Session 202 | Watch Us Grow: AAPI Women in the Federal Judiciary

In 1998, the federal bench saw the first Asian American and Pacific Islander (AAPI) woman appointed to a lifetime position. The second was not appointed until a decade later. Now, a little more than two decades since the first appointment, there are more than 15 AAPI women with lifetime positions. Still underrepresented relative to their proportion of the general population, AAPI women, often aided by NAPABA, have learned how to navigate the federal nomination and confirmation processes. This panel follows the stories of what made some of them interested in federal judicial service and of how they succeeded in getting appointed.

Drawing on a study of the first 15 AAPI women with lifetime positions as federal judges, the panel members will examine some of the differences and similarities among themselves, noting, for example, the influence on many of them of being the children of immigrants. The growth of AAPI women on the federal bench is compared to the growth of AAPI men, to other women of color, and to LGBTQ judges. The discussion will include words of advice to would-be judges and will highlight NAPABA’s role in supporting judicial applicants.

Moderator:
Susan Oki Mollway, Senior District Judge, U.S. District Court, District of Hawaii

Speakers:
Cathy Bissoo, District Judge, U.S. District Court, Western District of Pennsylvania
Pamela Chen, District Judge, U.S. District Court, Eastern District of New York
Jacqueline Nguyen, Circuit Judge, U.S. Court of Appeals, Ninth Circuit
WATCH US GROW

AAPI Women in the Federal Judiciary
Speakers

• Cathy Bissoon, District Judge, U.S. District Court, Western District of Pennsylvania
• Pamela Chen, District Judge, U.S. District Court, Eastern District of New York
• Jacqueline Nguyen, Circuit Judge, U.S. Court of Appeals, Ninth Circuit

Moderator

• Susan Oki Mollway, Senior District Judge, U.S. District Court, District of Hawaii
Article III Judges

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

U.S. Const., article III.
Who are Article III judges?

U.S. Supreme Court Justices

U.S. Circuit Judges

U.S. District Judges (except in 3 territories)

Court of International Trade Judges
Other Federal Judges

Magistrate Judges:
- Appointed by District Judges, 8-year terms

Bankruptcy Judges:
- Appointed by Circuit Judges for 14-year terms

Court of Federal Claims Judges:
- Nominated by President, Confirmed by Senate, 15-year terms

District Judges in Guam, Northern Mariana Islands, Virgin Islands:
- Nominated by President, Confirmed by Senate, 10-year terms
Process of Becoming an Article III Judge

District or Circuit Selection Process:

May include local merit selection committee organized by Senators

Nomination by President

Hearing before Senate Judiciary Committee (e.g., questions to Neomi Rao about academic writings)

Confirmation by vote in full Senate
U.S. Population in 2018

Whites: 60%+
African Americans: 14%
Latinos: 19%
Asians: 6-7%
Other groups: approx. 1%
Breakdown of U.S. Lawyers in 2018

Men: 63%

Women: 37%

Asian Lawyers: Nearly 5%
Women Article III Judges

First: 1934 (Florence Ellinwood Allen, Sixth Circuit)

First African American: 1966 (Constance Baker Motley, SDNY)

First Latina: 1980 (Carmen Consuelo Cerezo, DPR)

First LGBTQ: 1994 (Deborah Batts, SDNY)

First Asian: 1998 (Susan Oki Mollway, D. Hawaii)
Women Article III Judges as of mid-2019

Active and senior Article III judges: less than 30% women (363 of 1349)

In entire history of U.S.: less than 12% women
Number of women of color appointed to Article III judgeships as of mid-2019 in history of U.S.

African American 58
Latino 32
Asian 16 (vs. 30 Asian men)

Compare LGBTQ Article III judges (men and women) as of 2019: 14
The First 15 Asian Women Article III Judges

Susan Oki Mollway (D. Haw.) (1998)
Kiyo A. Matsumoto (E.D.N.Y.) (2008)
Jacqueline Hong-Ngoc Nguyen (E.D. Cal.) (2009), (9th Cir.) (2012)
Dolly Maizie Gee (C.D. Cal.) (2010)
Lucy Haeran Koh (N.D. Cal.) (2010)
Cathy Bissoon (W.D. Pa. 2011)
The First 15 Asian Women Article III Judges

Pamela Ki Mai Chen (E.D.N.Y.) (2013)
Indira Talwani (D. Mass.) (2014)
Karen Gren Scholer (N.D. Tex.) (2018)
Jill Aiko Otake (D. Haw.) (2018)
Neomi Jehangir Rao (D.C. Cir. 2019)
New Additions

Martha Maria Pacold (N.D. Ill.) (2019)
Diane Gujarati (E.D.N.Y.) (2020)
Regina Marie Rodriguez (D. Colo.) (2021)
Florence Pan (D.D.C.) (2021)
<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Number</th>
<th>Names</th>
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<tbody>
<tr>
<td>Japanese American</td>
<td>5</td>
<td>(Mollway, Matsumoto,</td>
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<td></td>
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<td>Kobayashi, Scholer,</td>
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<tr>
<td>Chinese American</td>
<td>3</td>
<td>(Gee, Du, Chen)</td>
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<tr>
<td>South Asian American</td>
<td>3</td>
<td>(Bissoon, Talwani, Rao)</td>
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<tr>
<td>Korean American</td>
<td>2</td>
<td>(Koh, Choe-Groves)</td>
</tr>
<tr>
<td>Vietnamese American</td>
<td>2</td>
<td>(Nguyen, Du)</td>
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<tr>
<td>Filipina American</td>
<td>1</td>
<td>(Schofield)</td>
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</tbody>
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Appointing Presidents (not always indicative of judges’ preappointment affiliations)

- Clinton: 1
- Bush: 1
- Obama: 10 (11 if counting Nguyen appointments to both district and circuit courts)
- Trump: 3 of first 15, but also 16th and 17th judges (Pacold & Gujarati)
- Biden: 2 as of 9/2021 (Rodriguez & Pan, more nominees pending)
Jaqueline Hong-Ngoc Nguyen

Nominated by Obama to Central District, California. Confirmed 2009.


Career:
Private practice, Los Angeles, California
Assistant U.S. Attorney, C.D. Cal.
Judge, Superior Court of California
Nguyen’s Path

• Had to overcome impact of moving from homogeneous to diverse country.

• Naturalized as a child.

• Decision to become a lawyer affected by immigrant background and watching parents struggle

• Encouraged by others to seek state and federal judgeships

• Went through Senator Feinstein’s merit selection committee

• Unexpected opportunity to seek circuit judgeship

• Seen as qualified and confirmable
Cathy Bissoon


Career:
Law clerk, W.D. Penn.
Private practice, Pittsburgh, Penn.
U.S. Magistrate Judge, W.D. Penn.
Bissoon’s Path

- Television influenced decision to become lawyer
- As federal law clerk, saw judgeship as dream job
- Applied to be U.S. magistrate judge; district judges knew her work
- Applied for district judgeship thinking odds were slim

- Notified by Senator Casey that he was submitting only her name without interview to Obama
- Renominated after first nomination lapsed
Pamela Ki Mai Chen

Nominated by Obama to E.D.N.Y. Confirmed 2013.

Career:
Private Practice
DOJ Civil Rights Division
Assistant United States Attorney, E.D.N.Y.
Deputy Commissioner for Enforcement, NY State Division of Human Rights
Chen’s Path

• Motivated by family background to become lawyer
• Encouraged by others to seek judgeship
• Sent application to Senator Schumer’s committee
• Learned that application being held up over concerns about her handling of a case

• Got support from judge on that case
• Renominated after first nomination lapsed
• Not questioned by Senate Judiciary Committee about case or LGBTQ issues
Immigration

11 of first 15 were children of immigrants

2 were themselves immigrants

Many judges influenced by parents’ struggles
Outside Validation

Women judges repeatedly mentioned that others urged them to seek judgeships

Women judges often initially demurred
NAPABA’s Assistance

Role of NAPABA has grown over last 20 years

Encouragement by John Yang, Vincent Eng, other NAPABA members

Assistance from White House (e.g., Chris Kang)

Bissoon only judge among first 15 not to have had NAPABA’s help
Advice from Judges
Questions?
The FIRST FIFTEEN

How Asian American Women Became Federal Judges

SUSAN OKI MOLLWAY
Neomi Jehangir Rao

*(DC Cir.)* (2019)

Born 1973 in Detroit, Michigan

**Federal Judicial Service:**
Judge, U.S. Court of Appeals for the District of Columbia Circuit
Nominated by Donald J. Trump on January 23, 2019, to a seat vacated by Brett M. Kavanaugh. Confirmed by the Senate on March 13, 2019, and received commission on March 18, 2019.

**Education:**
Yale University, BA, 1995
University of Chicago Law School, JD, 1999

**Professional Career:**
Counsel for nominations and constitutional law, U.S. Senate Committee on the Judiciary, 2000–2001
Law clerk, Hon. Clarence Thomas, Supreme Court of the United States, 2001–2002
Private practice, London, United Kingdom, 2002–2005
Associate counsel and special assistant to President George W. Bush, 2005–2006
Professor, Antonin Scalia Law School, George Mason University, 2006–2019; director and founder, Center for the Study of the Administrative State, 2015–2017
Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, 2017–2019
Other Nominations/Recess Appointments:
Nominated to U.S. Court of Appeals for the District of Columbia Circuit, November 14, 2018; no Senate vote\textsuperscript{139}

Neomi Jehangir Rao is the first South Asian woman to become a federal court of appeals judge. She is also the first Asian woman who was a Supreme Court law clerk to become an Article III judge. In addition, she is the first Asian woman to become an Article III judge after having been a law clerk at the federal court of appeals level. To date, she is the only Asian woman to become an Article III judge after having a legal career primarily in academia.

During her interview,\textsuperscript{140} Rao said that her parents came to the United States from India for what she called the “typical” reason of seeking better opportunities. In 2017, during a hearing before the Senate Homeland Security and Government Affairs Committee in connection with her nomination to be the administrator of the Office of Information and Regulatory Affairs (OIRA), which is part of the Office of Management and Budget, Rao described her parents’ experience: “Leaving India in 1972, my parents arrived in Detroit in the middle of a snowstorm without winter jackets, but with their medical degrees, $16, and the optimism of the recently married. They always imparted by example the importance of integrity, perseverance, kindness, and a commitment to service.”\textsuperscript{141} Rao’s parents, who both ended up practicing medicine in the United States, were Zoroastrians. Noting that the term Parsi is used for Zoroastrians living in India, Rao said that her parents were descended from people who had moved from Persia to India over a thousand years ago. Rao, the oldest of two children, was born and raised in Michigan.

Rao is Jewish, having converted to Judaism decades ago. She says that she and her husband, a lawyer who is also Jewish, are raising their two children in their religion.

Law was a field that Rao began thinking about as an undergraduate at Yale University. At Yale, she wrote extensively for the \textit{Yale Herald} and the \textit{Yale Free Press}. These college writings, particularly
those relating to rape, turned out to figure prominently during her judicial confirmation process.

In a column Rao wrote as editor in chief of the *Yale Free Press* in November 1993, she decried college student groups focusing on perceived “sexual and racial oppression”: “The recent hysteria, activism, and coalition-forming that occurred in relation to the Chicano Dean is just one example of this phenomenon. Myths of sexual and racial oppression perpetrate themselves, create hysteria and finally lead to the formation of some whining new group. One can only hope to scream, ‘Perspective, just a little perspective, dahling!’” Rao was questioned about this particular piece during her Senate Judiciary Committee hearing in 2019. She explained that there was “a very narrow set of issues on the Yale campus in a specific type of activism and multiculturalism that existed at Yale at that time. And you know, I guess I—you know, I always thought it would be best to have more tolerance and understanding rather than dividing people up into groups.”

The context of Rao’s piece is made clearer by a separate article that did not figure at all in the hearing—an article she coauthored that outlined concerns about Yale’s system of “ethnic deans” for undergraduates. Rao told me that she did not recall that specific article. I was nevertheless interested in it for two reasons. First, I was writing about a group of individuals with three things in common: their jobs, their sex, and their identification as Asian. Rao’s article on “ethnic deans” discussed race. Second, Rao’s comments about Yale’s faculty form a kind of counterpoint to Lucy Koh’s advocacy for greater diversity in Harvard Law School’s faculty.

Rao’s article described Yale’s “ethnic deans” as having been appointed to serve as “a more sympathetic and understanding ear for grievances like suspected racism, which students may feel uncomfortable explaining to their dean or master.” According to the article, opponents of the deanships were arguing that “the need of a separate voice in the administration for selected ethnic groups hardly seems justified.” It goes on to say, “If non-minority students at Yale have no particular voice except, perhaps, for their [Yale College Council] representative, why should each collective
of ethnic students receive a professional, faculty representative? Concern about quality teaching, student life and college housing are, after all, shared by every undergraduate, the critics say.”

An article that was the subject of discussion after Rao was nominated was one that she wrote for the Washington Times as an undergraduate:

Welcome to the multicultural college campus.

Here you will be defined by your race, gender, ethnicity and sexual orientation even before you enroll in classes. The labels come quickly and stick hard.

Arriving at Yale three years ago, I thought diversity on campus would mean that racial and gender differences would be taken in stride. I thought wrong.

Though the bean counters consider me a minority (Asian Indian, if you’re curious), I find myself in the awkward position of not considering my race and gender very important. To the “multicultural police” this means I’m a “traitor.” According to them, I’m supposed to be out there marching to “take back the night,” demonstrating for more Asian-American deans or throwing myself on the ground, covered with ketchup, to protest the mistreatment of Haitian refugees. Unfortunately, these preachers of tolerance apparently cannot tolerate a minority woman who claims an identity independent of race and gender.

. . .

Instead of marching to “take back the night,” reading “My Tongue” or fasting in a cage for Haitians, those truly concerned with tolerance should be fighting for individuals who want to escape the multicultural nightmare.

While explaining during her Senate Judiciary Committee hearing the context of her writings from decades ago, Rao said that “to be honest, you know, looking back at some of those writings and rereading them I cringe at some of the language that I used, and you know, I was young.” She added that “in the intervening two decades I like to think that I have matured as a thinker.
and writer and indeed, as a person.” This was not an explanation that she tied directly to the writings quoted previously; rather, it was a general statement about her Yale-related writings. Between completing her undergraduate studies and entering law school, Rao wrote for the *Weekly Standard*, a conservative political magazine. She told me during her interview, “I’ve always been interested in government. I studied political philosophy and political theory as an undergraduate, so law school seemed like a natural extension of that.”

After law school, Rao clerked for J. Harvie Wilkinson III on the Fourth Circuit, worked with the Senate Judiciary Committee (including on judicial nominations), and then clerked for Clarence Thomas on the U.S. Supreme Court. She spent a few years in private practice in London, worked in the White House Counsel’s Office in President George W. Bush’s administration, and then joined the faculty at what became the Antonin Scalia Law School of George Mason University. Her longest employment was at George Mason, where she stayed for more than a decade. Her most recent employment before becoming a judge was as the administrator of the OIRA under President Trump. Her position at OIRA brought her into contact with Donald McGahn while he was Trump’s White House counsel.

Having previously worked on judicial nominations and confirmations, Rao says that she “knew enough about the process” not to automatically think that she would become a judge. She attributes her own judgeship to “timing, circumstances, and luck.” She says that she had a good relationship with McGahn and recalls that when Brett Kavanaugh was elevated from the DC Circuit to the Supreme Court, she and McGahn discussed “the possibility of my being nominated.” She did not know of other individuals being considered, although she assumed that others expressed interest. Rao shared her discussions about a possible nomination with only her family and most trusted friends.

One commentator noted, “Unlike other lower court nominees, Rao had a personal interview with President Trump on October 12, 2018.” Vincent Eng of NAPABA thought the unusual
interview occurred because Rao might have been identified as a possible Supreme Court nominee. She was clearly on a fast track, although it turned out that President Trump named Amy Coney Barrett rather than Rao to fill the next Supreme Court vacancy, which opened up in 2020.

Rao was nominated to the DC Circuit on November 14, 2018, before the ABA had given her a rating. Her nomination was announced by President Trump the day before, at the White House celebration of Diwali, the Hindu Festival of Lights. With her nomination came advice, support, and assistance from a host of individuals and various organizations. She recalls that NAPABA reached out to her and was helpful, and the North American South Asian Bar Association also provided support.

NAPABA issued a press release applauding Rao’s nomination. Vincent Eng recalls that the Trump administration indicated that supporting op-eds by NAPABA would also be helpful to Rao. Eng tried to organize op-eds for placement in publications, but he says that he ran into questions within NAPABA about which members’ names belonged on the pieces. Eng said it was unfortunate that, because this was never resolved, op-eds ended up not being submitted at all.

A nominee for an Article III position in the District of Columbia has no home-state senator to rely on to champion her candidacy. Of course, at the same time, the nominee does not need to worry about whether a home-state senator will return a blue slip, the Senate Judiciary Committee’s document signifying a senator’s support for a nomination (the absence of which can kill a nomination). Rao met with a number of senators, including Majority Leader Mitch McConnell of Kentucky, Senate Judiciary Committee chair Lindsey Graham of South Carolina, Mike Lee of Utah (whom Rao knew from prenomination interactions), and Marsha Blackburn of Tennessee. These meetings were arranged through the Department of Justice. To Rao’s understanding, the choice of senators was not always linked to a senator’s position in the Senate hierarchy. Instead, she says, the selection of whom she should meet with was “largely driven by the interest of the senators.”
Although Rao never heard that her gender or race played a role in her nomination or confirmation, she notes that in every administration, there is “always an effort to find qualified candidates who share a president’s judicial philosophy who are not White men.”

Rao says that there had been some hope that, with her nomination coming in November, she might get a hearing before the Senate Judiciary Committee in December, but that did not occur. Her nomination lapsed, and Trump renominated her on January 23, 2019. A majority of the ABA committee gave her a “well qualified” rating, with a minority giving her a “qualified” rating. Rao then waited less than two weeks for a hearing before the Senate Judiciary Committee. She recognized that in getting a hearing on February 5, 2019, she was leaping ahead of other nominees who had been waiting longer. She attributed this rapid timing to the priority that Senator Mitch McConnell, the Senate majority leader, had placed on filling the DC Circuit vacancy. Courts of appeals are just one step below the Supreme Court, and the DC Circuit is often viewed as a particularly important court of appeals because of the nature of the cases that are filed in that court.

Rao had a lengthy paper trail for members of the Senate Judiciary Committee to examine, not only in the form of her college writings, but also in later pieces, some written before or after law school but many written during her career as an academic. Academics nominated for judgeships invariably face scrutiny of what some view as controversial positions taken in their writings. In this regard, Rao was hardly alone. Such scrutiny occurred by Republicans opposed to Obama’s nomination of Goodwin Liu to the Ninth Circuit, for example. That Democrats scrutinized Rao’s writings was to be expected.

Particular attention was paid to Rao’s college writings on sexual assault. She had written that a male student who forced a woman to have sex against her will should be held responsible, but “at the same time, a good way to avoid a potential date rape is to stay reasonably sober.” Questioned about whether she was victim-blaming, Rao told Senator Kamala Harris, a Democrat from California, “Senator, I was only trying to make the common sense
observation about the relationship between drinking and becoming a victim.” Senator Joni Ernst, a Republican from Iowa, asked Rao about an April 1993 article she had written about feminism. That article began, “I am a feminist. But what does that mean? As a movement, feminism has failed to provide women with a coherent set of beliefs.” The article, which goes on for more than thirty paragraphs, went on to note, “Camille Paglia’s view on date rape has often been criticized for its insensitivity because she seems to ‘blame the victim.’ Paglia, however, accurately describes the dangerous feminist idealism which teaches women that they are equal. Women falsely believe that they should be able to go anywhere with anyone.”

Having earlier emphasized that the rapist is “of course at fault,” Rao responded to a question about her reference to “the dangerous feminist idealism” by saying, “I very much regret that statement and I’ve always believed strongly in the equality of women and men, and for equal rights and opportunities for women. I’m honestly not sure why I wrote that in college.”

After her hearing before the Senate Judiciary Committee, Rao sent a letter to the committee saying that in college, “I failed to recognize the hurt that my words could cause a survivor of such crimes. I recognize now the arguments I made might discourage a victim from coming forward or seeking help. . . . If I were to address these issues now, I would have more empathy and perspective.”

Rao was also questioned about more recent writings in which she posited that laws banning dwarf tossing infringed on the dignity of individuals who wanted to determine for themselves whether to earn a living by agreeing to be tossed. Noting that an individual had objected to the ban on the ground that he was prepared and willing to be tossed, she had written that such a choice was analogous to a choice by a woman to earn a living through prostitution. The other topics that senators questioned Rao about included her views on deregulation and specific matters that OIRA, which she headed, worked on.

Rao says that, to respond to the many questions she faced, she worked with attorneys in the Department of Justice and White House Counsel’s Office. Concerns were raised not only
by Democratic senators. Some Republican senators also raised concerns about Rao on various grounds. For example, Senator Josh Hawley, a Republican from Missouri, and Senator Tom Cotton, a Republican from Arkansas, worried that Rao might not be on the same page with them in opposing abortion. An attempt to help Rao came from a powerful source: the Supreme Court’s Clarence Thomas, for whom Rao had spent a year as a law clerk. Justice Thomas reportedly spoke to Senator Hawley and Senator Tim Scott from South Carolina to support Rao.  

Justice Thomas is known for lending his support to selected embattled nominees. I recall hearing from a judge nominated by President William Clinton that Justice Thomas had been helpful. Indeed, the Washington Post noted, “Thomas, famously taciturn during oral arguments at the high court, has previously worked in private in support of other judicial nominees. In the 1990s, he intervened or offered to help several stalled African American judicial candidates, including those nominated by Democrats, according to several black judges interviewed by The Washington Post in 2004.” Besides having to respond to senators’ questions, Rao faced criticism in the press and on legal blogs, while various commentators came to her defense.

Rao notes that what helped her get through the process was her familiarity with it, the result of her prior work with the Senate Judiciary Committee and the White House Counsel’s Office, and the support of her family and friends. She thinks that her earlier work experience with nominees might have made her “maybe better prepared for it than other nominees,” but she says, “Still, it is different when you’re the nominee.” She says that she recognized that “you need a thick skin,” and she concludes, “My skin got a bit thicker.”

With Republicans holding a Senate majority, Rao was confirmed on a roll call vote of 53–46 just a little over a month after her Senate Judiciary Committee hearing. All the Republican senators voted “yea,” and all the Democratic senators (except one senator listed as “not voting”) voted “nay.” Rao was sworn in by Justice Thomas, an event reported by the media in India.
Rao advises anyone interested in a federal judgeship to learn as much as possible about what the position entails. She identifies clerkling for a judge as the best way to do that, especially clerkling at the level of court on which you are interested in serving. She notes that her own experience as an academic also helped prepare her for being an appellate judge because academia involves the substantive work of research and writing that appeals also require. She noted that an appellate court involves a more sequestered setting.
than other legal jobs, and not everyone is “dispositionally suited to being a judge.”

She says that an applicant needs to be “ready for your life to be opened up and scrutinized.” An applicant also needs to realize that becoming a judge involves “a fair amount of serendipity.” While becoming a judge is “not just luck,” there are many deserving candidates who never become judges. She therefore advises against spending one’s entire life trying to become a judge.
Demographic Factors

Particular Asian Ethnicities

The most obvious distinction among the fifteen judges is their Asian heritage. The Pan-Asian category includes a large number of ethnicities, and the judges’ Asian backgrounds clearly differ. Women of Japanese ancestry (Susan Mollway, Kiyo Matsumoto, Leslie Kobayashi, Karen Scholer, and Jill Otake, in order of appointment) occupy a third of the fifteen. South Asian women (Cathy Bissoon, Indira Talwani, and Neomi Rao) have three seats. There are also three Chinese judges (Dolly Gee, Miranda Du, and Pamela Chen), with Du listed twice, being Vietnamese on her mother’s side and ethnic Chinese on her father’s side. Vietnamese women (Jacqueline Nguyen and Du) and Korean women (Lucy Koh and Jennifer Choe-Groves) hold two seats each, and there is one woman of Filipino ancestry (Lorna Schofield).

The appointments of women with particular Asian backgrounds are clearly not proportional to their percentages in the general population. For example, even though a third of the fifteen Asian women judges are of Japanese background, people of Japanese ancestry make up less than 5 percent of Asians in the United States. Two of the Asian women judges of Japanese ancestry are from the District of Hawaii, which has a total population of about 1,420,500 that is about 38 percent Asian (534,600). About a third of that 38 percent is of Japanese ancestry, exceeded within the Asian population only by those of Filipino ancestry. Attorneys
of Japanese ancestry make up 12.6 percent of Hawaii’s bar, with women of Japanese ancestry occupying about 5.2 percent.\(^5\)

When Kobayashi and I were appointed, Hawaii’s senior senator was Daniel Inouye, who is of Japanese ancestry. With my own appointment, I had the sense that Senator Inouye was pleased at the thought that a child of a 442nd Infantry veteran would become an Article III judge. When Otake was appointed, Mazie Hirono, also of Japanese ancestry, not only was one of Hawaii’s senators; she was on the Senate Judiciary Committee. Of course, Senators Inouye and Hirono have also championed non-Japanese candidates, including non-Asian candidates, so no one should conclude that they considered Japanese ethnicity a prerequisite for their support.

If people of Asian backgrounds were appointed in proportion to their percentages in the Asian population of the United States, there would be more judges of Chinese background, as individuals of Chinese background make up about 24 percent of the nation’s Asian population.\(^6\) Within the nation’s total Asian population, Chinese are followed closely by Asian Indians. Filipinos and the “Other Asian” categories have more than 15 percent each. Vietnamese constitute more than 10 percent, and Koreans are close to 8 percent, with Japanese being more than 4 percent.\(^7\)

Three of the fifteen Asian women judges I study, or about 20 percent, are of Chinese background. Gee is in California, where, according to the most recent census data I consulted, about 28 percent of the Asian population is of Chinese ancestry.\(^8\) Du is in Nevada, where about 16 percent of the Asian population is Chinese and about 7 percent is Vietnamese (with Asians making up a little more than 8 percent of the state’s total population).\(^9\) Finally, Chen is in New York, where about 42 percent of the Asian population is of Chinese ancestry.\(^10\) Especially for someone seeking to become a district judge, the racial makeup of the individual’s state typically matters more than national figures for race. That is because, for most district courts, an individual needs to have the support of the senators from the applicant’s state. Senators have considerable influence in recommendations to a district court, which, unlike a federal
circuit court, operates entirely within a state’s borders (although a few district courts, such as the district courts in Puerto Rico and the District of Columbia, are not within any state and therefore have no assigned senators). Senators may consider the political benefits to themselves of recommending to the president a member of a specific constituency that they focus on.

That there are not more judges of Chinese ancestry is notable not only because Chinese form the largest Asian group in the country but also because Chinese immigration to the United States preceded immigration from other parts of Asia. There was significant immigration from China in the late 1800s, as workers came to the United States to work on the transcontinental railroads. The Chinese Exclusion Act of 1882 and its extension limited Chinese immigration for decades, but all exclusion acts were eventually repealed in 1943. Then, in the decades beginning in 1980 and 2010, there was significant immigration from China.

Japanese immigration to the United States was at its height in the early 1900s, especially in Hawaii, where Japanese men came to work in the sugarcane and pineapple fields. This length of time in the United States partly explains the number of Asian women who are Article III judges of Japanese ancestry. I, for example, would be considered *sansei*, meaning the third generation of my family in the United States (but the second generation of people born in the United States).


Talwani noted during her interview that South Asians were being appointed to Article III judgeships in numbers greater than might be expected, given how recent their significant immigration to the United States has been. As the statistics presented here indicate, people of Chinese ancestry are appointed in disappointingly low numbers, especially taking into account the fact that,
of all Asian groups, Chinese have been in the United States in significant numbers for the longest time.

Of course, none of the Article III judges of Chinese ancestry that I profile in this book had the advantage of the long history of Chinese in the United States. Gee and Chen are the daughters of immigrants from China, and Du herself emigrated from Vietnam.

It bears noting that immigrants from India, the Philippines, and Trinidad came from English-speaking countries. English-language ability is far less common when immigrants arrive from China, Japan, Korea, or Vietnam. Bissoon, whose mother came from Trinidad, remarked that immigrants coming directly from India are often financially comfortable. Alternatively, as with Rao’s parents, they arrive from India already well educated. These factors may have been advantages that have contributed to the number of South Asians (including men) appointed in recent years to the bench.

Five (Bissoon, Schofield, Talwani, Scholer, and Otake) of the fifteen Asian women judges I include here are of mixed race, with Bissoon having an Asian mother and a Latino father, Schofield and Scholer having Asian mothers and White fathers, and Talwani and Otake having White mothers and Asian fathers. Du is entirely Asian, but with a Vietnamese mother and an ethnically Chinese father.

The diversity among Asians makes it difficult to attribute a particular characteristic to a particular subset of the Asian community. What is clear is that race (and possibly, in some instances, ethnicity) likely played a role in the appointments of the fifteen judges. All Article III appointments are political, but rarely can one measure with precision how much weight to give to one specific factor. It is perhaps easiest to estimate that weight when the divergence between the general population and the makeup of the judiciary has become so stark that calls have gone out to add a particular demographic to the bench. Earlier in this book, I cited examples of California state and federal judges who pointed out the need for Asian judges. So far, I am not aware of widespread public calls for particular Asian ethnicities, but that could conceivably occur.
Immigrant or Child of Immigrant

Something I found immensely interesting was how many of the fifteen judges were the children of immigrants. Eleven (Nguyen, Gee, Koh, Bissoon, Du, Schofield, Chen, Talwani, Choe-Groves, Scholer, and Rao) are the children of immigrants. Two (Nguyen and Du) of those eleven are themselves immigrants; they left homogeneously Asian Vietnam for a very diverse country. Schofield and Scholer had mothers who immigrated to the United States and fathers who were born in the United States.

Only four of us (Mollway, Matsumoto, Kobayashi, and Otake) were born to two parents born in the United States. These four also happen to be of Japanese ancestry. All four had one or more parents with graduate degrees. My father was a lawyer; Matsumoto’s father was an architect and university professor; Kobayashi and Otake had fathers who were dentists; and Otake’s mother returned to school and earned a master’s degree. Higher education was in our family backgrounds. This was true for many of the judges with immigrant parents, but not all. For example, Bissoon was the first in her family to go to college, and Scholer was the first in her father’s family to complete a college degree.

When so many members of the group share a feature as formative as having an immigrant parent, it is hard to overlook the significance of that feature. Nguyen recalled seeing how powerless her parents felt in the United States, and that greatly influenced her in empowering herself by becoming a lawyer. Parents are authority figures in most homes, after all, and immigrant children with better facility in English than their parents may see their parents’ authority diminished outside the home. Gee expressly recognized the importance to her own development of seeing the difficulties that her parents faced as immigrants. She noted that helping her mother, who became a garment worker in the United States, navigate through life in this country inspired her to become a lawyer and to advocate for workers’ rights. She also was influenced by a desire to honor her parents’ sacrifices and struggles. Du recalls thinking of law as a profession that “gave voice” to people,
particularly immigrants. Being an immigrant or the child of immigrants appears to have understandably had a huge impact on the career paths of many of these judges.

Choe-Groves recalled that even when she was very young her father asked her to review his patent applications before he submitted them to the in-house lawyer in the company where he worked. This impressed on her the importance of protecting one’s own creations long before she formally studied intellectual property, but it also meant that her father trusted her to improve what he had written so that he would not be embarrassed.

The judges whose parents spoke English before arriving in the United States may have had a different experience from those whose parents did not arrive speaking English. Bissoon, Talwani, and Rao, for example, did not report needing to help their parents with language. Bissoon, however, recounted her blue-collar upbringing, and Rao has spoken about the inspiration provided her by her parents, who arrived in the United States with medical degrees but nearly penniless.

The reasons that their parents immigrated to this country may also have affected the judges. For some, their parents immigrated for economic opportunity, while Nguyen and Du were fleeing the aftermath of the Vietnam War and saw their parents’ stature in the community change upon arrival in the United States. Chen’s parents became stranded in the United States after the Communists defeated Chiang Kai-shek.

Some of the judges’ parents who immigrated to the United States were the products of what has been called hyper-selectivity. This concept “takes into account the dual positive immigrant selectivity, in which an immigrant group boasts not only a higher percentage of college graduates compared with nonmigrants from their country of origin but also a higher percentage of college graduates compared with the general population in the host country.”16 Rao’s parents, who both had medical degrees when they immigrated, come quickly to mind.

It appears to me that most of the judges who were the children of immigrants and saw their parents’ vulnerabilities were focused
on making sure that they were not as vulnerable as their parents had been.

Geography

The fifteen Article III judges in this book are concentrated for the most part in states with significant Asian populations. Three states—Hawaii, California, and New York—have multiple Asian women who are Article III judges.

The entire state of Hawaii is a single judicial district, so all three judges there (Mollway, Kobayashi, and Otake) sit on the same district court. This is not the same for New York or California.

Four of the fifteen Asian women sit in Article III positions on courts based in New York. Two of the New York judges (Matsumoto and Chen) are in the Eastern District of New York, while one (Schofield) is in the Southern District of New York. Matsumoto and Chen have been recently joined by Diane Gujarati, the seventeenth Asian woman to become an Article III judge. Choe-Groves sits on the Court of International Trade, which handles the entire country’s international trade cases; it has its courthouse in New York City but can sit anywhere in the United States.

California is home to three Asian women who are Article III judges—one circuit judge (Nguyen on the Ninth Circuit, which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Marianas), one judge (Gee) in the Central District of California, and one (Koh) in the Northern District of California.

Each of the other judges sits as the only Asian woman in her state (or, in the case of Rao, in her circuit) who is an Article III judge (Bissoon in the Western District of Pennsylvania, Du in the District of Nevada, Talwani in the District of Massachusetts, Scholer in the Northern District of Texas, and Rao on the DC Circuit).

That Hawaii, New York, and California have multiple Asian women Article III judges reflects their larger Asian populations. As already noted, about 38 percent of Hawaii’s population is
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