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A Brief Overview of President Obama's Asian American Judicial Nominees in 2010

Jonathan Jew-Lim[†]

INTRODUCTION^{††}

In 2009, President Obama made history by selecting the first Chinese American woman to sit on the federal bench (Dolly Gee), and the first Vietnamese American Article III judge (Jackie Nguyen).¹ Obama also nominated Denny Chin to the Second Circuit Court of Appeals, though Chin has not yet been confirmed.² This year may prove to be an even greater turning point for the representation of Asian Americans in the federal judiciary. As of March, Obama has nominated three Asian Americans to serve in the federal judiciary: Edward Chen, Lucy Koh, and Goodwin Liu.³ Together, the three candidates represent not only a wide-ranging set of professional qualifications, but also a unique collection of personal backgrounds that exemplifies the diversity of the Asian American

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^{††} Editor's Note: As of November 2010, Dolly Gee, Jackie Nguyen, Denny Chin, and Lucy Koh have been confirmed by the Senate. President Obama renominated Edward Chen and Goodwin Liu in September 2010.

1. Hector Berccerra, *Senate Confirms L.A. Attorney Dolly Gee as Judge; She'll Be First Chinese-American Woman on Federal Bench*, L.A. TIMES, Dec. 25, 2009, available at <http://latimesblogs.latimes.com/lanow/2009/12/dolly-gcc-confirmed-district-court-judge-chinese-american.html>; Press Release, Senator Diane Feinstein, U.S. Senate Approves Nomination of Jacqueline Nguyen to be U.S. District Court Judge for Central District of California (Dec. 1, 2009), available at http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=4c5ee1a1-5056-8059-764f-90500a7dc06c&Region_id=&Issue_id=551ee47b-7e9c-9af9-7621-90c3666ca9fc.

2. Press Release, The White House Office of the Press Secretary, President Obama Nominates Judge Denny Chin for United States Court of Appeals for the Second Circuit, Judge O. Rogerice Thompson for United States Court of Appeals for the First Circuit (Oct. 6, 2009), available at http://www.whitehouse.gov/the_press_office/President-Obama-Nominates-Judge-Denny-Chin-for-United-States-Court-of-Appeals-for-the-Second-Circuit-Judge-O-Rogerice-Thompson-for-United-States-Court-of-Appeals-for-the-F/.

3. Press Release, The White House Office of the Press Secretary, Presidential Nominations Sent to the Senate (Jan. 20, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-nominations-sent-senate-2>; Press Release, The White House Office of the Press Secretary, Presidential Nominations Sent to the Senate, 2/24/2010 (Feb. 24, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-nominations-sent-senate-22410>.

experience. Their confirmations would be a significant step in expanding the representation of Asian Americans in the federal judiciary.

I. THE EDWARD CHEN NOMINATION

On August 7, 2009, President Obama nominated Chen for a seat on the United States District Court for the Northern District of California.⁴ Chen was no stranger to the Northern District, as he had been serving as a magistrate judge there for more than eight years when the nomination was announced.⁵ Prior to his tenure in the judiciary, Chen's legal career included both private practice and nonprofit legal advocacy. He clerked for Judge Charles Renfrew in the Northern District of California and for Judge James R. Browning of the Ninth Circuit following law school.⁶ Chen subsequently worked as an associate at the San Francisco law firm of Coblenz Cahen McCabe & Breyer before leaving to become a staff attorney for the American Civil Liberties Union (ACLU) in San Francisco.⁷ During the 1980s, Chen also worked with the legal team that, in a *coram nobis* proceeding, successfully challenged Fred Korematsu's conviction for failure to obey President Roosevelt's executive order mandating the internment of Japanese Americans.⁸ In addition to his professional connections to the geographical area served by the Northern District, Chen also has strong personal ties to the San Francisco Bay Area, as he was born to immigrant parents in Oakland, California and received both his undergraduate and law degrees from the University of California, Berkeley.⁹

Chen's appointment as a magistrate judge for the Northern District was itself an historic occasion. Despite San Francisco's reputation as a national hub for Asian Americans, Chen was the first Asian American to sit on the federal bench in San Francisco.¹⁰ Many prominent Asian Americans noted the symbolic importance of Chen's presence on a court that had often

4. Press Release, The White House Office of the Press Secretary, President Obama Nominates Edward Milton Chen, Dolly Gee and Richard Seeborg to Serve on the District Court Bench (Aug. 7, 2009), available at <http://www.whitehouse.gov/the-press-office/president-obama-nominates-edward-milton-chen-dolly-gee-and-richard-seeborg-serve-di>.

5. *Id.*

6. *Hearing on the Nominations of Edward M. Chen to be United States District Judge for the United States District Court for the Northern District of California; Dolly M. Gee, to be United States District Judge for the United States District Court for the Central District of California; Jacqueline H. Nguyen to be United States District Judge for the United States District Court for the Central District of California Before the Sen. Comm. on the Judiciary*, 111th Congress (2009) (Statement of the National Asian Pacific American Bar Association and Asian American Justice Center) [hereinafter *NAPABA*] at 4, available at <http://www.napaba.org/uploads/napaba/NPAAJCTestimony0909.pdf>.

7. *Id.*

8. *Id.*

9. *Id.* at 4-5.

10. Ryan Kim, *Asian Magistrate Is A First in S.F.*, S.F. CHRON., Apr. 27, 2001, available at http://articles.sfgate.com/2001-04-27/news/17595665_1_asian-americans-federal-bench-chen-s-career.

used its power to discriminate against Asians in the past. Chen himself described it as “unfortunate” that it took until 2001 for the first Asian American to sit on the federal bench in the Northern District, particularly “considering the local demographics and historic role this court has played in affecting the Asian American community.”¹¹ State Insurance Commissioner Harry W. Low said the court had been “a mechanism of punishment and mistreatment of [the] Chinese in the past” and declared that Chen’s appointment was an important symbol of change from the court’s past practices.¹² Dale Minami, a prominent San Francisco attorney who led Fred Korematsu’s legal team, declared that Chen’s appointment would “[help] destroy the perception of Asian Americans as foreigners” and “encourage more Asian Pacific Americans applying for judicial positions.”¹³

Unlike his appointment to the bench as a magistrate judge,¹⁴ Chen’s 2009 nomination to become a district court judge was subject to approval by the Senate, and it proved to be controversial. Although the Senate Judiciary Committee voted to pass his nomination to the full Senate on October 15, 2009, the Committee fractured along party lines, with all twelve Democrats supporting Chen and all seven Republicans opposing him.¹⁵ Several conservative mass media outlets also voiced opposition to Chen’s confirmation. Sean Hannity, host of the Fox News Channel show “Hannity,” described Chen’s nomination as part of a “revolving door of radicals” under the Obama Administration.¹⁶ Hannity also cited a speech that Chen had given to graduates of UC Hastings College of Law in 2005, in which Chen described being moved to tears as mourners sang “America the Beautiful” at Fred Korematsu’s funeral and observed that sometimes he could not help feeling that “too much injustice and too many inequalities . . . prevent far too many Americans from enjoying the beauty extolled in that anthem.”¹⁷ Based on this evidence, Hannity concluded that Chen was “no fan of the song ‘America the Beautiful,’” suggesting that Chen’s patriotism was open to question.¹⁸ Hannity also criticized statements that Chen had made shortly after the September 11 terrorist attacks. Chen described experiencing the “sickening feeling in [his]

11. *Id.*

12. *Id.*

13. *Id.*

14. Unlike Article III federal appointments, magistrate judges are appointed by judges serving on the District Court.

15. Bob Egelko, *Senate OKs Magistrate As Federal Judge in S.F.*, S.F. CHRON., Dec. 15, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/12/25/MNGB1B9HH5.DTL>.

16. *Hannity Joins Witch Hunt of Chen: “The Revolving Door of Radicals Coming Into the Obama Administration Continues To Spin”* (Fox News television broadcast Oct. 27, 2009), available at <http://mediamatters.org/mmtv/200910270051> (last visited Apr. 18, 2010).

17. *Id.*

18. *Id.*

stomach about what might happen to race relations and religious tolerance on our own soil,” which Hannity suggested showed a lack of sympathy for the American victims.¹⁹ A *Washington Times* editorial, to which Hannity referred in his segment on Chen, described Chen as “another Obama nominee who doesn’t appear to love America” and “thinks the United States is inherently racist.”²⁰ The editorial warned that Chen was “a biased radical willing to impose his own politics from the bench.”²¹

Many of Chen’s supporters directly challenged such attacks on his candidacy. Dale Minami described them as “cynical and unfair,” while John Diaz of the *San Francisco Chronicle* described the vehement conservative opposition to Chen as, “[t]he smearing of a loyal American.”²² Other supporters emphasized his legal qualifications, his long history of public interest advocacy, and his personal background. Testifying before the Senate Judiciary Committee, the National Asian Pacific American Bar Association (NAPABA) and the Asian American Justice Center (AAJC) highlighted the judicial experience Chen accumulated over an eight-year tenure as a federal magistrate judge, pointing out that in over 300 published opinions and orders he had been reversed fewer than five times.²³ They also emphasized his commitment to public service, as manifested by his work to overturn the Korematsu conviction and his service on the board of numerous community organizations, such as the Asian American Bar Association of the Greater Bay Area, the Chinatown Community Development Corporation, and a local school for children with learning disabilities.²⁴ Lastly, they underscored Chen’s ability to overcome personal adversity, as he grew up in a single-parent home and is currently a parent of one child with a learning disability and another with severe developmental disabilities.²⁵

Chen also received bipartisan support from government officials. Democratic Senator Diane Feinstein, who had recommended Chen to President Obama, avidly defended Chen. She accused GOP critics of distorting Chen’s record, stated that he had successfully “made the transition from advocate to judge,” and asserted, “I do not believe there is a spot, a blemish, a wart on his record as a magistrate.”²⁶ Former U.S.

19. *Id.*

20. Editorial, *Another Judicial Radical*, WASH. TIMES, Oct. 25, 2009, available at <http://www.washingtontimes.com/news/2009/oct/25/another-judicial-radical/>.

21. *Id.*

22. John Diaz, Editorial, *The Smearing of a Loyal American*, S.F. CHRON., Nov. 1, 2009, available at http://articles.sfgate.com/2009-11-01/opinion/17180035_1_flag-graduates-tolerance.

23. NAPABA, *supra* note 6.

24. *Id.*

25. *Id.*

26. Bob Egelko, *Confirmation Votes Set for Judge Nominees*, S.F. CHRON., Oct. 17, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/10/17/BAH11A6UFI.DTL&type=politics>.

District Court judge and deputy attorney general Charles Renfrew, a Nixon-appointee for whom Chen had clerked, stated that senators should “focus on [Chen’s] eight-year record of fairly and impartially presiding as a magistrate, a record that has won him plaudits from numerous law enforcement officials.”²⁷ Renfrew added that it was “patronizing to insinuate Chen’s minority status will somehow negatively affect his judicial decisions.”²⁸

On December 24, 2009, more than four months after Chen was first nominated, the Senate declined to vote on whether to confirm him, and returned his nomination to President Obama. Expressing disappointment, Senator Feinstein indicated her hope “that the president will re-nominate Edward Chen and we will be able to move his candidacy.”²⁹ On January 27, 2010, Obama again nominated Chen to serve as a Northern District judge. About a week later, the Senate Judiciary Committee again approved Chen’s nomination on a strict party-line vote with the same number of senators supporting and opposing him.³⁰ Critics of Chen’s nomination also remobilized. Several Republican Senators criticized Chen for various public statements that he had made. Republican Senator Jon Kyl of Arizona referred to a speech Chen gave in 2007, in which Chen said that he found it rewarding to author decisions that advance the law, “especially if it comports with my view of justice.”³¹ Kyl claimed that this statement showed that Chen “has his own view of what justice is,” a quality that is “not what a judge should bring to the court.”³² Republican Senator Jeff Sessions of Alabama invoked an essay about diversity that Chen had written in 2003, in which Chen asserted that having judges with a wide range of life experiences can improve judicial decision-making.³³ Sessions declared that such experiences “are akin to biases” and that a judge would not be justified in allowing such factors to influence decisions.³⁴ Other Republican senators expressed skepticism of Chen due to his work at the ACLU, including his efforts to oppose California’s Proposition 209, which banned the state government from taking race and gender into account in a variety of public policies, perhaps most notably in the context of public university admissions.³⁵ Chen’s statements in 2005 that the government

27. Charles Renfrew, Letter to the Editor, SACRAMENTO BEE, Nov. 18, 2009, at 16A.

28. *Id.*

29. Bob Egelko, *Senate GOP Opposes S.F. Judicial Nominee*, S.F. CHRON., Dec. 29, 2009, available at http://articles.sfgate.com/2009-12-29/news/17462014_1_senate-floor-senate-action-president-obama-s-nomination.

30. Bob Egelko, *Senate Panel Backs Obama’s Judge Nominee*, S.F. CHRON., Feb. 5, 2010, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/02/05/MN591BSQLN.DTL>.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

would have responded more quickly to the crisis resulting from Hurricane Katrina if the victims had been primarily white and middle class rather than poor and black also provoked criticism.³⁶

In response, Chen's supporters rallied again. A *San Francisco Chronicle* editorial called Chen a "patriot" and advocated for his confirmation.³⁷ For a second time, NAPABA and the AAJC issued a joint-statement in support of Chen.³⁸ Chen also received bipartisan support once again. In a special column for the influential Washington newspaper *Roll Call*, Thomas Mazzuco, a self-described "lifelong member of the Republican Party," called the attacks on Chen "unwarranted" and described him as "an experienced judge who understands the distinction between personal preference and judicial obligation and who has always based his rulings . . . solely on the law and on the merits of the case."³⁹ Mazzuco concluded by asking, rhetorically, "If Judge Chen, an experienced judge whose judicial record proves he is committed to the rule of law without bias or favor and who is widely respected by the bar that has practiced before him, isn't qualified for the federal bench, who is?"⁴⁰ That sentiment echoed the assessment of the American Bar Association (ABA), which gave Chen the highest possible rating for a judicial nominee.⁴¹

The ultimate resolution of Chen's candidacy remains unclear. As of this writing, his nomination has yet to be put before the full Senate for confirmation. As the discussion above indicates, while he appears to enjoy substantial support from lawyers, legislators, and the Asian American legal community, it is also clear that many conservative politicians and commentators remain opposed to confirming him. For his part, Chen's own public comments on the judicial role have remained largely apolitical. They are perhaps best articulated in Chen's response to his own appointment as a magistrate judge almost ten years ago, in which he said the primary goal of a judge is "to do justice and do what's right and find the truth."⁴²

36. Bob Egelko, *Obama Will Renominate Edward Chen to be Judge*, S.F. CHRON., Jan. 9, 2009, available at http://articles.sfgate.com/2010-01-09/bay-arca/17823106_1_obama-s-nominecs-senate-floor-vote-first-asian-american-judgc.

37. Editorial, *Edward Chen: Portrait of a Patriot*, S.F. CHRON., Feb. 4, 2010, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2010/02/03/ED7N1BS1EB.DTL>.

38. Press Release, National Asian Pacific American Bar Association & Asian American Justice Center, Asian Pacific American Leaders Applaud President for Promised Renomination of APA Judge (Jan. 7, 2010), available at <http://www.napaba.org/napaba/showpage.asp?code=PRnpaaicedwardchen0110>.

39. Thomas P. Mazzuco, *Mazzuco: If Judge Edward M. Chen Isn't Qualified, Who Is?*, ROLL CALL, Feb. 5, 2010, available at <http://www.rollcall.com/news/43020-1.html>.

40. *Id.*

41. NAPABA, *supra* note 6.

42. Kim, *supra* note 10.

II. THE LUCY KOH NOMINATION

Unlike Edward Chen, Lucy Koh, a Santa Clara County Superior Court judge, has thus far enjoyed a relatively smooth nomination process. On January 20, 2010, President Obama nominated Koh to serve as a judge on the U.S. District Court for the Northern District of California in San Jose. While both Chen and Koh possess judicial experience and compelling personal narratives, Koh's professional resume contrasts from Chen's in that hers includes a substantial stint in private practice and several years of service as a federal prosecutor. On March 4, 2010 the Senate Judiciary Committee unanimously approved Koh's nomination on a voice vote with no debate, suggesting that her Senate confirmation may be relatively swift.⁴³

If confirmed, Koh would become the only Korean American judge currently sitting on the federal bench and only the second Korean American federal judge in American history.⁴⁴ Furthermore, Koh's personal background features stories of remarkable courage and resilience. Both of Koh's parents were immigrants. In 1945 her mother escaped North Korea at age ten after fleeing for two weeks on foot while suffering from yellow fever.⁴⁵ Her father fought the Communists during the Korean War before leaving for the United States, where he put himself through school at Johns Hopkins by working as a busboy and a waiter.⁴⁶ When Koh was young, her family moved to Mississippi, where her mother taught at a historically African American college and Koh was bused to predominantly poor and African American public schools.⁴⁷ After earning her undergraduate degree from Harvard College, Koh received her law degree from Harvard Law School.⁴⁸

Koh spent the first seven years of her legal career in government service. After spending several years working for the Department of Justice and the Deputy Attorney General, Koh became an Assistant U.S. Attorney in the major frauds division of the Central District of California.⁴⁹ While Koh worked on some violent crimes and narcotics cases, the bulk of her

43. Howard Mintz, *Senate Committee Votes to Confirm Judge to San Jose Federal Court*, S.J. MERCURY NEWS, Mar. 4, 2010, available at http://www.mercurynews.com/ci_14513001?nlick_check=1.

44. Bob Egelko, *Obama Picks Korean American for Federal Bench*, S.F. CHRON., Jan. 22, 2010, available at http://articles.sfgate.com/2010-01-22/bay-area/17834836_1_federal-judge-korcanamerican-federal-bench.

45. *Id.*

46. Press Release, Senator Barbara Boxer, Statement on Judge Lucy Koh at Senate Confirmation Hearing (Feb. 11, 2010), available at <http://boxer.senate.gov/en/press/releases/021210.cfm>.

47. *Id.*

48. *Id.*

49. Press Release, Governor Arnold Schwarzenegger, Governor Schwarzenegger Appoints Lucy Koh to Santa Clara County Superior Court (Jan. 25, 2008), available at <http://gov.ca.gov/press-release/8613/>.

work involved financial fraud and corruption, and Koh's efforts in prosecuting a \$54 million securities fraud case earned her an award from then-FBI Director Louis B. Freeh.⁵⁰ Koh left the U.S. Attorney's Office in 2000 to pursue private practice as a litigator.⁵¹ She spent two years as a senior associate at the Silicon Valley-based firm of Wilson, Sonsini, Goodrich & Rosati before moving to the Palo Alto branch of McDermott, Will & Emery, where she spent six years as a partner.⁵² Koh's law firm work consisted largely of complex litigation in the areas of intellectual property and securities.⁵³ In January 2008, Governor Arnold Schwarzenegger of California, a Republican, announced his appointment of Koh to the Santa Clara County Superior Court.⁵⁴

Senator Barbara Boxer, a California Democrat, recommended Koh to President Obama.⁵⁵ Immediately before Koh's appearance before the Senate Judiciary Committee, Boxer issued a press release supporting her.⁵⁶ Asserting that Koh "will make an outstanding addition to the federal bench," Boxer urged her fellow senators to confirm Koh quickly.⁵⁷ Boxer's sentiments were echoed by a wide range of groups and individuals. On the Republican side, Governor Schwarzenegger stated that Koh "exemplifies the very best of the legal profession and will be an excellent federal judge."⁵⁸ Koh also received endorsements from prominent former GOP officials such as William Weld, the former governor of Massachusetts, and Viet Dinh, a former legal adviser to President George W. Bush.⁵⁹ The leaders of NAPABA and the AAJC also issued a joint statement in support of Koh's confirmation.⁶⁰

Given Koh's broad base of support, the lack of an entrenched vocal opposition, and the ease with which the Senate Judiciary Committee approved her nomination, it may be likely that the full Senate will confirm her with little difficulty sometime this year. If that is the case, the relative ease of her confirmation process should not overshadow the historic nature of Koh's accomplishment in becoming only the second active Korean American federal judge and the first Korean American woman ever to hold such a post in the American judiciary.

50. Boxer, *supra* note 46.

51. Schwarzenegger, *supra* note 49.

52. *Id.*

53. Boxer, *supra* note 46.

54. Schwarzenegger, *supra* note 49.

55. Boxer, *supra* note 46.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Press Release, National Asian Pacific American Bar Association & Asian American Justice Center, Asian Pacific American Leaders Pleased with Senate Hearing for Federal Court Judicial Nominee Lucy H. Koh (Feb. 12, 2010), available at <http://www.napaba.org/uploads/napaba/PR-npaajclucykoh0210.pdf>.

III. THE GOODWIN LIU NOMINATION

President Obama's third Asian American nominee to the federal bench, Goodwin Liu, has spent most of his career as an academic.⁶¹ While Liu's impressive scholarly accomplishments suggest that he would be well-suited to a job as an appellate judge, Liu has also been a vocal critic of conservative legal theories, as evidenced by both his academic writings and his forceful opposition to the confirmation of Justice Samuel Alito to the U.S. Supreme Court.⁶² Indeed, a significant conservative political opposition to Liu's confirmation seems to have arisen already.

On February 24, 2010, President Obama nominated Liu for the U.S. Court of Appeals for the Ninth Circuit.⁶³ By that time, Liu had accumulated an impressive set of credentials. Although born in Georgia, Liu grew up in Sacramento, where both of his parents, who were Taiwanese immigrants, worked as physicians.⁶⁴ After earning his undergraduate degree from Stanford, Liu received a law degree from Yale Law School and completed a master's degree at Oxford as a Rhodes Scholar.⁶⁵ After law school, Liu clerked for Judge David S. Tatel of the Court of Appeals for the D.C. Circuit, and then for Justice Ruth Bader Ginsburg of the U.S. Supreme Court.⁶⁶ After working for several years at the Washington, D.C. office of the law firm O'Melveny & Myers, Liu left to become a law professor at the University of California, Berkeley, School of Law in 2003.⁶⁷ At the time of his nomination, Liu was both a Professor of Law and an Associate Dean at Berkeley, and taught classes on constitutional law and education policy.⁶⁸ Liu's interest in education and public service was longstanding, as he had worked at the Department of Education in between his two clerkships and also helped to launch the AmeriCorps program while working for the Corporation for National Service.⁶⁹

Notwithstanding Liu's objective qualifications to sit on the Ninth Circuit, his nomination comes at a time in which political pressures from both directions make it difficult to determine what to expect during the confirmation process. From the left, a number of liberals began to express

61. Christi Parsons, *Obama Zeros In on Law Professor for 9th Circuit Post*, L.A. TIMES, Feb. 24, 2010, available at <http://articles.latimes.com/2010/feb/24/nation/la-na-obama-judges24-2010feb24>.

62. *Id.*

63. *Id.*

64. *Id.*; Parsons, *supra* note 61.

65. Press Release, The White House Office of the Press Secretary, President Obama Nominates Goodwin Liu for the United States Court of Appeals for the Ninth Circuit, Judge Robert N. Chatigny for the United States Court of Appeals for the Second Circuit (Feb. 24, 2010), available at <http://www.whitehouse.gov/the-press-office/president-obama-nominates-goodwin-liu-united-states-court-appeals-ninth-circuit-jud>.

66. *Id.*

67. *Id.*

68. Berkeley Law – Faculty Profiles, http://www.law.berkeley.edu/php-programs/faculty/faculty_profile.php?facID=4360 (last visited Apr. 5, 2010).

69. *Id.*

frustration at what they perceived to be inadequate progress in putting a more progressive stamp on the judiciary. On the same day that President Obama announced Liu's nomination, eleven law professors released a signed letter in which they urged the president to take a more active role in shaping the federal judiciary by nominating more judges and being less hesitant to select nominees who might be subject to conservative opposition.⁷⁰ One of the signatories, Professor Geoffrey Stone of the University of Chicago, called Liu's nomination "a good sign," but qualified his optimism by observing, "it's one appointment."⁷¹

Meanwhile, conservative criticism of Liu's selection quickly materialized. Two days after President Obama announced Liu's nomination, Senator Sessions (who vigorously opposed Edward Chen's confirmation, as discussed above) issued a press release in which he stated that he was "very disappointed" by President Obama's choice and feared that Liu would become an "activist judge."⁷² Describing Liu as "far outside the mainstream of American jurisprudence," Sessions also criticized Liu's support for affirmative action and the time he spent on the board of the ACLU.⁷³ Ed Whelan, president of the Ethics and Public Policy Center and a former Deputy Assistant Attorney General for the Office of Legal Counsel under President George W. Bush, also released a series of blog posts for the conservative periodical *The National Review*.⁷⁴ These posts criticized, among other things, Liu's approach to interpreting the Constitution, his testimony against the confirmation of Justice Alito, his criticism of California's ban on same-sex marriage, and an article he wrote for the *Stanford Law Review* on the judicial role in preserving a wide range of welfare rights.⁷⁵ Whelan also referred to the ABA's assessment that Liu was "well qualified" for the Ninth Circuit as "a joke" and "yet further evidence of the political corruption of the ABA Committee."⁷⁶ *The Washington Times*, in turn, relied on Whelan's posts in its own editorial opposing Liu's confirmation, repeating his criticism that Liu had "'zero' experience as a trial lawyer."⁷⁷

70. Michael D. Shear, *Obama Nominates Berkeley Professor Goodwin Liu to Federal Appeals Court*, WASH. POST, Feb. 25, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/24/AR2010022404495.html>.

71. *Id.*

72. Ashby Jones, *A First Punch in a Goodwin Liu Confirmation Battle?*, WALL ST. J., Feb. 26, 2010, available at <http://blogs.wsj.com/law/2010/02/26/a-first-punch-in-a-goodwin-liu-confirmation-battle/tab/article/>.

73. *Id.*

74. Posting of David Ingraham to The BLT: The Blog of LegalTimes, <http://legaltimes.typepad.com/blt/2010/03/debate-heats-up-over-9th-circuit-nominee.html> (Mar. 8, 2010, 14:49 EST).

75. Posting of Ed Whelan to Bench Memos, <http://bench.nationalreview.com> (Mar. 3, 2010, 13:48 EST).

76. Posting of Ed Whelan to Bench Memos, <http://bench.nationalreview.com> (Feb. 25, 2010, 12:46 EST).

77. Editorial, *A Constitutional Right to Welfare?*, WASH. TIMES, Mar. 3, 2010, available at

Liu's supporters, including a number of conservatives, responded with a spirited campaign in support of his confirmation. On the day of Liu's nomination Senator Boxer released a statement calling him "a proven authority on constitutional law with a keen intellect."⁷⁸ Senator Feinstein described Liu as "sharp as they come, with a kind demeanor and a good temperament."⁷⁹ Former U.S. Solicitor General Walter E. Dellinger III, who served under President Bill Clinton, praised Liu as a "superb academic scholar" whose selection indicated that President Obama "is seeking judges of truly exceptional ability."⁸⁰ Several Republicans also voiced support for Liu's confirmation. Former GOP Congressman Tom Campbell asserted that Liu "will bring scholarly distinction and a strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit."⁸¹ Similarly, Clint Bolick of the conservative Goldwater Institute wrote a letter to the Senate Judiciary Committee indicating that Liu acted with "a great deal of courage and integrity" in writing a law review article that supported charter schools (a movement that many conservatives champion as a better alternative to traditional public schools) and that he found Liu's academic writings "to exhibit fresh, independent thinking and intellectual honesty."⁸² NAPABA and the AAJC also issued a press release advocating for Liu's confirmation, which included glowing quotes from Liu's colleagues at Berkeley.⁸³ Constitutional law professor Jesse Choper described Liu's qualifications as "nothing short of outstanding" and predicted that Liu "would be an especially fair jurist, and one with real intellectual firepower."⁸⁴ Law school dean Christopher Edley noted that Liu "is admired by his colleagues for his fairness, integrity, and good judgment" and that "[h]e is one of the brightest and most capable colleagues I've had in my three decades in academia."⁸⁵

Although Liu's nomination has yet to be formally considered by the Senate Judiciary Committee, which must approve his candidacy before the full Senate can vote on whether to confirm, many of his supporters and critics appear to have staked out their respective positions already. If the Senate eventually confirms Liu, the implications for Asian American representation in the federal judiciary would be substantial. Currently, none of the approximately 175 federal appellate judges is Asian American

<http://www.washingtontimes.com/news/2010/mar/03/a-constitutional-right-to-welfare/>.

78. Boxer, *supra* note 46.

79. Parsons, *supra* note 61.

80. Shear, *supra* note 70.

81. Press Release, National Asian Pacific American Bar Association & Asian American Justice Center, NAPABA and AAJC Applaud Nomination of Goodwin H. Liu to the Federal Appellate Circuit (Feb. 24, 2010), available at <http://www.napaba.org/uploads/napaba/PR-npaajcgoodwinliu0210.pdf>.

82. Parsons, *supra* note 61.

83. National Asian Pacific American Bar Association, *supra* note 81.

84. *Id.*

85. *Id.*

(President Obama has also nominated U.S. District Court Judge Denny Chin to the sit on the Second Circuit, but Chin has yet to be confirmed).⁸⁶ Furthermore, if Liu's confirmation process proves contentious, it could provide some indication of the willingness of the Obama Administration to select potentially controversial nominees in the future.

CONCLUSION

As of 2010, there are only ten active Asian American federal judges who have been appointed pursuant to Article III.⁸⁷ There are currently no Asian American federal judges sitting in either the Northern District of California (despite its relatively large Asian American population) or in the federal courts of appeal, and no Korean American federal judges at all.⁸⁸ If the three Asian Americans nominated for federal bench positions in 2010 are confirmed, then each of those statistics will change. In addition, many believe that if Goodwin Liu is confirmed to the Ninth Circuit, he will eventually be nominated for a seat on the U.S. Supreme Court.⁸⁹ The three nominees represent different Asian American ethnicities, different career paths, and different sets of qualifications. Yet it is clear that their confirmations would send a single, unambiguous message to Asian American lawyers and law students who might appear before them or seek to become judges themselves: the era of a federal judiciary that has been largely devoid of fellow Asian Americans may be coming to an end.

86. Parsons, *supra* note 61.

87. Asian Pacific American Federal Judges, <http://www.aaba-bay.com/aaba/showpage.asp?code=Current%20Federal%20Judges> (last visited Apr. 5, 2010).

88. *Id.*; Egelko, *supra* note 44.

89. Mark Sherman, *Obama Taps First Young Appeals Court Nominee*, ASSOCIATED PRESS, Mar. 14, 2010, available at http://www.boston.com/news/nation/washington/articles/2010/03/14/obama_chooses_first_young_appeals_court_nominee/.