

Judicial Profile

VINCENT T. CHANG

Hon. Denny Chin U.S. Court of Appeals for the Second Circuit

WHEN JUDGE DENNY CHIN was sworn in as a judge on the Second Circuit Court of Appeals on April 26, 2010, he became the only active Asian-American judge on the federal appellate bench. Confirmed by the U.S. Senate by a vote of 98-0 in April 2010, Judge Chin was appointed to the Second Circuit after serving 15 years (and writing 1,600 opinions) on the bench in the Southern District of New York. Judge Chin was a popular choice for the Second Circuit. His induction ceremony was standing-room only, with attorneys traveling from China, California, and other far-flung places to attend.



In his speech at Judge Chin's induction ceremony, Bill Kuntz, a partner at Baker & Hostetler, described Judge Chin's induction as a "particular treasure for the Asian-American community" and "a special jewel in the crown that adorns the head of the Statue of Liberty." Indeed, Judge Chin has consistently served the broader community, including Asian-Americans and Asian-American bar groups. While in private practice, Judge Chin provided pro bono representation to the Asian-American Legal Defense and Education Fund. He served as president of the Asian-American Bar Association of New York and also served on the boards of numerous nonprofit organizations, including Hartley House, Care for the Homeless, the Clinton Housing Association, Prospect Park Environmental Center, and Fordham Law School Alumni Association.

Judge Chin maintains a schedule of public appearances that would put a presidential candidate to shame. Recently, Judge Chin has made public appearances in locations such as Los Angeles, Atlanta, Boston, Seattle, and Miami, in addition to countless appearances in the New York and New Jersey area.

As Yang Chen, the former president and current executive director of the Asian-American Bar Association of New York, remarked: "Judge Chin has been a tireless and dedicated supporter of the Asian-American Bar Association of New York. From having

served for two years as one of the association's first leaders back in 1994, Judge Chin has never ceased giving his time, energy and guidance to the organization and its members." Judge Chin's public service has not gone unrecognized. Among the many bar association awards he has received are the American Bar Association's Spirit of Excellence Award and the New York County Lawyers Association's Edward Weinfeld Award. Princeton University, his alma mater, recently bestowed one of the university's highest honors—the Woodrow Wilson Award—on Judge Chin.

Judge Chin has also received the National Asian Bar Association's Trailblazer Award, an honor he deserves because he is, indeed, a trailblazer in every sense of the word. Judge Chin's grandfather worked as a waiter in several Chinese restaurants in New York City. Judge Chin's mother worked as a seamstress in the garment factories of New York's Chinatown, and his father worked for some time as a cook in Chinese restaurants there. Judge Chin was born in Hong Kong and came to New York at the age of two; he and his four siblings grew up in New York's Times Square and Hell's Kitchen areas, where, at times they lived above an adult movie theater.

As a district judge, Judge Chin often conducted naturalization ceremonies for new citizens, and he has

been quoted as saying that every time he performed such a ceremony, “I thought of my grandfather, of how hard he worked for so many years waiting on tables, of how he became a citizen in 1947, of how he brought my parents into the country, of how they became citizens, and how I, the son of a seamstress and Chinese cook, the grandson of a Chinese waiter, became a federal judge.”

Judge Chin attended Stuyvesant High School, one of the top high schools in New York City, then Princeton University, from which he graduated in 1975. Judge Chin’s wife, Kathy Hirata Chin, a highly regarded litigator at New York’s prestigious Cadwalader Wickersham & Taft, also graduated from Princeton the same year. Judge Chin then attended Fordham Law School, where he served as managing editor of the *Fordham Law Review*. After graduating from law school, he clerked for Judge Henry Werker in the Southern District of New York before taking a job as an associate at the law firm of Davis Polk & Wardwell.

Judge Chin later served as an assistant U.S. attorney in Manhattan. As former federal District Judge John Martin remarked in his speech at Judge Chin’s Second Circuit induction ceremony, “Denny ... quickly developed a reputation as a go-to guy who was willing to take on any case regardless of subject matter.” Michael Patrick, Judge Chin’s former colleague at the U.S. Attorney’s Office and a former partner in a private law practice, remarked in a speech at the New York County Lawyers Association that Judge Chin worked on disparate areas in the U.S. Attorney’s Office, including appeals, tax, civil rights, and environmental law. In a speech before the New York County Lawyers Association, Susan Millington Campbell, another former colleague at the U.S. Attorney’s Office and later Judge Chin’s partner in private practice, described the judge as “a star—a gifted oral advocate, a highly persuasive writer, a wonderful colleague and collaborator on cases of all kinds.”

In 1986, Judge Chin left the U.S. Attorney’s Office and started a law firm, Campbell, Patrick & Chin, with Michael Patrick and Susan Campbell. When he was nominated to serve as a district judge—at the age of 39—Judge Chin was working at Vladeck, Waldman, Elias & Engelhard, a firm that specializes in employment law.

During his years as a federal district judge, Judge Chin presided over 4,700 civil cases and 665 criminal cases, issuing nearly 1,600 opinions. As Frank Wu, the dean of Hastings Law School, pointed out in a recent article in *Fordham Law Review*, out of 1,600 opinions Judge Chin rendered, only 40 have been reversed—a reversal rate of approximately 2.5 percent. Dean Wu attributed this low reversal rate to Judge Chin’s “scrupulous” treatment of the factual record and binding case law.

Given his prodigious record, Judge Chin drew favorable reviews for his work as a district judge. The

New York Times noted that Judge Chin was “known for his intellect, command of the courtroom and self-deprecating wit.” *Fortune* magazine noted that, “Unlike the vast majority of judges, he does not refer to himself in magisterial terms as ‘the court,’ but rather uses a plainspoken ‘I.’ In a deeply emotional case, he seemed to be striving to lower the temperature in the courtroom.” New York City’s corporation counsel, Michael Cardozo, has described Judge Chin as “very smart, capable, works very quickly but weighs the issues carefully—and he’s extremely fair.” Judge Martin summarized the consensus view of Judge Chin: “If you read the comments of the lawyers who have appeared before him as reported in the *Almanac of the Federal Judiciary*, you will see remarks such as: ‘He’s an excellent judge.’ ‘I really like him. He is terrific.’ ‘He treats lawyers professionally.’ ‘I like him. He’s a very decent guy.’ And best of all, ‘He is a decent human being.’”

One hallmark of Judge Chin’s service on the district court was his focus on civility. For example, Judge Chin criticized one attorney’s “vexatious and unreasonable conduct” that “can only be described as ‘Rambo lawyering.’” In his opinion concerning such behavior, Judge Chin quoted a statement found in a *Law Review* article entitled, “The Topic is Civility: You Got a Problem with That?” The exact quote was: “Every time that you make uncivil lawyers lose, you score a big victory for civility. Every time an abrasive, abusive, hostile, harassing, combative, discourteous, hardball, win-at-all-costs, take-no-prisoners, scorched-earth, Rambo lawyer loses, it’s a great day for civility.” Remarkably, the attorney in question was later quoted by the *New York Daily News* as saying, “I’ve tried three cases before him, and ... I can’t think of anyone in that courthouse who is more fundamentally fair than Denny Chin.”

As a federal district judge, Judge Chin presided over a number of high-profile cases. As Michael Patrick noted when he introduced Judge Chin at the luncheon at which he received New York County Lawyers Association’s Edward Weinfeld Award: “Denny presided over both high profile and low profile cases. ... More notable cases included the United Nations Oil for Food Program Scandal, Megan’s Law, *Fox News v. Al Franken*, the Million Youth March, and more recently Bernie Madoff.” An indication of the extent to which Judge Chin’s cases have often been the subject of press scrutiny is that Judge Chin has worked on at least three cases that inspired plots for the television series *Law & Order*.

One of Judge Chin’s earliest cases was the Megan’s Law case, involving the sex offender registration and notification statute. Judge Chin held that the community notification portion of the law could not be applied retroactively without violating the Constitution. Even though Judge Chin upheld part of the law, the *New York Daily News* attacked the judge, calling him “Denny, the Pervert’s Pal.” In *Doe*

v. Pataki, 120 F.3d 1263 (2d Cir. 1997), the Second Circuit reversed Judge Chin's decision in the case in part and affirmed it in part, holding that the registration and community notification provisions of Megan's Law were not unconstitutional.

Judge Chin also presided over the Million Youth March case, in which he ruled that the City of New York had violated the First Amendment by denying a parade permit to a group whose leader had made racist statements in the past. A *New York Post* columnist blasted Judge Chin's ruling, calling Judge Chin a "fuzzy-headed buffoon."

In *Fox News v. Franken*, Judge Chin denied the Fox News Channel (which alleged a trademark violation) an injunction against a book written by Al Franken, a comic and current Democratic senator from the state of Minnesota, entitled *Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right*. Fox objected especially to the cover of the book, which used the phrase "fair and balanced" (the phrase used on Fox News) and a photograph of Fox anchor Bill O'Reilly. The plaintiff argued that the cover layout "is likely to cause confusion among consumers as to the origin and sponsorship of the book." But Judge Chin found that "[t]here is no likelihood of confusion as to the origin and sponsorship of the book ... or that consumers will be misled that Fox or Mr. O'Reilly are sponsors of the book."

Judge Chin also presided over the criminal trial of Oscar Wyatt, the Texas oil executive accused of making kickbacks to Saddam Hussein's regime during the UN Oil-For-Food Program. The case involved charges that Wyatt paid kickbacks to Saddam Hussein to get Iraqi oil, violating the UN's oil-for-food rules in Iraq in the years before the U.S. invasion. In the middle of the trial, Wyatt changed his plea to guilty as part of a plea bargain.

Most recently, Judge Chin presided over the trial of Bernie Madoff. In sentencing Madoff to 150 years for his role in a complex fraud scheme inflicting billions of dollars of injury on investors, Judge Chin remarked, "Mr. Madoff's very personal betrayal struck the rich and the not so rich, the elderly living on retirement funds and Social Security, middle class folks trying to put their kids through college and ordinary people who worked hard to save their money

The knowledge that Mr. Madoff has been punished to the fullest extent of the law may in some small measure help these victims in their healing process." The same *New York Post* columnist who had years earlier blasted Judge Chin's handling of the Million Youth March, had a different view of Judge Chin's handling of the Madoff case, describing Judge Chin as a "hero" and a "rock star in a black robe."

Even after his elevation to the Second Circuit, Judge Chin continued to preside over an antitrust case involving Google, rejecting the proposed \$125 million class action settlement in that case on March 23, 2011. Judge Chin stated that the settlement would have granted Google a "de facto monopoly" and the right to profit from books without the permission of copyright holders. Accordingly, he held that the proposed agreement was "not fair, adequate and reasonable."

Judge Chin's handling of such high-profile cases has drawn favorable attention. In explaining his support for Judge Chin, Sen. Charles Schumer (D-N.Y.) made the following statement: "We told the White House that Judge Chin would be an outstanding choice Even in the most high-profile of cases he has been unflappable, erudite and steadily applied the law." Judge Chin's former law partner, Anne Vladeck, has been quoted as saying that the judge "has the most deeply rooted sense of doing the right thing, and if that means that it's coming down on one side or another harsh—or in what appears to be harsh—it's just the product of doing the right thing."

Judge Chin now has the opportunity to apply those principles in the Second Circuit. **TFL**

Vincent T. Chang is a partner at Wollmuth Maher & Deutsch in New York and practices litigation in such areas as securities, bondholder litigation, insurance, antitrust, and bankruptcy. He graduated from Harvard College and Harvard University Law School, after which he clerked for Judge Robert Krupansky on the U.S. Court of Appeals for the Sixth Circuit.