respect for contrary views and those who held them. He was always even-tempered and unassuming, never one to promote himself or impose his views on others. Goodwin was unafraid to challenge orthodoxy, whether liberal or conservative, and he approached all issues with a discerning, independent mind.

It surprised no one in our class that Goodwin went on to clerk at the Supreme Court, became a law professor at a top law school, and has become a well-known author whose rigorous scholarship and legal acumen are respected even by those who disagree with him, and has accomplished so much already in his career. His qualifications for the bench are outstanding, and we can confidently say, based on what we know first-hand, that Goodwin would approach every case with diligence, care, and impartiality. He would be a generous and trustworthy colleague, and he would fully embrace and faithfully discharge his duty to follow the law. No one can doubt Goodwin's intellect, and no one who knows him well can doubt his integrity or commitment to the rule of law.

Although we represent diverse areas of legal practice, have widely ranging legal philosophies, and possess differing political views, we comfortably agree that in our personal opinions, Goodwin is a person of unassailable integrity, remarkable intellect, carefully considered views, a measured temperament, and a commitment to the rule of law.

We urge you to confirm Goodwin Liu. He is eminently qualified and possesses the intellect, discipline, and temperament to serve with the utmost distinction on the U.S. Court of Appeals for the Ninth Circuit.

John G. Balestriere

Elena A. Baylis, Associate Professor, University of Pittsburgh Law School

Jeanette Melendez Bead, Partner, Levine Sullivan Koch & Schulz, L.L.P.

Ramamoorthi Bhaskar, Independent Scholar

Robert A. Bonta, Deputy City Attorney, San Francisco City Attorney's Office

Julius Buchanan

Christina Duffy Burnett, Associate Professor of Law, Columbia University

Jennifer M. Chacon, Professor of Law, University of California, Irvine, School of Law

Edward Chang, New Haven, Connecticut

Steve Charnovitz, Associate Professor, George Washington University

Partha P. Chattoraj, Partner, Markowitz & Chattoraj LLP

Gregory S. Chernack, Partner, Hollingsworth LLP

Andrew Chin, Associate Professor, University of North Carolina School of Law

Iris Chiu, New York, New York

Polly A. Clark, Charlottesville, Virginia

Alicia Davis, Ann Arbor, Michigan

J. Benjamin Davis, Partner, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP

Melvin T. Davis, Private Equity Professional

Marie DeFalco, New York and New Jersey

Derek R. Douglas, Special Assistant to the President for Urban Policy, The White House, Domestic Policy Council

Ariela Dubler, Professor of Law, Columbia Law School

Kianga Ellis, Founder, Avail Art LLC

Matthew J. Fader, Baltimore, Maryland

J. Steven Farr, Washington, D.C.

Jesse M. Furman, New York, New York

Jonathan D. Glater, Director of Academic Support, U.C. Irvine School of Law

Camille Gear Rich, Associate Professor of Law, USC Gould School of Law

Robin S. Golden, Selma M. Levine Clinical Lecturer in Law and Ludwig Community Development Fellow, Yale Law School

Robert M. Gordon

Rachel J. Harris, Los Angeles, California

Kendra Kekelis Hartman, Chicago, Illinois

Stephen J. Hess

Damon J. Hemmerdinger, Principal, ATCO Advisory Services

Janile Hill, Chicago, Illinois

Joel D. Hornstein, Founder & Chief Investment Officer, Structural Investment Management LLC

Steven M. Juris, New York, New York

Benjamin S. Kerschberg, Co-Founder and VP, Corporate Development & Strategy, Consero Group LLC, Bethesda, Maryland

Mark H. Kim, Partner, Munger, Tolles & Olson LLP

Matthew Klein, Executive Director, Blue Ridge Foundation

Jonathan M. Landy, Bethesda, Maryland

Cynji Lee, Assistant County Attorney for Miami-Dade County, Florida

Amy L. Levine, Washington, D.C.

Lawrence Liu, Los Angeles, California

Andrea Luby, Kansas City, Missouri

Joseph W. Luby, Attorney, Public Interest Litigation Clinic

Juli Ann Lund, Counsel, Williams & Connolly LLP

John Ma, Goldman, Sachs & Co.

Gerard N. Magliocca, Professor of Law, Indiana University — Indianapolis

Paul S. Mandell, CEO, Consero Group LLC

Hannah C. McElhinny, Deputy Trial Chief, Public Defender Service for the District of Columbia, Washington DC

Dmitri L. Mehlhorn

Robin M. Meriweather, Washington, D.C.

Paul H. Meyer, Chairman & President, Voxiva, Inc.

Gail H. Miller, Brooklyn, New York

Marshall L. Miller, Brooklyn, New York

Allison H. Moore, Programme Manager - Human Rights, Legal and Justice Sector Reform, Democratic Governance Unit, UNDP Indonesia

Hari M. Osofsky, Associate Professor, Washington & Lee University School of Law

Daniel W. Park, Chief Campus Counsel, University of California, San Diego

Amanda T. Perez, New York, New York

Erik S. Pitchal, Assistant Clinical Professor of Law, Suffolk University Law School

Susannah Pollvogt

Richard A. Primus, Professor of Law, The University of Michigan

Sonja Petersen Rodman, Arlington, Virginia

Andrea Roth, Teaching Fellow, Stanford Law School

Michael Rubin, Washington, D.C.

Amy M. Sanford, Nashville, Tennessee

Gregory R. Schwartz, M.D., Brigham and Women's Hospital, Boston, MA

Peter Schwartz, Partner, Covington & Burling LLP

Thomas E. Shakow, Washington, D.C.

Alison Siegler, Assistant Clinical Professor of Law, University of Chicago Law School

Jason Small, Takoma Park, Maryland

Craig Spruce, New York, New York

Joshua Steinglass, New York, New York

Gloria Tan, Clinical Instructor, Harvard Law School

Mark Trachtenberg, Partner, Haynes and Boone LLP

Tanya Hairston Whitner, Atlanta, Georgia

P. Renée Wicklund, Of Counsel, Kirkland & Ellis LLP

Harry M. Wingo, Washington, D.C.

Andrea R. Wood

Monica Y. Youn

Jonathan Zhu, Partner, Wilson Sonsini Goodrich & Rosati P.C.



April 14, 2010

Rahm Emanuel
Chief of Staff
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

David Axelrod
Senior Advisor
White House
1600 Pennsylvania Ave NW
Washington, DC 20006

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510
SENT VIA FAX AND US MAIL

An Asian American Supreme Court Justice to Replace Stevens and the Need for Goodwin Liu

Dear Chief of Staff Emanuel, Senior Advisor Axelrod and Senator Feinstein,

According to the Wall Street Journal of April 13 the President's short list of ten nominees to the US Supreme Court includes no Asian Americans. In part, this is attributable to a recent pattern that ignores the long past history of Supreme Court nominations from a diversity of legal experiences. Specifically, the last few Presidents have chosen from an artificially narrow pool of Court of Appeals judges. Since there are no present Asian American Court of Appeal judges, the Asian American community is, in effect, "black listed" and barred from an opportunity to have a representative on our highest court.

As you are aware, there is no constitutional requirement for any specific experience in order to be nominated for the US Supreme Court; in fact it is constitutionally unnecessary to even be an attorney to be nominated.

There is a growing pool of highly qualified young Asian American lawyers who are fully qualified to be considered. We therefore urge you to enlarge the diversity of your pool by

including Supreme Court candidates from the many Asian American attorneys serving our nation's 18.5 million Asian Americans.

Since eight of the nine Supreme Court justices are graduates of Harvard or Yale Law School, we call your attention to the increasingly large pool of Asian American law school graduates beginning in the 1970s from both of these law schools. We also call to your attention, the lack of geographical diversity of the Supreme Court candidates so far being examined by the President including the absence of any candidate from California where 6.1 million Asian Americans reside[1].

No Asian Americans Among the 163 Court of Appeal judges

Related to our concern is that the most qualified lawyer for the vacant 9th Circuit Court of Appeals position is Goodwin Liu, a prominent and very well respected law professor. He is being blocked by some of the same partisan interests that overwhelmingly supported a far less qualified US Supreme Court justice, Clarence Thomas. We therefore urge you to do at least as much to ensure Goodwin Liu's nomination as the first President Bush did for Clarence Thomas. Within two years, Goodwin Liu will be fully experienced, even by Republican standards, to be our first Asian American US Supreme Court justice. The Asian American community looks to you to recognize the Asian American community and to support an extraordinarily well-qualified Goodwin Liu.

Sincerely,

Faith Bautista

Faith Bautista
President and CEO
Mabuhay Alliance

Cc: Attorney General Eric Holder
Congressman Patrick Leahy
Senator Arlen Specter
Congressman Mike Honda

[1] Our two demographic experts, after adjustments for undercounts and increases in population since 2008, have determined that as of July 2010, there will be 18.5 million Asian Americans in the United States, including 6.1 million in California. See attached letter to US Census Bureau.

MABUHAY ALLIANCE

March 30, 2010

Director Robert Groves
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear Director Groves,

The Asian American community, including Mabuhay Alliance, is eager to cooperate with the Census Bureau in its efforts to ensure a full count for Asian Americans in California and the nation. We would like to share with you the following data and secure your cooperation for the release of this data:

1. According to the census data as of July 1, 2008, there are 16.6 million Asian Americans, including Native Hawaiians and other Pacific Islanders. If we added a conservative five percent for undercount and three percent for annual growth, both of which we believe are conservative, there would be 18.5 Asian Americans as of July 1, 2010.[1]

2. The State of California, which has almost one-third of Asian Americans, has reported as of July 1, 2008 to have 5.4 Asian Americans, including Native Hawaiian and other Pacific Islanders. With the added five percent undercount and three percent annual growth, there would be approximately 6.1 million Asian Americans in California as of July 1, 2010.

We will be in Washington, D.C. during the week of April 13th and would be happy to meet with you to further discuss an updated and accurate analysis of the Asian American population.

We look forward to fully cooperating with you in ensuring an accurate census count for all Americans, including all Asian Americans.

Most sincerely,

Faith Bautista

Faith Bautista
President and CEO

[1] Based on consultations with our demographic experts.

1801 K Street, N.W., Suite 200-K, Washington, D.C. 20006 | Office 202 530 1444 | Fax 202 204 5843 | www.mabuhayalliance.org

SUSAN R MCCAW

March 11, 2011

The Honorable Patrick J. Leahy, Chairman
The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing in support of Professor Goodwin Liu's nomination to the United States Court of Appeals for the Ninth Circuit. As a former United States Ambassador under George W. Bush, I am familiar with the Senate confirmation process and want to express my support during this process. I am one of Goodwin's colleagues on the Stanford University Board of Trustees, and have observed his character and intellect in the intimate setting of a high-level fiduciary board. My observations leave me with no doubt that Goodwin would make a superb federal judge, and the nation would be fortunate to have him on the bench.

The Stanford Board of Trustees is the university's governing body. It is the custodian of the university's endowment and properties, and it sets the annual budget, appoints the president, and determines policies for operation and control of the university. Election to the board involves a rigorous screening process that considers an individual's temperament, collegiality, professional accomplishments, leadership abilities, and judgment, among other qualities. The 32 current trustees include leading venture capitalists, foundation and university presidents, and more than a dozen chairmen or CEOs of major corporations and private equity firms. The board meets five times a year for two days at a time, so board members get to know each other quite well.

Goodwin's election as a trustee is indicative of his professional stature and integrity, as well as his record of public service. Through the careful and confidential scrutiny involved in the board's screening process, Goodwin emerged as a person widely admired for his intellect, fairness, and ability to work well with people of differing views.

On the board, Goodwin has lived up to his reputation. Across a wide range of complex issues, Goodwin routinely asks thoughtful and incisive questions. He is good at thinking independently and zeroing in on important issues that need attention. Even in a room full of highly accomplished leaders, Goodwin is impressive. He is insightful, constructive, and a good listener. Moreover, he possesses a remarkably even temperament; his demeanor is unfailingly respectful and open-minded, never dogmatic or inflexible. Given these qualities, it was no surprise that he was asked to chair the board's Special Committee on Investment Responsibility after serving just one year of his five-year term.

In short, Goodwin's strengths are exactly what I expect in a judge: objectivity, independence, collegiality, respect for differing views, sound judgment. Goodwin possesses

these qualities on top of the brilliant legal acumen that is well-established by his professional record and the judgment of those most familiar with his scholarly work.

The confirmation of exceptionally qualified nominees like Goodwin should not be a partisan issue. I believe Goodwin deserves the support of Senators from both parties; at the least, he deserves a timely up-or-down vote. I am pleased to join the diverse range of individuals who endorse Goodwin's nomination and urge his swift confirmation.

Sincerely,

Susan R. McCaw

cc: The Honorable Harry Reid
The Honorable Mitch McConnell
The Honorable Lamar Alexander
The Honorable Dianne Feinstein

TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR THE HEARING ON THE NOMINATION OF

GOODWIN H. LIU,

TO BE UNITED STATES CIRCUIT JUDGE FOR THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARCH 24, 2010

BY THE

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

AND

ASIAN AMERICAN JUSTICE CENTER

The National Asian Pacific American Bar Association (NAPABA) and the Asian American Justice Center (AAJC) submit this testimony in strong support of Goodwin H. Liu, nominee to be United States Circuit Judge for the United States Court of Appeals for the Ninth Circuit. Associate Dean and Professor Liu has the intellect, integrity, experience and temperament to serve as an excellent circuit court judge.

NAPABA is the national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys nationally and over 60 local Asian Pacific American bar associations. Its members include solo practitioners, large law firm lawyers, corporate counsel, legal service and nonprofit attorneys, judges, and lawyers serving at all levels of government. Through its national network of affiliates and committees, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace, seeks to eliminate anti-Asian crime and anti-immigrant sentiment, and promotes professional development of minorities in the legal profession.

AAJC is a national organization dedicated to defending and advancing the civil and human rights of Asian Americans through advocacy, public policy, public education, and litigation, and is the nation's leading expert on issues of particular importance to the Asian American community in the areas of equal rights, anti-Asian violence prevention and race relations, census, health law policy, immigrant rights, immigration, language access, and voting rights. It works closely with its three affiliates – the Asian American Institute in Chicago, the Asian Law Caucus in San Francisco, and the Asian Pacific American Legal Center in Los Angeles – and nearly 100 community partners in 44 cities, 25 states, and the District of Columbia.

NAPABA and AAJC thank the Judiciary Committee for considering Professor Liu promptly. NAPABA and AAJC also thank President Obama for his nomination of Professor Liu, and Senators Dianne Feinstein and Barbara Boxer for their support of this nomination.

This nomination is especially important to NAPABA and AAJC. Out of the approximately 175 active federal appellate court judges, there are currently ***none*** who are Asian Pacific American. Even if Judge Denny Chin, nominee for the U.S. Court of Appeals for the Second Circuit, is confirmed, Asian Pacific Americans would be woefully under-represented on the federal appellate courts. If the number reflected the general population, then there should be 8-9 Asian Pacific American federal appellate court judges nationwide. Indeed, it is especially notable that there are no active Asian Pacific American judges in the Ninth Circuit, given the especially high concentration of Asian Pacific Americans in the states encompassed by that jurisdiction.

Professor Liu is a nationally recognized scholar in the areas of education and constitutional law who will bring outstanding intellect and integrity to the Ninth Circuit. He also has gained significant experience in private practice and with the government. The American Bar Association has rated him unanimously "well qualified."

Throughout his career, Professor Liu has gained wide respect for his intelligence, independence, and fair-mindedness. That respect has included many Republicans and conservatives. Tom Campbell, former dean of the Haas School of Business at UC Berkeley and a law professor who served nine years in Congress as a Republican, said, "Liu will bring scholarly distinction and a strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit."

For example, Professor Liu has earned the respect of admiration from many conservatives for his support of school vouchers and his positions on education generally. Clint Bolick, director of constitutional litigation at the Goldwater Institute, said, "Having reviewed several of his academic writings, I find Professor Liu to exhibit fresh, independent thinking and intellectual honesty. He clearly possesses the scholarly credentials and experience to serve with distinction on this important court." James Guthrie, the Director of Education Policy Studies at the George W. Bush Institute, likewise said that he found common ground with Professor Liu on school finance issues, stating that "[m]ore than an ideologue, I think he's a pragmatist."

Government officials from the George W. Bush Administration likewise have expressed support. Former Deputy White House Counsel Bill Burck has stated that "I thought very, very highly of him. I think, intellectually, he is more than capable of doing the job extremely well." UC Berkeley – and former Deputy Assistant Attorney General in the Office of Legal Counsel – John C. Yoo said that, "for a Democratic nominee, [Professor Liu] is a very good choice."

Conservative scholars also believe that Professor Liu will serve admirably on the Ninth Circuit. Indiana University Law Professor Gerard Magliocca stated that "I went to law school with Goodwin, and he is exceptionally smart, thoughtful, and fair-minded. Though we do not approach constitutional issues in a similar way, he would be a superb judge." Constitutional law professor and National Review Online contributing editor Jonathan Adler stated that "I believe Prof. Liu is qualified for the job and I would vote to confirm him."

Kenneth W. Starr, Dean and Professor at Pepperdine University School of Law, effusively praised Professor Liu's qualifications. In a letter to this Committee, Dean Starr – along with Professor Akhil Reed Amar of Yale Law School – summarized his support as follows:

> In sum, you have before you a judicial nominee with strong intellect, demonstrated independence, and outstanding character. We recognize that commentators on all sides will be drawn to debate the views Goodwin has expressed in his writings and speeches. In the end, however, a judge takes an oath to uphold and defend the Constitution, and in the case of a circuit judge, fidelity to the law entails adherence to Supreme Court precedent and (apart from the en banc process) adherence to circuit precedent as well. Thus, in our view, the traits that should weigh most heavily in the evaluation of an extraordinarily qualified nominee such as Goodwin are professional integrity and the ability to discharge faithfully an abiding duty to follow the law. Because Goodwin possesses those qualities to the highest degree, we are confident that he will serve on the court of appeals not only fairly and competently, but with great distinction.

Professor Liu's tenure at UC Berkeley School of Law reflects the excellence that he will bring to the Ninth Circuit. Jesse Choper, a leading constitutional scholar and chair of Professor Liu's tenure committee at UC Berkeley, said, "Liu's qualifications to be a judge are nothing short of outstanding. He is a person of excellent judgment, with carefully considered and balanced views. I am confident he would be an especially fair jurist, and one with real intellectual firepower." In the classroom, Professor Liu is one of the most popular teachers, and his courses are some of the most over-subscribed and highly rated by the students. As Associate Dean of the law school, Professor Liu oversees the curriculum and takes the lead in setting instructional priorities, including the promotion process for tenure-track faculty, the hiring of new faculty, and the supervision of the law school's lecturers and adjunct faculty. "Goodwin is admired by his colleagues for his integrity, fairness, and good judgment," said Christopher Edley, Dean of the law school. "He is one of the brightest and most capable colleagues I've had in my three decades in academia."

Professor Liu also has practical experience in the law. Professor Liu served as a Special Assistant to the Deputy Secretary at the U.S. Department of Education. In that capacity, he advised the Secretary and Deputy Secretary on a range of legal issues, including the development of guidelines to implement a $134 million congressional appropriation in 2000 to help turn around low-performing schools. Former South Carolina Governor Richard Riley, who

was U.S. Secretary of Education at the time, said Professor Liu was a "'go-to' person for important projects and complex issues because of his ability to see the big picture while also mastering the details of legal and policy problems." In additional to his public service, Professor Liu was an attorney with the corporate litigation practice of O'Melveny & Myers in Washington, D.C. Walter Dellinger, chair of O'Melveny's appellate practice, said Professor Liu was "widely respected in law practice for his superb legal ability, his sound judgment, and his warm collegiality." Since 2008, Professor Liu has served as a consultant for the San Francisco Unified School District, providing legal counsel to the San Francisco public school system on redesigning its student assignment plan to comply with federal and state law while minimizing racial and socioeconomic segregation.

Professor Liu has received numerous awards for his academic work and service to the community. In 2009, Professor Liu received UC Berkeley School of Law's Distinguished Teaching Award, which is the university's most prestigious award for teaching excellence. Also in that year, he was selected by the students to give the commencement address. Other awards that Professor Liu has received include: Doctor of Public Service (honorary degree), Unity College (1995); Pacific Islander, Asian, and Native American Law Students Association Alumni Award, Yale Law School (2009); Stanford Associates Governors' Award for Exemplary Volunteer Service, Stanford University (2005); Asian American Alumni Award, Stanford University (2005).

Professor Liu's upbringing reflects the American attitude that, with hard work, anyone can succeed. Professor Liu was born in Augusta, Georgia, where his parents were living as doctors recruited from Taiwan to work in underserved areas. His parents came to the U.S. when Taiwan was under martial law, and they have always admired and respected America for its commitment to the rule of law, a trait that his parents passed on to him. The Liu family arrived with little money but worked hard and sacrificed to make the most of the opportunities that America offered. In 1973, the family moved to Clewiston, Florida, a small sugarcane town near the southwest shore of Lake Okeechobee. In 1977, Professor Liu and his family moved to California. Professor Liu attended public schools in Clewiston, Florida and then Sacramento, California. His interest in government service was sparked when Congressman Robert Matsui sponsored his application to serve as a page in the U.S. House of Representatives. Professor Liu ultimately was the first in his family to become a lawyer. Notwithstanding his busy schedule as a teacher and school administrator, Professor Liu values his time with his family, which includes a three-year-old daughter and a son born one week ago. Professor Liu and his family enjoy the outdoors, and he is an avid fisherman – a skill that he learned from his father and hopes to pass on to his children someday.

Professor Goodwin Liu would make an immediate contribution as a federal circuit court judge. His qualifications, integrity, intellect, and commitment to the justice system are clear. He also brings a life story that is inspiring. Especially given the lack of any active Asian Pacific American federal appellate court judges nationwide, the confirmation of Professor Liu is important to NAPABA, AAJC, and the Asian Pacific American community. Accordingly, the National Asian Pacific American Bar Association and the Asian American Justice Center extend

their strong support and urge for the speedy confirmation of Associate Dean and Professor Goodwin H. Liu for the United States Court of Appeals for the Ninth Circuit. Thank you for considering this testimony today.



NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

April 15, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re.: Nomination of Goodwin H. Liu to the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Sessions:

I write on behalf of the undersigned Asian Pacific American organizations to support President Barack Obama's nomination of University of California Berkeley School of Law Associate Dean and Professor Goodwin H. Liu for the United States Court of Appeals for the Ninth Circuit. The organizations represent diverse constituencies on a wide variety of issues but share a common interest in ensuring that qualified Asian Pacific Americans have the opportunity to succeed and excel in the legal profession.

Professor Liu's confirmation is important and significant to the Asian Pacific American community, which currently has no representation in the federal appellate courts. Professor Liu is the second Asian Pacific American nominated to the federal appellate courts by President Obama, who earlier nominated Judge Denny Chin for the Second Circuit Court of Appeals. Out of approximately 875 federal judgeships nationwide, there are only 10 Asian Pacific American judges. If confirmed, Professor Liu would be the only Asian Pacific American among the 25 active federal appellate court judges in the Ninth Circuit. That statistic is particularly troubling given that over 12% of the population of the Ninth Circuit is Asian Pacific American. Moreover, it has been over five years since there has been an active Asian Pacific American federal appellate court judge and only four Asian Pacific Americans have ever served as federal appellate court judges.

1612 K STREET, NW, SUITE 1400 • WASHINGTON, DC 20006
PHONE: (202) 775-9555 • FAX: (202) 775-9333 • WWW.NAPABA.ORG

Professor Liu has impressive credentials and a broad range of experiences that make him well qualified to serve as a federal appellate judge. A distinguished graduate of Stanford University, Oxford University, and Yale Law School, Professor Liu is a Rhodes Scholar, a former Supreme Court clerk, and a member of the American Law Institute. He is also a nationally recognized scholar and distinguished Professor at U.C. Berkeley School of Law who earned tenure and promotion to Associate Dean in only five years.

Professor Liu also has the practical experience necessary for a federal appellate judge. He served as a Special Assistant to the Deputy Secretary at the U.S. Department of Education, where he advised the Secretary and Deputy Secretary on a range of legal issues, including the development of guidelines to implement a $134 million congressional appropriation in 2000 to help turn around low-performing schools. In addition to his public service, Professor Liu was a corporate litigation attorney with O'Melveny & Myers in Washington, D.C.

Professor Liu's background is an inspiring story for all Asian Pacific Americans. He was born in Augusta, Georgia, to Taiwanese doctors recruited to work in the United States by American medical institutions seeking assistance in serving underserved areas. Living in Georgia and then Florida in the late 1960s and early to mid-1970s, Professor Liu did not learn to speak English until kindergarten because his parents worried that he and his brother would acquire an accent if they were taught at home. Professor Liu's interest in public service and the law was sparked when he served as a page in the U.S. House of Representatives, thanks to the sponsorship of the late Congressman Robert Matsui.

Professor Liu is an outstanding and qualified judicial candidate who will bring intellect and objectivity to his service as a judge on the U.S. Court of Appeals for the Ninth Circuit. Accordingly, we proudly support the nomination of Associate Dean and Professor Goodwin H. Liu for the U.S. Court of Appeals for the Ninth Circuit and urge for his speedy confirmation.

Sincerely,

Joseph J. Centeno
President
National Asian Pacific American Bar Association

On behalf of:

National Council of Asian Pacific Americans (NCAPA)
Arizona Asian American Bar Association
Asian American Bar Association of the Greater Bay Area
Asian American Bar Association of the Greater Chicago Area
Asian American Bar Association of Houston

Asian American Citizens for Justice / Asian American Center for Justice
Asian American Institute
Asian American Lawyers Association of Massachusetts
Asian American Legal Defense and Education Fund
Asian American Justice Center
Asian Law Alliance
Asian Law Caucus
Asian Pacific American Bar Association of D.C.
Asian Pacific American Bar Association of Los Angeles County
Asian Pacific American Bar Association of Maryland
Asian Pacific American Bar Association of Pennsylvania
Asian Pacific American Bar Association of South Florida
Asian Pacific American Bar Association of Virginia
Asian Pacific American Community Support and Service Association
Asian Pacific American Labor Alliance
Asian Pacific American Lawyers Association – New Jersey
Asian Pacific American Legal Center
Asian Pacific Bar Association of Sacramento
Asian Pacific Bar of California
Asian Pacific Bar Association of Silicon Valley
Asian & Pacific Islander American Health Forum
Asian & Pacific Islander American Vote
Boat People S.O.S.
Dallas Asian American Bar Association
Filipino Bar Association of Northern California
Japanese American Bar Association of Greater Los Angeles
Japanese American Citizens League
Korean American Bar Association of Southern California
Korean American Bar Association of Washington
Korean American Resource and Cultural Center (Chicago)
Korean Resource Center (Los Angeles)
Missouri Asian American Bar Association
National Alliance of Vietnamese American Service Agencies
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Bar Association
National Asian Pacific American Bar Association – Minnesota
National Asian Pacific American Families Against Substance Abuse
National Asian Pacific American Women's Forum
National Association of Asian American Professionals
National Coalition for Asian Pacific American Community Development
National Korean American Service & Education Consortium

Orange County Asian American Bar Association
Orange County Korean American Bar Association
Oregon Asian Pacific American Bar Association
Organization of Chinese Americans (OCA)
Philippine American Bar Association of Los Angeles
Sikh American Legal Defense and Education Fund
South Asian Americans Leading Together
South Asian Bar Association of Northern California
Southeast Asia Resource Action Center
Southern California Chinese Lawyers Association
Vietnamese American Bar Association of Northern California
Vietnamese American Bar Association of Southern California

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

May 18, 2011

Members
United States Senate
Washington, D.C. 20510

via fax

RE: NAACP SUPPORT FOR GOODWIN LIU TO BE CONFIRMED TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Dear Senator:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, I strongly urge you to confirm Professor Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit. Professor Liu's stellar background, his intellectual honesty and independence, and his utmost respect for the Constitution and its values all make him an outstanding candidate. I therefore urge you to support Professor Liu's nomination when it comes before you later this week.

Professor Liu's credentials are truly outstanding. The son of Taiwanese immigrants who instilled in him a tremendous commitment to democracy and an abiding love of education, Liu graduated from his high school as a co-valedictorian, graduated Phi Beta Kappa from Stanford University, and subsequently studied at Oxford University as a Rhodes Scholar. At Yale Law School, he distinguished himself by serving as an editor of the Yale Law Journal and through numerous awards for his oral advocacy and writing skills. Following law school, he served as a law clerk for both Judge David Tatel on the U.S. Court of Appeals for the D.C. Circuit and Justice Ruth Bader Ginsburg on the Supreme Court, interrupting his clerkships only for a stint with the U.S. Department of Education in which he worked on policies affecting disadvantaged children.

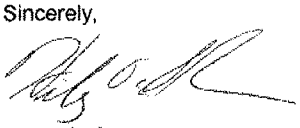
In 2003, after several years in private practice with the prominent law firm O'Melveny & Myers, Professor Liu joined the faculty of the University of California, Berkeley School of Law (Boalt Hall). Within five years, he earned tenure and was promoted to Associate Dean. At the same time, he has remained active as a practicing attorney and a policy advisor, and has written extensively on education, constitutional law, and a number of other issues.

Professor Liu's writings and other legal work reveal his admirable judicial temperament with a strong independent streak. While the NAACP may not always agree with the positions taken by Professor Liu, we nevertheless have nothing but great respect for his intellectual honesty, independent thinking, and commitment to fairness. It is no wonder

that his nomination has garnered strong support from across the political and ideological spectrum.

Thank you in advance for your attention to the NAACP position. I look forward to working with you to ensure that fair-minded jurists such as Professor Goodwin Liu are nominated and confirmed to the federal bench. Should you have any questions or comments, please do not hesitate to contact me at my office at (202) 463-2940.

Sincerely,



Hilary O. Shelton
Director, NAACP Washington Bureau &
Senior Vice President for Advocacy and Policy

NATIONAL REVIEW ONLINE www.nationalreview.com PRINT

Bench Memos

NRO's home for judicial news and analysis.

Miguel Estrada on Goodwin Liu's Contemptible Mud-Flinging

By Ed Whelan

Posted on March 03, 2011 1:24 PM

More on Richard Painter's insipid argument (see point 2 here) that Goodwin Liu's attacks on the nominations of Chief Justice Roberts and Justice Alito shouldn't be held against him:

Former D.C. Circuit nominee Miguel Estrada, whose unsuccessful nomination Richard Painter despicably tried to invoke in support of his shoddy *Huffington Post* defense of Liu, strongly disagrees with Painter. In an e-mail to me, Estrada writes (emphasis added):

> No one doubts that Senators from both parties have behaved shamefully toward nominees of the other party. The treatment of then-Judge Alito by Democratic members of the Judiciary Committee is not yet all that far in the rear-view mirror, and some of President Obama's nominees have waited far too long. There is much to be said, therefore, for the proposition that the degradation of the judicial confirmation process is a problem that cries out for a long-term solution. *The one thing that ought to be reasonably clear, however, is that someone who personally contributed to the sorry state of the confirmation process, by jumping in the mud pit with both feet and flinging the mud with both hands, is not well positioned to demand that standards be elevated solely for his benefit. Surely Mr. Painter can find a better case than this to dramatize the need for reform.*

PERMALINK

NATIONAL REVIEW ONLINE www.nationalreview.com PRINT

Bench Memos

NRO's home for judicial news and analysis.

Richard Painter's Deceptive Portrayal of Goodwin Liu—Part 1

By Ed Whelan

Posted on March 02, 2011 1:29 PM

On Huffington Post, law professor (and former Bush White House ethics adviser) Richard Painter offers an extensive, but badly flawed, defense of Goodwin Liu that falsely accuses me of "invent[ing] a series of myths about Liu with no basis in reality." The opening part of Painter's essay consists of regurgitating ill-informed or utterly conclusory endorsements of Liu from various folks, including some conservative who ought to know better. See, for example, my critique of the letter that Ken Starr submitted (jointly with Akhil Amar).

Given that Liu's hearing starts soon, I'm going to race through Painter's supposed myths in this post and the next (in the same order as he lists them):

1. According to Painter, I have propagated the "myth" that "Liu believes judges 'may legitimately invent constitutional rights to a broad range of social 'welfare' goods, including education, shelter, subsistence, and health care.'" My actual quote states that Liu argues in a law-review article that "judges *(usually in an 'interstitial' role)* may legitimately invent constitutional rights to a broad range of social 'welfare' goods, including education, shelter, subsistence, and health care." It's telling that Painter has to excise the italicized parenthetical in order to falsely accuse me of misstating Liu's views. Nor does he address (much less take issue with) my detailed posts on the matter.

2. According to Painter, it is a "myth" that Liu "believes in a 'freewheeling constitutional approach' that allows people 'to redefine the Constitution to mean whatever they want it to mean.'" Painter cherry-picks the most innocent-sounding of Liu's statements and ignores the controversial ones. (See, for example, the material in this post of mine.)

3. According to Painter, it is a "myth" that Liu "is a supporter of racial quotas in the schools, and he supports school choice only insofar as it furthers that goal." That is no myth, as I have documented. Painter doesn't even address my arguments.

4. According to Painter, it is a myth that Liu "supports racial quotas forever." Painter doesn't address my argument, and he hides behind a ridiculously narrow definition of quotas.

5. According to Painter, it is a "myth" that Liu supports "reparations for slavery" and a "grandiose reparations project." Painter pretends to provide a full account of Liu's discussion of "solutions for racial equality" but somehow completely omits the remarks of Liu's that I've highlighted, including:

> Then there's a further issue, which is that maybe there are white families who were not involved as directly or even indirectly with the slave trade, but who still benefited from it. And then there is the whole question, which you put on the table, about people who came to America after, and, you know, like my family. And why is it that this movie speaks to me so deeply yet?
>
> And so, what I would do, I think I would draw a distinction between a concept of guilt, which locates accountability in a sort of limited set of wrong-doers, and, on the other hand, a concept of responsibility, which is, I think, a more broad suggestion that *all of us, whatever our lineage, whatever our ancestry, whatever our complicity, still have a moral duty to ... make things right.* And that's a moral duty that's incumbent upon everybody who inherits this nation, regardless of whatever the history is.
>
> And I think, to add one more point on top of that, *the exercise of that responsibility ... necessarily requires the answer to the question, "What are we willing to give up to make things right?" Because it's gonna require us to give up something, whether it is the seat at Harvard, the seat at Princeton. Or is it gonna require us to give up our segregated neighborhoods, our segregated schools? Is it gonna require us to give up our money?*
>
> It's gonna require giving up something, and so until we can have that further conversation of what it is we're willing to give up, I agree that the reconciliation can't fully occur.

PERMALINK

NATIONAL REVIEW ONLINE www.nationalreview.com PRINT

Bench Memos

NRO's home for judicial news and analysis.

ABOUT | ARCHIVE | E-MAIL | LOG IN TO COMMENT

Richard Painter's Deceptive Portrayal of Goodwin Liu—Part 2

By Ed Whelan

Posted on March 02, 2011 1:55 PM

I'll continue with Painter's last three supposed "myths" and then offer some broader comments on Painter's defense of Liu:

6. Painter says it's a "myth" that Liu supports "direct judicial imposition of interdistrict racial-balancing orders" in public schools. Painter tries to give his readers the impression that Liu accepts *Milliken v. Bradley* as settled law. But he somehow doesn't disclose that Liu (in remarks that he failed to disclose to the Senate Judiciary Committee) called for *Milliken* to "be swept into the dustbin of history."

7. Painter says it's a "myth" that Liu supports "using foreign law to redefine the Constitution." Painter relies entirely on Liu's self-serving confirmation testimony and clips a passage to omit the fact that Liu wrote in 2006 that it "is difficult for [him] to grasp" how anyone could resist the "use of foreign authority in American constitutional law."

8. Painter says it's a "myth" that Liu supports "the invention of a federal constitutional right to same-sex marriage." I addressed this matter in detail just yesterday and fully stand by my account. (Painter falsely attributes to me the claim that Liu's amicus brief in the California supreme court was "truly an argument under the U.S. Constitution.")

I'll briefly add some closing comments:

If Painter were really interested in a real debate on Liu, he wouldn't have waited until the day of the hearing to launch his shoddy attack on me. He could have done so at any time over the last eight months. Instead, he's tried to gain some tactical advantage by depriving me of a fair opportunity to respond. (I've had to write these responsive posts within the space of two hours or so of discovering Painter's essay, and I'm sure that there's much that I would say better, or more fully, if I had time.)

Painter claims to have "reached the conclusion that Liu deserves an up-or-down vote in the Senate

and ought to be confirmed" only after "reading Liu's writings [and] watching his testimony." But the fact of the matter is that Painter, evidently suffering a severe case of battered-conservative-academic syndrome, raced onto the Liu bandwagon without having any understanding of what was at issue, and (both now and in a previous op-ed) he has resolutely ignored or distorted the many highly problematic aspects of Liu's record.

PERMALINK

Bench Memos

NRO's home for judicial news and analysis.

Richard Painter's Deceptive Portrayal of Goodwin Liu—Part 3

By Ed Whelan

Posted on March 03, 2011 10:48 AM

I'll limit myself to a couple of additional observations (beyond my Part 1 and Part 2 posts) on Richard Painter's deeply defective *Huffington Post* defense of Goodwin Liu:

1. In addition to failing to confront my actual arguments, Painter relies heavily on the argument-by-authority fallacy. As he puts it:

> Now, you can believe the top experts in the areas of Liu's scholarship and prominent conservatives such as Ken Starr and Clint Bolick–or you can believe National Review Online's Ed Whelan. I know where I would put my marbles.

Set aside that Painter, having evidently lost his marbles, would have to find them first before he could put them anywhere. Painter leaves the false impression that folks like Starr and Bolick have actually responded to my critiques of Liu and of their misunderstandings of his record. So far as I'm aware, they haven't.

(It's also amusing that Painter can't even be evenhanded in his mistaken argument by authority. While he invokes various credentials of Liu supporters, he identifies me only as "National Review Online's Ed Whelan.")

2. Towards the end of his piece, Painter tries to dismiss the relevance of Liu's demagogic and irresponsible arguments against the confirmations of Chief Justice Roberts and Justice Alito. According to Painter, "[i]t is critically important … that people feel free to speak their minds about Supreme Court and other judicial nominations without fear of retribution." But as I explained ten months ago when Painter made the same bad argument, Painter completely misses the point: The shoddy quality of Liu's opposition to Roberts and Alito reflects very poorly on him. There is no reason to *encourage* cheap attacks like Liu's by not holding him accountable.

NSCLC
National Senior Citizens Law Center
PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

May 18, 2011

Honorable Patrick Leahy, Chair
Honorable Chuck Grassley
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Leahy and Sessions:

I am writing to convey to you the strong support of the National Senior Citizens Law Center for the nomination of Goodwin Liu for the United States Court of Appeals for the Ninth Circuit. In particular, we urge all senators to support an up or down vote on the question of his confirmation, hence to vote to close off debate once a cloture petition is filed. If any nominee had the professional qualifications, judicial temperament, experience, and personal integrity to merit confirmation to the federal appellate bench, Goodwin Liu is that nominee.

Professor Liu is a nationally acclaimed member of the faculty of the University of California at Berkeley, a prize-winning author of major works of legal scholarship, substantial and successful service in significant government positions at the Corporation for National Service and the U.S. Department of Education, successful experience with one of the nation's preeminent law firms, O'Melveny & Myers, a member of the American Law Institute, and recipient of the highest possible rating from the American Bar Association – "unanimously well-qualified."

Professor Liu's testimony made clear his conviction that "The role of the judge is to faithfully follow the law as it is written and as it is given by the Supreme Court." No one familiar with Professor Liu and his work has any doubt that this is a genuine and dependable commitment, including numerous distinguished legal experts whose political and philosophical views do not entirely coincide with his, such as former Federal Judge Kenneth Starr, veteran conservative legal advocate Clint Bolick, and former congresspersons Bob Barr and Tom Campbell.

Professor Liu will be an intellectually distinguished, conscientious, and fair-minded judge. We urge you and your colleagues to support his confirmation, and, certainly, to ensure that the Senate has an opportunity to vote on the question of confirmation.

Sincerely,

Paul Nathanson

Paul Nathanson

National Senior Citizens Law Center
www.nsclc.org
nsclc@nsclc.org
1444 Eye St., NW, Suite 1100
Washington, DC 20005-2210
202-289-6976 • Fax: 202-289-7224
3435 Wilshire Blvd., Suite 2860
Los Angeles, CA 90010-1938
213-639-0930 • Fax: 213-639-0934
1330 Broadway, Suite 525
Oakland, CA 94612-2522
510-663-1055 • Fax: 510-663-1051



May 18, 2011

VIA FACSIMILE

Re: *Nomination of Goodwin H. Liu to U.S. Court of Appeals for the Ninth Circuit*

Dear Senator:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Goodwin H. Liu to the Ninth Circuit Court of Appeals.

We believe that Professor Liu is superbly qualified to be a federal appellate judge. Currently a professor of law and formerly Associate Dean of the University of California, Berkeley School of Law (Boalt Hall), Professor Liu has extraordinary legal qualifications, as reflected by the unanimous "Well-Qualified" rating that he received from the ABA's Standing Committee on the Federal Judiciary. Professor Liu graduated Phi Beta Kappa from Stanford University and then attended Oxford University on a Rhodes Scholarship. He earned his law degree from Yale Law School, where he was an editor of the Yale Law Journal. After graduating from Yale Law School, Professor Liu clerked for Judge David Tatel on the D.C. Circuit, and for Justice Ruth Bader Ginsburg on the United States Supreme Court. After spending several years in private practice, Professor Liu began a remarkable career in academia: in 2009, he was the recipient of U.C. Berkeley's Distinguished Teaching Award, the university's most prestigious teaching award.

Professor Liu exemplifies a commitment to public service and to educational opportunity. He is the son of immigrants who from an early age instilled in him a love of learning and a sense of responsibility to give back to his country and his community, principles that Professor Liu has carried with him throughout his career. Upon graduating from Oxford, Professor Liu helped launch the AmeriCorps National Service Program and then spent two years working for the Corporation for National Service, where he led the agency's effort to build community service programs at colleges and universities nationwide. After his appellate clerkship, Professor Liu continued his commitment to public service and education by serving as Special Assistant to the Deputy Secretary at the Department of Education. In that position, he dealt with a variety of legal and policy issues, including efforts to improve failing schools. In his scholarship, Professor Liu has focused on constitutional law and education law and policy, and is one of the nation's leading experts on educational equity. His research and writing focuses on the educational issues that affect America's most disadvantaged students.

Professor Liu has served as a member of the Board of Directors of the Center since June 2008. The Center has thus has had the opportunity to work with Professor Liu, and to know him as a person of the highest integrity, fairness, even-handedness and collegiality, who is deeply committed to public service and to the rule of law. The Center is confident that, if confirmed, Professor Liu would be an exceptional addition to the federal bench.

Moreover, if confirmed, Professor Liu would increase the diversity of the federal bench. He would be the only active Asian-American judge on the Ninth Circuit, and with Judge Denny Chin, who has been confirmed to the Second Circuit, he would bring the number of Asian-American circuit court judges to two.

Professor Liu was nominated to a seat designated a "judicial emergency" by the Administrative Office of the U.S. Courts over a year ago. The Senate Judiciary Committee has approved his nomination three times: it is time for the Senate to vote. The Center offers its strong support of Goodwin H. Liu to be a judge on the Ninth Circuit Court of Appeals and urges you to support his nomination. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,

Nancy Duff Campbell
Co-President

Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee



May 5, 2010 VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9516

The Honorable Jeff Sessions, Ranking Member
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9102

Re: *Nomination of Goodwin H. Liu to U.S. Court of Appeals for the Ninth Circuit*

Dear Senators Leahy and Sessions:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Goodwin H. Liu to the Ninth Circuit Court of Appeals.

In addition to meeting the requirements of honesty, integrity, character, temperament, and intellect, to be confirmed to a lifetime seat on a federal court, a nominee should be required to demonstrate a commitment to protecting the legal rights of ordinary American citizens, including civil rights and individual liberties. Further, an important consideration is the extent to which nominees increase the diversity of the bench, including in terms of gender, racial or ethnic background, or experience, which can assist the bench in understanding the real-world impact that decisions would have, and as a result whether those decisions comport with the intent of the law.

We believe that Professor Liu is superbly qualified to be a federal appellate judge. Currently a professor of law and Associate Dean of the University of California Berkeley School of Law (Boalt Hall), Professor Liu has extraordinary legal qualifications, as reflected by the unanimous "Well-Qualified" rating that he received from the ABA's Standing Committee on the Federal Judiciary. Professor Liu graduated Phi Beta Kappa from Stanford University and then attended Oxford University on a Rhodes Scholarship. He earned his law degree from Yale Law School, where he was an editor of the Yale Law Journal. After graduating from Yale Law School, Professor Liu clerked for Judge David Tatel on the D.C. Circuit, and for Justice Ruth Bader Ginsburg on the United States Supreme Court. After spending several years in private practice, Professor Liu began a remarkable career in academia: in 2009 he was the recipient of U.C. Berkeley's Distinguished Teaching Award, the university's most prestigious teaching award.

Professor Liu exemplifies a commitment to public service and to educational opportunity. He is the son of immigrants who from an early age instilled in him a love of learning and a sense of responsibility to give back to his country and his community, principles that Professor Liu has carried with him throughout his career. Upon graduating from Oxford, Professor Liu helped launch the AmeriCorps National Service Program and then spent two years working for the Corporation for National Service, where he led the agency's effort to build community service programs at colleges and universities nationwide. After his appellate clerkship, Professor Liu continued with his commitment to public service and education and served as Special Assistant to the Deputy Secretary at the Department of Education. In that position, he dealt with a variety of legal and policy issues, including efforts to improve failing schools. In his scholarship, Professor Liu has focused on constitutional law and education law and policy and is one of the nation's leading experts on educational equity. His research and writing focuses on the educational issues that affect America's most disadvantaged students.

Professor Liu has served as a member of the Board of Directors of the Center since June 2008. The Center has thus has had the opportunity to work with Professor Liu, and to know him as a person of the highest integrity, fairness, even-handedness and collegiality, who is deeply committed to public service and to the rule of law. The Center is confident that, if confirmed, Professor Liu would be an exceptional addition to the federal bench.

Moreover, if confirmed, Professor Liu would increase the diversity of the federal bench. He would be the only active Asian-American judge on the Ninth Circuit, and with Judge Denny Chin, who has been confirmed to the Second Circuit, he would bring the number of Asian-American circuit court judges to two.

Consequently, the Center offers its strong support of Goodwin H. Liu to be a judge on the Ninth Circuit Court of Appeals and urges the Committee to approve his nomination quickly. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,

Nancy Duff Campbell
Co-President

Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee



Religious Action Center
of Reform Judaism

The Religious Action Center pursues social justice and religious liberty by mobilizing the American Jewish community and serving as its advocate in the nation's capital.

Rabbi David Saperstein
Director and Counsel

Mark J. Pelavin
Associate Director

Cheryl Gutmann
Chair
Commission on Social Action of Reform Judaism

Rabbi Marla J. Feldman
Director
Commission on Social Action of Reform Judaism

The Religious Action Center operates under the auspices of the Commission on Social Action of Reform Judaism, a joint instrumentality of the Central Conference of American Rabbis and the Union for Reform Judaism with its affiliates:

American Conference of Cantors

Association of Reform Zionists of America

Canadian Association of Reform Zionists

Early Childhood Educators of Reform Judaism

National Association of Temple Administrators

National Association of Temple Educators

Men of Reform Judaism

North American Federation of Temple Youth

Program Directors of Reform Judaism

Women of Reform Judaism

Arthur and Sara Jo Kobacker Building
2027 Massachusetts Avenue, NW
at Kivie Kaplan Way
Washington, DC 20036
202.387.2800
Fax: 202.667.9070
E-mail: rac@urj.org
Visit our website at www.rac.org

United States Senate Judiciary Committee
Washington, DC 20510

May 5, 2010

Dear Senator:

On behalf of the Union for Reform Judaism, whose 900 congregations encompass nearly 1.5 million Reform Jews, I write to express support for the confirmation of Goodwin Liu to the 9th Circuit Court of Appeals. Prof. Liu's educational background and professional experience make him exceedingly qualified for this appointment.

Prof. Liu has had a distinguished academic career. A Rhodes Scholar, Prof. Liu has taught at the University of California, Berkeley School of Law since 2003, and has served as Associate Dean and Professor of Law since 2008. In 2009, he was awarded Berkeley's most prestigious teaching honor—the Distinguished Teaching Award.

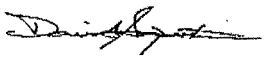
Prof. Liu has had varied legal experience outside of academia as well. He clerked for D.C. Circuit Judge David S. Tatel and served as Special Assistant to the Deputy Secretary of Education before clerking for Justice Ruth Bader Ginsburg during the October 2000 term of the Supreme Court. He has also been involved with various organizations committed to upholding civil right and civil liberties, having worked for the NAACP Legal Defense Fund and the Lawyers' Committee for Civil Right Under the Law, and served on the boards of the American Constitution Society, American Civil Liberties Union, and the National Women's Law Center.

In all of these roles, Prof. Liu has displayed a superb legal mind and an abiding respect for constitutional values. Accordingly, he has garnered support and praise from both sides of the aisle. His home-state Senators, Barbara Boxer and Dianne Feinstein, have expressed support for his confirmation, the latter stating, "[h]e's as sharp as they come, with a kind demeanor and a good temperament." Clint Bolick, President of the conservative Goldwater Institute wrote, "Having reviewed several of his academic writings, I find Prof. Liu to exhibit fresh, independent thinking and intellectual honesty. He clearly possesses the scholarly credentials and experience to serve with distinction on this important court."

The Jewish tradition teaches the importance of fair, just, and impartial courts. Nominees to the federal bench, serving lifetime appointments, can have an influence on federal jurisprudence for decades, eroding or enhancing the core values that the Reform Movement supports. We therefore pay close attention to the nominees who are appointed.

Prof. Liu's keen intellect, thoughtful approach to constitutional questions, and commitment to public service make him a terrific nominee to the 9th Circuit. Therefore, in anticipation of the upcoming Committee vote, we urge you to quickly move his nomination through the confirmation process and support his appointment to this critical post.

Sincerely,



Rabbi David Saperstein
Director and Counsel

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

University of California, Berkeley
School of Law
435 Boalt Hall (North Addition)
(510) 643-3506

April 12, 2010

BY FAX AND OVERNIGHT COURIER

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9516

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9102

Re: Nomination of Goodwin Liu for the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Sessions:

I am sending, along with this cover letter, a letter from twelve law professors, all former prosecutors, regarding the nomination of Goodwin Liu for the United States Court of Appeals for the Ninth Circuit. Please let me know if you have any questions. I can be reached by telephone at (510) 643-3506 or by email at <dsklansky@law.berkeley.edu>.

Sincerely,

David Alan Sklansky
Yosef Osheawich Professor of Law

April 12, 2010

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9516

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510
Fax: 202-224-9102

Re: Nomination of Goodwin Liu for the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Sessions:

We are former prosecutors who currently teach criminal law, criminal procedure and evidence. Because we care deeply about the fairness and effectiveness of criminal justice—because it is a lifelong professional commitment for each of us—we are particularly disturbed by the suggestion that Professor Goodwin Liu's nomination to the United States Court of Appeals for the Ninth Circuit should be rejected because of his views on the death penalty.

Professor Liu has written very little about the death penalty. His academic specialties lie elsewhere. Five years ago, though, he co-authored a 14-page paper for the American Constitution Society on the death penalty opinions of then-Judge Samuel Alito. Professor Liu and his co-author concluded that those opinions raised "serious concerns" about Judge Alito's nomination for the Supreme Court. It has now been suggested that this short paper casts doubt on Professor Liu's fitness for the bench. A fair reading of the paper shows otherwise.

Professor Liu and his co-author read the ten capital cases in which then-Judge Alito had participated while on the United States Court of Appeals for the Third Circuit. Five of those cases were decided unanimously. Professor Liu and his co-author focused on the other five, because they involved "the kind of contested issues and judgment calls" commonly presented to

the Supreme Court. Judge Alito had voted to uphold the death sentence in each of the five contested cases, and Professor Liu and his co-author concluded that the cases, taken as a whole showed "a troubling tendency" by Judge Alito "to tolerate serious errors in capital proceedings." Death penalty cases, they argued, "require judges to exercise utmost care and vigilance in ensuring due process of law."

The first of the contested cases was *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997). The Third Circuit invalidated the death sentence because the jury instructions had not made clear, as everyone agreed they should have, that the jury needed to find that the defendant had intended to kill or to assist in a killing. Judge Alito dissented; he argued that the jury instructions were adequate, and that, in any event, the defendant may have waived the objection by not raising it earlier. Professor Liu and his co-author agreed with the majority that this view was too tolerant of loose and defective instructions, and that it was inappropriate to raise the issue of waiver, because the state itself had never raised that objection to the defendant's argument.

It bears reiteration that Professor Liu's position on *Smith v. Horn* was the *majority* position when the Third Circuit decided the case. The two judges constituting the majority, moreover, were Judge Mansmann and Judge Cowen, both former prosecutors appointed to the bench by President Ronald Reagan. Their view of the case—the one that Professor Liu and his co-author endorsed—carefully balanced the interests of finality, and respect for the state's judicial processes, with a commitment to ensure that no one was wrongfully executed. It was a completely reasonable position, and one the court as a whole declined to reconsider *en banc*.

The second of the contested cases addressed by Professor Liu and his co-author was *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001). This is a case in which the Third Circuit, sitting *en banc*, invalidated a death sentence of a black defendant in part because of indications of racial bias in the selection of the all-white jury, and in part because of inappropriate and potentially misleading remarks by the prosecutor, suggesting to the jury that the final decision to impose the death penalty would be made by the state supreme court, not by the jury. Judge Alito took the position that the evidence of racial discrimination was too weak to warrant relief, and that the prosecutor's remarks conveyed no improper suggestion. Judge Liu and his co-author agreed with the *en banc* majority that Judge Alito's opinion "minimize[d] the history of discrimination against prospective black jurors and black defendants" and that the prosecutor's remarks could well have misled the jury about the scope of appellate review of a death sentence.

Here, as well, Professor Liu's position was the position of the Third Circuit *majority*. Among the judges who took that position were Judge Mansmann, Judge Nygaard (also appointed by President Reagan), Judge Roth (appointed to the federal bench by President Reagan and elevated to the Third Circuit by President George H.W. Bush), and Judge McKee (a former federal prosecutor). The opinion joined by these judges, and embraced by Professor Liu and his co-author, was anything but radical. It carefully applied Supreme Court precedents that require prosecutors to provide a convincing, race-neutral explanation for an apparent pattern of systematically excluding African-Americans in jury selection.

The third contested case addressed by Professor Liu and his co-author was *Rompilla v. Horn*, 355 F.3d 233 (3d Cir. 2004). In a 2-1 panel decision, with a majority opinion written by Judge Alito, the Third Circuit refused to set aside a death sentence, despite the failure by the defendant's lawyers to examine available records containing evidence of the defendant's troubled childhood and limited mental capacity. The Supreme Court reversed, reasoning that the defense attorneys provided constitutionally inadequate assistance when they failed to examine readily accessible court files on which they knew the prosecutors would rely. The majority opinion was written by Justice Souter, and joined by Justice Stevens, Justice O'Connor, Justice Ginsburg, and Justice Breyer. Professor Liu and his co-author faulted Judge Alito for failing to acknowledge, as the Supreme Court later did, that any minimally competent defense attorney would examine "a file he knows the prosecution will cull for aggravating evidence, let alone when the file is sitting in the trial courthouse, open for the asking." *Rompilla v. Beard*, 545 U.S. 374, 388 (2005). Justice O'Connor, who provided the swing vote, joined the majority opinion and also wrote a separate concurrence, stressing the factors that collectively made the performance of defense counsel constitutionally deficient: they "knew that their client's prior conviction would be at the very heart of the *prosecution's* case," the prosecutor's use of the conviction "threatened to eviscerate" one of their primary arguments for mitigation, and the failure to obtain and examine the case file resulted from inattention, not from a strategic decision. Professor Liu's position on *Rompilla* was the position of a *majority* of the Supreme Court.

The fourth and fifth contested cases addressed by Professor Liu and his co-author were *Flamer v. Delaware*, 68 F.3d 736 (3d Cir. 1995), and another Delaware capital case with which it was consolidated for review, *Bailey v. Snyder*. In each of these cases, the jury had indicated that one of the statutory "aggravating factors" on which it relied in recommending the death penalty was the "outrageously or wantonly vile, horrible, or inhuman" nature of the murder. The Delaware Supreme Court later declared that factor unconstitutionally vague, and the central question on appeal in *Flamer* and *Bailey* was whether that development invalidated the death sentences.

Everyone agreed that it did so, under the Supreme Court's precedents, if the juries were limited to statutory factors in deciding whether to recommend death, but not if the juries were free to consider any factors in reaching their decision. Officially, Delaware juries were free to consider any factors in recommending a sentence of death (as long as the jury found at least one aggravating factor, making the defendant "eligible" for the death penalty). However, the juries in *Flamer* and *Bailey* had been instructed to indicate "which statutory aggravating circumstance or circumstances were relied upon." Judge Alito, writing the majority opinion for the Third Circuit sitting *en banc*, "strongly disapprove[d]" of this jury instruction, because it was "potentially misleading" and needlessly confusing. But he was unpersuaded that it would have led the juries to place inappropriate weight on the statutory list of aggravating factors. Four dissenting judges disagreed.

Professor Liu and his co-author agreed with the dissenters that the jury instructions in *Flamer* and *Bailey* created a serious risk of sentencing error. The point of procedure on which Professor Liu focused was not minor or unimportant; it was the center of the controversy when the Third

Circuit considered *Flamer* and *Bailey*. That was why the Third Circuit consolidated the cases. And the issue that troubled Professor Liu and his co-author was the same one that led four judges of the Third Circuit to dissent in *Flamer* and *Bailey*—including Judge Mansmann, Judge McKee, and Judge Lewis (a former federal prosecutor, appointed to the federal bench and later elevated to the Third Circuit by President George H.W. Bush).

Nothing, therefore, in Professor Liu's short, co-authored paper on the death penalty opinions of then-Judge Alito suggests that Professor Liu is an extremist on capital punishment—unless Judge Cowen, Judge McKee, Judge Lewis, Judge Mansmann, Judge Nygaard, Judge Roth, and Justice O'Connor are all extremists as well. Nothing in this paper suggests that Professor Liu is out of the mainstream in his approach to the death penalty—unless the Supreme Court and the Third Circuit are also out of the mainstream. Nothing in the paper even comes close to indicating that Professor Liu would be unprincipled or result-oriented in capital cases—unless it is unprincipled and result-oriented to believe that these cases "require judges to exercise utmost care and vigilance in ensuring due process of law."

Those of us who know Professor Liu professionally can say with confidence that he would be a truly exemplary judge. What *all* of us can say with confidence, even those who do not know Professor Liu, is that nothing in his co-authored paper on then-Judge Alito's death penalty decisions provides any reason to doubt that he would be a superb addition to the Ninth Circuit.

Sincerely,

I. Bennett Capers
Associate Professor of Law, Hofstra University
Assistant United States Attorney, Southern District of New York, 1995-2004

Jennifer Collins
Professor of Law, Wake Forest University
Assistant United States Attorney, District of Columbia, 1994-2002

Kyle Graham
Assistant Professor, Santa Clara University School of Law
Deputy District Attorney, Mono County, California, 2006-2009

Lisa Kern Griffin
Professor of Law, Duke University
Assistant United States Attorney, Northern District of Illinois, 1999-2004

Tamara F. Lawson
Associate Professor, St. Thomas University School of Law
Deputy District Attorney, Clark County, Nevada, 1996-2002

Laurie L. Levenson
Professor of Law, William M. Rains Fellow and David W. Burcham Chair in Ethical Advocacy, Loyola Law School, Los Angeles, California
Assistant United States Attorney, Central District of California, 1981-1989

Kay L. Levine
Associate Professor of Law, Emory University
Deputy District Attorney, Riverside County, California, 1994-1997

Rory K. Little
Professor of Law, University of California, Hastings College of the Law
Trial Attorney, United States Department of Justice, Organized Crime & Racketeering Strike Force, San Francisco, California, 1987-1989
Chief, Appellate Section, Office of the United States Attorney, Northern District of California, 1989-1994
Associate Deputy Attorney General, United States Department of Justice, 1996-1997

Julie Rose O'Sullivan
Professor of Law, Georgetown University
Assistant United States Attorney, Southern District of New York, 1991-1994
Associate Counsel, Office of the Independent Counsel, Little Rock, Arkansas, 1994

Kami Chavis Simmons
Associate Professor of Law, Wake Forest University
Assistant United States Attorney, District of Columbia, 2003-2006

David Alan Sklansky
Yosef Osheawich Professor of Law, University of California, Berkeley
Assistant United States Attorney, Central District of California, 1987-1994

Alex Whiting
Assistant Clinical Professor of Law, Harvard University
Assistant United States Attorney, District of Massachusetts, 1995-2002
Trial Attorney, Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia, 2002-2007

State Building and Construction Trades Council of California

ROBERT L. BALGENORTH
PRESIDENT

JAMES W. KELLOGG
SECRETARY-TREASURER

Chartered by
BUILDING AND CONSTRUCTION TRADES DEPARTMENT
AFL - CIO

2010 SEP 29 AM 10: 44

September 17, 2010

The Honorable Diane Feinstein
United States Senator
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
United States Senator
112 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein and Senator Boxer:

We, the undersigned organizations in California, urge you to do everything within your power to ensure that the U.S. Senate confirms Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit before the next Congressional recess.

Professor Liu is an exceptional judicial candidate who enjoys a national reputation. He is a Rhodes Scholar with an impeccable academic background. He served as a law clerk to Supreme Court Justice Ruth Bader Ginsburg and District of Columbia Circuit Judge David Tatel. He has worked as a litigator for a private law firm and also served as Special Assistant to the Deputy Secretary of Education under President William Clinton. Goodwin would bring valuable expertise in government, private practice, and academia to his service on the bench.

Importantly, Professor Liu has numerous and extensive ties to California. He grew up in Sacramento and was educated in California's public schools. He received his undergraduate degree from Stanford University. For the past seven years, he has taught at one of California's leading law schools, U.C. Berkeley, and was promoted to Associate Dean. Over the years, he has devoted considerable time and energy to assisting several California institutions, such as Stanford University and the San Francisco Unified School District. The residents of California would be extremely lucky to have him confirmed to the Ninth Circuit.

Finally, Goodwin Liu's confirmation would bring Asian-American representation to the Ninth Circuit Court of Appeals. The Ninth Circuit has the highest percentage of Asian-American residents in the country. Yet for years, it has lacked Asian-American representation. Goodwin Liu's confirmation would mean that this community, once again, had representation on the court.

Senators, please do all that you can to ensure Goodwin Liu's confirmation to this important position.

Sincerely,

Robert L. Balgenorth
President

RLB:mb
opeiu#29/afl-cio

1225 8th Street, Suite 375 · Sacramento, CA 95814 · (916) 443-3302 · FAX (916) 443-8204

STANFORD
UNIVERSITY

JOHN L. HENNESSY
President

March 18, 2010

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Sessions:

This letter is being submitted on behalf of the three most recent presidents of Stanford University in support of the nomination of Goodwin Liu to the Ninth Circuit Court of Appeals.

Goodwin Liu attended Stanford University while Donald Kennedy was president, and he graduated *Phi Beta Kappa* in 1991. He was the recipient of numerous awards for his academic excellence, leadership, and contributions to the university, including the Lloyd W. Dinkelspiel Award for Outstanding Service to Undergraduate Education, the James W. Lyons Dean's Award for Service, the Boothe Prize for Excellence in Writing, the Walter Vincenti Prize, a David Starr Jordan Scholar, and the University President's Award for Academic Excellence. Dr. Kennedy worked with Goodwin Liu when he was one of the early student volunteers and leaders for the Haas Center for Public Service at Stanford (started by Dr. Kennedy), and while he was co-president of the student body in his senior year. In 1990 Donald Kennedy wrote a personal letter recommending Mr. Liu for the Rhodes Scholarship, which he won and used to obtain a Master's degree at Oxford University.

Gerhard Casper, President Emeritus of Stanford University and former Dean of the Law School and Provost at the University of Chicago, is now a constitutional law scholar at Stanford. Dr. Casper has come to know Mr. Liu as a Stanford alumnus and then as a colleague in constitutional law. He considers Mr. Liu as a measured interpreter of the Constitution. In expounding the Constitution, Mr. Liu fully appreciates that the commitments of the framers are decisive in finding and preserving constitutional meaning as we face new issues and challenges. In terms of fidelity to the Constitution and its interpretation by the Supreme Court, Mr. Liu will be a distinguished and faithful addition to the appellate bench.

Office of the President
Building 10, Main Quadrangle Stanford, CA 94305-2060 T (650) 723-2481 F (650) 725-6847

Goodwin Liu is currently a member of the Board of Trustees of Stanford University, the governing body for the university. John Hennessy has worked closely with him since his appointment as a trustee in 2008. Mr. Liu is an invaluable member of the Board, serving on the Committees on Audit and Compliance, Academic Policy, Planning & Management, and Alumni & External Affairs. In a group of highly accomplished trustees, he is widely regarded as insightful, hard working, collegial, and of the highest ethical standards.

In summary, Goodwin Liu as a student, scholar, and trustee has epitomized the goal of Stanford's founders, which was "to promote the public welfare by exercising an influence on behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty and the pursuit of happiness." We highly recommend Goodwin Liu for the honor and responsibility of serving on the United States Court of Appeals for the Ninth Circuit.

Sincerely,

John L. Hennessy
President

Sincerely,

Gerhard Casper
President Emeritus

Sincerely,

Donald Kennedy
President Emeritus

JAMES C. STURDEVANT*

MONIQUE OLIVIER**
WHITNEY B. HUSTON***

THE STURDEVANT LAW FIRM
A PROFESSIONAL CORPORATION
THE DIVIDEND BUILDING
354 PINE STREET, FOURTH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

Telephone
(415) 477-2410

Facsimile
(415) 477-2420

email:
jsturdevant@sturdevantlaw.com

April 15, 2010

***via facsimile (202-228-3954)* - 2 pages**

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington DC 20510

Re: Nomination of Gordon Liu to the Ninth Circuit U.S. Court of Appeals

Dear Senator Feinstein:

I want to applaud and congratulate you for being in the vanguard to support the President's nomination of Gordon Liu to become a member of the United States Court of Appeals for the Ninth Circuit. I understand that the hearings will take place tomorrow on his nomination. Frequently, in the past ten years, I have written you to urge that you oppose a nominee of President Bush to one or more of the federal courts of appeals because their experience, judicial decisions, or other factors made them demonstrably unsuitable for that position. The exact opposite is true of Mr. Liu.

Because the Republicans have announced their opposition to this nominee, I wanted to urge you and your colleagues on the Senate Judiciary Committee to speak out in favor of him at tomorrow's hearing and to amplify not only the excellent things about his record and experience, but also the very positive things said by many who one would normally think would be aligned with members of the Republican party concerning judicial nominees.

As I know you are aware of, Gordon Liu is eminently qualified for a position on the Ninth Circuit. His academic and professional qualifications are outstanding. He graduated from Yale Law School, clerked for Justice Ginsburg on the Supreme Court after clerking for Judge David Tatel on the D.C. Court of Appeals. He is a nationally-esteemed constitutional and educational law scholar, an award-wining professor at the University of California, and has received the highest possible rating from the ABA. He has a varied and rich experience in both government and in private practice at O'Melveny & Myers. He is routinely called upon for expert legal and policy advice from all levels of government, including the San Francisco Unified School District, the California Legislature, and Members of Congress.

His parents are immigrants from Taiwan. Gordon attended Stanford and then received a Rhodes scholarship. At present, he would be the only Asian-American on any federal appellate court.

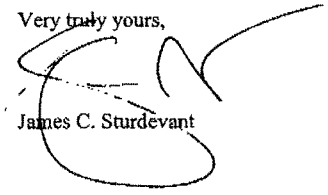
*ADMITTED IN CALIFORNIA AND CONNECTICUT
**ADMITTED IN CALIFORNIA AND MASSACHUSETTS
***ADMITTED IN CALIFORNIA AND OREGON

He has strong backing from many whom one would think might be aligned with Republicans and their viewpoint about proposed federal judges. Ken Starr, the Dean of Pepperdine University School of Law, has publicly stated that "Goodwin knows the difference between what the law is and what he might wish it to be, and he is fully capable and unafraid of discharging the duty to say what the law is." He "is exceptionally well-qualified" and "will serve on the court of appeals not only fairly and competently, but with great distinction." Tom Campbell, a former Republican member of Congress, former Dean of the Haas School of Business at UC Berkeley, and someone who is running for the United States Senate in California, has said that "Liu will bring scholarly distinction and strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit." Bob Barr, former Republican Member of Congress and an active member of the American Conservative Union, has said that Gordon Liu's "views on due process for criminal defendants certainly are not radical. [An] accurate reading of Liu's [writing] reveals simply his commitment to the Constitution and to a fair criminal justice system."

Many others have said similar things about him. For example, Jesse Choper, constitutional law professor and former Dean of Boalt Hall School of Law, has stated that "Liu is a person of outstanding intellect, unblemished character, and admirable judicial temperament . . . his writings indicate that he would be relatively moderate and pragmatic, and an especially fair jurist, one with a clear understanding of the limited role that courts should occupy."

These qualifications, experience, and accolades should be trumpeted by you and other members of the Senate Judiciary Committee during tomorrow's hearing. Gordon Liu is an exceptionally well-qualified individual who would add in so many diverse ways to the current membership of the Ninth Circuit. I trust that you will do all you can to ensure not only that his nomination is voted out of the Senate Judiciary Committee favorably, but that he receives a quick vote on the floor of the Senate so that he may take his place on an already overburdened federal appellate court. Thank you for considering my views, as you always do, and for taking a leadership role with respect to his nomination.

Very truly yours,



James C. Sturdevant

JCS:bn

cc: The Honorable Barbara Boxer

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

1111 Franklin Street
Oakland, California 94607-5200
Phone: (510) 987-9074
Fax: (510) 987-9086
http://www.ucop.edu

May 18, 2011

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Re: Federal Judicial Nomination of Goodwin H. Liu, U.S. Court of Appeals for the Ninth Circuit

Dear Senator Feinstein and Senator Boxer:

I write in support of the nomination of Goodwin Liu to the Ninth Circuit Court of Appeals.

As President of the University of California and as an education law scholar, I am familiar with and inspired by Goodwin Liu's important contributions to the University of California, Berkeley, School of Law and to the legal academy more broadly. Since Professor Liu arrived at UC Berkeley in 2003, he has established himself as one of the most knowledgeable and well-respected members of the faculty. In 2008, he earned tenure and was promoted to Associate Dean, all in less than five years, which is just one indication of the high regard his colleagues have for his intellect, judgment, and legal acumen.

While much has been written about Professor Liu's academic credentials, I want to focus your attention on his service to the University of California. Goodwin Liu's role as Associate Dean of the law school speaks volumes to his leadership skills, particularly to his ability to gain respect and trust from a faculty body with a set of independent and diverse members. In this role, Dean Christopher Edley and the entire School of Law faculty recognized Professor Liu's integrity, fairness, and good judgment. I understand that he flourished in this position and by the end of his service as Associate Dean, it was clear to the entire faculty that Professor Liu was someone who was very principled, fair and rule-bound—qualities that he would easily carry with him to the federal bench.

In addition to his service as Associate Dean, Professor Liu serves on various law school committees, making hard decisions about faculty appointments and curriculum issues, and he has been asked to serve the UC Berkeley campus-wide community in a variety of important roles. Most recently, he chaired the search committee for a new Dean at the School of Education, again an indication that the campus community looks to Goodwin Liu for leadership in helping to fill sensitive and important posts at the University. Professor Liu is also a superb teacher, as evidenced by his being awarded the Distinguished Teaching Award in 2009, the University of California, Berkeley's highest honor for teaching excellence.

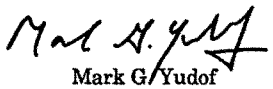
I would be remiss if I did not mention that Goodwin Liu is an exemplary education law scholar, which is also my chosen field of study. Professor Liu has studied school finance extensively, and has promoted school choice, including vouchers, to foster racial diversity in public schools. A nationally recognized expert on issues of educational equity, he won the Education Law Association's Steven S. Goldberg Award for Distinguished Scholarship in 2007.

Professor Liu has had enviable experience in government, law practice, and academia, and has won numerous honors and accolades. In his time at UC Berkeley, Professor Liu has come to be known for his thoughtful, open-minded, and meticulous approach to all that he does. I have always been impressed by his considered approach to issues, and his well-balanced approach to problem-solving.

Professor Liu is a person of great intelligence, accomplishment, and integrity, and is exceptionally well qualified to serve on the federal judiciary. For all of the reasons listed above, I fully support the nomination of Professor Liu, and urge his confirmation to the Ninth Circuit Court of Appeal.

With best wishes, I am,

Sincerely yours,



Mark G. Yudof
President

cc: The Honorable Harry Reid
The Honorable Mitch McConnell
Chancellor Robert Birgeneau
Senior Vice President Dan Dooley
Associate Vice President Gary Falle
Dean Christopher Edley

Senator Mitch McConnell Jr.
U.S. Senate
Senate Minority Leader Office
Hart Senate Office Building
Constitution Ave. & 2nd St. NE
Washington D.C. 20510

Dear Sen. McConnell:

As a life long Republican and supporter of the Republican Party, I would like to request that you allow the nominations of Magistrate Edward M. Chen to the U.S. District Court for the Northern District of California and Professor Goodwin Liu for the United States Court of Appeals for the Ninth Circuit Court to proceed to confirmation votes before the Senate breaks for its election recess.

By the way of introduction, I have had the privilege of working closely with your wife, Elaine, on many Asian issues over the years. I have supported and contributed to many Republican candidates for decades and currently serve as the California API (Asian Pacific Islander) state chair for the Whitman for Governor campaign and Fiorina U.S. Senate campaign.

I have been a strong advocate of greater diversity on our judicial benches and to the political education of the API community. To that end I have founded several bipartisan organizations such as the Asian Pacific American Islander Public Affairs Assn. and Community Education Assn., whose goals are to seek, encourage and influence the appointment and election of APIs to public offices. And while I have maintained a close affiliation with the Republican Party, I believe that a bipartisan approach to appointments and election of API candidates is critical to achieving full and equal status in this country.

I understand that this is a significant request I am making given your announced positions but, I am personally familiar with the records and character of both Magistrate Chen and Professor Liu and their intelligence and commitment to the rule of law has brought great pride to our community.

I would like to point out that API are significantly underrepresented on the federal bench – only 11 out of 875 federal judges are of API descent. Magistrate Chen and Professor Liu represent important steps in our community to be seen and respected as full participants in our country's government. I would also like to add that no API is currently sitting as a regular judge on the Ninth Circuit Court in spite of the fact that 35% of the population of the San Francisco area is of API descent.

For all these reason, I urge you to use your influence to allow an up or down vote on the confirmation of Magistrate Chen and Professor Liu before the Senate breaks for its election recess.

I hope to receive a positive response to my request.

Very truly yours,
C.C. Yin
Founder of APAPA

○