Hong Yen Chang, Lawyer and Symbol

Gabriel J. Chin*

In March 2015, the California Supreme Court admitted Hong Yen Chang to the bar; in 1890, the Court denied him admission because of his race.[1] The Court acted on the petition of the UC Davis Asian Pacific American Law Students Association,[2] with me as faculty advisor, represented by our pro bono counsel, Munger, Tolles & Olson.

Hong Yen Chang was admitted to the New York State Bar in 1888, making him the first Chinese American lawyer in the United States.[3] He came to America in 1872 as a participant in the Chinese Educational Mission, a group of young men sent from China to receive Western educations. The goal was to create a cadre of professionals familiar with Western knowledge and practices.[4] Chang was twelve years old when he came to the United States. He graduated from Phillips Andover Academy in 1879, and then attended Yale College until 1881.[5] However, China cancelled the mission in 1881, and Chang was recalled to China. However, Chang returned to the United States on his own in 1882.[6] He attended Columbia Law School, where he was the only Asian student on campus, and he graduated in 1886.[7] At Commencement, the Dean of Columbia mentioned Chang specifically:

> I would like to add a word of special greeting to one of your number who has come here from a far distant land, pressed by an irresistible desire to acquire a

* Martin Luther King Jr. Professor of Law & Affiliated Faculty, Aoki Center for Critical Race & Nation Studies, UC Davis School of Law. This article is based on remarks made at the 2016 NAPABA Annual Meeting, at the Asian Bar Association of Sacramento, and at William "Mac" Taylor Inn of Court in Dallas.

1. *In re* Chang, 344 P.3d 288 (2015), *overruling In re* Chang, 24 P. 156 (1890).
2. The APALSA members participating in the project include: Christopher Alvarez '13, Caspar Chan'13, Sue Chang '15, JoAnne Jennings '13, Jocelyn Koo '15, Robert Marcelis '13, Kian Magana '14, Matthew Peng '13, Sally Son '13, Erin Tanimura, '14, Steven Vong '16, Tina Wang '14, Tammy Weng '13, and Elaine Won '16.
3. Li Chen, *Pioneers in the Fight for Inclusion of Chinese Students in American Legal Education and Legal Profession*, 22 Asian Am. L.J. 5, 31–32 (2015). Most of the details of Hong Yen Chang's life and career are drawn from this excellent work, as well as from Lani Ay Tye Farkas, Bury My Bones in America: The Saga of a Chinese Family in California, 1852–1966 (1998).
4. *Origins of the Chinese Educational Mission,* Chinese Educ. Mission Connections, http://www.cemconnections.org/index.php?option=com_content&task=view&id=29&Itemid=34&limit=1&limitstart=0.
5. Chen, *supra* note 3, at 16.
6. *Id*.
7. *Id*. at 19.

> knowledge of the principles of the common law. Coming from China by way of the Sandwich Islands, he is among your number tonight, a living and most credible witness to the fact that there is implanted in the mind of man an instinctive desire for justice, that universal justice which betokens his relations to a great lawgiver, whose aim it is to bring about in the end not merely national justice, but the sway of natural justice. You cannot have failed to recognize in this stranger a gentlemen fit in every respect to be a professional brother to any one of us. In your kindness of treatment and marks of friendly esteem, you show that however narrow and provincial in spirit our international politics may be, a true university knows no disparaging distinctions based upon race or religion, but spreads its arms wide to welcome all who resort to it with lofty aims and generous purposes. So I know that you all will join me in a most friendly and respectful parting salutation to our good brother, Mr. Hong Yen Chang.[8]

Like many other states at the time, New York restricted professional licensure to citizens.[9] For many immigrants, this was a technicality; they simply had to go through the naturalization process. But for Chang and other Asians, there was a problem.

One of the first laws of the first Congress was the 1790 Naturalization Act. It was signed by President George Washington, Secretary of State Thomas Jefferson, and Vice President John Adams, as President of the Senate.[10] The act restricted naturalization to "free white persons," a limitation that remained in effect in some form until 1952.[11] To eliminate any doubt, a provision of the Chinese Exclusion Act of 1882 explicitly forbade naturalization of Chinese people: "[H]ereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed."[12]

Chang addressed these problems with two clever solutions. First, somewhat mysteriously, he procured a naturalization certificate from a New York judge declaring that he was a U.S. citizen. It is not clear whether the issuance of this certificate represented civil disobedience by a judge rejecting an unjust law, corruption, or perhaps the judge thought that westernized, English-speaking, American-dressing Chinese like Chang were outside the spirit of the law. For whatever reason, Chang received a certificate. Second, Chang persuaded the New York State legislature to pass a special law allowing him to take the bar. The father of one of Chang's Yale classmates happened to be the Speaker of the New York Assembly,

8. *Id*. at 19.

9. *In re* Petition of Harrison, 211 P. 26, 26 (Ct. App. 1922) (holding non-citizen did not satisfy requirements for bar admission); *Ex parte* Thompson, 10 N.C. 355, 363 (1824) (denying admission to non-citizen applicants; "it is difficult to conceive how a professional advocate, owing foreign allegiance and cherishing alien prejudices, can usefully vindicate principles in the abhorrence of which he may have been nurtured.")

10. Act of Mar. 26, 1790, 1 Stat., 103 (repealed 1795).

11. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. Rev. 273, 282 (1996).

12. Act of May 6, 1882, 22 Stat.,58, 61.

and he introduced a bill, *An Act for the relief of Hong Yen Chang*, which passed both Houses.[13] Governor David B. Hill was doubtful about the bill because it was "special legislation."[14] However, Chang used his status as a "double Ivy" to arrange a meeting with the governor and persuaded him to not veto the bill; thus, it became law without Governor Hill's signature.[15]

Chang passed the New York bar exam and was recommended for admission. However, the General Term of the New York State Supreme Court sitting in the City of New York turned him down. The problem lay in the text of *An Act for the relief of Hong Yen Chang*, which stated that the Court was *authorized*—but not required—to waive the alienage of Hong Yen Chang and admit him to the bar. The Court, in a 2-1 decision, elected not to exercise the power.[16] Only two years later, the Court admitted a white Canadian lawyer who was the beneficiary of a similar relief bill that Governor Hill signed, suggesting that for both the court and Governor Hill, the critical issue was race.[17]

Again reflecting his skill as a lawyer, Chang did what a shrewd lawyer does when the local judges were unfavorable; he went to another court. Chang applied to the General Term sitting at the city of Poughkeepsie, New York and was admitted in 1888, two years after graduating from Columbia Law.[18]

Chang then moved to California, where he clerked in the office of Olney, Chickering & Thomas.[19] On May 17, 1890, William H. Chickering moved Hong Yen Chang's admission to the California State Bar on the ground that he was a duly admitted member of the bar in another state.[20] In *In re Hong Yen Chang*, the California Supreme Court denied the motion on the ground that he was not a U.S. citizen, and that he could never be one because of his race:

> A person of Mongolian nativity is not entitled to naturalization under the laws of the United States, and a certificate showing the naturalization of such person by the judgment of any court is void, and cannot entitle him to admission to practice as an attorney in this state; nor will his license to practice in all the courts of the state of New York, issued by the supreme court of that state, avail such applicant, since only those who are citizens of the United States, or who, being eligible to become citizens, have declared their intention to become such, are entitled to be admitted in the supreme court of this state on presentation of license to practice in the highest court of a sister state.[21]

Hong Yen Chang had a distinguished career in spite of this setback. He became a banker and later joined the Chinese Diplomatic Service, where he became

13. Li, *supra* note 3, at 22–23.
14. *Id*. at 24.
15. *Id*.
16. *Id*. at 27.
17. *Id*. at 27–28.
18. *Id*. at 31.
19. *Id*. at 33.
20. *Id*. at 33–34.
21. *Chang*, 24 P. at 157.

the first secretary of the Chinese Embassy in Washington.[22] He even attended the wedding of Woodrow Wilson's daughter at the White House in 1913.[23] Chang died in Berkeley, California in 1926. Though he left no direct descendants, he has grandnieces and grandnephews who are still alive with their own careers and children in the United States. Though Chang himself was never admitted to the California bar, Chang's extended family includes lawyers duly admitted to the California State Bar, including Rachelle Chong, the first APA Commissioner of the California Public Utilities Commission and the first APA Commissioner of the Federal Communications Commission.

In re Hong Yen Chang is a published case, well known to people who study Asian Pacific American history. It is said that "[t]he wheels of justice grind slowly but they grind exceedingly fine."[24] Recent decades have seen a number of posthumous apologies, pardons, repeals based on historical wrongs. In 2013, the Governor of Alabama pardoned the last three Scottsboro Boys who had not already been exonerated.[25] Lenny Bruce was pardoned for his obscenity convictions in New York.[26] Delaware recently pardoned Samuel Burris for crimes committed in the 1840s associated with his participation in the Underground Railroad.[27] In 2005, the Senate passed a resolution apologizing for its failure to make lynching a federal crime.[28] Congress has also apologized for the Chinese Exclusion Act and other anti-Chinese laws.[29]

There are two other lawyers who were in situations similar to Chang. The first is Takuji Yamashita, who was denied admission to the Washington State Bar in 1902 because of his Asian racial ancestry; ironically, the decision cited *In re Hong Yen Chang*.[30] Yamashita was posthumously admitted 99 years later.[31] The second is George Vashon, who was the first African American admitted to the New York Bar, and was admitted to the U.S. Supreme Court Bar, but was denied admission in Pennsylvania because of his race in 1847. The court reasoned that since African Americans could not vote in Pennsylvania, they also could not hold fiduciary

22. Chen, *supra* note 3, at 36.

23. Farkas, *supra* note 3, at 93.

24. Charles Alan Wright & Kenneth W. Graham, Federal Practice and Procedure § 5219 (2d ed. 2014).

25. Alan Blinder, *Alabama Pardons 3 "Scottsboro Boys" after 80 Years*, N.Y. Times, Nov. 22, 2013, at A14.

26. John Kifner, *No Joke! 37 years After Death Lenny Bruce Receives Pardon*, N.Y. Times (Dec. 24, 2003), http://www.nytimes.com/2003/12/24/nyregion/no-joke-37-years-after-death-lenny-bruce-receives-pardon.html?pagewanted=all.

27. Gretchen Frazee, *Delaware Pardons man who Helped Slaves Escape on the Underground Railroad*, PBS NewsHour (Oct. 21, 2015, 1:49 PM), http://www.pbs.org/newshour/rundown/delaware-to-posthumously-pardon-man-who-helped-slaves-on-the-underground-railroad/.

28. S. Res. 39, 109th Cong. (2005).

29. H. Res. 683 112th Cong. (2012); S. Res. 201, 112th Cong. (2011).

30. *In re* Yamashita, 30 Wash. 234 (1902);143 Wash. 2d xxxiii (2001).

31. 143 Wash. 2d xxxiii (2001).

positions. The Pennsylvania Supreme Court posthumously admitted Mr. Vashon in 2010.[32]

Inspired by Takuji Yamashita and George Vashon, the UC Davis Asian Pacific American Law Students Association, with me as faculty advisor, decided to ask the California Supreme Court to revisit *In re Hong Yen Chang*. The students went to the California Senate to pass a resolution,[33] went to the bar associations to garner support, and even created a change.org petition.[34]

Before filing with the Court itself, we first went to the California State Bar to request their support.[35] The State Bar has no power to admit anyone to the bar themselves and did not even exist in 1890, but they do advise the Court and administer the bar admissions process. We learned that the State Bar has a policy against posthumous admissions, so this was a challenge. After months of consideration, the Bar made a suggestion to recognize that Chang's exclusion was a historical injustice worth noting. They offered to have a public ceremony recognizing Chang, but absent a formal, legal, bar admission. Under their proposal, the Supreme Court itself would not be involved.

We were thus faced with the choice between accepting a fair and reasonable settlement offer or going for broke. We wanted an opinion about Hong Yen Chang that would be on Lexis and Westlaw so that anyone who looked up *In re Hong Yen Chang* would see what California thought about it now – even if the modern decision only said "reconsideration denied".

The situation was complicated by the composition of the California Supreme Court, which is one of the most diverse in the country. A majority of the Justices are women, and a majority are people of color, including several Asian Pacific Americans. Thus, if the Court perceived some institutional or pragmatic reason to deny our petition, this particular Court might well conclude it had the political capital to do so. No one could accuse this Court of being insensitive to people of color.

Before the California Supreme Court, we were represented by Jeff Bleich, former U.S. Ambassador to Australia, and Ben Horwich and Joshua Meltzer of Munger, Tolles & Olsen in San Francisco. They filed a concise motion in December 2014. We relied on the fact that California, unlike the federal system, does not have a rigid standing or case and controversy rule. More fundamentally, jurisdiction for the motion rested on the doctrine that the California Supreme Court, like many other state supreme courts, has plenary authority over the bar. Therefore, if the Court liked the idea, it could do as it pleased, and if it did not, there was no way anyone could force them to reevaluate the case.

32. *In re* Vashon, No. 5 WM 2010 (Pa. 2010) (per curiam).

33. S.R. 46, 2013–14 Leg., Reg. Sess. (Cal. 2014).

34. UC Davis Law Asian Pac. Am. Law Students Ass'n, *Please Grant Posthumous Admission to Hong Yen Chang,* Change.org, https://www.change.org/p/the-state-bar-of-california-please-grant-posthumous-admission-to-hong-yen-chang-a-chinese-lawyer-who-was-denied-admission-in-1890-because-of-the-chinese-exclusion-act.

35. Represented by the then-Director of the UC Davis California Supreme Court Clinic, Aimee Feinberg.

On March 16, 2015, the court issued a ruling on our petition. The first line stated, "We grant Hong Yen Chang posthumous admission as an attorney and counselor at law in all courts of the state of California."[36]

The tenor of the decision can be demonstrated by comparing it to the result in the Takuji Yamashita case. First, the Washington Supreme Court granted Takuji Yamashia only honorary admission; the California Supreme Court decision had no such qualifier. More importantly, the Washington Supreme Court issued no written decision, only oral remarks. In his remarks, Chief Justice Gerry L. Alexander said "We are not considering a motion to overrule or reverse that earlier decision, nor are we here to indict our forbears [sic] on that earlier court."[37]

The California Supreme Court, by contrast, issued a published decision that speaks plainly about its views of the era of *In re Hong Yen Chang*. The California Supreme Court stated that consideration of the petition "requires a candid reckoning with a sordid chapter of our state and national history."[38] The Court cataloged the range of discrimination imposed on the Chinese by law in the 1850s onward and noted that "[m]any of the era's discriminatory laws and government actions were upheld by this court."[39] They acknowledged that the California Supreme Court, up until the 1940s, was an active participant in racial segregation. The Court said that it was "past time to acknowledge that the discriminatory exclusion of Chang from the State Bar of California was a grievous wrong. . . . Even if we cannot undo history, we can acknowledge it and in so doing, accord a full measure of recognition to Chang's pathbreaking efforts."[40]

In their own defense, they noted that in 1972, a year before the U.S. Supreme Court, the California Supreme Court held that it violated equal protection to exclude non-citizens from the bar.[41] They also referred favorably to their *Sergio Garcia* decision of 2014, granting a California law license to an undocumented migrant.[42]

The students and I learned a lot in the course of this project, and we hope that the Court's actions brought attention to a relatively unknown aspect of the history of California and the United States.[43] Not everyone knows that Asian Pacific

36. *Chang*, 344 P.3d at 288.

37. 143 Wash. 2d xxxvii.

38. *Chang*, 344 P.3d at 289.

39. *Id.* at 290.

40. *Id.* at 291–92.

41. *Id.* at 291 (citing Raffaelli v. Committee of Bar Examiners, 7 Cal.3d 288, 291 (Cal. 1972)).

42. *Id.* (citing *In re* Garcia, 315 P.3d 117, 134 (Cal. 2014)). Sergio Garcia was an undocumented child migrant who graduated from high school, college and law school in California, and then faced the problem of bar admission. There is a federal law suggesting that he could not practice in the absence of a state law specifically allowing admission to the bar of undocumented people. The California legislature passed such a law in 2013, while the case was pending, and the Supreme Court admitted him in 2014. We actually had been ready to file our case in 2012. Then Sergio Garcia came on the scene, and we did not want his case and our case pending before the Court at the same time, so we had to sit on the sidelines for a couple of years.

43. Maura Dolan, *Ruling gives Posthumous Law License to Victim of anti-Chinese 1890s*, L.A. Times (Mar. 17, 2015), http://www.latimes.com/local/california/la-me-chinese-lawyer-20150317-story.html.

Americans were subject to the ordinary incidents of the Jim Crow system of racial subordination. Fifteen states, including California, prohibited marriages between Asians and Caucasians.[44] Asians were forced to attend segregated schools in some jurisdictions.[45] Restrictive covenants prevented Asians from owning or occupying property.[46]

The largest burden, however, as Chang experienced, was the discrimination Asians received based on their nativity and citizenship. The suffrage provision, Article 2, Section 1 of the California Constitution of 1879 makes this clear. It grants the right to vote to "Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under the treaty of Queratarо [the peace treaty of the Mexican-American War], and every male naturalized citizen of the age of 21 years, provided, no native of China, no idiot, no insane person, or person convicted of any infamous crime, shall ever exercise the privileges of an elector of this state."[47]

But the real action was in Article XIX of the 1879 Constitution, entitled "Chinese." The presence of Asians, the Constitution provided, "is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power.[48] The Constitution directed the legislature to "provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution."[49] The Constitution provided that no corporation could "employ directly or indirectly, in any capacity, any Chinese or Mongolian,"[50] and that "[n]o Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime."[51] The Constitution was only eleven years old when Chang was refused admission by the Court; it was a remarkable act of optimism for him to have even attempted to become a member of the bar.

Chang was unable to become a citizen based on federal law; that law was based on unvarnished racism. In the debates over the Chinese Exclusion Act of

44. Gabriel J. Chin, Sumi Cho, Jerry Kang & Frank Wu, *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, a Policy Analysis of Affirmative Action*, 4 Asian Pac. Am. L.J. 129, 146 & n.74 (1996).

45. *Id.* at 146, n.75.

46. Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. Rev. 1, 44 & n. 215 (1998).

47. Cal. Const. art. II, § 1 (1879) (repealed). Ironically, this was an improvement. California's 1849 Constitution provided: "Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty Queretaro, shall be entitled to vote: Provided, nothing herein contained, shall be construed to prevent the Legislature, by a two–thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such proportion of the legislative body may deem just and proper." Cal Const. art. II, § 1 (1849) (repealed 1879). Thus, in what passed for progress at the time, the 1879 Constitution disenfranchised only Asians rather than members of every non-white race.

48. Cal. Const. art. XIX, § 4 (1879) (repealed 1952).

49. *Id*.

50. Cal. Const. art. XIX, § 2 (1879) (repealed 1952).

51. Cal. Const. art. XIX, § 3 (1879) (repealed 1952).

1882, lawmakers were explicit about the reasons for the policy. For example, Senator John F. Miller of California explicitly appealed to notions of racial inferiority:

> It is not numbers that are needed, quality is more important than quantity. One complete man, the product of free institutions and high civilization, is worth more to the world than hundreds of barbarians. Upon what other theory can we justify the almost complete extermination of the Indian, the original possessor of all these States? I believe that one such man as Newton, or Franklin, or Lincoln, glorifies the creator of the world and benefits mankind more than all the Chinese who have lived, struggled and died on the banks of the Hoang Ho.[52]

Supporters of Chinese Exclusion quickly dismissed from the Declaration of Independence the line, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." Senator La Fayette Grover of Oregon pointed out:

> [The Founding Fathers'] conduct towards the aborigines of this country, whom they found in lawful occupancy here when they came, must be construed as fixing a limit to the meaning of their public declarations upon the rights of man. When they declared that all men were created equal, and were endowed by their creator with the inalienable right of life, liberty and the pursuit of happiness, they undoubtedly meant all men like themselves, and in like manner joined in the bonds of civil society. And when they dedicated this country to be an asylum for the oppressed of all nations they undoubtedly meant all nations whence they came, peoples of character and conditions similar to their own.[53]

Lawmakers made an explicit connection between racial policy with respect to Asians, Indians and African-Americans. Senator John Percival Jones of Nevada argued:

> Does anybody pretend to tell me that it is a blessing to this country that [African-Americans] are here? It is no fault of ours that they are here; it is no fault of theirs; it is the fault of a past generation; but their presence here is a great misfortune to us to-day, and the question of the adjustment of the relations between the two races socially and politically is no nearer a settlement now than it was the day Sumter was fired upon. What encouragement do we find in the history of our dealings with the Negro race or in our dealings with the Indian race to induce us to permit another race-struggle in our midst?[54]

Senator James Z. George of Mississippi, former confederate colonel and architect of African American disenfranchisement said:

> It is not so clear that our Constitution, with all its great strength and vigor, after embracing the African, can take in with safety even the more enlightened countrymen of Confucius . . . . The Constitution was ordained and established

52. 13 Cong. Rec. 1487 (1882), cited in Chin, *supra* note 46*, at* 31.
53. 13 Cong. Rec. 1546 (1882).
54. 13 Cong. Rec. 1744–45. Senator Jones was the author's 5th great uncle.

> by white men, as they themselves declared in its preamble, "to secure the blessings of liberty to themselves (ourselves) and their (our) posterity," and I cannot doubt that this great pledge thus solemnly given will be as fully redeemed in favor of the white people of the South, should occasion for action arise, as I intend on my part to redeem it this day in favor of the white people of the Pacific States, by my vote to protect them against a degrading and destructive association with the inferior race now threatening to overrun them.[55]

As Professor Milton Konvitz wrote seven decades ago, "[A]fter 1876 the Negro problem and the Chinese problem were linked when it came to voting in Congress on anti-Chinese measures . . . . The South, it has been said, `was quite willing to join with the Pacific Coast in fitting the Chinese into a caste system which, in many respects, closely resembled that which prevailed throughout the former slave belt.'"[56] As Harvard professor Oscar Handlin explained: "By the end of the century the pattern of racist practices and ideas seemed fully developed: the Orientals were to be totally excluded; the Negroes were to live in a segregated enclave; the Indians were to be confined to reservations as permanent wards of the nation . . . ."[57]

The Hong Yen Chang case as it reflects the Asian Pacific American experience in the exclusion era leaves me with two questions. The first involves the fact that during exclusion, many Asians arrived illegally, as paper sons, or as surreptitious border crossers through Canada or Mexico. Hong Yen Chang himself was touched by this phenomenon. In 1892, he was named in a series of articles in the *San Francisco Examiner* as a participant in a ring where customs officials were paid to admit Chinese illegally.[58] Hong Yen Chang was apparently never charged or convicted of anything, and the *Examiner* was a William Randolph Hearst paper, reputed to have fabricated and sensationalized many stories. But for the sake of argument, what should we think now about people who entered the United States illegally, or helped others to do so, when the thing that made their entry unlawful was their race? Should we unquestioningly follow all laws, good or bad? Or was Martin Luther King Jr. right when he wrote in his Letter from Birmingham Jail:

> [T]here are two types of laws: there are just laws, and there are unjust laws. I would agree with St. Augustine that "An unjust law is no law at all." . . . Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality.[59]

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55. 13 Cong. Rec. 1637–38.

56. Milton R. Konvitz, The Alien and the Asiatic in American Law 12 (1946) (quoting Carey McWilliams, Brothers Under the Skin 83 (1943)).

57. Oscar Handlin, Race and Nationality in American Life 48 (1957).

58. *Chang, Pattison & Company: The Exposure of the Methods of the Coolie Importers*, San Francisco Examiner, July 15, 1892 at 3; *Chinese Conspirators: Custom-House Officials and the Imperial Consulate in Business Landing Chinese*, San *Chinese Conspirators: Custom-House Officials and the Imperial Consulate in Business Landing Chinese*, San Francisco Examiner, July 14, 1892, at 3.

59. Editors, *Martin Luther King's 'Letter From Birmingham Jail'*, The atlantic (Apr. 16, 2013), http://www.theatlantic.com/politics/archive/2013/04/martin-luther-kings-letter-from-birmingham-jail/274668/.

Finally, while Hong Yen Chang's admission to the California bar is cause for celebration, it is not an occasion for moral superiority. True, the Justices of the California Supreme Court were nothing less than racists in 1890. However, they did not have the historical experience that the people alive today do of the evil and irrationality of racism. From the perspective of 1890, growing up when and where they did, they might well have been doing the best they could to uphold the rule of law, and issue decisions based on sound public policy. They blundered, but that gives me no smug satisfaction. It makes me wonder: What am I doing today, what is my society doing, that we think of as fair and reasonable, but that our descendants in 50 or 100 years will think makes us fools or moral monsters?

EXHIBIT A: MOTION FOR POSTHUMOUS ADMISSION OF HONG YEN CHANG

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The Hon. Chief Justice Tani Cantil-Sakauye
and Associate Justices
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Re: Motion for Posthumous Admission of Hong Yen Chang to the State Bar

Dear Chief Justice and Associate Justices:

Nearly 125 years ago, Hong Yen Chang was denied admission to practice law in California. Although he was otherwise qualified, this Court denied him admission in a published opinion based on now-repudiated laws that barred immigrants of Asian ancestry from the legal profession in California. (Exhibit A [*In re Hong Yen Chang* (1890) 84 Cal. 163 [24 P. 156]].) By this motion for posthumous admission, the Asian Pacific American Law Students Association of the University of California, Davis School of Law (APALSA) respectfully moves this Court to right this historic wrong by exercising its discretion to posthumously admit Mr. Chang to the bar.

Other States have posthumously admitted applicants excluded from the bar based on similar discriminatory laws, and this Court has the power to grant the requested relief. Hong Yen Chang is uniquely deserving of the extraordinary relief sought here, which will not open the door to similar requests for admission to the bar outside the ordinary course. Posthumous admission for Mr. Chang would both acknowledge the long history of discrimination against Asian Americans in our State and celebrate the modern legal profession's commitment to diversity and inclusion.

I. Hong Yen Chang's Background

In 1872, at age 13, Mr. Chang, a native of China, came to the United States as part of the Chinese Educational Mission, a program designed to teach Chinese youth about the West. (Exhibit B [Farkas, Bury My Bones In America (1998) p. 87 (hereafter Bury My Bones)].) Mr. Chang studied at Phillips Academy in Andover, Massachusetts, and then at Yale College. (*Id.* at pp. 87, 89.) When the Chinese government cancelled the Mission in 1881, Mr. Chang was forced to suspend his studies at Yale and return, temporarily, to China. (*Id.* at p. 89.) When he came back to the United States, he enrolled at the Columbia Law School, where he earned his law degree. (*Id.* at pp. 89-90.)

After his graduation from Columbia, Mr. Chang applied for admission to the New York bar. The examiners gave him high marks and unanimously recommended his admission. (Exhibit C [*Naturalizing a Chinaman: Hong Yen Chang's Struggles to be Admitted to the Bar*, N.Y. Times (Nov. 19, 1887) (hereafter *Hong Yen Chang's Struggles*)].) But in a 2-1 decision, the New York Supreme Court, General Term rejected his application on the ground that he was not a citizen. (*Ibid.*)

Undeterred, Mr. Chang successfully reapplied for admission. In 1887, a New York judge issued him a naturalization certificate, and the state legislature enacted a law permitting him to reapply to the bar. (Exhibit C [*Hong Yen Chang's Struggles*, *supra*]; Exhibit D [*A Chinese Lawyer: Hong Yen Chang and a Colored Student Admitted to the Bar*, N.Y. Times (May 18, 1888) (hereafter *A Chinese Lawyer*)].) The *New York Times* reported that, when Mr. Chang and a successful African-American applicant "were called to sign for their parchments[,] the other students applauded each enthusiastically." (Exhibit D [*A Chinese Lawyer*, *supra*].) Upon his admission, Mr. Chang became the only regularly admitted Chinese lawyer in the United States. (*Ibid.*)

Mr. Chang later applied for admission to the California bar. Notwithstanding his credentials, this Court denied Mr. Chang's application in a published opinion. The Court acknowledged that Mr. Chang was licensed to practice in another State, that his "moral character [was] duly vouched for," and that he therefore met the requirements for admission for a citizen. (Exhibit A [*In re Hong Yen Chang*, *supra*, 84 Cal. at p. 164].) But the Court held that Mr. Chang's naturalization certificate was void because, under the Chinese Exclusion Act and other federal statutes, "persons of the Mongolian race are not entitled to be admitted as citizens of the United States." (*Ibid.*) Because only citizens, or those eligible for citizenship, were entitled to admission to practice under California law, the Court rejected Mr. Chang's application for bar membership. (*Ibid.*)

This Court rejected Mr. Chang's application during an era of widespread discrimination against people of Chinese ancestry. As mentioned in the Court's decision, the Chinese Exclusion Act, enacted by Congress in 1882, prohibited the immigration of Chinese

laborers for ten years and made Chinese persons ineligible to naturalize. (22 Stat. 58, 59, 61, repealed by 57 Stat. 600.) Congress later reauthorized and expanded the Act and adopted a number of other measures to restrict Chinese immigration. (See H.Res. No. 683, 112th Cong., 2d Sess. (2012) [describing series of congressional enactments limiting Chinese immigration].) The California Constitution of 1879 dedicated an entire article to restricting the rights of Chinese residents. (Cal. Const., former art. XIX, §§ 1-4, repealed Nov. 4, 1952.) Among other things, this article prohibited employment of "any Chinese or Mongolian" person, barred Chinese persons from working on public works projects, and authorized localities to remove Chinese immigrants. (*Ibid.*)

Notwithstanding the discrimination he faced, Mr. Chang went on to a distinguished career in diplomacy and finance. (Exhibit B [Bury My Bones, *supra*, at p. 91].) He served as an adviser at the Chinese Consulate in San Francisco and then became a banker. (*Ibid.*) He eventually rose to the post of Chinese consul in Vancouver and served as first secretary at the Chinese Legation in Washington, D.C. (*Id.* at pp. 92-93.) Yale later awarded him an undergraduate degree and listed him with the graduating class of 1883. (*Id.* at p. 93.) Before retiring, Mr. Chang returned to California and served as the director of Chinese naval students in Berkeley. (*Ibid.*) He died of a heart attack in 1926. (*Ibid.*)

II. Consistent With Other State High Courts, This Court Has The Power To Posthumously Admit Mr. Chang

This Court has the inherent power to admit attorneys to practice law in California. (See, e.g., *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336 [178 Cal.Rptr. 801] ["[T]he power to regulate the practice of law, including the power to admit and to discipline attorneys, has long been recognized to be among the inherent powers of the Article VI courts."]; *In re Lacey* (1938) 11 Cal.2d 699, 701 [81 P.2d 935] ["That this Court has the inherent power and authority to admit an applicant to practice law in this state . . . we think is now well settled . . . ."].) The Court's powers with regard to matters of bar admission are "plenary and its judgment conclusive." (*In re Lacey*, *supra*, 11 Cal.2d at p. 701.)

In the ordinary course, the State Bar of California, an administrative arm of this Court, certifies to the Court those individuals who it determines have met the qualifications for admission. (Bus. & Prof. Code §§ 6046, 6064.) But that process exists for the convenience of this Court; it does not limit this Court's inherent power over bar admissions. To the contrary, "the power in this court is plenary to admit those who have in our opinion met the prescribed test, whether the investigators do or do not agree with this conclusion." (*Brydonjack v. State Bar of Cal.* (1929) 208 Cal. 439, 446 [281 P. 1018].) "Although both the Legislature and this court possess the authority to establish rules regulating admission to the State Bar, under the California Constitution this court bears the ultimate responsibility and authority for determining the issue of admission." (*In re Garcia* (2014) 58 Cal.4th 440, 451 [165 Cal.Rptr.3d 855].)

In any event, granting the requested relief would not put this Court at odds with either the Legislature or the State Bar, both of which have expressed support for redressing the denial of Hong Yen Chang's application for admission. The California State Senate unanimously approved a resolution calling for Hong Yen Chang to be posthumously admitted to the State Bar of California. (Sen. Res. No. 46 (2013-14 Reg. Sess.).) Although the State Bar declined to join this motion "because of the State Bar's role as the Supreme Court's administrative arm," the State Bar passed a resolution recognizing the "courage and the historic efforts of Hong Yen Chang to become the first individual of Asian birth to be admitted to the legal profession in California" and granted him posthumous honorary admission and membership in the State Bar of California. (Exhibit E [State Bar Resolution Regarding Hong Yen Chang].)

Other state high courts have posthumously admitted bar applicants under similar circumstances. For example, in 2001, the Washington Supreme Court granted a petition to posthumously admit Takuji Yamashita, a Japanese immigrant who was refused admission to the Washington bar in 1902 based on his Japanese ancestry. (Exhibit F [*In re Takuji Yamashita* (1902) 30 Wash. 234 [70 P. 482]].) To commemorate the event, the court convened a public ceremony featuring remarks by the President of the Washington State Bar, the state Attorney General, elected officials, and others. (Exhibit G [Ceremonial Induction of Takuji Yamashita to the Washington State Bar (2001)]; see also Washington State Supreme Court Oral Arguments (Mar. 1, 2001) <http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2001030001> [video of ceremonial induction, as of Dec. 5, 2014].) The *New York Times* reported the Washington Supreme Court's "extraordinary ceremony" to provide "posthumous justice" to Mr. Yamashita as a "symbolic coda to what is now widely viewed as a sorry chapter of national history." (Exhibit H [Verhovek, *Justice Prevails for Law Graduate, 99 Years Late*, N.Y. Times (Mar. 11, 2001)].)

Similarly, in 2010, the Supreme Court of Pennsylvania posthumously admitted George B. Vashon, an African-American who had been denied admission to the practice of law in 1847 on account of his race. (Exhibit I [In the Matter of George B. Vashon, Deceased (Pa. Sup. Ct., May 4, 2010, No. 5 WM 2010) (hereafter Vashon Order)]; Exhibit J [Littman, *A Long Time Coming* (Sept. 2010) 96-Sep A.B.A. J. 10].) Explaining that the discrimination that kept Mr. Vashon from his chosen profession "would be intolerable today," the court ordered that his admission be confirmed in an open session of the court. (Exhibit I [Vashon Order, *supra,* at p. 2.)

III. Mr. Chang Is Uniquely Deserving Of Posthumous Admission

This Court's power to admit people to the bar outside the ordinary process has been exercised sparingly and with discretion, but Mr. Chang's case presents circumstances that favor an exercise of that discretion. Although the relief sought here is extraordinary, as discussed, it is not without precedent in other States. Mr. Chang is an appropriate candidate for

such singular relief given the published Supreme Court opinion that bears his name, and his history as a pioneer for Asian-American immigrants in the legal profession. Moreover, a decision to posthumously admit Mr. Chang would reasonably and naturally be limited to the facts of his case, which are extraordinary and inextricable from their historical context. In particular, the Court may wish to consider the following matters.

First, Mr. Chang was unquestionably qualified for bar admission at the time he applied, and there is no doubt from the Court's opinion that he would have been admitted, but for the discriminatory laws that made him ineligible. He was licensed to practice in another State, and this Court recognized that his "moral character [had been] duly vouched for." (Exhibit A [*In re Hong Yen Chang, supra*, 84 Cal. at p. 164]; see also Exhibit K [Code Civ. Proc. § 279 (1890) (prescribing standards for bar admission)].) The Court rested its ruling solely on the ground that Mr. Chang was not a citizen and that, as a person of Chinese ancestry, he was ineligible to naturalize. (Exhibit A [*In re Hong Yen Chang, supra*, 84 Cal. at pp. 164-65].) This is not, therefore, a circumstance in which the Court would need to examine in the first instance whether the applicant would have been qualified for admission.

Second, Mr. Chang was denied relief solely on the basis of discriminatory and now-repudiated laws. The legal underpinnings of the denial of his application have been rightly discredited. In 1972, this Court held that excluding non-citizens from the bar violates the equal protection clauses of both the state and federal constitutions. (*Raffaelli v. Comm. of Bar Exam'rs* (1972) 7 Cal.3d 288 [101 Cal.Rptr. 896].) Banning non-citizens from the practice of law, the Court explained, reflected "the lingering vestige of a xenophobic attitude" and should be left "among the crumbled pedestals of history." (*Id.* at p. 291; see also Johnson, *Bias in the Legal System? An Essay on the Eligibility of Undocumented Immigrants to Practice Law* (2013) 46 U.C. Davis L.Rev. 1655, 1659 [noting that the "exclusion of noncitizens from the practice of law historically has had pernicious racial impacts," in light of the longstanding prohibition against non-whites naturalizing] (hereafter *Bias in the Legal System*).) The United States Supreme Court followed suit the next year, holding that a State could not constitutionally bar non-citizens from the legal profession. (*In re Griffiths* (1973) 413 U.S. 717 [93 S.Ct. 2851].) Additionally, Congress repealed the Chinese Exclusion Act in 1943, and recently both Houses of Congress adopted resolutions expressing regret for the Chinese Exclusion Act and other laws that discriminated against Chinese immigrants. (57 Stat. 600; H.Res. No. 683, 112th Cong., 2d Sess. (2012); Sen.Res. No. 201, 112th Cong., 1st Sess. (2011).) The discriminatory laws that barred Hong Yen Chang from practice have either been held to violate the California and United States Constitutions or been repealed and apologized for.

Third, Mr. Chang had no opportunity to reapply for admission while he was alive, because when he died in 1926, both the Chinese Exclusion Act and California's citizenship requirement for bar membership remained in effect.

Fourth, because Mr. Chang is deceased, granting the requested relief would not lead to him actively practicing law in the State. Legitimate concerns exist about admitting people to practice based on the standards of an earlier era because those standards may not be consistent with today's standards for the legal profession. Those concerns are not implicated here.

Finally, posthumously admitting Mr. Chang would serve the public interest. The published opinion bearing his name closely associates Mr. Chang with this State's and the Nation's history of discrimination against Asian Americans. (See *Bias in the Legal System, supra*, 46 U.C. Davis L.Rev. at pp. 1659-60 [citing *In re Hong Yen Chang* and *In re Takuji Yamashita* as the two cases exemplifying the pernicious effect of discriminatory immigration laws on access to the legal profession]; Knapp, *Disdain of Alien Lawyers: History of Exclusion* (1996) 7 Seton Hall Const. L.J. 103, 127 [same].) Just as the posthumous admission of Mr. Yamashita in Washington provided a "symbolic coda to what is now widely viewed as a sorry chapter of national history" (Exhibit H [*Justice Prevails for Law Graduate, 99 Years Late, supra*]), so too would the admission of Hong Yen Chang bear important symbolic value for the California legal community and beyond.

There is no known opposition to the granting of this request, which has received the support of Hong Yen Chang's descendants. Mr. Chang's grand-niece, Rachelle Chong—herself a pioneer as the first Asian-American Commissioner of the Federal Communications Commission and the first Asian-American Commissioner of the California Public Utilities Commission—recently wrote: "[m]y family is honored that the UC Davis students have taken up my great uncle's case." (Exhibit L [Chong, *Petitioning to Right a Historic Wrong* (Sept. 2014) Los Angeles Lawyer].) Her article concludes: "I join in asking the California Supreme Court and the California State Bar to grant this petition, repudiate the terrible injustice done to my great uncle, and make a bold statement about the Bar's commitment to diversity." (*Ibid.*)

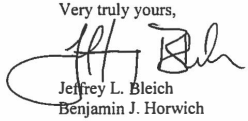
The unique confluence of reasons that make Mr. Chang's case a suitable opportunity for this Court to exercise its discretion to grant the extraordinary relief sought here is likewise a strong guarantee that the Court would not be confronted with similar requests from other applicants. Few, if any, other individuals would meet the qualifications outlined above that warrant posthumous admission in this case. And few, if any, are as deserving of the requested relief.

* * *

For the foregoing reasons, APALSA urges this Court to grant the motion to posthumously admit Hong Yen Chang to the State Bar of California.

Thank you for considering this motion.

Very truly yours,



Jeffrey L. Bleich
Benjamin J. Horwich
Joshua S. Meltzer

EXHIBIT B: LETTER TO THE STATE BAR FROM UC DAVIS SCHOOL OF LAW

March 6, 2014

Mr. Luis J. Rodriguez
President
State Bar of California
c/o Office of the General Counsel
180 Howard Street
San Francisco, CA 94105

Dear Mr. Rodriguez:

On behalf of the Asian Pacific American Law Students Association of the University of California, Davis School of Law (APALSA), we write to request the California State Bar's support for the posthumous admission to the bar of Hong Yen Chang, reportedly the first Chinese lawyer to be educated in the United States. Mr. Chang was admitted to the New York bar in 1888, but in 1890, the California Supreme Court denied his application to practice in this state based on two now-repudiated laws: a California statute excluding non-citizens from the bar and a federal law making Chinese immigrants ineligible to naturalize. (*In re Hong Yen Chang* (1890) 84 Cal. 163, 164-165.) As a result of these laws, Asian immigrants were barred from the legal profession in this state. We respectfully ask the State Bar of California to join with APALSA in petitioning the California Supreme Court to right this historical wrong and to now admit Mr. Chang to the bar.

Other states have posthumously admitted applicants excluded from the bar based on similar discriminatory laws. For example, in 2001, the Washington Supreme Court granted a joint petition submitted by the Washington State Bar Association, the University of Washington Law School, and the Asian Bar Association of Washington to honorarily admit Takuji Yamashita, a Japanese immigrant who, like Mr. Chang, was refused admission to the profession on account of his race. The court held a ceremonial induction featuring remarks by the President of the Washington State Bar, the state Attorney General, state legislators, and the Dean of the University of Washington Law School, among others. APALSA respectfully suggests that a similar public ceremony here in California would provide a unique opportunity to educate the public about the history of de jure discrimination against Asians and to advance the bar's ongoing efforts to promote diversity and inclusion in the legal profession.

This letter sets forth the reasons why Mr. Chang should now be admitted to the California bar. We appreciate your consideration of this request.

I. Background

Mr. Chang was reportedly the first Chinese immigrant to earn a law degree in the United States and, upon his admission to the New York bar, was the only regularly admitted Chinese

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lawyer in this country. Yet discriminatory state and federal laws kept him from joining the California bar.

In 1872, at age 13, Mr. Chang, a native of China, came to the United States as part of the Chinese Educational Mission, a program designed to teach Chinese youth about the West. (Exhibit A [Farkas, Bury My Bones In America (1998) p. 87] (hereafter Bury My Bones).) Mr. Chang attended the exclusive Phillips Academy in Andover, Massachusetts and then Yale College (now Yale University). (*Id.* at pp. 87, 89.) When the Chinese government cancelled the Mission in 1881, Mr. Chang was forced to suspend his studies at Yale and return to China. (*Id.* at p. 89.) He nevertheless came back to the United States and enrolled in Columbia Law School. (*Id.* at pp. 89-90.) There, he earned his law degree and reportedly became the first Chinese lawyer educated in the United States. (*Id.* at p. 90.)

After his graduation from Columbia, Mr. Chang applied for admission to the New York bar. The examiners gave him high marks and unanimously recommended his admission. (Exhibit B [*Naturalizing a Chinaman: Hong Yen Chang's Struggles to be Admitted to the Bar*, N.Y. Times (Nov. 19, 1887) (hereafter *Hong Yen Chang's Struggles*)].) But in a 2-1 decision, the New York Supreme Court, General Term rejected his application on the ground that he was not a citizen. (*Ibid.*)

Mr. Chang nevertheless reapplied for admission and was successful. In 1887, a New York judge issued him a naturalization certificate, and the state legislature enacted a law permitting him to reapply to the bar. (Exhibit B [*Hong Yen Chang's Struggles*, *supra*]; Exhibit C [*A Chinese Lawyer: Hong Yen Chang and a Colored Student Admitted to the Bar*, N.Y. Times (May 18, 1888) (hereafter *A Chinese Lawyer*)].) *The New York Times* reported that, when Mr. Chang and a successful African-American applicant "were called to sign for their parchments[,] the other students applauded each enthusiastically." (Exhibit C [*A Chinese Lawyer*, *supra*].) Upon his admission, Mr. Chang became the only regularly admitted Chinese lawyer in the United States. (*Ibid.*)

Despite his credentials, the California Supreme Court denied Mr. Chang's application to the California bar. In a published decision, the Court held that Mr. Chang's naturalization certificate was void and that, as a non-citizen, he was ineligible for bar membership. (*In re Hong Yen Chang* (1890) 84 Cal. 163, 165.) The Court acknowledged that Mr. Chang was licensed to practice in another state and that his "moral character [was] duly vouched for." (*Id.* at p. 164.) But because federal law barred Chinese immigrants from naturalizing, Mr. Chang, "a person of Mongolian nativity," could not become a citizen and thus could not practice law in this state. (*Id.* at p. 165.)

The Court's rejection of Mr. Chang's application came in an era of widespread discrimination against people of Chinese ancestry. As mentioned in the Court's decision, the Chinese Exclusion Act, enacted by Congress in 1882, prohibited the immigration of Chinese laborers for ten years and made Chinese persons ineligible to naturalize. (22 Stat. 58, 59, 61, repealed by 57 Stat. 600.) Congress later extended the Act and adopted a number of other measures to restrict Chinese immigration. (See H. Res. No. 683, 112th Cong., 2d Sess. (2012) [describing series of congressional enactments limiting Chinese immigration]; see also Chin,

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Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration (1998) 46 UCLA L.Rev. 1, 13-15 [similar] (hereafter *Segregation's Last Stronghold*).) The California Constitution of 1879 dedicated an entire article to restricting the rights of Chinese residents. (Cal. Const., former art. XIX, §§ 1-4, repealed Nov. 4, 1952.) Among other things, the charter prohibited employment of "any Chinese or Mongolian" person, barred Chinese persons from working on public works projects, and authorized localities to remove Chinese immigrants. (*Ibid.*)

Notwithstanding the discrimination he faced, Mr. Chang went on to a distinguished career in diplomacy and finance. (Exhibit A [Bury My Bones, *supra*, at p. 91].) He served as an adviser at the Chinese Consulate in San Francisco and then became a banker. (*Ibid.*) He eventually became the Chinese consul in Vancouver and served as first secretary at the Chinese Legation in Washington, D.C. (*Id.* at pp. 92-93.) Yale later awarded him an undergraduate degree and listed him with the graduating class of 1883. (*Id.* at p. 93.) Before retiring, Mr. Chang returned to California and served as the director of Chinese naval students in Berkeley. (*Ibid.*) He died of a heart attack in 1926. (*Ibid.*)

II. Mr. Chang Should Now Be Admitted to the Bar.

Mr. Chang should now be admitted to the California bar. Mr. Chang was qualified for admission, and the laws blocking him from the practice of law have since been repudiated. Posthumously admitting him now would remedy the injustice he suffered and send a powerful message about the legal profession's commitment to diversity and inclusion.

As an initial matter, Mr. Chang was qualified for membership in the bar. Aside from the citizenship requirement, Mr. Chang satisfied the criteria for admission: he was licensed to practice in another state, and his moral character had been "duly vouched for." (*Hong Yen Chang*, *supra*, 84 Cal. at p. 164; see also Code Civ. Proc., § 279 (1890) [prescribing standards for bar admission].) The Court rested its ruling solely on the grounds that Mr. Chang was not a citizen and that, as a person of Chinese ancestry, he was ineligible to naturalize. (*Hong Yen Chang*, at pp. 164-165.)

The legal underpinnings of this ruling have also been abandoned. In 1972, the California Supreme Court held that excluding non-citizens from the bar violates the equal protection clauses of both the state and federal constitutions. (*Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288, 304 (hereafter *Raffaelli*).) Banning non-citizens from the practice of law, the Court explained, reflected "the lingering vestige of a xenophobic attitude" and should be left "among the crumbled pedestals of history." (*Id.* at p. 291; see also Johnson, *Bias in the Legal System? An Essay on the Eligibility of Undocumented Immigrants to Practice Law* (2013) 46 U.C. Davis L.Rev. 1655, 1660 [noting that the "exclusion of noncitizens from the practice of law historically has had pernicious racial impacts," in light of the longstanding prohibition against non-whites naturalizing] (hereafter *Bias in the Legal System*).) The United States Supreme Court followed suit the next year, holding that states could not constitutionally bar non-citizens from the legal profession. (*In re Griffiths* (1973) 413 U.S. 717, 729.)

In addition, Congress has explicitly repealed, and apologized for, the Chinese Exclusion Act. Congress revoked the law in 1943. (57 Stat. 600.) And in the past few years, both the United States House and Senate adopted resolutions expressing regret for the Chinese Exclusion Act and other laws that discriminated against Chinese immigrants. (See H. Res. No. 683, 112th Cong., 2d Sess. (2012) Sen. Res. No. 201, 112th Cong., 1st Sess. (2011).) Accordingly, there is no legal barrier to Mr. Chang's admission.

Admitting Mr. Chang would serve important public-interest objectives. It would remedy the injustice that Mr. Chang suffered as a result of laws that uniquely burdened Asian immigrants in this state. It would remind members of the bar, as well as the broader public, of the history of de jure discrimination against Asians. And it would reaffirm that the profession does not tolerate discrimination of any kind.

Other state high courts have posthumously admitted bar applicants excluded under similar circumstances. For example, in 2001, the Washington Supreme Court granted a petition presented by the Washington State Bar Association, the University of Washington Law School, and the Asian Bar Association of Washington to posthumously admit Takuji Yamashita, a Japanese immigrant who was refused admission to the Washington bar in 1902 based on his Japanese ancestry. (See *In re Takuji Yamashita* (1902) 30 Wash. 234, 239.) To commemorate the event, the court convened a public ceremony featuring remarks by the President of the Washington state bar, the state Attorney General, elected officials, and others. (See Exhibit D [*Ceremonial Induction of Takuji Yamashita to the Washington State Bar* (2001) 24 Wash. xxxiii]; see also Washington State Supreme Court Oral Arguments, *at* http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2001030001 [video of ceremonial induction].) As *The New York Times* reported, the Washington Supreme Court's "extraordinary ceremony" to provide "posthumous justice" to Mr. Yamashita represented a "symbolic coda to what is now widely viewed as a sorry chapter of national history." (Exhibit E [Verhovek, *Justice Prevails for Law Graduate, 99 Years Late*, N.Y. Times (Mar. 11, 2001)].)

Similarly, in 2010, the Pennsylvania Supreme Court posthumously admitted George B. Vashon, an African-American who had been denied admission to the practice of law in 1847 on account of his race. (See Exhibit F [*In the Matter of George B. Vashon, Deceased* (Pa. Sup. Ct., May 4, 2010, No. 5 WM 2010) (hereafter *Vashon Order*)]; Exhibit G [Littman, *A Long Time Coming* (Sept. 2010) 96-Sep A.B.A. J. 10].) Explaining that the discrimination that kept Mr. Vashon from his chosen profession "would be intolerable today," the court ordered that his admission be confirmed in an open session of the court. (Exhibit F [*Vashon Order*, *supra*, at p. 2.)

Finally, admitting Mr. Chang to the California bar would not lead to a flood of requests for posthumous bar admissions. Mr. Chang's case is unique. As far as we are aware, Mr. Chang was the first Chinese lawyer educated in the United States. (Exhibit A [Bury My Bones, *supra*, at p. 90].) In addition, members of other underrepresented groups were eligible for bar admission earlier than Chinese applicants. (See *Raffaelli*, *supra*, 7 Cal.3d at p. 295 [noting that, in 1877, women and non-white citizens were permitted to practice law in California].) And scholars have cited *In re Hong Yen Chang* and *In re Takuji Yamashita* as the two cases exemplifying the pernicious effect of discriminatory immigration laws on access to the legal

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profession. (See *Bias in the Legal System*, *supra*, 46 U.C. Davis L.Rev. at p. 1659; Knapp, *Disdain of Alien Lawyers: History of Exclusion* (1996) 7 Seton Hall. Const. L.J. 103, 127.) The Washington State Bar has sought (and won) the posthumous admission of Mr. Yamashita. We respectfully suggest that the California bar should do the same with respect to Mr. Chang.

In sum, we respectfully request that the bar join with APALSA in petitioning the California Supreme Court to posthumously admit Mr. Chang. As the President of the Washington State Bar Association stated at the ceremonial induction of Mr. Yamashita, "now, now is always the right time to do the right thing." (Exhibit D [34 Wash. at p. li].) Those simple words apply with equal force to Mr. Chang.

We would be grateful for the opportunity to meet with you to further discuss this request. Thank you for your consideration.

Sincerely,

Aimee Feinberg
California Supreme Court Clinic
UC Davis School of Law
Counsel to APALSA

Gabriel J. Chin
Professor and APALSA Faculty Advisor
UC Davis School of Law

cc: Mr. Joseph L. Dunn

Attachments

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Exhibit C: California Supreme Court Decision: In re Hong Yen Chang

60 Cal.4th 1169 (2015)

In re HONG YEN CHANG on Admission.

No. S223736.

Supreme Court of California.

March 16, 2015.

OPINION

THE COURT.[*] — We grant Hong Yen Chang posthumous admission as an attorney and counselor at law in all courts of the State of California.

Hong Yen Chang, a native of China, came to this country in 1872 as part of an educational program to teach Chinese youth about the West. (Farkas, Bury My Bones in America (1998) p. 87 (Farkas).) Chang graduated from the Philips Academy in Andover, Massachusetts, in 1879 and earned his undergraduate degree at Yale University. (*Id.* at pp. 87, 89, 93.) He went on to graduate from Columbia Law School in 1886. (*Id.* at p. 90.) He applied for admission to the New York Bar, but despite a "high marking" and unanimous recommendation from the bar examiners, he was turned down by the state supreme court in 1887 because he was not a citizen. (*In and About the City: Naturalizing a Chinaman. Hong Yen Chang's Struggles to be Admitted to the Bar,* N.Y. Times (Nov. 19, 1887) p. 8.) That same year, a New York judge issued Chang a certificate of naturalization. (*Ibid.*) After the New York Legislature passed a law allowing him to reapply for bar admission, Chang was admitted in 1888, becoming "the only regularly admitted Chinese lawyer in this country." (*A Chinese Lawyer: Hong Yen Chang and a Colored Student Admitted to the Bar,* N.Y. Times (May 18, 1888) p. 1.)

Chang then relocated to California, "where he planned to serve the large Chinese community of San Francisco." (Farkas, *supra,* at p. 90.) When he moved for admission to the California bar, this court observed that his motion was "made in due form" and "his moral character duly vouched for." (*In re Hong Yen Chang* (1890) 84 Cal. 163, 164 [24 P. 156].) At the time, however, a California statute provided that only United States citizens or persons "who have *bona fide* declared their intention to become such in the manner provided by law" could gain admission upon presentation of a license to practice law from another state. (*Id.* at p. 165, citing Code Civ. Proc., former 1171*1171 § 279, enacted in 1872 and repealed by Stats. 1931, ch. 861, § 2, p. 1762.) This court held that the statute "requires that they shall be persons eligible to become [citizens], as well as to have declared their intention." (*In re Hong Yen Chang,* at p. 165.) Observing that "courts are expressly forbidden to issue certificates of naturalization to any native of China" under the federal Chinese Exclusion Act (Act of May 6, 1882, 47th Cong., ch. 126, § 14, 22 Stat. 58, 61), we determined that the certificate of naturalization Chang had obtained in New York

"was issued without authority of law, and is void, it being conceded that the holder of it is a person of Mongolian nativity." (*In re Hong Yen Chang,* at pp. 164-165.) The court concluded: "Holding, as we do, that the applicant is not a citizen of the United States, and is not eligible under the law to become such, the motion must be denied." (*Id.* at p. 165.)

Understanding the significance of our two-page decision denying Chang admission to the bar requires a candid reckoning with a sordid chapter of our state and national history. (See McClain, In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America (1994) (McClain); Takaki, Strangers from a Different Shore: A History of Asian Americans (1989) pp. 79-131.) The general outline of this history is recounted in *The Chinese Exclusion Case* (1889) 130 U.S. 581 [32 L.Ed. 1068, 9 S.Ct. 623] (*Chae Chan Ping*), which upheld the Chinese Exclusion Act against various legal challenges one year before our decision in *In re Hong Yen Chang.* Reflecting then prevalent sensibilities, a unanimous high court said:

"The discovery of gold in California in 1848, as is well known, was followed by a large immigration thither from all parts of the world, attracted not only by the hope of gain from the mines, but from the great prices paid for all kinds of labor. The news of the discovery penetrated China, and laborers came from there in great numbers, a few with their own means, but by far the greater number under contract with employers, for whose benefit they worked. These laborers readily secured employment, and, as domestic servants, and in various kinds of out-door work, proved to be exceedingly useful. For some years little opposition was made to them except when they sought to work in the mines, but, as their numbers increased, they began to engage in various mechanical pursuits and trades, and thus came in competition with our artisans and mechanics, as well as our laborers in the field. [¶] The competition steadily increased as the laborers came in crowds on each steamer that arrived from China, or Hong Kong, an adjacent English port. They were generally industrious and frugal. Not being accompanied by families, except in rare instances, their expenses were small; and they were content with the simplest fare, such as would not suffice for our laborers and artisans. The competition between them and our people was for this reason altogether in their favor, and the consequent irritation, proportionately deep and bitter, was followed, in many cases, by open conflicts, to the great disturbance of the public peace.

1172*1172 "The differences of race added greatly to the difficulties of the situation.. . . [T]hey remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people, or to make any change in their habits or modes of living. As they grew in numbers each year the people of the coast saw, or believed they saw, in the facility of immigration, and in the crowded millions of China, where population presses upon the means of subsistence, great danger that at no distant day that portion of our country would be overrun by them unless prompt action was taken to restrict their immigration. The people there

accordingly petitioned earnestly for protective legislation." (*Chae Chan Ping, supra*, 130 U.S. at pp. 594-595.)

Hostility toward Chinese labor, together with cultural tensions and xenophobia, prompted the California Legislature to enact a raft of laws designed to disadvantage Chinese immigrants. (See, e.g., Stats. 1880, ch. 116, § 1, p. 123 [establishing commercial fishing ban for "aliens incapable of becoming electors of this State"]; Pen. Code, former §§ 178, 179, added by Code Amends. 1880, ch. 3, §§ 1, 2, pp. 1, 2 [imposing criminal liability on corporations that employed Chinese workers]; Stats. 1862, ch. 339, § 1, p. 462 [creating "the Chinese Police Tax" in order "to protect Free White Labor against competition with Chinese Coolie Labor, and to discourage the Immigration of the Chinese into the State of California" (italics omitted)]; Stats. 1855, ch. 174, § 1, p. 216 [imposing license tax on each foreigner who was "ineligible to become a citizen"].) Many of the era's discriminatory laws and government actions were upheld by this court. (See, e.g.,*Mott v. Cline* (1927) 200 Cal. 434 [253 P. 718]; *In re Yick Wo* (1885) 68 Cal. 294 [9 P. 139], revd. *sub nom. Yick Wo v. Hopkins* (1886) 118 U.S. 356 [30 L.Ed. 220, 6 S.Ct. 1064]; *Ex parte Ah Fook* (1874) 49 Cal. 402, revd. *sub nom. Chy Lung v. Freeman* (1875) 92 U.S. 275 [23 L.Ed. 550]; *People v. Brady* (1870) 40 Cal. 198;*People v. Hall* (1854) 4 Cal. 399, 404-405; *People v. Naglee* (1850) 1 Cal. 232.)

Anti-Chinese sentiment was a major impetus for the California Constitutional Convention of 1879. (See McClain, *supra,* at pp. 79-81 [describing the influence of the California's Workingmen's Party led by Dennis Kearney, whose slogan was "The Chinese Must Go!"].) As ratified by the electorate in 1879, the California Constitution denied the right to vote to any "native of China" alongside any "idiot, insane person, or person convicted" of various crimes. (Cal. Const., former art. II, § 1, as ratified May, 7, 1879.) It also included an entire article titled "Chinese," directing the Legislature to enact laws to combat "the burdens and evils" posed by Chinese immigrants, including laws "to impose conditions upon which persons may reside in the State, and to provide the means and mode of their removal from the State." (*Id.,* former art. XIX, § 1, as ratified May 7, 1879.) The article specifically prohibited any corporation or government entity from "employ[ing] directly 1173*1173 or indirectly, in any capacity, any Chinese or Mongolian," and directed the Legislature to "pass such laws as may be necessary to enforce this provision." (*Id.,* former art. XIX, § 2, as ratified May 7, 1879.)

When the Legislature convened in 1880, it took up its new constitutional duties "with enthusiasm" in a session that "prove[d] to be the most Sinophobic in the state's history." (McClain, *supra,* at p. 83; see *id.* at pp. 83-93 [discussing anti-Chinese laws enacted in 1880]; see *In re Ah Chong* (C.C.D.Cal. 1880) 2 Fed. 733, 733-734 [same].) The laws enacted that session included "An Act to prohibit the issuance of licenses to aliens not eligible to become electors of the State of California," which provided that "[n]o license to transact any business or occupation shall be granted or issued by the State, or any county

or city, or city and county, or town, or any municipal corporation, to any alien not eligible to become an elector of this State." (Stats. 1880, ch. 51, § 1, p. 39.)

The 1879 Constitution also directed the Legislature to "provide the necessary legislation to prohibit the introduction into this State of Chinese" going forward and to "discourage their immigration by all the means within its power." (Cal. Const., former art. XIX, § 4, as ratified in May 7, 1879.) This provision continued the state's decades-long policy of opposing Chinese immigration. (See, e.g., 2 Willis & Stockton Debates and Proceedings, Cal. Const. Convention 1878-1879, p. 739; Sen. Conc. Res. No. 25, Stats. 1874 (1874 Reg. Sess.) res. ch. 29, p. 979; Assem. Conc. Res. No. 3, Stats. 1872 (1872 Reg. Sess.) res. ch. 20, p. 970; Stats. 1862, ch. 339, p. 462; Stats. 1858, ch. 313, p. 295.)

The United States Supreme Court, in upholding the Chinese Exclusion Act, observed that California's advocacy played a key role in motivating Congress to pass the law: "In December, 1878, the convention which framed the present constitution of California, being in session, took this subject up, and memorialized Congress upon it, setting forth, in substance, that the presence of Chinese laborers had a baneful effect upon the material interests of the State, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well-nigh universal; that they retained the habits and customs of their own country, and in fact constituted a Chinese settlement within the State, without any interest in our country or its institutions; and praying Congress to take measures to prevent their further immigration. This memorial was presented to Congress in February, 1879. [¶] So urgent and constant were the prayers for relief against existing and anticipated evils, both from the public authorities of the Pacific Coast and from private individuals, that Congress was impelled to act on the 1174*1174subject." (*Chae Chan Ping, supra*, 130 U.S. at pp. 595-596.) This was the historical context in which this court denied Chang admission to the bar.

(1) More than a century later, the legal and policy underpinnings of our 1890 decision have been discredited. In 1972, this court unanimously held it was "constitutionally indefensible" to forbid noncitizens to practice law, calling such a ban "the lingering vestige of a xenophobic attitude" that "should now be allowed to join those anachronistic classifications among the crumbled pedestals of history." (*Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288, 291 [101 Cal.Rptr. 896, 496 P.2d 1264].) One year later, the high court reached the same conclusion. (*In re Griffiths* (1973) 413 U.S. 717 [37 L.Ed.2d 910, 93 S.Ct. 2851].) In 2013, our Legislature passed a law making undocumented immigrants eligible for admission to the State Bar. (Bus. & Prof. Code, § 6064, subd. (b).) We thereafter granted admission to an undocumented immigrant who had been brought to the United States as a child, put himself through college and law school, passed the California bar exam, and met the requirement of good moral character. (*In re Garcia* (2014) 58 Cal.4th 440, 466 [165 Cal.Rptr.3d 855, 315 P.3d 117].) We said "the fact that an undocumented immigrant is

present in the United States without lawful authorization does not itself involve moral turpitude or demonstrate moral unfitness so as to justify exclusion from the State Bar, or prevent the individual from taking an oath promising faithfully to discharge the duty to support the Constitution and laws of the United States and California." (*Id.* at p. 460.)

In addition, Congress repealed the Chinese Exclusion Act in 1943 (Act of Dec. 17, 1943, Pub.L. No. 78-199, ch. 344, 57 Stat. 600), and both houses of Congress have recently expressed regret for the act and similar laws discriminating against Chinese immigrants (H.Res. No. 683, 112th Cong., 2d Sess. (2012); Sen.Res. No. 201, 112th Cong., 1st Sess. (2011).) The anti-Chinese provisions of the California Constitution were repealed in 1952. (Cal. Const., former art. XIX, repealed by initiative, Gen. Elec. (Nov. 4, 1952), commonly known as Prop. 14.) In 2014, our Legislature adopted a resolution acknowledging California's history of discrimination against its Chinese population. (Sen. Joint Res. No. 23, Stats. 2014 (2013-2014 Reg. Sess.) res. ch. 134.) Among its findings, the resolution observed that "California's stance against the Chinese community influenced the promotion and passage of the federal Chinese Exclusion Act"; that "California lobbied Congress for years to strictly prohibit immigration from China"; and that "[t]he Chinese Exclusion Act set the precedent for racist foreign and national policy that led to broader exclusion laws and fostered an environment of racism that quickly led to the Jim Crow laws of the 1880s." (*Ibid.*) While commending Congress on its recent resolutions expressing regret for the Chinese Exclusion Act, the resolution called on Congress to issue "a formal apology for the legalized 1175*1175 governmental mistreatment marked by the Chinese Exclusion Act." (Sen. Joint Res. No. 23, Stats. 2014 (2013-2014 Reg. Sess.) res. ch. 134.)

In light of these developments, it is past time to acknowledge that the discriminatory exclusion of Chang from the State Bar of California was a grievous wrong. It denied Chang equal protection of the laws; apart from his citizenship, he was by all accounts qualified for admission to the bar. It was also a blow to countless others who, like Chang, aspired to become a lawyer only to have their dream deferred on account of their race, alienage, or nationality. And it was a loss to our communities and to society as a whole, which denied itself the full talents of its people and the important benefits of a diverse legal profession.

(2) More than a century later, Chang's descendants and the Asian Pacific American Law Students Association at the University of California, Davis, School of Law have sought to right this wrong. Even if we cannot undo history, we can acknowledge it and, in so doing, accord a full measure of recognition to Chang's pathbreaking efforts to become the first lawyer of Chinese descent in the United States. The people and the courts of California were denied Chang's services as a lawyer. But we need not be denied his example as a pioneer for a more inclusive legal profession. In granting Hong Yen Chang posthumous admission to the California Bar, we affirm his rightful place among the ranks of persons deemed qualified to serve as an attorney and counselor at law in the courts of California.

[*] Cantil-Sakauye, C. J., Werdegar, J., Chin, J., Corrigan, J., Liu, J., Cuéllar, J., and Kruger, J.