

Time for Change: Addressing Underrepresentation of Asian American Judges in the New York State Judiciary

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Body

As we approach the Lunar New Year, I take this opportunity to reflect on how much progress Asian Americans have made in the New York State judiciary and how much work there is still left to be done. In the 1970s, it was lonely practicing law as an Asian American, and I could count the number of Asian American lawyers in New York City on one hand. And as a lawyer, I never appeared in front of an Asian American judge. In 1983, at just 35 years old, Mayor Ed Koch appointed me to the Criminal Court of the City of New York, making me the first Asian American judge in New York State.

In the 40 years since, much progress has been made, but much is still left to be accomplished. Asian American judges now account for approximately 5% of the New York State judiciary. Out of the 1,300 state paid judges, only 68 identify as an Asian American. Almost all of those judges are located in New York City. Notably, Judge Bernard Cheng had a groundbreaking election outside of New York City when he was elected to the Suffolk

County Family Court in November 2010. We did not have our first Asian American judge elected north of New York City until 2020, when Meredith Vacca who is now a U.S. district judge for the Eastern District of New York was elected to Monroe County Court, and Judge Hyun Chin Kim was elected to Orange County Court. The majority of our judges today have been on the bench six years or less.

There are only ten Asian American Supreme Court justices currently in all of New York State. 59 of 62 counties in New York have never elected Asian American Supreme Court justices. Only three counties Queens, Manhattan and Brooklyn have ever elected Asian Americans to serve in New York State's court of general jurisdiction. Seven are elected out of Queens, two are elected out of Manhattan, and one is elected out of Brooklyn. There are no elected Supreme Court justices outside of New York City. There has never been a judge elected to Supreme Court in the other 59 counties in New York State, including the Bronx and Richmond counties. There are 201 elected Supreme Court justice positions within New York City. Asian Americans only occupy 5% of those seats despite the fact that the Asian American population in New York City hovers around 15%. This is particularly significant because only elected Supreme Court justices are eligible for gubernatorial appointment to the Appellate Division, the mid-level appellate court in New York.

I was the first and only Asian American to serve in the Second Department during my tenure from 2008-17. The court hears appeals from a total of ten counties: Kings, Queens, Richmond, Nassau, Suffolk, Westchester,

Rockland, Orange, Putnam and Dutchess. When Gov. Andrew M. Cuomo appointed me to the position of presiding justice of the Appellate Division, Second Department in 2012, I became the first Asian American in the state to serve in the position. After my retirement from the bench, there was no Asian American jurist on the Second Department until five years later, with Gov. Kathy Hochul's appointment of Justice Lillian Wan in May 2022. With the August 2024 appointment of Justice Philip Hom, for the first time in our state's history, we have two Asian American justices in the Appellate Division, Second Department serving at the same time.

As for the Appellate Division, First Department, which hears appeals from New York and Bronx Counties, now-retired Justice Peter Tom became the first Asian American to be appointed to that court in 1994. When Justices Jeffrey Oing and Anil Singh were appointed to the First Department in 2017 during Justice Tom's tenure, there were three Asian American jurists sitting on the First Department bench for the first time in history. With Oing's recent retirement, Singh is the only Asian American justice remaining on that court. Justice Singh has announced that he will be retiring in the next few months. After 30 years of having at least one Asian American jurist on the First Department, we will soon have none.

There has never been an Asian American judge appointed to the Third and Fourth Departments of the Appellate Division.

Most significantly, since its creation in 1846, there has never been an Asian American judge on our state's highest court, the New York Court of Appeals.

Historically, Court of Appeals judges were elected to the court. The Commission on Judicial Nomination was created in 1977 by an amendment to the New York State Constitution. The commission became the

body entrusted with the responsibility of evaluating and recommending to the governor a list of candidates to fill vacancies on the high court. Notably, it took 35 years for an Asian American to appear on the shortlist when, in 2012, Kathy Hirata Chin made the shortlist for the vacancy created by Justice Carmen Beauchamp Ciparick's retirement. A review of the nominee lists available on the commission's website reveals that from 1979 to the present, a 44-year time span encompassing 37 Court of Appeals vacancies, an Asian American candidate has only made the list five times: Oing in 2022; Hirata Chin in 2012, 2014 and 2021; and Preeti D. Bansal in 2014.

While I applaud the Office of Court Administration for making the historic appointment of Manhattan Civil Court Judge Shahabuddeen Ally to the position of Administrative Judge of the New York City Civil Courts, Asian Americans still trail behind in terms of administrative and supervisory positions. According to OCA, there are 105 administrative and supervisory positions throughout the state. Of those positions, only five are held by Asian American judges and there are none within OCA's executive leadership team.

Over the years, I have mentored many Asian American lawyers and judges. For the last four decades, I have been stressing the importance of being visible and embracing leadership positions. Critically, politics is not a dirty word. For years I have been telling lawyers and judges to ask themselves "why not me?" Much progress has been made forcing people to ask themselves that three-word question. It has resulted in some of our historic firsts in the New York judiciary. But it does not end there. We need to take it to the next step. We need to start saying as a community "it should be us." When the next vacancy in the Appellate Division is filled, we should expect it to be filled

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with an Asian American. When the next vacancy opens at the Court of Appeals, we should not be satisfied with the inclusion of an Asian American name on the shortlist. We should expect an Asian American to be nominated for the next vacancy and not be surprised when it happens.

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