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Foreword: We Have Arrived, We Have Not Arrived

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INTRODUCTION

In the following two articles, Professors Chew¹ and Yen² explain empirical studies revealing previously unexplored patterns in the hiring and retention of Asian American law faculty. Their findings announce both the arrival and struggle of Asian Americans as law professors. I cannot in this brief introduction do justice to the complexity of this subject, and I will at times generalize broadly. I also acknowledge a likely divergence of views. My goal is to frame salient questions about Asian American law professor hiring and retention raised by the data collected, organized and insightfully presented by Professors Chew and Yen.

The mere existence of these studies in some measure proclaims the arrival of Asian Americans in the legal teaching profession. A population of Asian American legal scholars large enough to form the basis of meaningful studies signals our growing impact on law teaching and scholarship. Professor Chew learned that Asian American law professors possess extremely high qualifications in terms of academic credentials such as participation on law review, judicial clerkships, and interdisciplinary graduate degrees. Yet, she also discovered the small overall numbers of Asian American faculty and the channeling of many of those faculty into a narrow range of specialties. Professor Yen found that Asian American candidates for faculty positions were hired at a lower rate than African American or

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1. Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 *ASIAN L.J.* 7 (1996) [hereinafter Chew, *Legal Academy*].

2. Alfred Yen, *A Statistical Analysis of Asian Americans and the Affirmative Action Hiring of Law School Faculty*, 3 *ASIAN L.J.* 39 (1996).

Latino candidates. Taken together, their studies paint a poignant picture: As members of the legal academy, "we have arrived, we have not arrived."

II.

"WE HAVE ARRIVED"

The studies by Professors Chew and Yen reveal that the experience of arrival may be increasingly common among Asian American aspirants to the legal academy.³ The evidence of our arrival? Asian American law professors are reaching a critical mass. We recently held the second annual Asian American Law Professors' conference and are planning a third.⁴ Our numbers are small but growing in law schools across the country—61 total, representing a seventy percent increase since 1980.⁵ Ninety-four percent of the Asian American women law professors entered teaching in the last fifteen years.⁶ Many law schools hired their first Asian American professor in the last five years.⁷

Despite the recency of our arrival, Asian American law professors are making a mark. We are increasingly sought as speakers at national conferences on a range of legal topics—sometimes to embody the "Asian view," sometimes to speak on our other areas of expertise. We have a thriving Asian American legal scholarship and are publishing on a variety of legal subjects.⁸ Our academic credentials exceed those of colleagues with com-

3. In terms of my own hiring and retention experiences, in 1985, following seven years of private firm and public interest practice, I was hired by the University of Hawaii Law School. I am one of three tenured and tenure-track Asian Americans on the faculty. My first promotion to associate professor in 1986 was an early promotion. I am now a tenured full professor and have been involved in several renewal, tenure and promotion decisions of other faculty members, have chaired the faculty appointments committee on several occasions and have served on the University-wide Tenure-Promotion Review Committee. My experience with arrival/non-arrival concerning my own promotion is described later in this introduction.

4. The first Asian American Law Professors' Conference was held at the Boston College Law School in October of 1994. A third conference is planned for 1996 in Los Angeles.

5. Chew, *Legal Academy*, *supra* note 1, at 13.

6. *Id.*

7. Yen, *supra* note 2, at 41.

8. Concerning Asian American legal scholarship *see, e.g.*, ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY (Hyung-Chan Kim ed., 1992); BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990 (1993); Keith Aoki, *The Politics of Backlash and the Scholarship of Reconstruction*, 81 IOWA L. REV. (forthcoming 1996); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241 (1993), 1 ASIAN L.J. 1 (1994); Williamson B. C. Chang, *The "Wasteland" in the Western Exploitation of "Race" and the Environment*, 63 U. COLO. L. REV. 849 (1992); Jim Chen, *Unloving*, 80 IOWA L. REV. 145 (1994); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994) [hereinafter Chew, *Asian Americans*]; Margaret Chon, *On the Need for Asian American Narratives*, 3 UCLA ASIAN PAC. AM. L.J. (forthcoming 1996); Neil Gotanda, *Critical Legal Studies, Critical Race Theory and Asian American Studies*, 21 AMERASIA J. 127 (1995); Neil Gotanda, *"Other Non-Whites" in American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985); Natsu Saito Jenga, *Unconscious: The "Just Say No" Response to Racism*, 81 IOWA L. REV. (forthcoming 1996); Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1 (1996); Cynthia Kwei Yung Lee, *Beyond Black and*

parable positions at similar schools.⁹ We are seen by some, for better or worse, as a “model minority.”¹⁰ By these indicia, and these are important indicia, Asian American law professors have arrived.

There is a caveat, however. For those who have arrived, doing what is *normally* expected is usually enough. But sometimes for Asian American law professors, meeting normal expectations may not be enough. This brings me to the second part of this introduction’s title: “We have not arrived.”

I.

“WE HAVE NOT ARRIVED”

I signed my initial law teaching contract at the level of associate professor. Following seven years of private and public interest law practice, this rank was consistent with the advertised terms of the job. However, due to objections by then assistant professors, the dean asked me to tear up the signed contract and re-sign—this time as an assistant professor. I did so after receiving assurance of early promotion. A year later, I applied for promotion. My application was approved by the law school faculty but rejected by the University-wide promotion review panel as premature—assistant professors should wait five years for promotion. The panel also rejected the application for promotion to full professor of another Asian American on the law faculty (a professor with ten years experience and numerous publications). Fortunately, the law school dean and supportive faculty appealed to the University President who, after much discussion, reversed the panel’s decisions and approved our promotions. It was a harrowing experience.

Is there, at some level, for some reason, a quiet reluctance to hire, retain and promote Asian American law professors? Overall data reveal a paucity of Asian American law professors. Asian Americans comprise approximately three percent of the population and three-and-a-half percent of law school student bodies. Yet, a 1990 study by the Law School Admis-

White: Racializing Asian Americans in a Society Obsessed with O.J., 6 HASTINGS WOMEN’S L.J. 165 (1996); Mari J. Matsuda, *We Will Not Be Used*, 1 UCLA ASIAN AM. PAC. ISLANDS L.J. 79 (1993); Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 BOST. COLL. THIRD WORLD L.J. 225 (1995); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA ASIAN PAC. AM. L.J. (forthcoming 1996); Eric K. Yamamoto, *Friend, or Foe or Something Else: Social Meanings of Redress and Reparations*, 20 DENV. J. INT’L L. & POL’Y 223 (1992) [hereinafter Yamamoto, *Social Meanings of Redress*]; Eric K. Yamamoto, *Korematsu Revisited—Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1 (1986).

9. Chew, *Legal Academy*, *supra* note 1, at 22-31.

10. See generally RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 474-84 (1989) (describing the genesis and the impacts of the model minority image of Asian Americans). See *infra* text accompanying notes 24-26, concerning the negative impacts of the model minority image.

sions Service found that Asian Americans comprise only nine-tenths of one percent (0.9 %) of law faculties.¹¹ That stark underrepresentation by two thirds, based on raw numbers, has been only slightly lessened by recent hirings. A rough count of Asian-named professors in the 1994-1995 American Association of Law Schools Directory yields 60 or so of the 6,000 law professors listed, or approximately one percent.¹²

Professor Chew notes that "70 percent of American law schools have never hired an Asian American."¹³ She observes that the hiring data raise the possibility that "only those Asian American candidates with extraordinarily impressive backgrounds receive one of the few admission tickets to law school teaching."¹⁴ Professor Yen's statistical research on law school racial minority hirings in the early 1990s provides additional insight. A general three-year window of hiring opportunity opened for law teachers of color from 1990 to 1993. During that period, with one exception, minority group professors were hired at rates far exceeding their proportionate group numbers in applicant pools. Asian American law professor applicants were the one exception.¹⁵

Behind these sobering numbers are the experiences of Asian American faculty that suggest the particular difficulties facing them. At one school, an untenured Asian American professor is told by a senior white professor not to write on Asian American issues because Asian Americans are not discriminated against, and certainly not to find race issues in non-race fields, such as property. At another law school, an untenured Asian American professor is present when a senior professor tells another that the school should not send a professor of color to the American Association of Law School's recruitment conference because "applicants would not like it." At another institution, a senior faculty member with a thin record of publications circulates copies of the *Adarand*¹⁶ and *Hopwood*¹⁷ opinions and calls upon other faculty to agree as a matter of policy that "merit and only merit" should determine law school hiring. At still another school, a previously almost all white and male faculty hires several women and people of color, including an Asian American. Those hirings lead to a formal complaint of harrassment—the creation of a hostile working environment for white males.¹⁸

11. LAW SCHOOL ADMISSIONS SERVICES, MINORITY PARTICIPATION IN LEGAL EDUCATION AND THE PROFESSION: A COMPENDIUM OF DATA 70, 81-83 (1990); Chew, *Asian Americans*, *supra* note 8, at 51.

12. Directory of the Association of American Law Schools 1994-1995.

13. Chew, *Legal Academy*, *supra* note 1, at 33.

14. *Id.*

15. Yen, *supra* note 2, at 43. See also Chew, *Asian Americans*, *supra* note 8, at 75.

16. *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097 (1995) (federal race-related affirmative action programs subject to strict scrutiny review).

17. *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) (University of Texas law school's minority admissions program held violative of equal protection rights of white applicants).

18. These stories relate accounts of actual events or situations. In the interest of confidentiality, I have combined certain situations and altered insignificant details.

Given experiences like these and the still limited numbers of Asian Americans in the legal academy, it is apparent that sometimes doing what is normally expected may not be enough. Something more is at play. We have not yet arrived.

CONCLUSION

What does it mean, then, to say that we have arrived/we have not arrived? What are Asian American law professors to think about hiring and retention at a time of both celebration—when we have begun to achieve a critical mass and make a scholarly impact—and apparent backlash? No clear answers emerge. The two empirical studies presented in this volume, nevertheless, lay a significant foundation for exploring the particular and complex ways in which Asian American faculty are hired and treated.

Asian Americans share common struggles with African American, Native American and Latino professors.¹⁹ Professors Chew and Yen, in addition, describe how the demographics and experiences of Asian American law professors differ from both law faculty in general and other faculty of color. Their studies suggest the need to explore the sources of these differences and their effect on our safe arrival. Are Asian Americans stereotyped in ways that contribute to in-your-face, racialized comments, the concentration of Asian American faculty in particular specialties²⁰ and the failure of affirmative action efforts to increase the rate of Asian American faculty hirings?²¹

Images of Asian Americans portrayed in recent socio-political controversies reveal stereotypes that may subtly impact upon Asian American law professors. California's Proposition 187, passed by the electorate in 1994, and Republican-sponsored congressional anti-immigrant legislation both employed coded terms like job protection and responsible government spending to tap into mainstream community fears of Asian and Latino newcomers as "foreign" economic and cultural threats to mainstream America.²² Juxtaposed against the Asian American image of foreign and threatening is the image of the model (and passive) citizen of color who is harmed by "racial preferences" for others.²³ Supporters of the University of California Regents' decision to end affirmative action and California's

19. This discussion focuses on the struggles of Asian American law professors, and that focus does not mean to diminish the shared and unique problems addressed by other professors of color. It is important in discussing these struggles to acknowledge that along with the difficulties comes many of the benefits and privileges of the legal professoriat. Moreover, as further context for these struggles, it is noteworthy that many law professors across the country have been and are supportive of hiring and retaining qualified Asian Americans and other professors of color and that their support has sometimes had an important influence on faculty actions.

20. See Chew, *Legal Academy*, *supra* note 1, at 35.

21. See Yen, *supra* note 2, at 41.

22. Frank H. Wu, *Just the Facts*, *ASIANWEEK*, Jan. 26, 1996, at 11 (critiquing anti-Asian depictions in studies used to support Proposition 187 and anti-immigrant congressional legislation).

23. See Yamamoto, *Social Meanings of Redress*, *supra* note 8, at 236-38.

inaptly named Civil Rights Initiative depict Asians in America as technically (although not creatively) proficient model minorities.²⁴ This depiction is then lifted up as proof that minorities do not need affirmative action, that people of color can find a place in society if they stop complaining and really try—much to the frustration and anger of many Asian Americans, African Americans, Native Americans and Latinos.²⁵

Are these conflicting social images of Asian Americans replicated within the legal academy? If so, to what extent? And with what effect upon Asian Americans and other professors of color? Consider the response of one Asian American law professor to Professor Chew's survey:

[W]e are not included in affirmative action efforts, except when the administration is counting up its minorities. We do not receive preferential treatment in hiring, promotion, benefits. In fact, I know of instances where we are discriminated against. At the same time, others believe that we do get preferential treatment. Other minorities resent us because they think we are not a "true minority." Whites resent us because they think we don't deserve or need preferential treatment. We lose both ways.²⁶

The statistical studies of Professors Chew and Yen demonstrate what many may have long suspected — that the experiences of Asian American law faculty are in some ways similar to those of other professors of color and are in some ways significantly different. Inquiry into what is and foresight into what might be are the order of this day and the next—For we have arrived, we have not arrived.

24. Nancy Chin of the Illinois Advisory Committee to the United States Civil Rights Commission makes a similar point.

Perceptions are often contradictory. For example, an article in the February issue of the *Atlantic Monthly* complained about southeast Asian refugees taxing the Nation's welfare system, while another study published by the Center for Immigration Studies warned about Asian professionals edging out minority groups and whites in high-paying jobs.

Nancy Chin, *Civil Rights and the Asian American Community*, in *CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN METROPOLITAN CHICAGO* 11 (1995).

25. Bill Wong, *Now Under Attack, Affirmative Action Is Complex, Contentious*, *ASIANWEEK*, Feb. 24, 1995, at 9 (describing the vote of the Regents of the University of California to end university affirmative action, and the California Civil Rights Initiative).

26. Anonymous response to survey by Pat K. Chew, cited in Chew, *Asian Americans*, *supra* note 8, at 3 n.1, 75.