

GOODWIN LIU: CORRECTING THE RECORD

LIU'S COMMENTS ABOUT CHIEF JUSTICE ROBERTS AND JUSTICE ALITO WERE NOT UNCOMMON

BACKGROUND: Professor Liu testified during Justice Alito's 2006 confirmation hearing. He authored an article critical of then-Judge Alito's death-penalty jurisprudence. In 2005, Professor Liu wrote an article about then-Judge Roberts.

Professor Liu was not alone in his criticism, and he accurately predicted that Chief Justice Roberts and Justice Alito would swing the court away from the mainstream.

FACT: Professor Liu was not alone in his criticism of Chief Justice Roberts and Justice Alito. **Dozens of Senators, legal thinkers, and advocates representing millions of Americans agreed with him.**

FACT: Professor Liu's predictions were accurate. As evidenced by decisions from *Citizens United* to *Parents Involved*, Chief Justice Roberts and Justice Alito have brought the Court out of touch with mainstream America.

FACT: Even while he disagreed with the nominees, Professor Liu showed **respect for the confirmation process**. He never suggested that the Senate should fail to timely consider the President's nominations. And **he has never argued that the rulings of the Roberts Court are not binding precedent.**

Sitting judges regularly engage in dissent, which is a valuable part of our civil discourse.

FACT: Sitting jurists routinely criticize each other in their published opinions.

- Justice Scalia accused Justice Roberts of "**faux judicial restraint**" and "**judicial obfuscation**" in a 2007 campaign-finance decision. (*FEC v. Wisconsin Right to Life* at 499)
- Judge J. Harvie Wilkinson criticized a 2008 Supreme Court decision as a "**failure**" that "encourages Americans to . . . bypass the ballot and seek to press their political agenda in the courts." (*Virginia Law Review*, April 2009 (criticizing *District of Columbia v. Heller*))
- In *Webster v. Reproductive Health Services*, Justice Scalia accused Justice O'Connor of holding "**irrational**" views that "**cannot be taken seriously.**" (*Webster v. Reproductive Health Services* at 532, 536)
- Judge Posner called the Supreme Court's decision in *District of Columbia v. Heller* "**fig-leaving**," and he argued that it was "**questionable in both method and result**, and . . . evidence that the Supreme Court . . . exercises a **freewheeling discretion strongly flavored with ideology.**" (*The New Republic*, August 27, 2008)
- Justice Scalia overly mocked Justice Stevens in *Baze v. Rees*, a 2008 death penalty case, saying of Justice Stevens's concurrence that, "**pure expression cannot be found of the principle of rule by judicial fiat.**" (*Baze v. Rees* at 1555)

FACT: Chief Justice Roberts has said that he thinks "**people should feel free to criticize what we do.**" (University of Alabama School of Law, March 9, 2010)

FACT: Dissent is a natural part of our civil discourse. To restrict dissenters from serving on the federal bench would be to deprive the judiciary of many of our most brilliant jurists.