



FORUM

Asian American Lawyers: Then and Now

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Introduction

Conversations about Asian Americans have only just captured national attention as anti-Asian hate crimes have escalated amidst the COVID-19 pandemic. Within the past two years, numerous discussions about Asian American identity, stereotypes of Asians, and America's egregious history of exclusion against Asian Americans have surfaced, and, most recently in July 2021, Illinois became the first state to require the teaching of Asian American history in public school classrooms. As an aspiring lawyer who has paid attention to and often participated in such discourse, I have especially wanted to learn more about Asian American lawyers, who I believe can further enrich and complicate our understanding of Asian Americans overall. In what context did the first Asian American lawyers emerge? Who were some of the most prominent Asian American lawyers in the past, and how have they shaped American law? What are the unique obstacles that Asian American lawyers endure today? These are just some of the questions that have long interested me, and I will attempt to answer them in this article.

While I have discovered a few sources that already examine these issues (which will be referenced later), this article will aim to provide a more cohesive narrative demonstrating the overall journey of Asian American lawyers from the 1880s to modern years. Its purpose is twofold: to briefly trace the emergence of Asian American lawyers throughout American history, and to illuminate the present conditions and challenges of Asian American lawyers today. To be clear, it is beyond the scope of this article to be comprehensive; it does not attempt to identify every single

Asian American lawyer in Asian American history, and neither will it attempt to explicate every event or idea relevant to this topic. Instead, it will focus on what appears to be the most salient, recurring themes that characterize the Asian American experience in the legal field. More information about Asian American lawyers will likely be unearthed in later years, but I hope that this article will inspire more conversations about their impact and struggles in the meantime.

I. Asian American Lawyers Throughout American History

The first Chinese American licensed to practice law in the U.S. was Hong Yen Chang, born in Guangdong, China, who immigrated to America in 1872 as one of the 120 Chinese boys sent to study in the U.S. through the Chinese Educational Mission. Chang had arrived during a time of escalating anti-Chinese sentiment in America. One reason for such racial hostility included claims that the Chinese were inherently inferior, as demonstrated in the California Supreme Court's 1854 ruling in People vs. Hall where Chief Justice John Murray wrote that the Chinese were "incapable of progress or intellectual development beyond a certain point, as history has shown." As the number of Chinese immigrants working in America's gold mines, factories, and agriculture grew, allegations from other laborers in America's economy that the Chinese posed an economic threat further exacerbated racial tensions. Pressured by such xenophobia pervading the nation, the government eventually passed the Chinese Exclusion Act of 1882, which suspended skilled and unskilled Chinese laborers in mining from immigrating to the U.S. for ten years (and it would eventually be extended for another 10 years by the 1892 Geary Act, which also required all Chinese living in the U.S. to carry identification papers—which many observed were similar to "dog tags"—at all times or suffer deportation). When Chang sought admission to the New York State Bar Association, the state's Supreme Court rejected him since the Exclusion Act barred him from U.S. citizenship. But after Chang pressured the Association for two years, they eventually issued him a naturalization certificate and allowed him to reapply to the bar again. He was admitted in 1887. However, Chang was not as fortunate when he later moved to California, where the state's Supreme Court deemed that his naturalization certificate from New York was invalid and thus rejected him from the bar. Chang was never allowed to practice law in California, although thanks to petitions from groups of law school students such as the Asian Pacific American Law Students Association, he was posthumously granted admission to the state's Bar Association 130 years later in 2015. The first Chinese American lawyer in California wouldn't emerge until nearly four decades after the Court's decision in Chang's case,

when You Chung Hong, a son of Chinese immigrants, passed the state's bar in 1923. He worked to repeal the Chinese Exclusion Act of 1882 that had obstructed Chang's admission to the bar, testified in the U.S. Senate on immigration laws, and in 1933, became the first Chinese American permitted to practice before the Supreme Court.

Alongside the Chinese Exclusion Act, the government also passed legislation thwarting South Asians from entering the U.S during this time. In 1917, the U.S. banned immigration from the entire Indian subcontinent through the Barred Zone Act. In the 1923 case, *U.S. v. Bhagat Singh Thind*, the Supreme Court ruled that Southeast Asians were ineligible for naturalization. An immigrant from Punjab, India, Dalip Singh Saund campaigned against these discriminatory policies. His efforts eventually resulted in Congress passing the Luce-Celler Act of 1946, which permitted more South Asians to immigrate to the U.S. and become U.S. citizens. After becoming a naturalized U.S. citizen in 1949, Saund was elected to Congress in the House of Representatives—and re-elected twice—thus becoming the first Asian American, Indian American, and first Sikh American to do so.

More Asian American lawyers emerged during and shortly after the U.S.' participation in World War II. For example, Minoru Yasui, a Japanese American lawyer, established a practice in Portland to help Japanese Americans affected by Executive Order 9066, by which President Franklin Delano Roosevelt authorized the internment of Japanese Americans and noncitizens from Japan. Yasui also refused to evacuate to an internment camp and was consequently sentenced to a year in prison. When he was released in 1944, he practiced law in Colorado, where he advocated for the Japanese community in America to receive reparations. During this time, Fred Korematsu, a son of Japanese immigrants, was arrested for resisting his displacement to an internment camp; this incident would eventually result in *Korematsu vs. U.S.* (1944), where the Supreme Court upheld Executive Order 9066—but nearly four decades later in 1983, Dale Minami, an Asian American lawyer, would reopen and help overturn this decision.

Furthermore, although they are often overlooked, Asian American lawyers directly served in America's war efforts. Herbert Choy, a graduate of Harvard Law School, served in the U.S. Army Judge Advocate General's Corps (from 1942-1946), which "represents the legal interests of soldiers and the U.S. Army," according to the U.S. Army Judge Advocate General's Corps brochure. When he returned to America, he became the first Korean American in the United States admitted to the bar. Another Asian American graduate of Harvard Law School, Hiram Fong, served as Judge Advocate in the U.S. Air Force, after which he became the first Asian

American U.S. Senator from 1959 to 1977 from Hawaii and the first Asian American to receive delegate votes to be nominated for the President of the United States.

Asian American lawyers also actively contributed to the social change movements that swept America in the 1960s—most notably, Patsy Mink, a third-generation Japanese American from Hawaii and graduate of University of Chicago Law School. Several years after being rejected from all jobs she applied to because of her interracial marriage, Mink became the first Asian American woman to serve in Congress when she won a seat in the U.S. House of Representatives in 1964. As a Congresswoman, Mink helped address the needs of the women's rights movement through sponsoring the first childcare bill, in addition to passing the 1974 Women's Educational Equity Act which allocated \$30 million a year for programs in schools that promoted gender equality, improved women's academic and job opportunities, and expunged gender stereotypes from educational curricula. She even co-wrote the Title IX law which stated that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Mink also championed educational reform more broadly as she pushed for legislation introducing bilingual education, in addition to introducing the first Early Childhood Education Act.

II. Asian American Lawyers in the Modern Era

The population of Asian American lawyers has grown considerably since the 2000s. According to “A Portrait of Asian Americans in the Law,” a 2017 report published by Yale Law School and the National Asian Pacific American Bar Association and compiled by Eric Chung, Samuel Dong, Xiaonan April Hu, Christine Kwon, and Goodwin Liu, “the number of Asian American lawyers has grown from 20,000 [in 2000] to 53,000 [in 2017], comprising nearly 5 percent of all lawyers nationwide.” Additionally, the report establishes that over the past three decades, the number of Asian Americans enrolled in law school has nearly quadrupled to 8,000, demonstrating the largest spike of any racial or ethnic group—and that they are more likely to attend highly ranked law schools. But it also notes that most recently in 2016, the number of Asian American students entering law school in general was the lowest in more than 20 years. The report doesn't attribute an exact reason for such a steep decline and recommends further research into this trendline.

With respect to the numerous Asian American lawyers who are already in the field today, however, data from the report reveals that very few of them hold leadership positions in the legal profession. Of course, while Kamala Harris has become

the first South Asian American Vice President, most Asian American lawyers in general struggle to become leaders. Although 7.05% of respondents in the Vault and Minority Corporate Counsel Association's (Vault/MCCA) 2015 survey of 225 law firms were Asian American, the data indicated that only 2.09% of them had seats on executive management committees, 2.32% on partner review committees, and 3.78% on associate review committees. Moreover, few Asian Americans serve as state judges. Even in states such as Maryland and New York—both home to a significant number of Asian Americans—less than 1 percent of their state appellate or general jurisdiction trial judges were Asian American in 2014. Even fewer Asian Americans serve in supervisory positions at the federal level; the "Portrait" highlights that in 2016, there were only three Asian American United States Attorneys in office—out of all 94 available positions—with one in each of the following areas: Hawaii, Guam and the Northern Mariana Islands, and the Southern District of New York. Data from a 2014 survey in the "Portrait" also found that, out of the 2,437 elected prosecutors in the nation, only four were Asian American. Asian Americans also rarely serve in the higher ranks of academic administration at law schools. In 2013, only three Asian Americans were law deans out of the 202 in the country, and only 18 Asian Americans out of the nation's 709 associate or vice deans.

Why, despite demonstrating an overall and significant growth of lawyers, is there such a dearth of Asian Americans working as leaders in the law? A possible answer may include the model minority myth, which stereotypes Asian Americans as hardworking and "smart," but too passive and socially inept to hold leadership positions. Indeed, in Elisabeth Frater's article, "Asian American Attorneys: Shattering Conventional Norms," Reed Smith Partner Min S. Suh confirms that "there is a perception, especially in the legal community, that Asian American lawyers are not suitable for management or leadership positions due to the stereotype that Asian Americans lack the personality to influence and lead others." Joseph J. Centeno, a partner with Philadelphia's Obermayer Rebmann Maxwell & Hippe, further buttresses this point: he adds that "in our society, to be a leader in any industry, you have to be bold, you have to take risks, and you have to be out there and network and create relationships with people... but Asian Americans [are often seen as] not being aggressive or assertive and being meek or sometimes a geek." In the survey featured in the "Portrait," many Asian American lawyers indicated that, throughout their experience in the legal profession, the most common traits that they were associated with at their jobs were "quiet," "introverted," "passive," and "awkward." Few to none of them reported that they believed they were seen as "assertive," "extroverted," or "loud."

The misconception of Asians as perpetual foreigners in America may also account for another reason why Asian Americans struggle to further advance in the legal field. In the “Portrait” survey, one Asian American lawyer reported that “[she’s] an immigration lawyer. When [she] go[es] to immigration court, [she’s] mistaken for the alien.” Moreover, the Western fetishization of the sexualized, “exotic” Asian woman also poses significant obstacles for female Asian American lawyers that may thwart them from further elevating their legal careers. The same immigration lawyer from the “Portrait” survey mentioned above also revealed that “when [she] go[es] to jail to visit a client, [she’s] mistaken for their girlfriend.” Another respondent in the “Portrait” survey explained that “being an Asian woman added another layer as men were often more interested in expressing themselves as romantic prospects as opposed to colleagues.”

Moving Forward

Sources confirm that Asian American lawyers have demonstrated outstanding progress since the 1880s, despite having once been barred from practicing law. Yet they continue to face significant obstacles in the profession. Although Asian American lawyers have helped shape, build, and change American law for nearly 200 years, they are still reduced to outdated, fictitious stereotypes that preclude them from becoming leaders in the field today. Now it is time for those not only in the legal field, but also the rest of America in general, to reflect on these realities and consider how we should move forward and treat our Asian American lawyers in the future to help them reach their full potential.