

22 Lewd Chinese Women: Chy Lung v. Freeman**I. Introduction**

NARRATOR 1: On August 24, 1874, after a 30-day voyage from Hong Kong, the steamship *Japan* arrived in the port of San Francisco. On board were some 600 Chinese passengers, including 89 women, 22 of them traveling alone. Within hours, the fate of those 22 Chinese women would be bound up with principles of federalism and civil and human rights, principles that still resonate today.

NARRATOR 2: The commissioner of immigration of the State of California, Rudolph Piotrowski, arrived with his agents and an interpreter. He examined the 89 women, decided that 22 were prostitutes, and, pursuant to a recently-enacted California statute, ordered Captain John Freeman to detain the 22 women on board until the ship's owner arranged a \$500 bond for each. If the bonds were not posted, the captain was to return the women to China when the ship sailed.

By the next morning, the ship's owner had refused to pay the bonds, but a Chinese man named Ah Lung, described by some as a local merchant and by others as a trafficker in Chinese prostitutes, hired a lawyer to file a petition for a writ of habeas corpus on behalf of the women. The sheriff took the 22 women away.

[Piotrowski, Freeman, Ship Owner, and Ah Fung take center stage]

NARRATOR 1: The competing interests of these players would be drawn out through legal proceedings that included a trial and appeals all the way to the United States Supreme Court. First, Commissioner Piotrowski, six-and-a-half feet tall and nick-named "Big Ralph," an immigrant from Poland himself:

PIOTROWSKI: They were not proper women to be landed, and so I gave orders not to land them. Their answers to my questions were perfectly not satisfactory.

NARRATOR 2: Second, John Freeman, Captain of the steamship Japan:

CAPTAIN FREEMAN: Their conduct and deportment on board was just as good as any other passenger. The women were not permitted to leave Hong Kong without being approved by the consul and the harbormaster.

NARRATOR 1: Next, the ship owner, who was not willing to post the \$500 bonds:

SHIP OWNER: There was no evidence to show that the women were lewd or abandoned. There was no evidence whatsoever that these women came here for immoral purposes, and they should be discharged. The Commissioner has interfered in a case in which he has no authority.

NARRATOR 2: Finally, the 22 women, who were dubbed by the newspapers "the Chinese Maidens," "the Celestial Maidens," and "the Chinese Courtesans." Here is one of them, Ah Fung:

AH FUNG: Why should you ask me so many questions! My husband didn't dare to ask me so many questions. In China it was hard to find work. I came here hoping to find something better.

[all four exit]

NARRATOR 1: Legal proceedings commenced immediately. Within two years, *Chy Lung v. Freeman* would become the first case decided by this country's highest court involving a Chinese litigant. In our reenactment today, we will use transcripts of the hearings, other court documents, newspaper articles, and historic photographs to tell the story of the 22 Lewd Chinese Women.

II. Historical Background

NARRATOR 2: The California statute that Piotrowski invoked was the most recent in a series of measures enacted by state legislators to restrict Chinese immigration into California. In

1852, more than 20,000 Chinese arrived in San Francisco. Some came to escape the Taiping Rebellion, some dreamed of making a fortune in the Gold Rush, others came to work on the First Transcontinental Railroad.

NARRATOR 1: At the time regulation of immigration was left largely to the states, and California's legislators began pushing back against the influx of Chinese. In April 1852, the governor of California, John Bigler, delivered a message to the state legislature urging control of Chinese immigration.

GOVERNOR BIGLER: It is my duty to present for your consideration measures to address the present wholesale importation into this county of immigrants from the Asiatic quarter of the globe. To enhance the prosperity and to preserve the tranquility of this State, measures must be adopted to check this tide of Asiatic immigration, and to prevent the exportation by them of the precious metal which they dig up from our soil without charge and without assuming any of the obligations imposed upon citizens.

NARRATOR 2: That year, the legislature passed a special foreign miner's tax as well as a law requiring ship owners to report on the character and health of all immigrants debarking in California and authorizing immigration officials to require bonds for alien passengers.¹ When San Francisco port authorities nevertheless reported the arrival of another 16,000 Chinese in 1854, the legislature took further steps, first levying a tax on vessels transporting any person ineligible to be a citizen. Then, in 1858, the legislature simply excluded persons of "the Chinese or Mongolian races" from entering the state. Both laws were declared unconstitutional by the California Supreme Court.² The Chinese were already challenging -- successfully -- discriminatory laws.

¹ McClain at 12-13.

² People v. Downer, 7 Cal. 169 (1857); Lin Sing v. Washburn, 20 Cal. 534 (1862).

NARRATOR 1: From the point of view of California legislators, a different tactic was called for. The early Chinese immigrants and the majority of all gold rush participants were male. The shortage of women created new global markets for the trafficking and exploitation of women, with prostitutes arriving from many different countries. Some established their own brothels, including Ah Toy, who became one of the most famous madams in San Francisco. She commanded high fees and, because prostitution was legal at the time, she regularly used the court system to collect unpaid bills.

Most Chinese prostitutes were not so successful, living lives of misery as slaves as a "yellow slave trade" emerged in Asia. Thousands of Chinese women and girls were kidnapped or deceived by procurers in China and some were sold by their families. They were shipped to California, where they were traded by the tongs, secret criminal societies of Chinese immigrants. By the 1850s, the prostitution industry had become sufficiently embarrassing that local officials, while still unwilling to call prostitution illegal, passed statutes designed to penalize prostitutes, brothel owners, and landlords -- but not their patrons. Although initially worded to attack prostitution generally, the laws were directed principally against the Chinese.

NARRATOR 2: In 1870, California passed a bill that prohibited Chinese passengers from disembarking until the state commissioner of immigration determined that they had come voluntarily and were of good moral character. Any ship captain who violated the statute could be imprisoned or fined. The statute was later modified to require a bond instead of a fine and to include "lewd or debauched" women among its targets. To make it less vulnerable to legal attack,³ the statute was further amended to make it applicable to prostitutes of all national origins, although in practice the principal target remained Chinese women.⁴ The state

³ Sucheng Chan at 98-99.

⁴ 105 Colum. L. Rev at 677.

commissioner could retain 20% of all monies collected. It is this statute that Commissioner Piotrowski sought to apply to the 22 Chinese women.

III. The Trial

NARRATOR 1: Ah Lung hired Leander Quint [**stand**], a prominent San Francisco attorney and former judge, to represent the women.⁵ Quint applied for a writ of habeas corpus, arguing that the women were illegally restrained of their liberty. The matter was assigned to Judge Robert Morrison [**take the bench**] of the Fourth District Court of San Francisco. Thomas Ryan, the District Attorney of San Francisco [**stand**], took the lead for the State of California. Also appearing was Morris M. Estee for the Commissioner.

NARRATOR 2: Testimony commenced on Wednesday, August 26, just two days after the ship landed. The first witness was Captain Freeman. He explained some of the background on direct, and then, on cross-examination, Quint elicited information helpful to the women.

CROSS-EXAMINATION OF FREEMAN (by Mr. Quint).

Q. Do you know the American consul at Hong-Kong?

A. I do, sir.

Q. At the time these passengers were received on board, had you obtained from him this certificate? [Showing]

A. Yes, sir.

Q. Under the authority of the American consul, you did receive those persons as passengers on board the ship.

A. Yes, sir.

Q. And brought them here to San Francisco?

A. Yes, sir.

Q. And among that list are those who are now in court?

⁵ Daily Alta, Aug. 26, 1874; but see Pepper, at 62, who writes that Quint was hired as counsel for Pacific Mail.

A. Yes, sir.

Q. And by virtue of this certificate you received them on board as passengers?

A. Yes, sir.

Q. And received the regular fare?

A. Yes, sir.

Q. What examination was made, if any, of these persons before they were permitted to board your ship?

A. In Hong Kong, the women were all obliged to go to the consul's office, and were interviewed by him and his interpreters. He satisfies himself that they are respectable women. At that time he stamps them upon their arm; from there they go to the harbor-master, and he satisfies himself on the same grounds and he stamps them, then they go buy their ticket. The day the ship leaves Hong Kong, the harbor-master and the consul come on board and inspect the women again.

Q. You observed the conduct and deportment of these women on board?

A. Yes, sir.

Q. What was it?

A. Good.

Q. You saw nothing indicating a lewd character on that voyage?

A. Nothing, sir.

NARRATOR 1: Over the course of two days, 21 additional witnesses testified. Commissioner Piotrowski was among them:

DIRECT EXAMINATION OF PIOTROWSKI (by Ryan):

Q. Did you give any instructions to the captain of the steamer Japan?

A. I gave him instructions, verbally, not to land these persons present in the court; and a few moments afterwards I delivered in writing the instruction to the director of the company.

Q. Have you ever given any permission for these people to land at any time?

A. No, sir; I stopped them from landing.

CROSS EXAMINATION OF PIOTROWSKI (by Mr. Quint):

Q. You went down when you heard this steamer was in and visited the steamer, did you?

A. Yes, sir.

Q. What was the first thing you did when you got there?

A. I had my own interpreter sworn, because I did not speak Chinese.

Q. What was the next thing you did?

A. I examined all of the women; and according to my judgment --

Q. Never mind about your judgment. I only ask you what you did.

A. I asked them questions.

Q. Then what did you do?

A. I judged that these women which I have brought here in court --

Q. No, no; tell us what you did.

A. I asked them some questions.

Q. Then what next did you do?

A. When I was not satisfied, and supposed they were not proper women to be landed, I told them to step away, and gave orders not to land them.

Q. And then?

A. Next, I notified the agent of the company that they could not be landed.

Q. How long did this examination last?

A. I believe 3 hours, or more.

Q. And upon this examination you passed your judgment in regard to the character of the women?

A. Yes, sir.

Q. How many did you permit to land?

A. Except those 22, the others were permitted to land.

Q. How many did you permit to land?

A. There were 89 in all, and 22 taken off leaves the balance.

Q. Did you ask the captain or any of the crew as to the character of the women?

A. No, sir, I did not.

REDIRECT EXAMINATION OF PIOTROWSKI (by Mr. Ryan):

Q. Be good enough to look at that paper [showing] and see if you simply asked these people their names and ages.

A. I asked plenty of other questions.

Q. State to the court what you asked them.

A. I asked them generally: where they were married; or why and by what means they came. All of them answered that they were married. I asked "Where is your husband? In California. When did he come? 3 years. How are you going to find him? We don't know. I say, What proofs have you that your husbands sent for you? They had no letter; they say their husbands will come for them. I say, If he comes for you, you can go. My duty is to stop anything that is dangerous to the welfare of the community. I did the best I could. I made a very careful examination. These people, according to my judgment -- they were perfectly improper to come into this community.

Q. Were there other women on board that you permitted to land?

A. Yes, sir.

Q. State their conduct.

A. There were women on board with their husbands and children who sent to me a special invitation to go and examine them, because they didn't wish to be examined with the others. I sent my deputy, and he went there and let them go, all of them; that gave me suspicions that these present women were not proper persons to be landed.

RECROSS EXAMINATION OF PIOTROWSKI (by Mr. Quint):

Q. That is the reason you refused to permit them to land?

A. That is one of the principal reasons.

Q. Didn't most of these women tell you they came here to meet their husbands?

A. Yes, sir; to look for their husbands.

Q. Others came here with children?

A. Those were all permitted to go.

Q. But those who didn't have children, you concluded that they were improper persons to live here?

A. Yes, sir.

Q. That was the chief reason that prevented your allowing them to land, wasn't it -- that they came here by themselves and didn't have any children? They told you they had husbands here?

A. I could not believe their statements.

NARRATOR 2: Several witnesses were American men called to provide expert testimony on customs and practices of Chinese prostitutes -- or courtesans, as they were sometimes called.

The first was a minister, Otis Gibson, who had served as a missionary in China and had established the Women's Missionary Society of the Methodist Episcopal Church on the Pacific Coast in 1871 to "elevate and save the souls of heathen women."⁶

DIRECT EXAMINATION OF GIBSON (by Mr. Ryan):

Q. Do you know whether there are any distinctive marks by which a courtesan and prostitute can be recognized?

A. I would know courtesans in China as I would know the courtesans on DuPont Street here in San Francisco. They are in the habit of wearing a kind of flowered garment -- not always, but generally. You will find silk, yellow and figured, and things of that kind, which are not worn so much by the wives; the wives wear plain colors except on gala days, when there is great dressing up for company. Courtesans are accustomed to wearing flowered gaudy kind of clothing -- clothing that is not worn by the respectable wives.

Q. What is the custom of the Chinese in China in relation to wives leaving there and going away from their husbands to different countries?

A. It is not the custom at all for the wives to go away without their husbands. Chinese gentlemen do not send their wives on any lengthy visits.

Q. Then, you say that in China women of the respectable class never travel alone?

A. No, sir, they do not. I think it would be almost never. Leaving their husbands alone, it would be a very unusual thing.

JUDGE MORRISON: Is there anything about the hair that is peculiar, the manner of dressing it?

A. Yes, sir; the manner of dressing the hair is somewhat different, though I could not well explain it. They have many modes of doing the hair in different places. The women on shore do their hair in one way and those in boats do their hair differently; and the courtesans on shore and on boats would not do their hair alike. The flowers on that girl at the end [pointing], and her whole get up indicate without a doubt; the others haven't got that on.

⁶ Yung, *Unbound Feet* at 35.

CROSS-EXAMINATION OF GIBSON (by Mr. Quint):

Q. Do you claim to be an expert with regard to the peculiar characteristics of these different classes of people?

A. I don't claim to be an expert in anything.

Q. Were you familiar with these who are prostitutes in China?

A. I have no familiarity with prostitutes in any country.

Q. The only familiarity you have with them is mere observation, which a citizen living in that place would naturally obtain?

A. Yes, sir.

Q. I understood you to state that you could tell a courtesan from a married woman?

A. No, sir; I didn't say so.

Q. I understood that to be the import of your testimony. Can you, or not?

A. I didn't say so.

Q. Can you, or can you not?

A. I said I could easily distinguish a courtesan from a respectable lady.

Q. In walking along Kearney and Montgomery Streets, suppose that you should meet half a dozen ladies, or women, could you tell which were and which were not courtesans?

A. I might and might not.

Q. Some of the most notorious courtesans walk the streets, don't they, in as modest apparel as the most virtuous wives?

A. I don't know; I have heard so.

Q. You have seen some wives in this community that have dressed gaudy?

A. I could not say that I have.

Q. You do know that some wives do dress in apparel as gaudy as the most notorious courtesans?

A. I suppose so.

NARRATOR 1: The lawyers engaged in a colloquy with Judge Morrison over the propriety of examining the women in open court.⁷ Noting the looseness of their garments, Judge Morrison ruled that:

JUDGE MORRISON: There would be no indelicacy or impropriety in gazing down their sleeves.

**[as Narrator 2 reads the next passage,
Quint peers into the sleeves of a couple of the women,
with Ryan trailing along]**

NARRATOR 2: Quint raised the sleeve of several of the women.⁸ Gibson then responded:

A. Yes, sir; that is what distinguishes them from the virtuous female -- that style. The same style you will find in all of the Chinese bawdry houses, when they stand at the door inviting company in.

NARRATOR 1: In testifying about the number of married Chinese women in the United States, Gibson referred to the practice among the Chinese of polygamy. The California immigration law did not, on its face, target polygamy, but an underlying theme throughout the hearing was that polygamy was scandalous and that Chinese women in polygamous marriages were akin to prostitutes.

Q. What proportion of the Chinese women coming to this country are married? Could you say from your own knowledge of the Chinese here?

A. I don't suppose there are in this city today perhaps 100 married women. I don't think so, and those are second wives for the most part. I don't think there are 20 first wives in this city.

Q. How many Chinese women are there in this city; do you know?

A. We call it in round numbers about 2,000.

Q. And you don't think more than one hundred of them are married.

A. I think not, unless you call it married where they have second wives. Some men take these women for a second wife, and leave them when they leave here, and somebody else takes them.

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Paul Kramer, The Case of the Twenty-Two Chinese Women (expanded version).

⁸

See SF Chronicle, Aug. 30, 1874.

NARRATOR 2: Quint called another witness to testify to his observations of the Chinese in San Francisco, Gaylos Woodruff, a policeman who was a member of the Chinatown Squad.

DIRECT EXAMINATION OF WOODRUFF (by Quint):

Q. What is your business?

A. I am a police officer, and have been for the past 8 years in San Francisco.

Q. What is the population that chiefly inhabits your beat, Chinese or American?

A. Chinese altogether.

Q. Can you state the population of Chinese married women in that district?

A. No, sir, I cannot state exactly. I find in the county clerk's office, from May, 1872, up to date, 49 marriage licenses for Chinamen -- Chinese females.

Q. How many of the Chinese people are living together as husbands and wives?

A. Number 642 Jackson Street has 8 families living in it; Number 635 has 4 families; 33 Washington alley has 6; 693 Jackson Street has 12 families.

Q. What, if anything, do you know of the generally prevailing rule of those women in that vicinity who are recognized as prostitutes? How do they dress?

A. They dress according to the occasion.

Q. How do they dress? Any distinctive features with regard to their dress, those that are married women there, living with their husbands?

A. No, sir.

Q. None whatever?

A. None whatever that I ever noticed.

Q. Is it not a fact that the dress of the women living there who are recognized as prostitutes is of the most common and ordinary kind generally?

A. Generally it is. On occasions they dress up very gaily; that is, when they go to the theatre, or to the burying-ground to feed the dead, and Joss days.

Q. That is how often?

A. Three times a year they go to feed the dead.

Q. Is there any difference or distinction between their ordinary daily apparel and the apparel which is worn by married women in that vicinity?

A. Not that I ever noticed.

CROSS-EXAMINATION OF WOODRUFF (by Ryan):

Q. How do you know they were married?

A. I didn't say they were married. I didn't state that, by any means. I say they are living there *apparently* as man and wife, and not living a life of prostitution.

Q. Are there what are usually called kept women?

A. No, sir.

Q. How do you know?

A. Well, I know a great many women, and their husbands, or those who claim to be their husbands, I know.

Q. Is it not a fact that within your experience that these women who are brought here are mostly brought for the purposes of prostitution?

A. A great number of them. I may say the great majority.

JUDGE MORRISON: Do you know what proportion of these women are lewd women -- the Chinese women coming to this country?

A. I cannot give you any idea of it.

MR. QUINT. I object.

JUDGE MORRISON: According to the best information that you have on the subject.

A. Well, I should say two-thirds.

Q (Mr. Ryan). These families that you speak of, are they composed commonly of one woman to the man, or are there two or three living in the same room?

A. As a matter of economy, two women occupy two rooms with their two husbands. Those women generally have a girl, which is the servant; and most of them, in the day-time and up to 7 o' 8 o'clock in the evening, are making overalls or flannel shirts for these little Jew stores.

JUDGE MORRISON: Do these lewd women do any work?

A. Yes, sir; the same kind of work -- most of them sew.

REDIRECT EXAMINATION OF WOODRUFF (by Quint):

Q. These people live as men and wives, and they have done so since your knowledge of them?

A. I cannot tell each particular one; as a general proposition, yes, sir.

Q. Now, how many white people are there in this town that you can swear were married, of your own knowledge?

A. I can swear that I am married.

[Ah Yek, Fang Hoy, and Chung Lee take center stage]

NARRATOR 1: Several Chinese men were called to testify as to whether the women were prostitutes or whether they could distinguish "moral" women from prostitutes based on their looks and clothing. They gave contradictory answers:

AH YEK: I have lived in California about ten years, but I have been back to China. I last came from China on the steamer *Japan* a few days ago. I saw these women on the ship. I cannot say whether they are prostitutes. I was on the steamer with them, but I didn't go with them, and did not keep their company. The women were in one portion of the steamer and the men in another. I could not tell what they were.

FANG HOY: I am in Chinese clothing business. I was here for ten years before I went back to China. There is a distinction between whore and Chinese good woman. Chinese high class we call mandarin or rich folks; they dress in silk garments. Common people dress in cotton or woolen. But the whore or prostitute, they have dresses just like rich folks. From what I see of these women [gesturing], I have no doubt they are whores. I think every one of them are prostitutes.

CHUNG LEE:⁹ I arrived on the steamer *Japan*. I lived here in California, for about two years, before I returned to China more than ten years ago. I know some of these women; some are

⁹ Identified in transcript as Chung Fing and in Daily Alta as Chung Lee.

prostitutes. One is a relative of mine. I took care of her since she was very young. She was brought here against her will to be a prostitute. Another must be a prostitute; if she were not, she would not look as she does. And she came here with prostitutes. Another, I heard her talking on the steamer. Someone asked her, what makes you dress and look so nice? She said, Of course, if we are prostitutes, we are dressed nice.

NARRATOR 2: A reporter from the Daily Alta described the scene in the courtroom when Chung Lee identified the women as prostitutes:

REPORTER: The women jumped to their feet and commenced yelling at the top of their voices. The witness said he was afraid that the women would attack him after he went out, but was reassured when a deputy sheriff promised to protect him.

[Ah Yek, Fang Hoy, and Chung Lee exit]

NARRATOR 1: Nine of the 22 women testified. Those who took the stand testified in Chinese, with the assistance of an interpreter. Rather than give a literal translation, as interpreters do today, the interpreters in 1874 gave the answers in the third person, referring to the witness in the third person. We reenact two of the examinations. With the first, Lon Ying, we follow the interpretation style of 1874, and also give the answers in Chinese, as would have occurred during the hearing before Judge Morrison. The one difference is that, in all likelihood, the witness spoke in the Toisanese dialect, while we will use Mandarin. With the second, Ah Fook, we have converted the testimony to the more modern first-person format, and we give it in English only:

DIRECT EXAMINATION OF LON YING (by Mr. Quint):

[witness answers in Chinese and interpreter gives the answers in English, as written here]

Q. What is your age?

LON YING. [in Chinese]

Interpreter. 20 years.

Q. Have you ever been in California?

A. [Chinese]

Interpreter. She says she has been here before.

Q. When did you first come to California?

A. [Chinese]

Interpreter. When she was 10 years old, she came to California first.

Q. When did you go back to China?

A. [Chinese]

Interpreter. When she was 17 years old she went back.

Q. Are you a married woman?

A. [Chinese]

Interpreter. She is not.

Q. For what purpose did you return to California?

A. [Chinese]

Interpreter. She came here to marry a husband. She is engaged to be married.

CROSS-EXAMINATION LON YING (BY Mr. Ryan):

Q. Where did you live when you were in California?

A. [Chinese]

Interpreter. In this San Francisco [gesturing], on Jackson Street.

Q. Where is Jackson Street?

A. [Chinese]

Interpreter. In San Francisco, in this place.

Q. How far from here?

A. [Chinese]

Interpreter. She said she didn't know; that she was living with her mother, and didn't go out in the street; and don't know how far it is from this court-house.

Q. Ask her where this love of hers is that she came here to marry?

A. [Chinese]

Interpreter. She says he is at a place called San Tey.

Q. Did he write to her to come here?

A. [Chinese]

Interpreter. She says her mother told her to come here to California.

Q. Did she give her any directions where she was to find him?

A. [Chinese]

Interpreter. She said that her mother was the one that found the husband for her. It was not with her own consent. In Chinese style the mother finds the husband.

Q. Where is the mother?

A. [Chinese]

Interpreter. She says her mother is on Jackson Street. First, she said Gibson Street, and then Jackson Street.

Q. Ask her if that same woman is the mother of all these people [gesturing]?

A. [Chinese]

Interpreter. Only her mother.

Q. Ask her to name any person whom she knew during the 7 years that she lived here.

A. [Chinese]

Interpreter. She said that she was not acquainted much; that she didn't go into the street while she was here.

Q. She didn't know anybody, then?

A. [Chinese]

Interpreter. She was not acquainted; she didn't go out into the street. How should she be acquainted with persons?

NARRATOR 2: We turn to Ah Fook, using the modern style of interpreting, and omitting the Chinese.

DIRECT EXAMINATION OF AH FOOK (by Mr. Quint):

Q. What is your age?

A. 20 years.

Q. When did you come to California?

A. When I was 17 years old.

Q. Are you a married woman?

A. Yes, sir. I was married a short time before I came here.

Q. Where were you married?

A. In China.

Q. Where is your husband?

A. Here, in California.

Q. Did you come to join him?

A. I came here with my sister. We had no money and were poor. I brought my sister here to find employment at needlework.

Q. Is your husband living in California now?

A. Yes, sir.

Q. You came here to join him, with your sister?

A. Yes, sir.

CROSS-EXAMINATION OF AH FOOK (by Mr. Ryan):

Q. When did you marry?

A. About 3 years ago.

Q. If you married 3 years ago, how did you come to say earlier that you married in China shortly before you came here?

A. I said before, that I married my husband a short time before I came to California.

Q. Where did you live when you were here before?

A. I lived on Jackson Street, in a little alley that runs behind the baker's establishment.

Q. What street does that alley run into from Jackson Street?

A. I know the place.

Q. What street is Jackson Street between?

A. I lived on that street, and I did not know the house or the names of the other streets

Q. Could you start from this court-house now and go to that place where you lived and show it to somebody?

A. I do not need any one to go with me. I know the way to go to the place.

Q. Who occupied the baker's shop?

A. Now you are foolish; I was here a short time, and I cannot remember who kept the baker store; if you were doing right you would not ask me so many questions; I went home with a good intention, and I brought my sister here with a good intention.

NARRATOR 1: At this point, the transcript notes that the proceedings were interrupted by the noisy demonstrations of the Chinese. A reporter from the Daily Alta California described the scene:

**[as Reporter describes the scene, first Connie and then other women
jump up and pantomime screaming and jabbering]**

REPORTER: One of the women jumped to her feet and let out a most unearthly yell!

Immediately the whole lot were jabbering and screaming at the top of their voices, and it was found impossible to quiet them until they were hustled from the Courtroom.

NARRATOR 2: The San Francisco Chronicle reported that a woman gave an "awful screech" and the rest of the women "put their handkerchiefs in their faces and bellowed at the top of their lungs." The Chinese interpreter later told the Chronicle that:

INTERPRETER: The women were expostulating against being kept in prison, saying they had not killed anybody, stolen anything, or set fire to anything.

NARRATOR 1: The Chronicle noted that the judge "stuffed his fingers in his ears and retired to his chambers, and Court was suspended fifteen minutes before order could be restored."

[Ah Fung, Di He, and Ahr Keo take front and center]

NARRATOR 2: Several of the women testified in a manner that generated skepticism. Here, for example, are, again, Ah Fung, as well as 17-year old Di He and 23-year old Ahr Keo.

AH FUNG: I have a husband. I married him three years ago, in China. I left my husband in China, and I came here to California. I came here with my older sister. Where is my husband? How much did it cost to get here? Why did I come here? Why should you ask me so many questions! My husband didn't dare to ask me so many questions. I came here because in China it was hard to find work. I came here hoping to find something better.

DI HE: I am married. My husband is living in this San Francisco. I was married to him in China, the fourth month. In the eighth month he left China, for here. I came here because in the first month of this year, a letter came and told me to come here. Where is the letter? After I read it, I knew the contents. And so I burned it.

AHR KEO: I was married in China, 3 years ago. My husband died one year after we married. My mother was here in San Francisco, sewing, engaged in needle work. She lives above the Baker's alley. She fixes Chinawomen's hair for a living. A letter came from my mother, for me to come here, to be married; she saw that I was young and had no husband. The letter? I didn't bring it here. Why should I bring it?

[Ah Fung, Di He, and Ahr Keo exit]

NARRATOR 1: Nine women testified. Their testimony was so similar the state stipulated that if the remaining women were to testify, they would swear to essentially similar facts: they

had come to California from China and were or would be married. Quint saw no need to call any of the remaining women. None of the women was asked directly whether she was a prostitute. It was left to the male witnesses to testify as to whether the women were identifiable as prostitutes.

NARRATOR 2: The California authorities envisioned only two possibilities for Chinese women: if they were not proper wives, they were prostitutes. In San Francisco in 1874, a Chinese woman was one or the other; to the authorities, there was no other possibility.

In the days following the ship's arrival, some men came forward to "claim" their supposed "wives." Some suspected these men were representatives of the tongs seeking newly-arrived prostitutes. One woman, Ah Oy, testified that she came to meet her husband, the owner of a dry goods establishment. District Attorney Ryan sarcastically stated to Quint:

MR. RYAN (looking at Quint): If you will produce that man who keeps this fancy dry-goods store, we will let her go.

NARRATOR 1: After the government rested, Quint produced a man claiming to be the husband of another woman, Ah Sin.

QUINT: I ask that Ah Sin be called in, and I propose to produce a person that claims to be her husband.

JUDGE MORRISON: If it is proved that he is her husband, she will be allowed to depart with him.

RYAN: I propose that this man be placed among a half-dozen of his countrymen to see if his reputed wife can pick him out.

QUINT: I object.

JUDGE MORRISON: Overruled. It is a good suggestion. Proceed as Mr. Ryan proposes.

NARRATOR 2: The San Francisco Chronicle described what ensued:

REPORTER: A fat, jolly-looking Chinaman was placed in a row with five others, and the woman he claimed as his wife was brought into the Courtroom and told by the Chinese interpreter to pick her husband out. She scanned the row, the fat Chinaman rolling his head and endeavoring to catch her eye, and finally he nodded his head at her.

[Judge Morrison, Ryan, and Quint are looking over at row of men]

JUDGE MORRISON: That won't do. I saw him nod his head at her.

RYAN (excitedly): Yes, and he stepped out of the line.

QUINT: I think there was a selection here.

JUDGE MORRISON: No, there was no selection. I rule otherwise.

RYAN (addressing Quint): Got any more husbands?

QUINT: We have not had time to look around for them.

JUDGE MORRISON: The Court will give you an opportunity.

NARRATOR 1: No other husbands came forward, however, and on this note the taking of testimony came to an end. The lawyers returned to Court the next day, Friday, to make their closing arguments.

NARRATOR 2: The next morning, Saturday, in a courtroom described by the Daily Alta as "crowded with spectators, many of whom were leading members of the Bar, who had taken great interest in the proceedings," Judge Morrison announced his ruling.¹⁰ He rejected the argument that the California law was unconstitutional and then turned to the factual question:

JUDGE MORRISON: Are they lewd women? There is no positive proof that they are. The evidence is purely circumstantial. . . . [A number] testified that they were married and the

¹⁰ S.F. Chronicle, Aug. 30, 1874.

husbands had written them to come. It was a matter of surprise to the Court that these husbands did not appear. . . .

The lover has not come to claim the sweetheart, the mother to claim the daughter, the husband the wife. Have the women come here with good purpose? Reverend Gibson testifies that women of the prostitute class are known by their dress -- wide sleeves and gaudy garments. When the counsel for the petitioners made the examination, these women were dressed exactly as he described. As a rule, married women do not dress in gaudy colors. It is a very rare thing for married women to be sent from China abroad without any escort. It is said the law presumes chastity, but the evidence in this case is the most unfavorable to the petitioners. Reverend Gibson says that there are some 2,000 Chinese women in California, and only 100 are married. Only forty odd marriage licenses were issued since May 1872 to Chinese persons. That overthrows the chastity presumption altogether. Many of these people say they were here before, and have friends here. Not one witness has been called to testify on their behalf.

What, then, can the Court believe but that these women are unchaste? Believing, as I do, that they are here for purposes of prostitution, and that they come within the certain class designated by this law, I deem it my duty to remand them to the custody from which they were taken. Such, then, is my decision.

NARRATOR 1: The spectators in the Courtroom broke into applause, prompting Quint to ask the Court to reprimand the crowd. The next day, the San Francisco newspapers praised Judge Morrison's decision. The Chronicle declared it "a righteous decision," while the Examiner wrote that Judge Morrison had dealt a "death-blow to the importation of Chinese women for immoral purposes."

NARRATOR 2: Judge Morrison ordered the Sheriff to take the women back to the steamship *Japan*, with instructions to the Captain to reconvey them to China. It was approximately 11 a.m.

IV. The Appeals

A. The California Supreme Court

NARRATOR 1: The women were immediately transported to the steamship company's wharf and placed aboard the *Japan*, which was set to sail at noon. Amidst great confusion, shortly before the hour set for departure, counsel for the women arrived with another writ of habeas corpus, issued by the California Supreme Court. The women were released to the custody of the sheriff and taken to the county jail.

NARRATOR 2: The California Supreme Court ruled just a week later, in *In re Ah Fook*. The women lost again. The Court rejected the women's contentions that the California statute violated the treaty between China and the United States and the Fourteenth Amendment.¹¹ The Court reasoned that the treaty was not violated because the statute permitted the state to exclude “lewd or debauched persons” of all nationalities. The Court did not address the fact that the California statute was not applied evenhandedly.

The Court also rejected the Fourteenth Amendment due process argument. The Court held that individuals subjected to the law were “accorded every reasonable opportunity to defend [their] individual rights.” Accordingly, the California Supreme Court ordered that the women be returned to the steamship and that the steamship carry the women “beyond the state.”

B. The Circuit Court for the District of California

NARRATOR 1: Undeterred, the women sought relief in federal court. One of the women, Ah Fong, filed a habeas petition in the Circuit Court for the District of California. The case was

¹¹ *Ex Parte Ah Fook*, 49 Cal. 402 (1874).

heard by a three-judge panel that included U.S. Supreme Court Justice Stephen Field, who was riding circuit in San Francisco. The case was argued on September 17, 1874. Here is Morris M. Estee, for the California commissioner of immigration:¹²

ESTEE: The State has a right to prohibit the importation of criminals because they are dangerous to the welfare of the State. No one would dispute this proposition. The importation of lewd women is dangerous to the welfare of the State, and the State had the right to enforce its internal police regulations to prevent them from landing.

JUSTICE FIELD: Counselor, does not the whole matter rest on the Fourteenth Amendment? The Fourteenth Amendment says that no law shall abridge the privileges and immunities of any citizen, and that no person shall be deprived of life, liberty or property, unless under the proper course of the law. There may not be one law for a citizen and another for a foreigner. This amendment is one of the most glorious laws ever enacted by the Government.

ESTEE: If the Court has already made up its mind on such a construction of the Fourteenth Amendment, it may be no use to argue the point further.

JUSTICE FIELD: I simply asked a question, Mr. Estee, and I do not wish to be understood in that way.

ESTEE: Your Honor, all dangerous persons may be excluded from the state, and this law applies to all persons coming from foreign ports who are not citizens of the United States.

NARRATOR 2: The Court ruled just a few days later, on September 21, 1874. Justice Field acknowledged that California had the right to protect its borders, but he nonetheless held the California statute unconstitutional, opining that Congress, not the states, had authority to regulate immigration. Justice Field read his decision in open court:

¹² Daily Alta, Sept. 18, 1874.

JUSTICE FIELD: The petitioner, being an alien and a subject of a country having treaty relations with the United States, has a right to invoke the aid of the federal tribunals for her protection, when her rights, guaranteed by the treaty or the Constitution or any law of congress, are in any respect invaded.

The police power of the state extends to all matters relating to the internal government of the state and the administration of its laws, which have not been surrendered to the general government The police power of the state may be exercised against the increase of crime or pauperism, or the spread of infectious disease from persons coming from other countries. But whatever affects the intercourse of foreigners with our people -- including their immigration to this country and residence therein -- is exclusively within the jurisdiction of the general government, and is not subject to State control or interference.

I am aware of the very general feeling prevailing in this State against the Chinese. It is felt that the dissimilarity in physical characteristics, in language, manners, religion and habits, will always prevent any possible assimilation of them with our people. That there is ground for this feeling does not justify any legislation for their exclusion. . . . If their further immigration is to be stopped, recourse must be had to the Federal Government, where the whole power over this subject lies.

NARRATOR 1: Justice Field returned to a theme he had pursued at oral argument. Most significantly, for the first time, a court explicitly held that the Fourteenth Amendment applied not just to U.S. citizens, but to aliens as well, including the Chinese:

JUSTICE FIELD: It is certainly desirable that all lewdness, especially when it takes the form of prostitution, should be suppressed, and that the most stringent measures to accomplish that end should be adopted. But I have little respect for that discriminating virtue which is shocked

when a frail child of China is landed on our shores, and yet allows the bedizened and painted harlot of other countries to parade our streets, without molestation and without censure.

The Fourteenth Amendment declares that no state shall make or enforce any law which abridges the privileges or immunities of citizens of the United States. It also enacts that no state shall deprive "any person," dropping the distinctive designation of citizens, of life, liberty, or property, without due process of the laws. . . . Equality of privilege is the constitutional right of all citizens, and equality of protection is the constitutional right of all *persons*. . . .

The petitioner must be discharged from further restraint of her liberty. It is so ordered.

C. The United States Supreme Court

NARRATOR 2: Justice Field released on habeas corpus all the women except one, Chy Lung, who was kept in custody so that she could continue to challenge the California statute. Thus, the case proceeded to the Supreme Court captioned *Chy Lung v. Freeman*.

The U.S. Attorney General, Edward Pierrepont, appeared before the Supreme Court in support of Chy Lung. The State of California submitted no papers and made no appearance. Pierrepont's overarching theme was equal protection.

PIERREPONT: The California statute is void. Under its provisions, the Commissioners of Immigration of California are bound to prevent the landing of any passenger who shall arrive in the State by vessel from any port in Great Britain, Germany, France, or China if the person is a woman and is "lewd," unless the prescribed bonds are given. It can hardly be doubted that an English woman or a French woman in these circumstances would be released from imprisonment. Under our Constitution, our laws, and our treaty with China, the plaintiff has

precisely the same rights as an English, French or German woman enjoys on a visit to California. There is no evidence in the record here that the plaintiff was ever “lewd,” unless it is lewd to be unlearned or of the humbler class.

NARRATOR 1: Pierrepont argued that California was violating the Fourteenth Amendment by treating citizens of China differently from other immigrants by charging the Chinese what amounted to a tax, while not imposing that tax on other immigrants. He also addressed California's reliance on the police power.

PIERREPONT: The “police power of a State” is limited; it is not to be exercised whimsically, without reason, and contrary to the well-established principles that govern the intercourse of nations, and it cannot be invoked to contravene the lawful authority of the Federal government. Under the “Police Power,” very many things may be done for the safety of the State; but laws that are the result of caprice, bigotry or unreasonable apprehension, and that tend to endanger the peace of the nation with foreign powers, touch the domain of Federal authority, and come under the supervision of the Federal courts.

NARRATOR 2: On March 20, 1876, the United States Supreme Court unanimously ruled the California statute unconstitutional. The Court’s decision, however, was not grounded on equal protection, although the Court alluded to it. Rather, it was based on the commerce clause and the federal government’s power to regulate immigration. Justice Samuel F. Miller wrote for the Court.

JUSTICE MILLER: It is hardly possible to conceive a statute more skillfully framed to place in the hands of a single man the power to prevent entirely vessels engaged in a foreign trade, say with China, from carrying passengers, or to compel them to submit to systematic extortion of the grossest kind. The commissioner has but to go aboard a vessel filled with

passengers ignorant of our language and our laws, and without trial or hearing or evidence, to point with his finger to twenty[-two], as in this case, or a hundred if he chooses, and say to the master, "These are idiots, these are paupers, these are convicted criminals, these are lewd women, and these others are debauched women. I have the power to commute all this for you -- for any sum I may choose to take in cash. I am open to an offer; for you must remember that twenty per cent of all I can get out of you goes into my own pocket, and the remainder into the treasury of California."

NARRATOR 1: The Court held that the Federal government had the sole power to regulate immigration, and it echoed Justice Field's belief that the 22 women were selectively prosecuted because they were Chinese.

JUSTICE MILLER: If this plaintiff and her companions had been subjects of the Queen of Great Britain, can anyone doubt that this matter would have been the subject of international inquiry, if not of a direct claim for redress? Upon whom would such a claim be made? Not upon the State of California; for, by our Constitution, she can hold no exterior relations with other nations. It would be made upon the government of the United States. . . . The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.

The California statute is in conflict with the Constitution of the United States, and therefore void. The judgment of the Supreme Court of California is reversed, and the case remanded with directions to make an order discharging the prisoner from custody.

V. The Aftermath

NARRATOR 2: The Supreme Court's ruling allowed the 22 Chinese women to remain in the United States. The decision did not, however, result in any less restrictive policy toward

Chinese immigrants; to the contrary, by effectively putting an end to state-based immigration legislation, it helped pave the way for federal immigration policy and ultimately the first federal Chinese Exclusion Act. The decision made no mention of the Page Law, a federal law passed almost a year earlier, shortly after Justice Field wrote his decision in *Ah Fong*. He had there stated that if further immigration of the Chinese was to be halted, recourse had to be had to the federal government.¹³ Through the efforts of Congressman Horace Page, California turned to the federal government. Page had already sponsored several failed attempts to exclude the Chinese when he proposed the Page Law, which, like California's earlier statutes, did not attempt to exclude all Chinese, but targeted two groups, women and "coolies." Congressional testimony on the Page Law echoed the themes explored before Judge Morrison.

NARRATOR 1: During the Congressional hearings, Page made the point repeatedly that practices such as polygamy and prostitution and so-called coolie labor were the work of a slave-like, inferior people, and that a country that had only recently fought a great Civil War to rid itself of slavery should not allow itself to be inundated with the Chinese.

PAGE: [O]ur recent history shows with what devotion to the great principles of freedom our citizens placed their lives at the command of the Government and poured out their blood and treasure to terminate the blighting influence of slavery in our midst. Yet an equally and, if possible, a more insidious danger must eventuate by the great increase of this servile population.¹⁴

NARRATOR 2: The Page Law passed the House and Senate in 1875, shortly after Congress reaffirmed that Asian immigrants were not eligible for citizenship. Congress thus ensured that Asian immigrants could not become citizens and effectively prevented the birth of

¹³ In re *Ah Fong*, 1 F. Cas. at 217.

¹⁴ 3 Cong. Rec. appx at 44.

American-born citizens of Chinese ancestry by making it close to impossible for Chinese women to immigrate. In 1882, Congress passed the first Chinese Exclusion Act, also sponsored by Horace Page. In that year, Justice Field wrote to a friend in support of the Act:

FIELD: The manner, habits, mode of living, and everything connected to the Chinese prevent the possibility of their ever assimilating with our people. They are a different race, and even if they could assimilate, assimilation would not be desirable.¹⁵

NARRATOR 1: Justice Field later authored the Supreme Court decision in 1889 upholding the constitutionality of the Chinese Exclusion Act. The law remained in effect until 1943.

VI. Conclusion

NARRATOR 2: Ironies abound in the tale of the 22 Lewd Chinese Women, from the first day of hearings to the Supreme Court decision. The principal expert at the hearings was not someone who frequented prostitutes, but a Methodist minister. Reverend Gibson established programs to help Chinese prostitutes, and yet his testimony before Congress was used to support a movement to shut America's door to the Chinese. Ultimately, the women won their case, and while the state statute they had fought was struck down, the federal statute that replaced it was even more onerous. Ah Lung, who hired the lawyers to represent the women, probably was a trafficker and he was undoubtedly more interested in protecting his monetary investment than in vindicating the women's civil rights.

NARRATOR 1: Still, it was clear that the Chinese -- an immigrant group facing a hostile and politically difficult environment -- appreciated the importance of their civil rights and were willing, even in the earliest days, to seek recourse in the courts. Indeed, although they prevailed in the Circuit Court in *Ah Fong*, the women pressed on for a more authoritative ruling from the Supreme Court in *Chy Lung v. Freeman*, and one of the women, Chy Lung, remained in custody

¹⁵ See Colum. L. Rev. at 689-90.

to make that procedurally possible. After the passage of the Page Law and the Chinese Exclusion Act, the Chinese would bring thousands of lawsuits in federal court to challenge what they perceived to be oppressive and racist statutes.¹⁶

NARRATOR 2: What became of the 22 Chinese women? All we know for sure is that they were all released -- they won their freedom. But what did that mean? In all likelihood, they *were* brought to the United States to become prostitutes, and victory meant lives of misery and forced sexual servitude.¹⁷ In the 1870s, the more fortunate prostitutes were purchased by wealthy Chinese in San Francisco as concubines or mistresses; others were sold to parlor houses to serve rich Chinese or white gentlemen. Most, however, were sold as slaves to brothels, relegated to shacks where they served a racially mixed, poorer clientele. Harshly treated by both owners and customers, many succumbed to venereal disease and were left to die alone and unattended.

NARRATOR 1: Leander Quint, who represented the 22 Chinese women, later represented a group of five Chinese women in another habeas corpus proceeding, this one precipitated by application of the Page Law. Quint Street in San Francisco still bears his name. Morris Estee, who represented the Commissioner, unsuccessfully ran for Governor and Senator of California. In 1900, he was appointed the first United States District Judge for the Territory of Hawaii. Captain Freeman resigned his post as Captain of the *Japan* to become U.S. Inspector of Hulls in San Francisco. Judge Morrison went on to become Chief Justice of the California Supreme Court, a position held today by an Asian-American woman.

¹⁶ Sucheng Chang at 103-04, 109-10.

¹⁷ Judy Yung, *Unbound Feet* at 27.

NARRATOR 2: The questions raised by the Case of the 22 Lewd Chinese Women continue to trouble us today. Human trafficking and the exploitation of women persist. Our society continues to struggle with issues of race, gender, sexuality, stereotyping, and profiling.

NARRATOR 1: And just last year, more than a century after it decided *Chy Lung v. Freeman*, the Supreme Court again confronted the issue of state versus federal control of immigration. On April 23, 2010, Arizona Governor Janice Brewer signed into law the Support Our Law Enforcement and Safe Neighborhoods Act, which imposed new penalties on undocumented aliens and expanded law enforcement's authority to stop and detain individuals suspected of being in this country illegally. Governor Brewer explained:¹⁸

GOVERNOR BREWER: Today, we take another step forward in protecting the state of Arizona. The bill represents another tool for our state to use as we work to solve a crisis we did not create, and the federal government has refused to fix the crisis caused by illegal immigration and Arizona's porous border.

We in Arizona have been more than patient waiting for Washington to act. But decades of federal inaction and misguided policy have created a dangerous and unacceptable position.

NARRATOR 2: The United States brought suit, challenging the constitutionality of the Arizona statute. On June 25, 2012, the Supreme Court held the law unconstitutional, in large part. With Justice Kennedy writing, the Court ruled that the federal government had "broad, undoubted power over the subject of immigration and the status of aliens." The Court reaffirmed the principle that states cannot regulate conduct in a field congressionally determined to be within the purview of the federal government alone.

¹⁸ <http://latimesblogs.latimes.com/washington/2010/04/jan-brewer-arizona-illegal-immigration.html>

NARRATOR 1: The Court cited prominently its decision in *Chy Lung v. Freeman*. It recognized the dangers inherent in allowing states to use crude ethnic profiling to determine who was fit to enter the United States or to remain within its borders. And as it had done in *Chy Lung* in 1876, the Court paid tribute to the contributions of immigrants to the creation and development of this nation. Justice Kennedy wrote:

JUSTICE KENNEDY: Immigration policy shapes the destiny of the Nation. . . . The history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come here.

NARRATOR 2: Just a few days before the Supreme Court cited Chy Lung in deciding the Arizona case, the issues presented by the Case of the 22 Lewd Chinese Women were referenced on the floor of Congress in a different way. On June 18, 2012, the House of Representatives passed House Resolution 683, which expressed regret for the passage of laws that adversely affected the Chinese in the United States, including the Chinese Exclusion Act. The House Resolution was sponsored by Representative Judy Chu, the first Chinese-American woman elected to Congress. She stated:

REPRESENTATIVE CHU: This expression of regret is for my grandfather and for all Chinese-Americans who were told for six decades by the U.S. government that the land of the free was not open to them. . . . We must finally and formally acknowledge these ugly laws that were incompatible with America's founding principles. With this expression of regret, we recognize that discrimination has no place in our society and we reaffirm our strong commitment to preserving civil rights and constitutional protections for all.