

7-1-1990

Territory of New Mexico v. Yee Shun: A Turning Point in Chinese Legal Relationships in the Trans-Mississippi West

John R. Wunder

Follow this and additional works at: <https://digitalrepository.unm.edu/nmhr>

Recommended Citation

Wunder, John R.. "Territory of New Mexico v. Yee Shun: A Turning Point in Chinese Legal Relationships in the Trans-Mississippi West." *New Mexico Historical Review* 65, 3 (1990).
<https://digitalrepository.unm.edu/nmhr/vol65/iss3/2>

This Article is brought to you for free and open access by UNM Digital Repository. It has been accepted for inclusion in *New Mexico Historical Review* by an authorized editor of UNM Digital Repository. For more information, please contact disc@unm.edu.

Territory of New Mexico v. Yee Shun (1882): A Turning Point in Chinese Legal Relationships in the Trans-Mississippi West

JOHN R. WUNDER

The legal relationships of the Chinese in the American West during the post-Civil War era included numerous complex issues to be resolved. These issues went to the heart of basic human rights—the right to own property, the right to work in certain jobs, and the right to participate in the American constitutional system. One of these latter rights—the ability of the Chinese to testify in court—was resolved eventually in part by a landmark case: *Territory of New Mexico v. Yee Shun* (1882).¹

The *Yee Shun* precedent, articulated by the New Mexico Territory Supreme Court, decided whether non-Christian Chinese could take an oath to testify in court. The court held that Chinese were allowed to testify but only after they were subjected to racial, cultural, and religious probing. Nevertheless, a legal breakthrough had occurred.

John R. Wunder is Professor of History and Director of the Center for Great Plains Studies in the University of Nebraska, Lincoln. He recently published two books: *Historians of the American Frontier* (1988) and *The Kiowa* (1989).

1. See Milton R. Konvitz, *The Alien and the Asiatic in American Law* (Ithaca: Cornell University Press, 1946) and John R. Wunder, "The Chinese and the Courts in the Pacific Northwest: Justice Denied?" *Pacific Historical Review*, 52 (May 1983), 191–211; John R. Wunder, "Law and Chinese in Frontier Montana," *Montana, The Magazine of Western History*, 30 (Summer 1980), 18–30; and John R. Wunder, "The Courts and the Chinese in Frontier Idaho," *Idaho Yesterdays*, 25 (Spring 1981), 23–32; 3 New Mexico Reports (record of court proceedings), 100 (1884). See also 2 Pacific Reporter 80 (1884).

Throughout the trans-Mississippi West religious belief could no longer prevent Chinese witnesses from testifying in most jurisdictions.²

Before the *Yee Shun* precedent, only Colorado, Iowa, Nebraska, Nevada, Oregon, and Texas had protected the Chinese right to take an oath before a court. These protections occurred in state constitutions but had not been tested in court. Special oath ceremonies were required in California and in Arkansas, but Chinese testimony was not allowed if the litigant denied the being of a God.³ After *Yee Shun*, most states and territories accepted the New Mexico decision as law.⁴

Given the importance of this case to the developing relationship of law and race in the nineteenth-century American West, it is crucial to understand the forces that led to this particular decision. In short, what follows is a legal biographical essay designed to trace the "lifespan" of *Territory of New Mexico v. Yee Shun*.⁵

On February 24, 1882, Yee Shun got off a train at the depot in Las

2. For an introduction to the *Yee Shun* case, see John R. Wunder, "Chinese in Trouble: Criminal Law and Race on the Trans-Mississippi West Frontier," *Western Historical Quarterly*, 17 (January 1986), 25-41.

3. Colorado, *Colorado Constitution*, Article II, Section 4 (1876); Iowa, *Iowa Constitution*, Article I, Section 4 (1857); Nebraska, *Nebraska Constitution*, Article I, Section IV (1875); Nevada, *Nevada Constitution*, Article I, Section 4 (1864); Oregon, *Oregon Constitution*, Article I, Section 67 (1859); Texas, *Texas Constitution*, Article I, Section 5 (1876); California, *California Code of Civil Procedure*, Section 2096 (1872); Arkansas, *Arkansas Constitution*, Article XIX, Section 1 (1874).

4. See Arizona, *Arizona Revised Statutes*, Section 1866 and 2037 (1887); Colorado, *Colorado Annotated Statutes*, Section 4821 (1891); Idaho, *Idaho Constitution*, Article I, Section 4 (1899); Montana, *Montana Constitution*, Article III, Section 4 (1889); Nebraska, *Nebraska Compiled Statutes*, Section 5939 (1899); New Mexico Territory, *New Mexico Compiled Laws*, Section 3015 (1897); North Dakota, *North Dakota Constitution*, Article I, Section 4 (1889); Oklahoma Territory, *Oklahoma Statutes*, Section 4229 (1893); Texas, *Texas Penal Code*, Section 776 (1895); Utah, *Utah Constitution*, Article I, Section 4 (1895); Wyoming, *Wyoming Constitution*, Article I, Section 18 (1889). States attempting to restrict the *Yee Shun* decision included Arkansas, *Arkansas Statues*, Section 2924 (1894); Kansas, *Kansas General Statues*, Chapter 95, Section 351 (1897); Minnesota, *Minnesota General Statutes*, Section 5665 (1894); Missouri, *Missouri Revised Statutes*, Section 8842 (1899); Washington, *Washington Code and Statutes*, Section 6057 (1897). Only Louisiana continued to bar Chinese testimony if a Chinese witness refused to certify belief in God, Louisiana, *Louisiana Criminal Proceedings*, Section 478 (1894).

5. This essay follows a legal biographical approach tracing the "lifespan" of a legal dispute. For other models, see James R. McGovern, *Anatomy of a Lynching: The Killing of Claude Neal* (Baton Rouge: Louisiana State University Press, 1982); Marc A. Franklin, *The Biography of a Legal Dispute: An Introduction to American Civil Procedure* (Mineola, New York: Foundation Press, 1968); and Anthony Lewis, *Gideon's Trumpet* (New York: Alfred A. Knopf, 1964); and John R. Wunder, "Constitutional Oversight: *Clark v. Bazadone* and the Territorial Court as the Court of Last Resort," *The Old Northwest*, 4 (September 1978), 259-84.

Vegas, New Mexico Territory, and walked to John Lee's laundry. New Mexico Territory in the 1880s was in its formative years. Twelve counties were divided into three judicial districts for administrative law purposes. Las Vegas, in San Miguel County, and Santa Fe comprised one of the judicial districts. The first railroad to enter New Mexico, the Atchison, Topeka and Santa Fe, reached Las Vegas along the Old Santa Fe Trail through Raton Pass. More than 1,000 miles of railroad track already had been laid in the territory connecting it to Colorado, Texas, and Arizona Territory. Santa Fe was the largest city in the territory with 6,185 residents in 1890. The population of Las Vegas was nearly 2,000, making it one of the ten largest towns in the territory.⁶

Las Vegas grew as a city of dualities. Old Town constituted the more established, affluent section; New Town included East Las Vegas and a merchant area around the depot. By 1882 Chinese residents had begun to concentrate in New Town. The first Chinese had arrived in Las Vegas five years earlier to work on the railroad and conduct service businesses such as laundries and restaurants. By 1890 a Chinatown had developed in the 300 and 400 blocks of Grand Avenue. Six Chinese laundries separated by restaurants and boarding houses dotted the street. John Lee's laundry was located at 411½ Grand Avenue. To the east was an upholstery shop and to the west was a large building of furnished rooms. Across the street was an intersection with Sixth Street. One block north was Railroad Avenue and the Atchison, Topeka and Santa Fe Railroad depot.⁷ On the evening of February 24, 1882, a murder occurred in John Lee's laundry for which Yee Shun would be charged.

The Chinese constituted 1 percent of all persons living in the Southwest by 1880. Mining, railroad, and service business opportunities attracted most Chinese to the region. Chinese communities developed in numerous New Mexican towns, most notably in Silver City, Albuquerque, Raton, and Las Vegas. Although the Chinese tended to contribute economically to the betterment of most communities, their reception had not been pleasant. In Deming, when two Chinese tried to claim a lot, E. A. Kidder prevented it with violence. According to the *Deming Headlight*, "when on Monday last two hop joint Celestials

6. Warren Beck and Ynez D. Haase, *Historical Atlas of New Mexico* (Norman: University of Oklahoma Press, 1969), 45–46, 53, 58, 62.

7. F. Stanley, *The Las Vegas Story* (Denver: World Press, 1951), 179; *Sanborn Maps of New Mexico*, Las Vegas, San Miguel County, 1890, Section 4. Laundries were located at 311, 411½, 419, 419½, and 421 on Grand Avenue and 10 Lincoln Avenue. The laundry located at 411½ Grand was the site of the murder.

attempted to make a location, he [Kidder] enforced with a club a vigorous protest." The Chinese opted not to locate on the lot, and the paper called for a more desirable citizen to buy the property so the incident would not be repeated.⁸

Rumored Silver City and Raton disturbances caused the governor of New Mexico Territory to request federal troops. None were forthcoming although anti-Chinese cells were active in Silver City. At the Blackhawk mine, violence broke out. Thirty-two white miners threatened bodily harm to mine manager Platt McDonald's Chinese cook. Only the intervention of McDonald's wife reportedly prevented bloodshed. The men were fired, the company woodyard was set afire, and the cook left. In the mid-1880s the West seemed consumed with anti-Chinese hysteria, and New Mexico was not immune.⁹

Into this racially tense arena came Yee Shun. Born in China, he emigrated to the United States shortly before 1882. Like most young Chinese, Yee Shun was a laborer. Prison records described him as five feet three and one-half inches tall, with black hair, black eyes, and a light yellow-brown complexion. Yee Shun was twenty years old when he arrived in Las Vegas on the evening of February 24, 1882, the night of the murder.¹⁰

The killing occurred at John Lee's laundry on Grand Avenue. Inside the two-part building were two Chinese—the owner, who was laying down in a corner smoking opium, and his ironer, known as Jo Chinaman. Coming to visit around 7:00 p.m. were Ah Locke and Sam Lee. They had come to buy out John Lee, offering to purchase his laundry, house, and lot. John Lee set \$1,700 as the asking price. They said that was too much, so Lee came down to \$1,400.¹¹

Yee Shun arrived about a half hour later. He said he was looking for a friend, Gum Ting. Yee Shun had been working in Silver Cliff, Colorado, but was in the process of relocating. He thought he would come to Las Vegas to work in a hotel laundry, but he had decided to go on to Albuquerque instead. Thus, he wanted to ask his friend to

8. Francis A. Walker, *Tenth Census of the United States, 1880: Population* (Washington, D.C.: 1880), 38–39; *Deming Headlight*, September 28, 1888.

9. *Silver City Enterprise*, November 27, 1885, December 11 and 25, 1885, January 1, 15, and 22, 1886. See also Roger Daniels, ed., *Anti-Chinese Violence in North America* (New York: Arno Press, 1978) and Elmer Clarence Sandmeyer, *The Anti-Chinese Movement in California* (Urbana: University of Illinois Press, 1939).

10. Prisoner Ledgers A & E, Number 2763, Kansas State Penitentiary Records, Kansas State Archives, Topeka, Kansas.

11. *Territory of New Mexico v. Yee Shun* (1882), trial transcript, 49–55, 111–33, San Miguel County District Court Records, New Mexico State Archives, Santa Fe.

forward any mail he might receive. Yee Shun asked the four men if anyone knew Gum Ting. John Lee said he did, and that after he finished smoking, he would take Yee Shun to Gum Ting's home. He offered Yee Shun a seat.¹²

At this point Jim Lee (also known as Sam Ling Wing and as Frank) came into the room from a back room and sat on a soap box near the stove. Suddenly two shots rang out from a .44 caliber Bulldog pistol. Jim Lee slumped to the floor in the middle doorway. In the midst of the smoke and fire, the four Chinese capable of fleeing did so. Yee Shun was first out the front door followed closely by Ah Locke and Sam Lee. Jo Chinaman ran out the back door. John Lee, dead or dying, was in no condition to escape.¹³

Jo Chinaman went to tell the butcher—a Mr. Baker—next-door to the incident, then he informed Jim Lee's brother, before returning to the scene of the murder. Ah Locke and Sam Lee ran to Sam Lee's laundry on Eighth Street, where they stayed the night. In testimony, Ah Locke said they all were extremely frightened. When asked: "Ever hear pistol shots before?" Ah Locke replied, "In this town I saw lots of pistol shooting before."¹⁴

Having only just arrived in Las Vegas, Yee Shun ran toward the railroad tracks and livery stables before walking on to Sixth Street toward the scene of the murder. D. B. Borden, who had been strolling with his wife Jennie and saw the commotion, demanded that Yee Shun stop and explain his behavior. Yee Shun told him he was afraid and had panicked. Borden then turned Yee Shun over to Marshal H. J. Franklin, who put him under arrest. After spending a half hour at the jail, Franklin and Yee Shun returned to John Lee's laundry, where Dr. Russell Bailey was conducting an inquest. Jim Lee was Dr. Bailey's laundryman. Bailey cut the bullet out of the body and gave it to Franklin. Jo Chinaman was then asked under oath to identify Yee Shun as the killer, but he refused.¹⁵

Nevertheless, Yee Shun was arraigned on March 10, 1882, before LeBaron Bradford Prince, chief justice of the New Mexico Territory Supreme Court, and charged with murder. John Lee was later added to the indictment. Both pleaded not guilty, and Sidney Barnes, attorney for John Lee, successfully moved for two separate trials. Change of venue requests were denied, but a postponement was granted to the

12. *Ibid.*, 59–60, 113–36.

13. *Ibid.*, 49–76, 86–111.

14. *Ibid.*, 59–60, 107, 133–36.

15. *Ibid.*, 1–14, 16–20, 77–80, 136–43.

fall term. Yee Shun's attorney, T. A. Green, would have time to prepare a defense.¹⁶

The murder trial of Yee Shun began on August 16, 1882, with a new judge, Chief Justice Samuel B. Axtell, presiding. A jury of twelve was chosen. They included Blas Martinez, Manuel Tagaija, Runaldo Archibeque, Alsolinario Almanzar, Jose Leon Martinez, Hijinio Garcia, Marcos Tagoya, Ysidro Torres, Manuel Jimenes, Manuel Urioste, Juan Chavez, and Juan E. Sena. All were Mexican-American residents of Las Vegas. Attorneys present included T. A. Green for the defendant and Attorney General William Breeden for the territory. When actual testimony began on August 17, the prosecution sought to place Yee Shun in John Lee's laundry at the time of the murder with the murder weapon and to identify him as the killer. Breeden called six witnesses to establish his case.¹⁷

The first witness sworn was D. B. Borden. He and his wife had been out for an evening walk and were heading for their residence on Lincoln Avenue when they heard two shots and saw a man with a pistol run out of John Lee's laundry. Borden followed the man across the street and through a vacant lot, then lost him only to see the man again walking toward him near Dr. Bailey's office on Sixth Avenue in front of the Martinez Dry Goods Store. Borden stopped the man and had him arrested by Marshal Franklin. Borden admitted the man he stopped had no weapon on him, but Borden looked around Dr. Bailey's lot and found a pistol that had been fired recently. The man arrested was Yee Shun, but Borden could not swear that the defendant was the man he had seen leaving the laundry.¹⁸

San Miguel deputy sheriff Marshal H. J. Franklin then identified Yee Shun as the man arrested. Franklin also testified that Borden had found the .44 caliber Bulldog pistol with two chambers discharged and given it to him. Franklin had given the gun to Justice of the Peace William Steele at the coroner's inquest. When Franklin heard the shots, he ran to the laundry and then turned up Sixth Avenue to make the arrest. According to Franklin, Yee Shun had understood English and he had spoken in English. William Steele was called to testify next and

16. Criminal Record Book A, United States District Court of New Mexico Territory, San Miguel County, New Mexico State Archives, Santa Fe, 88; Criminal Record Book A, 90-91, 95, 99, 101, 115. See also Walter J. Donlon, "LeBaron Bradford Prince, Chief Justice and Governor of New Mexico Territory, 1879-1893" (doctoral dissertation, University of New Mexico, 1967).

17. Criminal Record Book A, 115-16, 160-61.

18. *Yee Shun* trial transcript, 1-14.

presented the pistol as well as the bullet Dr. Bailey had taken from Jim Lee's body.¹⁹

The prosecution then turned to R. P. Hesser, who claimed to be an eyewitness. Hesser had arrived in Las Vegas from Kansas City on February 22. He said he was going to Kate Nelson's restaurant when he heard a shot, then saw Yee Shun with a pistol. Under cross-examination Hesser seemed rather vague.²⁰

Green: Can you name, or did you know any of the men you saw there at the wash-house?

Hesser: I cannot name them.

Green: Did you know any of them?

Hesser: No, sir, not by name.

Green: State whether they were Americans, Chinamen, or what kind of men they were?

Hesser: They were Americans.

Green: How many Chinamen did you see?

Hesser: At the time of the shooting, or [in the laundry] afterwards?

Green: I am asking you, at the time you got there.

Hesser: I saw one or two.

Green: State whether or not you were the first man that got there?

Hesser: I don't know.

Judge Axtell intervened to get Hesser to clarify his statements identifying the defendant. Green took exception to the court's interruption, arguing that Hesser was a drifter—a sign painter and a coal miner from Pennsylvania and Iowa. Green asked Hesser why he needed to be subpoenaed to testify. Hesser said he did not like trials. Pressing further, Green finally asked: "Have you a special prejudice against Chinamen?" Hesser tried to deny the accusation, "No sir, not a bit. Notice they get my washing when it is dirty." After another series of sharp exchanges, Green submitted a question in writing to Judge Axtell. "I want to ask this witness whether or not he is not a fancy house runner or pimp as they are called. I am told he is." Judge Axtell disallowed the question. Nevertheless, Hesser's testimony was littered with inaccuracies and had not proven persuasive.²¹

The key witness for the prosecution, Jo Chinaman, came next. Chinaman was a twenty-six-year-old ironer employed by John Lee,

19. *Ibid.*, 14–24, 24–26.

20. *Ibid.*, 26–48.

21. *Ibid.*, 34–36, 38, 47.

who had been present when the murder was committed. Chinaman had been in Las Vegas for one year, having migrated from Shasta, California, where he had been a gold miner. Jo Chinaman was sworn at the beginning of his testimony, and it was this portion of the trial that proved to make new law. Through an interpreter, the attorneys quizzed Chinaman.²²

Green: I will ask you if you believe in Chinese worship: their Chinese Joss houses, do you believe in Chinese Joss?

Jo: I live in a Chinese house.

Green: I will ask you if you believe in the Chinese joss house where they worship, where they have their religious services? Do you ever go with Chinamen in this country where they worship? Do you understand what a God is?

Jo: I don't know what it is? Yes, I believe the Chinese religion.

Green: Have you ever changed from Chinese to Christian religion since you came to this country?

Jo: I am a Chinaman, and believe in the Chinese religion.

Green: Was you ever a witness in court before?

Jo: Yes.

Green: Do you know anything about the obligations of an oath under the Christian religions?

Jo: I don't know it.

Breeden then sought to soften the blow to allow Jo Chinaman to testify.

Breeden: Ask him what he is to do, or what his duty is in telling his story as a witness? If he knows what his duty is as to telling the truth?

Jo: I can tell the truth in this case.

Breeden: Do you know that you are sworn here so that you are to tell the truth?

Jo: Yes.

Judge Axtell allowed Jo Chinaman to be sworn for testimony. Green offered a strong objection.

Attorney General Breeden proceeded to take Chinaman through the events leading toward the murder. In the process Chinaman identified Yee Shun specifically as the killer. But Chinaman also laid the groundwork for what an alert attorney might have used for perjury.

22. *Ibid.*, 49, 50-51.

Green did not recognize the inconsistencies. At one point Chinaman testified that Yee Shun said nothing at all and shot Jim Lee when he came in the door. Later, under cross-examination, Chinaman said Yee Shun "just went in, and just talk with one person; put his hand in his pants pocket, drew a pistol and shot." Chinaman also testified that only four persons were in the laundry at the time of the murder, instead of six. Two others had come by earlier to try to force John Lee to sell out. Chinaman said they argued that there were too many laundries in town. He suggested a shakedown was happening.²³

Under severe cross-examination the defense began to build its case for a Tong murder. Green established that Jo Chinaman left town after the murder. He was given \$30 to go to Pueblo, Colorado. If he stayed there, Green suggested Chinaman would have been killed. Chinaman was a member of the Hip Wo Company, the same as Jim Lee and one of the two trial interpreters, it was later discovered. Green also noted how Tam Kay Tung, owner of two laundries, was assisting the prosecution, and that he had helped Jo Chinaman. Chinaman then became uncooperative as a witness.²⁴

The prosecution next called Dr. Russell Bailey, who verified the gunshot wounds to the deceased, and recalled Borden and Franklin to go over the discovery of the pistol.²⁵ The prosecution then rested. Jo Chinaman's testimony was crucial. Only Chinaman had identified Yee Shun as the murderer.

T. A. Green pinned Yee Shun's defense on the testimony of the defendant and two other eyewitnesses, Ah Locke and Sam Lee. Locke stated Yee Shun was unarmed, that the defendant had not fired a shot, and that the shots came from the back. Lee verified Locke's testimony. On cross-examination, Lee admitted he belonged to the Kong Chow Company, and that Yee Shun was a member of the Sam Yup Company.²⁶ Breeden tried to establish an unsavory motive in Locke's testimony by forcing him to admit that he used the name John Lee. Breeden then asked Locke:²⁷

Breeden: What is your religion?

Ah Locke: American, and Chinese too.

Breeden: Have a mixed religion, do you?

Ah Locke: Yes, sir.

23. *Ibid.*, 54, 55-63, 75.

24. *Ibid.*, 65-71, 80-81.

25. *Ibid.*, 77, 85.

26. *Ibid.*, 86-133.

27. *Ibid.*, 109-10.

Breeden: When did you get the American religion?

Ah Locke: In Denver.

Breeden: Didn't you learn it for this case so as to come in and testify about it?

Ah Locke: At the church in Denver.

Breeden: In the church you went to in Denver, did you hear the American religion?

Ah Locke: Yes, sir.

Breeden: What is the American religion?

Ah Locke: American believes that good men are sent to Heaven and badmen to Hell.

Breeden: What is the Chinese religion?

Ah Locke: The Chinese religion is to always do good.

Breeden: Haven't you been going to Sunday school here a little, getting ready for this trial? Haven't you been to Sunday school at all?

Ah Locke: No, sir.

Clearly, the attorney general was worried about an appeal based upon oath-taking objections.

Yee Shun took the stand next, but before he testified for very long, the court interrupted and allowed the prosecution to call Jennie Borden to tell her account. Evidently, she had been unavailable at the beginning of the trial. This tactic upset the momentum for the defense, and then the defendant's attorney may have made a crucial error in his cross-examination of Mrs. Borden.²⁸

Green: I will get you to state whether or not you were present with your husband when he pursued someone that ran from the washhouse?

J. Borden: Yes, sir.

Green: I will get you to state whether or not it was light enough to distinguish a man as to whether it was a Mexican or American?

J. Borden: Not unless I met them face to face.

The all-Hispanic jury no doubt listened intently to this new racial element interjected into the trial. Yee Shun returned to the stand and denied shooting Jim Lee, but the damage had been done and the defense never recovered. Green called J. C. Minner, whom he mistakenly believed could impeach the previous testimony of Hesser. This tactic backfired when Minner could not verify that Hesser ran a "fancy

28. *Ibid.*, 137.

house," although Franklin said Hesser had a bad reputation. The defense rested.²⁹

The jury could not help but be confused. A murder had occurred, but there was conflicting testimony over who had weapons, who was present, who had seen the murder, and who had fired the shots. Identity of the witnesses and accuracy of the interpreters also was doubtful. There also was question whether the fundamental legal basis upon which testimony could be heard was satisfied, and it was this latter issue that proved to be the basis of Yee Shun's appeal. Despite the uncertainties, the jury found Yee Shun guilty of second degree murder, and Judge Axtell sentenced him to life in prison. Yee Shun was removed from the courtroom and transported to the Kansas State Penitentiary where he awaited his appeal.³⁰

Yee Shun's attorney filed an appeal with the New Mexico Territory Supreme Court upon conclusion of the trial. Green argued that oath-taking in an American court required the belief in Judeo-Christian traditions or in a life hereafter. Because Chinaman admitted he was "of the Chinese religion," judicial error occurred when Judge Axtell allowed his testimony. The court, composed of justices Axtell, Joseph Bell, and Warren Bristol, met, heard arguments, and in January 1884, decided against Yee Shun. Chief Justice Axtell did not participate in the opinion, which was authored by Bell, a former New York attorney who handled the judicial business of the Second District headquartered in Albuquerque. Judge Bristol, originally from Minnesota, assigned to the Third District centered in Taos, and who would die unexpectedly later that year in Deming, concurred. Knowledge of anti-Chinese activities in Silver City and Raton no doubt had reached both Bell and Bristol by the time they heard the *Yee Shun* case.³¹

The primary basis for appeal concerned the examination of Chinaman's fitness to take an oath. After reciting his testimony and the questions Green and Breeden had asked, Bell concluded that no reversible error had been committed in the trial and that the record did not show the witness to be incompetent.³²

Bell went further, however. He noted that Chinaman had not been quizzed on his specific religious beliefs. Bell adopted the maxims found in *Greenleaf on Evidence* suggesting a twofold test: 1) if the witness is

29. *Ibid.*, 168-75.

30. Prisoner Ledgers, Kansas State Penitentiary Records. New Mexico sent its felony prisoners to Kansas because New Mexico did not have a secure prison facility.

31. 3 New Mexico Reports 100 (1884); 2 Pacific Reports iv (1884).

32. 3 New Mexico Reports 100 (1884).

not a Christian, then the court can inquire into the custom used in oath-taking in the witness' home country; and 2) if the witness takes an oath, then attorneys may ask if the witness believes the oath to be binding on his conscience. "The defect of religious belief is never presumed," Bell declared. "It is, therefore, incumbent on the party objecting to the competency of a witness on this ground to show want of religious belief as to render him incompetent. . . ." Moreover, Bell ruled, such evidence must be evidence aliunde. In other words, outside sources must be used to impeach the witness.³³ It was not enough for Green to prove Chinaman did not believe in Judeo-Christian principles. Green should have called witnesses establishing Chinese oath-taking customs and Chinese religious beliefs. Not doing so allowed Chinaman's testimony to stand.

Twenty-two-year-old Yee Shun was in Leavenworth, Kansas, when he heard the results of his appeal. Life imprisonment awaited him without recourse. The prospect may have proved to be too much for him for on September 11, 1884, sometime during the morning, Yee Shun committed suicide, hanging himself with a small cord taken from his bed.³⁴

Territory of New Mexico v. Yee Shun proved to be an important legal hallmark in the relationship between the Chinese and American law and a significant social and political development among Chinese in the American West. These generalizations were as much a product of historical circumstance, however, as of substantive legal change.

The early 1880s were not easy times for Chinese living in the American West. Anti-Chinese violence and cultural attacks already had begun in the rural West and were spreading to the cities. Moreover, violence within Chinese communities was escalating. Early Chinese communities, especially in California, sought to maintain cultural identities and order from within. Based upon blood and region, social organizations such as the Six Companies evolved and sought to protect Chinese culture, religion, economic freedoms, and legal rights.³⁵ Three

33. Italics added, 3 NM 100 at 103 (1884). See also Henry Campbell Black, *Black's Law Dictionary* (St. Paul: West Publishing, 1968), 97-98.

34. *Leavenworth Times*, September 12, 1884, p. 4.

35. Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley: University of California Press, 1971), 7-9; Shih-Shan Henry Tsai, *The Chinese Experience in America* (Bloomington: Indiana University Press, 1986), 45-51; Shih-Shan Henry Tsai, *China and the Overseas Chinese in the United States, 1868-1911* (Fayetteville: University of Arkansas Press, 1983), 31-42. See also Sucheng Chan, "Chinese Livelihood in Rural California: The Impact of Economic Change, 1860-1880," *Pacific Historical Review*, 53 (August 1984), 273-307.

of the Six Companies—Kong Chow (through Sam Lee), Hip Wo (through Jo Chinaman), and Sam Yup (through Yee Shun) were represented at the trial.³⁶

Chinese also were members of other social organizations, such as benevolent societies, trade groups, and lodges. Such groups concentrated in parlors or halls called "tongs." Much misunderstanding by nineteenth-century non-Chinese Americans occurred over the role of tongs. Writes Shih-Shan Henry Tsai:

. . . it was difficult for outsiders to distinguish a militant tong from a pacific one. This difficulty was compounded by overlapping membership, since many people belonged to more than one tong. A respectable merchant, for instance, had automatic membership in one of the Six Companies; he probably held membership in one or two benevolent tongs. He might also join a secret society tong for protection against fighting tongs. Economic motives and the preservation of clan prestige were the most important causes of tong violence.³⁷

Tong wars arose throughout the West in the 1880s. At first the Six Companies tried to prevent the violence. The trial record of the *Yee Shun* case suggests tong economic violence in Las Vegas over the control of the laundry business and an early attempt by the Six Companies to stop it. Most of the witnesses immediately left Las Vegas after the murder of Jim Lee, and yet they were encouraged to return for the trial. There is evidence of payments, free lodging, coercion, and influence from Denver and San Francisco Chinese. Even Jo Chinaman came forward to testify after refusing to participate initially.³⁸

A fundamental question remains: Why would the Six Companies wish to have the John Lee laundry incident tried openly in court? Perhaps the situation was out of hand in New Mexico, and leaders could not control the violence through informal pressures. Perhaps no agreement could be reached among the three companies involved, and neutral parties forced a public hearing. Whatever the reason, the *Yee Shun* trial marked an early attempt by the Six Companies to quell intra-Chinese violence. This early example of Chinese cooperation to prevent further incidents proved futile as tong violence increased, eventually

36. *Yee Shun* trial transcript, 49–76, 80–81, 86–136, 143–68.

37. Tsai, *Chinese Experience*, 51, 54.

38. *Yee Shun* trial transcript, 49–76.

culminating in a major San Francisco feud in 1886 that caused heavy loss of property and lives.³⁹

Although the Six Companies did not prevent future violence through the Yee Shun trial, the court action did result in a significant legal precedent. Prior to *Yee Shun*, the legal right of Chinese to testify in American courts was unclear. The stumbling block was the oath. After *Yee Shun*, Chinese clearly could testify in open court, but the cost was high. Chinese cultural and religious practices could be scrutinized by attorneys before non-Chinese juries, and racial and cultural discrimination was deemed appropriate. Non-Chinese did not have to submit to such treatment when they used American court systems.⁴⁰

The *Yee Shun* precedent held sway throughout most of the trans-Mississippi West for Chinese litigants, and it was even used to apply to other Asian-American minorities. In 1909 the Nebraska Supreme Court invoked *Territory of New Mexico v. Yee Shun* to determine if a Japanese witness, Jack Naoi, could be disqualified "for the alleged reason that Japan is a heathen country." Because counsel did not determine whether the witness practiced Buddhism or Shintoism or establish Japanese customs on oath-taking, Justice Jesse L. Root ruled that Naoi was presumed competent to testify. The *Yee Shun* rule prevailed.⁴¹

Thus, when Yee Shun got off the train in Las Vegas that fateful night and walked to John Lee's laundry, he unknowingly became an important participant in developing Chinese legal relationships. Race and law collided in the courtroom, and the compromised outcome, although adopted as the law of the West, would prove unsettling, particularly to the Chinese. Western America's legal precedents were no more colorblind than those made by other nineteenth and early twentieth-century judiciaries and legislatures in the United States.

39. Tsai, *Chinese Experience*, 54-55.

40. John Henry Wigmore, *A Treatise on the System of Evidence in Trials at Common Law* (4 vols., Boston: Little, Brown, 1904), III: 2365-71. See also Edward W. Cleary, ed., *McCormick on Evidence* (St. Paul: West Publishing, 1972), 141-42.

41. *Pumphrey v. State* 122 Northwest Reporter 19 at 20 (1909), 122 Northwest Reporter 19 at 21 (1909). The former case also is found at 84 Nebraska Report 36 (1909).