

The Legal Defense of Chinese Immigrants in Federal Courts—A Simulation Activity

For use in conjunction with “Chew Heong v. United States: Chinese Exclusion and the Federal Courts,” by Lucy Salyer, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

Through simulation of proceedings in the *Chew Heong* case, students will understand the role of the federal courts in protecting the rights of Chinese immigrant laborers. Students will also learn how the Chinese immigrant community used litigation in the federal courts to protect the interests of Chinese laborers.

Essential Questions

- What rights do noncitizens have in a federal court? What specific laws allowed the returning Chinese to enter federal court and challenge their detention?
- What arguments were most successful in establishing the rights of Chinese returning to the United States?

Legal Issues Raised by the *Chew Heong* Case

The habeas petition of Chew Heong and the petitions of numerous other Chinese forced the federal courts to address the conflicts between the protections offered Chinese immigrants in U.S. treaties with China and restrictions imposed by the Chinese Exclusion Acts passed by the Congress in 1882, 1884, and 1888. Federal judges responded with very different interpretations of the legislation.

Estimated Time Frame

Three to four 50-minute class periods.

Recommended Prep Work

Read and discuss the short narrative introduction to the *Chew Heong* case (pp. 1–8) in “*Chew Heong v. United States: Chinese Exclusion and the Federal Courts*,” by Lucy Salyer. All page citations refer to the PDF version of the unit, available at <http://www.fjc.gov/history/home.nsf>.

Make sure students understand the basic chronology of the case. A chronology of Chew Heong’s journey through the judicial process is on pages 11 and 12 of the unit. Other important dates include:

- Signing of Angell Treaty on November 17, 1880

- Departure of Chew Heong from San Francisco to Hawaii on June 18, 1881
- Passage of Chinese Exclusion Act in 1882
- Passage of amendment to the Chinese Exclusion Act in 1884 (described as the Chinese Exclusion Act of 1884)
- Chew Heong's return to San Francisco on September 22, 1884

Discuss with students the Supremacy Clause in Article VI, Section 2, of the Constitution. The Supremacy Clause says the Constitution, laws made pursuant to it, and treaties made under the authority of the United States are the supreme law of the land. In the *Chew Heong* case, both a federal law and a treaty are at issue. If there appears to be a conflict between a law and a treaty, how could a court decide what takes precedence?

Divide the students into three groups. All three groups will have to know about the Angell Treaty of 1880, the Chinese Exclusion Act of 1882, and the Chinese Exclusion Act of 1884. If you wish, you can discuss these documents as a class or have each group study them independently.

Description of the Activity

Activity Overview

Students will write scripts for and reenact three key episodes in the story of *Chew Heong v. United States*.

- *Scene I: Detention of Chew Heong Aboard the Mariposa*
In this episode, students will reenact the experiences of Chinese laborers returning to the United States without the return certificates required by the 1882 and 1884 Exclusion Acts. Students will also describe the efforts of Chinese immigrant associations to initiate legal challenges to the Exclusion Acts through petitions of habeas corpus to the federal courts.
- *Scene II: In re Cheen Hong, U.S. Circuit Court for the District of California*
In this episode, students will reenact arguments made for and against the rights of returning Chinese laborers to re-enter the United States without the return certificates required by the 1882 and 1884 Exclusion Acts. (*Note*: “Cheen Hong” is a variant spelling of “Chew Heong.”)
- *Scene III: Chew Heong v. United States, U.S. Supreme Court*
In this episode, students will reenact oral arguments before the United States Supreme Court in an appeal of the circuit court's decision to deny Chew Heong's right to reenter the United States. Students will also present highlights of the Court's majority and dissenting opinions in the case.

Preparing for the Simulation

1. Divide the class into teams for the simulation. There are three episodes that students will reenact in this simulation, with a total of thirteen character assignments. Group One will need four students, Group Two will need five, and Group Three will need four. Give each group copies of their group worksheet (one copy for each student) and assign each student a character. (*Note:* See “Alternative Modalities and Enhancement Activities,” below, for ideas on working with different class sizes.)
2. The first class period should be used for student research of their characters. Each student should be able to articulate what role his or her character plays in the *Chew Heong* case, whether the character favors or is opposed to Chew Heong’s right to reenter the United States, and facts or opinions about the character that the student believes should be included in the reenactment. Each student should submit a one-page summary of his or her character that draws, as appropriate, from biographical information and relevant primary source documents.
3. The second class period (and the third, if necessary) should be dedicated to group work on scripts for the reenactment. The teacher should draw attention to the essential questions listed on each group’s worksheet. Answers to these questions should be worked into the group’s script. Each group’s reenactment should take no more than ten minutes. Groups should submit their scripts for teacher review prior to the reenactment.
4. The final class period should be dedicated to the reenactment.

Assessment

This activity offers several opportunities for formal and informal assessment, including:

- Students’ individual written summaries of the characters they have been assigned for the simulation.
- Group written scripts for the reenactment.
- Students’ performances in the reenactment.

An additional assessment activity, especially for students who are not actively participating in the simulation, would be a short op-ed piece (1–2 pages) for or against the right of Chew Heong to enter the United States, written from the perspective of a nineteenth-century observer of the trial.

Alternative Modalities and Enrichment Activities

Like most simulations, this activity can be easily adapted to different class sizes and circumstances. Here are a few suggestions:

- For larger classrooms, have students prepare two simulations. Discuss similarities and differences between the two simulations.
- Add additional characters. Possible roles would include reporters for a local San Francisco newspaper, assistant attorneys (see profiles of additional attorneys in the unit biographies), and consulting circuit court judges Ogden Hoffman and George Sabin (see unit biographies).
- Add additional scenes. Students might, for example, reenact a debate in Congress over the 1884 Chinese Exclusion Act or the 1888 Chinese Exclusion Act.

Enrichment activities for this simulation might include:

- *Research in related cases.* Pages 15–19 of the unit provide summaries of related Chinese civil rights cases and additional Chinese exclusion law cases. Ask students to research one or more of these cases and compare the facts and outcome of the cases to *Chew Heong*. What was the source of the rights asserted by Chinese immigrants in the selected case? Did the federal judiciary act to protect or restrict these rights? What are similarities and differences between the selected case and *Chew Heong*?
- *Tracing the legacy of Chew Heong.* In his dissenting opinion in *Chew Heong v. United States*, Justice Field predicted that Congress would soon speak to the question of Chinese exclusion “in terms which will admit of no doubt of their meaning.” Ask students to trace the history of Chinese exclusion beyond 1884, using the materials in the unit. How was the issue of Chinese exclusion ultimately resolved?

Alternative Content Areas

This lesson is appropriate for U.S. History, World History, and English Language Arts classrooms.

Involving a Judge

Simulation activities provide numerous opportunities for working with a judge. Possibilities include:

- Inviting a judge to join students playing judicial roles in the simulation. Both the trial scenes in this simulation (the circuit court and the Supreme Court) involved panels of judges. You might ask the judge to lead a “deliberation” with the student judges before the students announce their decisions.
- Inviting a judge to work with students on the legal and jurisdictional issues involved in the case while they are preparing their reenactment scripts.

- Inviting a judge to speak to the class following their reenactment on the actions and decisions of the judges in the *Chew Heong* case.

Standards Addressed

Standards in Historical Thinking, Standards 1–5

U.S. History Standards (Grades 5–12)

Era 6—The Development of the Industrial United States (1870–1900)

Standard 2: Massive immigration after 1870 and how new social patterns, conflicts, and ideas of national unity developed amid growing cultural diversity.

World History Standards (Grades 5–12)

Era 7—An Age of Revolution, 1750–1914

Standard 3D: The student understands how China’s Qing dynasty responded to economic and political crises in the late 18th and the 19th centuries.

Standard 6A: The student understands major global trends from 1750 to 1914.

Worksheet for Group One

Scene I: Detention of Chew Heong Aboard the *Mariposa*

Assignment

Your group will begin the simulation by reenacting Chew Heong's arrival in the United States, the refusal of the Collector of the Ports in San Francisco to let Chew Heong enter the United States, and Chew Heong's petition for habeas corpus relief in the federal court. Each of you will be assigned a character and will be responsible for understanding that character's role in the story. Together, you will develop a script for a reenactment (lasting no more than ten minutes) of this episode in Chew Heong's story.

(Note: Page numbers refer to the PDF version of "*Chew Heong v. United States: Chinese Exclusion and the Federal Courts*," by Lucy Salyer, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Documents

- The Angell Treaty of 1880 (pp. 38–39)
- Chinese Exclusion Act of 1882 (pp. 39–40)
- Chinese Exclusion Act of 1884 (pp. 40–42)
- Laborer's return certificate (pp. 44–45)
- Habeas corpus petition of Chew Heong (pp. 43–44)

Essential Questions

As you develop the script for your reenactment, be sure that it answers the following questions:

- Why didn't Chew Heong have a return certificate when he tried to reenter the United States?
- Why wouldn't Collector Sears let Chew Heong enter the United States without a return certificate?
- Why did Chew Heong ask for habeas corpus relief from the federal court? What would be the result if the court granted him relief?
- Why was Captain Hayward named as the person who was illegally detaining Chew Heong on the petition for habeas corpus? Would Captain Hayward want Chew Heong to be able to enter the United States?
- What was the role of the Chinese Six Companies in helping Chinese immigrants who were denied permission to reenter the United States?

Characters

- Chew Heong (pp. 28–30)
- Captain Hayward, Master of the Steamship *Mariposa*. There is no biography of Captain Hayward in the materials, but the biography of Harvey Brown, the lawyer who represented the owner of the *Mariposa*, gives information on the likely position of Captain Hayward and the *Mariposa*'s owners on Chinese exclusion (p. 33). The chronology entries for September 25 and September 26, 1884, on page 11 of the unit, also give information on Captain Hayward's role.
- William H. Sears, collector of the port (pp. 31–32)
- Chew Young, representative of the Chinese Six Companies. There is no biography of Chew Young in the unit, but his name appears on the petition for habeas corpus that is filed with the U.S. Circuit Court on behalf of Chew Heong. For purposes of this exercise, you should pretend (as is likely) that Chew Young was a member of the Chinese Six Companies (described on pages 30–31 of the unit), and that he was assigned to assist Chew Heong on his case.

Worksheet for Group Two

Scene II: *In re Cheen Hong*, U.S. Circuit Court for the District of California

Assignment

Your group will reenact the hearing on Chew Heong’s petition for habeas corpus relief in the U.S. Circuit Court for the District of California. At issue is whether Chew Heong has a right to leave the *Mariposa* and enter the United States under the Angell Treaty without the return certificate required by the Chinese Exclusion Act of 1884. Each of you will be assigned a character and will be responsible for understanding that character’s role in the story. Together, you will develop a script for a reenactment (lasting no more than ten minutes) of this episode in Chew Heong’s story.

(Note: Page numbers refer to the PDF version of “*Chew Heong v. United States: Chinese Exclusion and the Federal Courts*,” by Lucy Salyer, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Documents

- The Angell Treaty of 1880 (pp. 38–39)
- Chinese Exclusion Act of 1882 (pp. 39–40)
- Chinese Exclusion Act of 1884 (pp. 40–42)
- Opinion of Justice Stephen J. Field in the U.S. Circuit Court for the District of California (pp. 48–49)
- Dissenting opinion of Judge Lorenzo Sawyer, *In re Cheen Hong* (pp. 50–51)

Essential Questions

As you develop the script for your reenactment, be sure that it answers the following questions:

- How did the Exclusion Act of 1884 amend the Exclusion Act of 1882? What is the conflict between the 1884 Exclusion Act and the Angell Treaty of 1880?
- Why would the attorneys for Chew Heong (Riordan and Brown) ask the court to favor the language of the Angell Treaty?
- Why would the attorney for the government (Hillborn) ask the court to favor the language of the 1884 Chinese Exclusion Act?
- Why does an attorney for the Oriental and Occidental Steamship Company (owner of the *Mariposa*) argue on behalf of Chew Heong?

- How do Justice Field and Judge Sawyer disagree over the language of the 1884 Chinese Exclusion Act?
- Why does Justice Field's opinion take priority over the opinion of Judge Sawyer and the two consulting judges?

Characters

- Thomas D. Riordan, attorney for the Chinese Six Companies and Chew Heong (p. 35)
- Harvey Brown, attorney for the Oriental and Occidental Steamship Company and Chew Heong (p. 33)
- Samuel Greeley Hillborn, U.S. attorney for the Northern District of California (pp. 34–35)
- Justice Stephen J. Field, presiding judge (pp. 22–24)
- Judge Lorenzo Sawyer, circuit judge (pp. 27–28)

Worksheet for Group Three

Scene III: *Chew Heong v. United States*, U.S. Supreme Court

Assignment

You will conclude the simulation by reenacting oral arguments before the U.S. Supreme Court and the majority and dissenting decisions of the Court in *Chew Heong v. United States*. Each of you will be assigned a character and will be responsible for understanding that character's role in the story. Together, you will develop a script for a reenactment (lasting no more than ten minutes) of this episode in Chew Heong's story.

(Note: Page numbers refer to the PDF version of "*Chew Heong v. United States: Chinese Exclusion and the Federal Courts*," by Lucy Salyer, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Documents

- The Angell Treaty of 1880 (pp. 38–39)
- Chinese Exclusion Act of 1882 (pp. 39–40)
- Chinese Exclusion Act of 1884 (pp. 40–42)
- Opinion of Justice John Marshall Harlan (pp. 51–53)
- Dissenting Opinion of Justice Stephen J. Field (pp. 53–55)

Essential Questions

As you develop the script for your reenactment, be sure that it answers the following questions:

- How did Chew Heong's case get to the Supreme Court?
- As the lawyer for Chew Heong (Riordan), how would you explain to the Court why Chew Heong did not have a return certificate? Why should he nonetheless be entitled to reenter the United States, given the 1884 Chinese Exclusion Act's language requiring a certificate?
- As the lawyer for the United States (Maury), how would you argue that the language of the 1884 Chinese Exclusion Act should be favored over the language of the 1880 Angell Treaty?
- What, for Justice Harlan, gave Chew Heong the right to reenter the United States? Why didn't the 1884 Chinese Exclusion Act affect that right?
- Why does Justice Field disagree with Justice Harlan's opinion? What does Justice Field see as the likely consequences of the Court's decision in the *Chew Heong* case?

Characters

- Thomas Riordan (p. 35), attorney for Chew Heong
- William A. Maury (p. 35), assistant attorney general for United States
- Justice John Marshall Harlan (pp. 24–25), author of majority opinion
- Justice Stephen J. Field (pp. 22–24), author of dissenting opinion

Glossary of Key Terms

certificate of division of opinion—A certification from the circuit court that the judges had disagreed in their opinions on a case. Based on this certificate, the U.S. Supreme Court gained jurisdiction to hear an appeal of the decision.

circuit courts—One of two types of trial courts in the federal system at the time of Chew Heong’s case. In 1884, circuit courts were staffed by appointed federal judges and by a Supreme Court justice assigned to the circuit.

habeas corpus—A Latin term which means, “you have the body.” An individual who is being detained or otherwise held in custody can seek a writ of habeas corpus to challenge whether the detention is legal.

return certificate—The Chinese Exclusion Acts of 1882 and 1884 provided that Chinese laborers who were in the United States on November 17, 1880 (the day the Angell Treaty between the U.S. and China was signed), could, upon leaving the United States, obtain a certificate that establish their right to re-enter the United States. The 1884 Chinese Exclusion Act provided that a return certificate was the only evidence permissible to prove the right to re-enter.

Supremacy Clause—Article VI, Section 2 of the Constitution provides: “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.”