

**TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**FOR THE HEARING ON THE NOMINATIONS OF**

**EDWARD M. CHEN,**

**TO BE UNITED STATES DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**DOLLY M. GEE,**

**TO BE UNITED STATES DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**JACQUELINE H. NGUYEN,**

**TO BE UNITED STATES DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SEPTEMBER 23, 2009**

**BY THE**

**NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION**

**AND**

**ASIAN AMERICAN JUSTICE CENTER**

The National Asian Pacific American Bar Association (NAPABA) and the Asian American Justice Center (AAJC) submit this testimony in strong support of three nominees presented today for confirmation: Edward M. Chen, nominee to be United States District Judge for the United States District Court for the Northern District of California; Dolly M. Gee, nominee to be United States District Judge for the United States District Court for the Central District of California; and Jacqueline H. Nguyen, nominee to be United States District Judge for the Central District of California. Each nominee has excellent credentials to serve as federal district court judges, and each nominee has the strong backing of the Asian Pacific American community nationally.

NAPABA is the national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys nationally and 60 local Asian Pacific American bar associations. Its members include solo practitioners, large law firm lawyers, corporate counsel, legal service and nonprofit attorneys, judges, and lawyers serving at all levels of government. Through its national network of affiliates and committees, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace,

seeks to eliminate anti-Asian crime and anti-immigrant sentiment, and promotes professional development of minorities in the legal profession.

AAJC is a national organization dedicated to defending and advancing the civil and human rights of Asian Americans through advocacy, public policy, public education, and litigation, and is the nation's leading expert on issues of particular importance to the Asian American community in the areas of equal rights, anti-Asian violence prevention and race relations, census, health law policy, immigrant rights, immigration, language access, and voting rights. It works closely with its three affiliates – the Asian American Institute in Chicago, the Asian Law Caucus in San Francisco, and the Asian Pacific American Legal Center in Los Angeles – and nearly 100 community partners in 44 cities, 25 states, and the District of Columbia.

NAPABA and AAJC applaud the Judiciary Committee for considering these three candidates promptly, and for considering them together. This is the first time in history that three Asian Pacific American judicial candidates have been before this Committee at the same time. Similarly, never before in history have three Asian Pacific American federal judicial nominees been confirmed in the same year. In the history of the United States, there have been only 17 Asian Pacific American Article III judges.

NAPABA and AAJC also thank Senator Feinstein for her recommendation of Judge Nguyen and Judge Chen, and thank Senator Boxer for her recommendation of Ms. Gee. The organizations also appreciate the confidence that President Obama has demonstrated by nominating them.

The historic significance of this hearing underscores the woeful underrepresentation of Asian Pacific Americans in the federal judiciary. The following key facts illustrate the need for greater representation:

- Of the approximately 875 federal Article III judgeships, only 8 are Asian Pacific American – less than 1 percent. Incredibly, of the approximately 180 active federal appellate court judges, none are Asian Pacific American.
- Only 4 of the over 70 Article III judges serving in California are Asian Pacific American. If the number of Asian Pacific American Article III judges serving in California reflected that state's general population, approximately 10 judges would be Asian Pacific American.
- There have only been 2 Asian Pacific American female Article III judges in the history of the United States, none of whom serve in California. There has never been an Asian Pacific American female federal appellate court judge in the history of the United States.
- There has never been a Vietnamese American to serve as an Article III judge anywhere in the nation.

- There has never been a Chinese American female to serve as an Article III judge anywhere in the nation.
- Although Asian Pacific Americans constitute approximately 35% of the population in the San Francisco/Greater Bay Area, there has never been an Asian Pacific American Article III judge in this area. The lack of an Asian Pacific American judge in this District is particularly unfortunate, given that many of the most infamous decisions affecting Asian Pacific Americans – including *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), *Korematsu v. United States*, 323 U.S. 214 (1944), and *Lau v. Nichols*, 414 U.S. 563 (1974) – were first rendered by the courts in San Francisco.
- It is also worth noting that only 5 of the 24 active status judges in the Central District of California are women.

Having this historical perspective is noteworthy. Diversity is important because of the results that a diverse judiciary is more likely to produce. A judiciary that more closely resembles the American citizenry is more likely to engender confidence by that citizenry in the justness of the results reached. A judiciary that has diverse perspectives is more likely to ensure that cases are decided fairly, evenly, without predisposition, and with an open mind.

With respect to the Asian Pacific American community, the importance of diverse perspectives within the judiciary can be illustrated by two scenarios that have frequently arisen in courtrooms across America. The first scenario involves the veracity of an Asian Pacific American witness whose credibility is questioned because the witness refuses to look directly at an examiner or a judge. Certainly, the failure to make eye contact could be a sign that a witness is not telling the truth. In many Asian cultures, however, looking down or avoiding eye contact is simply a show of respect or deference to someone who is in a more authoritative position. The second scenario involves an Asian Pacific American witness who seems to be agreeing with every question that a cross-examiner or judge asks him, even though the answers have the effect of impeaching the witness. Again, in this scenario, the witness's apparent willingness to say "yes" may be caused by the witness's culture, where explicit disagreement is a sign of disrespect. If a jurist understands these cultural tendencies, then a jurist might be able to determine whether culture may be affecting perception instead of dismissing that witness as unreliable or non-credible. In this manner, the administration of justice is affected.

Thus, diversity is not necessarily a goal in itself but rather a means to ensuring that a just result is reached. Although certainly judges can be educated about different cultures and how characteristics might manifest themselves in the courtroom, judges also learn every day from each other as a result of conversations in chambers, over lunch, or at judicial conferences. A diverse judiciary will help to ensure that all judges have the benefit of a diversity of perspectives and experiences to allow them to make the most informed decision possible.

Of course, neither diversity nor the historic significance of these nominations – standing alone – would compel the confirmation of these nominees if they are not otherwise qualified. Rather, all three nominees have the experience, intellectual capacity, integrity, and temperament to serve admirably as U.S. district court judges. Two nominees have proven track records as sitting jurists and the third has substantial quasi-judicial experience. The legal community has strong confidence in all three nominees, as demonstrated by a wide range of bipartisan support from bar organizations, community groups, law enforcement, and individual leaders in the legal community.

Each of the three Asian Pacific American nominees currently before this Committee has the types of experiences that would help to create a better justice system. The individual qualifications and attributes of each nominee will be summarized below.

**Judge Edward M. Chen** is a well-respected jurist with a history of service in the Bay Area, not only as a judge but as an attorney and community advocate. He has served as a United States Magistrate Judge for the Northern District of California for over eight years, where he has presided over numerous civil and criminal trials by jury and bench. He was recently re-appointed for a second term. Judge Chen has adjudicated scores of cases by motion, and is the author of over 300 published opinions and orders covering a wide range of subject matters. Notwithstanding that large number of published opinions, Judge Chen has been reversed less than 5 times. He already has the experience of running a federal district court docket, and would be poised to contribute immediately in the Northern District. Prior to his appointment as a magistrate judge, Judge Chen served as a staff attorney for the American Civil Liberties Union, as a litigation associate at Coblenz Patch Duffy & Bass, as a law clerk for the Honorable James R. Browning, then Chief Judge of the United States Court of Appeals for the Ninth Circuit, and as a law clerk for the Honorable Charles B. Renfrew, U.S. District Judge for the Northern District of California. Judge Chen served on the *California Law Review* and graduated Order of the Coif from University of California – Berkeley School of Law. He has been unanimously ranked “well qualified” by the American Bar Association.

Judge Chen has demonstrated a commitment to public service and the legal community throughout his career. Most notably, Judge Chen was on the legal team representing Fred Korematsu that successfully overturned – in a *coram nobis* case – his World War II conviction for failing to comply with the Japanese internment order. *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984). Judge Chen’s confirmation as an Article III judge on the same court that initially convicted Mr. Korematsu would represent a symbolic arc of history that affirms the strength of the American justice system. But Judge Chen’s community service has not been limited to this one case. He has contributed in numerous ways, including service on the boards of directors of the Asian American Bar Association of the Greater Bay Area, the Chinatown Community Development Corporation, and the Middlebridge School, which serves children with learning disabilities. Judge Chen also chaired the Marin Montessori School’s diversity committee.

Judge Chen has been a longstanding leader in the Bay Area legal community generally and in the Asian Pacific American community specifically. Judge Chen was named Judge of the Year in 2007 by the Barristers Club of San Francisco and has been ranked “exceptionally well qualified” by the Bar Association of San Francisco. Among the awards and recognitions that he has received are: Building Bridges Lifetime Achievement Award, Bay Area Asian Pacific American Law Students Association Conference (2005); Trailblazer Award, NAPABA (2001); Joe Morozumi Exceptional Legal Advocacy Award, Asian American Bar Association of the Greater Bay Area (1998); Unity Award, Minority Bar Coalition (1993).

Judge Chen overcame adversity at a young age and understands the challenges faced by many families. Judge Chen’s father emigrated from China as a merchant in the 1920s and his mother immigrated to Texas in the late 1930s during the Sino-Japanese war. Judge Chen was born and raised in racially diverse Oakland, California. When Judge Chen was 9 years old, his father suffered a stroke and slipped into a coma for 3 ½ years before passing away. His mother was left to care for Judge Chen and his three older brothers and also to take over the family import business started by his father. When Judge Chen became an adult, he helped to run that business. Growing up, Judge Chen has held jobs as a musician, valet, and restaurant worker, but also has managed small businesses such as a motel with 40 employees, a retail clothing store, and his family’s real estate investments. Judge Chen understands family challenges even now. He is the parent of a child who is severely developmentally disabled and another with learning disabilities. All of these experiences – as a judge, a community advocate, a small business owner, the son of immigrants, and as a father – will combine to allow Judge Chen to approach each case with balance and neutrality, as he has done so with distinction as a federal magistrate judge. Judge Edward M. Chen is worthy of elevation to become a U.S. District Court Judge for the Northern District of California.

**Dolly M. Gee** is a partner with Schwartz, Steinsapir, Dohrmann & Sommers LLP, where she specializes in labor and employment law. She has extensive experience in federal and state court litigation involving all aspects of labor and employment law. Although Ms. Gee has not served as a judge before, she has a substantial amount of quasi-judicial experience. From 1994 to 1999, Ms. Gee served as a member of the Federal Service Impasses Panel, where she mediated and arbitrated numerous disputes and participated in hundreds of summary dispositions of impasses between federal agencies and federal sector labor unions. During the 1995-96, 1999-2000, and 2005-06 International Brotherhood of Teamsters Delegate and Officer Elections, Ms. Gee served as an independent election monitor under the auspices of the Office of the Election Officer, established under the supervision of the Honorable David N. Edelstein, U.S. District Judge for the Southern District of New York. In that capacity, she investigated and recommended dispositions for hundreds of election protests relating to alleged violations of election rules. Since 2000, Ms. Gee has served as an arbitrator for the Kaiser Permanente Independent Arbitration System, where she has arbitrated several disputes involving medical malpractice or breach of contract. Upon graduation from law school, she was a law clerk for

the Honorable Milton L. Schwartz, U.S. District Judge for the Eastern District of California. Ms. Gee has been unanimously ranked "Qualified" by the ABA.

Ms. Gee serves as a role model for all lawyers, and especially Asian Pacific American and female lawyers. Ms. Gee's parents emigrated from small farming villages in Toisan, China. Her father served in the U.S. Navy during World War II and was among the first wave of Chinese American aerospace engineers who worked on the Apollo space missions for North American Aviation and later Rockwell International. Her mother was a garment worker and her experiences inspired Ms. Gee to go into the field of labor and employment law. English was Ms. Gee's second language.

Ms. Gee's bar association and public service activities reflect her commitment to fostering racial harmony and understanding, and promoting tolerance in Los Angeles, a diverse community which too often has been scarred by racial strife and violence. Notably, Ms. Gee was President of the Southern California Chinese Lawyers Association (SCCLA) in 1992 when police officers involved in the Rodney King beating were acquitted, which sparked one of the largest outbreaks of urban violence in U.S. history. At that time, many Asians were victims of violent crime, theft, and vandalism. Ms. Gee coordinated volunteer attorneys to provide pro bono legal services to the victims of civil unrest. Importantly, Ms. Gee also worked tirelessly with other bar associations and community groups to restore peace, ease racial tensions, and create a more unified city. Her work since that time has not diminished, and she has been a leader in working with both the federal and state court systems: Standing Committee on Discipline, U.S. District Court for the Central District of California (1999-2001); Advisory Board Member, U.S. Court of Appeals for the Ninth Circuit (2005-2008); Commission on Judicial Nominees Evaluation, State Bar of California (1996-1998). Ms. Gee's other leadership positions have included: Board of Trustees, Los Angeles County Bar Association (1993-1995); Co-Founder/Board of Governors, Asian Pacific American Bar Association of Los Angeles (1998-2000); Board of Directors, Western Center on Law & Poverty (1993-1995; Vice President, 1996-1998); Board of Directors, California Women's Law Center (1995-1998); Board of Directors, Asian Pacific American Legal Center of Southern California (1983, 2003-present).

As a result of her many pro bono efforts, Ms. Gee has received public service awards and commendations from the City of Los Angeles, the City of Monterey Park, the Los Angeles Human Relations Commission, the Office of the California Secretary of State, the Office of the Los Angeles City Attorney, and the Asian Pacific American Bar Association of Los Angeles County. Ms. Gee received NAPABA's Trailblazer Award in 2001. Since 2004, she has been named each year as a "Southern California Super Lawyer" by *Los Angeles Magazine*. Ms. Gee's many accomplishments – as a successful and well-respected attorney, an arbitrator/mediator/"neutral," and as a community leader – demonstrate that she will be a judge who will be respected and admired for her fairness and ability to make all litigants feel that they have been treated justly regardless of outcome.

**Judge Jacqueline H. Nguyen** has been a judge with the Los Angeles County Superior Court for over seven years. When appointed, she was the first Vietnamese American woman to serve as a judge in California. As a judge, she has presided over thousands of cases, including over 65 jury trials. Judge Nguyen's record as a jurist is stellar – to date, none of her cases have been reversed on appeal. In addition to her regular duties as a trial court judge, Judge Nguyen is currently the Site Judge for the Alhambra Courthouse. As Site Judge, Judge Nguyen is in charge of the administrative operation of the Alhambra Courthouse, which she accomplishes through close working relationships with the sitting judges, court leadership, law enforcement, and the assigned prosecutors and defenders. Prior to her appointment to the bench, Judge Nguyen worked for many years as an Assistant United States Attorney with the United States Attorney's Office for the Central District of California, ultimately serving as Deputy Chief of the General Crimes Section, after stints with the Organized Crimes Strike Force, and the Public Corruption and Government Fraud Section. Judge Nguyen is perhaps best known for her ground breaking anti-terrorism prosecution in the "Operation Eastern Approach" case of *United States v. Tabatabai*, the first successful prosecution in the United States for providing material support and resources to a designated foreign terrorist organization.

Judge Nguyen has received several awards for her achievements. These awards include the Federal Law Enforcement Officers Association's Contribution to the Field of Law Enforcement Award (2002), NAPABA's Trailblazer Award (2006), a Special Recognition Award from the Asian Pacific American Legal Center (2002), the Alumni Award from Occidental College (2007), and several commendation and achievement awards from the Department of Justice, the Federal Bureau of Investigations, and the State Department.

Judge Nguyen has demonstrated a lifelong commitment to the community. She was a volunteer pro bono attorney with Public Counsel's foster adoption project. She – along with Ms. Gee – was a founding member of the Asian Pacific American Bar Association of Los Angeles, and served as its president in 1999-2000. She has served as a board member of the Women Lawyers Association of Los Angeles, a board member of the Japanese American Bar Association of Greater Los Angeles, and was Co-Chair of the Asian Concerns Committee.

Judge Nguyen is a testament to both the beauty, and the promise, of the American Dream. Judge Nguyen was born in Dalat, South Vietnam, the daughter of a South Vietnamese Army major who worked closely with U.S. intelligence officers. She escaped the fall of South Vietnam with her family in a harrowing trip, starting with a terrifying toss over a fence, to a plane ride filled wall to wall with people, temporary separation from her father, through a chaotic Saigon, to the Philippines, to Guam, and eventually, to Camp Pendleton, California. Having been born into a life of relative security, then to lose it all to the chaos of war, Judge Nguyen embraced her new life in America with grace, fortitude, determination, and cheerful modesty, assisting her mother in cleaning dental offices growing up. She earned a four-year full tuition scholarship to Occidental College, and then graduated from UCLA School of Law. Throughout it all, she continued to help in the family donut shop on weekends and also taught

as an elementary school substitute teacher. A story that could be crushing to many, Judge Nguyen's strength of character and determination shines. She brings a deep diverse experience, both professional and personal, that would serve her well as a United States District Court Judge.

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Jacqueline H. Nguyen, Judge Edward M. Chen, and Dolly M. Gee would make immediate contributions as federal district court judges. Each nominee has significant professional accomplishments that demonstrate his or her fitness for the bench. Moreover, each nominee brings a unique personal life story that would inspire all Americans. Especially given the exceedingly low number of Asian Pacific American federal judges nationwide, the addition of all three individuals to the federal judiciary is important to NAPABA and AAJC. NAPABA and AAJC are encouraged by the progress being made here today, and look forward to working with this Committee and the Administration as many more Asian Pacific Americans are nominated for federal judgeships. Indeed, the addition of these three individuals to the federal judiciary should be important to all Americans interested in ensuring that the federal judiciary is reflective of all of the different communities that make up the fabric of the United States. Accordingly, the National Asian Pacific American Bar Association and the Asian American Justice Center proudly support and urge for the speedy confirmations of Judge Jacqueline H. Nguyen and Dolly M. Gee for the United States District Court for the Central District of California, and Judge Edward M. Chen for the United States District Court for the Northern District of California. Thank you for considering this testimony today.