Chew Heong v. United States—Suggestions for Judges

Judges can make an important contribution to students' understanding of the cases included in the Federal Judicial Center's Teaching Judicial History project. When meeting with students who are studying the cases, judges may wish to draw on these suggested discussion topics.

Overview

Chew Heong, a Chinese immigrant, challenged the enforcement of the Exclusion Acts of 1882 and 1884, which prohibited the entry into the United States of all Chinese laborers except those who had been resident before 1882. Chew Heong returned to San Francisco in 1884 after an absence of several years and was denied entry because he did not have the certificate of residence required by the acts. The federal courts had initially accepted other evidence of prior residence for those Chinese who had left the United States before passage of the first act, but the Act of 1884 stated that the certificates were the only acceptable evidence. Supreme Court Justice Stephen J. Field, presiding in the circuit court in California, denied Chew Heong's entry, but the other circuit judge, Lorenzo Sawyer, held that the Angell Treaty of 1880 protected all Chinese immigrants resident in the United States before passage of the Exclusion Acts. The Supreme Court reversed Field's decision in the circuit court and declared that Chew Heong had a right under the treaty to reenter the country.

The vast number of habeas corpus petitions filed by Chinese immigrants like Chew Heong overwhelmed the federal courts in California and led to popular demands for more effective enforcement of Chinese exclusion. In 1888, Congress effectively blocked the immigration of all Chinese laborers, but not before the Chinese community in San Francisco had developed legal strategies that would offer immigrants and their families limited protection during the long years of immigration restriction.

Understanding the court procedures and legal questions

In studying historic cases, students find it helpful to understand the differences between historical and current procedures in the federal courts. They also want to learn how the current courts handle similar cases. The questions below highlight features of the *Chew Heong* court proceedings that can frame conversations between judges and students.

1. The lawyers defending Chew Heong and other Chinese returning to California relied on a writ of habeas corpus to prove their clients' right to reenter the United States. Why? What other legal strategies were available to immigrants?

2. The 1880 Angell Treaty guaranteed that Chinese laborers then resident in the United States would be free to travel to and from the United States, regardless of any future restrictions on Chinese immigration, but the Chinese Exclusion Act of 1884 stipulated that the certificates of residency issued beginning in 1882 would be the only acceptable evidence for returning Chinese. Chew Heong left California after the signing of the treaty in 1880 but before the certificates were first issued in 1882, and his lawyers argued that he had a right to return under the terms of the treaty even though he had no certificate.

   How did the judges in the *Chew Heong* case reconcile the differences between the Angell Treaty and the Exclusion Acts? How do the present-day federal courts balance the authority of treaties and laws?

3. In the circuit court and the Supreme Court, Justice Stephen Field based his decisions on his understanding of the intent of Congress in the Exclusion Act of 1884. What authority does legislative intent have in a federal court?

4. The federal judges in California recognized that the majority of the California population supported strict controls on Chinese immigration and that the courts' protection of immigrants' rights angered many people. What effect did popular pressure have on the *Chew Heong* proceedings? How do courts maintain their independence and their adherence to the law in the face of popular political opposition?

5. Judge Lorenzo Sawyer privately expressed serious misgivings about Chinese immigration to California, but his court decisions supported the Chinese access to the federal courts and protection of their rights as established by treaties signed by China and the United States. How did Sawyer explain his decisions in favor of the Chinese?

Focus on Documents

These excerpted documents can be the basis of a classroom discussion with students who have read about the *Chew Heong* case and reviewed these selections in advance of a judge's visit.

1. *In re Cheen Hong*, two opinions

In their circuit court opinions, Justice Field and Judge Sawyer found very different meanings in the text of the Exclusion Act of 1884. Which opinion is more persuasive? What rules can judges follow if the words of a congressional act are unclear or ambiguous?

> Opinion of Justice Stephen Field, U.S. Circuit Court for California
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> The provisions of the amendatory act of 1884 seem to me to remove any doubt as to the necessity of the certificate, if any existed under the act of 1882, for the admission of any Chinese laborers, who may have left the country before the passage of the original act. Under the construction adopted in this circuit, parol evidence had been allowed in a multitude of cases where previous residence was alleged; and the district and circuit courts were blocked up by them, to the great delay of their general business and the inconvenience of suitors. This circumstance, and the suspicious character, in many instances, of the testimony produced, from the loose notions entertained by the witnesses as to the obligation of an oath, created a general expression of a desire for further legislation placing some restriction upon the evidence which should be received. This desire led to the passage of the amendatory act; and by that it is declared that the certificate which the laborer must obtain "shall be the *only evidence permissible* to establish his right of re-entry" into the United States. This declaration applies to the certificate issued under either act. By it the door is effectually closed to all parol evidence. Nothing can take the place of the certificate or dispense with it. . . .
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> Dissenting opinion of Judge Lorenzo Sawyer, U.S. Circuit Court for California
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> If it had been the intention to violate the specific terms of the treaty which secured the right to those Chinese laborers who were in the United States at the date of the treaty "to go and come of their own free will and accord," by excluding from returning all those who departed for temporary purposes upon the faith of the treaty prior to the passage of the act of 1882, congress would certainly have acted in a manly way, and expressed that intention boldly, openly, and by plain and direct language which could not be misunderstood . . . .

2. *Chew Heong v. United States*, two opinions

Justice John Marshall Harlan's opinion for the Supreme Court was based in part on the principle that a law could not require evidence that was impossible to produce, while Field's dissent emphasized the practical impact of the Court's decision. What legal obligations does Harlan believe the federal courts have toward

the Chinese immigrants? What does Field believe is the problem presented by the Chinese petitions for habeas corpus? To what extent do judges consider the policy effects of their decisions?

> Majority opinion of Justice John Marshall Harlan, U.S. Supreme Court
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> The supposition should not be indulged that Congress, while professing to faithfully execute treaty stipulations, and recognizing the fact that they secured to a certain class the "right to go from and come to the United States," intended to make its protection depend upon the performance of conditions which it was physically impossible to perform . . . . What injustice could be more marked than, by legislative enactment, to recognize the existence of a right, by treaty, to come within the limits of the United States and, at the same time, to prescribe, as the only evidence permissible to establish it, the possession of a collector's certificate, that could not possibly have been obtained by the person to whom the right belongs? . . .
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> Dissenting opinion of Justice Stephen Field, U.S. Supreme Court
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> But for this decision, nothing could take the place of the certificate or dispense with it; and I see only trouble resulting from the opposite conclusion. All the bitterness which has heretofore existed on the Pacific Coast on the subject of the immigration of Chinese laborers will be renewed and intensified, and our courts there will be crowded with applicants to land, who never before saw our shores, and yet will produce a multitude of witnesses to establish their former residence, whose testimony cannot be refuted and yet cannot be rejected. I can only express the hope, in view of the difficulty, if not impossibility, of enforcing the exclusion of Chinese laborers intended by the Act, if parol testimony from them is receivable, that Congress will, at an early day, speak on the subject in terms which will admit of no doubt as to their meaning.

3. Judge Ogden Hoffman to Rep. Charles N. Felton, January 16, 1888

In this excerpt from a letter to a member of Congress, Judge Ogden Hoffman describes the crisis of the California federal courts. What power does Congress have to assist the federal judges? What does he think will be the impact of more petitions from Chinese immigrants? How do courts balance the obligation to hear cases with the need to provide regular and efficient administration of justice?

> It is of paramount and indispensable importance that something should be done to relieve the courts of the intolerable nuisance and obstruction to their regular business caused by the Chinese cases. If they continue in the future as numerous as in the past, it is not too much to say

that the constant service of one judge will be necessary to dispose of them. . . .

The prospect fills me with dismay and almost with despair. It appears to me if you even think you can succeed in inducing Congress to abrogate the treaty, it can only be done after preliminary negotiations with China, or at least after some notice to that Government of our intention to no longer be bound by our solemn treaty stipulations, and I need not remind you that Chinese negotiations once entered upon will postpone all prospects of relief for an almost indefinite period.

Judge Sawyer and myself have both pointed out some simple measures which I presume could be readily got through Congress, and which will effect the object we are so anxious to attain.

The first is to pass a law providing that after a reasonable notice, say of two or three months' notice, the right to enter the country on ground of previous residence shall no longer be recognized. This simple act would at once dispose of perhaps three-quarters or more of the cases presented to us. I think there can be no objection to such a law on the ground of breach of public faith. . . .

If you could have attended court and listened to the hearing of any of these cases, you would have recognized how completely the court is at the mercy of Chinese testimony and how impossible it is to distinguish a genuine case from a fraudulent one. . . .