

THE CASE FOR AN ASIAN AMERICAN LAW PROFESSOR: AN EPISTOLARY AMONG THREE ASIAN AMERICAN STUDENT ACTIVISTS AT THE UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW

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I. INTRODUCTION

We were troubled when, as second-year law students and members of our school's Asian Pacific American Law Students Association ("APALSA"), we discovered that there was not a single tenure-track Asian American professor at our law school. In turn, in the fall of 2010, APALSA began to direct its attention to this obvious absence, and spread awareness about the importance of having a diverse faculty that includes Asian American professors. Our initial search for answers about faculty hiring and statistics about the racial composition of our student body and faculty turned into a mission to inform and energize students about this critical issue and to encourage the school to start actively pursuing Asian American candidates for hire. To enact this goal, in the fall of 2011, we formed the Faculty Diversity Initiative ("FDI"), an organization aimed at rallying students around faculty diversity and working with the administration to hire a tenure-track, or full-time teaching, Asian American professor. A year later, in February 2012, the law school hired Alex Lee, an Asian American professor specializing in law and economics, for a tenure-

track position.

This essay is written in the form of a critical epistolary,¹ an exchange of letters among the three of us who were founding members of FDI and active members of APALSA. This collaborative correspondence memorializes our efforts with FDI, but more than that, it documents our personal experiences as Asian American student activists at the University of Southern California Gould School of Law (“USC Law”). The purpose of this commentary is not to advocate a legal position or thoroughly review data and literature about law school faculty hiring. Instead, we see this exchange as an opportunity to reflect on our accomplishments, the challenges we encountered as we tried to convince other students who were resistant to the merits of our agenda, and our plans for FDI’s future. This moment is crucial for us for two reasons: first, this is our last year of law school and as we pass the torch to first- and second-year law students we hope that the advocacy continues; second, we document our collaboration in written form in order to memorialize our efforts and hold USC Law accountable. While other alumni have attempted to raise the issue in past years, there are no readily accessible records for us to review to figure out why it has taken thirteen years for USC Law to finally hire a full-time Asian American faculty member.

In this epistolary, Jane Tanimura opens by explaining the importance of having a diverse faculty that includes Asian American representation and why the absence of an Asian American law professor is problematic. Helen Tran then responds to Jane by detailing our initial address of this problem and the answers received from faculty about why this absence has

* J.D. Candidates, Class of 2012, University of Southern California Gould School of Law. We would like to thank other founding members of the Faculty Diversity Initiative: Katrina Dela Cruz, Lituo Huang, Mika Okamura, Jennifer Park, Michael Santos, and Suzetty Shen, whose work has very much contributed to the history of Asian American student activism at USC Law, and, more importantly, with whom we share their friendship. We would also like to thank the Asian Pacific American Bar Association of Los Angeles County for its generous financial support and encouragement of our advocacy efforts. Finally, we would like to thank the Faculty Appointments Committee; members of the USC Law faculty; editors of the *Southern California Review of Law and Social Justice*; Dr. Sumun L. Pendakur, Director of USC’s Asian Pacific American Student Services; and Dr. Varun Soni, USC’s Dean of Religious Life.

¹ We were inspired to write in the form of a critical epistolary upon reading the commentaries of other legal scholars who have used the form as a means by which to expand and comment upon views exchanged among multiple authors. See, e.g., Rachel Anderson, Marc-Tizoc González & Stephen Lee, *Toward a New Student Insurgency: A Critical Epistolary*, 94 CAL. L. REV. 1879 (2006); Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J. L. & GENDER 1 (2010); Robert S. Chang & Adrienne D. Davis, *The Adventure(s) of Blackness in Western Culture: An Epistolary Exchange on Old and New Identity Wars*, 39 U.C. DAVIS L. REV. 1189 (2006) [hereinafter *Blackness in Western Culture*].

persisted. Then, Annette Wong replies with a discussion of the challenges confronting the creation of a politicized space at the law school.

Moving forward, Jane continues with a discussion about the progress and pushback that FDI received in the 2011–2012 academic year. Annette responds by explaining the basis of this pushback as the tenuous relationship that Asian Americans have had with affirmative action. Finally, Helen concludes with a vision for the future in which students will use the organizational tools at hand to advocate for the inclusion of more tenure-track Asian American professors in USC Law's faculty.

II. LETTER ONE: WHY THE ABSENCE OF AN ASIAN AMERICAN LAW PROFESSOR IS A PROBLEM

Dear Helen and Annette,

I am delighted to have this opportunity to reflect on a movement that we have devoted so much time and energy to creating. No one of us could have tackled this project alone and it was through our collaboration that we were able to get so much accomplished in the past two years. I thank you both for inspiring me with your insight and friendship.

With that said, in the letters that follow, I would like for us to ponder the problem that drew us together in the first place—the fact that until Alex Lee's hiring in 2012, there was no *full-time* Asian American professor at USC Law and that there had not been one since 1999.² In the past thirteen years, this absence has not gone unnoticed. Before FDI, students had already made efforts to bring this problem to the administration's attention. In 2004, APALSA issued a Minority Faculty Hiring Report that highlighted the absence of both tenure-track Asian American faculty and tenure-track women minority faculty (which has since changed).³ Notably,

² I write this statement with a caveat, recognizing that there are adjunct faculty at USC Law who are Asian American, and one Asian American professor who is a courtesy appointment with the law school but does not teach law school classes. See *Lecturers in Law*, USC GOULD SCHOOL OF LAW, <http://weblaw.usc.edu/contact/instructors.cfm> (last visited Feb. 13, 2012); *Law School Faculty, Deans, and Law Librarians*, USC GOULD SCHOOL OF LAW, <http://weblaw.usc.edu/who/faculty/directory> (last visited Feb. 13, 2012). Professor Howard Chang was the law school's last tenure-track Asian American professor and taught from 1996 to 1999. An expert on immigration law and policy, he now teaches at the University Pennsylvania Law School. Interview by Helen Tran with Pauline Aranas, Associate Dean, Acting Dean of Library & Information Tech., & Adjunct Professor Law, USC Gould School of Law, in Los Angeles, Cal. (Jan. 26, 2012).

³ See generally James Jhun, APALSA Minority Faculty Hiring Report: A Snapshot of USC Law School (2003–2004) (unpublished report) (on file with authors) (“This study seeks to illuminate three issues: 1) Has USC Law School[] systematically failed to hire and retain minority faculty? 2) What is the general process by which faculty are hired? 3) What is student opinion

80% of 222 students polled indicated that they wanted more minority faculty.⁴ According to the alumni who researched and compiled this report, it was shared with members of the administration, some of whom are still at USC.⁵ Students of diverse groups have also signed on to a letter to then-USC President Steven B. Sample: “[T]here are no Asian Pacific American faculty and no women of color faculty at USC’s Law School. . . . President Sample, we petition your assistance in beginning an earnest discussion between students and the Law School administration to remedy this impasse.”⁶ But ultimately, nothing transpired out of APALSA’s efforts.

So why is the absence of an Asian American law professor even a problem? Why do we care so much that we have an Asian American law professor and more generally, why is it important that our faculty be diverse?⁷

I begin with the premise that diversity is a good thing. By interacting with people who are traditionally not like ourselves—who have different beliefs, attitudes, and backgrounds—we initiate the process of understanding differences. We become more accepting and learn to abandon the preconceived notions that enable the existence of hatred and inequality in the first place. In a world that is becoming increasingly diverse, it is crucial that we develop the cross-racial understanding that will equip us to become more sensitive members of society. In the end, diversity creates a better environment for *everyone*.

These ideas are by no means original. It is a justification that was prominently examined and endorsed by the Supreme Court in *Grutter v.*

around faculty hiring, academic ambitions and discrimination at USC?”).

⁴ Id.

⁵ E-mail from James Jhun, USC APALSA President 2003–2004, USC Law ’05, to Helen Tran (Feb. 20, 2012) (on file with author) (“The Report and some of the original research, which was requested at one point by [Dean] Altman . . .”).

⁶ Id.; The letter to President Sample concluded, “We fear that without your help, USC Law School will miss the boat in minority faculty hiring, resulting in an even greater crisis: students who graduate from USC Law School are left unprepared for the reality of diversity in a professional society, or worse yet, feeling alienated by their alma mater.” Letter from student leaders of USC Law’s Black Law Students Ass’n, La Raza, APALSA, Middle Eastern South Asian Law Ass’n, Student Coalition for Diversity, Gay and Lesbian Legal Union & Women’s Law Ass’n to President Steven B. Sample, former USC President (on file with authors).

⁷ My conception of diversity is not limited to a critical mass of racial minorities. Rather, true diversity includes diversity of background, experience, and knowledge. Characteristics that can contribute to true diversity include socioeconomic status, ideology, sexual orientation, disability, and religion. See Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean’s Perspective*, 96 IOWA L. REV. 1549, 1566–57 (2011) (“[A] diverse faculty both (1) measurably benefits the education, broadly defined, of law students, and (2) contributes to a rich, cutting-edge legal scholarship.”).

Bollinger.⁸ In addressing the constitutionality of the University of Michigan Law School's race-conscious admissions policy, the Court found the benefits that flow from a diverse student body to be a compelling interest.⁹ The Court acknowledged that diversity "helps to break down racial stereotypes, and enables [students] to better understand persons of different races. These benefits are important and laudable, because classroom discussion is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds."¹⁰

Although *Grutter* was analyzed in the context of endorsing student diversity,¹¹ its rationale also applies with equal force to faculty diversity. Our professors assert tremendous influence over how we think about the law, its purpose, and how it functions. Professors who integrate their diverse perspectives and experiences in the classroom enrich our understanding of the law by forcing us to think outside the narrow scope in which the law often frames a problem. Might not a female professor teaching the law of rape, an African American professor teaching reasonable suspicion, an Asian American professor teaching immigration law and enforcement, have some fundamental knowledge that their counterparts do not have?

Inside the classroom, an Asian American professor can offer his unique perspective, formed by his Asian American identity, to get students to think outside their own perspective. Outside the classroom, an Asian American professor can serve as a role model and mentor to Asian American students as well as to other students of color. To have an Asian American professor whom Asian American students can look up to and relate to reassures us that we in fact belong in law school and the legal profession, and that we can make it as lawyers, scholars, judges, and policymakers.¹²

This reassurance is important because Asian Americans have been severely underrepresented in the field of law and remain so even today.¹³ Although law school can be an alienating experience for everyone,¹⁴ for

⁸ 539 U.S. 306 (2003).

⁹ *Id.* at 328.

¹⁰ *Id.* at 330 (internal citations omitted).

¹¹ *Id.* at 382.

¹² See Johnson, *supra* note 6, at 1558.

¹³ *Id.* at 1565.

¹⁴ The law school experience can be alienating in part because it is so competitive. As a result of the grading curve and the overwhelming significance that is attached to grades, we are constantly meant to feel that we are competing against each another and that we are inadequate if we fail to perform in a certain way.

Asian American and other students of color, the experience is particularly daunting given the added pressure we face of having to prove ourselves worthy of belonging, that we are just as smart as everyone else. This is not an easy position to be in, especially in an environment that can be hostile to differing viewpoints and practices. This opposition does not make it easy for us to fluidly engage in the Socratic method, argue boldly in front of our peers, or pepper our professors with questions, particularly when they do not look or act like us, they do not come from our same backgrounds, and they do not hold our same beliefs. However, the presence of an Asian American professor, who shows interest in our struggles—the isolation we face, the insecurities we feel, the outrage we experience when issues that are important to us are overlooked in the classroom—and who has similarly struggled, can alleviate some of the anxiety we feel by being a source to whom we can honestly and comfortably confide, by advising us on how to do better and demonstrating to us that these obstacles can be overcome.

Ultimately, a law school like USC, which touts itself as “one of the most diverse elite law schools in the nation,”¹⁵ must remember these considerations. It undermines our school’s credibility to entice prospective students by citing to a diverse student body, when once admitted these students will find that our faculty is not so similarly diverse. Ultimately, our faculty cannot be said to be truly diverse when there is not a single full-time teaching Asian American law professor, a fact that is particularly outstanding in light of the fact that 16% of the Class of 2013 is Asian American and 84% of Master of Law (“LLM”) students come from Asian countries.¹⁶

Helen and Annette, what are your thoughts? Is it just me or is it also maddening to you that this is even an issue, that this is something that we *have to ask for*? I would love to hear your take on this.

Cheers,

Jane

III. LETTER TWO: THE FORMATIVE YEAR

Dear Annette and Jane,

¹⁵ Diversity Pioneers, USC GOULD SCHOOL OF LAW, <http://lawweb.usc.edu/who/history/diversity.cfm> (last visited Feb. 13, 2012).

¹⁶ E-mail from Chloe Reid, Assoc. Dean & Dean of Admissions, USC Gould School of Law (Oct. 24, 2011) (on file with authors); E-mail from Misa Shimotsu-Kim, Dir. Graduate & Int’l Programs, USC Gould School of Law (Oct. 29, 2011) (on file with authors).

I borrow the sentiments shared by Professor Neil Gotanda who delivered an Asian Americans in the Law lecture at USC this past fall and commented on our efforts to address the absence of Asian American professors: "In the era of Post-Racialism, the USC demand seems old-fashioned and out-of-date."¹⁷ Indeed, as the most diverse of the nation's top-twenty law schools in terms of student body composition, where "[t]he mix of students from many different backgrounds means that there is no real majority culture"¹⁸ it is painfully ironic that the largest minority group among students finds no representation on the faculty.

When we, as Fall 2010 board members of APALSA, first talked about acting collectively during one of our meetings that September, the inconsistency between the express commitment of the Faculty Appointments Committee¹⁹ to diversity and the conspicuous absence of Asian American professors foreshadowed the uphill battle before us. I often thought that we were asking for something that was unattainable. I questioned whether it was within our ability or role as students to ask an institution to commit its resources to locating and hiring Asian American professors. I frequently discussed with many friends about why a good-intentioned and sympathetic faculty could still be without Asian American colleagues.

Armed with these frustrations, on a Monday in November 2010, about half the board of APALSA showed up to the Dean's Town Hall meeting. We asked how the issue of hiring a tenure-track Asian American professor was being discussed among faculty and why it has taken so long for such a hiring to have occurred. In short, the Dean said that the administration was aware of this issue and addressing it. Now that APALSA had gone "radical," according to one student, and had "hijacked" the meeting, according to another student, the question remaining was how we could build upon this small-scale agitation.

To be true to our "radical" selves, while conversations with the Dean and other administrators were beginning to take place, several APALSA

¹⁷ Neil Gotanda, Critical Legal Studies Ass'n, Asian Am. in the Law, & Spirit of the Law Lecture at USC Gould School of Law: Managing Post-Racial Legal Identities (Jan. 11, 2012).

¹⁸ Interview with Dean Robert Rasmussen of the University of Southern California Gould School of Law, TOP-LAW-SCHOOLS.COM, <http://www.top-law-schools.com/robert-rasmussen-interview.html> (last visited Feb. 13, 2012).

¹⁹ The Faculty Appointments Committee is a group of senior and junior faculty members that, among other duties, provides initial recommendations to the rest of the faculty about entry-level candidates to interview during the Association of American Law Schools annual Faculty Recruitment Conference. See also *Uncloaking Law School Hiring: A Recruit's Guide to the AALS Faculty Recruitment Process*, ASS'N OF AM. LAW SCHOOLS, <http://aals.org/> (last visited Feb. 13, 2012) (detailing the law school entry-level faculty hiring process).

board members took part in the Student Body Association's ("SBA's") Faculty Selection Committee. During the 2010–2011 academic year, USC Law invited five entry-level candidates from the annual Association of American Law Schools Faculty Recruitment Conference for interviews, four of whom were Asian or Asian American.²⁰ Three actually interviewed with USC, but no offers were extended. That year, however, the school had already extended an offer to Mitu Gulati, an Asian American professor from Duke Law who writes about contract language, international finance, and judicial behavior and has published a seminal piece on racial minorities in the corporate hierarchy.²¹

Then in April 2011, we garnered the signatures of thirteen students representing nine different student organizations for a memo to several deans and the Faculty Appointments Committee, reiterating the importance of having a diverse faculty for teaching and mentoring.²² The memo ended the school year on a momentous and collaborative note, but the continued absence of Asian American hires remained. Our knowledge of the faculty selection process and its key players, in addition to a general consensus of support from diverse student groups, gave us some tools to move forward into the new academic year.

We were well aware that merely participating in the student Faculty Selection Committee had its limitations. Rather than engaging students in the nomination and selection of candidates for interviews, the committee only engaged students in interviews after an initial filtering of candidates. Furthermore, there was no transparency in how our feedback was being used and represented to the faculty. We could not do much more to maneuver through the available structures of participation in the faculty selection process, except to voice our concerns more conspicuously. Our conversations with members of the Faculty Appointments Committee had

²⁰ E-mail from Scott Altman, Vice Dean & Virginia S. and Fred H. Bice Professor of Law, USC Gould School of Law, to Jane Tanimura (Nov. 3, 2010) (on file with authors). Three candidates had research interests in international law and one in law and economics. *Id.*

²¹ See *Mitu Gulati*, DUKE UNIV. SCHOOL OF LAW, <http://www.law.duke.edu/fac/gulati> (last visited Feb. 13, 2012).

²² Memorandum from student leaders of APALSA, Black Law Students Ass'n, Critical Legal Studies Ass'n, Latino Law Students Ass'n, Middle Eastern South Asian Law Ass'n, Muslim Law Students Ass'n, OUTLaw, Public Interest Law Foundation & Student Bar Ass'n to Deans Robert Rasmussen & Scott Altman and Professors Rebecca Brown, Ariela Gross, Dan Klerman, Tom Lyon & Dan Simon (Apr. 25, 2011) (on file with authors). "Increasing the diversity of our faculty must be a paramount goal because diversity enriches all of us personally and intellectually. . . . [A] professor who comes from and writes with an eye towards diverse communities encourages the development of mentor relationships, fostering an environment where issues pertinent to those communities are discussed." *Id.*

revealed and would continue to reveal that they believed the absence of Asian American professors was due primarily to a small pool of Asian American candidates and, naturally, an even smaller pool of qualified individuals from which all elite law schools could choose.

That year, I believed that the administration had made a good faith effort to interview Asian American candidates, but the fact that no Asian Americans had been hired since Professor Chang left in 1999 still remained unsettling to me. No alumni and professors with whom we spoke recalled any Asian American professors preceding Professor Chang. A good faith effort one year to interview Asian American candidates left the severe underrepresentation of Asian Americans in prior decades unexplained. Moreover, no one on faculty or the administration mentioned that students before us had brought up the same concerns in personal meetings with faculty members and campaigns not unlike the ones launched by APALSA and FDI.²³ Still, without actual statistical data on how many Asian American candidates had received but declined offers since the founding of the law school, it would be remiss of us to say that any kind of foul play had occurred.

The law school's lack of bias, however, does not mean that Asian American candidates have not been systematically ruled out in more indirect ways. Without any affirmative steps from the administration to address the absence of Asian American faculty, the status quo may have become a self-reinforcing cycle in which the need to hire an Asian American professor was ignored or forgotten altogether. When members of APALSA in 2004 lobbied their position that minority hiring at the law school had reached a crisis point, I wonder why such an important issue had to be dug up from the trenches in 2010.

It is also possible that Asian American candidates have been extended offers in recent years but declined perhaps for reasons that being the only Asian American professor would decrease their chances of reaching tenure.²⁴ The supply side explanation of having a limited pool of qualified

²³ See *supra* text accompanying notes 5 & 6.

²⁴ The American Association of Law Schools identified five issues central to the problem of recruiting and retaining minority faculty:

(1) critical mass of minority professors on a faculty (versus tokenism); (2) the extra burden of excessive "academic housekeeping" demands on minority faculty; (3) the existence and/or perception of a "double standard" for minority faculty; (4) issues related to mentoring of pre-tenure, tenure-track minority law teachers; and, (5) the existence of a racially hostile environment on some law schools.

candidates is unpersuasive to the extent that we know the law school has not exhausted all reasonable avenues of recruiting Asian American candidates, namely through lateral hiring instead of entry-level hiring. The perpetual lack or complete absence of Asian American professors at USC Law surely contrasts with the presence of Asian American professors in similarly ranked law schools in Los Angeles and throughout the country. I read the late Duke Law Professor Jerome Culp's account of how his law school Dean "would defend the sincere desire of [their] colleagues in the legal academy to hire black faculty with anecdotal evidence of nondiscriminatory intentions and with statistical proof of a lack of a pool of qualified candidates,"²⁵ and I am disappointed to hear the same defense echoed today.

Even when viewing this reasoning in light of Professor Chang's observation that "borders are policed to determine which bodies populate the faculties or the student bodies, and to determine who gets to set the curriculum or define legitimate scholarship,"²⁶ I do understand the difficult task before law schools to grapple with new definitions of merit and qualifications. Our work together on this initiative has encouraged me to challenge the existence of these borders in a way that my frightful 1L self would have insisted on maintaining. By revisiting what we have done with FDI and APALSA these past two years, I ask myself how understanding others and acknowledging my own biases contribute to this greater—and amorphous—concept we call diversity. *Grutter* helps us explain the value of diversity of students in the law school setting,²⁷ and I also believe there is more value to diversity than what is relegated to our lives as students of the law and soon-to-be professional careers. When we called upon our peers to act with us, to value diversity like us, what do you perceive were their sentiments? Besides FDI, what other defining moments have you had with understanding how diversity factors into our personal and professional lives?

Fondly,
Helen

ASS'N OF AM. LAW SCH., THE RACIAL GAP IN THE PROMOTION TO TENURE OF LAW PROFESSORS 5 (2005), *available at* <http://www.aals.org/documents/racialgap.pdf>.

²⁵ Jerome McCristal Culp, Jr., Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse, 26 CONN. L. REV. 209, 247 (1993).

²⁶ Blackness in Western Culture, *supra* note 1, at 1199–200 (2006).

²⁷ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

IV. LETTER THREE: POLITICIZING LAW SCHOOL

Dear Jane and Helen:

Tackling how to translate the value of diversity into action was very much at the forefront of my mind during our first years at law school. To me, diversity encompasses diversity in its racially inclusive sense as well as diversity in thought and approach. What do I mean by this? By diversity in thought I am referring to explorations of how our identities intersect with the law, and by diversity in approach I am referring to different proactive and multi-faceted ways to advocate for our communities. The big picture question I faced was how to create a more politicized space at the law school in order to achieve these diversity goals.

Because lawyers have often been catalysts for watershed social and racial justice advancements, I had a (perhaps idyllic) notion that law school would be a place where individuals wanted to learn how to become advocates for causes they cared about. This was the kind of community I wanted to be a part of. I anticipated having rich discussions about race and rights, effective representation of disadvantaged communities, and strategies to effectively raise awareness both in the classroom and through school organizations.

Contrary to what I expected, in the classroom, issues concerning race, gender, and sexual orientation were often relegated to casebook footnotes. Hoping to find a community of like-minded Asian Americans who cared about these issues, I joined APALSA's mailing list in the first month of school. I noticed an interesting phenomenon—most of the events advertised were social or professional in nature: events centered on eating, drinking, and networking. Having an active social and professional organization for Asian Americans is no doubt very important (as are eating, drinking, and networking), but missing from the picture were events centered on political engagement.

I wanted to serve on APALSA by introducing a more political element. As Asian Americans, how can we ensure that our communities' interests are advanced? When it came time for board elections I decided that my vision fit none of the existing positions. I wanted to create a new position, one specifically focused on advancing Asian American issues—a political chair.

What unfolded is telling of the tentativeness with which the Asian American community at USC Law is willing to express itself politically. When I emailed the outgoing board with my suggestion for a new position, I received the following response: "We were a little concerned with the name 'Political Chair' simply because as APALSA we are not sup-

posed to be a 'political organization.' Therefore, the Board approved the position of Civic Awareness Chair, which most closely describes what you would like to do in the position."²⁸

It never occurred to me that APALSA was not supposed to be a political organization. As I see it, identity-based groups are inherently political because they are an expression of community solidarity. Why the aversion towards the political in a school for advocates?

Nonetheless, I accepted the outgoing board's suggested moniker and organized political events anyway. In my year of civic awareness raising, we included a blurb in the weekly APALSA newsletter that highlighted current affairs affecting Asian Americans, registered voters in time for the 2010 mid-term elections, launched a "stick up for Goodwin" campaign, and hosted two panels: one entitled "Civil Rights: Then and Now," and another entitled "Diversity on the Bench" (to discuss the role that diversity can and should play in judicial decision making).²⁹

On the diversity of thought front, a group of students from my first year Law, Language, and Values class came together after reading Margaret Montoya's article, *Mascaras, Trenzas, y Grednas: Unmasking the Self While Un/Braiding Latina Stories and Legal Discourse*.³⁰ For many of us in the group, reading this piece was a breath of fresh air—finally, an opportunity to discuss how we ourselves felt masked in law school. The class discussion that ensued did not allow for a full discussion of all that the article entailed. Wanting to create a space where we could have more robust discussions of articles like Montoya's, we formed what became the Critical Legal Studies Association ("CLSA").

The importance of faculty mentoring in the creation of CLSA cannot be understated. We were fortunate to have the support of faculty members

²⁸ E-mail from outgoing APALSA Board Member, USC Gould School of Law to Annette Wong (Apr. 16, 2010) (on file with author); see also Board, USC APALSA, <http://www.uscapalsa.com/board.html> (last visited Feb. 13, 2012) (listing past and current board positions).

²⁹ Ron Buckmire, President, Barbara Jordan/Bayard Rustin Coalition, Stewart Kwoh, Founding Dir., Asian Pacific American Legal Ctr., Cynthia Valenzuela, then Dir. of Litigation, Mexican American Legal Defense and Educ. Fund, Event at USC Gould School of Law: Civil Rights: Then and Now (Nov. 9, 2010); Judge Jay Gandhi, (first Indian-American) federal judge, U.S. Court Cent. Dist. of Cal.; Judge Holly Fujie, Cal. Superior Court Cnty. of L.A. and former President of the Cal. State Bar, Wendy Chang, Co-chair of the Judiciary Comm., Nat'l Asian Pacific American Bar Ass'n, Bryant Yang, Co-chair of the Judicial and Pub. Appointments Comm., Asian Pacific American Bar Ass'n of L.A. Cnty., Event at USC Gould School of Law: Diversity on the Bench (Mar. 7, 2011).

³⁰ Margaret E. Montoya, *Mascaras, Trenzas, y Grednas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1 (1994).

who hosted discussions and provided guidance. A number of the faculty had themselves formed critical theory reading groups when they were law students. Knowing this was inspiring and lessened the sense of alienation we felt at school. However, I was also very much aware of the fact that an Asian American faculty voice was missing. I am glad that the two of you were also beginning to question this absence and figuring out what we could do about it.

Yours,
Annette

V. LETTER FOUR: PROGRESS AND PUSHBACK

Dear Helen and Annette,

I echo your frustrations. Because this is an issue that I care so deeply about, it especially stings when the resistance that we get for being outspoken comes not from the administration, which is responsible for this predicament in the first place, but from our own peers, the very population that is most adversely affected by the absence of Asian American faculty. I think it is laughable that our presentation at last year's Town Hall meeting was even called "radical." There is nothing "radical" about a group of students politely asking, in a public forum that has the expressed purpose of allowing students to voice their concerns, about the status of hiring an Asian American law professor. Still, in the end, the pushback that we received was productive insofar as it motivated us to be more proactive and aggressive in getting our message across.

Unsure of how to more effectively promote our agenda, in August 2011, at the beginning of the first semester of our third year we reached out to professors, whom we thought would become allies, for guidance. They carefully listened to our concerns and were both sympathetic and supportive. From these conversations, we came up with the idea of promoting our cause on two fronts—through a visual campaign and speaker series. The purpose of the visual campaign would be to draw awareness about the absence of a full-time teaching Asian American law professor through posters that highlight this fact. The speaker series, which we entitled *Asian Americans in the Law*,³¹ would take the message we sought to

³¹ It should be noted that this event was held in conjunction with *Spirit of the Law*, a regular speaker series put on by USC's Office of Religious Life and the Levan Institute for Humanities and Ethics. As part of *Spirit of the Law*, legal professionals are invited to discuss "how they find meaning, purpose, and identity in the law; how they use their law degrees in creative and innovative ways; and how they connect the personal and the professional in their lives." *Spirit of the Law*, USC DANA & DAVID DORNSLIFE COLLEGE OF LETTERS, ARTS & SCIENCES,

communicate through our visual campaign one step further by showcasing prominent Asian American jurists, law professors, and lawyers who could speak to how their identities have influenced their careers, as well as the importance of diversity in the legal profession.

We unveiled our first set of posters in November 2011. The posters were strategically placed throughout the law school in locations that receive the most foot traffic. Further, the posters presented the predicament in a factual way.³² The top of the poster stated, "USC Law is the most diverse top-20 law school."³³ The middle of the poster featured two pie charts.³⁴ One pie chart highlighted the fact that 16% of the Class of 2013 is Asian American and that 84% of LLM students are from Asian countries.³⁵ The second pie chart showed that there is no full-time Asian American professor.³⁶ The bottom of the poster read, "A diverse faculty is important too. Join the movement."³⁷ In order to capitalize on the attention we thought our posters would bring, we kicked off our speaker series around the same time we unveiled our posters. For our inaugural event, we invited Professor Stephen Lee of the University of California, Irvine School of Law, who writes at the intersection of administrative law and immigration law, to speak about his own experience as an Asian American student activist and the connection between Asian American studies and the areas of the law in which he teaches.

<http://dornsife.usc.edu/spirit-of-the-law/> (last visited Feb. 14, 2012). Without the support of Dr. Varun Soni, USC's Dean of Religious Life, who organizes the Spirit of the Law lectures, the Stephen Lee lecture would not have been possible. We especially thank him for his encouragement.

³² Poster, Faculty Diversity Initiative, USC Law Is the Most Diverse Top-20 Law School (Nov. 2011) (on file with author).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*; see also sources cited *supra* note 16.

³⁶ Poster, *supra* note 32.

³⁷ *Id.*



Poster that hung at various locations throughout the law school

Professor Lee's lecture was a great success. In order to encourage student attendance at our event, Dean Rasmussen canceled his annual fall Town Hall meeting that was scheduled to occur at the same time as Professor Lee's lecture. The room, which seats seventy people, was filled to capacity, with Dean Rasmussen, Dean Altman, and other faculty members and students supportive of our initiative, in attendance. The visual campaign was likewise successful—it got people to become aware of the problem and sparked productive discussion about why it is important to have Asian American representation in our faculty.

Although the posters fulfilled its purpose in the way we intended it to, the journey to get APALSA to co-sponsor the posters and the aftermath that resulted from the visual campaign were met with tremendous resistance. Surprisingly, most of the dissent that we encountered came from members of APALSA and SBA.

On the one hand, many members of APALSA are strong supporters and even members of FDI and served as key liaisons between the two groups when we were presenting FDI's mission and the purpose of the

visual campaign to APALSA. While APALSA did end up endorsing the posters, we by no means received overwhelming support—our endorsement came down to a very close vote. When the posters were finally unveiled, some members felt “blindsided” by the posters even though they had been made aware of the posters’ appearance before they had implemented a vote. Certain members of both SBA and APALSA called a meeting with all three of us, letting us know that although they supported our end goal of faculty diversity, they did not approve of the way we went about pursuing our agenda. A comment was made that our posters made our administration look racist; in other words, the posters communicated the message that we do not have any Asian American faculty because our administration discriminates against Asian Americans. It was also problematic that we did not involve SBA in the planning of our visual campaign given that SBA already runs a Student Faculty Selection Committee which shares overlapping interests with FDI. The message that I got from that meeting was that our approach was too aggressive and that we were making our school look bad.

That meeting caught me off guard. I felt attacked. I did not understand why I needed SBA’s permission to vocalize my concerns. Our posters presented facts—how one could interpret our posters of accusing the administration of racism, I still do not know. What do you think this reaction says about USC law students and about Asian American law students specifically? To follow up on issues Annette raised in her last letter, why, in a school that trains students to be advocates, are students so adverse to political activism? What are students so afraid of?

Cheers,

Jane

VI. LETTER FIVE: SUSPECT RACE

Dear Jane and Helen,

You raise an interesting question about resistance to student activism at the law school. Part of me believes that the resistance might be, in part, attributable to how we are taught law. We read appellate opinions, not trial briefs. We are asked to consider the majority’s opinion, and then debate the merits of the dissent’s arguments. We are asked to arrive at balanced solutions, propositions that account for both sides of view. We are taught to separate dicta from holdings, and parse away facts extraneous to the legal issues at bar. We are told that successful exam answers “get to may-

be.”³⁸ Matters of policy make for interesting discussion, but are ultimately secondary to black letter law. Legal reasoning does not allow for passion. To borrow from Mari Matsuda: “[w]hat is justice, and what does law have to do with it?”³⁹

Racially conscious activism in law school settings has its unique challenges. In our first year Constitutional Law class, we read cases that espouse the merits of colorblind jurisprudence.⁴⁰ Race is a suspect category, whether used in a discriminatory manner or in an affirmative, remedial way.⁴¹ This adverse doctrinal backdrop makes having conversations about race difficult, as our awareness raising efforts are met with by our peers with, well (brace yourselves), the strictest of scrutiny.

Doctrinal considerations aside, talking about race makes people uncomfortable. Discussions of race incite individuals to be preemptively defensive (“Are you saying I’m racist?”) or accusatory (“What you’re saying is racist!”). In other words, it is very difficult to have discussions of race without the specter of racism being summoned. Once it is, productive conversation ceases. It was never our intention to do anything but raise awareness in a racially affirming manner: to say, “Hey, school, race matters to us, and it matters to us to have faculty members who come from our communities.” Racism has nothing to do with any of this. Unfortunately, as Jane described, we found those arguments imputed to us by other students.

The pushback from within the Asian American community might be explained by the awkward position Asian Americans find themselves in when it comes to the issue of race. Part of this is a manifestation of the model minority myth. To take a step back, let us situate Asian Americans within the model minority framework before elaborating on the pushback from within the community.

The model minority myth does Asian Americans a real disservice both in terms of how others perceive us and in terms of how we perceive

³⁸ See generally RICHARD MICHAEL FISCHL & JEREMY PAUL, *GETTING TO MAYBE: HOW TO EXCEL ON LAW SCHOOL EXAMS* (1999).

³⁹ See MARI MATSUDA, *WHERE IS YOUR BODY?: AND OTHER ESSAYS ON RACE, GENDER AND THE LAW* 8

(1996) (discussing how ideas from feminist legal theorists and legal scholars of color “have important points of intersection that assist in the fundamental inquiries of jurisprudence”).

⁴⁰ See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

⁴¹ See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) (O’Connor, J., concurring) (applying strict scrutiny to a federal program favoring minority owned businesses and holding that “all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny”).

ourselves. To non-Asian Americans who ascribe to the myth, seeing Asian Americans make political demands is cognitively dissonant: the model minority myth serves to perpetuate the idea that Asian Americans having nothing to complain about. This should come as no surprise for those who know the history of the phrase “model minority.” Coined in 1966 during the Civil Rights Movement, the term was deployed to silence protesting blacks by way of comparison.⁴² From the outset, the idea of the model minority has served to quell dissent. Furthermore, the myth has the effect of making Asian American issues invisible. Because the stereotype is that Asian Americans are models of success, when dissatisfaction is expressed, the complaints are seen as surprising on the mild end of the spectrum, or uncritically escalated to the level of “radical” or “militant” on the other end. These were, as mentioned, two adjectives used by students to describe our campaign.⁴³

The model minority myth is especially salient in the educational realm. As Professor Neil Gotanda writes, “Today, the term [model minority] continues to inject Asian Americans into the ongoing debate over race conscious affirmative action practices. The term colors educators’ and other students’ expectations of Asian Americans.”⁴⁴

The exchange Jane described in her previous letter highlights how these expectations shaped the (unexpected) student reactions we received, even from within the Asian American community. One student said that what we were advocating for was “Asian-affirmative-action”—as if affirmative action were a bad thing. This knee-jerk reaction to race conscious advocacy is emblematic of the scrutiny race faces both from outside the community and within.

It is true that Asian Americans have a tenuous relationship with affirmative action. Like it or not, we are strangely situated in this debate. Critics of affirmative action point to the way in which such programs “lower the bar” in terms of merit, and the ways in which Asian Americans are harmed because we do not qualify as underrepresented minorities.

⁴² Brandon Yoo, *Unraveling the Model Minority Myth of Asian American Students*, EDUCATION.COM, <http://www.education.com/reference/article/unraveling-minority-myth-asian-students/> (last visited Apr. 15, 2012).

⁴³ See Pat K. Chew, *Asian Americans: The “Reticent” Minority and their Paradoxes*, 36 WM. & MARY L. REV. 1, 56–57 (1994) (Explaining that the perceived success of Asian Americans “allows everyone, including Asian Americans, to obscure, minimize, or even disregard the many real economic, legal, social, psychological, and medical problems facing many Asian Americans.”).

⁴⁴ Neil Gotanda, *New Directions in Asian American Jurisprudence*, 17 ASIAN AM. L. J. 5, 11 (2010) [hereinafter *New Directions*].

However, the first argument assumes that *merit* is neutral and objective to begin with, and the second argument is simplistic because it erases the differences between Asian Americans, and assumes a common experience across all Asian ethnicities.⁴⁵ For example, a child of Hmong refugees certainly cannot be said to have had the same experience as a third generation Chinese American who attended fancy prep schools. Proponents point to the utility of affirmative action for underrepresented Asian minorities, in addition to the historic fact that Asian Americans were and continue to be, beneficiaries of affirmative action programs not only in schools but also in various occupational and professional settings.⁴⁶

I think though, what this particular student took discomfort with was the idea that affirmative action necessarily meant that we were advocating that the administration pick a candidate without due consideration for that individual's qualifications. This is an iteration of the argument that affirmative action policies "lower the bar." This line of reasoning strikes me as putting little faith in the potential for candidates to be both excellent and Asian American—as if merit and race conscious hiring were incompatible. This, more than our apparent charge of racism towards the administration, was an even more salient vote of no confidence for our administration.

Our school can prioritize finding a faculty member who is both excellent and Asian. In the same way that USC Law has managed to recruit talented African American, Latina/o, female, and gay professors, it can attract talented Asian American professors. While this student's response was cognizable as an embodiment of a common critique of affirmative action, it was nonetheless disheartening to hear. This is why I think Professor Gotanda is quite deliberate to say that the model minority myth "inject[s]" Asian Americans into the debate about affirmative action practices.⁴⁷ We are polarized by it, and seen by others as polarizing when we advocate for race conscious improvements.

If I may leave you both with a quote, I am reminded of Mitsuye

⁴⁵ See Pat K. Chew, *supra* note 43, at 27-31 (Discussing how the category of Asian American is not monolithic); Eric Liu, *What Asian Americans Reveal About Affirmative Action*, TIME.COM (March 6, 2012), <http://ideas.time.com/2012/03/06/what-asian-americans-reveal-about-affirmative-action/> ("The ethnic and socioeconomic diversity within Asian America is usually overlooked in the media. Great numbers of Asian Americans do not fit the model minority or "tiger family" stereotypes, living instead in multigenerational poverty far from the mainstream.").

⁴⁶ See Norimitsu Onishi, *Affirmative Action: Choosing Sides*, N.Y. TIMES (March 31, 1996), <http://www.nytimes.com/1996/03/31/education/affirmative-action-choosing-sides.html?pagewanted=all&src=pm>.

⁴⁷ New Directions, *supra* note 44, at 11.

Yamada's words: "We need to raise our voices a little more, even as they say to us 'This is so uncharacteristic of you.' To finally recognize our own invisibility is to finally be on the path toward visibility. Invisibility is not a natural state for anyone."⁴⁸

Maintaining a conversation like the one we have begun here is a starting point. If it takes "hijacking" or being called "radical" or "militant" to combat both scrutiny and invisibility, I am in.

Yours,

Annette

VII. LETTER SIX: THE FUTURE

Dear Annette and Jane,

The conversations that we have had with faculty and students about the hiring of Asian American professors have illuminated the complexity and necessity of talking about race in law school. Students have sincerely shared their doubts about our case for an Asian American professor. They have questioned the value of considering race in faculty hiring and have asked whether discourses about race generally will become a moot topic sooner rather than later. For those of us who have experienced race personally, race is not separate from how people treat us and how we view ourselves. Raised in the San Gabriel Valley by parents who were refugees of the Vietnam War, I think often about what it means to be Asian in America. I think about my assimilation to a profession marked by wealth and old tradition, and whether I am ever too far removed from my roots to appreciate the privilege that was never afforded to my parents and many in my community.

As you mentioned in your first letter, Jane, law school definitely has had its alienating days. The merits of our accomplishments and potential are judged on a bell curve, and based on where we have landed, we are judged to be worthy of inclusion or exclusion. For me, personally, academic pressure has never been as trying as the constant questioning of whether I was in law school for the right reasons. Going to law school was a political choice for me, and I am appreciative of the political space that FDI has created for us to not have to disingenuously mask ourselves.

Just as suffocating as this pressure to reject our identities is the embracing of so-called positive stereotypes of Asian Americans by Asian

⁴⁸ Mitsuye Yamada, *Invisibility is an Unnatural Disaster: Reflections of an Asian American Woman*, in *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* 40, 40 (1981).

Americans. As you said in your previous letter, Annette, these subscriptions have made the issues of our community invisible. The vehicle that FDI gave us to collaborate with faculty and students gives me much hope that Asian American issues will not remain invisible at USC Law. Until USC obtains a critical mass of Asian American professors, I hope that FDI will continue to exist in ensuring that Asian American candidates are interviewed and hired. I also hope that APALSA will reengage in this effort.

APALSA was created in 1971⁴⁹ at a time when identity groups in law schools were being established throughout the country. These student organizations were a product of the widespread sense of racial and social justice shared by America's youth at the time of the Civil Rights Movement and Vietnam War. However much I romanticize this time to be one of vibrant student activism, the story of Asian American student activism at USC Law, in particular, may have shared a different history from its counterparts. Speaking with Judge Vincent Okamoto at the writing of this letter, he said that he was just one of two Asian Americans in his graduating class at USC Law in 1973.⁵⁰ The sheer lack of Asian American students prevented any collective action from taking place.⁵¹ Now in 2012, Asian American students at USC Law may have almost forgotten the struggles inherited with APALSA, the organization we call our own. To the continuing and future Asian American students of USC Law, I want to ask the following: Is staying silent indicative of progress? Or do we simply have nothing to say anymore?

In discovering that we had replicated many of the efforts of Asian American students before us, we learned that creating institutional memory is critical to speedy progress. Rather than working separately, FDI and APALSA can work together and use the pushback expressed by APALSA members as an opportunity for productive dialogue. After all, in the past, APALSA did itself have a Minority Faculty Hiring Committee.⁵² APALSA still exists today with the same mission as its initial founding: to "promote[] equality and social progress for the Asian Pacific American

⁴⁹ USC Law Timeline, USC GOULD SCHOOL OF LAW, <http://lawweb.usc.edu/who/history/timeline.cfm> (last visited Feb. 13, 2012).

⁵⁰ Interview by Helen Tran with Judge Vincent H. Okamoto, Superior Court of Cal. Cnty. of L.A., in Inglewood, Cal. (Feb. 9, 2012).

⁵¹ *Id.*

⁵² See James Jhun, *The Natural, the Unnatural, and the River That Dried Up Between Them: Asking Why an Illusion of Meritocracy Continues to Promote Racial Elitism and Institutional Nepotism at USC Law School*, at n.1 (2004) (unpublished student note, USC Gould School of Law) (on file with authors).

legal community here at USC Law School.”⁵³ The politicization of APALSA does not stray from its mission.

As an initiative, FDI is meant to be temporary; the problem of not having tenure-track Asian American professors should be resolved. I view FDI as a catalyst for new (or renewed) beginnings of student activism at our law school. We can be both students of the law and advocates for our communities. FDI has challenged me to evaluate the integrity of our institution and its oft stated commitment to diversity. Today, with the recent hiring of Alex Lee, there is reason to be confident that our law school will one day see a critical mass of Asian American professors.⁵⁴ I look forward to the day when diverse faculty and diverse students are seamlessly integrated.

Fondly,
Helen

⁵³ USC APALSA CONST. art. I, § B, *available at* <http://www.uscapalsa.com/constitution.html>.

⁵⁴ I share Jane’s perspective about what constitutes diversity. *See supra* note 7.