

# Pioneers in the Fight for the Inclusion of Chinese Students in American Legal Education and Legal Profession

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*In 1878, the first Chinese student, Sit Ming Cook, sought entry into an American law school and was rejected because of his race. Chang Hong Yen, the second Chinese law student, was more fortunate. In 1884, Chang journeyed to New York City to embark on his legal education at Columbia Law School. A former Chinese Government Scholar, Chang had nine years of preparatory and collegiate education in the United States. In June 1886, after two years of full-time study, Chang became the first Chinese person to graduate from an American law school. Unfortunately, his race became a formidable barrier for him to gain admission to the New York bar. By dint of resourcefulness and determination, Chang fearlessly fought against racial discrimination for inclusion in legal profession. In May, 1888, two years after graduating from Columbia Law School, Chang successfully overcame all hurdles and became the first Chinese to be admitted to practice law in America. Two years later, Chang relocated to California in order to practice law among the Chinese community. When he sought admission to the California bar, the California Supreme Court denied his admission because of his race, finally admitting him posthumously 125 years later. Chang's aspiration was again thwarted by his race. Sit and Chang's courageous, yet largely unknown and untold struggles have paved the way for early Chinese Americans to achieve improved successes in the legal field since the early part of 20th century.*

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## INTRODUCTION

The first law school in the United States was founded in 1784.<sup>1</sup> Prior to then, it was customary for students of law to be tutored privately and serve under apprenticeships. The next century would see the founding of many illustrious law schools, including those at Harvard, Yale, and Columbia universities. By the late nineteenth century, law schools had become exclusionary and elitist bastions of privilege. Minorities and women were routinely—even officially—excluded from law schools.<sup>2</sup> Before long, the first Chinese students would come on the scene to challenge the exclusionary admissions policies of some legal institutions. They would soon find that, regardless of their academic performance, adoption of Western customs and English, use of legal loopholes, and the precedent set by Japanese students, they would be unable to overcome the depth of anti-Chinese sentiment at the time.

The law schools at Harvard, Columbia, Yale, Michigan, and Boston University were no strangers to students from Asia. More than ten years before the first Chinese student's matriculation at Columbia Law School, they had already admitted and graduated several Japanese students. Shoge Takato Agee was the first to matriculate at Columbia Law School in 1874, successfully graduating with an LL.B. with 219 other law graduates in 1876. Two fellow Japanese students were also awarded LL.B. degrees in 1877. Far from being the only school to do so, other American law schools had Japanese students graduating during this time.

1. MARIAN C. MCKENNA, *TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL* 59 (1986).

2. *See generally* JEROLD AUERBACH, *UNEQUAL JUSTICE. LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

**Table 1.**

Name	Enrollment Periods	School, Degree and Year
Enouyé, Yoshikatsu <sup>3</sup>	1872–1874	Harvard Univ. LL.B. 1874
Mégata, Tanetaro <sup>4</sup>	1872–1874	Harvard Univ. LL.B. 1874
Komura, Jutarō <sup>5</sup>	1875–1878	Harvard Univ. LL.B. 1877
Kanéko, Kentarō <sup>6</sup>	1876–1878	Harvard Univ. LL.B. 1878
Kurino, Sinichiro <sup>7</sup>	1878–1881	Harvard Univ. LL.B. 1881
Agee, Shoge Takato <sup>8</sup>	1874–1876	Columbia Univ. LL.B. 1876
Miura, Kazuo <sup>9</sup>	1875–1877 1877–1880	Columbia Univ. LL.B. 1877 Yale Univ. LL.M. 1878, D.C.L. 1880
Shimidz, Atz Mori M. <sup>10</sup>	1875–77	Columbia Univ. LL.B. 1877
Kikuchi, Takeo <sup>11</sup>	1875–78	Boston Univ. LL.B. 1877
Saito, Shiuchiro <sup>12</sup>	1875–78	Boston Univ. LL.B. 1878
Tsuda, Junichi Urizumi <sup>13</sup>	1876–78	Univ. of Michigan LL.B. 1878

3. RICHARD AMES, QUINQUENNIAL CATALOGUE OF THE LAW SCHOOL OF HARVARD UNIVERSITY 1817–1919 120 (1920).

4. *Id.*

5. *Id.* at 130.

6. *Id.*

7. *Id.* at 138.

8. COLUMBIA COLLEGE, CATALOGUE OF THE OFFICERS AND STUDENTS OF COLUMBIA COLLEGE FOR THE YEAR 1874–75 124 (1874) [hereinafter COLUMBIA COLLEGE CATALOGUE]; COLUMBIA COLLEGE CATALOGUE 1875–76 122 (1875) (His name appeared as Shoge Tahato Agee in 1874–75.); CATALOGUE OF THE GOVERNORS, TRUSTEES, AND OFFICERS AND OF THE ALUMNI AND OTHER GRADUATES, OF COLUMBIA COLLEGE FROM 1754–1882 172 (1882) [hereinafter CATALOGUE OF THE GOVERNORS].

9. COLUMBIA COLLEGE CATALOGUE 1875–76 132 (1875); COLUMBIA COLLEGE CATALOGUE 1876–77 125 (1876); CATALOGUE OF THE GOVERNORS 1754–1882 178 (1882); YALE UNIVERSITY, OBITUARY RECORD OF GRADUATES OF YALE UNIVERSITY, DECEASED FROM JUNE 1910, TO JULY 1915, 954 (1915) (in the final year of his registration at Yale, he changed name to Kazuo Hatoyama).

10. COLUMBIA COLLEGE CATALOGUE 1875–76 134 (1875); COLUMBIA COLLEGE CATALOGUE 1876–77 126 (1876); CATALOGUE OF THE GOVERNORS 1754–1882 179 (1882).

11. BOSTON UNIVERSITY, BOSTON UNIVERSITY SCHOOL OF LAW CATALOGUE, AND CIRCULAR FOR THE YEAR 1875–76 6 (1876) [hereinafter BOSTON UNIVERSITY CATALOGUE]; BOSTON UNIVERSITY CATALOGUE 1876–77 5 (1877); BOSTON UNIVERSITY CATALOGUE 1877–78 3, 5 (1878); HISTORICAL REGISTER OF BOSTON UNIVERSITY, 1869–1891 51 (1891) [REGISTER OF BOSTON UNIVERSITY].

12. BOSTON UNIVERSITY CATALOGUE 1875–76 at 6; BOSTON UNIVERSITY CATALOGUE 1876–77 at 5); REGISTER OF BOSTON UNIVERSITY 1869–91 at 54.

13. *See* UNIVERSITY OF MICHIGAN, CALENDAR OF THE UNIVERSITY OF MICHIGAN FOR 1877–78 125 (1878) [hereinafter MICHIGAN CALENDAR]; MICHIGAN CALENDAR 1876–77 123 (1877). In his first

The first Chinese student who went abroad to obtain a legal education was Wu Tingfang, a distinguished Chinese diplomat who, in 1896, became the top envoy to the United States.<sup>14</sup> Previously, he sailed to London from Hong Kong in 1874, completed his legal studies with distinction at Lincoln's Inn, and was called to the English Bar on January 26, 1877.<sup>15</sup> Wu Tingfang's three brothers-in-law, Sir Ho Kai, Ho Wyson, and How Yow, also studied law in England and scored many firsts. On January 26, 1882, Sir Ho Kai became the second Chinese called to the English Bar and was the first Chinese to win a scholarship from Inns of Court for academic excellence. In June 1887, his younger brother Ho Wyson successfully passed the final examination for solicitor in London and completed the requirements for admission to practice law as an English solicitor, thus becoming the first Chinese to be admitted to practice as a solicitor.<sup>16</sup> Ho Yow, the youngest brother, completed the preliminary examination for solicitor in London in 1885 and later came to the United States with Wu Tingfang, serving as Consul in San Francisco. Ho Yow was admitted to Hastings College of the Law and studied for two years from 1897–99, becoming the fourth Chinese student to pursue legal education in America.<sup>17</sup>

The Chinese government also sponsored Ma Jianzhong, another eminent Chinese diplomat, who was awarded *Licencie en Droit* in 1879 by the University of Paris.<sup>18</sup>

While the aforementioned Chinese students were pioneers for Chinese students receiving educations abroad, this Article will specifically focus on the first two Chinese law students in America: Sit Ming Cook, also known as Xue Minggu, and Chang Hong Yen, also known as Zhang Kangren. Although these persons certainly are pioneers in their own right, this paper will meticulously trace how they endured unspeakable racial discrimination to fight for admission to either law school or the state bar. Their bold attempts to overcome hurdles with admirable resourcefulness provided an

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year at the Department of Law, his name appeared as Kinpay Saito with a B.S from Pacific University. University records showed they were the same person. He was the first person of East Asian descent student to graduate from the university with a degree.

14. *Coming in Yang Yu's Place: Wu Ting-Fang China's New Minister at Washington*, EVENING TIMES, Dec. 28, 1896, at 1.

15. Li Chen, *Lawyers as the Emerging Diplomatic Elite in China: The Making of the First Chinese Barrister at the English Bar*, 2 CHIN J COMP LAW 337–37 (2014).

16. *Id.*

17. UNIVERSITY OF CALIFORNIA, HASTINGS, REGISTER OF UNIVERSITY OF CALIFORNIA, 1897–98 378 (1898); UNIVERSITY OF CALIFORNIA, HASTINGS, REGISTER OF UNIVERSITY OF CALIFORNIA, 1898–99 412 (1899). For more information on these early Chinese law students, see Li Chen, *The Early Chinese Law Students in American Law Schools* (forthcoming) (on file with author). If interested, please contact me at lichen@wustl.edu for further information on my future projects.

18. MA, KIÉ-TCHONG, THÈSE POUR LA LICENCE (1879). For more information on Ma Jianzhong, see Li Chen, *The First Chinese Law Student in France* (forthcoming) (on file with author).

impetus for law schools to reconsider their racist admission policies. Their inspiring stories made Chinese American students aware that they could also study law in the United States and seek admission to their local state bars. In Part I, I provide historical background on Sit Ming Cook, the first Chinese law student in the United States. In Part II, I focus on Chang Hong Yen, the second Chinese law student and the first Chinese bar applicant in the United States.

### I. THE FIRST CHINESE APPLICANT

The first Chinese who sought legal education in the United States was Sit Ming Cook. He was an obscure member of a diplomatic mission headed by Chen Lanbin, the first Chinese top envoy tasked with founding the Chinese Legation in the United States. Sit was born in Guangdong province in 1844 and came to the United States in 1858 to attend public schools in New Bedford, Massachusetts for eight years.<sup>19</sup> In 1864, he returned to Guangzhou to join the Imperial Maritime Customs in Guangzhou as a linguist.<sup>20</sup> He was later transferred to the Shanghai Office in 1868. On November 18, 1869, he was commissioned as an Interpreter for Consul C.W. Legendre at the American Consulate in Xiamen<sup>21</sup> with a starting salary of \$720 per annum.<sup>22</sup> He reported to his new position in 1870.<sup>23</sup>

As a testament to Sit's aptitude, on January 11, 1871, De B. Randolph Keim,<sup>24</sup> an agent of the United States, dispatched a letter to George Sewall Boutwell, Secretary of the Treasury in Washington, D.C. In his letter, he gave a thorough description of the consulate in Xiamen and went out of his way to elaborate on Sit Ming Cook's linguistic skills, strongly recommending a two-thirds pay raise for him:

The interpreter at this consulate, Sit Ming Cook, a young Chinaman, educated in the public schools of the United States, also attracted my

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19. 2 AN INVESTIGATIVE REPORT ON INTERPRETING OFFICER XUE MINGGU (SIT MING COOK) OF AMERICAN CONSULATE IN XIAMEN AS NOT CONNECTED WITH FOREIGN COMMERCIAL TRADE, FROM WENYU, FUZHOU GENERAL TO TSUNGLI YAMEN (CHINA'S FOREIGN OFFICE) (JANUARY 26, 1871); HISTORICAL MATERIALS ON CHINA AND U.S. FOREIGN RELATIONS: REIGN OF TONGZHI (1868-1874) 882 (1968), INSTITUTE OF MODERN HISTORY, ACADEMIA SINICA [hereinafter HISTORICAL MATERIALS].

20. CHINA DIRECTORY FOR 1867, EIGHTH ANNUAL PUBLICATION 60 (1867) (Sit was listed as a linguist at the Imperial Maritime Customs in Whampoa.).

21. DEPARTMENT OF STATE, REGISTER OF THE DEPARTMENT OF STATE 16 (1871); *General Telegraphic News*, N.Y. DAILY TRIB., Nov. 12, 1869, at 3 ("The following appointments were made yesterday: Sit Ming Cook has been appointed Interpreter to the Consulate of United States in China.").

22. UNITED STATES, DOCUMENTS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES WITH OTHER COUNTRIES DURING THE YEARS FROM 1869 TO 1870 4, (v.71).

23. HISTORICAL MATERIALS, *supra* note 18.

24. He was sent by President Ulysses S. Grant as a special agent to the United States consulates in China, Asia, Egypt, and South America in 1870.

notice. The readiness with which he rendered dispatches into Chinese or prepared translations, was remarkable, and gave rise to considerable controversy in my own mind as to whether for the general work of translation, such persons would not be better adapted than foreign interpreters. I have yet to see his superior anywhere, and I am safe in saying that his equal it would be difficult to find. I doubt not the success of the consul here has been much aided by the service of the interpreter, as a means of communication and understanding with the Chinese officials. In my opinion, an allowance of \$1200 per annum, instead of 720,<sup>25</sup> as at present, for salary, would be but fair and deserving as recognition of services and merit.<sup>26</sup>

After three years of working as an interpreter for the American Consulate, the Chinese Government hired Sit to work for the China Merchants Steamship Navigation Company, which was established by Prime Minister Li Hongzhang in January 1873. However, Sit stayed in touch with the American diplomats in China and his efforts paid off. On November 10, 1876, John C. Myers, Consul General at Shanghai, sent a report to his superior in the US.<sup>27</sup> In the report, he described receiving information on China's missions to the Western Powers and that a Consul General and staff had been appointed to serve in San Francisco. Sit Ming Cook was named Vice Consul General. Because his formal accreditation as a Consul was not approved until December 1878, he was free to pursue his own studies in San Francisco in the meantime.<sup>28</sup>

On his arrival in San Francisco on July 23, 1878, Sit was interviewed by eagerly waiting journalists. The newsmen described him as speaking "English as fluently as his mother tongue. He is well known and very popular with all the foreigners in China."<sup>29</sup> Another newspaper reported, "[h]e will be installed as Consul at San Francisco, is remarkably courteous and intelligent, having received thorough education at New Bedford, Massachusetts. He speaks English without hesitation, and with no accent."<sup>30</sup>

Sit Ming Cook was charged with the responsibility of protecting Chinese interests in California by safeguarding rights granted to Chinese

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25. The pay rate for American interpreters doing the same job ranged from \$1500 (B. Jenkins in Shanghai) to \$1000 (C.F. Preston in Guangdong).

26. DE BENNEVILLE RANDOLPH KEIM & UNITED STATES DEPARTMENT OF THE TREASURY, REPORTS OF DE B. RANDOLPH KEIM, AGENT OF THE UNITED STATES, ECT., TO THE SECRETARY OF THE TREASURY, RELATING TO THE CONDITION OF THE CONSULATES OF THE UNITED STATES IN JAPAN, CHINA, COCHIN CHINA, MALAY PENINSULA, JAVA, BRITISH INDIA, EGYPT, AND ON THE EAST AND WEST COASTS OF SOUTH AMERICA 52-53 (1871).

27. UNITED STATES, COMMERCIAL RELATIONS OF THE UNITED STATES WITH FOREIGN COUNTRIES FOR THE YEAR 1876 223-24 (1877).

28. *Received Formal Notice*, SACRAMENTO DAILY UNION, Dec. 20, 1878, at 3.

29. *The Chinese Ambassador*, FRANK LESLIE'S ILLUSTRATED NEWSPAPER, Aug. 31, 1878, at 1.

30. *The Chinese Embassy*, FRIENDS INTELLIGENCER, Aug. 17, 1878 at 416.

under the Burlingame Treaty, which regulated bilateral relations between the nations. In an interview with one of the reporters, he stated, “The Chinese Government has signed that document [Burlingame Treaty], and will not repudiate its signature. It also expects the United States, in the same spirit, to live up to its signature.”<sup>31</sup> He was optimistic about protecting his fellow countrymen’s legitimate rights in California. In another interview, he gave a glimpse of anti-Chinese sentiment in California and why he felt the United States Government was responsible for not reining in the rampant discrimination. Sit Ming Cook asserted, “Our government has abided by its provisions strictly and will continue to do so. The rights of the Americans in China have always been respected. If our people are ill-treated here the American government is responsible for the wrong.”<sup>32</sup>

A. *Sit’s Initial Application to Hastings College of the Law*

Sit Ming Cook believed that a good knowledge of American laws would be most helpful to his job as a diplomat charged with protecting Chinese interests under the relevant laws. Prior to coming to the U.S, he handled some legal related work for the China Merchants Steamship Navigation Company.<sup>33</sup> He decided to further his knowledge by pursuing his legal studies at Hastings College of the Law. The California legislature established Hastings College of the Law as a department of the University of California on March 28, 1878. At inception, the admission requirements at Hastings were very modest: students needed only to furnish a satisfactory certificate of their good moral character and pay the registrar ten dollars as a matriculation fee. In addition, applicants for the first year class also needed to “satisfy the authorities of the institution that they possess sufficient knowledge and culture to enable them to profit by the course of study.”<sup>34</sup> In light of this admissions procedure, it was necessary for Sit to approach and have meetings with Dean S. Clinton Hastings and Registrar Charles P. Hastings to arrange his admission before his enrollment. His initial application was successful and his name appeared on the printed name roll of 130 members of the inaugural class at Hastings College of the Law,<sup>35</sup> with the first term beginning August 8, 1878.<sup>36</sup> The local newspaper later picked up on his admission and stated “Sing [sic]

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31. *The Chinese in California*, CINCINNATI COMMERCIAL TRIB., Aug. 13, 1878, at 4.

32. *Mongolian Majesty: Enthusiastic Reception of the Chinese Embassy*, S.F. CHRON., July 27, 1878, at 3.

33. NORTH CHINA HERALD & SUPREME COURT & CONSULAR GAZETTE, July 28, 1877, at 79.

34. UNIVERSITY OF CALIFORNIA, BERKELEY, REGISTER OF UNIVERSITY OF CALIFORNIA, 1878–79 134 (1878).

35. UNIVERSITY OF CALIFORNIA, BERKELEY, *supra* note 33, at 132.

36. *Id.*

Ming Cook, the Chinese Consul at this city, has joined the Hastings Law College, not with the ultimate intention of practi[c]ing, but of becoming fully conversant with the laws of the United States.<sup>37</sup>

The first year at Hastings College of the Law required a study of general principles and doctrines. The required courses included readings for The Law as to Persons, The Law as to Personal Property, Outline of the Law as to Contract, and The Law as to Real Property.<sup>38</sup> Sit studied these common subjects during his brief attendance at the law school. While attending law classes, it appeared that Sit's presence in the class became a powerful argument to bolster Clara Shortridge Foltz's fight for the rights of women to attend law school.

### B. *Anti-Women and Anti-Chinese*

Foltz was among the first American female lawyers, and her struggle to gain admission to law school and the bar exemplifies that of minorities. After completing an apprenticeship under her father and his partner in the law office of Stephens and Shortridge, she became the first woman admitted to the California Bar on September 8, 1878. This only came to fruition after she and her suffragist male allies successfully lobbied the State Legislature to pass a bill allowing women to become lawyers.<sup>39</sup> Upon the founding of Hastings College of the Law, Foltz wanted to attend law school and applied to Hastings in October 1878. This audacious move was recorded in the Hastings Board of Directors' meeting minutes dated October 18, 1878.<sup>40</sup> On receiving the application, the Board of Directors needed to deliberate a way to deal with this unorthodox application. Two months into the first term, in the same meeting that considered the receipt of Foltz's application, the Board reconsidered Sit Ming Cook's previous admission and resolved to deny it: "Oct. 18th Resolved that the application of Sit Ming Cook for admission to the law school be refused. Carried unanimously." It also decided to consider Clara's application in the next meeting: "It was unanimously carried that they discuss her application during the next board meeting."<sup>41</sup>

Hon. Oliver P. Evans, Hon. John Raymond Sharpstein, Hon. Warner Walton Cope, Thomas Benton Bishop and Thomas I. Bergin, all of whom

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37. *Around The City*, DAILY ALTA CAL., Oct. 11, 1878, at 1.

38. UNIVERSITY OF CALIFORNIA, BERKELEY, *supra* note 33, at 136.

39. Mortimer D. Schwartz, Susan L. Brandt & Patience Milrod, *Clara Shortridge Foltz: Pioneer in the Law*, 27 HASTINGS L.J. 545, 549 (1976).

40. HASTINGS COLLEGE OF THE LAW, MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF HASTINGS COLLEGE OF THE LAW, OCTOBER 18, 1878 (unpublished manuscript) (on file with the author).

41. *Id.*

were judges or practicing lawyers, attended this meeting.<sup>42</sup> Their decision in denying Sit Ming Cook's admission was a de facto rescission of his previous acceptance to the inaugural class of Hastings, as his name had already appeared in the University of California official publication as a member of first year's class.<sup>43</sup>

There is no doubt that Sit Ming Cook was denied not on academic grounds, but because of the high anti-Chinese sentiment prevalent in California during that time. Although there are no surviving historical records in connection with the deliberation of his case, the meeting minutes of Hastings College shows that it did not record any admission or refusal decisions in their initial years of operation except for the denials of Sit Ming Cook and two women, including Foltz. It was not until October 9, 1886, when the Board Directors of Hastings crafted a series of guidelines for admission that the denial of students showed up in the meeting minutes.<sup>44</sup> Since admission requirements were almost non-existent at the outset of the law school's operation, one of the most obvious grounds for refusal was the high anti-Chinese sentiment prevailing in California at that time. Another plausible reason for denial was to foreclose any argument that may have bolstered Foltz's attempt to seek admission. By directly excluding Sit Ming Cook, the school eliminated a powerful argument that women should be admitted on an equal footing as the Chinese. The timing of Foltz's application and the abrupt rescission of Sit Ming Cook's enrollment (his name was on the printed roll of admitted student, he had already started attending classes, and this fact was reported by the local press), lent more credence to the latter explanation.

Foltz was not the only woman who sought admission to the new law school; at the same Board meeting, they also denied the application of Laura de Force Gordon, a journalist and women's rights advocate.<sup>45</sup> Foltz applied in October 1878 with the goal of starting law school in January 1879, as the fall semester had started in August. Because the status of her application was unclear, she began classes with a temporary arrangement in January, after extraordinary efforts.<sup>46</sup> Two days after her appearance at law school, on January 10, the Board of Directors, faced with a dilemma they could no longer ignore, adopted a resolution to not admit Foltz and

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42. *Id.*

43. University of California, Berkeley, *supra* note 35.

44. HASTINGS COLLEGE OF THE LAW, MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF HASTINGS COLLEGE OF THE LAW, OCTOBER 9, 1886 (unpublished manuscript) (on file with the author).

45. HASTINGS COLLEGE OF THE LAW, MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF HASTINGS COLLEGE OF THE LAW, JANUARY 10, 1879 (unpublished manuscript) (on file with the author).

46. BARBARA ALLEN BABCOCK, WOMAN LAWYER: THE TRIALS OF CLARA FOLTZ 43-44 (2011).

Gordon, recorded in the meeting minutes: “not admitted.”<sup>47</sup> However, eager to attend law school, Foltz and Gordon filed a court case.<sup>48</sup>

Throughout February 1879, Foltz and Gordon fought a fierce court battle against Hastings in their attempt to gain admission. After Foltz made central legal points, Gordon rose to represent herself by the court’s permission. She played on the prevalent anti-Chinese sentiment common among Californians at the time to make a case for her admission, pointing out that Hastings had admitted “a Chinaman, while respectable women were excluded.” She read from the rolls the name of “Cain Mook Sow”<sup>49</sup> (a mispronunciation of Sit Ming Cook). Delos Lake, a Director of the College’s Board, protested: “But he was afterwards excluded.” Gordon retorted: “He remained long enough to get his name on the official books before he was bounced, anyway.”<sup>50</sup> In the end, Foltz and Gordon prevailed at the California Supreme Court, and in December 1879, Hastings received the court decision and papers in favor of Foltz’s admission.<sup>51</sup> However, the successful crusade for the right of women to receive legal education did not ease restrictions on Chinese students’ and may even have contributed to the exclusion of the first Chinese law student in America.

Despite being denied an opportunity to get a legal education at Hastings, Sit Ming Cook did not give up the chance to improve himself whilst serving as a Chinese Consul in San Francisco. As there was no other law school in California at the time, he subsequently enrolled himself into Heald’s Business College in San Francisco and completed his studies by December 31, 1879.<sup>52</sup>

## II. THE SECOND CHINESE APPLICANT

Chang Hong Yen was the second Chinese who attempted to receive a legal education in America. He successfully completed his legal studies at Columbia Law School and earned his LL.B in 1886. In spite of his sterling academic credentials, Chang was prevented from taking the New York bar examination as the Chinese Exclusion Act denied him a chance to satisfy the citizenship requirement. By dint of his resourcefulness and tenacity, he garnered adequate support to obtain a special legislation enacted by the State Legislature to waive his alienage in admission to the New York bar. After passing the bar examination with flying colors, the State Court in

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47. *Id.*

48. *Foltz v. Hoge*, 54 Cal. 28 (1879).

49. BARBARA ALLEN BABCOCK, *supra* note 46 at 51.

50. *Id.*

51. HASTINGS COLLEGE OF THE LAW, MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF HASTINGS COLLEGE OF THE LAW, DECEMBER 22, 1879 (unpublished manuscript) (on file with the author).

52. *Around The City*, Daily Alta Cal., Jan. 4, 1880, at 1.

New York City still refused to admit him as an attorney on the ground of his race. On the advice of his American supporters, Chang exploited a legal loophole to obtain a naturalization paper from a sympathetic New York judge. To overcome the resistance toward his admission in New York City, he had to travel to city of Poughkeepsie to be admitted to the bar. Chang's nightmare did not end there; when he relocated to California with the intent of establishing legal practice among his countrymen, the court rebuffed his petition for admission to the California bar. Again, on the basis of his race and the Chinese Exclusion Act, the California Supreme Court flatly refused to recognize his citizenship.<sup>53</sup>

Chang's odyssey started at Columbia Law School in New York City. He sought admission as a candidate for a law degree there in 1884.<sup>54</sup> At that time, only graduates of literary colleges were admitted without any examination.<sup>55</sup> The Law School required candidates to be at least eighteen years old and have a good academic education, including knowledge of Latin as customarily required for admission to the College of Arts.<sup>56</sup> The written and oral examinations were conducted by an examiner appointed by the Committee of the Board of Trustees of the Law School.<sup>57</sup> As a non-college graduate, Chang had to take an entrance examination, which he completed on Saturday, October 4, 1884.<sup>58</sup> Candidates had to demonstrate basic familiarity with Greek and Roman history, as well as the histories of England and America, English Grammar, Rhetoric, and the Principles of Composition, the entirety of Caesar's Gallic War, six books of Virgil's Aeneid, and six orations of Cicero or other Latin authors deemed equivalent to the above.<sup>59</sup> Chang's performance satisfied examiner Frank Drisler,<sup>60</sup> and he was granted admission.

This entrance examination was not a daunting challenge to Chang; despite being a native of China, he had an extremely rare educational background for his generation. In 1872, the Chinese Government emulated the Japanese by launching an Educational Mission to the United States. Thirty carefully selected young boys were brought to America for extended periods of living and schooling up to the completion of college. At twelve

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53. See Li Chen, *The Early Chinese Law Students in American Law Schools* (forthcoming) (on file with author).

54. COLUMBIA COLLEGE, ANNUAL REGISTER OF THE OFFICERS AND STUDENTS OF COLUMBIA COLLEGE FOR THE YEAR 1884-1885 62 (1885).

55. COLUMBIA COLLEGE, TWENTY-SIXTH ANNUAL CATALOGUE OF THE OFFICERS AND STUDENTS OF THE LAW SCHOOL OF COLUMBIA COLLEGE 1883-1884 24 (1884).

56. *Id.*

57. *Id.*

58. *Id.* at 38.

59. *Id.*

60. COLUMBIA COLLEGE, TWENTY-EIGHTH ANNUAL CATALOGUE OF THE OFFICERS AND STUDENTS OF THE LAW SCHOOL OF COLUMBIA COLLEGE 1885-1886 4 (1886).

years old, Chang was among the first thirty students who came onshore in September 1872.<sup>61</sup> He was first sent to school at Northampton, Massachusetts, and soon went to Springfield Collegiate Institute; he gave a recitation of Cicero in Latin at Springfield Collegiate in June 1876.<sup>62</sup> Afterward, he entered Hartford High School, but then transferred to the prestigious Phillips Academy at Andover and graduated from the Classical Department in June 1879.<sup>63</sup> At his Phillips Academy commencement exercises, he delivered an English oration on “The Influence of Greece beyond Greece”.<sup>64</sup>

After high school, he was admitted to Yale College in 1879, but was forced to withdraw after two years on the Chinese Government’s order.<sup>65</sup> High ranking officials in Beijing had made a fateful decision to recall all students in America due to the victory of conservative forces at the Imperial Court, who had grown increasingly dissatisfied with the anti-tradition orientation of the educational program and Americanized students.<sup>66</sup> However, Chang managed to leave China again in 1882, sailing for Honolulu where his brother was an established merchant on the island.<sup>67</sup> Chang’s intention to study law manifested early on, after coming to Honolulu. He first studied law at the office of Alfred Stedman Hartwell for a year; Mr. Hartwell was an 1867 graduate of Harvard Law School.<sup>68</sup> Chang was later advised by Hartwell to complete his legal education in New York.<sup>69</sup> About six years later, Hartwell recalled of Chang: “. . . Hong Yen Chang was my office clerk for about eight months in the years 1883–1884, and that by my advice he went to the Columbia Law School in New York, and, as I am credibly informed, sustained an excellent reputation while there . . . .”<sup>70</sup>

After being granted admission to Columbia Law School, Chang paid his initial seventy-five dollar tuition fee to John M. Nash, the college treasurer, and then went to the office of secretary Robert Senftner to enter

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61. EDWARD J.M. RHOADS, *STEPPING FORTH INTO THE WORLD: THE CHINESE EDUCATIONAL MISSION TO THE UNITED STATES, 1872–1881* 15 (2011).

62. *Local Intelligence*, SPRINGFIELD DAILY REPUBLICAN, June 23, 1876, at 5.

63. *Graduating Exercises at Philips Academy*, BOSTON HERALD, June 18, 1879, at 6.

64. Order of Exercises at Exhibition: Philips Academy, Andover, Mass. June 17, 1879, Class of 1879.

65. See RHOADS, *supra* note 57.

66. See *Lawyer Hong Yen Chang, The Mongolian Who Has Become a Member of the New York Bar*, OMAHA DAILY BEE, June 8, 1887, at 7; EDWARD J.M. RHOADS, *STEPPING FORTH INTO THE WORLD: THE CHINESE EDUCATIONAL MISSION TO THE UNITED STATES, 1872–1881* 167 (2011).

67. *Notice*, HAWAIIAN GAZETTE, July 3, 1888, at 4.

68. AMES, *supra* note 2, at 101.

69. YALE UNIVERSITY, *OBITUARY RECORD OF YALE GRADUATES, 1926–1927* 109 (1927); *Chang Hong Yen’s Bill, He Asks the Legislature to Let Him Become a Lawyer, Something About His History and Pleas—His Education in This Country and China—His Signature in English and Chinese*, SUN, April 24, 1887, at 6.

70. *A Chinese Lawyer, The First Chinaman Admitted to the Bar of Hawaii*, THE DAILY BULLETIN, August 9, 1889, at 3.

his name in the register.<sup>71</sup> He was the only Asian student on campus.<sup>72</sup> The annual tuition fee was \$150, with one half due at the beginning and the other half at the middle of the year. This payment entitled him to all lectures, use of the college library and all the courses in the School of Political Science. The matriculation fee was five dollars each year, payable before registration, and the fee for a degree was twenty-five dollars.<sup>73</sup> His listed address was 95 Clinton Place for the first year<sup>74</sup> and 26 West 9th Street for the second year.<sup>75</sup> The latter address suggests that he boarded at or next to the Chinese Consulate, where his former classmates were working as junior diplomats.

#### A. *Columbia Law School in Chang's Time*

Students at Columbia Law School had already distinguished themselves through their undergraduate education and Chang was no exception. In 1886, 183 students attending Columbia Law School were college graduates. While they came from 44 different colleges, over half of the students graduated from what were arguably the top universities in the nation. Thirty-one students were from Columbia, thirty from Chang's alma mater Yale, twenty-eight from Princeton, and twelve from Harvard.<sup>76</sup>

At the time, it took only two years to complete law school. The first year focused on the study of the general commentaries upon municipal law, and contracts and real estate. The second year concentrated on equity jurisprudence, commercial law, the law of torts, criminal law, evidence, pleading and practice. Occasionally, lectures upon constitutional law and history, political science, and international law were delivered and medical jurisprudence was provided to second year students.<sup>77</sup> It was compulsory to attend lectures relating to The Law of Contracts, Maritime and Admiralty Law, Real Estate and Equity Jurisprudence, Criminal Law, Torts and Procedure. For these topics, each class was divided into two sections and students could join either section. Students spent ten hours each week studying these topics. Classes were generally taught by catechetical instruction.<sup>78</sup> All lectures for Constitutional History, International and Constitutional Law, Political Science, and Medical Jurisprudence were optional; however, the school administration strongly recommended

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71. COLUMBIA COLLEGE, COLUMBIA COLLEGE LAW SCHOOL 1885–1886 24 (1886).

72. This conclusion is drawn after checking every student's place of origin in Chang's years of enrollment printed on the Registers.

73. COLUMBIA COLLEGE, *supra* note 50, at 24.

74. COLUMBIA COLLEGE, *supra* note 50, at 62.

75. COLUMBIA COLLEGE, *supra* note 68, at 6.

76. ANNUAL REPORT OF THE PRESIDENT OF COLUMBIA COLLEGE FOR THE YEAR 1885–86 MADE TO THE BOARD OF TRUSTEES, MAY 3, 1886, ATTENDANCE, at 10.

77. COLUMBIA COLLEGE, *supra* note 68, at 24–27.

78. WARDEN OF THE FACULTY, *Appendix D. Report on the School of Law*, in ANNUAL REPORT OF THE PRESIDENT OF COLUMBIA COLLEGE, MADE TO THE BOARD OF TRUSTEES, May 4 1885, at 83–84.

students attend due to their usefulness.<sup>79</sup>

Chang participated in weekly moot courts at Columbia as part of his advocacy training. Students were given case facts that were presumed to be true; they only needed to grapple with the contestable issues of law. The moot courts involved preparing written points for legal arguments on the basis of binding precedents. They had to discuss these points before classmates and a presiding professor.<sup>80</sup> To further encourage the students, the trustees of the college established a series of prize fellowships.<sup>81</sup> It was the responsibility of the fellows to help students in their preparation of case briefs and the proper use of legal authorities. Six to eight students were selected to conduct the arguments each time, and the presiding professor would render a decision a week later.<sup>82</sup>

In his first year at law school, Chang studied the general outlines of Municipal Law, specifically, the Law of Contracts, under Professor Theodore W. Dwight and the Law of Real Estate under Professor Benjamin Lee. In his second year, Chang studied the rules of Equity Jurisprudence under Professor Lee, and the topics of Evidence, Torts, and the Code of Procedure under Professor George Chase. Chang also studied Shipping and Insurance topics and a review of the Law of Contracts with Professor Dwight. For his remaining courses, Chang took a review of the Law of Real Estate with Professor Lee, a course on Lectures in Medical Jurisprudence with Professor John Oronaux, and attended voluntary lectures in Criminal Law with Professor Chase.<sup>83</sup>

Chang's first year class had 182 students and his second year class had 147, with several of them also graduating from Yale University. He belonged to the Yale Class of 1883, which had 182 students<sup>84</sup> his freshman year and 176 his sophomore year.<sup>85</sup> Two of his Yale classmates, George Lorenzo Burton and Warner Calhoun, also entered Columbia Law School in the fall of 1884, as well as seven students from the Yale Class of 1884.<sup>86</sup>

It appears Chang's initial plan after graduation was to go back to Hawaii and use his legal education to help others there. In his first year of study, the "Study Gossip" section of the *Columbia Jurist* reported "Mr. Chang wants to take some of the students back to the Sandwich Islands

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79. COLUMBIA COLLEGE, *supra* note 68, at 24–27.

80. COLUMBIA COLLEGE, *supra* note 66, at 26.

81. *Id.* at 27.

82. *Id.*

83. WARDEN, *Appendix D. School of Law*, in ANNUAL REPORT OF THE PRESIDENT OF COLUMBIA COLLEGE FOR THE YEAR 1885–86 MADE TO THE BOARD OF TRUSTEES, MAY 3, 1886, at 140.

84. YALE COLLEGE, THE YALE BANNER, V. XXXVI, at 34 (1879).

85. YALE COLLEGE, THE YALE BANNER, V. XXXVII, at 35 (1880).

86. YALE UNIVERSITY, CATALOGUE OF THE OFFICERS AND GRADUATES OF YALE UNIVERSITY 1701–1892 103, 105–106 (1892) The seven students were Robert Munro Boyd, Jr., William Benjamin Bristow, Harris Dunscomb Colt, F. Kinsbury Curtis, Charles Edwin Eaton, Sidney Wright Hopkins, Jr., John Henry Stevenson, Jr., and Joseph Wood.

with him. Here is a chance for philanthropic young lawyers to enlighten the heathen.”<sup>87</sup>

To obtain the LL.B. degree, Chang had to take a series of examinations at the close of his second year. From May 19 to 22, 1886, Chang took several examinations and successfully passed them.<sup>88</sup>

### B. Graduation from Columbia Law School

Columbia Law School’s twenty-seventh commencement was held at the Academy of Music on Wednesday, May 26, 1886, at eight p.m. After music and prayer, Professor Dwight, Dean of the Law School, gave an address, which was followed by the presentation of diplomas. When called, Chang came forward to receive his LL.B. diploma from Frederick A.P. Barnard, President of Columbia College. Afterward, Hon. Daniel H. Chamberlain also gave an address to the students.<sup>89</sup>

Before ending his address, Professor Dwight made a point to mention the first Chinese law graduate:

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 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.<sup>90</sup>

Chang was listed as receiving only a plain LL.B. without ‘*cum laude*’, which indicates that he did not take or pass a non-compulsory examination relating to Constitutional History and Constitutional Law, as well as Diplomatic History and International Law, and he did not win any prize in

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87. The Students of Columbia College Law School, *Study Gossip*, THE COLUMBIA JURIST, Feb. 3, 1885, at 4.

88. COLUMBIA COLLEGE, *supra* note 68, at 39.

89. J.P. Kirlin, *Columbia College Law School*, THE COLUMBIA JURIST, June 5th, 1886, at 431.

90. *Id.* at 416.

the final year money prize competition.<sup>91</sup> At the time, *cum laude* did not refer to an academic honor singularly awarded on the basis of high grades, but on account of having studied and passed these non-compulsory courses or having won a money prize in competition at the end of his studies.<sup>92</sup>

There were 110 graduates in the Class of 1886, with Chang being the only one with a foreign residence on the list. Among his fellow graduates were future political and legal luminaries in America: Paul Drennan Cravath became a prominent Manhattan lawyer and a partner of the law firm today known as Cravath, Swaine & Moore; Jonathan Mayhew Wainwright was appointed United States Assistant Secretary of War in 1921; Edward Murray Basset became “The Father of American Zoning” and a US Congressman representing New York in 1902; and Westmoreland Delaware Davis was elected the 48<sup>th</sup> Governor of Virginia in 1918. Chang’s post-graduation plan was to get admitted to the New York Bar.<sup>93</sup>

### C. *Fight to Join the New York Bar*

While Chang was still in high school in America, a native of Japan, Eneas Yamada, became the first Asian to gain admittance to the New York Bar. Yamada was born in 1850 in Chikugo Province, Japan.<sup>94</sup> He was the son of a Japanese nobleman and had received preparatory education at Edo. Yamada travelled extensively before coming to the United States in 1868.<sup>95</sup> He was among the early contingent of Japanese students to undertake legal studies in the United States. He was the first Japanese student to enroll at Harvard Law School on September 26, 1871; however, he left without a degree on June 25, 1874.<sup>96</sup> It appears he practiced law in Boston for a while before going to New York.<sup>97</sup> Because of a citizenship requirement for admission to the New York Bar, he became a naturalized American citizen on September 14, 1874.<sup>98</sup> On March 3, 1877, on the motion of Counselor Livingston, Eneas Yamada prevailed in his endeavor to become the first Asian American to gain admission to the New York Bar.<sup>99</sup> He soon formed

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91. See COLUMBIA COLLEGE, *supra* note 68, at 33–34.

92. *Id.*

93. *Telegraphic Brevities*, SACRAMENTO DAILY RECORD-UNION, May 28, 1886, at 1.

94. U.S. Naturalization Record Indexes, 1791–1992 (Indexed in World Archives Project).

95. *Clippings*, NORTH CHINA HERALD AND SUPREME COURT & CONSULAR GAZETTE, May 5, 1877, at 453.

96. Harvard Law School, Harvard Law School Matriculation Records 1865–1872, (unpublished manuscript) (on file with the author).

97. 1 WILLIAM THOMAS DAVIS, BENCH AND BAR OF THE COMMONWEALTH OF MASSACHUSETTS 636 (The Boston History Company, 1895) (“Eneas Yamada, practicing in 1876”).

98. National Archives and Records Administration (NARA); Washington, D.C.; *Index to New England Naturalization Petitions, 1791–1906 (M1299)*; Microfilm Serial: M1299; Microfilm Roll: 117.

99. *New Nor'-Westers*, THE NEW NORTH WEST, March 30, 1877, at 1 (“Eneas Yamada, a native of Japan, has been admitted to the Bar of New York”); *Bench and Bar*, ALBANY LAW JOURNAL; A WEEKLY RECORD OF THE LAW AND THE LAWYERS, March 10, 1877, at 193 (“A native of Japan, named

a law firm with W. Rodman Winslow, practicing under the name of Yamada & Winslow on No. 132 Nassau Street, New York City.<sup>100</sup>

Previous to 1876, law school graduates were admitted to the Bar of the State of New York without any additional examination. However, in 1876, the provisions of the Amended Code of Procedure of New York<sup>101</sup> were amended to empower the Court of Appeals to make general rules regarding admission to the Bar. On July 1, 1882, the Courts adopted a new rule to regulate admission:

No person shall be admitted to practice as an attorney and counselor in any court of record in this state, except as provided in these rules, without a regular admission and license by the [S]upreme [C]ourt, at a general term thereof, after a satisfactory examination, conducted by the judges of such court, or by not less than three practicing lawyers, of at least seven year's standing at the bar, to be appointed by the Court for one year at the first general term held in each year in the respective departments.<sup>102</sup>

On top of this examination prerequisite came an additional requirement that would prove to be an insurmountable hurdle for Chang: "To entitle an applicant to an examination as an attorney and counselor, he must prove to the Court: *First*. That he is a citizen of the United States, twenty-one years of age, and a resident of the department within which his application is made . . . ."<sup>103</sup> However, because of the Chinese Exclusion Act, Chang could not obtain citizenship.

One of Chang Hong Yen's countrymen, Saum Song Bo, a 1884 graduate of the old University of Chicago and a resident of New York foreshadowed the formidable challenges Chang would face in order to become a lawyer in America. In 1885, Saum wrote a letter to the editor of the New York Sun, which was reprinted in a missionary magazine. In it he decried the passage of the Chinese Exclusion Act and the irony of erecting a Statue of Liberty in the aftermath of it:

If there be a Chinaman who came to this country when a lad, who has passed through an American institution of learning of the highest grade, who has so fallen in love with American manners and ideas that he

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Eneas Yamada was on Monday admitted to the bar of the Supreme Court of this State").

100. *Law Reports: A Law Firm in Trouble. Mr. Yamada and His Partner Charged with an Attempt to Extort Money from Daniel O'Connell*, NEW YORK TIMES, April 14, 1877, at 3.

101. See WARD & PELOUBET, THE NEW YORK CODE OF CIVIL PROCEDURE: CHAPTER 448 OF THE LAWS OF 1876, AS AMENDED BY CHAPTER 422 OF THE LAWS OF 1877; WITH OTHER CONNECTED LEGISLATION (1877).

102. *Rules for the Admission of Attorneys and Counselors at Law of New York: Rule 1*, in THE NORTH EASTERN REPORTER, VOLUME 33. CONTAINING ALL THE CURRENT DECISIONS OF THE SUPREME COURT OF MASSACHUSETTS, OHIO, ILLINOIS, INDIANA, APPELLATE COURT OF INDIANA, AND THE COURT OF APPEALS OF NEW YORK vi (St. Paul: West Publishing Co., permanent ed. 1893).

103. THE NORTH EASTERN REPORTER, *supra* note 99, *Rule 4* at vii.

desires to make his home in this land, and who, seeing that his countrymen demand one of their own number to be their legal adviser, representative, advocate and protector, desires to study law, can he be a lawyer? By the law of this nation, he, being a Chinaman, cannot become a citizen, and consequently cannot be a lawyer.<sup>104</sup>

Because of the Chinese Exclusion Act of 1882, Chang was ineligible for American citizenship. In late 1886 or early 1887, Chang had attempted to acquire American citizenship in preparation for taking the bar examination. He had applied to the US District Court in New York to become a citizen, and was refused on the grounds of the Chinese Exclusion Act forbidding naturalization of Chinese.<sup>105</sup> Determined to find a way past this extraordinary impediment, he and his friends realized the solution might lie in the decision of *In re O'Neill*.<sup>106</sup> This case involved a British subject who had been a bankrupt solicitor in England<sup>107</sup> and came to be admitted to practice by the Supreme Court of New York on May 8, 1881, although he was not naturalized. His license was later revoked when the General Term of the Supreme Court noticed his alien status. The case went up to the Court of Appeals, which held that as the law then stood, O'Neill was an alien and thus he could not practice, but the Legislature had the power to pass an act allowing aliens to be admitted to practice.<sup>108</sup> Chang needed a law specifically passed to authorize his admission to practice in disregard of alien status.

Chang's plight had attracted the interest of a number of influential friends, largely connected to the Republican Party. He had ties to the legal profession and alumni of Yale College and Columbia Law School, including such men as US Senator William M. Evarts, US Senator Chauncey Mitchell Depew, both of New York, Justice Noah David of the New York Supreme Court, and Judge Nathaniel Shipman of United States District Court for Connecticut. They advocated on his behalf and garnered support for the passage of the legislation.<sup>109</sup> They also put him in touch with useful contacts, most notably James W. Husted, father of a Yale

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104. 39 SAUM SONG BO, *A Chinese View of The Statue of Liberty*, in THE AMERICAN MISSIONARY, 290 (Oct. 1885).

105. *Refused Admission, a Young Chinaman Refused Admission to Practice in the New York Supreme Court*, PHILLIPSBURG HERALD, Nov. 25, 1887, at 1.

106. 90 N.Y. 584 (1882).

107. *List of Gentlemen Who Passed the Final Examination. Hilary Term 1875*, THE LAW TIMES: THE JOURNAL AND RECORD OF THE LAW AND THE LAWYERS, February 6, 1875, at 250; *Extraordinary Irish Breach of Promise Case*, THE LANCASTER GAZETTE, August 09, 1879; *In Re W. Lane O'Neill*, THE TIMES, June 10, 1882; at 6.

108. *Id.*; See H.E. SICKELS, IN THE MATTER OF WILLIAM LANE O'NEILL, REPORTS OF CASES DECIDED IN THE COURT OF APPEALS OF THE STATE OF NEW YORK, FROM AND INCLUDING THE DECISIONS HANDED DOWN OCTOBER 10, 1882, TO THE DECISIONS OF JANUARY 16, 1883. WITH NOTES, REFERENCES AND INDEX 584 (1883).

109. See *A Christian Chinese Lawyer*, HARTFORD COURANT, Jan.7, 1889, at 5.

classmate, who was a Speaker of the New York Assembly. Most likely through the urging of Husted, George H. Henry, a Republican Assemblyman of Chang's district, introduced a bill in the Assembly;<sup>110</sup> Thomas C. Dunham, a Democrat, introduced the same bill in the Senate. As a result of these efforts, on March 9, 1887, a bill entitled "An act for the relief of Hong Yen Chang" ("Act") was introduced at the New York State Assembly.<sup>111</sup>

Chang's bill on the agenda of the State Legislature caught the eye of a reporter with the *Sun*. The reporter reached out to him for an interview on the evening of April 23, 1887,<sup>112</sup> and they met in the parlor of the Chinese Consulate in New York. The article ran in the next day's edition and the positive media attention garnered further support for Chang's cause. The reporter depicted Chang favorably, noting, "He speaks English with a scarcely noticeable accent and with an apparently unlimited vocabulary."<sup>113</sup> The journalist also tried to set him apart from the stereotypical image of Chinese immigrants, writing "... Mr. Chang's conversations are interesting and surprising to one who remembers the stolid manners of the average Chinese immigrant . . . [b]ut Mr. Chang, as a cosmopolitan and as an educated gentleman of polished manners has lost or discarded this trick of some of his countrymen."<sup>114</sup>

Chang explained to the reporter that unjust discrimination against his race compelled him to use a legislative strategy to seek relief. He understood that it would be impossible to pass national legislation to grant him relief in this anti-Chinese climate, so he pinned his hopes on state legislation, which would enable him to apply for the examination for the New York Bar. He and his American friends and teachers were confident that, given the chance, he would pass the bar examination.

He also elaborated on his larger plans and purpose behind seeking admission to the Bar, which was to look out for the legal interests of the Chinese community in New York. As he saw it, it was inevitable that his countrymen in the United States would get entangled in legal disputes, both as plaintiffs and defendants. American attorneys relied on interpreters to represent the Chinese in these cases, and considerable difficulties had already arisen because of things being easily lost in translation due to linguistic and cultural differences. Chang believed it imperative for the Chinese community to have a representative of their own language and nationality at the bar.<sup>115</sup> At the time of the interview, he was supplementing his regular course of legal studies by working with a well-known

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110. See *Howards Gossip: Hong Yen Chang*, BOSTON DAILY GLOBE, Nov. 21, 1887, at 5.

111. See Appendix II.

112. See *Chang Hong Yen's Bill*, SUN, April 24, 1887, at 6.

113. *Id.*

114. *Id.*

115. See *id.*

downtown law firm of excellent standing in the city, readying himself to begin active work as soon as his admission to the bar was secured.<sup>116</sup>

After the bipartisan bill sailed through both houses, the final hurdle was the presentation of the bill to the Governor. Chang feared that Democratic Governor David Bennett Hill would veto the bill because it was special legislation, so he made a personal appeal to him.<sup>117</sup> Governor Hill was a lawyer by training and President of the New York State Bar Association.<sup>118</sup> Chang went to see the Governor on March 2, 1887 to plead his case in person. The Governor listened to him with much interest and complimented him for the neat speech made.<sup>119</sup> The Governor ultimately decided to neither sign nor veto the bill, and thus it became law on May 2, 1887.<sup>120</sup>

The Act authorized the General Term of the first department of the Supreme Court of New York “to waive the alienage of Hong Yen Chang, a native of China, but now a resident of the city, county and State of New York, and to regularly admit and license him to practice as an attorney and counselor at law in all the courts of this State, on his passing in a satisfactory manner the usual examination for the admission of attorneys and counselors.” The Act took immediate effect. The detailed legislative history of the act is summarized in Appendix II.

#### *D. The Final Hurdle: The Bar Examination*

After the passage of the law in May 1887, Chang informally applied to the New York Supreme Court regarding his potential admission to the bar if he passed the rigid examination, and no response was received from the New York Supreme Court. In October, he took the final step to register for the required bar examination and submitted a formal application.<sup>121</sup> To bolster his application, Chang obtained letters of support from Noah Porter, President of Yale College, and Professor Dwight, Dean of Columbia Law School, both giving a splendid tribute to his achievements as a student.<sup>122</sup> There were four examinations held in the first department each year, covering the most important elementary principles of the law.<sup>123</sup> The

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116. *See id.*

117. *A Christian Chinese Lawyer*, HARTFORD DAILY COURANT, Jan. 7, 1889, at 5.

118. NEW YORK STATE LEGISLATURE ASSEMBLY, DOCUMENTS OF THE ASSEMBLY OF THE STATE OF NEW YORK, Sess. 134, Albany, NY, 1911 at 206.

119. *Hong Yen Chang's Plea*, DAILY PICAYUNE, May 2, 1887, at 4.

120. *See LAWS OF THE STATE OF NEW YORK PASSED AT THE ONE HUNDRED AND TENTH SESSION OF THE LEGISLATURE, BEGUN JANUARY FOURTH, AND ENDED MAY TWENTY-SIXTH, 1887, IN THE CITY OF ALBANY 312 (1887).*

121. *Hong Yen Chang's Hopes*, THE PRESS, Dec. 2, 1887.

122. *Howards Gossip: Hong Yen Chang*, BOSTON DAILY GLOBE, Nov. 21, 1887, at 5.

123. ROBERT W BONYNGE & EDWIN C WARD, 1,500 QUESTIONS PROPOUNDED TO THE APPLICANTS FOR ADMISSION TO THE NEW YORK STATE BAR, IN THE FIRST AND SECOND DEPARTMENTS, BETWEEN JANUARY 1, 1878, AND MARCH, 1887, ANSWERED BY REFERENCES TO STANDARD TEXT-BOOKS, DECISIONS OF THE VARIOUS COURTS, CODES, STATUTES, ETC., ETC. iv

questions addressed the breadth of law related to agency, contracts, corporations, criminal law, domestic relations, equity, insurance, real property, torts and other topics. The following are sample questions asked between January 1878 and March 1887 on various required topics. They clearly demonstrated that the examination was not an easy one. Chang's successful completion of it confirmed that he was suitably qualified to practice law in New York.

1. Enumerate certain kinds of agents who have been adjudged to be particular and not general agents.<sup>124</sup>
2. Suppose your client came to you and told you he had found a valuable dog in the street, and he had kept him a month, and then the owner came, wanted him, and refused to pay any of his expenses, what advice would you give your client?<sup>125</sup>
3. What is the meaning of the maxim "Respondeat Superior"?<sup>126</sup>
4. What is the meaning of the word "stock," in reference to a corporation; what does it represent, how is it transferred, and what rights have stockholders in and to the corporate property?<sup>127</sup>
5. State the cases in which one may deprive another of life, without being criminally liable.<sup>128</sup>
6. State what are the domestic relations, and illustrate some of the duties arising out of them.<sup>129</sup>
7. Give some maxims of equity, and apply them to cases.<sup>130</sup>
8. Define the difference between direct and circumstantial evidence.<sup>131</sup>
9. In case of re-insurance has the original insurer, in the event of a loss, any claim against the re-insurer?<sup>132</sup>
10. Is a written promise to pay a certain sum upon the happening of a contingency, a promissory note? Give reasons for answer.<sup>133</sup>

The October Examining Committee was composed of three distinguished practicing lawyers: Rastus S. Ransom, Michael H. Cardozo, a first cousin of Justice Benjamin N. Cardozo, and William B. Hornblower, an 1875 graduate of Columbia Law School. They were very pleased with the way Chang acquitted himself in the examination and felt he "passed a

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(1887).

124. *Id.* at 1.

125. *Id.* at 3–4.

126. *Id.* at 7.

127. *Id.* at 15.

128. *Id.* at 18.

129. *Id.* at 20.

130. *Id.* at 22.

131. *Id.* at 28.

132. *Id.* at 33.

133. *Id.* at 35.

very creditable examination, and was deservedly awarded a diploma.”<sup>134</sup> On account of his high grades, they unanimously recommended his admission.<sup>135</sup> With his newly minted law degree from Columbia and the satisfactory result of the required bar examination, he filed a formal application for admission to the bar in New York City. To bolster his application, Chang called on his post-graduate employers where he had been serving as a law clerk, Goodrich, Deady & Goodrich and Richards & Brown. His attempt to seek admission to the New York bar had received support and commendation from both law offices, and his employers spoke highly of his efficiency, excellent character, and manners.<sup>136</sup> Chang sought a meeting with Presiding Justice Charles H. Van Brunt and handed him a letter of support from a well-known lawyer in support of his admission.<sup>137</sup>

In speaking to a reporter about his application, Chang was confident that he would be admitted.

I came to the United States fifteen years ago, when I was twelve years old. I was one of a corps of some two hundred lads whom the Chinese government desired to be educated in American and to study American systems and institutions. After a few years the government failed to support us, and all but about twenty have returned to China. I went back myself on a visit to my father, but soon returned, and I propose to live here. Whether the Court determines to admit me to practice or not will make no difference as to my purpose in making my home in this country. Even if I am not entitled to be a citizen I think the Court will not refuse finally to admit me to the Bar. Others have before this been admitted.<sup>138</sup>

#### E. *Rejected by the Court*

On November 18, 1887, the three Justices of the New York Supreme Court, General Term, convened to consider the list of twenty-eight recommended candidates. All were accepted and sworn in as new attorneys—except Chang Hong Yen. Presiding Justice Charles H. Van Brunt and Justice Charles Daniels were in opposition to Chang’s admission upon the grounds that he was an alien and had not been naturalized. However, Justice John Riker Brady was in favor of his admission by virtue of the fact that the State Legislature in its last session passed a law authorizing the court to waive Chang’s alien status and admit him to the

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134. *A Chinese Lawyer: Hong Yen Chang and a Colored Student Admitted to the Bar*, N.Y. TIMES, May 18, 1888, at 1.

135. *See id.* *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, at 8.

136. *Hong Yen Chang’s Dilemma. A Bright Young Chinaman Barred out by the Courts*, N.Y. HERALD, Nov. 19, 1887, at 6.

137. *Id.*

138. *Id.*

bar upon passing the examination.<sup>139</sup> Justices Van Brunt and Daniels cited *In re O'Neill* as a precedent for refusing admission of a naturalized foreigner for legal practice in the state. Justice Brady saw *O'Neill* differently, noting that the court clearly held that the legislature has the power to pass acts allowing the admission of aliens as attorneys. He also found a noteworthy instance of the admission of an alien to practice law in New York: an English barrister by the name of Edwin James was admitted in 1868 by the General Term.<sup>140</sup> This case was presided over by Judges George L. Ingraham, Josiah Sutherland, and George G. Barnard.<sup>141</sup>

Justice Brady also called attention to the Court of Appeal's proposition on this case, arguing that the legislature had passed an act in this case expressly authorizing the admission of Chang Hong Yen to practice.<sup>142</sup> However, the opposing Justices performed a close examination of the act to reveal a tiny ambiguity exploited by them in order to argue that the legislation did not *compel* but only *authorized* the Court to waive Chang's alienage, if they chose to do so. This put the matter in a different light, and the opposing Justices seized upon this tenuous point and declined to exercise the power conferred upon it by the act. The majority prevailed and the Court refused to admit Chang Hong Yen as a member of the bar. As Justice Van Brunt said, "The Legislature cannot compel the court to do anything they have no right to do."<sup>143</sup>

However, Justice Van Brunt's statutory construction of the special act was unpersuasive, as a plain reading would confirm that the Act authorized the court to waive alienage if it chose to do so, so it was logically untenable for him to argue that the Court had no right to admit Chang on the basis of this special legislation. One of the most conceivable interpretations of why he refused to admit Chang was that Justice Van Brunt did not want to admit a Chinese to the bar. This interpretation is bolstered by the stark contrast between Chang's appalling mistreatment in the hands of the Justices of the New York Supreme Court with John Baldwin Hands' case three years later. Hands was a Canadian-British subject, who was disbarred by the Law Society of Upper Canada for serious misconduct unbecoming of a barrister or solicitor.<sup>144</sup> He came to New York and successfully managed to obtain a substantially similar legislative relief previously granted to Chang. The special legislation concerning Hands also only stated the court "is hereby authorized to waive the alienage of John

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139. *Barring Out a Chinaman: Judges Say That He Cannot Practice, the Legislature Had Authorized the Court to Waive "Alienage" in His Case*, N.Y. TRIBUNE, Nov. 19, 1887, at 10.

140. *Chinese Lawyers. Desire Expressed That the New York Courts Will Admit Hong Yen Chang*, DAILY EVENING BULLETIN, Nov. 29, 1887, at 3.

141. *Id.*

142. *Barring Out a Chinaman*, *supra* note 139, at 10.

143. *Id.*

144. *Proceedings of Law Societies*, CAN. L.J., Jan. 16, 1889, at 17.

Baldwin Hands . . . .”<sup>145</sup> In Chang’s situation, Governor Hill possibly was in fear of being perceived as pro-Chinese immigration, and he therefore decided to neither sign nor veto the bill, allowing it to become law after a lapse of time. But in Hands’ case, he agreed to sign the bill as an explicit show of support on May 16, 1890.<sup>146</sup> The Justices of the New York Supreme Court had no problem with the waiver of alienage on this occasion and swiftly swore Hands in as an attorney. Afterwards his name appeared in various law reports as J. Baldwin Hands.<sup>147</sup>

However, unbeknownst to the Justices when they were deliberating on Chang’s case, Chang had just been naturalized.

#### F. Naturalization as an American Citizen

Chang had befriended two well-established lawyers in New York by introduction of Columbia Law School Dean Theodore W. Dwight: Austen George Fox of Richards & Brown, where he worked as a law clerk, and William Alexander Duer of Deyo, Duer & Bauerdorf. The former was an 1871 graduate of Harvard Law School;<sup>148</sup> the latter was a grandson of one-time Columbia College President, after whom he was named. Duer was an 1871 graduate of Columbia Law School, and he had given much of his time and means to philanthropic work.<sup>149</sup> The two lawyers introduced him to Judge George M. Van Hoesen of the Court of Common Pleas Bench for New York. The Republicans and anti-Tammany Democrats elected Judge Van Hoesen to the Court of Common Pleas Bench for New York in 1875.<sup>150</sup> His court had a history of granting naturalization orders to Chinese. This surprising precedent was set because of a case that came before Judge Lorenzo Sawyer of the United States Circuit Court in California. Judge Sawyer ruled against the naturalization of Chinese,<sup>151</sup> but Judge Hamilton W. Robinson of the Court of Common Pleas Bench for New York<sup>152</sup> studied the decision and the act of Congress and came to the contrary conclusion, that Chinese might be naturalized without violating the act of Congress.<sup>153</sup>

Judge Van Hoesen met Chang and found him to be a respectable man

145. LAWS OF THE STATE OF NEW YORK PASSED AT THE ONE HUNDRED AND TENTH SESSION OF THE LEGISLATURE, BEGUN JANUARY FOURTH, AND ENDED MAY TWENTY-SIXTH, *supra* note 120, at 684.

146. *See id.*

147. *See, e.g.,* Flanagan v. Fox, 23 N.Y.S. 344 (N.Y. City Ct. 1893).

148. AMES, *supra* note 2, at 112.

149. *Year Book, ASS’N B. CITY N.Y.*, 1906, at 141–42.

150. Morris Coster, *Judge Van Hoesen*, NEW AMSTERDAM GAZETTE (EXTRA EDITION), Nov. 30, 1885, at 2.

151. *In re Ah Yup*, 1 F. Cas. 223 244 (C.C.D. Cal. 1878).

152. JAMES WILTON BROOKS, HISTORY OF THE COURT OF COMMON PLEAS OF THE CITY AND COUNTY OF NEW YORK WITH FULL REPORTS OF ALL IMPORTANT PROCEEDINGS 109–11 (1896).

153. *Judge Van Hoesen Defends His Action*, N.Y. TRIB., Nov. 19, 1887, at 10.

who could set a good example for his countrymen.<sup>154</sup> The judge granted Chang's petition for naturalization on November 11, 1887.<sup>155</sup> He defended his decision to naturalize Chang and explained his reasoning to a reporter when interviewed:

When the Supreme Court of the United States decides that Chinamen cannot be naturalized we shall, of course follow the decision. I felt at liberty to adopt Judge Robinson's opinion and not Judge Sawyer's. During the twelve years that I have been a Judge of the Court of Common Pleas, a number of Chinamen have been naturalized, I cannot say how many.<sup>156</sup>

### G. Responses to the Refusal to Admit Chang

Chang's plight continued to receive ongoing attention from the media, high-profile lawyers, and legislators. In the aftermath of his rejection from the bar, several people protested the decision, as shown below. While their appeals did little to change the stance of the court, it did show that, despite the prevailing anti-Chinese sentiment at the time, Chang had made significant progress in laying the groundwork for America's first Chinese lawyer.

After learning of Chang's rejection from a reporter from the *Herald*, John Treadwell Richards of the firm Richards & Brown expressed surprise and disgust:<sup>157</sup>

I have taken great interest in this young man's success, for he is capable and worthy. He was in our employment for over a year as law clerk, and we found him in every way capable. He is finely educated and well bred. . . . In fact he is today an American and a better lawyer than three-fourths of those who are practicing at the Bar. . . . There are twelve or thirteen thousand Chinaman in this city and it would be to the interest of these people, and would aid the cause of justice and order in the community, if they were represented in their civil and criminal controversies and trials by an intelligent lawyer of their own race and of American education and instincts.<sup>158</sup>

Similarly, *The New York Tribune* published a highly positive editorial entitled "Give the Chinaman a Chance," advocating for the court to reverse the decision. The editorial provided:

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154. *Id.*

155. COURT OF COMMON PLEAS FOR THE CITY AND CNTY. OF N.Y., NAT'L ARCHIVES & RECORDS ADMIN., NE. REGION, VOL. 500 RECORD NO. 275 (1887).

156. *Id.*

157. *Hong Yen Chang's Dilemma*, *supra*, note 136, at 6.

158. *Id.*

It will be unfortunate if the General Term of the Supreme Court shall not see its way clear to admit the able and educated young Chinaman, Hong Yen Chang, to the bar. Now that he has been naturalized in the Court of Common Pleas, the objection raised by the court seems to be removed. There is no question about his qualifications, he is a graduate of Yale College as well as the Columbia Law School, and passed an examination before the lawyers selected by the court as examiners that compared favorably with that of any successful candidates. It seems especially fitting that the considerable number of Chinaman residing in this city should have a well-qualified advocate of their own race to look after their legal interests. It's easy to understand that an educated lawyer of their own race can much more thoroughly and intelligently sustain their rights than any other. Indeed, it's safe to assert that there is no other nationality of anything like their number in New York who is not represented by one of themselves at the bar . . . that although the United States Courts, following the decision of Judge Sawyer in California eight years ago, refused to naturalize Chinaman, the Common Pleas of this city held the other way, and Chinamen were naturalized in that court every year. Judge Van Hoesen in admitting Hong Yen Chang to citizenship last week merely followed the precedent, which long ago was established in his court. Now that he is a citizen of the United States, there appears to be no reason why he should not be made a full-fledged lawyer. Give the Chinaman a chance.

Chang had been successful in wooing strong support from some local newspapers to help advance his cause. It showed that some progressive newspapers were in sympathy with the plight of early Chinese immigrants, and they were committed to fairly presenting these immigrants' dilemmas to the public in favorable light. Chang's eventual success to gain admission to the bar was in no small measure due to his ability to garner the media's support.

#### *H. Gaining Admission to the Bar*

After he received his citizenship papers, Chang had originally wanted to reapply for admission to the Bar. However, it appeared that Justice Van Brunt was determined to oppose his admission and felt that Chang's naturalization was invalid. In response to a reporter's comment about Chang receiving citizenship, Justice Van Brunt replied, "It remains to be seen whether he is a citizen or not, and that is a matter for the General Term to consider. I have always supposed that since the law of Congress in regard to the naturalization of Chinamen was passed, no Chinaman could be admitted as a citizen."<sup>159</sup> He was of the firm opinion that the Chinese Exclusion Act passed by Congress expressly denied the right to

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159. *Id.*

naturalization for any Chinese subject.<sup>160</sup> Justices Ingraham (who presided over the Edwin James alien case) and Donohue were present during this interview and also weighed in. Justice Ingraham said, “Since that act was passed I have refused to naturalize any Chinaman,” and Justice Donohue agreed, “I should regard it as my duty to take the same course.”<sup>161</sup>

Against this backdrop, Chang knew that his odds of persuading Justice Van Brunt and others to admit him were slim even with citizenship papers in hand. On February 12, 1888, a news article revealed Chang’s predicament and his diminishing optimism, “This is a very hard upon Mr. Chang, a worthy young man, whose culture and ability, it is claimed by all who know him, would do credit to the profession into which he desires to enter. . . He dresses like an American and speaks English more grammatically and accurately than many lawyers whose right to practice is not questioned.”<sup>162</sup> When the *Press* reporter interviewed him on February 11, 1888, Chang said: “It is not a very happy New Year for me.”<sup>163</sup> (referring to the fact that it was the Chinese New Year):

It is my dearest wish to be admitted to the Bar, but it does not seem that I am able to convince the judges that a Chinaman is a competent person to take into the fold. I cannot say when they will take any action. I am glad of the sympathy of the public and of the newspapers, but the effect of it on the judges appears to be slight. There are more than six thousand Chinamen in New York and I think they should have lawyers of their own race.<sup>164</sup>

Chang’s resourceful and well-connected friends and supporters crafted a way to circumvent Justice Van Brunt’s court’s steely opposition: Chang would apply to a different court. Chang trekked to the city of Poughkeepsie, New York to apply for admission to the Bar. It is not exactly clear why he selected Poughkeepsie to petition for admission. One very likely explanation is that the court there was more sympathetic to the applicants of color. William M. Randolph, another applicant of color from Brooklyn, also sought his law license at Poughkeepsie;<sup>165</sup> if he were able to gain admission in New York City, it would not make sense for him to travel all the way to Poughkeepsie, suggesting it was quite likely that persons of color were greatly discriminated by some New York State courts during that period. On May 17, 1888, two years after graduating

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160. *A Chinese Lawyer*, LOS ANGELES HERALD, Nov. 19, 1887, at 1.

161. *Barring Out a Chinaman: Judges Say That He Cannot Practise*, N.Y. TRIBUNE, Nov. 19, 1887, at 10.

162. *Hong Yen Chang Loses Heart*, PRESS, Feb. 12, 1888, at 1.

163. *Id.*

164. *Id.*

165. *A Chinese Lawyer: Hong Yen Chang and a Colored Student Admitted to the Bar*, N.Y. TIMES, May 18, 1888, at 1.

from Columbia Law School, Chang successfully became the first Chinese to be admitted to practice law in America.<sup>166</sup>

The media attention continued. The *New York Times* interviewed Chang after he gained admission to the Bar, noting that “[i]n appearance he has a decidedly Chinese look, but he speaks excellent English. He is of medium high, rather stout, and is a very bright young man.”<sup>167</sup> In the same bar examination, William M. Randolph of Brooklyn passed with creditable results as well. When Chang and Randolph came forward to sign for their licenses, the newspaper noted, “The other students applauded each enthusiastically.”<sup>168</sup> The *Hawaiian Gazette* was excited about Chang’s admission to the Bar, reporting that “. . . he was ‘generally and favorably known in Honolulu, as a gentleman of high social culture as well as a very able young man . . . The *Advertiser* joins with all Mr. Chang’s circle of friends in congratulating him on the justice which has at last been accorded him . . . .”<sup>169</sup> The *Christian Union* also interviewed Chang, giving him the opportunity to describe in detail how justice was administered in China and to outline the Chinese legal and criminal justice systems.<sup>170</sup>

The *Brooklyn Daily Eagle* ran an editorial about admission of the first Chinese lawyer in New York shortly after his admission. It suggested that strong opposition to Chang’s admission was precisely due to anti-Chinese sentiment:

If there was reason for the suspicion that the legal profession was about to be overrun by the “Mongolian hordes,” the advent of Hong Yen Chang in the ancient and honorable occupation would provoke more commotion than it is otherwise likely to produce. But as long as no danger arises that the laundry will be hastily abandoned for Columbia or Yale, or that the police court will be sought while the supplies of soap and flatirons hold out, the gentlemen who are under obligations to Coke and Blackstone need not be expected to wander from the pursuit of the luckless client to repulse an influx of “mooneyed lepers.” What great harm will come to the Commonwealth from the admission of Chang has not been made apparent nor is there much likelihood that he will be permitted to reverse the administration of jurisprudence in the community which grants opportunity for the exaltation of his ambitious propensities. It need [sic] surprise no one to find, for a time at least, that his practice is confined to advising the luckless denizens of Mott or Mulberry Street, who have

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166. For more information on these early Chinese law students, see Li Chen, *The Early Chinese Law Students in American Law Schools* (forthcoming) (on file with author). If interested, please contact me at lichen@wustl.edu for further information on my future projects.

167. *Id.*

168. *Id.*

169. HAWAIIAN GAZETTE, July 3, 1888, at 4.

170. *Hong Yen Chang, How the Law is Administered in China*, CHRISTIAN UNION, Nov. 15, 1888, at 537.

become demoralized enough through the seductive influences of opium or fan tan to fall into the hands of the unfeeling police, to plead guilty and promptly discharge their fines. The American and his European brother entertain a prejudice against the Asiatic that will not be readily wiped out by the decrees of General Terms. . .<sup>171</sup>

Chang started practicing law in New York serving the Chinese community. On March 28, 1889, he appeared in Judge John Courtney's court in Brooklyn, representing Jung Gong and J.M. Singleton, two Chinese residents, for the recovery of debt from Sing Kee, a Chinese laundry operator. He received a favorable verdict for the full amount claimed.<sup>172</sup>

In the meantime, apart from his professional work, he also wrote articles on various topics for publication. He tried to draw on his own educational experience in America to propose reforms of the anachronistic educational and political systems in China. One article titled "The Chinese System of Education and Competitive Examination" was published on May 30, 1889. After careful outline and analysis, he blamed China's present backwardness and decadence on the system of education and competitive examination:

Hence it's safe to aver that these unregenerate disciples of Confucius are the real obstacles to China's advancement. Therein, I think, lies the secret of the difference between the present conditions of China and Japan. The latter never had, in her struggles to free herself from trammels of the past, that inert mass of fossilized intellects to contend against which has barred the former's road to progress. China's awakening from her sleep of a thousand years must come, if it comes at all, either over the corpse of her literary hierarchy or through regeneration and its willingness to attune itself to the times-to "Let the dead past bury its dead! Act -act in the living present!"<sup>173</sup>

### I. *Denied Admission to the California Bar*

In May 1890, Chang decided to relocate and practice law in California, where a substantial number of his countrymen lived and anti-Chinese sentiment was the highest. On his arrival, he started to gain some practical experience by reading in the law office of Olney, Chickering & Thomas in San Francisco.<sup>174</sup> Chang later asked William Henry Chickering of the firm to move the court to admit him as an attorney and counselor of

171. *Hong Yen Chang, Lawyer*, BROOKLYN DAILY EAGLE, May 20, 1888, at 8.

172. *City and Suburban News, Brooklyn*, N.Y. TIMES, Mar. 29, 1889, at 3.

173. *A Psalm of Life by Henry Wadsworth Longfellow*, <http://www.poetryfoundation.org/poem/173910> (last visited Oct. 23, 2014); Hong Yen Chang, *The Chinese System of Education and Competitive Examination*, CHRISTIAN UNION, May 20, 1889, at 686.

174. *A Chinese Lawyer*, DAILY EVENING BULLETIN, June 23, 1890, at 2.

the court on the strength of his license to practice law in all courts of the State of New York and his certificate of naturalization issued by the New York Court. Chang was acutely aware of the challenges regarding the validity of his citizenship papers, so he prepared a voluminous brief in seeking the admission.<sup>175</sup>

The sentiment against the admission of Chinese to practice law in California was evident since 1877 when Wu Tingfang, the first Chinese admitted to practice law in England, came to California on his way back to China. His fairly brief stay as a newly qualified English barrister alarmed white Californians, and one news report illuminated the grave concerns harbored by the anti-Chinese population about the danger of having Chinese lawyers in California:

Should Choy [Wu Tingfang] find business remunerative, we might soon expect further importations of Chinese barristers until, in due course of time, law, instead of being a costly luxury would be within the reach of the poorest citizen. Mr. Choy's presence amongst us is a menace to the California Bar. Looking at the danger from all anti-cooli[e] point of view, we rejoice. The white laboring men of the country have for twenty years appealed to Congress to frame for them a law which should discourage more Chinese from coming here and encouraging those here to leave. There have always been found tomes of good law for the Johns, but none that has proved satisfactory to the white workingmen. Now, John bids fair to hoist them lawyers with their own petard.<sup>176</sup>

For Chang, however, the statutory basis for his admission to the California Bar should have been straightforward. Per Section 279 of the Code of Civil Procedure,

Every citizen of the United States, who has been admitted to practice law in the highest court of a sister State, may be admitted to practice in the courts of this State upon the production of his license, and satisfactory evidence of good character; but the court may examine the applicant as to his character.<sup>177</sup>

Upon learning of Chang's attempt to seek admission in California, a local legal commentator expressed the view that "[s]o far as the prima facie evidence is concerned, the Supreme Court, it is claimed, has no option but to admit him."<sup>178</sup> But the commentator also predicted that "[i]t's believed

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175. *Id.*

176. *Counselor Choy*, OAKLAND EVENING TRIBUNE, Mar. 15, 1877, at 2.

177. NATHAN NEWMARK, THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA 105 (1889).

178. *A Full Citizen, Hong Yen Chang Applies for Admission to the Bar*, MORNING CALL, May 17, 1890, at 3.

that the Supreme Court will deny the application and so compel Hong Yen Chang to appeal to the Supreme Court of the United States and thus decide the vexed question upon which the rulings of the several State courts are at variance, but upon which the Supreme Court of the United States has not as yet passed. The question in point is whether any Chinaman can become a citizen of the United States.”<sup>179</sup> The question that Chang had been skirting throughout his pursuit for recognition would come to a head.

The motion for Chang’s admission was made on May 17, 1890. The court was comprised of Justices Fox, McFarland, Beatty (Chief Justice), and Sharpstein (who, as a board member of Hastings College of the Law, voted to deny Sit Ming Cook’s admission in 1878). After scrutinizing the paperwork, they arrived at a unanimous decision to reject his application. Fox wrote the opinion. The Court held:

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.<sup>180</sup>

Originally, Chang intended to appeal this decision to the Supreme Court of the United States, as he was firmly of the opinion that his certificate of naturalization and certificate of admission to the New York Bar were prima facie evidence of a fact that a court of another State must respect.<sup>181</sup> The California court seemed to have failed to follow its own laws. A *San Francisco Morning Call* reporter noted that there was a comparable case before the California Supreme Court in which a man disbarred in New York applied for admission to the courts of California and his application was refused. He promptly went to Nevada and was admitted, and then he came back to California and immediately applied for admission to the same court. On granting him admission upon a second application, the court said it had no power to inquire behind the genuine certificate of the highest court of a sister State.<sup>182</sup>

However, given that an unsuccessful appeal would result in revocation of his citizenship paper and would create a sticky precedent that might

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179. *Id.*

180. *In re Hong Yen Chang*, 84 Cal. 163 (1890).

181. *Id.*

182. *Not Eligible, A Mongolian refused admission to the Bar*, MORNING CALL, May 18, 1890, at 3.

completely bar even sympathetic courts from naturalizing Chinese, Chang, in light of these weighty considerations, decided not to appeal the decision.

Chang had once again fallen victim to unjust racial discrimination, codified by the Chinese Exclusion Act 1882 and rising anti-Chinese sentiment in California. This, however, did not derail his professional career. He subsequently enjoyed a very successful career in the Chinese Diplomatic Service. Putting his legal knowledge to full use, at different times, he worked as a banker in California, a professor of law in China, Chinese Consul in Vancouver, and First Secretary and Chargé d'Affaires at the Chinese Legation in Washington, D.C.<sup>183</sup>

### CONCLUSION

In the next a few decades, aspiring and ambitious Chinese Americans, on the heels of Sit and Chang's precedent, fearlessly confronted legalized racial discrimination to seek admission to their local state bars and tried to establish their own legal practice and seek public office. The challenges they faced were simply daunting. It was not until June 1918, 28 years after the California court refused to admit Chang, that Chan Chung Wing became the first Chinese American to be admitted to practice law in California.<sup>184</sup> Chan was born in Napa, California, where he completed his education at local public schools and graduated as a member of the University of San Francisco Law School's (formerly known as University of St. Ignatius College of Law) first graduating class.<sup>185</sup> The racial discrimination he faced was vividly recalled by his own words:

I found it very difficult to defend my clients, because there was a lot of discrimination against Chinese and many judges tried to throw me out of the courtroom . . . [b]ut I was very persistent and soon found out that playing golf with the judges and district attorneys afforded me the opportunity to discuss the problems of the Chinese community with them.<sup>186</sup>

With his American citizenship, law license, and pure perseverance and resourcefulness, Chan consequently made his mark in the service of Chinese community in California.<sup>187</sup>

William "Billy" Heen was the first Chinese American appointed to the bench in the United States. He had to grapple with formidable racial

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183. YALE UNIVERSITY, OBITUARY RECORD OF YALE GRADUATES, *supra* note 64, at 109–10.

184. *Chan Chung Wing Now Full-Fledged Attorney*, THE WASH. HERALD, June 26, 1918, at 7. For more information on Chan Chung Wing, see Li Chen, *The Early Chinese American Lawyers in California* (forthcoming) (on file with author).

185. *Interesting Westerners*, *Sunset*, THE PACIFIC MONTHLY, Vol. 42, No. 1 47 (1919).

186. IRIS CHANG, *THE CHINESE IN AMERICA: A NARRATIVE HISTORY* 188 (2004).

187. *Id.*

discrimination in order to get his judicial appointment confirmed by the U.S. Senate. Heen was born in Hawaii to a Chinese father and a Hawaiian mother. After completing his preliminary education in Hawaii with flying colors, he attended the Hastings College of the Law for two years before being admitted to practice in all courts of the territory on January 16, 1905.<sup>188</sup> After a brief period of legal practice in Shanghai, China, he returned to resume his residence in Honolulu, Hawaii. He was subsequently appointed deputy attorney general of Hawaii in the October 1915.<sup>189</sup> In February 1917, he made history by being the first Chinese American to be named a judge, as President Woodrow Wilson appointed him to a Circuit Court judgeship: “For the first time in the history of American government a Mongolian has been elevated to a judgeship.”<sup>190</sup> Racism against Chinese, however, was still high and was entrenched by the Chinese Exclusion Act, so there was overt protest against his Chinese ancestry on the Senate judiciary committee, which held up his confirmation.<sup>191</sup> In the end, he had to be re-nominated when the Senate judiciary committee assembled in a new session in April; this committee favored his appointment and finally recommended his confirmation.<sup>192</sup> During the delay, Hawaii local media rallied for him:

That Attorney William Heen, who was nominated by the President as a circuit judge, should be opposed in Congress on the ground that he, being part-Chinese, is not a suitable person for the bench, comes as a severe shock to all American citizens who are and who are not of pure white descent. . . . That an American citizen of any breeding should be discriminated against does not carry out the idea that all men are born equal and live equal in this great republic.<sup>193</sup>

The Senate finally confirmed his appointment and President Wilson signed his commission on May 24, 1917.<sup>194</sup> At the age of 34, he became the youngest judge on the bench in Hawaii at that time.<sup>195</sup>

The Chinese Exclusion Act of 1882, the Scott Act of 1888, the Geary Act of 1892, and associated judicial interpretations were one of the most significant restrictions on immigration in the history of the United States. It

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188. *Admitted to Practice*, THE HAWAIIAN GAZETTE, Jan. 17, 1905, at 5. For more information on Heen and the early Chinese American lawyers in Hawaii, see Li Chen, *The Early Chinese American Lawyers in Hawaii* (forthcoming) (on file with author).

189. *Personal Mention*, HONOLULU STAR-BULLETIN, October 29, 1915, at 4.

190. *Mongolian Named Judge: Wilson Appoints Him to Circuit Court Bench of Honolulu*, THE WASH. POST, Feb. 17, 1917, at 1.

191. *Heen's Name Goes In Again*, HONOLULU STAR-BULLETIN, April 6, 1917, at 1.

192. *Id.*

193. *Unfair Discrimination*, THE MAUI NEWS, April 13, 1917, at 4.

194. *Heen's Commission Signed By President*, THE HAWAIIAN GAZETTE, May 25, 1917, at 4.

195. *Local Attorneys to Fill Vacancies, Names Sent to Senate and Confirmation Expected Soon*, THE HAWAIIAN GAZETTE, Feb. 16, 1917, at 2.

took over sixty years to be repealed, and it is now commonly disparaged as the unjust legalization of racial discrimination. Pioneers in the field of law, like Sit Ming Cook and Chang Hong Yen, did not initially set out to make history and publicly challenge the Act, but through their plights to gain fair representation within the legal profession, they ultimately revealed the unjust discrimination and limits of the Act and similar measures. In March, 2015, Chang's descendants and the Asian Pacific American Law Students Association at the University of California, Davis, School of Law succeeded in a petition to grant Hong Yen Chang posthumous admission to the California Bar.<sup>196</sup> In granting the petition, the Court affirmed that:

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.<sup>197</sup>

As the Court correctly pointed out “[e]ven 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.”<sup>198</sup> Chang's fearless fight indeed set an example as a pioneer for a more inclusive legal profession. Sit and Chang's courageous, yet largely unknown and untold struggles have paved the way for people like Chan Chung Wing and William Heen to do the same and achieve much improved successes for Chinese Americans in the legal field since the early part of 20th century.

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196. *In re Chang*, 60 Cal. 1169 (2015).

197. *Id.*

198. *Id.*

APPENDIX I:  
HONG YEN CHANG'S SCHOOL CALENDAR

**Law School Calendar 1884–1886**  
(Early part of 1875 was not available in the historical calendar)<sup>199</sup>

October 4, 1884	Examination for Admission, Saturday
October 6, 1884	Law Term begins, Monday
November	Election Day (Holiday)
November	Thanksgiving Day ( Holiday)
December 25, 1884	Winter Recess begins

October 5, 1885	Law term begins, Monday
November 26, 1885	Thanksgiving day, Thursday (Holiday)
December 24, 1885	Winter recess begins
January 5, 1886	Lectures commence, Tuesday
February 22, 1886	Washington's birthday (Holiday)
April 22, 1886	Examination for prizes, Thursday
April 23, 1886	Good Friday (Holiday)
May 19–22, 1886	Examination for degrees (Wednesday–Saturday)
May 26, 1886	Lectures close, Wednesday
June 1, 1886	Summer vacation begins, Tuesday

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199. See COLUMBIA COLLEGE, TWENTY-SIXTH ANNUAL CATALOGUE OF THE OFFICERS AND STUDENTS OF THE LAW SCHOOL OF COLUMBIA COLLEGE, *supra* note 50, at 38–39.

APPENDIX II:  
COLUMBIA LAW SCHOOL FACULTY 1884–1886

Name	Title
Theodore W. Dwight, LL.D.	Warden of the Law School, and Professor of the Law of Contracts and of Maritime and Admiralty Law
Benjamin Franklin Lee	Professor of Real Estate and Equity Jurisprudence
George Chase, LL.B.	Professor of Criminal Law, Torts, and Procedure
John W. Burgess, A.M.Ph.D.	Professor of Constitutional History, International and Constitutional Law and Political Science
John Ordronaux LL.D.	Professor of Medicinal Jurisprudence
James M. Gifford, LL.B.	Holding Prize Fellowship
Charles E. Hughes, LL.B.	Holding Prize Fellowship

APPENDIX III:  
LEGISLATIVE HISTORY OF THE RELIEF ACT, MARCH–APRIL 1887

**New York State Assembly**

Wednesday, March 9, 1887	The House met pursuant to adjournment, Mr. George H. Henry, a Republican, introduced a bill entitled “An act for the relief of Hong Yen Chang” which was read the first time, and by unanimous consent was also read the second time. On motion of Mr. G.H. Henry, and by unanimous consent, the rules were suspended, and said bill ordered to a third reading and printed, and when printed to be committed to the committee on the judiciary, retaining its place on the order of third reading. <sup>200</sup>
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200. NEW YORK STATE LEGISLATURE ASSEMBLY, JOURNAL OF THE ASSEMBLY OF THE STATE OF NEW YORK, Sess. 10, Albany, NY, Jan. 4, 1887 at 513.

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*PIONEERS FOR CHINESE STUDENT INCLUSION*

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Thursday, March 31, 1887	Mr. Charles D. Baker, a Republican, from the committee on the judiciary, to which was referred the bill introduced by Mr. G.H. Henry, Int. No.915, entitled "An act for the relief of Hong Yen Chang," reported in favor of the passage of the same, with amendments, which report was agreed to, and said bill restored to its place on the order of third reading. <sup>201</sup>
Wednesday, April 6, 1887	Mr. Frederick W. Kruse, a Republican, from the committee on revision, to which was referred the following entitled bills, report the same without recommendation: "An act for the relief of Hong Yen Chang." Int. No.915. <sup>202</sup>
Tuesday, April 12, 1887	Mr. Frank B. Arnold, a Republican, from the committee on engrossed bills, reported as correctly engrossed the bills entitled as follows: "An act for the relief of Hong Yen Chang." (No.599) <sup>203</sup>
Wednesday, April 13, 1887	The bill (No.599) entitled "An act for the relief of Hong Yen Chang," was read the third time. Mr. Speaker (James W. Husted ) put the question whether the House would agree to the final passage of said bill, and it was determined in the affirmative, a majority of all the members elected to the Assembly voting in favor thereof, and three fifths being present, Ayes: 79, Noes:1, only Timothy D. Sullivan, Tammany Dem, voted against it. Ordered, That the Clerk deliver said bill to the Senate, and request their concurrence therein. <sup>204</sup>

201. *Id.* at 933.202. *Id.* at 1051.203. *Id.* at 1113.204. *Id.* at 1157–58.

Tuesday, April 19, 1887	The Senate returned the following entitled bills, with a message that they have concurred in the passage of the same: "An act for the relief of Hong Yen Chang,"(No.599) Ordered, That the Clerk deliver said bills to the Governor. <sup>205</sup>
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### New York State Senate

Tuesday, March 15, 1887	Mr. Thomas C. Dunham, a Democrat, introduced a bill entitled "An act for the relief of Hong Yen Chang," which was read the first time, and by unanimous consent was also read the second time, and referred to the committee on the judiciary. <sup>206</sup>
Monday, March 21, 1887	Mr. Albert C. Comstock, a Republican, from the committee on the judiciary to which was referred the bill introduced by Mr. Dunham, Int No.535, entitled "An act for the relief of Hong Yen Chang," reported in favor of the passage of the same, which report was agreed to, and said bill committed to the committee of the whole. <sup>207</sup>
Thursday, April 14, 1887	The Senate met pursuant to adjournment, The Assembly sent for concurrence the following entitled bills among them, "An act for the relief of Hong Yen Chang" (No.599), which was read the first time, and by unanimous consent was also read the second time, and referred to the committee of the whole. <sup>208</sup>

205. NEW YORK STATE LEGISLATURE ASSEMBLY, *supra* note 196, at 1271-72.

206. NEW YORK LEGISLATURE SENATE, JOURNAL OF THE SENATE OF THE STATE OF NEW YORK AT THEIR ONE HUNDRED AND TENTH SESSION BEGUN AND HELD AT THE CAPITOL, Albany, NY, Jan. 4, 1887, at 317.

207. *Id.* at 370.

208. *Id.* at 648.

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Monday, April 18, 1887	The Senate then resolved itself into a committee of the whole, and proceeded to the consideration of general orders, being the bills entitled as follows: Assembly, "An act for the relief of Hong Yen Chang." After some time spent therein, the President resumed the chair, and Mr. Parker, from said committee, reported in favor of the passage of the first named bill, which report was agreed to, and the same ordered to a third reading. <sup>209</sup>
Monday, April 18, 1887	The Assembly bill (No.599) entitled "An act for the relief of Hong Yen Chang," was read the third time. The President put the question whether the Senate would agree to the final passage of the said bill, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof, and three-fifth being present, as follows: Ordered, That the Clerk return said bill to the Assembly with a message that the Senate have concurred in the passage of the same. <sup>210</sup>

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209. *Id.* at 673.

210. New York State Legislature Assembly, *supra* note 191, at 677–78.

