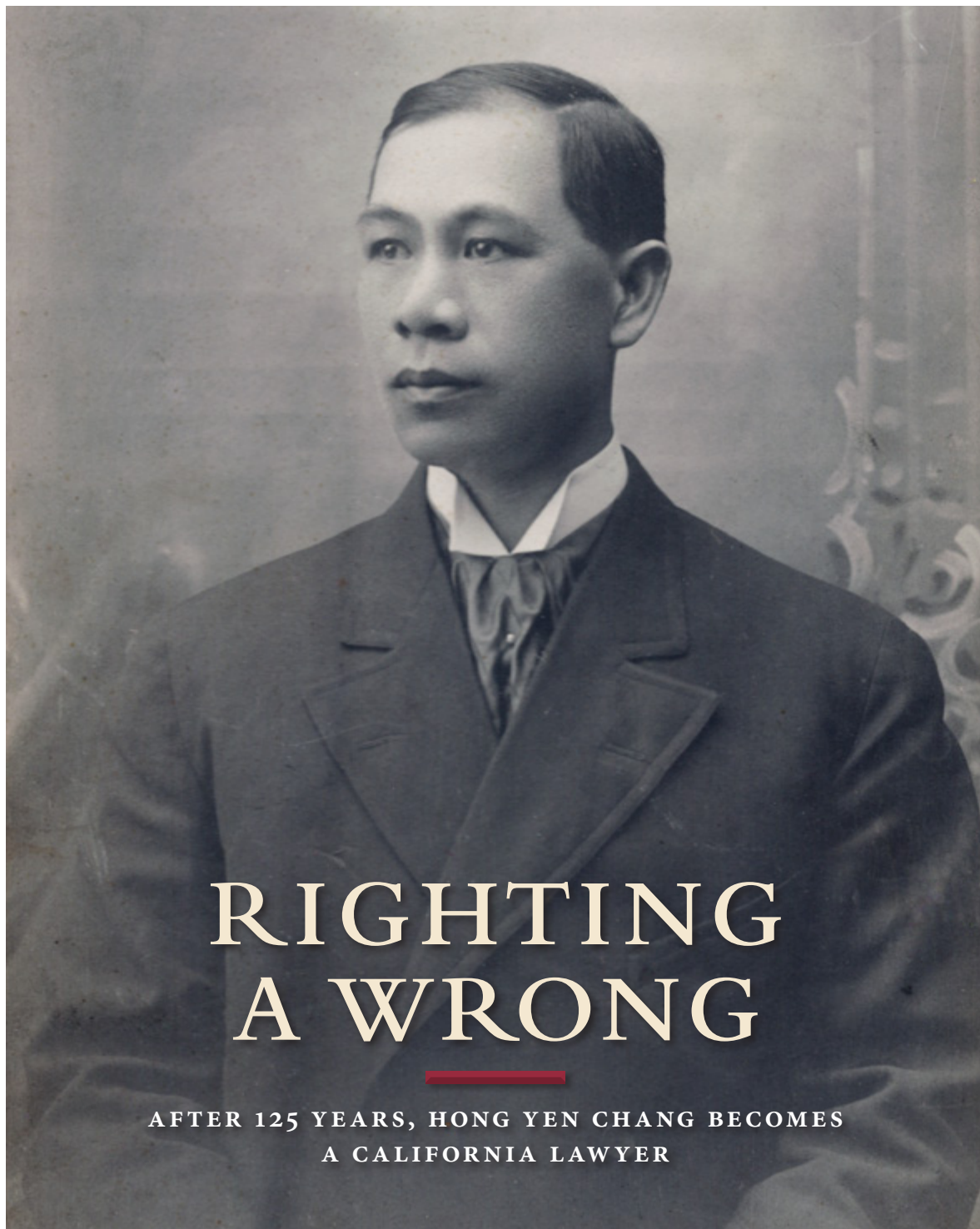




CALIFORNIA SUPREME COURT

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RIGHTING A WRONG

AFTER 125 YEARS, HONG YEN CHANG BECOMES
A CALIFORNIA LAWYER

Righting a Historic Wrong

THE POSTHUMOUS ADMISSION OF HONG YEN CHANG TO THE CALIFORNIA BAR

BY JEFFREY L. BLEICH, BENJAMIN J. HORWICH AND JOSHUA S. MELTZER*

ON MARCH 16, 2015, the California Supreme Court unanimously granted Hong Yen Chang posthumous admission to the State Bar of California. In its ruling, the court repudiated its 125-year-old decision denying Chang admission based on a combination of state and federal laws that made people of Chinese ancestry ineligible for admission to the bar. Chang's story is a reminder of the discrimination people of Chinese descent faced throughout much of this state's history, and the Supreme Court's powerful opinion explaining why it granted Chang admission is an opportunity to reflect both on our state and country's history of discrimination and on the progress that has been made.



Hong Yen Chang

HONG YEN CHANG'S STORY

In 1872, a 13-year-old boy named Hong Yen Chang came from China to the United States as part of the Chinese Educational Mission, a program designed to teach Chinese youth about the West. Chang studied at Phillips Academy in Andover, Massachusetts, and then at Yale College. When the Chinese government cancelled the mission in 1881, Chang was forced to suspend his studies at Yale temporarily and return to China. After coming back to the United States he enrolled at Columbia Law School, where he earned his law degree.

HONG YEN CHANG WAS REJECTED DURING AN ERA OF WIDESPREAD DISCRIMINATION AGAINST PEOPLE OF CHINESE ANCESTRY.

After graduating from Columbia, Chang applied for admission to the New York bar. The examiners gave him high marks and unanimously recommended his admission. But in a

2-1 decision, the New York Supreme Court rejected his application on the ground that he was not a citizen. Undeterred, Chang continued to pursue admission to the bar. 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. *The New York Times* reported that when Chang and a successful African-American applicant "were called to sign for their parchments, the other students applauded each enthusiastically." Chang became the only regularly admitted Chinese lawyer in the United States.

Later Chang applied for admission to the California bar. Notwithstanding his credentials, the California Supreme Court denied his application in a published opinion in 1890.¹ The Court acknowledged that 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 — if he were a citizen.² But the Court held that Chang's naturalization certificate was void, under the Chinese Exclusion Act and other federal statutes, because "persons of the Mongolian race are not entitled to be admitted as citizens of the United States."³ Only citizens or those eligible for citizenship could be admitted to practice under California law at the time.

Chang's application was rejected during an era of widespread discrimination against people of Chinese ancestry. As the Court noted in its recent decision, the Chinese Exclusion Act, enacted by Congress in 1882, prohibited the immigration of Chinese laborers for 10 years and made Chinese persons ineligible for naturalization. Congress later reauthorized and expanded the act and adopted a number of other measures to restrict Chinese immigration. Anti-Chinese sentiment served as a major impetus for the California Constitutional Convention of 1879, and the ensuing California Constitution dedicated an entire article to restricting the rights of Chinese residents. Among other things, the constitution prohibited corporations or the government from employing "any Chinese or Mongolian" person, barred Chinese persons from working

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on public works projects, and authorized localities to remove Chinese immigrants.

Notwithstanding the discrimination he faced, Chang went on to a distinguished career in diplomacy and finance. He served as an adviser at the Chinese Consulate in San Francisco and then became a banker. He eventually rose to the post of Chinese consul in Vancouver and served as first secretary at the Chinese Legation in Washington, D.C. Yale later awarded him an undergraduate degree and listed him with the graduating class of 1883. Before retiring, Chang returned to California and served as the director of Chinese naval students in Berkeley. He died of a heart attack in 1926.

A XENOPHOBIC ATTITUDE

In the 125 years since Hong Yen Chang was denied admission to the California bar, the laws that made him ineligible for bar membership have been repealed or found to violate the state and federal constitutions. In 1972, the California Supreme Court held that excluding non-citizens from the

THE COURT HAD NOT PREVIOUSLY GRANTED POSTHUMOUS ADMISSION, AND DID NOT HAVE A PROCESS FOR DOING SO.

bar violates the equal protection clauses of both the state and federal constitutions. Banning non-citizens from the practice of law, the Court ruled, was a reflection of “the lingering vestige of a xenophobic attitude” and should be left “among the crumbled pedestals of history.”⁴ The United States Supreme

Court followed suit the next year, holding that a state could not constitutionally bar non-citizens from the legal profession.⁵ 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. The anti-Chinese provisions of the California Constitution were repealed in 1952. Most recently, the California Supreme Court granted admission to an undocumented immigrant who came to the United States as a child and put himself through college and law school.⁶

Several of Hong Yen Chang’s descendants are now lawyers in California. His grandniece Rachele Chong is a pioneer in her own right, having served as the first Asian-American member of the Federal Communications Commission and the first Asian-American member of the California Public Utilities Commission.

Notwithstanding the many changes, however, Hong Yen Chang’s denial of admission remained undisturbed as a published opinion of the California Supreme Court. To remedy this injustice, students in the UC Davis

FROM THE OPINION

“EVEN IF WE CANNOT UNDO HISTORY, WE CAN ACKNOWLEDGE IT”

IN GRANTING Hong Yen Chang posthumous admission as a California lawyer, the California Supreme Court did not simply hand down an order. It published a unanimous opinion repudiating its earlier decision, noting:

[I]t is past time to acknowledge that the discriminatory exclusion of [Hong Yen] 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.

Even if we cannot undo history, we can acknowledge it and, in so doing, accord a full measure of recognition to Chang’s path-breaking 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.

— *In re Hong Yen Chang on Admission*, 60 Cal.4th 1169, 1175 (2015).

School of Law’s Asian Pacific American Law Students Association and their faculty adviser, professor Gabriel “Jack” Chin, took up the cause of seeking posthumous admission for Chang. The students worked initially with the UC Davis School of Law California Supreme Court Clinic. Building on that work, in December 2014 the authors filed a motion on behalf of the student association in the California Supreme Court. Although the Court had not previously granted posthumous admission and did not have a process for doing so, the

motion made the case that Hong Yen Chang's unique circumstances warranted posthumous admission.

On March 16, 2015, the California Supreme Court unanimously ruled: "We grant Hong Yen Chang posthumous admission as an attorney and counselor at law in all courts of the state of California."⁷ The Court engaged in a "candid reckoning with a sordid chapter of our state and national history" and resolved that it was "past time to acknowledge that the discriminatory exclusion of Chang from the State Bar of California was a grievous wrong."

One need only consider the composition of today's California Supreme Court to see how far the state has come since Hong Yen Chang was denied admission to the bar. But as the Court recognized, we must have the courage to grapple with difficult chapters of our history and to acknowledge the lasting harms visited

upon members of our community. As we strive to achieve a legal profession that fully reflects the diversity of California, the Supreme Court has taken a bold step to recognize Hong Yen Chang's "example as a pioneer for a more inclusive legal profession." ☆

ENDNOTES

1. *In re Hong Yen Chang*, 84 Cal. 163 (1890).
2. *Id.* at 164.
3. *Ibid.*
4. *Raffaelli v. Comm. of Bar Exam'rs*, 7 Cal.3d 288, 291 (1972).
5. *In re Griffiths*, 413 U.S. 717 (1973).
6. *In re Garcia*, 58 Cal.4th 440 (2014).
7. *In re Hong Yen Chang on Admission*, 60 Cal.4th 1169 (2015).



Hong Yen Chang and his wife, Charlotte Ah Tye Chang, with their children Ora and Oliver in the early 1900s

PHOTOS: AH TYE FAMILY ARCHIVES