



# Documenting Implementation Realities:

## Undocumented Immigrant Students in California and North Carolina

### Introduction

Shortly before September 2001, comprehensive national immigration reform seemed to be making its way to the top of the US policy agenda (Flores and Chapa 2009; Waslin 2009). While sentiments around immigration in a post-September 11 context developed in ways particular to a region's local history, state governments were responding to the educational needs of undocumented immigrant students attending their local school systems as long time "residents" even if not actual US citizens or legal residents according to US law. The educational issue of this first decade of the millennium relating to immigrant students is the provision of eligibility via state policies—both through admissions and tuition benefits—to attend US postsecondary public institutions. In the midst of a nation's response to an unprecedented national security tragedy, one-fifth of U.S. states passed legislative mandates that allow undocumented students along with other qualifying U.S. residents to receive in-state resident tuition rates to attend public colleges and universities. Known as in-state resident tuition policies (ISRTs), or state dream acts, nearly half of all states have considered similar legislation (National Conference of State Legislators 2006). It is almost certain that other states will continue to debate these issues in their respective state legislative and local contexts.

### From the Legislative Chamber to the Community College

Although a growing line of research has emerged on the legal history and policy effects of state legislation regarding the college access opportunities of undocumented students, less is written on the implementation stories of these laws and policies in the institutions most likely to enroll undocumented students—the community college (Feder 2006; Flores and Oseguera 2009; Gonzales 2007; 2009; Kobach 2007; Olivas 1995; 2004; 2009). This article examines the communication of legal directives to community college service providers with an emphasis on California, a state with a clear state mandate on the admission and tuition benefit requirements for undocumented students, and North Carolina, a state without a state legislative mandate but with legal directives from the state attorney

general although more recently with an updated community college system board decision (Moltz 2009). We argue that the most important location of implementation is the community college and the most important implementers are the college personnel that operate within these sectors. A particular question of interest is how continued change in policy directives is managed and disseminated to community college personnel so that all students' needs are addressed. As important is an examination of policy sustainability when, for example, in-state resident tuition laws are in place, as well as learning from other states' responses since 40 of the 50 states currently do not have a state policy and will likely have to assume a position on this matter in the near future given the continued demographic changes in the US.

Varied postsecondary institutional response to policy interpretation amidst complex legal debates of in-state tuition and admission permissibility for undocumented students highlights the complexity of the issue that has led to differences not only in the availability of the tuition provision but also admission to a particular system.

In-state resident tuition legislation that benefits undocumented students is perhaps the most relevant immigrant college access-related policy of the last three decades. By 2009, 11 states had adopted an in-state resident tuition law following the monumental 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act. These laws define the most recent context in which immigrants, both legal and undocumented, can receive certain educational and social benefits (Kobach 2007; Olivas 2004; 2008). The states include Texas, California, New York, Illinois, Washington, Oklahoma, New Mexico, Kansas, Utah, Nebraska, and now Wisconsin. The movement toward passing such state-related legislation, however, has also been accompanied by policy revisions to the original legislation as in Oklahoma, governor vetoes to proposed legislation as in Connecticut, Maryland and Massachusetts, legislative bans to any higher education benefits to undocumented immigrants in South Carolina and Colorado, and a voter-related referenda ban in Arizona. In the interim, various versions of federal legislation that would resolve state decisions to offer in-state resident tuition legislation in addition to securing a path toward citizenship for qualifying students in the form of the Development, Relief, and Education for Alien Minors Act (DREAM Act), have been proposed with no lasting legislative success. In essence, state movements continue with increasing responsibility for institutions to interpret what is permissible to implement until a federal decision provides additional clarity.

For this analysis we move away from the discussion of legalities regarding the passage of in-state resident tuition laws and instead highlight the implementation response on college campuses to demonstrate that regardless of local interpretation or state policy, the confusion generated by the constant re-articulation or challenges to existing policies and legal directives leads to challenges in actually serving students enrolled on community college campuses. We discuss the implementation scheme of a state (California) where an ISRT benefit/opportunity exists and a state where the implementation scheme is less studied (North Carolina) focusing specifically on the practical application of the availability of the tuition benefit or admission benefit as well as the perception of those charged to apply the policy. California represents a state context whose response to undocumented students and educational benefits is influenced by its long history with immigration and Latino residents, whereas North Carolina, having historically dealt primarily with black-white

race relations, only recently began having to deal with brown (i.e., Latino) residents in its local educational and labor markets (Marrow 2008). In this discussion we also consider why community colleges are an essential player in this enrollment discussion.

### The Community College: Possibilities and Consequences

Varied postsecondary institutional response to policy interpretation amidst complex legal debates of in-state tuition and admission permissibility for undocumented students highlights the complexity of the issue that has led to differences not only in the availability of the tuition provision but also admission to a particular system. An undeniable demographic and institutional reality at the center of these varied local responses to postsecondary educational services is the growing significance of immigrants, the Latino population and the community college. Community colleges represent the epicenter of the educational advancement of this population and one of the most crucial links to the local labor markets in which these populations will enter either formally or informally (Gonzales 2007; Texas Comptroller 2006).

Many students attend community college because they are less expensive than four-year institutions, are predominately open access institutions, offer a route for initiating college-level studies for first-generation students, and allow for scheduling flexibility for students that are working full-time (Rendón and Garza 1996). Community colleges serve the needs of diverse constituents and are viewed as gateways for those who otherwise would not have access to higher education. Community colleges are regarded as staples in many communities as community colleges provide multiple educational and workforce services such as vocational education, terminal associate of arts/science degrees, basic skills training, workforce development, language training, transfer opportunities to four-year institutions, and lifelong learning opportunities. Communities rely on the services that community colleges offer to maintain the economic well being in the areas they are located (Adelman 2005; NCCCS 2009). These multiple services and open access spaces make them an attractive option for a variety of constituents, including immigrant students, a number of whom are undocumented.

### Two "Representative" States on the Issue

Two states, California and North Carolina, have adjusted to the changing character of the community college student population over time albeit with somewhat different strategies. California's higher education policy toward undocumented immigrant students is

seemingly the more supportive, as exemplified by passage of its in-state resident tuition law, known as AB540. In contrast, North Carolina is in the midst of demographic change, primarily due to a growing population of Latino-origin migrants, in a context that has no ISRT legislation and little policy experience with educational laws that relate to Latino immigrants. The absence of consistent state policy directives in North Carolina appears to have left the decision of who deserves a US college education to the state legal officers and community college officials rather than to legislative authorities, as occurred in California (Flores and Oseguera 2009). There is little empirical work that examines how these policies are subsequently communicated to personnel within the community college system. This work highlights the challenges that arise in adhering to policy that is in continued change and flux. Three main sources of data are used to address community college systems' decisions related to educational access for (undocumented) immigrant students: legal documents, the National Center for Education Statistics' (NCES) Integrated Postsecondary Education Data System (IPEDS) files, and implementation stories adapted from existing empirical research evidence and academic reporting sites.<sup>1</sup> We examine trends from 2000 to 2007, the most recent period to witness the various legal challenges and interpretations of legislation addressing undocumented immigrant populations in US postsecondary systems. These results, however, are descriptive and do not infer causal inference to our interpretation.

## State Contexts

### California

The California Community College System is the largest higher education system in the US and includes 72 districts and 110 colleges, enrolling 2.6 million students annually (California Community Colleges System Office 2009). In fall 2007, Latinos comprised 29 percent of the two-year college enrollment in California, second only to the white population at 36 percent, although whites' share of enrollment has been declining while Latino enrollments are increasing. Non-resident aliens accounted for two percent of the community college population in California.

Utilizing an open-door admission policy established by the 1964 Master Plan for Higher Education, the California Community College System allows all students with a high school diploma or equivalent or who are at least 18 years old to attend the state's public two-year colleges. This system, like others in the state, operates under Proposition 209, the state referendum that prohibits the use of race in college admission and employment, and under AB540, the in-state resident tuition legislation that allows undocumented students to attend college at the same in-state rate as legal residents, provided they meet certain residency and educational requirements.<sup>2</sup> AB540<sup>3</sup> is deemed legally permissible by the California state legislature, although new challenges have since been issued (Olivas 2009).

### North Carolina

North Carolina's public two-year system enrolls approximately 883,000 students annually in 58 colleges and accounts for 37.3 percent of the state's higher education institutions. Latinos accounted for 3.5 percent of the community college enrollment in North Carolina, which more than doubled since 1997. Non-resident aliens account for one percent of total enrollment.

According to the North Carolina Community College System Office (NCCCS 2009), community colleges have a positive effect on the state's economy, as 95 percent of students are in-state residents who remain and work in the state, thus contributing to the tax base.

Similar to California, a primary mission of the North Carolina Community College System is to provide an open door to high-quality, accessible educational opportunities (NCCCS 2009). The North Carolina Administrative Code (North Carolina Administrative Code. [NCAC] 2009) requires colleges to "maintain an open-door admission policy to all applicants who are high school graduates or who are at least 18 years of age" (23 NCAC 02C .0301). Despite this clear mandate, the NCCCS has gone through various policy iterations over the past eight years as it struggles to define what a system-wide admission policy for undocumented immigrant students should look like. North Carolina community college officials have turned to their general counsel and the state attorney general's office for guidance. Final guidance was provided in September of 2009 when the board of the NCCCS voted to admit undocumented immigrant students although without the benefit of in-state tuition rates. The victory, considered "hollow" by many, has resolved a near decade battle over a system's decision-making struggle regarding at least the *admission* fate of this growing population (Moltz 2009).

The first milestone of the nearly decade-long battle began in 2001, when the legal affairs office for the NCCCS issued a memo defining the three groups of undocumented students that were eligible for enrollment in community colleges: (1) North Carolina high school students who were ushered in under the state's open-door enrollment policy; (2) undocumented immigrants who wanted to enroll in non-college-level programs, including GED and adult basic education programs; and (3) undocumented immigrants who could prove they were eligible for protection under a federal battered or abused immigrant policy (NCCCS memo December 2001). Since 2001, there have been multiple memos issued that separately expand and constrict the local community colleges' ability to admit undocumented students. North Carolina has proposed legislation similar to California's AB540, but there has not been much legislative action around the issue (General Assembly of North Carolina 2003; Olivas 2007). (For a more detailed explanation of the memo directives, see Flores and Oseguera 2009.)

<sup>1</sup> As IPEDS data do not provide detailed citizenship data or non-resident status by race and ethnicity, we rely on non-resident aliens as a measure of foreign-born nonresident status among the institutional data.

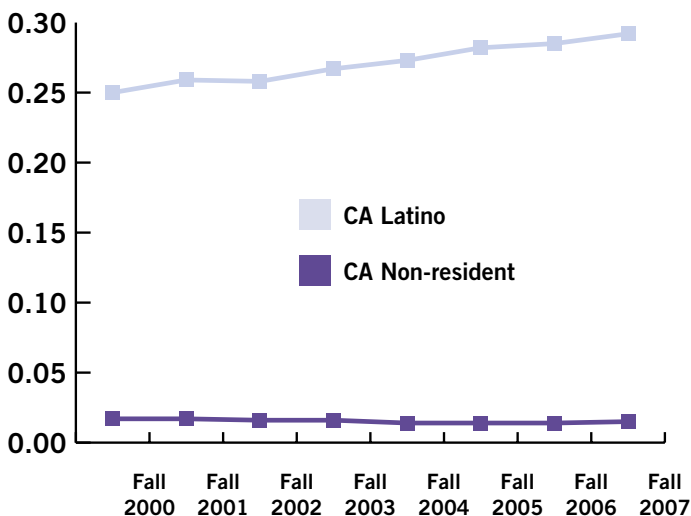
<sup>2</sup> See Mexican American Legal Defense Fund [MALDEF] 2008 and Olivérez, Chavez, Soriano, and Tierney 2006.

<sup>3</sup> Precursor Superior Court rulings and federal legislation to AB540 include Leticia A vs. the UC Regents and CSU Board of Trustees (1986), The UC Regents vs Superior Court (Bradford) (1991), and the 1996 IIRIRA law (see Feder 2006 and Flores and Oseguera 2009 for more detailed analyses of these previous court rulings and legislation).

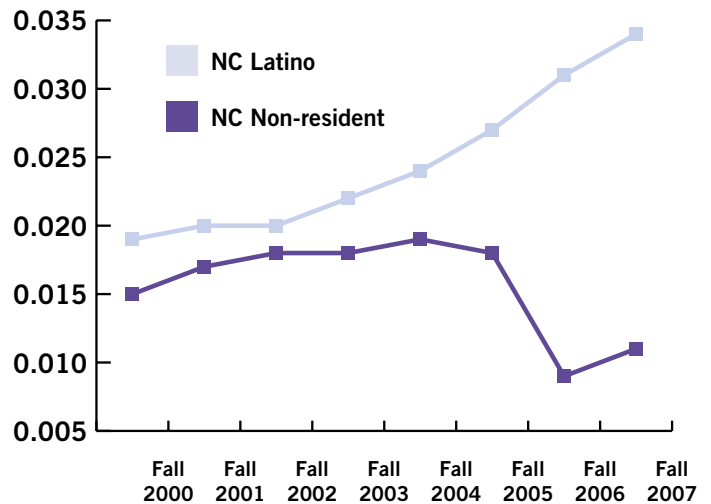
*Policy Milestones, Enrollment Trends and Policy Events*

Figure 1 highlights changes in the community college enrollment of Latino and non-resident groups in the state of California from Fall 2000 to Fall 2007. The data show a persistent and expected increase in Latino enrollment in community colleges given the overall growth of the state's Latino population. Of interest here is the decline in the number of individuals who identify (or are classified) as non-resident alien. In Fall 2000 and Fall 2001, we see a stable line for non-resident alien status. In Fall 2002, when AB540 was in effect, we begin to see a decline in the proportion of individuals classified as non-resident alien, a trend that contrasts with the overall growth of the foreign-born population in the state over the same time period (Flores and Oseguera 2009). Of particular policy importance and distinction is that the issue in California is not whether immigrant students can attend California community colleges but whether they are eligible for in-state tuition rates. Proponents argue that allowing undocumented students to pay the in-state tuition rate yields economic benefits for both the students and the state (Reich and Mendoza 2008). Similarly, recent research documents that the presence of an ISRT policy increases the college enrollment odds of students likely to be undocumented (Flores *forthcoming*). Although not a causal analysis, the examination here begins to present a possible relationship between students' newly legislated opportunity to reclassify into a racial/ethnic category other than non-resident alien. That is, what may be occurring is the reclassification of non-resident aliens to that of a self-identified Latino ethnicity, which appears to correspond with legal and policy activity related to the in-state resident tuition policies (Flores and Oseguera 2009). The North Carolina example, as dictated by state attorney general's memos and institutional response to those memos, follows. While we cannot provide a causal analysis of the effects of legal changes in the memo directives, we provide a modest analysis of enrollment behavior potentially related to these shifts in admission and tuition policies within the state as it relates to the community college system.

**Figure 1. Proportion of Latinos and Non-residents Enrolled in California (CA) Community Colleges (N=110 Campuses)**



**Figure 2. Proportion of Latinos and Non-residents Enrolled in North Carolina (NC) Community Colleges (N= 58 Campuses)**



Source (Figure 1 & 2): National Center for Education Statistics, Integrated Postsecondary Education Data System; Flores & Oseguera 2009.

Figure 2 represents a portrait of North Carolina community college enrollment changes amidst tremendous Latino population growth in the state of North Carolina. Specifically, we examine the community college enrollment trends of non-resident aliens against the backdrop of local interpretation of the memos issued by the state attorney general and general counsel, a picture emerges that is quite distinct from that of California. Beginning in 2000, the data indicate a steady increase in the enrollment of non-resident aliens. In 2001, a memo was issued that permitted colleges to enroll undocumented students. For 2004, when a second, more restrictive memo was issued regarding undocumented students, the data show a decline in the numbers of students classified as non-resident alien and an even larger drop in Fall 2006 (from 3,807 in Fall 2004 to 3,679 in Fall 2005, to 1,905 in Fall 2006).

Unlike institutions in California that rely on state legislative mandates to determine the classification and tuition benefits of undocumented students, North Carolina community colleges appear to rely on local policy interpretations of the state attorney general's office that vary over time. Until there are clear mandates for a system to systematically admit or deny a particular group, the state may continue to see dramatic shifts in the enrollment of the non-resident alien population coupled with increased confusion among community college personnel over how to implement directives. Evidence of this is the National Immigration Law Center's reports on its requests from college administrators for clarification of the Department of Homeland Security (DHS) policy requiring administrators to check the immigration status of their students (National Immigration Law Center 2009). In 2008, in a response to a specific request from the state of North Carolina, DHS clarified that its policy does not require college administrators to check the immigrant status of their students, except students who come to the United States on a student visa (National Immigration Law

Center 2008a; 2008b). Administrators were instead advised to follow state policy or legislation, and in the absence of state policy or legislation, individual colleges and universities were to use their own discretion when deciding to admit or bar undocumented students. However, DHS emphasized that individual colleges and universities should use federal standards when determining immigration status (National Immigration Law Center 2008b). This highlights the significant responsibility that institutions must assume in the absence of federal or state legislation to determine admission requirements for undocumented students in North Carolina and in a number of other states.

### Implementation Stories

Having presented a portrait of the situation for undocumented student regardless if directives come from legal counsel or state policy, we conclude with a discussion on policy implementation focusing specifically on community college personnel's response to its student populations. Open door admission policies, coupled with a perception that community colleges are institutions for the people, make community colleges seem much more welcoming to undocumented students (Cortes 2008; Jauregui et al. 2008). As a result, community college personnel are at the front lines of meeting the needs of undocumented students. Unfortunately, there is a dearth of research about how student services professionals interact with undocumented students from the perspective of student services professionals. Most of the research on undocumented students focuses on the challenges that undocumented youth face in accessing and persisting in colleges and universities (Abrego 2006; Cortes 2008; Flores and Horn 2009; Perez-Huber and Malagon 2007). While research specifically on how student services professionals in community colleges manage the practical aspects of implementing state and local directives is not abundant, research about the experiences of undocumented students in community colleges highlights some of the strategies that are being used by community college personnel to address the needs of this unique student population and subsequently allows us to better understand challenges in implementing policy directives.

The primary theme that emerges from studies conducted about the experiences of undocumented students in community college is a general sense that "front-line personnel" such as admission and financial aid counselors, and records officers are not trained to handle the unique issues undocumented students bring with them to the community college setting, but more importantly to understand the policy directives of their state or local institution (Cortes 2008; Perez-Huber and Malagon 2007). As previously mentioned, the perception of insufficient training can be attributed to state and institutional policies that are often in flux. Even in states like California and Texas where there is a long history of immigrant migration and state legislation providing in-state tuition for undocumented students, there is confusion about the application of specific directives of the state policy. These policies require clarification, but this clarification often comes in the form of memos directed to higher-level student services administrators, such as the NCCCS memos that were issued between

2001 and 2008. There is very little information about how these directives are then distributed to the student services personnel that most frequently interact with undocumented students. The intent of in-state residency admission and tuition policies is to expand higher education opportunities to undocumented students. Proper implementation of these policies requires that community college personnel are aware of the spirit of the policies, and are working in concert to provide undocumented students with meaningful and significant support. It is through education and training about in-state residence admission and tuition policies that community colleges will be able to ensure that student services personnel are properly equipped to manage and handle the changing climate of undocumented student access at their institutions. As community colleges are the institutions most likely to enroll undocumented, immigrant students, their role cannot be overstated.

Providing training and education for student services personnel working with undocumented students raises an important practical concern about the additional administrative responsibilities, if any, associated with working with this population as well as the additional cost both financially and in staff time that could be directly linked to admitting undocumented students. Thus, a second issue related to policy implementation is the verification process. The verification process is the primary mechanism through which institutions verify the information submitted by students and reviewed by college staff. Drawing from a national survey administered by the American Association of College Registrars and Admissions Officers (AACRAO), Lee et al. (2009) concluded of the 11 states that currently have implemented a specific policy directed toward undocumented student admission at two-year institutions, 80 percent reported that they had adequate staffing to manage the verification process (Lee et al. 2009). It is difficult to estimate the actual cost of implementing these varying verification processes because there is little hard data, but the AACRAO survey data found that the majority of colleges spend less than 20 percent of verification time on undocumented students (Lee et al. 2009). However, in states like South Carolina where undocumented students are prohibited from attending public universities and colleges, the verification process can be more burdensome because student status must be confirmed to make an adequate admission determination (Lee et al. 2009).

A third theme related to the policy implementation encompasses the students' experiences and their ability to access campus resources and services. Because of their precarious citizenship status, undocumented students are often forced to navigate the institution on their own (Flores and Horn 2009; Perez et al. *forthcoming*). Undocumented students report that they receive varying degrees of support and multiple messages from campus offices. This miscommunication occurs as policy directives have not been sufficiently communicated to all campus personnel. One recommendation to remedy some of these challenges is to modify existing support mechanisms to meet the needs of undocumented students. These modifications could significantly improve the educational

experiences of undocumented students and ease policy implementation in a practical sense. For example, community colleges that have historically drawn large minority student populations may already have multicultural student centers or student services personnel who work with these groups. It is these student support officers that are probably best equipped to expand their services to include undocumented students. In addition programs such as the Puente Project, or similar academic preparation programs aimed at increasing community college transfer rates particularly among minority groups, may be uniquely prepared to expand their services to work with undocumented students. In fact, many of these programs on community college campuses are already working with undocumented students (Cortés 2008). Having a policy in place is a first step, but the long-term impact and sustainability given the demographic changes remain to be seen.

### Conclusion

In this work we illustrated two states' pathways to address the issue of undocumented student access coupled with the demographic reality of the changing state context. There is a continued need to address how the policy implementation develops and unfolds on campuses and the corresponding decisions that key community college personnel invoke. A key question these case studies, implementation responses, and associated state enrollment trends examine is community college systems' rationale for making decisions related to educational access for undocumented, immigrant students. A central issue is how each state frames the issue of undocumented students' access to their community college system and how associated admission and tuition policies are constructed. Equally important to this question is acknowledgement that changes are not static. Multiple iterations of laws and policies have been communicated to the community colleges and public generally and this necessarily generates confusion over who to serve and how to serve them. In particular, the provision of educational opportunity, particularly for undocumented immigrants, is influenced by federal and state law and by the demographic palatability of a new group.

Despite policy volatility around access to higher education policies, it is likely that a large proportion of undocumented youth desire to remain and will remain in the United States. In a statement issued by the president of the North Carolina Community College System, a state that has struggled with the admission of undocumented students, he acknowledged, "For North Carolina to be competitive in a global economy, it must depend on a knowledge-based workforce which makes it imperative that every future worker in North Carolina receive as much education as possible" (NCCCS Presidential Statement 2007). The reality is that undocumented workers are working in almost every field imaginable, and investing in the education of undocumented students in order to build a knowledge rich workforce may lead to larger economic benefits for entire communities. In addition various higher education organizations, including the American Association of Community Colleges, share a similar

view and support federal legislation to make college accessible and affordable for undocumented students.

Moreover, each year approximately 65,000 undocumented youth who have lived in the United States for five or more years graduate from high school (Passel 2003). In many instances, these students have lived in America longer than in their home countries. These students have adopted American mannerisms, identities and aspirations (Gonzales 2009). According to Abrego, "many of these students have internalized the US values and expectations that equate academic success to economic rewards and stability" (Abrego 2006, 221). While the *Plyler v. Doe* decision guarantees these students an education through high school, their educational paths are uncertain beyond high school graduation. In the absence of clear federal and state policy guidance regarding access to higher education, these youth may be unnecessarily pushed into the underground economy and isolated from mainstream American society (Kaushal 2008). A question to consider for educators and the communities they educate is what are the social and economic costs to such isolation? Moreover, what will nations with emerging immigrant populations in Europe and other continents learn from the American example? The success and failure of the interplay between education and immigration policies is in the hands of not only policymakers but the practitioners most likely to encounter the realities of these students under debate.



**LETICIA OSEGUERA** is an assistant professor in the Department of Education at the University of California, Irvine. Her research focuses on stratification in American higher education, the civic role of higher education, college transitions, and baccalaureate degree attainment for underrepresented groups. She earned her Ph.D. from UCLA and an undergraduate degree from UC-Irvine.



**STELLA M. FLORES** is an assistant professor of public policy and higher education at Vanderbilt University (TN). Her research examines the impact of state and federal policies on the college enrollment of underrepresented students. She earned an Ed.D. from Harvard University (MA), an MPAff from the University of Texas at Austin, and a B.A. from Rice University (TX).



**EDELINA BURCIAGA** is a doctoral student in sociology at the University of California, Irvine. Her research interests include education, race and ethnicity, immigration, and social movements. She earned her B.A. and M.A. from Stanford University (CA), and also holds a law degree from the Boston University School of Law (MA).

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