

# TRAILBLAZING CHIEF JUSTICES IN THE AMERICAN STATES



## STATE COURTS HAVE WELCOMED DIVERSE LEADERS FOR DECADES. HERE'S A LOOK AT A FEW 'FIRSTS' AMONG STATE CHIEF JUSTICES.

BY RICHARD L. VINING JR. AND TEENA WILHELM

The diversity of the American bench is frequently scrutinized by politicians, journalists, academics, and jurists themselves. This has been particularly true in recent years as the U.S. Supreme Court has become more diverse. Barriers that once prevented minorities and women from serving on the bench may no longer be as difficult to scale. Recent presidents, especially those from the Democratic Party, have emphasized the importance of making appointments from diverse pools of judicial nominees. As a result, the demographic profile of the federal judiciary has changed substantially since the 1970s. In 2022, the federal bench comprised approximately 36 percent female and 29 percent nonwhite judges.<sup>1</sup>

Similar trends toward diversity are evident in state courts, as previously underrepresented groups have become more visible on the bench.<sup>2</sup> By 2021, women and minorities occupied 39 percent and 17 percent, respectively, of seats on state courts of last resort. While these figures still indicate a "stark lack of diversity" in state high courts compared to the diversity of the American population,<sup>3</sup> they are a massive shift from the judiciary's collective profile a generation ago.

As diversity in the state supreme courts increases, it is worth considering those individuals who overcame historical bias to join the bench. Many groundbreaking federal judges have received scholarly and journalistic attention for their status as trailblazers (e.g., Florence E. Allen, Louis D. Brandeis, Reynaldo G. Garza, William H. Hastie, Thurgood Marshall, Sandra Day O'Connor, Sonia M. Sotomayor, and Ketanji Brown Jackson), but less notice has been given to judges at the state level with similar accomplishments. This is an oversight in scholarly inquiry, especially since state courts handle the majority of the nation's cases and are uniquely powerful. The historical record will benefit from more attention to the stories of individuals who paved the way in these important roles.

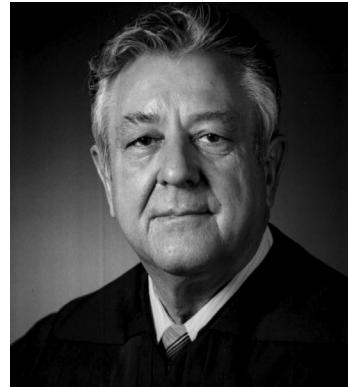
Chief justices are important figures who lead both their own courts and, in the modern era, their state judicial systems. Chief justices are formally recognized as the head of the judicial branch in all 50 states, either alone, as head of a judicial council, or in conjunction with their supreme court colleagues. In this capacity, they can develop policies for the judiciary, champion reforms, communicate with the public, and foster interbranch relations to improve ►

the well-being of state courts and the states' judicial systems.

While all 17 chief justices of the U.S. Supreme Court have been white men, dozens of minorities and women have headed state supreme courts.<sup>4</sup> Examining court leaders who broke new ground enables us to observe when and how minorities and women first rose to positions of leadership in the judiciary. Many such groundbreaking leaders have not received much recognition for their accomplishments due to their courts' limited public profile. This has masked their contributions and limited popular awareness of public servants who overcame social and professional barriers to become court leaders.<sup>5</sup>

### An Overview of Trailblazing Chief Justices in the States

To give proper credit to trailblazing chief justices on state supreme courts, we begin with our best assessment of



JEAN A. TURNAGE WAS LIKELY THE FIRST NATIVE AMERICAN CHIEF JUSTICE. HE SERVED AS MONTANA'S CHIEF JUSTICE 1985-2000. (MONTANA MEMORY PROJECT)

the earliest chief justices in several demographic categories. We provide a select list of several groundbreaking heads of state supreme courts in Table 1. We confirmed demographic and identity information about state chief justices from media reports, law review articles, obituaries, court histories, and published biographies.

The list is not intended to be exhaustive or to represent all types of diversity or trailblazers; any error of omission is unintentional. We also acknowledge that whether an individual is a true pioneer — the first to represent a particular underrepresented group — is open to interpretation. Regardless, the individuals included in Table 1 are worthy of scholarly attention. Among the dozen chiefs we identify as pioneers, four were elected by their colleagues and three were appointed by the state's governor (two of whom served in Hawaii). Two became chief justice as a result of seniority. The remaining chief justices were selected by different means — one by the state legislature, one by rotation, and the other in a non-partisan popular election.

Aside from the 19th century Jewish chiefs (Henry A. Lyons and Franklin J. Moses Sr.), the earliest pioneers identified here represented groups that composed large proportions of

TABLE 1. TRAILBLAZING CHIEF JUSTICES OF STATE COURTS OF LAST RESORT

| NAME                   | BACKGROUND                     | STATE | YEARS                | SELECTION METHOD       |
|------------------------|--------------------------------|-------|----------------------|------------------------|
| Henry A. Lyons         | Jewish American                | CA    | 1852                 | Seniority              |
| Franklin J. Moses Sr.  | Jewish American                | SC    | 1868-1877            | Elected by legislature |
| Eugene D. Lujan        | Hispanic                       | NM    | 1951-1952, 1957-1959 | Rotation by seniority  |
| Wilfred C. Tsukiyama   | Asian American                 | HI    | 1959-1965            | Appointed by governor  |
| Lorna E. Lockwood      | Female                         | AZ    | 1965-1966, 1970      | Peer vote              |
| William S. Richardson  | Asian American/Native Hawaiian | HI    | 1966-1982            | Appointed by governor  |
| Robert N. C. Nix Jr.   | African American               | PA    | 1984-1996            | Seniority              |
| Jean A. Turnage        | Native American                | MT    | 1985-2000            | Nonpartisan election   |
| Dorothy Comstock Riley | Hispanic female                | MI    | 1987-1991            | Peer vote              |
| Leander J. Shaw Jr.    | African American in South      | FL    | 1990-1992            | Peer vote              |
| Leah Ward Sears        | African American female        | GA    | 2005-2009            | Peer vote              |
| Tani Cantil-Sakauye    | Asian American female          | CA    | 2011-2023            | Appointed by governor  |

Note: This table includes select trailblazing chief justices who served in the American states. With the exceptions of Chief Justice Moses and Chief Justice Shaw, we chose to feature here only the first individual from each identity group. See article text for additional pioneers of note.

their state populations (for example, Hispanic Americans in New Mexico and Asian Americans in Hawaii). In the 1980s, Robert N.C. Nix Jr. of Pennsylvania and Jean Turnage of Montana became chief justices even though the minority groups they identified with did not make up a large portion of the state's population. Notably, Turnage was the first modern minority chief justice elected by popular vote. Other subsequent trailblazers frequently came from states where people who shared their demographic profiles were important but not dominant in state politics (e.g., the Jewish population of New York, African Americans in Georgia, and Cuban Americans in Florida).

The rise of minority chiefs like these is consistent with broader trends toward increasing diversity in the legal profession<sup>6</sup> and within state high courts in the second half of the 20th century.<sup>7</sup> Although these individuals reached the apex of their court systems, and several established national reputations, many are not well-known to casual court watchers or even experts not immersed in the histories of the various state courts of last resort. Few are the subjects of extensive biographies, though some have been featured in book manuscripts or law review articles. We discuss a selection of these pioneers below in approximate chronological order. We hope that this discussion contributes to a better understanding of how they defied history to become leaders of state court systems.

#### **The First Minority Chief Justices: Henry A. Lyons and Franklin J. Moses Sr.**

Our analysis of the historical record suggests that no state was led by a minority or female chief justice for the first six decades of American his-

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tory. That changed in 1852 when a Jewish man, Henry A. Lyons, became the second chief justice of California. According to J. Edward Johnson, a longtime biographer of California Supreme Court justices, "Lyons was a Jew and unquestionably ground in the Judaic traditions" but also influenced by Christianity.<sup>8</sup> Lyons, a Pennsylvania native, was a seasoned attorney when he left Louisiana for California in 1849.<sup>9</sup> Like so many of his time, he was drawn to the West Coast by the economic boom associated with the Gold Rush, and he quickly established himself in law and Democratic politics.

After losing an 1849 election for the state senate, Lyons became the second justice elected by the California legislature to the state's new supreme court.<sup>10</sup> He and the other first justices on the California Supreme Court began service in January 1850. When the two-year term of the first chief justice, Serranus C. Hastings, expired, Lyons became chief justice due to his seniority.<sup>11</sup> His tenure in leadership was brief: Lyons served as chief justice for only three months, January to March 1852, and resigned with two years remaining in his term. He wrote two opinions

as chief justice. After leaving the court, Chief Justice Lyons focused on business rather than law.<sup>12</sup>

The first Jewish chief justice to serve a prolonged tenure, Franklin J. Moses Sr. of South Carolina, also took office during a time of constitutional change in his state.<sup>13</sup> The Palmetto State adopted a new constitution in 1868 as part of its effort to rejoin the Union following the Civil War. During this period, the state's large African American population was granted voting rights, and many former Confederate loyalists were disenfranchised under provisions of the 14th Amendment.<sup>14</sup> These conditions led to a wholesale shift in the state's political power structure, with the new government led by Republicans, including a majority-Black House of Representatives. New leaders eager to enforce the 1866 federal Civil Rights Act — including Moses' son, House Speaker Franklin J. Moses Jr. — took control of state government.<sup>15</sup> The 1868 constitution included a reorganization of the state supreme court to include three members chosen by the General Assembly for six-year terms.<sup>16</sup> The search for allies willing to serve in the Reconstruction-era state government, distrusted by many Democrats and white citizens, and the reconfiguration of the state's high court led to the 1868 selection of Chief Justice Franklin J. Moses Sr.,<sup>17</sup> a wealthy attorney who had spent more than two decades in South Carolina's antebellum legislature. Although the Jewish population of South Carolina was well-established, assimilated, and active in state politics, Franklin Moses Sr. "downplay[ed] his own Jewishness," and his son, Franklin Moses Jr., was raised in the Methodist tradition favored by his wife.<sup>18</sup>

Franklin J. Moses Jr. used his role as speaker of the House in South ►

Carolina's legislature to support his father's election as chief justice.<sup>19</sup> The elder Moses was elected to lead the South Carolina Supreme Court by a joint assembly of the state legislature on the third ballot; he received 70 of 131 lawmaker votes, with 64 of those votes coming from House members.<sup>20</sup>

Chief Justice Moses was a South Carolina native who had been supportive of the Confederate cause, which clearly affected how his election was viewed. Despite being elected by the Republican legislature, his defeat of Republican rival D.T. Corbin was seen as "another Democratic victory" that left Republicans "very much disgusted."<sup>21</sup> However, Chief Justice Moses had also enforced the Reconstruction acts during his service on a lower court despite his former allegiances. His decision to cooperate with the Republican legislature was perceived as illegitimate by many South Carolina citizens and journalists, who branded him a traitor, opportunist, or "scalawag."<sup>22</sup> Scathing attacks and distrust directed toward Moses by South Carolina's white elites were common while he was chief justice. Even so, he was not a reliable supporter of the new government, and his judicial decisions frequently disappointed Republicans.<sup>23</sup> Chief Justice Moses' tenure ended when he passed away in 1877.

After Moses, several decades passed before another Jewish chief judge took office. Benjamin Cardozo was designated to sit on the New York Court of Appeals in 1914 to help clear its case backlog, and he was appointed formally in 1917. He won popular election as chief judge in 1926 and served in that role until 1932, when he joined the U.S. Supreme Court.<sup>24</sup>

### **The First Hispanic Chief Justices: New Mexico and Elsewhere**

When individuals from minority racial or ethnic groups first became court leaders after World War II, they primarily emerged in states where minorities were a substantial proportion of the population. This trend was first realized in the American Southwest.

The earliest Hispanic chief justice we identified was Eugene D. Lujan of the New Mexico Supreme Court. Lujan's career included stints as both a district attorney and a district judge, as well as a widely noted change of party affiliation from Republican to Democrat as New Mexico's political winds shifted in the early 1930s.<sup>25</sup> He was elected to the New Mexico Supreme Court in 1945 after a disputed Democratic primary that took over four months to resolve.<sup>26</sup> After winning the general

election, he became "the first Spanish American to serve on the state's highest court"<sup>27</sup> and was reelected in 1952. Chief Justice Lujan's electoral success provided descriptive and symbolic representation to a large subset of the state's people. Estimates of the Hispanic population of New Mexico circa 1950 are difficult to ascertain due to limitations in census data of that era; however, Glenn Winters noted that New Mexico's population had only recently transitioned away from a "long-standing voting majority" of Spanish Americans in the state.<sup>28</sup>

Lujan was chief justice from 1951 to 1952 and 1957 to 1959. He succeeded the retiring Chief Justice Charles R. Brice as the court's leader in 1951. This occurred as a result of the New Mexico Supreme Court's internal rules, which specified that "the member who is next up for election becomes chief justice."<sup>29</sup> As a result, justices often served in non-consecutive terms as chief. These duties cycled back to Lujan in 1957, and he occupied the center seat when he retired in 1959. He retired primarily because of legislation passed earlier that year to coerce the departures of three senior justices, including Lujan. Once the new law went into effect on March 4, 1960, justices who continued service past the age of 70 would get a pension but would no longer be able to secure survivor benefits for spouses.<sup>30</sup>

New Mexico had another Hispanic chief justice within a decade, as David Chavez Jr. held the post from 1967 to 1968. Governor John Burroughs appointed Justice Chavez in 1959 to maintain a Hispanic presence on the court when Chief Justice Lujan retired, though it was likely helpful that Chavez was the brother of New Mexico's senior senator, Dennis Chavez.<sup>31</sup> Dan Sosa also held the New Mexico chief

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justiceship from 1979 to 1980 and again from 1989 to 1991.

Discussions regarding the identity of the first Hispanic leader of a state's high court also include the aforementioned Benjamin Cardozo of New York. He was from a Sephardic Jewish family that fled the Iberian peninsula (Portugal) during the Inquisition to reside elsewhere in Europe.<sup>32</sup> However, as Portugal is not a Spanish-speaking country and Cardozo did not identify as Hispanic, there is ongoing debate about whether he ought to be categorized as such.<sup>33</sup>

Dorothy Comstock Riley of the Michigan Supreme Court became the nation's first Hispanic female chief justice in 1987; she held the position until 1991. Her mother, Josephine Grima, was the first known Mexican student to enroll at Indiana University.<sup>34</sup>

Luis D. Rovira of Colorado has been identified as "the United States' first-ever Hispanic chief justice,"<sup>35</sup> though we perceive that to be an error. Rovira was born in Puerto Rico before moving to New York as a child. He was elected unanimously as chief justice by his

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peers in 1990<sup>36</sup> and served until reaching Colorado's mandatory retirement age in 1995. While Rovira was the first chief justice of Puerto Rican ancestry, he was preceded by at least four other chief justices of Hispanic descent (Lujan, Chavez, Sosa, and Riley).

In 2014, Florida Justice Jorge Labarga was elected by his colleagues to serve as chief justice. He was the first Cuban American to lead Florida's court system, and the state's second Cuban American justice. Labarga came to Florida as a young refugee following the Cuban Revolution, living in a segregated city in Palm Beach County. When he was sworn in as chief justice, he celebrated that "we have come a long way from those dark days" but stressed that it remains "absolutely imperative that we continue to strive to be a country and a state of inclusion and not exclusion."<sup>37</sup>

#### **The First Asian American Chief Justice: Wilfred C. Tsukiyama**

The first Asian American chief justice was Wilfred C. Tsukiyama of Hawaii, who was the state's initial court leader from 1959 to 1965. When Tsukiyama was appointed chief justice, Japanese Americans were a large part of Hawaii's population. In the 1960 cen-

sus, Hawaii reported more Japanese (203,455) than Caucasian (202,230) residents. Altogether, Asian residents comprised more than 45 percent of the state population.<sup>38</sup>

Tsukiyama was a second-generation Japanese American and son of immigrant plantation workers. He received his law degree from the University of Chicago before joining a Honolulu law firm and entering public service.<sup>39</sup> He became successful "as an attorney, jurist, legislator, community leader and athlete."<sup>40</sup> Active in Hawaii politics, Tsukiyama served as the territory's Republican senate majority leader and ran unsuccessfully for the U.S. Senate before being appointed chief justice by Governor William F. Quinn.

As Hawaii's first chief justice after statehood, Chief Justice Tsukiyama served during a period of transition that invited challenging legal issues.<sup>41</sup> When the government of Japan honored him for his public service and work to improve relations between Japan and the United States, Chief Justice Tsukiyama was described by Hawaii Senator Hiram Fong as "one of the most highly respected citizens of the State of Hawaii" who was regarded approvingly by "all the people of the 50th State."<sup>42</sup> His tenure as chief justice ended prematurely in December 1965 as a result of illness.<sup>43</sup>

Hawaii had a series of Asian American chief justices from 1959 until 2010 that also included the first Chinese American and Native Hawaiian, William S. Richardson, as well as the earliest Korean American, Ronald T. Y. Moon, to lead a state's high court.<sup>44</sup>

#### **The First Female Chief Justice: Lorna E. Lockwood**

The first American woman to become chief justice was Lorna E. Lockwood of the Arizona Supreme Court. Lockwood ►



WILFRED C. TSUKIYAMA (RIGHT) WAS HAWAII'S TERRITORIAL SENATE PRESIDENT BEFORE HE WAS APPOINTED CHIEF JUSTICE. (PICTURED HERE WITH A UNIVERSITY OF HAWAII PROFESSOR / HAWAII TIMES.)

was the daughter of a former chief justice of the same court, Alfred C. Lockwood, who served on Arizona's high court from 1925 to 1943. She was the only woman in her law class at the University of Arizona, where Dean Samuel Fegley reportedly told her that "law school is no place for a woman."<sup>45</sup> Lockwood had substantial difficulty finding employment after law school. As a result, she worked as a legal secretary despite her academic success. She turned to politics before rising to the state supreme court, serving as a state legislator and assistant attorney general before becoming a Maricopa County Superior Court judge in 1951. She was elected as a justice in 1960 and was first elected by her peers to become chief justice in 1965. She served in that capacity twice, from 1965 to 1966 and again in 1970. Chief Justice Lockwood's achievement was widely recognized in the statewide and national press, and for it she received a congratulatory message from President Lyndon Johnson.<sup>46</sup> Her tenure was a significant milestone for female judges, with others, including fellow Arizona native Sandra Day O'Connor, citing Chief Justice Lockwood as an inspiring example: "Each position I held in Arizona was one which was attained by following a course made far more accessible because Lorna Lockwood had prepared the way by proving it could be done and done well by a woman."<sup>47</sup>

#### **The First African American Chief Justice: Robert N. C. Nix Jr.**

The earliest African American state chief justice was Robert N. C. Nix Jr. of Pennsylvania.<sup>48</sup> Nix became the Keystone State's first Black statewide official when he was elected to the state's high court in 1971. He became chief justice in 1984 as a result of his seniority. Chief Justice Nix recognized



CHIEF JUSTICE ROBERT N.C. NIX JR. (ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS)

the significance of his new position, remarking that as "a member of a minority group, you recognize that the only hope for fairness and justice has to come from the court system." He asserted that he was "determined that there will be equal and fair justice for all Pennsylvanians."<sup>49</sup> At his investiture ceremony, Chief Justice Nix said that his leadership of the judicial system would show young African Americans that "they can be whatever they want to be." Numerous leaders of the legal profession attended the event in recognition of the first Black chief justice of a state, and Chief Justice Warren E. Burger sent a message that said Chief Justice Nix's elevation confirms that "high office is open to all on the basis of merit."<sup>50</sup> Nix led the court through a difficult period during which he feuded with Justice Rolf Larsen, who was investigated in the early 1980s for using racial slurs in reference to Nix. Larsen was exonerated of the accusations but his relations with Chief Justice Nix were tainted permanently.<sup>51</sup> Nix vacated the chief justice role in 1996 when he retired from the court.<sup>52</sup>

While the first Black chief justice in the American states is significant, the

first in the South can also be considered an important breakthrough. In 1990, Leander Shaw Jr. became chief justice of Florida — a significant milestone following an era of historical discrimination in the Southern states.<sup>53</sup> In 1959, Shaw was denied a seat to take the bar exam in the same Miami hotel space as white prospective attorneys. When he became chief justice, Shaw remarked that "[w]hether I like it or not, I serve as a role model for Black kids and other minority kids who can say 'Look, Lee Shaw did it. There is no reason I can't do it.'"<sup>54</sup> Chief Justice Shaw was selected unanimously for the leadership role by his fellow justices as the most senior justice who had not yet served as the court's leader.<sup>55</sup>

#### **The First Native American Chief Justice: Jean Turnage**

The first Native American chief justice was likely Jean A. Turnage of Montana, who led the state's supreme court from 1985 to 2000.<sup>56</sup> He was an enrolled member of the Confederated Salish and Kootenai Tribes from Lake County on the Flathead Reservation<sup>57</sup> and the first Native American elected to statewide office in Montana.<sup>58</sup> Turnage was a Republican state legislator for 22 years before joining the court, often sponsoring bills related to the judicial system. Turnage's tribal membership was recognized by his hometown newspaper, which described him in 1974 as a "one eighth degree tribal member" who "picks up his yearly per capita check with his Indian brothers, and a formal Tribal Attorney." But the paper also suggested he was not a reliable ally for tribal interests.<sup>59</sup> He won election in 1984 by nearly 27,000 votes. By 1992, the Salish-Kootenai Tribes vocally criticized Chief Justice Turnage for interfering in their efforts to reassert criminal jurisdiction on the

Flathead Nation after the tribe ceded it to the state in 1965 with Turnage serving as their attorney.<sup>60</sup> Turnage denied the accusations, arguing they were manufactured by his opponents in the 1992 election. He defeated fellow justice Terry N. Trieweiler that year by a margin of 1,034 votes statewide and declined to run again in 2000.

#### Intersectionality and Trailblazing Chief Justices

As the judiciary becomes more diverse, court scholars are increasingly interested in the effect of intersectional identities on judicial selection and judicial behavior.<sup>61</sup> Perhaps unsurprisingly, we find that chief justices who were both women and minorities emerged much more recently than most of the singular categories discussed above.

The earliest Jewish female leader of a state high court that we identified was Chief Judge Judith S. Kaye of the New York Court of Appeals. Her parents were immigrants from Poland who left their native country in search of safety and prosperity in America. After a stint as a journalist, Kaye graduated from NYU Law School in 1962 before entering private practice. Governor Mario M. Cuomo appointed Kaye to be the first female associate judge on New York's high court in 1983, fulfilling a campaign promise he made the prior year.<sup>62</sup> Judge Kaye became chief judge a decade later, following the resignation of Chief Judge Solomon "Sol" Wachtler. She served 15 years in that role, the longest tenure in state history, and had a national reputation as a leader in judicial administration and reform. Her contemporary counterpart Chief Justice Randall T. Shepard of Indiana referred to Chief Judge Kaye as "chief among chiefs"<sup>63</sup> and worthy of recognition for her work toward "building

**RILEY, THE DAUGHTER of an auto worker, earned her law degree from Wayne State University in Detroit but had difficulty finding employment after graduation. Prospective employers advised her to seek work in a steno pool or as a legal secretary.**

a better system of justice" within the Empire State and beyond its borders.<sup>64</sup>

The earliest female Hispanic chief justice was Dorothy Comstock Riley of Michigan, mentioned above among the pioneering court leaders.<sup>65</sup> Riley, the daughter of an auto worker, earned her law degree from Wayne State University in Detroit but had difficulty finding employment after graduation. Prospective employers advised her to

seek work in a steno pool or as a legal secretary. Instead, she later served a decade in Michigan's lower courts before joining the state supreme court in 1982. After being removed by her colleagues in 1983 due to a dispute about the legality of her appointment, she was returned to the high court by voters in 1984.<sup>66</sup> In doing so, she defeated incumbent Justice Thomas G. Kavanagh — who had earlier voted to remove her. This feat was remarkable given the difficulty of ousting incumbent justices at the polls.<sup>67</sup> She won a contested vote within her court to earn the chief justice position in 1987, defeating fellow Associate Justice Michael Cavanagh. The outgoing chief justice, G. Mennen Williams, praised the choice by noting that Justice Riley was "well known for her scholarly, trenchant opinions" and punctuality.<sup>68</sup> She served two consecutive two-year terms as chief justice, leaving the position in 1991.

The first Black woman to become chief justice of a state was Leah Ward Sears. She was elected by her colleagues to lead Georgia's court system in 2005.<sup>69</sup> Sears had spent the prior four years as the court's presiding justice, working closely with the chief justice on budgeting, court administration, and interbranch relations. Featured speakers at her investiture included former Atlanta Mayor Andrew J. Young and Associate Justice Clarence Thomas of the U.S. Supreme Court, both of whom remarked on her elevation as a symbol of social progress.<sup>70</sup> Chief Justice Sears used her public profile to bring attention to social problems associated with the decline of the family unit. She argued this problem was especially harmful for the African American community, where a disproportionate number of children were born to unmarried mothers.<sup>71</sup> Chief Justice Sears left the ▶



PORTRAIT OF DOROTHY COMSTOCK RILEY, PAINTED BY JOSEPH MANISCALCO. (MICHIGAN SUPREME COURT HISTORICAL SOCIETY)



TANI CANTIL-SAKAUYE RECENTLY COMPLETED A 12-YEAR TERM AS CHIEF JUSTICE OF CALIFORNIA. (ALAMY.COM.)

Georgia Supreme Court in June 2009, when her term expired.

Governor Arnold Schwarzenegger of California appointed Tani Cantil-Sakauye, the first Asian American female chief justice, in 2010. She is also the first Filipina leader of a state court system. Chief Justice Cantil-Sakauye had modest roots as the child of agricultural workers before earning a law degree at the University of California, Davis, and entering public service as a prosecutor. She had two decades of judicial experience when Governor Schwarzenegger tapped her to lead California's sprawling judicial

branch.<sup>72</sup> She was perceived as a very capable administrator, a vital skill set when leading the nation's largest court system, and a moderate Republican similar to Schwarzenegger.<sup>73</sup> She began her service as chief justice in January 2011 and her 12-year term expired on Jan. 2, 2023.

### Conclusion

This compilation of biographical information is significant for a singular reason: Diversity adds value to the judiciary. When judges look more like the parties that bring cases to the courts, or share characteristics with the public at large, the legitimacy of judicial institutions is strengthened.<sup>74</sup> As U.S. Supreme Court Justice Elena Kagan observed, "People look at an institution and they see people who are like them, who share their experiences, who they imagine share their set of values, and that's sort of natural I think and they feel more comfortable if that occurs."<sup>75</sup> When it comes to judicial leaders, diversity may be even more important. As state chief justices are the administrative and political leaders of an entire branch of government, descriptive representation in these powerful positions is essential.



**RICHARD L. VINING JR., PhD**, is an associate professor in the Department of Political Science at the University of Georgia. His research focuses on

judicial selection, judicial departures, judicial decision-making, and the interaction of courts with exogenous institutions.



**TEENA WILHELM** is an associate professor in the Department of Political Science at University of Georgia. Her research focuses on constitutional law,

judicial institutions, separation of powers, and public policy.

<sup>1</sup> These data are drawn from the website of the American Constitution Society, which provides updates regarding federal court diversity. *Diversity of the Federal Bench*, Am. Const. Soc'y, <https://www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench/>.

<sup>2</sup> Greg Goelzhauser, *Diversifying State Supreme Courts*, 45 Law & Soc'y Rev. 761, 763 (2011).

<sup>3</sup> Janna Adelstein & Alicia Bannon, *State Courts' Stark Lack of Diversity Demands Action*, LAW360 (June 30, 2021), <https://www.law360.com/articles/1399237>.

<sup>4</sup> When Associate Justice Abe Fortas of the U.S. Supreme Court was nominated for promotion to chief justice in 1968, it was widely noted that he could be the first Jewish chief justice of the United States. However, Justice Fortas was not confirmed, and the seat went to Chief Justice Warren Burger instead.

<sup>5</sup> This lack of awareness becomes obvious when reviewing contemporaneous press accounts discussing the selection of minority and female

chief justices. Several are erroneously described by journalists as the "first" chief justice in a demographic category, likely due to a lack of organized and accessible information about their predecessor(s).

<sup>6</sup> Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1042 (2011).

<sup>7</sup> Goelzhauser, *supra* note 2, at 763.

<sup>8</sup> J. Edward Johnson, 1 HISTORY OF THE SUPREME COURT JUSTICES OF CALIFORNIA 1850–1900, at 33 (1963). Another historical account of the California Supreme Court refers to Solmon Heydenfeldt, who served from 1852 to 1857, as "the first Jewish member of the Court." Joseph R. Grodin, *The California Supreme Court and State Constitutional Rights: The Early Years*, 31 HASTINGS CONST. L. Q. 141, 143 (2004). However, a 1902 profile of Heydenfeldt in the *Publications of the American Jewish Historical Society* affirms that Lyons was "the first Jewish judge in California." Albert M. Friedenberg, *Solomon Heydenfeldt: A Jewish*

*Jurist of Alabama and California*, 10 PUBL'NS AM. JEWISH HIST. SOC'Y 129, 132 (1902).

<sup>9</sup> J. Edward Johnson, *Henry A. Lyons*, 21 J. ST. BAR CAL., 305, 306 (1946).

<sup>10</sup> *Id.*

<sup>11</sup> Arnold Roth, *A History of the California Supreme Court in Its First Three Decades, 1850–1879*, 14 CAL. LEGAL HIST. 293, 307–308 (2019).

<sup>12</sup> Johnson, *supra* note 8, at 32.

<sup>13</sup> Moses is sometimes referred to as the first Jewish chief justice although Lyons preceded him by 16 years. For example, historian Belinda Gergel, then president of the Jewish Historical Society of South Carolina, noted that Sumter, South Carolina, was "home of America's first Jewish Chief Justice of a state supreme court [Moses]." Belinda Gergel, *From the President*, 11 JEWISH HIST. SOC'Y S.C. 2, 2 (2006).

<sup>14</sup> A.A. Taylor, *The Convention of 1868*, 9 J. NEGRO HIST. 381, 381–324 (1924).

<sup>15</sup> BENJAMIN GINSBERG, *MOSES OF SOUTH CAROLINA: A JEWISH SCALAWAG DURING RADICAL RECONSTRUCTION* 110 (2010).

- 16 Taylor, *supra* note 14, at 410.
- 17 The first African American state supreme court justice, Jonathan Jasper Wright, was also elected to the South Carolina Supreme Court during the Reconstruction period (in 1870). For an account of his selection and tenure, see generally Caleb A. Jaffe, *Obligations Impaired: Justice Jonathan Jasper Wright and the Failure of Reconstruction in South Carolina*, 8 MICH. J. RACE & L., 471 (2003).
- 18 GINSBERG, *supra* note 15, at 18–20.
- 19 *Id.* at 110.
- 20 Special Session, July 29, 1868, in J. HOUSE REPRESENTATIVES. ST. S.C., 135–6.
- 21 From Columbia, EDGEFIELD ADVERTISER, Aug. 5, 1868, at 2.
- 22 GINSBERG, *supra* note 15, at 111.
- 23 *Id.*
- 24 ANDREW L. KAUFMAN, CARDODO 127–129, 178–182 (1998).
- 25 Lujan Accepts Demo District Nomination, SANTA FE NEW MEXICAN, Oct. 17, 1932, at 6.
- 26 Susan A. Roberts, *The Democratic Court, 1930–1958*, 6 N.M. L. REV. 45, 56–58. (1975).
- 27 *Id.* at 58.
- 28 Glenn R. Winters, *The New Mexico Judicial Selection Campaign—a Case History*, 35 J. AM. JUDICATURE Soc'y, 166, 169 (1952). Chief Justice Lujan's granddaughter, Michelle Lujan Grisham, is currently the governor of New Mexico. Their family connection is frequently mentioned in news articles about Lujan Grisham. See, e.g., Seung Min Kim, *Sister's Death Drives Lujan Grisham*, POLITICO (Jan. 17, 2013) <https://www.politico.com/story/2013/01/michelle-lujan-grisham-profile-086137>.
- 29 Art Morgan, *Lujan Slated to Become Chief Justice*, SANTA FE NEW MEXICAN, NOV. 9, 1957, at 17.
- 30 Will Harrison, *Legislature Baits Retirement Hook for Three Court Justices*, SANTA FE NEW MEXICAN, Mar. 12, 1959, at 8. The effective date of the retirement law is discussed in *Hensley Seeking NM Post*, SANTA FE NEW MEXICAN, Nov. 4, 1959, at 8.
- 31 Susan A. Roberts, *The Court in the 1960s: Stability and Transition*. 6 N.M. L. REV. 64, 66–67 (1975).
- 32 ANDREW L. KAUFMAN, CARDODO 6–8 (1998).
- 33 See Ashby Jones, *Has the Supreme Court Already Had a Hispanic Justice?*, WALL ST. J., May 12, 2009, for a succinct discussion of this point from Cardozo biographer Andrew Kaufman. Cardozo is part of a similar debate regarding the first Hispanic justice of the United States Supreme Court. While that distinction is usually associated with Justice Sonia Sotomayor, some scholars suggest that Cardozo may also qualify. Charles W. Rhodes, *Navigating the Path of the Supreme Appointment*, FLA. ST. U. L. REV. 537, 539 n.10 (2011).
- 34 Mary Mellon, *Josephine Grima: IU's First Mexican Student*, BLOGGING HOOSIER HIST. (Jan. 29, 2019). <https://blogs.libraries.indiana.edu/iubar-chives/2019/01/29/josephine-grima/>.
- 35 See, e.g., Craig Silverman, *Expect Colorado's Supreme Court to Uphold Assault Weapon Bans*, COLO. SUN (Mar. 29, 2021), <https://coloradosun.com/2021/03/29/colorado-assault-weapons-ban-supreme-court-opinion/>.
- 36 Peter G. Chronis, *Chief Justice of State High Court Elected*, DENVER POST, May 26, 1990, at 1B.
- 37 John Kennedy, *Labarga First Cuban-American Chief Justice*, PALM BEACH POST, July 1, 2014, at 1B.
- 38 See Hawaii population data by race and ethnicity from the U.S. Census from 1900 to 2010 at <http://www.ohadatabook.com/T01-03-11u.pdf>.
- 39 *A Lifetime Honored*, HONOLULU ADVERTISER, Sept. 6, 1963.
- 40 Gregg K. Kakesako, *Former Chief Justice a Proud, Loyal Nisei*, HONOLULU STAR-BULL., Sept. 29, 1999.
- 41 112 CONG. REC. S1,003–4 (1966).
- 42 109 CONG. REC. S16,858–59 (1963).
- 43 Lengthy tributes to Tsukiyama were published in the Honolulu Star-Bulletin, Harriet Gee, *Justice Tsukiyama Dies at Age 68*, HONOLULU STAR-BULL., Jan. 6, 1966, and Congressional Record when he passed away in 1966, 112 CONG. REC. S1,003–4 (1966).
- 44 Chief Justice Herman T.F. Lum, a Chinese American man, was the Hawaii Supreme Court's leader from 1982 to 1993 between the tenures of Richardson and Moon.
- 45 SONJA WHITE DAVID, *LADY LAW: THE STORY OF ARIZONA SUPREME COURT JUSTICE LORNA LOCKWOOD* 11 (2012).
- 46 *Id.* at 38.
- 47 *Id.* at 46.
- 48 Phoebe Haddon, *An Independent Judiciary: The Life and Writings of Robert N.C. Nix*, 78 TEMPLE L. REV. 331, 332 (2005).
- 49 David Morrison & Daniel R. Biddle, *Nix Pledges to Make Court More Accountable to Public*, PHILA. INQUIRER, Jan. 7, 1984, at A1.
- 50 *Id.*
- 51 Larsen was eventually removed from the bench in 1994 after an impeachment conviction.
- 52 Emilie Lounsberry & Robert Zausner, *Nix to Step Down from High Court*, PHILA. INQUIRER, Mar. 7, 1996, at A1.
- 53 John C. Van Giesen & Bob Levenson, *Chief Justice Set for Fight at Polls*, ORLANDO SENTINEL, Mar. 14, 1990, at A1.
- 54 Tim Nickens, *State Supreme Court to Get Its First Black Chief Justice*, MIAMI HERALD, Mar. 14, 1990, at 1A.
- 55 *Id.* Shaw was followed four years later by the second African American chief justice in the South, Ernest Finney, of South Carolina. Finney had served on the court since 1985 and had become the most senior associate justice. Kevin Chappell, *Record Number of Black Chief Justices: Six Jurists Head D.C. and State Supreme Courts*, EBONY, October 1997, at 122–30; Bristow Marchant, *Pioneering SC Chief Justice, "A Legitimate Hero, Battled with Alzheimer's – Ernest Finney, 1931–2017"*, STATE, Dec. 4, 2017, at 1. Finney began his law career in a time when African Americans were not permitted to join the state bar. In 1954, as a young attorney, he attended his first state bar meeting as a waiter rather than a lawyer because of the association's discriminatory membership rules.
- 56 We note that Turnage was “likely” the first Native American chief justice because it is feasible that chief justices identified with other racial groups had Native American ancestry that is not emphasized in their biographies. However, Turnage was an enrolled member of a Native American tribe and was recognized by the tribe as such.
- 57 LUANA ROSS, *INVENTING THE SAVAGE: THE SOCIAL CONSTRUCTION OF NATIVE AMERICAN CRIMINALITY* 25 (1998).
- 58 Amy Beth Hanson, *Former Montana Chief Justice Jean Turnage Dies at 89*, ASSOCIATED PRESS, Sept. 28, 2015.
- 59 Editors, *Nov. 5 Election: What's in It for the Indians?*, CHAR-KOOSTA NEWS, Nov. 1, 1974, at 4.
- 60 Tribes Condemn Turnage's Actions, CHAR-KOOSTA NEWS, Oct. 2, 1992, at 1.
- 61 See Anna Blackburne-Rigsby, *Black Women Judges: The Historical Journey of Black Women to the Nation's Highest Courts*, 53 HOWARD L.J. 53, 645 (2010); Todd Collins & Laura Moyer, *Gender, Race, and Intersectionality on the Federal Appellate Bench*, 61 POL. RSCH. Q., 219 (2008); SUSAN B. HAIRE & LAURA P. MOYER, *DIVERSITY MATTERS: JUDICIAL POLICY MAKING IN THE U.S. COURTS OF APPEALS* (2015); Scott Hofer & Susan Achury, *The Consequences of Diversifying the U.S. District Courts: Race, Gender, and Ideological Alignment through Judicial Appointments*, JUST. SYS. J. (2022).
- 62 Susan N. Herman, *Biographical Introduction*, in JUDITH S. KAYE: IN HER OWN WORDS XVII–XXIV (ed. by Henry M. Greenberg et al., 2019).
- 63 Randall T. Shepard, *Judith Kaye as Chief among Chiefs*, 84 N.Y.U. L. REV. 671, 671 (2009).
- 64 *Id.* at 672.
- 65 As an example of the confusion about the earliest state supreme court judges from various demographic categories, a 2009 article in the Michigan Bar Journal identified Riley as “the first Hispanic person elected to the Supreme Court of any state.” Naseem Stecker & Samantha Meinke, *Assessing the Needs of the Justice System in Changing Times*, 88 MICH. BAR J. 8, 9 (2009). However, as noted above, Eugene Lujan was elected to New Mexico's high court in 1945 — nearly four decades before Riley was elected.
- 66 Associated Press, *Auto Worker's Daughter Heads Top Michigan Court*, CHICAGO TRIB., Jan. 8, 1987, at 3; Ron Dzwonkowski, *High Court May Have to Hear Its Own Drama*, DETROIT FREE PRESS, Aug. 27, 2010, at A8.
- 67 Chris Andrews, *Court Election Process Favors Incumbents*, LANSING ST. JOUR., Mar. 24, 2004, at B2.
- 68 Associated Press, *supra* note 66, at 3.
- 69 Judith W. Rogers, another African American woman, had previously served as chief judge of the District of Columbia Court of Appeals from 1988 to 1994.
- 70 REBECCA SHRIVER DAVIS, *JUSTICE LEAH WARD SEARS: SEIZING SERENDIPITY* 116–19 (2017).
- 71 *Id.* at 120.
- 72 Maura Dolan, *Gov. Chooses Moderate for Chief Justice; Tani Cantil-Sakauye is Known as a Skilled Administrator Who Has Shown Few Specific Ideological Leanings*, L.A. TIMES, July 22, 2010, at A1; Howard Mintz, *California's Chief Justice Nominee Will be Groundbreaking if Confirmed*, McCCLATCHY-TRIB. NEWS. SERV., July 21, 2010.
- 73 Dolan, *supra* note 72, at A1.
- 74 See generally Nancy Scherer and Brent Curry, *Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of U.S. Courts*, 72 J. POL. 90, (2010).
- 75 See Adam Liptak, *Sonia Sotomayor and Elena Kagan Muse Over a Cookie-Cutter Supreme Court*, N.Y. TIMES (Sept. 6, 2016), <https://www.nytimes.com/2016/09/06/us/politics/sotomayor-kagan-supreme-court.html>.