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## THE SCALES OF JUSTICE: FORMER CLERKS WEIGH IN

SUITABLE DESIGN: JUDGE CHIN'S CLEAR VOICE\*\*

*Owen Glist\**

Writing about Judge Chin is easy. He is, of course, truly all-American, certainly all-New York. He is whip smart, yet modest. Or, at least, he's not pretentious. To clerk for him was to enter a family. Not a perfect family, but more often than not a better family than the one you came from. A co-clerk reacted with surprise when asked why she sent the judge a father's day card. "He's, um, not actually your father." But she was not alone. The judge was firm, and he was demanding, but he was kind, and he was loyal. He expected a lot, but he trusted that you could deliver. And he was always open—to us—with great warmth and a sense of fun. Some of us envied his children.

Judge Chin speaks and writes so clearly—the word limpid comes to mind, even though I have to look it up when it does—that he can be underestimated by those who forget this truth: only the truly smart, the really bright, make complicated things seem simple. That's the trick. My own expertise—like so many lawyers—is the reverse, and that's the easy thing. And this is part of what makes him a great speaker, writer, teacher, and trial judge.

The Judge had a parlor game in chambers. One rule: reduce each case to one complete, grammatically correct sentence. Gifted with vision and lucidity, Judge Chin would make this look easy while we struggled to speak our run-on drafts in a single long-winded breath. Almost every clerk experienced this gift in a painful way, when, at one point or another, the Judge would add a single sentence to a particularly good draft of a notable opinion, and, invariably, it would be that sentence—and none of the carefully researched, finely wrought clerk-drafted text—that would be picked up by the newspapers the next day. In this way, a meticulous

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\*\* "Work from a suitable design" is the Strunk & White imperative Judge Chin recommended to hundreds of first-year legal writing students at Fordham over the years. See WILLIAM STRUNK, JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 15, 70 (4th ed. 2000).

\* Owen Glist was a member of the *Fordham Law Review* from 1999–2000 and a Senior Articles Editor from 2000–2001. He practices commercial and antitrust litigation at Constantine Cannon LLP and teaches legal writing at Fordham. He clerked for Judge Chin during the golden years of 2002–2003, when the Judge ran every single day and was thus able to eat local delicacies (i.e., crispy squid, pork buns) with impunity.

10,000-word opinion<sup>1</sup> is reduced to the following, drawn from the penultimate sentence tacked on to the decision: “A foreign government that is alleged to be the recipient of bribes from an American corporation cannot be permitted to bring a grand jury investigation to a halt . . . .”<sup>2</sup> In much the same way, the Judge’s exquisite summary of the largest theft in history consisted of just two words: “extraordinarily evil.”<sup>3</sup>

I have no doubt that if Judge Chin were asked, he could summarize my clerkship—or his judgeships—in a single sentence, artfully composed and yet not leaving much of importance out. Like the rest of us, however, all I can do is ramble, hoping that, if I work hard at it, I can speak or write a Chin-like sentence once a week.

### JUDGE CHIN: THE MENTOR YOU ALWAYS WANTED

*Kara Spencer-Ching\**

Over the years, Judge Chin has mentored hundreds of young law students and new lawyers, including his legal writing students from Fordham University School of Law and members of the Asian American Bar Association, as well as his constant stream of interns and law clerks. This is a large group of people who are very loyal to Judge Chin. They respect him because he is brilliant, experienced, and fair; they love him because he is approachable, genuine, and funny; they want to help others because he helped them.

Many of the attributes that make Judge Chin an effective judge are the same ones that make him a natural mentor. For instance, he is a careful listener who can immediately identify key issues and practical solutions, drawing from a broad range of professional and life experiences. During my clerkship and in the years since, I have felt like I could tell Judge Chin anything and that he would hear me and assist me. During my clerkship, I could tell him that I was confused about a particularly complicated case, and he would help me work through it. Later, I could tell him that I was anxious about my legal career, and he would talk through all of my options. More recently, I could tell him about parenting concerns, and he had advice.

And if that were not enough, what makes Judge Chin really unique and special is his winning sense of humor paired with a tendency to call it like he sees it—from self-deprecating comments to silly jokes to good-natured ribbing. His humor can break the tension in a settlement conference and calm a nervous witness, just as it can put a new intern or clerk at ease, making chambers a fun place to hang out. Indeed, he has been known to

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1. See *In re Grand Jury Subpoena* dated August 9, 2000, 218 F. Supp. 2d 544, 547–64 (S.D.N.Y. 2002).

2. Mark Hamblett, *Privilege Denied Nation in Foreign Bribery Case*, N.Y. L.J., Sept. 10, 2002, at 1.

3. See, e.g., Diana B. Henriques, *Madoff, Apologizing, Is Given 150 Years*, N.Y. TIMES, June 30, 2009, at A1.

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play Stump the Judge (a sports trivia game) with law clerks,<sup>4</sup> draft mock Orders to Show Cause, pen humorous multi-colored notes, make nickel wagers over correct grammar and usage, and needle clerks for actual or perceived shortcomings.<sup>5</sup>

My year clerking for Judge Chin will always be one of my best. I could not feel more fortunate to have worked for him and to count him as one of my mentors. Because of Judge Chin's generous spirit and tireless outreach, I know that there are many other lawyers who feel exactly the same way. And I hope that we all can honor the Judge's commitment to us by mentoring others we meet along the way.

### JUDGE CHIN, THE TEACHER

*Lauren K. Handelsman\**

Those who know Judge Chin undoubtedly know of his tireless commitment to training and mentoring young attorneys. I have had the great fortune of learning from him not only in the classroom at Fordham Law School, but also as his intern, as his law clerk, and now as a practicing attorney. He is one of those rare individuals who takes the time to explain the issues and provide constructive feedback, while also leading by example.

I had only been a law student at Fordham a few weeks when Judge Chin asked for volunteers in our first-year legal writing class to participate in a mock oral argument on an issue that the class had been asked to prepare. Two of my classmates threw their hands in the air and quickly stepped to the podium. The argument got underway, with Judge Chin throwing out a series of softball questions and then more rigorously testing their preparation with some tougher questions.

About five minutes into the argument, Judge Chin interrupted one of them: "Excuse me, counselor, but are you chewing BUBBLE GUM in my courtroom?!" The student did not miss a beat. He squared his shoulders, swallowed his chewing gum with a big, loud "GULP," and then continued on with his response to Judge Chin's pending question as if nothing had happened.

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4. The Judge has a vast knowledge of sports and was difficult to stump. He was indeed stumped, however, on April 1, 1999, when he was unable to identify the only person to have played in an All-Star baseball game, the World Series, and the National Basketball League (predecessor to the National Basketball Association). Unfortunately, the author cannot now remember the answer, but bonus points to anyone who can. Judge: Do you remember or are you stumped once again?

5. In one case, an unnamed law clerk was heckled repeatedly when it came to light that the clerk had never watched *Star Wars*. (The clerk later tried unsuccessfully to regain credibility by claiming to have seen *E.T.*)

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When he finished his answer, we all held in our breath—and our laughter—and turned our heads to Judge Chin for his reaction. There was what seemed to be an endless pause. Then Judge Chin broke into a wide smile and let out a chuckle. “Nice recovery counselor. That’s the way to think on your feet. But never EVER chew gum in my courtroom again.”

This was my first encounter with a series of valuable lessons Judge Chin has reinforced countless times since that day. First, always act with the utmost respect for the court, your adversary, and your colleagues. Second, don’t let a tough question from the bench throw you off course during an oral argument. And, finally, always remember to keep your sense of humor.

### THE SENTENCING OF PATRICK REGAN

*David B. Anders\**

The first criminal trial over which Judge Chin presided was *United States v. Regan*.<sup>6</sup> Regan was a cop—part of a group of undercover officers in the 34th Precinct known as “Local Motion”—who was charged with perjury for lying in the grand jury to protect his fellow officers.<sup>7</sup> After an emotionally charged one-week trial in August 1995, the jury convicted Regan.

Regan was to appear for sentencing on March 19, 1996. Like the trial had been, the sentencing was going to be difficult for Judge Chin. On the one hand, you had a police officer who had lied under oath—and the evidence of his guilt had been overwhelming. Perjury is a significant offense under any circumstance but is even more sinister when committed by a police officer, whose mission should be the proper administration of justice, not obstruction of justice. So this was a crime that demanded significant punishment. On the other hand, the person appearing before Judge Chin for sentencing was literally a hero cop. Patrick Regan patrolled one of the most dangerous areas in New York City—at a time when crime in the city dwarfed what it is today. He had been shot previously in the line of duty and, but for this significant detour, had otherwise led an exemplary life.

To add to the difficulty of the decision, the atmosphere in the courtroom was charged. The courtroom was packed with uniformed police officers; among them was Steven McDonald, a police officer who famously had been shot while questioning suspects in Central Park and was confined to a wheelchair.<sup>8</sup>

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6. 897 F. Supp. 748 (S.D.N.Y. 1995).

7. *Officer Sentenced for Lying Under Oath*, N.Y. TIMES, Mar. 20, 1996, at B3.

8. See, e.g., Todd S. Purdum, *Paralyzed Shooting Victim Part of Proud ‘Cop’ Family*, N.Y. TIMES, July 15, 1986, at B3; Wolfgang Saxon, *Officer Wounded in Central Park*, N.Y. TIMES, July 13, 1986, at 1.

I remember Judge Chin sitting down with me an hour before the sentencing to go over his thinking. The government was asking for a sentence within the Sentencing Guidelines—eighteen to twenty-four months. The defense was seeking a downward departure based on a combination of circumstances and was asking for a sentence of probation. Applying judicial instincts possessed by only the keenest of judges, he waded through the arguments each side offered and found the right result.

When he told Regan to rise for the imposition of sentence, the entire courtroom of uniformed officers rose in unison. “The administration of justice depends upon the respect for the sanctity of the oath. No matter how good a cop you were, you were bound to tell the truth, the whole truth and nothing but the truth and you did not do that.”<sup>9</sup> Judge Chin then sentenced Regan to a year and a day in prison.<sup>10</sup>

Sometimes, judges believe they reach the right result because neither side is satisfied. With Judge Chin, as in the case of the sentencing of Patrick Regan, he knows he reached the right result because both sides are satisfied.

### JUDGE CHIN, THE RUNNER

*Betsy Tsai\**

Judge Chin—jurist, mentor, teacher . . . runner? Yes, in fact Judge Chin has a lifetime membership to the New York Road Runners Club and has completed four New York City marathons to date (2000, 2001, 2002, and 2003).

I first met Judge Chin when I arrived in chambers for my clerkship interview in early 2000. I had already run my first New York City marathon in 1996 and had, fortunately, put it on my resume. We talked about running the marathon, as the Judge was contemplating his first. We talked about one of the Judge’s recent cases, a Hague Convention case in which a victim of domestic violence had fled from her home country with her children to avoid further abuse.<sup>11</sup> Running and domestic violence—two of my greatest passions. I knew it was the beginning of a wonderful friendship.

I began clerking for Judge Chin in the fall of 2002. The work was rigorous, the cases were fascinating, and the running was phenomenal! The Judge made running a way of life, a bonding and team-building experience, and a fun-filled activity for all. Once a week, we ran together as a group—the Judge, current clerks, and former clerks. It was usually an easy,

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9. Greg B. Smith, *No-Snitch Cop Gets Year & Day*, N.Y. DAILY NEWS, Mar. 20, 1996, at 12.

10. *Id.*

\* Betsy Tsai is Co-Director of the Courtroom Advocates Project at Sanctuary for Families, representing victims of domestic violence in Family Court. She also teaches Legal Research and Writing for LL.M. students at Fordham Law School. She was a Notes & Articles Editor for the *Fordham Law Review* from 2000–2001 and clerked for Judge Chin from 2002–2003.

11. *See Blondin v. Dubois*, 78 F. Supp. 2d 283 (S.D.N.Y. 2000), *aff’d*, 238 F.3d 153 (2d Cir. 2001).

relatively short run with either Chinatown coffee/pork buns or cart coffee/muffins/buttered rolls as our reward, depending on our route that morning. Once a week, the Judge would meet me at 102nd Street and Broadway (near my apartment), and we would run the seven miles to the courthouse, philosophizing along the way about everything from cases and draft opinions to life in general. And on occasion, a group of us would get together to run road races in Central Park, sometimes involving a little “friendly” competition,<sup>12</sup> and always followed by a trip to the diner for Belgian Tropical Waffles.<sup>13</sup> Running and food came hand in hand in those days, before the Judge began touting his self-proclaimed successful diet: “Run more, eat less.”<sup>14</sup>

Running is the perfect platform for Judge Chin’s strengths, abilities, and passions—discipline, mental toughness, teaching, and mentoring. Obviously, finishing four marathons and countless other road races requires discipline and psychological strength, which the Judge has in spades. But for the Judge, running is also an opportunity to be inclusive, to invite willing participants to join us for races. And much the same way Judge Chin provides practice tips and advice to Assistant United States Attorneys after the full completion of their first tried case before him, he is only too willing to take novice runners under his wing with words of wisdom, counseling them on such weighty issues as chafing, for example.

Running and the law—the Judge is a true devotee and connoisseur of both, approaching them with pure joy, unwavering dedication, and unbridled passion.

#### THE SENTENCING OF BERNARD L. MADOFF

*Gina Castellano\* and Christopher L. McCall\*\**

One morning in March 2009, we observed oral arguments as Judge Chin sat by designation on the Second Circuit. When the morning session ended, we went back down to chambers while the Judge discussed the cases with the other members of the panel. As soon as we walked into chambers we knew something was up. The phones were ringing off the hook and Judge Chin’s generally unflappable deputy, Dave Tam, looked frazzled. We then found out why: Judge Chin had just been assigned the most highly-

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12. To this day, there is an ongoing dispute about a certain road race on the Judge’s birthday, an alleged attempt by him to sneak past us in the race, and an elbow thrown as he sprinted to the finish to ensure a birthday race victory. The facts of this situation, including who threw the controversial elbow, are still hotly contested.

13. See *Metro Diner Menu*, MENU PAGES, <http://www.menupages.com/restaurants/metro-diner/menu> (last visited Feb. 23, 2011) (“Belgian Tropical Waffle topped with strawberries, bananas, melon and whipped cream.”).

14. *Gorran v. Atkins Nutritionals, Inc.*, 464 F. Supp. 2d 315, 319 n.2 (S.D.N.Y. 2006).

\* Gina Castellano was a Notes & Articles Editor of the *Fordham Law Review* from 2007–2008 and clerked for Judge Chin from 2008–2009.

\*\* Christopher McCall was the Writing & Research Editor of the *Fordham Law Review* from 2006–2007 and clerked for Judge Chin from 2008–2009.

publicized case of the year—*United States of America v. Bernard L. Madoff*.<sup>15</sup>

We were obviously excited that we would assist the Judge on such a high-profile case, but as soon as we started answering the phones we, like Dave, became a bit frazzled. The reporters calling just had so many questions, and we were not sure what, if anything, we could tell them. As soon as the Judge returned to Chambers, however, all our concerns were allayed. When told that he had been assigned the Madoff case, Judge Chin reacted coolly and calmly: He drafted an order setting a hearing in the case, instructed us what to tell the press, and then went on with his day.

Throughout the case, Judge Chin never expressed any doubts about his ability to perform his job under the glare of the media spotlight. It was always clear to us, however, how seriously he took his responsibilities. Under the Justice for All Act of 2004, federal crime victims have the “right to be reasonably heard at any public proceeding in the district court involving . . . sentencing . . . .”<sup>16</sup> Because of the wide-ranging magnitude of Madoff’s crime, Judge Chin received hundreds of victim impact statements. The Judge read each and every one, and it was apparent that he was deeply moved by them.

Another moment stands out. The day of Mr. Madoff’s sentencing was an incredibly busy and chaotic one at the courthouse. Reporters were calling constantly, we had to deal with security issues, and many of Judge Chin’s former interns and law clerks were in chambers to witness the sentencing. We were, without a doubt, experiencing our most stressful day as law clerks. The Judge, as always, was exuding confidence, but then, just as we were waiting to enter the ceremonial courtroom—the sentencing was taking place there to accommodate the large crowds—the Judge mentioned that he was worried his hands would shake due to nervousness as he spoke. The Judge’s intelligence and confidence is always apparent, but it is his humanity and humility—that brief moment when he expresses his nervousness and acknowledges how difficult his job is—that makes him a great judge, a great mentor, and a great friend.

### JUDGE CHIN, A GAMBLING MAN

*Amanda L. Houle\**

Judge Chin loves the thrill of a bet. In Chambers, there are two common varieties. The first category involves competitions among generations of law clerks. A few years ago, for example, the Judge bet a dozen law clerks that he could do more push-ups than they could. Participants were required

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15. No. 09-CR-213 (2009).

16. 18 U.S.C. § 3771 (2006).

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to complete an increasing number of push-ups each week. The competition was fierce, and the prizes, which included fried chicken and finely aged scotch, were highly coveted. One law clerk famously braved the floor of a train bathroom for her exercises so as to complete her set before midnight and avoid disqualification.

These bets build community, and contribute to the sense of “family” that is so often used to describe the Judge Chin network. I count Judge Chin’s clerks as a group of lawyers that I respect and admire, and also as among my closest friends. I am eternally grateful to the Judge for this, despite the fact that I have yet to win a competition.

The other type of bet popular in Chambers involves five-cent wagers over, for example, whether the Yankees have ever played opening day at night, the year a certain Supreme Court case was decided, who would win American Idol, or the exact wording of a particular statute. These bets typically conclude with the Judge earning a nickel and bragging rights (which he never fails to exercise). The Judge has a shelf next to his desk where he displays his winnings from over the years. He can tell you how he earned each prize.

Putting our money where our mouths were, we learned to take bold positions and stand by them, a quality that has defined Judge Chin’s career. While Judge Chin’s Megan’s Law opinions have been the subject of heated political debate, what I think they say most about the Judge is that he is fiercely independent and does not compromise his convictions merely because they might be unpopular. The Judge is fearless in this regard. Likewise, the Judge encouraged us clerks to find our voice in Chambers, and to advocate strongly our positions on topics as trivial as what qualifies as an unassisted triple play to ones as serious as whether an individual should be granted asylum.

On the flip side, these bets schooled us in the humbling practice of discovering and confronting the deficiencies in our arguments. Put simply, sometimes it’s time to cough up your nickel. Though I have never seen the Judge lose one of our petty wagers, I have seen him work his way through a case to a final conclusion at odds with his first impression. No argument at a sentencing or hearing was made in vain—the Judge would carefully evaluate and consider each theory presented, always challenging his own presumptions. I am sure this is why in the few paragraphs dedicated to lawyers’ comments about the Judge in *The Almanac of the Federal Judiciary*, the word “fair” is used seventeen times.<sup>17</sup>

It is Judge Chin’s balancing of these two virtues—his boldness tempered with his humility—that I admire most about him. It is what made him a successful lawyer, an honored District Court Judge, and now a respected member of the Second Circuit. Quite a gain for the cost of a few nickels.

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17. 2 ALMANAC OF THE FEDERAL JUDICIARY 14 (Aspen Publishers 2010).

## TRADITION IN CHAMBERS

*Ellen L. Frye\**

Judge Chin believes in tradition. He also loves good food and his clerks, and as a clerk for Judge Chin you come to learn about and experience the many traditions that have grown up through the years in his Chambers: going out for lunch to Joe's Shanghai or Peking Duck House in Chinatown, running in the mornings with the Judge, and the annual holiday party he hosts for his current and former clerks in Chambers. At the end of each clerk class's year, Judge Chin takes that group of clerks and his permanent deputy clerk out for dinner, which usually takes place at Peter Luger steak house in Brooklyn (even when vegetarians are involved). Keeping with tradition, each year the Judge asks each clerk to reflect on the year that has passed and to divulge his or her clerkship "high" and "low."

A clerk's low moment is often a very difficult case or a party that was challenging to deal with. The high moment is often the most well-publicized case a clerk worked on, or one featuring truly outstanding lawyering (and often these go hand in hand). During my clerkship year, 2006–2007, when he was on the District Court, Judge Chin had several high-profile cases that also involved fascinating witnesses, high-caliber lawyering, and a fair amount of media coverage. The cases included *United States v. Finnerty*,<sup>18</sup> where a New York Stock Exchange specialist was found guilty but which verdict Judge Chin subsequently overturned (a ruling that was upheld on appeal);<sup>19</sup> the Cartoon Network–Cablevision two-day permanent injunction hearing;<sup>20</sup> and *United States v. Chalmers*,<sup>21</sup> a trial resulting from the complex U.N. Oil-for-Food corruption investigation and which ultimately ended in a guilty plea.

But none of these noteworthy cases were my cases. Judge Chin split up his District Court docket of cases among his three clerks based on each case's assigned docket number. In 2006–2007, cases with my assigned docket numbers, 4, 5, and 6, were not highly publicized. In fact I didn't have any "newsworthy" cases, so unlike my co-clerks, I never had one of my cases even noted in the New York Law Journal, let alone on the front page. (Another tradition: when a clerk's case appears on the front page of the Law Journal, the other clerks buy him or her lunch that day.)

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18. 474 F. Supp. 2d 530 (S.D.N.Y. 2007), *aff'd*, 533 F.3d 143 (2d Cir. 2008).

19. *See United States v. Finnerty*, 533 F.3d 143 (2d Cir. 2008).

20. *See Twentieth Century Fox Film Corp. v. Cablevision Sys. Corp.*, 478 F. Supp. 2d 607 (S.D.N.Y. 2007), *rev'd in part, vacated in part by Cartoon Network LP v. CSC Holdings, Inc.*, 536 F.3d 121 (2d Cir. 2008).

21. *See Judgment as to Oscar S. Wyatt, Jr., United States v. Vincent*, No. 05-CR-0059 (DC) (S.D.N.Y. Nov. 28, 2007) (No. 332) (reflecting Wyatt's guilty plea as part of the corruption investigation).

Still, the case that I recall as a “high” of my clerkship was significant to me and, of course, to the parties. The case was about admiralty attachment, a subject area considered “sexy” by few lawyers. When I gave my completed draft memorandum decision to the Judge, he concluded that the decision should go the other way. But instead of simply asking me to rewrite the decision his way, together we took down the relevant case reporters from the shelves in Chambers and sat in the clerk’s office, reviewing all the precedents and discussing the implications of each one for the case now before him. Ultimately, I felt as though we had reached the right decision together and that I had learned a great deal, all through the lens of an admiralty attachment dispute. This was a high point of my clerkship because it exemplified Judge Chin’s attitude, both to law and to life. He respects the opinions of his colleagues and his clerks (even when he disagrees), and he takes every opportunity to both teach and learn from those around him, doing so with the utmost care and respect.

But if I could go back to that dinner at Peter Luger, I would reframe my clerkship high point. In hindsight the “high point” lasted the entire year: it was the opportunity to learn from and experience the care and commitment that can be part of the practice of law. Judge Chin exemplifies these values, not only in the approach he takes to the cases that come before him, but in the care and commitment with which he establishes relationships with each of his clerks. Through his long-standing traditions, all clerks gain a sense that they are part of something that is larger and more meaningful than their one year clerking for Judge Chin and that they will always have their Chambers traditions and family to come back to.