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California's Century-Late Granting of a Law License

Hong Yen Chang isn't a name that's likely to ring a bell with many lawyers, which raises an interesting question: What purpose was served when the California Supreme Court earlier this year admitted Chang to the bar, almost 90 years after his death and 125 years after it first rejected his application on racial grounds?

The details of Chang's life were in the news briefly after he was posthumously granted a law license in March. He arrived in the U.S. from China in 1872, a 13-year old sent on an educational mission. After attending and graduating from Philips Academy and Yale University, Chang graduated from Columbia Law School in 1886.

The New York State bar initially refused to grant him admission, but in 1887, after the legislature naturalized him, Chang was admitted. He moved to San Francisco, where he was refused admission again—because he was not a U.S. citizen, and was of “Mongolian nativity.”

His case stood until a group of U.C. Davis School of Law students with the Asian-Pacific American Law Students Association, working with Professor Gabriel “Jack” Chin as their faculty adviser and with Munger, Tolles & Olson as their counsel, filed a petition for his admission last year. In March, the California Supreme Court granted him a license.

It's reasonable to ponder the purpose and value of this posthumous admission, and what if any consequences it will have on the legal profession.

Jeffrey Bleich, a Munger, Tolles & Olson partner who represented the U.C. Davis law students, noted California has an important economic relationship with China.

Chang's admission to the bar, Bleich said, while symbolic, is valuable because it shows California's “commitment to a fair and open court.”

“It's particularly important now, as we have a more globalized legal community,” said Bleich, a former state bar president and former U.S. Ambassador to Australia. “The bar needs to not merely be no more worse than anyone else; we need to be better.”

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That’s a change from the California of Chang’s time, whose experience the California Supreme Court described as “a sordid chapter” in the history of the state and country in its 9-page ruling. It also drew on historical rulings to paint a picture of the state in that era.

By the time Chang relocated to San Francisco, and in 1890, moved for admission to the California bar, there was already a large Chinese population in California dating to the 1848 gold rush.

Quoting from an 1889 ruling, the court noted: “The news of the [gold] discovery [had] 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.”

Most were engaged as domestic servants, according to the opinion, but as their numbers increased, they began to compete in various trades.

“The competition steadily increased as the laborers came in crowds on each steamer that arrived from China ... 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,” the California Supreme Court noted in its recent opinion.

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Bleich argued that reopening Chang’s case shows how the legal profession has changed even just in the two decades since he started practicing. The case sends “a signal that the U.S. courts are open to business for lawyers from all walks of life and all regions of the world who are capable of meeting the standards of the California law,” he said.

Such messages may be particularly important as the number of interactions between lawyers in China and in the United States grows. In January, there was a historic alliance between Dentons and Dacheng that puts thousands of lawyers in the United States and China together in the same firm through a Swiss *verein*.

Exact details of how the firms will share expenses have not been disclosed, but the U.S.-based leadership of Dentons has said the deal with Dacheng—the largest law firm in China—will create a referral network that extends from its lawyers throughout the United States, United Kingdom and elsewhere into the deepest provinces of China.

That deal was followed by news in April that Chicago-based Baker & McKenzie has become the first international law firm granted a license to partner with a Chinese law firm in the international trade zone in Shanghai. And, there are also dozens of law firms that maintain Chinese offices, where a huge base of potential future clients exists in the pool of multinational companies emerging there.

One lesson to draw from the admission of Chang 90 years after his death and 125 years after he applied for admission is that globalization is a force in diversity's favor, said Joe West, president and chief executive officer of the Minority Corporate Counsel Association. "Just about every large law firm either has or seeks to have an international presence," and "cultural competencies" are essential to doing business globally, said West.

But the impact of these abstract gestures of goodwill can seem small in the absence of more concrete progress towards achieving diversity in the bar. Lawyers working at firms may be only vaguely aware of California's decision to grant Chang admission to the bar, or a similar order from the Pennsylvania Supreme Court in 2010 admitting George Vashon, an African-American lawyer and abolitionist from the 1800s, to that state's bar.

"It's certainly nice to have bar associations go back and rectify these historical injustices," said West. "I would like our profession to make sure we are equally as concerned about the people who are practicing now."

He voiced concern about the high cost of law school and the difficulty for low-income students to survive and graduate into the profession. "If you're a minority, you are far more likely to not have one of the traditionally accepted predictors of success in law school in order to be interviewed and offered a job," he said. Minority students, he said, are less likely to have worked on a law review or journal, or received an award.

Munger Tolles, Bleich's firm, has developed a program aimed at preparing minority and low-income individuals to gain admission and succeed in law schools. However, it does not help offset tuition costs and cannot change the fact that underprivileged students who need to work to support themselves during law school may be at a disadvantage in terms of their studies.

West said he would like to see more focus on "inclusiveness as a means of increasing retention, and, more importantly, providing opportunities for advancement at the higher ranks."

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But he also said there is progress to celebrate: Diversity is improving in the judiciary, both at the federal and state levels, and the same thing is happening with regulatory bodies and corporate boards of directors. “It stands to reason that the weight of demographic inevitability will cause firms to understand and focus on diversity and inclusion” or “ignore it at their peril,” West said.

Indeed, the California Supreme Court that issued the Chang decision is diverse by standards within the legal profession: It has more women than men, and three justices hail from Asian backgrounds including the chief justice, one is of Latino descent, one is African-American descent and two are white women.

Yet diversity on the bench is not a sign of diversity in the legal profession as a whole, said Chin, the U.C. Davis School of Law professor who originally asked his students to think about helping Chang obtain admission to the bar in 2011.

A judgeship is a high-status, powerful position, but it is public service work, which generally pays less than private practice, he said.

“I know in this day and age, there are very, very few people who consciously think, ‘I only want white men at my firm,’” said Chin. “Most attorneys would probably be very happy if their colleagues were diverse, but it’s going to take some time to get there.”

One problem is that it’s easier to attract and retain female and minority partners if there are already some at a firm to provide mentoring to new lawyers. Lawyers may find it easier to mentor people who are similar to themselves in some ways, he said.

“There’s a chicken-and-egg problem,” Chin said.