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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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April 6, 2010

The Honorable Patrick J. Leahy
Chairman, U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

We write regarding the voluminous supplement to Professor Goodwin Liu's Questionnaire that we received from the Justice Department today. The supplement lists numerous additional items that Professor Liu omitted from the Questionnaire he submitted to the Committee on February 24, 2010. These glaring omissions were provided only after Committee staff continued to locate other additional items not disclosed by the nominee. At best, this nominee's extraordinary disregard for the Committee's constitutional role demonstrates incompetence; at worst, it creates the impression that he knowingly attempted to hide his most controversial work from the Committee. Professor Liu's unwillingness to take seriously his obligation to complete these basic forms is potentially disqualifying and has placed his nomination in jeopardy.

In the weeks since we received Professor Liu's original Questionnaire, Committee staff has repeatedly discovered missing items, including: (1) Professor Liu's commencement speech to UC Berkeley Law; (2) his participation in a panel entitled "What the 2008 Election Will Mean for the Supreme Court"; (3) his participation in a presentation entitled "The Fate of Affirmative Action from the O'Connor Court to the Roberts Court"; (4) his participation in an event co-sponsored by La Raza and the Center for Social Justice at Berkeley entitled "*Mendez v. Westminster: 1946—A California Look at Brown v. Board of Education*"; and (5) his participation in a conference on school funding. In addition, on March 31, it was reported that Professor Liu failed to include his participation in a panel entitled "The Legacy of *Brown v. Board of Education*" at the American Constitution Society's (ACS) 2004 national convention. At the time of his participation, Professor Liu was a member of ACS' board, his academic work focused heavily on *Brown*, and the panel discussion marked the 50th anniversary of *Brown*. Nevertheless, Professor Liu failed to identify his participation in and/or provide a transcript of this panel discussion in his Questionnaire.

These are not minor omissions. A cursory glance at the titles of the events that Professor Liu has omitted from his Questionnaire shows that his participation in and comments during each are crucial to this Committee's review of his nomination. Not only will the Committee require more time to review these new items, but, as we are sure you will agree, the Committee must conduct further research to confirm that there are no other missing items.

The Honorable Patrick J. Leahy
Chairman, U.S. Senate Judiciary Committee
April 6, 2010

In addition to Professor Liu's incomplete Questionnaire, we have yet to receive a complete response from Second Circuit nominee Judge Robert Chatigny or the Justice Department regarding the items we requested on March 8, including:

"(1) all unpublished opinions that were not previously produced; and (2) a list of all criminal cases in which you departed downward from the sentencing guidelines, including a description of the charge(s) for which the defendant was convicted, the sentence called for under the guidelines, the sentence you imposed, and the reason(s) for the departure."

The Justice Department has yet to even acknowledge our request for all unpublished opinions not heretofore produced. In response to the second request, we received a list of cases, identified by number, in which Judge Chatigny departed downward from the Sentencing Guidelines. This list, presumably generated by the U.S. Sentencing Commission, is not responsive to our request, as it does not provide the Committee with the case names or underlying facts. Accordingly, we have resubmitted our request to the Justice Department and requested opinions and/or transcripts where available. To date, we have not received a response.

Professor Liu's hearing is currently scheduled for Friday, April 16, 2010, a mere 51 days after he was nominated, and now a mere 11 days after the Committee has received what essentially amounts to a new Questionnaire. This expedited schedule is unacceptable given that we have no confidence in the completeness and accuracy of his record before the Committee. Accordingly, we request that you postpone the Committee's consideration of this nomination. We believe that maintaining the integrity of the Committee's constitutional advise and consent responsibilities more than justifies such a request.

Very truly yours,














