

**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.

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.

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

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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

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

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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.

2/23/10
(DATE)

[Signature]
(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.



Signature [Signature] (Seal)

GOODWIN LIU
Associate Dean and
Professor of Law

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:

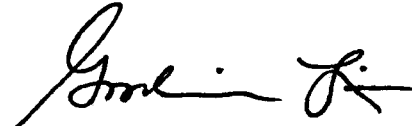
I am providing an additional response to my Senate Questionnaire that was inadvertently omitted from my original submission.

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,

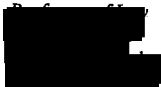


Goodwin Liu

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

SUPP2

GOODWIN LIU
Associate Dean and



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,

A handwritten signature in black ink, appearing to read "Goodwin Liu".

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 Mabee 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

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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

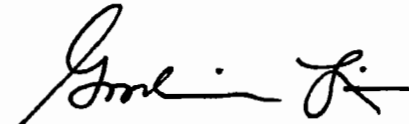
Stephanie Frances Ward, “Schools Cast About for New Diversity Plans,” ABA Journal E-Report, July 6, 2007

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,

A handwritten signature in black ink, appearing to read 'Goodwin Liu', with a stylized flourish at the end.

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.

NATIONAL CITIZENSHIP AND EQUALITY OF EDUCATIONAL OPPORTUNITY

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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

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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 5.

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 |

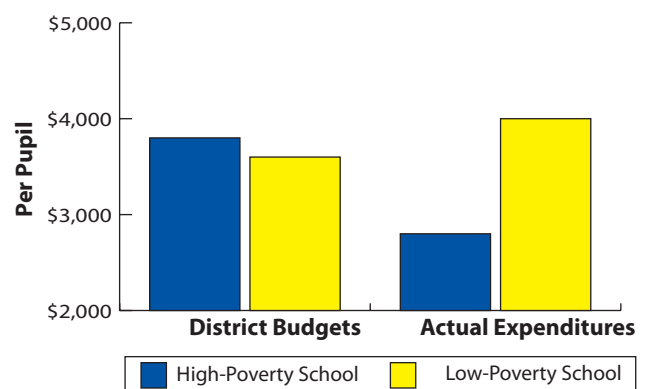
Sources: *Center for Reinventing Public Education Analyses, 2005
 **Education Trust, Hidden Funding Gap, 2005, available at <http://www.hiddengap.org/>

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," Brookings 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 stages²⁰ 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/ggground.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>.

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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.

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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/saie/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:

$$\text{ADJREV} = (\text{TSTREV} + \text{TLOCREV}) / \text{CWI}$$

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:

$V33 + (\text{SPECED03} * 0.9) + (\text{POV03} * (\text{poverty adjustment}))$

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 (ADRVSTD) = 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:

$$\sum (ADRVSTD * V33) / \sum (V33)$$

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.

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 Ser-

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.

vice. 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

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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,

NATIONAL AND COMMUNITY SERVICE

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 ser-

vice 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.

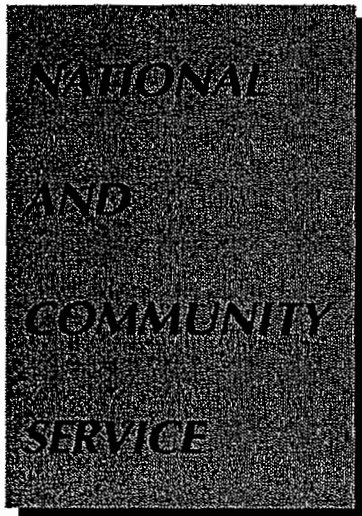
I hope these examples begin to give you a sense of the learning objectives that service-learning can support. I should add that service-learning is aligned with another set of educational objectives that distinguishes it from other forms of experiential learning and that is equally important to the mission 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 democ-

cracy. 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.

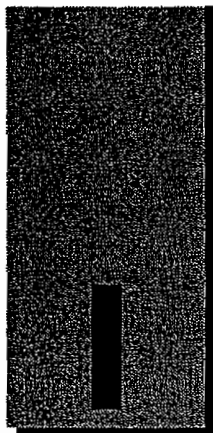
The involvement of community colleges in national service is a natural extension of institutional mission. Your institutions model the civic character that they seek to develop in their students through the educational process. It is for this reason that we ask community colleges to join us in our effort 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
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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; Jlna 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.

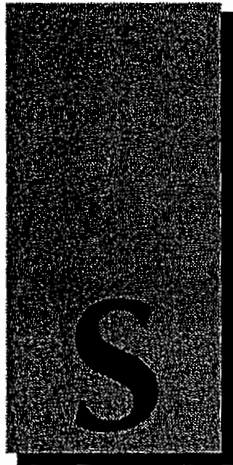
Moreover, the Corporation thanks Deanna Durham of the Community of Hope in Washington, D.C. and Rolette Thomas of Hands On Atlanta for

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 ongoing 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 Rehnquist'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 optimistic. 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 rationale. But, the fundamental nature of the rationale 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 rationale only after rejecting a broader remedial rationale. But, like the diversity rationale, 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 public 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 rationale, 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 seem 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 it's 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 call 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

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

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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

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-

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.”

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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

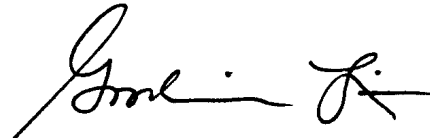
publicly, there has been some confusion as to whether relevant text and video links were disclosed. For this reason, I am providing links to the documents produced. These documents may be accessed by clicking on the relevant entry in the revised answer to Question 12. Where I do not have a responsive 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,

A handwritten signature in black ink, appearing to read "Goodwin Liu". The signature is fluid and cursive, with a prominent initial "G" and a stylized "L".

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>

- ① “From *Brown* to *Grutter* and Beyond,” *Boalt Hall Transcript*, Spring/Summer 2004, at 26
- ② *Foreword*, in *SERVICE-LEARNING: A MOVEMENT’S PIONEERS REFLECT ON ITS ORIGINS, PRACTICE, AND FUTURE* at xi (Timothy K. Stanton et al. eds., 1999)
- ③ “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
- ④ “Service-Learning: A Paradigm Shift in Higher Education?,” *NSEE Quarterly* (National Society for Experiential Education, Mt. Royal, N.J.), Fall 1995, at 8
- ⑤ *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

- ① Final Report of the Task Force on Minority Alumni Relations, Stanford University (2004)
- ② 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-ac-s-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&ses_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-KjIMgIgxg>.
- 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=8dAmkHs11PM>.
- 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/s/how_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#noprload=-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

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James Parker, "Prop. 8 Suits Win Supreme Court Review," *Daily Californian*, Nov. 20, 2008

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Michelle Locke, "University of California Professors Propose Admissions Changes," *Associated Press*, Oct. 27, 2006

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Bob Egelko, "The President's Supreme Court Nominee," *San Francisco Chronicle*, July 20, 2005, at A13

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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

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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

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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](http://teaching.berkeley.edu/dta09/liu.html), available at <http://teaching.berkeley.edu/dta09/liu.html> (2009)
["The Constitution in 2020," Post by Goodwin Liu \(2004\)](http://constitutionin2020.blogspot.com/2004/11/post-by-goodwin-liu.html), 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 \(Jan. 12, 2009\)](http://portal.sfusd.edu/data/epc/January%2012%202009.pdf). I gave a presentation on the [Achievement Gap and the Relationship Between Diversity and Equity](http://portal.sfusd.edu/data/epc/January%2012%202009.pdf). 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/](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 \[http://www.law.berkeley.edu/files/May_4_conf_agenda3.pdf\]\(http://www.law.berkeley.edu/files/May_4_conf_agenda3.pdf\).](#)

[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](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](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](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](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-KjIMgIgxg](http://www.youtube.com/watch?v=0-KjIMgIgxg).
- 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](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](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.](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.](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.](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.](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.](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.](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.](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.](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.](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](http://www.law.berkeley.edu)

- 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](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 \[http://www1.umn.edu/news/features/2005/UR_47223_REGION1.html\]\(http://www1.umn.edu/news/features/2005/UR_47223_REGION1.html\).](#)

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 \[http://webcast.berkeley.edu/event_details.php?seriesid=8d2830c1-fa11-4baf-8687-255c0ac42207&p=1&ipp=15&category=\]\(http://webcast.berkeley.edu/event_details.php?seriesid=8d2830c1-fa11-4baf-8687-255c0ac42207&p=1&ipp=15&category=\)](#)

["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://ajj.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 \[http://www.pbs.org/newshour/bb/law/jan-june06/alito_2-21.html\]\(http://www.pbs.org/newshour/bb/law/jan-june06/alito_2-21.html\).](#)

[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.

September 13, 2010

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

Dear Mr. Chairman:

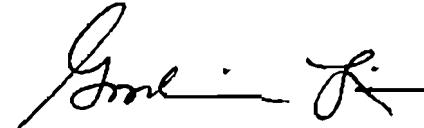
I have reviewed the Senate Questionnaire and supplemental submissions I previously filed in connection with my nomination on February 24, 2010, to be United States Circuit Judge for the Ninth Circuit. With the following exceptions, I certify that the information contained in my prior submissions is, 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,

A handwritten signature in black ink, appearing to read "Goodwin Liu", with a stylized flourish at the end.

Goodwin Liu

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

**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]

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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
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 - b. The response to *Brown* [skim 474-85]; *Cooper* (1958) [58]
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2. *Craig v. Boren* (1976) and heightened scrutiny [627-35]
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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