

University of Pennsylvania v. Prof. Amy L. Wax

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2020 Writing Competition: The Personal Statement

- To that end, please write an original essay describing how your **background** and experiences have equipped you to make a unique contribution to a legal journal.
- Some examples of potentially relevant topic areas include . . . **personal experiences** that have contributed to your growth or world view.
- While you cannot identify yourself by name, you can of course include details about your life and experience that you believe make you a **diverse individual**.

2020 Writing Competition: The Personal Statement

- The success of a legal journal depends not only on the editing and analytical skills of editors but also on the . . . **backgrounds** . . . that make its editors who they are. We firmly believe that in an endeavor to produce a collection of scholarship and approaches that assesses the law in varied and diverse manners, a journal should seek editors who will bring . . . **diverse perspectives** to bear on the task of engaging with that scholarship.

Michael W. McConnell

Stanford University
Former Federal Judge



[I]t is true that professors should not reveal personal information about individual students, especially of an unflattering nature. But this cannot be extended to broad statements about demographic groups, when the academic performance of those groups is relevant to public policies like admission standards.

Michael W. McConnell

Stanford University
Former Federal Judge



It is not possible to discuss certain topics, like affirmative action with respect to university admissions, without making some statements about empirical reality – where even the facts are in dispute and can be interpreted in different ways. Good-faith misstatements of fact are not grounds for discharge, let alone factual assertions that may well be true. Legitimate points of view on contentious subjects, however unpopular among the majority of the university community, must not be suppressed on the pretext that individual students are personally involved.

Michael W. McConnell

Stanford University

Former Federal Judge



This principle cannot survive if the university determines that discussing group performance is not allowed because someone could, if he wanted to, research the professor's class and determine which members of that group were in the professor's class or if the public learns that the student attended the law school in question. The fact that a student is in the group being discussed does not violate that student's right to confidentiality. Moreover, defining the school's rule on student confidentiality, or the federal laws on protecting student confidentiality, would gut the professor's right to discuss the reality of grades within broad demographic groups.

Lei Ke v. Drexel University (2014)

Federal Court
Eastern District of Pennsylvania



- The Family Educational Rights and Privacy Act (FERPA) forbids disclosures that reveal a student’s identity with “reasonable certainty.” 34 C.F.R. § 99.3
- FERPA does not prohibit disclosure of academic performance data “in statistical, summary form.” *Lei Ke* citing *Naglak v. Penn. State* (1990)
- Even if that data includes the students’ “ethnic background.” *Lei Ke*

Keith E. Whittington

Princeton University



- Indeed, it is critical that [extramural] such speech is robustly protected by universities.
- Social media has created enormous new pressures on universities to punish faculty for saying controversial things in public. Professors across the country are now routinely targeted by outside activists, politicians, alumni, students, and even their fellow professors for controversial personal opinions that have been expressed in public. If we narrow the scope of protection for extramural speech, the consequences for faculty in our current polarized political climate will be dire.
- Extramural speech should enjoy near absolute protection from reprisal by university employers.

Peter Wood

National Association of Scholars



- Academic freedom does not mean that a faculty member can or should be shielded from the strongly worded objections of the public to statements made to that public.

- But it does mean that the university as an institution will defend the faculty member's right to make those statements. And generally it means that defense will be stout and ungrudging. *Academic freedom, rightly understood, invites a certain degree of intellectual, emotional, and rhetorical turmoil, overseen by administrators who look on with calm disregard of everything except the need to maintain civil order and respect for the free exchange of ideas.*

Michael W. McConnell

Stanford University
Former Federal Judge



- [T]here is no exception for statements that make students or colleagues feel uncomfortable or even “unwelcome.”
- The purpose of education is not to reassure students of their worthiness or identity but to challenge them with information, ideas, and perspectives that may be unfamiliar or disquieting. In the discipline of law more than any other, important topics of research, teaching, litigation, and contention often touch on sensitive aspects of identity – including religious freedom, race and affirmative action, immigration law, criminal justice, disability law, sexuality, abortion rights, divorce and child-rearing, sexual assault, and many others.

Michael W. McConnell

Stanford University

Former Federal Judge



Legitimate discussion of any of these issues may be uncomfortable for people with particular experiences and backgrounds. That is no reason for universities to police or limit the candid and robust exchange of opinions – even if, as I believe, professors have a moral and professional responsibility to take care that discussions do not veer into personal insult.

Dr. Russell Warne



For over 100 years, there have been differences in average IQ scores among racial groups. In the United States, Asian examinees have a mean that is approximately 103-105. The mean White American IQ is about 100. The mean Hispanic American IQ is about 90-95, and the average Black American IQ is 85-90. *This is one of the most consistent findings in all of the social sciences.*

Gail Heriot

University of San Diego

U.S. Commission on Civil Rights



- [Respondent's] statements [about grade distribution by race] are consistent with the evidence.
- At elite law schools (like the University of Pennsylvania), 51.6 percent of African American students had first-year GPAs in the bottom 10 percent of their class (as opposed to only 5.6% of white students).
- Overall, with disappointingly few exceptions, African American students were grouped toward the bottom of their law school class.
- I am not aware of anyone who disputes those figures.

Dr. Jason Richwine



- The reality of cultural persistence is especially striking when analyzing the descendants of European immigrants in the United States, as most of the . . . studies do.
- Despite generations of opportunity to dissipate, cultural differences . . . are still evident in the data. If such apparently similar groups retain key aspects of their ancestors' cultures, then it is practically certain that today's immigrants (who are mostly non-European) will also change the culture of the U.S. over the long term.

Dr. Jason Richwine



Given cultural persistence among past immigrant groups, it is perfectly reasonable for anyone, including Professor Wax, to be concerned about the impact of today's immigration – especially immigration from countries that do not embrace Western values. One danger that Garrett Jones sees is that mass immigration could result in the importation of cultures that are not conducive to prosperity.

Peter Sprigg

Director of Research &
Advocacy, Family Watch
International



[T]here is no question that the issue generally of whether children with gay parents suffer relative to children with straight parents, and more specifically whether children raised by their own married biological mother and father have better outcomes than those raised by same-sex couples, was a lively subject of contention in the context of the same-sex marriage debates, and remains a subject of debate even after the Supreme Court's decision mandating a nationwide redefinition of marriage in *Obergefell v. Hodges* (2015).

Peter Sprigg

Director of Research & Advocacy, Family Watch International



- There is an abundance of evidence that, as the Institute for American Values has put it, “The intact, biological, married family remains the gold standard for family life in the United States, insofar as children are most likely to thrive—economically, socially, and psychologically—in this family form” (Institute for American Values, 2011).
- [F]ederal survey data [shows] that “children living with two biological parents” (which by definition includes a mother and father, not two people of the same sex) are fifteen times less likely “to have had four or more adverse experiences” than children in any other living situation (Bramlett & Radcliff, 2014).

Peter Sprigg

Director of Research &
Advocacy, Family
Watch International



[T]he data show rather clearly that children raised by gay or lesbian parents on average are at a significant disadvantage when compared to children raised by the intact family of their married, biological mother and father (Regnerus, 2012).

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SCORE COUNTRY/TERRITORY

90	Denmark
87	Finland
87	New Zealand
84	Norway
83	Singapore
83	Sweden
82	Switzerland
80	Netherlands
79	Germany
77	Ireland
77	Luxembourg
76	Hong Kong
75	Australia
74	Canada
74	Estonia
74	Iceland
74	Uruguay
73	Belgium
73	Japan
73	United Kingdom
72	France
71	Austria
70	Seychelles

69	United States of America
68	Bhutan
68	Taiwan
67	Chile
67	United Arab Emirates
65	Barbados
64	Bahamas
63	Israel
63	Korea, South
62	Lithuania
62	Portugal
60	Botswana
60	Cabo Verde
60	Saint Vincent and the Grenadines
60	Spain
59	Latvia
58	Qatar
56	Czechia
56	Georgia
56	Italy
56	Slovenia
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54	Costa Rica
53	Fiji
53	Slovakia
52	Cyprus
52	Greece
52	Grenada
51	Malta
51	Rwanda
51	Saudi Arabia
50	Croatia
50	Mauritius
49	Namibia
48	Vanuatu
47	Jordan
47	Malaysia
46	Armenia
46	Romania
45	China
45	Cuba
45	Montenegro
45	Sao Tome and Principe

44	Bahrain
44	Jamaica
44	Oman
43	Benin
43	Bulgaria
43	Ghana
43	Senegal
43	South Africa
42	Burkina Faso
42	Hungary
42	Kuwait
42	Solomon Islands
42	Timor-Leste
42	Trinidad and Tobago
42	Vietnam
41	Kosovo
40	Guyana
40	India
40	Maldives
40	North Macedonia
40	Suriname
40	Tunisia
39	Belarus



39	Colombia
39	Moldova
38	Argentina
38	Brazil
38	Ethiopia
38	Morocco
38	Tanzania
37	Cote d'Ivoire
37	Lesotho
36	Albania
36	Ecuador
36	Kazakhstan
36	Panama
36	Peru
36	Serbia
36	Sri Lanka
36	Thailand
36	Turkey
34	Bosnia and Herzegovina
34	Gambia
34	Indonesia
34	Malawi
34	Nepal

34	Sierra Leone
33	Algeria
33	Angola
33	El Salvador
33	Mongolia
33	Philippines
33	Ukraine
33	Zambia
32	Dominican Republic
32	Kenya
32	Niger
31	Bolivia
31	Laos
31	Mexico
31	Uzbekistan
30	Djibouti
30	Egypt
30	Eswatini
30	Mauritania
30	Papua New Guinea
30	Togo
29	Gabon

28	Mali
28	Paraguay
28	Russia
27	Kyrgyzstan
27	Pakistan
26	Cameroon
26	Liberia
26	Madagascar
26	Mozambique
26	Uganda
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25	Guinea
25	Iran
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24	Central African Republic
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21	Guinea Bissau
20	Democratic Republic of the Congo
19	Chad
19	Comoros
19	Nicaragua
19	Turkmenistan
17	Burundi
17	Equatorial Guinea
17	Haiti
17	Korea, North
17	Libya
16	Yemen
14	Venezuela
13	South Sudan
13	Syria
12	Somalia

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