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JUDGE DENNY CHIN: A STUDENT OF THE LAW

John D. Feerick

I appreciate the invitation to contribute reflections as part of the *Fordham Law Review*'s tribute to Judge Denny Chin. He occupies a cherished position in the Fordham University Law School community and the American legal profession, making this tribute timely and highly appropriate.

In thinking about Judge Chin, whom I have known since 1978, I am reminded of my childhood hero, Joe DiMaggio. He retired as one of baseball's immortals after the 1951 season. Three years later another hero of mine, Check Kong Chin (Denny Chin), was born in Hong Kong, China. Though different in background and nationality at birth, Judge Chin and DiMaggio have at least one thing in common: they both approached their work as students of their subjects. In an interview he had in November 1951 with former Yankee batboy Joseph Carrieri (a Fordham College and Law School classmate of mine), DiMaggio said of the meaning of success: "Remember to stay interested in the game. You're always a student. And as long as you live, you always have more to learn. If you can remember that, you'll have learned a great deal about the meaning of success."¹ Before expressing that vision of life, DiMaggio recounted the joy he received from Billy Martin, a new player at the time who wanted to learn all he could about the game from its greatest player. He asked question after question and in the process revived in DiMaggio the excitement he had experienced in his own youth as a player.²

Judge Chin has found the key to perpetual youth in the law through his service as a judge and all the activities he has chosen to make a part of his total life. He is, by all accounts, a superb mentor of law interns and law clerks, not simply in terms of their work in his Chambers but in providing perspectives about careers in the law and offering reflections on advocacy in federal court litigation. His former clerks speak of his patience in dealing with counsel appearing before him, allowing them more than sufficient time to make their arguments, and granting extensions so that the work product before the court will represent their best advocacy. According to one of his former clerks, "Prosecutors, defense attorneys, and judges alike recognize that Judge Chin's even-handedness and meticulous thoughtfulness results in

1. JOE CARRIERI, SEARCHING FOR HEROES: THE QUEST OF A YANKEE BATBOY 189 (1995).

2. *Id.*

a respectful litigation environment that encourages attorneys to continue improving their craft.”³

He has brought a similar kind of mentoring approach to his service in the organized bar, contributing in multiple ways to the progression of newer lawyers in voluntary associations. Students of Fordham Law School have been the special beneficiaries of his teaching, for almost twenty-five years, the basic first-year course on legal writing. This is a course which introduces students to the skill of legal writing and the imperatives of thinking clearly and seeing all the possibilities in the drafting of a memorandum or brief. Students, year after year, speak uniformly of his excellence as a teacher in that course. Judge Chin has been extraordinarily generous as well with his time and knowledge—sharing for countless other audiences, including students of many other law schools, college students, elementary school students, lawyers attending panels and conferences in which he appears as a speaker, programs for newer judges, and lectures in classes for foreign lawyers on subjects of federal jurisdiction and the role of the American judiciary. He breathes new life into old law, as he prepares for public reenactments of famous, historical cases.⁴ His handling of naturalization proceedings evinces his pride in his grandfather’s naturalization in 1947 in the Southern District of New York—his grandfather’s naturalization certificate hangs on the wall of his chambers at the courthouse—as well as that of his parents’ naturalization in 1967, also in the Southern District, through which act, under the law extant at the time he, too, became a citizen.⁵ He brings a related zeal to ceremonies admitting lawyers to the bar of the federal courts of New York.

In all of these activities, he engages with members of the groups involved in ways that add to his own learning and understanding and remind him always of the privilege he has to be a lawyer for more than thirty years, almost half of them as a federal judge. His total immersion in the law has made him, like DiMaggio, the best at what he does. His rise to his present position as a member of the United States Court of Appeals for the Second Circuit is another incredible expression of the American dream, not unlike DiMaggio. Educated at Princeton and Fordham Law School, Judge Chin has enjoyed a phenomenal career, starting as a judicial intern and summer associate, then as a law clerk to a distinguished federal judge (Hon. Henry F. Werker), an associateship at a firm headed by a former major party

3. E-mail from Victoria Lai, former clerk, to author (Jan. 13, 2011, 22:30 EST) (on file with author).

4. One of his clerks described his preparation for a reenactment of the 1932 criminal trial in Hawaii known as the “Massie Trial” as follows:

Every day he would tell us a little more about the case, and together over lunch, he and all the clerks would discuss the civil rights realities of that time and how modern day forensics could have changed the outcome of the case. His face would light up each time he described something new that he and his wife had learned while researching this project. He loved being a student of this new topic.

Id.

5. Remarks of Judge Denny Chin at the New York County Lawyers’ Association Weinfeld Award Luncheon, October 27, 2010, at 9, 10.

presidential candidate (Davis Polk & Wardwell), appointment as an assistant United States Attorney for the Southern District of New York under U.S. Attorneys Rudolph Giuliani and John Martin, in his own practice at Campbell, Patrick and Chin, as a partner with the highly respected Vladeck Waldman firm, with a focus on employment law and commercial litigation, and finally to the federal bench of the United States District Court for the Southern District of New York.

As a federal judge, he has handled many high-profile cases, including the United Nations Oil-for-Food Program Scandal,⁶ “Meghan’s” law,⁷ “Fox News v. Al Franken,”⁸ the Million Youth March,⁹ the “Naked Cowboy,”¹⁰ and Bernard Madoff.¹¹ In sentencing Madoff to a 150 year prison sentence, Judge Chin said, “[T]he message must be sent that Mr. Madoff’s crimes were extraordinarily evil.”¹² Some of his cases have become the plots for television scripts, i.e., a priest who disclosed a confession by the real murderer,¹³ an investment banker who was fired for posing nude in a gay magazine,¹⁴ and the mob infiltrating a Wall Street securities firm.¹⁵ But the overwhelming number of his cases do not fall in either category, constituting the normal work of a dedicated federal judge. According to his judicial questionnaire, he has presided over 190 trials, 4700 civil cases and 665 criminal cases, and issued 1553 opinions as a district court judge (as of October 23, 2009) and authored nine opinions while sitting by designation on the Second Circuit.¹⁶ A review of his decisions reveals a person who pays close attention to the facts and applicable law and expresses in his judicial writings a clarity and directness like that law student of the 1970s, leaving little room for guessing at his reasons for deciding a particular matter.

In glancing backwards to Judge Chin’s legal education, I had the good fortune to meet him in his last year as a student at Fordham Law School. I then taught a course on employment discrimination, which I had created a few years before, hoping to convey some of my learning from practice in that field at the firm of Skadden, Arps, Slate, Meagher & Flom. There, I headed its labor and employment group. What I did not expect to find in my classes were students, from evening law students serving as police officers to EEO Managers for major companies, from whom I learned what

6. Colum Lynch, *Park Sentenced to 5 Years in U.N. Oil-for-Food Bribery Scandal*, WASH. POST, Feb. 23, 2007, at A11.

7. *Doe v. Pataki*, 3 F. Supp. 2d 456 (S.D.N.Y. 1998).

8. *Fox News Network v. Penguin Grp. (USA), Inc.*, No. 03 Civ. 6162, 2003 WL 23281520 (S.D.N.Y. Aug. 20, 2003).

9. *Million Youth March, Inc. v. Safir*, 63 F. Supp. 2d 381 (S.D.N.Y. 1999).

10. *Burck v. Mars, Inc.*, 571 F. Supp. 2d 446 (S.D.N.Y. 2008).

11. *United States v. Madoff*, 626 F. Supp. 2d 420 (S.D.N.Y. 2009).

12. Transcript of Sentencing Hearing at 47, *Madoff*, 626 F. Supp. 2d 420 (09 CR 213).

13. *Morales v. Portuondo*, 154 F. Supp. 2d 706 (S.D.N.Y. 2001); *Law & Order Criminal Intent: Last Rites* (NBC television broadcast Aug. 17, 2008).

14. *Curry v. Morgan Stanley & Co.*, 193 F.R.D. 168 (S.D.N.Y. 2000).

15. *United States v. Gangi*, 1 F. Supp. 2d 256 (S.D.N.Y. 1998).

16. Denny Chin, Questionnaire for Judicial Nominees, S. COMM. ON THE JUDICIARY (2009), at 23.

I did not know. Denny Chin was one of those students. He brought a different kind of experience to that classroom, armed with a deep knowledge of alien discrimination which was reflected in an impressive student comment he had written for the *Fordham Law Review*. In that article he analyzed the subject from empirical, historical, and constitutional standpoints, leaving no doubt where he stood on the subject: "The image of an open-armed Statue of Liberty welcoming 'huddled masses yearning to breathe free' and the promise of America's unique melting-pot heritage have been marred by this country's history of prejudice and discrimination against foreigners."¹⁷ His treatment of the subject was thoughtfully written and reasoned, with an abundance of supporting citations of federal and state cases sprinkled over almost 200 footnotes.

In that class, I introduced or re-introduced Judge Chin and other students to seminal Supreme Court cases, such as *McDonnell Douglas Corp. v. Green*,¹⁸ concepts of reasonable accommodations for the handicapped; employment and civil rights statutes; and applicable constitutional provisions relevant to the field of employment discrimination. Too often, I ended the class exhausted, challenged by student questions and observations, requiring of me additional study before the next class. Judge Chin was one of those students who made teaching both a challenge and a joy. He was exceedingly smart, spoke softly but with an already keen knowledge of the subject, answered questions clearly and directly, and participated with effectiveness in class discussions. A teacher can't see what is to become in a student's life but I must have had some glimmer of possibilities in Judge Chin's case, based on giving him the highest grade I gave that year, a ninety-four. I was not surprised to learn of his subsequent co-authorship of a Brooklyn Law Review article taking issue with the burden-shifting test of the *McDonnell* case for analyzing issues of employment discrimination. He was again clear and direct, stating that the test "has long outlived its usefulness. The time has come for a change."¹⁹ For him the focus was the ultimate issue of discrimination, for which he advanced a "simplified but more focused approach for evaluating and weighing evidence of discrimination."²⁰ He was more matter-of-fact in an earlier writing on the topic of reasonable accommodations for the handicapped for a program at New York University Law School.²¹

In 1986, Fordham Law School happily welcomed Judge Chin back as an adjunct professor of legal writing. He was encouraged to apply for the position by a giant in the history of the school, the late Professor Mary Daly

17. Denny Chin, Comment, *Aliens' Right to Work: State and Federal Discrimination*, 45 FORDHAM L. REV. 835, 835 (1977) (citations omitted).

18. 411 U.S. 792 (1973).

19. Denny Chin & Jodi Golinsky, *Moving Beyond McDonnell Douglas: A Simplified Method for Assessing Evidence in Discrimination Cases*, 64 BROOK. L. REV. 659, 661 (1998).

20. *Id.*

21. Denny Chin, *Discrimination Against the Handicapped: The Duty of Reasonable Accommodation*, in PROCEEDINGS OF THE NEW YORK UNIVERSITY FORTY-SECOND ANNUAL NATIONAL CONFERENCE ON LABOR 14-1 (Bruno Stein ed., 1989).

(later to be the first woman dean of St. John's Law School) and by then-Acting Associate Dean Robert Byrn. I was then serving as the school's dean and was pleased to join in their recommendation to extend him a teaching offer. From the start, and now for nearly twenty-five years, his service to the school as a legal writing adjunct was spectacular. I never heard a negative word about his teaching but only admiration that a judge would devote so much time to helping first-year law students grow in the law through the skills of legal research, reasoning, analysis, and writing. I suspect he grew as well through his relating to and mentoring of students.

As Professor Rachel Vorspan, the director of the Law School's legal writing program for more than twenty-five years, puts it:

As a teacher of legal writing, Professor Chin is unsurpassed. He is a wonderful writer himself: his prose exemplifies clarity and directness, and his class materials are so well written that Fordham uses them as models in training new instructors. Perhaps even more important, Professor Chin has the ability to develop the skill of good writing in others, which he accomplishes both through classroom instruction and individual editing and conferencing of student work. Professor Chin controls his classroom, like his courtroom, with firmness and grace, and students love his classes for their integration of theory and practice and their "real world" flavor.²²

His students are equally fulsome in their praise of his legal writing class: "I sincerely wish that Judge Chin were a tenured professor at Fordham Law School. I doubt that there is any other individual in the United States who possesses such a breadth of legal theoretical brilliance combined with practical lawyering wisdom;"²³ "Professor Chin's perspicuity was only enhanced by his geniality, approachability, and humour;"²⁴ and "What a simply splendid experience!"²⁵

In 1992–1993, when he served as president of the Asian American Bar Association and I occupied a similar position as president of the City Bar Association of New York, we enjoyed a special collaboration which exposed me to his in-depth knowledge of his association's membership, enabling lawyers of Asian-American background to be introduced to City Bar committees and programs eagerly seeking their participation, among which was the City Bar's all important Judiciary Committee. His talent in advancing others was priceless, as was the esteem in which he was held by his community, as I discovered when I attended functions of the Asian-American Bar. I felt how lucky Fordham Law School was to have him as one of its graduates. A few more words about his service of Fordham Law School deserve mention in a tribute appearing in the *Fordham Law Review*.

22. Memorandum from Rachel Vorspan, Professor of Law and Director of Legal Writing, Fordham Univ. Sch. of Law, to John D. Feerick, Norris Professor of Law, Fordham Univ. Sch. of Law (Jan. 6, 2011) (on file with author).

23. *Id.*

24. *Id.*

25. *Id.*

Throughout the 1990s, as Fordham Law School became more and more diverse, Judge Chin and a few other graduates (including Archibald Murray, the State Bar's first African-American president, and New York State Supreme Court Justice Jaime Rios) played seminal roles in increasing Fordham Law's diversity. In the last two decades of the twentieth century, the Law School's percentage of minority students rose from four percent to over twenty percent, with the Law School placing before the close of the century as among the top tier of all ABA-approved law schools in enrolling minority students. Judge Chin played an important role in this accomplishment. He appeared on all kinds of admission programs, served on school committees and task forces and spoke at school events, all designed to address challenges it faced at the time. No one was more forthcoming with his time, or helpful to Fordham Law School, than Judge Chin. His selection by the class of 1999 as its graduation speaker spoke volumes of the very special place he had earned for himself at Fordham and throughout the American legal community.

Judge Chin's career is still in ascendancy and forever will I be grateful for having lived long enough to see a Fordham Law School graduate as the first Asian-American to serve on a federal court of appeals outside of the Ninth Circuit.

A long-time friend and colleague of Judge Chin's, Michael D. Patrick, in remarks delivered at the presentation of the New York County Lawyer's Association 2010 Edward Weinfeld Award, described Judge Chin as "A scholar. A teacher. A mentor Incredibly smart but also incredibly patient. A colleague. A friend. A jurist of unique characteristics. A leader. An inspiration. This is the person I know, and the person I love."²⁶ I want to add "a student of the law."

26. Michael D. Patrick, Remarks in Presenting NYCLA's Edward Weinfeld Award to the Honorable Denny Chin (Oct. 27, 2010), *available at* http://www.nycla.org/siteFiles/Publications/Publications1400_0.pdf.