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The Bricks Before *Brown v. Board of Education*:
A Comparative, Historical Study of Race, Class, and Gender in Chinese American, Native American, and Mexican American School Desegregation Cases, 1885-1947

By

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Doctor of Philosophy

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By

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An abstract of

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2018

Abstract

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Brown v. Board of Education, the 1954 Supreme Court case which declared the "separate but equal" doctrine of *Plessy v. Ferguson* unconstitutional, represents a watershed moment in the United States. Because of its sacrosanct place within Civil Rights canon, much of the research regarding *Brown* has been limited to the 50s, situated in the South, and analyzed through the Black/White lens of race. In an attempt to generate a more inclusive and intersectional narrative of the school desegregation movement in the United States, the author examines three significant cases, filed before *Brown*, that represent racial communities whose contributions have been overlooked, omitted, or understudied within law, history, and sociology. Through archival research, interviews, and field visits, the author shares the stories of *Tape v. Hurley*, an 1885 case involving Chinese American children, *Piper v. Big Pine*, a 1924 case involving Native American children, and *Mendez v. Westminster*, a 1947 case involving Mexican American children to compare how race, gender, and class were constructed similarly and separately across the cases. Using a comparative historical, case study approach that relies on Critical Race Theory, Controlling Images, and the Politics of Respectability, the author finds that the road to *Brown* is not only raced but also gendered, classed, and aged in complicated, connected, and expected ways.

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CHAPTER 1: INTRODUCTION

I, too, sing America

I am the darker brother.
They send me to eat in the kitchen
When company comes,
But I laugh,
And eat well,
And grow strong.

Tomorrow,
I'll be at the table
When company comes.
Nobody'll dare
Say to me,
"Eat in the kitchen,"
Then.

Besides,
They'll see how beautiful I am
And be ashamed—

I, too, am America.

--Langston Hughes (1945)

America's racial history is laden with stories of the attempts of various groups who vie for a spot at "the table when company comes." The history of legal struggle against school segregation in the United States provides an example of how communities respond when confronted with the beauty of the ever growing and ever strengthening darker brother who laughs in the face of rejection. *Brown v. Board of Education*, the case that legally dismantled the "separate but equal" doctrine established by *Plessy v. Ferguson* in 1896, is a case that has earned its place at the proverbial table. An example of its eminence is that it has been the subject of at least ten documentaries, over 150 books or book chapters, and more than 450 peer reviewed articles and law reviews.[1]

[1] This is the result of a title search of "*Brown v. Board*" within Emory University's Woodruff Library databases.

One of its most famous documentaries, *The Road to Brown*, uses the analogy of a road to describe the legal journey from *Plessy* and the birth of Jim Crow to *Brown* and, at least, the legal death of Jim Crow. It was this analogy of *The Road* that inspired two critical questions whose answers became the genesis of this project. First, what happened along *The Road* between 1896 and 1954? Surely, there were more legal attempts to dismantle segregation before *Brown*. Second, were there Asian American, Native American[2], and Latinx[3] plaintiffs among those who had also traversed and shaped *The Road to Brown*? If so, I wanted to know who they were, where they fought, and what were their legal claims. What I discovered was that there were at least 101 bricks that lined the road to *Brown*, 11 of which involved non-Black plaintiffs.

My research reveals that the transcript of school desegregation in the United States is filled with the faceless and nameless testimonies from darker brothers (and sisters) who represent the full racial spectrum of the United States. *Brown*, I argue, was built upon a careful scaffolding of these earlier school desegregation cases brought to court not only by other African Americans but also by Chinese Americans, Native Americans, and Mexican Americans (Kuo 1998; Perea 2004; Blalock-Moore 2012). Scholarly research, however, has largely overlooked, forgotten, or excluded how these racial groups engaged in the legal fight for racial equality in education. Those few works that do exist focus on single cases, do not investigate the similarities and differences between cases, and do not consider the role of race, gender, and class (Wollenberg 1974, Ngai 2010, Strum 2010, Berard 2016). Furthermore, much of the research on school desegregation is rooted in law and history (Kluger 1975, 2004; Bell 2004). Sociological works focus mostly on the post-*Brown* effects on education (Della Piana 1999; Zirkel and Cantor 2004;

[2] There is debate about whether to use Native American or American Indian to describe the Indigenous populations of the United States. Whenever possible, I will refer to the specific nation and/or tribe of an individual. Generally speaking, however, I use the term Native American.
[3] In this paper, I use the words Latinx and Chicanx. They are gender-neutral forms of Latina/o and Chicana/o.

Moran 2010; Reardon and Owens 2014). These scholarly works situate the school desegregation narrative in the South, limits the analysis to the 1950s, and frames the efforts as a division between Black/White communities.

The sociological studies of Brown, while limited, focus almost exclusively on the social construction of race and do not consider the role of gender and class. My research fills this gap by producing an intersectional, comparative historical analysis of the ways that race, class, and gender were deployed and negotiated in three school desegregation cases preceding *Brown*. Those three cases are *Tape v. Hurley*, an 1885 case involving Chinese American plaintiffs; *Big Pine v. Piper*, a 1924 case involving Native American children; and *Mendez v. Westminster*, a 1947 case involving Mexican Americans. Because all of these cases occurred in California, the continuity of law remains intact as I examine race, class, and gender.

School desegregation is a field ripe for sociohistorical study. This project asks two questions: First, how did Asian Americans, Native Americans, and Latinx communities engage in the fight for racial equality? Second, how were race, class, and gender constructed similarly and separately in each case and across time? To answer this question, I use an intersectional, comparative historical case study approach to examine how race, gender, and class were constructed across time and across racial groups as they legally challenged segregated school systems.

Using mixed methods comprised of archival research, legal research, field visits, and interviews, I demonstrate that the civil rights narrative of school desegregation emerges from the West, captures the experiences lost within the Black/White binary of race, and reveals a narrative that is both gendered and classed.[4] This research will deepen our understanding of the history of

[4] See Appendix C for a detailed outline of the methodologies utilized and Appendix D for list of archival visits.

efforts of racially marginalized groups to attain basic rights such as education, and exhibit how the negotiation of race was made intelligible through constructions of gender and class.

Furthermore, because these cases proceed through time in order of furthest from to closest to Blackness, they also reveal the construction of the U.S. racial hierarchy over time. To miss the underlying, yet unspoken narrative of anti-Blackness that runs through these cases is to ignore a very salient part of the history and construction of the racial hierarchy in the United States. It is this underlying theme of anti-Blackness that allowed these Chinese American, Native American, and Mexican American plaintiffs to utilize legal arguments that were not available to the plaintiffs in *Brown*.

Finally, I argue that to understand fully the impact of school desegregation today, it is imperative to recognize the full breadth of the fight in the past. This research reveals that school desegregation not only failed to create substantive change for Black communities, but also Asian American, Native American, and Latinx communities (Perea 2004; Telles and Ortiz 2008; Tran, Birman, and Leong 2010; Trujillo and Alston 2005). An examination of the social and historical circumstances surrounding the Chinese American, Native American, and Mexican American cases reveals the genesis of, and connections between, these communities fight to achieve educational parity with their White counterparts. Identifying the differences and similarities between Asian American, Native American, and Latinx communities' challenges to educational inequality generates a more inclusive and nuanced narrative of the school desegregation movement in the United States. Ultimately, the overall goal is to provide an example of shared historical struggles among the different racial communities to, as Alvarez (2016:349) shares, "tear down walls, cross boundaries, and see how the categories that contain and constrain us can be used to liberate and enhance our mutual interests."

This dissertation is composed of six chapters dedicated to providing the background information necessary to identify an intersectional and inclusive school desegregation narrative.

In Chapter 2, "Studied Separately and Unequally," I review the relevant literature, describe three theoretical frameworks, and explain how a comparative historical methodology is the best way to connect these cases. In addition to showing the sparse scholarly treatment of each case, I identify the scholarly gap related to the school desegregation movement, namely its failure to include and compare the experiences of non-Black plaintiffs as well as consider the role of gender and class. Next, I describe the three theoretical frameworks that help me to analyze race, gender, and class. Those theories are: (1) Critical Race Theory (CRT) and what I call its "intellectual offspring" (AsianCrit, TribalCrit, and LatCrit) to interrogate the similarities and complexities of race presented by *Tape*, *Piper*, and *Mendez*, respectively; (2) Patricia Hill Collins (2009) Theory of Controlling Images to identify the gendered and classed images represented in the culture surrounding the cases that the plaintiffs had to overcome to be considered worthy; and (3) the Politics of Respectability to identify the ways in which the plaintiffs and the families constructed, through class, their equality with and worthiness of an integrated education. Finally, I describe and explain how a comparative historical methodology that relies on narratives and storytelling is the method I use to compare and contrast cases representing three different periods and three distinct racial groups.

In Chapter 3, "The 101 Bricks before *Brown*," I provide the legal and historical background of school desegregation efforts since 1849, when one of the first common schools was segregated, to 1954 when segregated schools were declared unconstitutional. In doing so, I identify 101 cases that represent "bricks" that line the road to *Brown v. Board of Education*, 11 of which represent non-Black plaintiffs. I provide descriptive statistics of all the cases, identify

when and where they took place, and generate a map to visualize how school desegregation efforts took place around the United States. In this same chapter, I recite the legal facts of five Native American cases, four Chinese American cases, and two Mexican American cases to suggest why *Tape*, *Piper*, and *Mendez* are ideal cases for the in-depth analysis and study.

Chapter 4, "The Omitted, The Forgotten, and The Nearly," is dedicated to retelling the social and legal histories of *Tape*, *Piper*, and *Mendez* through newspaper accounts, interviews, transcripts, and secondary research on the cases. In this chapter, I introduce the families and the representatives of the school boards. I describe the social, historical, and political context in which each case was situated. Finally, I provide the circumstances that pitted family against school systems, which culminated with legal battles that ended in false, partial, and near victories. I anticipate this retelling may offer an explanation for why *Tape* is largely omitted from the civil rights narrative, *Piper* battles to be remembered in the narrative, and *Mendez* nearly becomes a significant part of the narrative.

Chapter 5, "The Complicated Case of Race," provides an in-depth analysis and discussion of the role of race and class within and among these cases. First, I provide a brief history and the central tenets of CRT, AsianCrit, TribalCrit, and LatCrit. Next, using their respective "crits," I discuss the role of race in each case. For example, the school board in *Tape* argued that the Fourteenth Amendment was "meant for those of African descent" (*Daily Alta* 1885c:1). This reveals the "racial flexibility" of Chinese Americans in the eyes of the law. In *Piper*, the plaintiffs are referred to as "those of the Aboriginal Race" who had "adopted civilized habits" according to the Dawes Act. This provides insight into the complicated, political relationship Native Americans have with the U.S. Government because they are both a race and a sovereign nation. In the *Mendez* case, the attorney deployed a brilliant legal strategy to avoid

being dismissed since Mexicans were classified as White in the census yet still experienced disparate treatment. In addition to interrogating their racial status, I explain how that status was further complicated and mediated by their middle-class positioning. Overall, this chapter interrogates the profound differences and significant similarities in how race and class were legally constructed within these three cases and offer an alternative theory that better captures the flexibility and embraces the complication of race.

In Chapter 6, "Fighting Fathers and Pretty Little Plaintiffs," I address the role of gender, class, and age within and across the cases. This chapter examines the familiar daddy/daughter narrative that appears in each case from 1885 to 1954, revealing a pattern in segregation stories. The child attempts to enroll in the local public school and is brutally rebuffed at the behest of the racist school board. The children are forced to attend a school for "their own kind" which is inevitably further away from their home. To fight on behalf of his daughter, the father secures an attorney and sues the school system. In historical and contemporary newspaper accounts, the fathers are featured prominently.

Next, through newspapers, transcripts, and interviews, I identify the relevant controlling images of Chinese, Native American, and Mexican women and children that these young plaintiffs had to overcome in order to be recognized as worthy and in need of rescue. I explore the use of little girls, as lead plaintiffs, even when younger boys were available. Are young girls worthier of rescue than boys are? Are they less threatening than boys who grow to be men, thereby fanning the fears of "race mixing?"

I also, in Chapter 6, explore the role of class in the creation of "tumble proof" plaintiffs through the politics of respectability. Through archival data, transcripts, and newspaper accounts, I explain how the plaintiffs and families in each case had to overcome deeply embedded racist

beliefs about their inferiority, inability to assimilate, and unworthiness of equality promised to every "American." I identify the ways in which each family participated in the politics of respectability, not to assert whiteness but to demand worthiness. Some actions of the families have been observed as assimilationist. I contend, however, that it was evidence of their agency and legal strategy to use their middle-classness to avoid threats to their livelihood and challenge the prevailing controlling images attributed to their group. In doing so, I hope to support Higginbotham's assertion that resistance comes in various forms and is not always marked by marches and militancy. While respectability politics may be largely rejected today, it certainly served its purpose in these cases despite its overall inability to implement substantive and structural change.

Finally, in the Final Chapter 7, I summarize the findings, provide suggestions for how the materials can be used in a course, and offer future directions for research. Consequently, I hope this project shows that the damage resulting in educational equality today is not limited to one racial community. It is insidious in its nature, affecting Asian American, Native American, and Latinx communities. There exists a shared history shaped by discriminatory practices designed to simultaneously subjugate and separate racial and ethnic communities in the United States. This project is ultimately an invitation for Mamie Tape, Alice Piper, and Sylvia Mendez, to join Linda Brown at the table, eat, and show how beautiful they all are when company comes.

By injecting these cases to the school desegregation narrative and treating gender and class as symbiotic with race, I argue that these plaintiffs were more than just Chinese American, Native American, and Mexican American. They were also mothers and fathers who, like *Brown*, utilized their middle-class status to confront a system of inequality that refused to make space for their daughters. They were daughters who were every bit as, if not more, intelligent, capable, and

eager as their White counterparts. Most importantly, *Tape*, *Piper*, and *Mendez* are examples that these families did not simply sit on the side of the road to *Brown* as spectators. They were fellow travelers that contributed in ways that, while complicated, still added to the bricks that lined the path to *Brown v. Board of Education*.

CHAPTER 2: STUDIED SEPARATELY AND UNEQUALLY

"I know there is strength in the differences between us.
I know there is comfort where we overlap."
-Ani DiFranco

This chapter is dedicated to accomplishing three important goals related to the literature, theory, and methodologies applicable to this project. These goals identify the differences and overlaps through an intersectional lens between *Tape*, *Piper*, and *Mendez*. First, I summarize the literature on Mexican American, Native American, and Chinese American school desegregation, exposing how the study of school desegregation is, ironically, studied separately and unequally. This results in a disconnected, incomplete, and singular narrative of civil rights efforts across and between different racial communities.

Adding to the existing literature, I study school desegregation cases collectively and comparatively to provide a more connected, inclusive, and intersectional narrative. Next, I introduce three theoretical frameworks that guide my research design and analysis of how race, gender, and class were constructed within and across these cases. These theoretical frameworks are Critical Race Theory (CRT) and its intellectual offspring, Controlling Images, and the Politics of Respectability. Finally, I describe how deploying a methodology that utilizes an intersectional, comparative historical approach, which relies on legal storytelling and narratives, is an effective way to scrutinize this research.

Using this approach, I argue, allows me to examine these cases side-by-side and across time to describe how these groups engaged in the legal fight for educational equality and how race, class, and gender were constructed similarly and separately across these cases. This methodology aligns the experiences of disparate racial communities and provides a more inclusive, intersectional, and multiracial civil rights narrative.

Literature Review: Studied Separately and Unequally

When a field of study is imbalanced and wanting of a particular perspective, a resultant gap is revealed. My research identifies such gaps in the school desegregation literature and provides theoretical bridges that traverse those gaps to establish critical connections between singular experiences. In reviewing the following literature, I am not suggesting that the cases should have an equal amount of scholarly coverage. My goal is to shed light on the disparity in the scholarly treatment of the contributions of Latinx, Native Americans, and Asian Americans to the school desegregation movement in the United States. I accomplish this by first briefly summarizing the literature on *Brown* to identify the larger empirical gaps that this project aims to fill with *Tape*, *Pipe*r, and *Mendez*. Next, I review the literature on Latinx, Native American, and Asian American school desegregation generally and the literature on *Mendez*, *Piper*, and *Tape* specifically. This identifies the paucity in scholarly treatment, limited focus on race, dearth of an intersectional analysis, and the siloed ways racial inequality is studied by various disciplines and across different racial groups.

For the most part, research on school desegregation has been focused on the racialized experiences of Black communities and largely authored by historians and legal scholars. For example, books and articles about *Brown* are plentiful and generally can be reduced to four categories:

1) Books about the case (Kluger 1975; Bell 2004; Klarman 2004, 2007);

2) Books about its famous participants such as Thurgood Marshall and Earl Warren (Horowitz 1998; Williams 1998; Marshall and Tushnet 2001; Newton 2006; Sullivan 2009; James, Jr. 2013, Daugherity 2016);

3) Books and articles about co-plaintiffs and school desegregation efforts that are lost in the "shadow" of Brown (Ribble 1959; Crossland 2004; Turner 2004; Bernstein 2007; Forman Jr. 2005; Rubin 2006; De Laine Gona 2011; Minow 2012; Gadsden 2013; Dolin 2014;); and

4) Books about the post-Brown educational system (Clotfelter 2004; Contreras 2004; Ogletree, Jr. 2004; Reber 2005; Anderson 2010; Frankenberg 2014; Lewis-McCoy 2014; Mickelson, Smith, and Nelson 2015; Delmont 2016).

What this literature also shows is that a majority of the materials written about *Brown* are about what happened during and ***after*** the case. In fact, much of the scholarly treatment on school desegregation is centered on examining the state of education in a post-*Brown* world and its failure to generate real, substantive, and necessary educational reforms for African Americans. This project turns the focus from post-1954 social analysis to a pre-1954 sociohistorical inquiry.

When discussing or reviewing the state of Black education prior to 1954, scholarly boundaries still exist. Much of the literature is focused on activism (Payne and Green 2003), particular regions like the South (Anderson 1988) and Northeast (Moss 2009), particular types of schools (Rury and Hill 2012), and the structural inequality of Black education that is historically rooted in White ideology and supremacy (Watkins 2001). As for the sociological study of the history school desegregation, social movement scholars take the lead (Morris 1984; McAdam 1999; Luders 2010). These scholars, however, focus on movement leadership, larger structural and political changes in and around the South, and civil rights techniques deployed, such as boycotts, voter registration drives, and marches. Furthermore, school desegregation is only an ancillary part of their studies rather than the central focus of analysis. This research is, too, limited to the Black/White binary, void of an intersectional analysis, and limited to the 1950s.

To find an intersectional approach that provides a more in-depth discussion about race, class, and gender, I needed to expand my search from school desegregation specifically to civil rights generally. In doing so, it is historians, the scholarly siblings to comparative historical sociologists, who provide some of the richest data. Some of the most notable contributions are those by Evelyn Brooks Higginbotham (1993), Danielle L. McGuire (2010), and Ruth Feldstein

(2013) to name a few. Their intersectional approach reveals the amazing contributions that are clearly absent from the civil rights narrative. In bringing to life the experiences of the radical, religious, and woman-centered roots of the role of the Black Baptist Church, Black women entertainers in the Civil Rights Era, and the bold, life-threatening, rape investigations conducted by Rosa Parks, they both deepen and complicate the civil rights narrative where men are the central figures. It is this approach, examining evidence and data beyond the popular narrative, which guides my research. In fact, it is McGuire's (2010:91) detailed account of Claudette Colvin's pregnancy "tumble" from becoming the face of the movement that inspired me to question if using little girls as lead plaintiffs could be a way to construct "tumble proof" plaintiffs.

Even with all the wealth of material dedicated to *Brown*, this review so far reveals four significant limitations in the study of school desegregation. First, much of the literature is limited in time to the 1950s. Second, it situates the efforts of activists squarely in the South. Third, it reinforces the Black/White binary. Finally, it has only scratched the surface when it comes to utilizing an intersectional analysis. To remedy these limitations, I begin my analysis in the late 1800s, expand the geography of inequality beyond the South, seek cases situated within the Black/White binary, and add gender and class to my analysis. While *Brown* occupies the largest amount of real estate on the proverbial library shelf, the remainder of this literature review introduces the perspectives that are obscured by the shadow of *Brown v. Board*.

For the remainder of this section, I focus on two important objectives. First, I review the scholarship on the school desegregation efforts of Mexican Americans, Native Americans, and Chinese Americans generally. Second, I summarize the limited scholarship of the *Mendez*, *Piper*, and *Tape* cases specifically. I present this material in reverse chronological order to establish the

paucity of scholarship on these racial communities. The overall goal is to expose the scholarly gap and academic need this project will fill: an intersectional, comparative, pre-*Brown* analysis of the school desegregation efforts of Mexican Americans, Native Americans, and Asian American. What emerges is that, compared to *Brown*, the literature on Mexican American, Native American, and Chinese American school desegregation cases generally and on the *Tape*, *Piper*, and *Mendez* cases specifically is severely limited. The scholarship that utilizes an intersectional approach is even smaller. The literature comparing the legal and historical connections between *Brown*, *Mendez*, *Piper*, and *Tape* can be counted on one hand (Wollenberg 1976; Kuo 1998).

First, the literature on Latinx communities and school desegregation is ever growing. While not as robust as the literature on the struggle for educational equality in the Black community, historians and legal scholars provide an excellent summary of the cases and issues unique to Latinx civil rights generally and Mexican American civil rights specifically. These contributions to the study of race and rights provide insight into the issues particular to the Mexican American community that make it both similar to and different from the African American community. These similarities and differences provide an opportunity to recognize a shared struggle and fate that the history of school desegregation provides Black and Brown communities. Through Mexican American school desegregation case law, Alvarez (2016:347) explains how José Crow, the *de facto* practice of segregating Mexicans, reveals the "parallel instances of inequality and disenfranchisement" of both racial/ethnic groups.

Emerging mainly from Texas and California, the literature on Mexican American school desegregation cover three different areas: (1) the legal battles involving "Mexican schools"; (2) the social and political history of segregation; and (3) the lingering effects of school

desegregation on Latinx schooling. The materials that focus on the legal history and impact of school desegregation focus on the following cases: *Salvatierra v. Del Rio* (1931) and *Delgado v. Bastrop* (1948), cases based in the state of Texas; *Romo v. Laird* (1929) one case based in Arizona; and *Alvarez v. Lemon Grove* (1931) and *Mendez v. Westminster* (1947), 2 cases out of California. I address the specifics of these cases in the next chapter.

To date, Strum (2010), a political scientist, has written the only book that focuses exclusively on the *Mendez* case.[5] While rich with details and well researched, it is marketed primarily for high school audiences. Behnken (2011) dedicates a chapter to *Salvatierra* and *Delgado* outlining the history of the cases, as well as establishing a connection to the civil rights efforts of African Americans in Texas. Mike Madrid, an educational studies scholar, and Sandra Robbie, the producer of the only documentary on the *Mendez* case, each contribute chapters on the *Lemon Grove* and *Mendez* cases, respectively (Cólon-Muñiz and Lavandez 2016). Finally, there are a handful of articles dedicated to the *Lemon Grove* case (Madrid 2008), *Romo* case (Muñoz 2001), and Mexican American school desegregation case law generally (Wilson 2003; Valencia 2008; Donato and Hanson 2012).

Providing a detailed account of the history of educational inequality in Texas and California, San Miguel, Jr. (2001) and Valencia (2008) survey the development and downfall of Mexican American education from 1846 with the signing of the Treaty of Guadalupe Hidalgo to the 1996 Hopwood/Affirmative Action case. In their account, they discuss the impact of all four Mexican American cases and the failure of both states to implement considerable, measureable change for Mexican and Mexican American children. Sociologist and Chicanx studies scholar Gilbert Gonzalez (1990, 2013) authors an outstanding sociohistorical account of segregated

[5] There is also a beautifully illustrated children's book, *Separate is Never Equal: The Story of Sylvia Mendez and Her Family* by Duncan Tonatiuh (2014). Though not "scholarly," it bears mentioning.

Mexican schools in California designed to Americanize Mexican and Mexican American children, serve the "special needs" of children assumed to be Spanish-only speakers, and essentially house children until they were old enough to enter the agricultural economy.

Similar to the literature on *Brown*, there are also articles that address the people, organizations, and subsequent efficacy of the fight for educational equality. If there were ever a Mexican American "equivalent" of Thurgood Marshall, it would be activist and professor of education at the University of Texas, George I. Sánchez. Simultaneously inspiring and controversial, historians describe George I. Sánchez as a leader, fighter, and educator of Mexican American people (García 1989; Blanton 2006) and a racist assimilationist who shunned coalition efforts with Thurgood Marshall (Foley 2004; Foley 2010; Ramos 2011). He was, by both accounts, a complicated leader of Mexican Americans in the Southwest.

In addition to the work on Sánchez, several scholars have also provided important descriptions of the development and subsequent activism of Mexican American advocacy groups. The two most associated with organizing a legal campaign against school desegregation were the League of United Latin American Citizens (LULAC) and the Mexican American Legal Defense and Education Fund (MALDEF) (San Miguel, Jr. 1982; Johnson 2011; Olivas 2013). These studies provide insight into an organization's role in deploying respectability politics in Mexican American civil rights efforts. Like the role of the National Association for the Advancement of Colored People (NAACP) in *Brown*, these organizations possessed a complicated relationship with the individuals who would ultimately serve as the face of their causes. They, too, were in search of the "right" cause and the "right" individuals to back when their entire community's fate was on the line.

With over 50 law review articles, notes, or comments and over 30 articles in peer-reviewed journal, *Mendez v. Westminster* has developed scholarly momentum as it becomes more renowned. Once again, it is legal scholars and historians who recognize the significance of the case. Sociologists also join the fray to explore the social significance of *Mendez* after the case, but there are no articles about the case itself (Roscigno, Vélez, and Ainsworth-Darnell 2001).

The scholarship written exclusively on *Mendez* can be grouped into the following themes:

(1) The conflation of race, language, and citizenship (Gonzales Rose 2015; Wollenberg 1974);

2) The historical and legal connections between Mendez and Brown (Contreras and Valverde 1994; Wilson 2003; Guajardo and Guajardo 2004; Ramos 2004; Saenz 2004; Vaca 2004; Walker 2004; Aguirre 2005; Valencia 2005; Dimaria 2007; Powers 2008; Powers and Patton 2008; Blanco 2010; Santiago 2013; Powers 2014; Bowman and Ryan 2015);

3) The multiracial collaboration of Mendez (Robinson and Robinson 2003); and

4) The legal and social history of the Mendez case and/or family (Arriola 1995; Bowman 2001; Montoya 2001; Ruiz 2001; Ruiz 2003; Hoogeveen 2007; Nance 2007; Saldaña-Portillo 2008; Strum 2010; Aguirre et al. 2014).

What emerges from the literature on *Mendez* is that it is a case thoroughly complicated by race, intimately connected to *Brown*, and overlooked in civil rights history writ large. Often framed as the case that was almost *Brown* (Arriola 1995; Ramos 2004; Powers 2014), *Mendez* nevertheless carries its own historical significance. It did not become ***the*** Supreme Court case because the governor of California lobbied the legislature to integrate the school systems shortly after the *Mendez* victory. As a result, the school system could not appeal the case. Six years after *Mendez*, in 1953, the Governor of California, Earl Warren, was appointed Chief Justice of the Supreme Court. His first case, unintentionally, was *Brown v. Board*. Though *Mendez* was only cited in the NAACP's brief in *Brown*, the strategic, collegial, and extralegal connections between

the cases are numerous. They include, but are not limited to, the adoption of the *Mendez* litigation strategy to use social science experts (Wilson 2003), the strikingly similar language in the *Brown* opinion and an attorney general's amicus brief filed on behalf of *Mendez* (Aguirre 2005), and the amicus brief filed in *Mendez* on behalf of the NAACP (Stanford Special Collections).[6]

To date, there is only one article that considers the issues related to gender in the *Mendez* case. It is an article entirely dedicated to Felícitas Mendez, the mother of Sylvia Mendez (McCormick and Ayala 2007). In 2009, in tribute to the memory of Sylvia's parents, the Los Angeles Board of Education named a new high school within the Los Angeles Unified School District the Felícitas and Gonzalo Mendez High School. Unfortunately, in what is probably the most ironic (or tragic) turn of fate for the efforts of the Mendez family to desegregate California's schools, the high school is nearly 100% Latino (Gerson 2016). In an interview with the *L.A. Times,* Sylvia Mendez shares, "[m]y parents thought that everything was going to be integrated forever. Who would have thought that we would have this kind of segregation in our schools?" (Yoshiko Kandil 2016:1).

The history and politics of Native American school desegregation presents an interesting case study. As the only racial group that also possess the status of a sovereign nation, their relationship with the government adds a layer of complication that is different from *Mendez*. Similar to *Brown* and *Mendez*, a majority of the literature about Native Americans and segregated school systems are about the pitiable state of Native American education today (Trujillo and Alton 2005; Klein 2014; Ellwood 2017). However, because of the creation of "Indian Schools," there is a decent amount of literature about the intentional efforts of the U.S.

[6] Amicus briefs are legal briefs filed with the court to demonstrate support and offer an explanation of why and how it is significant to the group they represent. Translated it means "friend of the court."

government to remove Native American children from their homes with the goal to "Americanize" them (Adams 1995; Almeida 1997; Child 1998; Reyhner and Eder 2004; Lomawaima and McCarty 2006).

There are also works whose focus is on a particular school, group, or individual. Fear-Segal and Rose (2016) provide a collection of multidisciplinary essays on life at one of the most famous Indian boarding schools, the Carlisle Indian Industrial School. By 1905, however, it was clear that boarding school were an abysmal failure. A member of the Board of Indian Commissioners, Francis Ellington Leupp, wrote in his first annual report:

> It is a great mistake to start the little ones in the path of civilization by snapping all the ties of affection between them and their parents and teaching them to despise the aged and nonprogressive members of their families. (Adams 1995:308)

Independent scholars Peavy and Smith (2008), who specialize in women's history, provide a unique story of a championship girl's basketball team from the Fort Shaw Indian School in Montana. Continuously on "exhibit," the reporters described the team in mythical and gendered ways. For example, at one particular game, newspaper reporters described the young players as "nimble maidens [that] played like lambent flames back and forth across the polished floors" (Peavy and Smith 2008:174).

When it comes to *Piper,* the research is comparatively miniscule. There are only a handful of articles (Gauerke 1953; Blalock-Moore 2012), a few pages within books (Wollenberg 1976; Williamson et al 2007), and no books exclusively dedicated to the case. Because it is a legal case and takes place in California, it is also mentioned or footnoted, but never the subject of, various law review articles (Kuo 1998; Delgado and Stefancic 2000; Baca 2006; Berger 2009; Gordon 2016)

Like *Mendez*, *Piper* is discussed in Wollenberg's book on the history of segregated schools in California. In a chapter titled, "The Tragedy of Indian Education," Wollenberg (1976) correctly captures the debate of where and how Native American children were to be educated. In the 1920s, there were three options available to Native American children, all segregated from White public-school systems. Those options were Indian boarding schools, reservation ("rez") schools, or federal Indian schools. I address this educational history in detail in Chapter 4. The only article dedicated exclusively to the *Piper* case is one written by Nicole Blalock-Moore (2012). Relying on court records, newspaper articles, and interviews with members of the community, Blalock-Moore assembles a strong record of the case providing exceptional historical background that is also addressed more specifically in Chapter 4.

With very little on the case itself, there has been very little sociological or intersectional study of the case, similar to *Brown*, *Mendez*, and *Tape*. Unlike *Brown*, *Mendez*, and *Tape*, *Piper* is the only case that has yet to generate a documentary. This may be because there is so very little known about the case and the Piper family relative to the other cases. The Big Pine School District and the Paiute Tribe of Owens Valley did work together to create several YouTube® videos designed to raise money for a life-sized sculpture of Alice Piper. This makes it the only case that has a statute erected in its honor (Figure 2.1).

While it has not captured the attention of the scholarly community and documentary filmmakers, it is nonetheless a critical part of the indigenous history of the Paiute Tribe. To date, however, the videos have only garnered a little over 4,000 views (Digital Ndn 2014a,b,c,d,e). In a digital age where clicks and views are the new measure of public interest, the Alice Piper story has a long way to go before it becomes an established part of the civil rights narrative of

educational equality. Still, the Paiute Tribe of Owens Valley is a community determined to spread the word as outlined in Chapter 4.

[Figure 2.1 approximately here]

Finally, almost 70 years before *Brown*, in San Francisco, CA is the first school desegregation case involving Chinese children: *Tape v. Hurley* (1885). What makes this particular case so interesting is that it was argued 17 years after the passage of the Fourteenth Amendment, but 11 years before *Plessy v. Ferguson* legally established the "separate but equal doctrine." It was, in a sense, a test case of the validity of the promise of "equal protection of the laws." Despite its significance, there is very little written about Asian American segregation generally and even less written about the *Tape* case specifically.

Much of the literature on Asian Americans and education is research that either reinforces or dispels the "model minority" myth with few discussing the creation of segregated schools (Ng, Lee, and Pak 2007; Dhingra and Rodriguez 2014; Chou and Feagin 2015; Lee and Zhou 2015). Consistently constructed as examples of immigrant success stories and high academic achievers, it is possible to forget that at several points in history, Asian Americans were an unwanted and unwelcomed population (Takaki 1998; Robinson 2012; Ancheta 2008; Lee 2015; Wu 2014). Still, the overdetermined amount of scholarly research dedicated to the model minority stereotype, explains the shortfall in scholarly treatment of Asian Americans and segregated schooling. The few books in which segregated schooling for Asian Americans is addressed are occasionally allocated an entire chapter. Most, however, receive a simple, general reference.

Then there are books that focus on a particular population, family, or organization. Historian Jorae (2009) powerfully describes the lives of Chinese children in San Francisco during the height of Chinese exclusion policies. She is one of the few authors who dedicate an

entire chapter to segregated schools, describing Chinese public schools, the Chinese mission schools, and Chinese-language schools that were created as an alternative. Jorae (2009:138) writes, "[a]fter 1885 [the year *Tape* was decided] the segregated Chinese school stood as a visible symbol of anti-Chinese hostility . . . Chinese American community leaders opened Chinese-language schools in an effort to . . .counter the negative influences of Americanization."

More recently, Berard (2016) wrote an entire book about a Chinese American family in Mississippi, the Gong Lums, who argued for their daughter to attend the local White school instead of the "Negro school." *Gong Lum v. Rice* is a 1928 case that made its way to the U.S. Supreme Court. She characterizes the family as the first to fight segregated schools in the South. The book, *Water Tossing Boulders*, is a beautifully and romantically written biography of the family based on archival research and letters from the family. However, the author's characterization of them as "freedom fighters" is misguided. As will be discussed in more detail in Chapter 3, they were not necessarily arguing that segregated schools were wrong, just that they were mislabeled as "Colored" and mistakenly sent to the Negro school. They did not argue, for example, that Negro schools were unconstitutional. They argued that they were not Negro and therefore should be admitted to the White school.

The remaining academic literature about Asian Americans and school desegregation is limited to a handful of articles. Tamura (2003) writes about Asian Americans in educational history but only briefly mentions the *Tape* case. In fact, that entire issue of *History of Education Quarterly* was dedicated to Asian American educational history but contained no articles on the *Tape* case. Instead, the articles were about Japanese language schools in Hawaii (Asato 2003), second-generation Japanese Americans who lived and studied in Japan (Azuma 2003), and the racial negotiations of Chinese who lived in the Mississippi Delta (Lim de Sánchez 2003). Their

purpose was to bring what Tamura calls the "in-between-ness" of Asian identities into the discussion of racial political history of the United States.

When *Tape* is mentioned, as in the following law review articles, it is limited to a footnote or citation. For example, the *Asian Pacific American Law Journal* reprinted the amicus brief filed by the Asian American Legal Foundation in *Bollinger* (2003), the case challenging the University of Michigan's Law School affirmative action practices. The brief includes one sentence summarizing the *Tape* case. The case also appears in law review articles that summarize California's educational history (Delgado and Stefancic 2000), discuss birthright citizenship (Ngai 2007; Berger 2016), apply AsianCrit theory (An 2017), and various reference entries, but it is limited to footnotes and sentences. Considering it is the first school desegregation case in Asian American history, I expected more information.

However, there are only a few sources where *Tape* receives closer attention. They are largely included in literature about late 19th century Chinese education, discrimination laws, and the role of Chinese women in San Francisco (Wollenberg 1976; McClain 1994; Yung 1995; Kuo 1998). Unfortunately, many of these earlier works do not tell the complete story of the Tapes and some report incorrect facts. For example, McClain (1994:137) wrote that Joseph Tape married a White woman and took her last name.

The Tape family does not become the major focus of scholarly research until *The Lucky Ones*, a book about the life of the Tape family by Ngai (2010). In it, she writes about the extraordinary life and legacy of the Tape family, but dedicates only a portion of a chapter to the case itself. In a beautifully written and exceptionally researched book, she introduces the family from its humble beginnings as Chinese immigrants to its assimilated and wealthy life as Chinese Americans, complete with extravagant weddings, fancy cars, several homes, and legal intrigue.

In this book, Ngai provides the most detail of the Tape family beginnings in Berkeley, California. Nevertheless, it is to date the only book written exclusively about the family and their case. Ngai's study of the family will become more relevant when I delve into the issues of class in Chapter 6.

Finally, like *Mendez, Tape* is the subject of a short documentary. The Center for Asian American Media (CAAM) produced a 21-minute documentary on the case designed for high school audiences (Ding 2000). While it is not necessarily a rigorous, academic treatment of the case, it does introduce the Tape family and their descendants to the public.

The only sociological treatment the case receives is in a comparative case study by Jewell (2014) of social mothering in two school-related cases in New Orleans and San Francisco. He relies on the *Tape* case to demonstrate "…how racialized constructions of social mothering helped to maintain links between race and class" (Jewell 2014:138). While he does discuss the Tape family and includes a consideration of the social construction of gender in his analyses, the focus of his article is Jennie Hurley, the principle of the school where the Tape family sought entry. Jewell (2014:144) argues that she was an "effective social mother" because of how quickly and deftly she responded to the Chinese family who "threatened the homogeneity of white, middle-class children's spaces."

As this literature reveals, comparatively speaking, there is very little written on Latinx, Native American, and Asian American school desegregation both individually and collectively. It also regularly interrogates inequality through the singular lens of race. Such research however, demands, yet rarely utilizes, an intersectional approach as outlined by numerous activist, scholars, and writers over time (Truth 1851; Church Terrell 1940; King 1988; Crenshaw 1991; Collins 2009; Petrovich 2015). I contribute to the literature on school desegregation by providing

the social and legal histories of the cases and providing an intersectional analysis that considers the critical role of gender and class and its inextricable connection to race. Accomplishing the latter tasks requires combining three theoretical frameworks that allows me to study the construction of race, gender, and class within and between *Tape*, *Piper*, and *Mendez*.

Three Theoretical Frameworks

Applying an intersectional approach requires linking three theoretical frameworks: Critical Race Theory (CRT) and its intellectual offspring, Controlling Images and the Politics of Respectability. Together, these theories provide a more thorough examination of race, gender, and class, respectively, than any one theory could on its own. While this section provides a brief description of the three theories, as well as their overall significance to this study, a more specific discussion takes place in the subsequent chapters dedicated.

Using the tenets of CRT alone would provide an excellent foundation to discuss the role of race, writ large, across the cases. However, to provide a more nuanced discussion of the legal construction of race within each racial community, I rely on CRT's intellectual offspring for each relevant case. This allows me to, for example, use AsianCrit to examine the role of transnational context to discuss *Tape*, TribalCrit to explore the liminal position unique to Native Americans in *Piper*, and LatCrit to address issues of citizenship and nationality in *Mendez*. I explore these critical similarities and differences on the social and legal construction of race within and between these racial communities in Chapter 5.

Using controlling images as an analytical tool allows me to consider how dominant gendered and classed images of the respective racial groups influenced legal strategies and the discourse about the case in the mainstream media. A review of secondary research allows me to identify the prevailing controlling images of Chinese women and children in the late 1800s,

Native American women and children in the early 1900s, and Mexican American women and children in the 1940s. After identifying the specific gendered and classed controlling images specific to each racial group, in Chapter 6 I will analyze how they appear in court transcripts and newspapers. What this research reveals is that Mamie Tape, Alice Piper, and Sylvia Mendez, whom I refer to as "pretty little plaintiffs," maintain a middling position between the criminalized and sexualized images of Chinese, Native American, and Mexican American women on one end and the pathetic imagery of Chinese, Native, American and Mexican little girls on the other. This middling position situates these plaintiffs in a standing that makes them too young to be criminalized and sexualized, and too middle class to be pathetic.

Also discussed in Chapter 6 is how the politics of respectability played a critical role in establishing and maintaining the appearance of "middle-classness" that separated the *Tape*, *Piper*, and *Mendez* families from the controlling images associated with each population. I argue their use of respectability politics had less to do with adopting an assimilated identity of sameness and more to do with demanding equality based on citizenship in spite of rather, than because of, their race. What their arguments expose, however, is how these racial groups failed to consider the similarity of their experiences were with those of African Americans. While they did not directly and explicitly separate themselves from African Americans, their conspicuous silence and failure to refer to African Americans speaks volumes.

Critical Race Theory, its Intellectual Offspring, and Race

I use CRT to examine how race is not only socially constructed, but also historically and legally constructed. For the purposes of this project, I rely on both the theoretical elements of CRT (social construction, racialization, and intersectionality) as well as its qualitative methodological tool of legal storytelling. Relying on the synergetic relationship of CRT and

Race/Ethnic Sociology allows me to accomplish two goals: (1) to show that the ways in which the families were racialized from 1885 to 1954; (2) to reveal the historical roots of educational inequality to the contemporary consequences of desegregated, underfunded, and poor performing education systems.

Describing the relationship between sociology and CRT as synergetic may be problematic considering the fact that CRT challenges the kind of objectivity upon which much of sociology professes. However, as Zuberi and Bonilla-Silva (2008) suggest, a growing commitment to the development of a critical social science that is more race-conscious can help to bridge the social science/CRT theoretical and empirical divide. Furthermore, Carbado and Roithmayr (2014) identify that the most salient ways in which social science and CRT work together are in the analysis of structural inequality and the shared value of storytelling (Fernandez 2002; Tilly 2002; Maynes, Pierce, and Laslett 2008; Lawrence 2012).

In exploring the legal, historical, and social construction of race, however, CRT also has its own limits and blind spots. In response, Latinx, Asian American, and Indigenous scholars developed their own forms of CRT. Latino Critical Theory (LatCrit) was developed to include the role of language, immigration, citizenship, the debate of race vs. ethnicity, and nationalism (Haney Lopez 1997; Stefancic 1997; Alcoff 2003; Perea 2004; Bender and Valdes 2011; Olden 2015; Aparicio 2016). Asian Critical Theory (AsianCrit), like LatCrit, considers the role of immigration and citizenship. However, it also adds the unique experiences of Asians in America and around the globe as it relates to multiple languages, transnationalism, and the change from yellow peril to model minority in the United States just to name a few (Chang 1993; Chuang 2001; Hayakawa Török 2002; Chang and Gotunda 2007; Matsuda 2010; An 2016; Berger 2016). Finally, Tribal Critical Theory (TribalCrit) adds the role of colonialism, imperialism, and tribal

sovereignty to the scholarly discussion of race (Brayboy 2006). While each theory incorporates issues unique to their respective communities, the overall tenets of CRT still make up the foundation upon which each is built, particularly as it relates to the social construction of race, the commitment to historical context, the structural nature of racism, as well as the commitment to intersectionality.

Consequently, in addition to using CRT to discuss race across the cases, I intend to use its intellectual offspring to analyze the issues of race specific to each case (i.e. LatCrit for *Mendez*, TribalCrit for *Piper*, and AsianCrit for *Tape*). A more detailed review of the literature for the various theories is offered in Chapter 5. In the meantime, Table 2.1 below provides a side-by-side comparison of the tenets of CRT, LatCrit, AsianCrit, and TribalCrit.

[Table 2.1 approximately here]

Controlling Images, Gender, and Class

While CRT and its intellectual offspring examine the construction of race in *Tape*, *Piper*, and *Mendez*, Collins' theory of controlling images conveys the mechanism through which this construction occurs using gender and class. More importantly, it provides a layer of complexity that comes from identifying the interwoven roles of gender and class with the legal, social, and historical construction of race. This recognition that race is inseparable from gender and class is what has been missing from the sociohistorical treatment of civil rights struggles generally and school desegregation efforts specifically. I use controlling images to begin filling that scholarly void but limit my analysis to the "pretty little plaintiffs."

Collins (2009), in her development of the theory of controlling images, focuses solely on Black women. While she identifies the criminalized, sexualized, and oversimplified images of Black women throughout history, her analysis fails to include an in-depth discussion of children.

This project aims to add to the existing literature by offering, identifying, and comparing controlling images represented in the cultural milieu surrounding the cases. Specifically, I identify controlling images associated with Chinese American women and children in the 1880s, Native American women and children in the 1920s, and Mexican American women and children in the 1940s. My treatment of controlling images adds to existing literature because it not only considers gender, but also adds layers of race, class, age, and historical context to the overall analysis.

Feminist and race scholars have identified several gendered controlling images across all forms of media including, but not limited to, advertising (Kilbourne 1999), film (Haskell 1997), comic strips (Crawford and Unger 2004), and other forms of television and media but they use the phrases "myths" or "stereotypes" to describe them. These, too, are described as either Black or White. Collins (2009:44) does invite Latinx, Asian American, and Indigenous women to "identify points of connection" as they establish their own social justice projects. While scholars like Golash-Boza (2015) have recently answered the call by identifying raced and classed controlling images of Asian American, Native Americans, and Latinx men and women from the lower to upper classes, much of the scholarship focuses on the images specific to Black women (Kilbourne 1999; Haskell 1997; Crawford and Unger 2004). Furthermore, much of this literature uses phrases like "myths" or "stereotypes" to describe specific racialized images. Nonetheless, their discussion and application fits into the definition of controlling images. The definitions, historical origin, and identification of these controlling images that are relevant to Tape, Piper, and Mendez are discussed in more detail in Chapter 6.

The Politics of Respectability and Class

Because class is inextricably tied to race and gender, I turn to the work of Evelyn Higginbotham's (1993) research on the role of Black women in the Baptist church between 1880 and 1920 to provide a stronger conceptual foundation. It was in her research of these determined, powerful women that she theorizes that their activism was marked by the politics of respectability. The politics of respectability, she explains, was deployed to counter the racist notions of self-inflicted poverty, laziness, and lack of schooling that were rooted in White supremacy. Higginbotham (1993:187) explains that respectability politics "emphasized reform of individual behavior and attitudes both as a goal in itself and a strategy for reform of the entire structural system of America's race relations."

Since identifying and defining the politics of respectability, the concept has been criticized as assimilationist, classist, and controlling (Durham, Cooper, and Morris 2013). Higginbotham, however, very clearly makes the argument that the politics of respectability is not only defined as "ladylike" behavior, but also celebrated participation in what was deemed unladylike protest. "The politics of respectability," she explains, "assumed a fluid and shifting position along a continuum of African American resistance" (Higginbotham 1993:187). The Black women of the Baptist Church utilized the politics of respectability to assert citizenship, equality, and worthiness, not to declare assimilative whiteness.

Higginbotham (1993:188) briefly alludes to other groups who "feel the sting of prejudice." She explains that Chinese and Japanese immigrants were also subject to demeaning stereotypes designed to dehumanize Asians and Asian Americans. She makes it clear, however, that African American's indignities stretch far beyond recent immigration experiences and are deeply rooted in slavery. While I agree with Higginbotham that the histories of the different racial groups in the United States result in differential treatment at the hands of Whites, *Tape,*

Piper, and *Mendez* make evident that the politics of respectability is not bound by time or limited to a particular racial group.

To identify the raced, gendered, and classed controlling images present in the cultural milieu surrounding *Tape*, *Piper*, and *Mendez*, a particular kind methodology is necessary to identify important differences and establish critical connections among the cases. Through a comparative historical case study methodology and the effective use of narrative and storytelling, this project not only provides a deeper understanding of the contributions of the racial groups lost within the Black/White binary, but examines the ways in which marginalized groups in the United States can use history to forge present day coalitions and collaborations that can mediate the social inequalities often reproduced within and between groups.

Methodology: Studying Collectively and Comparatively

In this section, I describe the value and use of comparative, historical, and storytelling methodologies and share how scholars outside of sociology have successfully utilized these approaches to identify a more complete and compelling story of how race works in America. Despite their valuable contributions, however, it is clear that they did not utilize an intersectional approach to consider the role of gender and class. Ultimately, I argue, that to remedy the separate and unequal study of school desegregation, I must use an intersectional, comparative-historical approach that relies primarily on narrative and storytelling.

Most comparative historical research focuses on macro-level analysis of issues such as state formation and the restructuring of various world regions (Tilly 2010; Barkey 1994), economic development (Hopcroft 1999), and historical and modern social revolutions (Skocpol 1994). There are also an increasing number of studies that focus more on meso-level analysis of groups and organizations, such as the identity development of particular populations and

countries (Brubaker 1992) and social movements involving race and gender (Marx 1998; Banaszak 1996). A large debate within Comparative Historical Sociology (CHS), however, is whether micro-level studies of individuals or small groups fit into the macro-level approach of the field. While I do not expect to resolve this particular debate, I believe micro-level studies are compatible with the commitment of CHS "to offering historically grounded explanations for large-scale and *substantively important outcomes*…defined by…an emphasis on processes over time and the use of systematic and contextualized comparison" (Mahoney and Rueschemeyer 2003:4, 6, emphasis mine).

For this project, utilizing a comparative historical approach means gathering data based on identities, narratives, and storytelling (Tilly 2002). As Maynes, Pierce, and Laslett (2008:41) argue in their book *Telling Stories: The Use of Personal Narratives in the Social Sciences and History*:

> Personal narrative analyses have the potential to theorize and investigate a more complex and interesting social actor—constructed through social relations, embodied in an individual with a real history and psychology, and living and changing through time.

A growing area of social science recognizes autobiographies, interviews, diaries, oral histories, journals, and letters – and the stories they tell – as valuable forms of data. In addition to the court transcripts, newspaper articles, magazines, and legal opinions, I rely on this data to tell a more complete story of educational racial inequality in the United States.

Historians, legal scholars, and ethnic studies scholars are at the forefront of utilizing a comparative historical approach to study the experiences of multiple racial groups. This particular manner of studying a social phenomenon across racial and ethnic groups deeply informs my own research. From Pascoe's (2009) study on anti-miscegenation law to Gross's (2008) research on the legal and historical development of race in the United States, it is not

impossible to find research that explores the differences and similarities within and between racial communities. Takaki (1993) authored one of the most comprehensive histories of racial groups in America. In one tome, he reviews the histories of the Irish, Native Americans, African Americans, Asian Americans, and Mexican Americans. While he did not directly compare the histories of the groups, he did organize them into themes of colonization, racial identity development, legal subordination, and economic subservience. Connecting the themes that emerge from the social and legal narratives of *Tape*, *Piper*, and *Mendez* is also central to my comparative-historical approach.

Studies in other disciplines have utilized a comparative historical approach that also guides this research. They come in the form of comparing different racial groups historical oppression, political struggles, and challenges to unjust laws. For example, Gonzales-Day (2006) compares, contrasts, and connects the histories of the lynching of Mexicans, Chinese, and Native Americans in the West to African Americans in the South. Pulido (2006), through archival research and qualitative interviews, discusses the activism of the Los Angeles based, Third World Left comprised of organizations such as the Black Panther Party, the Yellow Brotherhood, and the *Centros de Acción Social Autónomo* (CASA). There is also Brilliant's (2010) study of how Japanese American, Mexican American, and African American organizations helped to shape and push changes in civil rights legislation. Most recently, Jones-Branch (2014), through the lens of race and gender, examines the interracial alliance between Black and White women to challenge racial injustice in post-WWII South Carolina.

Within sociology there is historical research related to race and gender, but very little comparative-historical work that considers race, gender, and class (Nelson and Bridges 1999; Solanke 2009). A significant challenge in the legal, historical, and sociological literature on civil

rights is a scholarly approach that only considers the role of race. The narrative is much more complex. I show that the meanings and outcomes ascribed to Mamie's, Alice's, and Sylvia's race are deeply intertwined with their gender and class. The symbiotic relationship of race, class, and gender has a greater impact than race alone. The *Tape*, *Piper*, and *Mendez* families were more than Chinese, Native American, and Mexican American. They were daughters, fathers, and mothers. They were middle class, entrepreneurs, and community leaders who were immune to the threats of job loss and financial ruin. These social characteristics complicate the narrative of school desegregation in the United States. They encourage scholars to understand the multiple ways the U.S. racial hierarchy is constructed, influenced, and maintained.

Lastly, and most importantly, another goal that an intersectional, comparative historical approach accomplishes is identifying opportunities for coalition building. It is a goal that neither comparative historical scholars nor Collins and Bilge (2016) identify as an important outcome of the methodology. Simply because it has not been recognized does not mean that an outcome does not exist or should not be pursued.

In their essay on coalition building between Black and Latinx youth groups, Freer and Sandoval Lopez (2011) identify two ideological tools that help build and maintain Black/Brown coalitions. The first is racial pride and the second is an understanding that the groups share a linked fate. To strengthen racial pride and provide evidence of a shared fate, the group leaders would provide "educationals" to its youth members. As one of Freer and Sandoval Lopez' (2011:292) youth informants, Maria, shares:

> We do…this ethnic studies stuff. We do an educational about the Black Panthers. We do an educational about the Brown Berets. We do an educational about Malcolm X. We do an educational about Corky Gonzales. So, they make sure that it's pretty balanced and we're not being exclusive.

This study is a sort of "educational" designed to inspire pride in knowing that similar to African Americans, Mexican Americans, Native Americans, Asian Americans fought for their rights as well. It is also a lesson on the shared fate of marginalized racial groups in the United States. It is, ultimately, a sociohistorical example of how the structure of educational, racial, gender, and class inequalities in the United States were constructed, maintained, and legally challenged.

I want to make clear that my use of a comparative historical approach is not meant to put an equal sign (=) between the experiences of various racial groups in the United States. Instead, I use the mathematical symbol for similarity (≈) to recognize not only the differences but also the profound similarities across *Tape*, *Piper,* and *Mendez*. In doing so, this project reframes the enduring legacy of U.S. racial inequality in two critical ways. First, by incorporating the experiences of Chinese Americans, Native Americans, and Mexican Americans to establish the enduring legacy of structural racism. From the late 1885 to 1947, the narratives, stories, and identities strikes a chord of familiarity no matter which racial group occupies the role of storyteller. Second, by complicating the school desegregation narrative in the United States by exposing how the school desegregation movement was not only raced. but also classed and gendered. Using a comparative historical approach that relies on narratives, storytelling, and other primary sources, I can reveal how the fight for educational equality connected one case to another despite being disguised as singular, unrelated events.

Conclusion

I expect this research to answer two important questions regarding the school desegregation movement in the United States. First, how did Chinese American, Native American, and Mexican American communities engage in the fight for racial equality in education? Second, how were race, class, and gender constructed similarly and separately in each

case and across time? A review of the literature from *Brown* to *Tape* suggests that answering these questions requires more than one theory and one methodology.

In this chapter, I have reviewed the literature regarding school desegregation relevant to each racial group to establish how this topic is studied separately and unequally, and I have identified a scholarly gap in the literature on school desegregation specifically and in race scholarship generally. Second, I described the three theoretical frameworks I will use to analyze the construction of race, gender, and class across all three cases. CRT, LatCrit, AsianCrit, and TribalCrit frame my discussion of race and class. Patricia Hill Collins' theory regarding Controlling Images and Higginbotham's Politics of Respectability frame my discussion of gender and class. Finally, I have proposed an intersectional, comparative historical methodology to study *Tape*, *Piper*, and *Mendez* collectively and comparatively by using archival data to construct legal and historical narratives and stories. In doing so, I consider the historical contributions and circumstances of each racial group to explore both the critical connections between, and divergent disparities among. Black, Latinx, Asian American, and Native American communities.

While theorized separately, the inherent intersectional positions of the plaintiffs and their families' shape the overall discussion. The diagram below visually demonstrates my theoretical framework, the legal connections between the cases, and the growing significance of each case (Figure 2.2). The only cases that cite one another are *Brown* and *Mendez* and that is limited to a Supreme Court brief submitted by the NAACP, not in the Supreme Court opinion drafted by Warren.

The inclusion of *Brown* in the graphic is demonstrative of its legal accomplishments, historical significance, and social connection to *Tape*, *Piper*, and *Mendez*. Discussing how

Mendez, *Piper*, and *Tape* engage in the legal fight for racial equality in education and how race, class, and gender were constructed across the cases requires recognizing *Brown*'s theoretical, historical, and legal foundation to the project. While *Brown* is not included in my overall analysis, its presence throughout the project represents the symbolic and inextricable rootedness in Blackness that is missing from these types of social justice studies.

As a scholar, I would not have thought about the contributions of Latinx, Native American, and Asian American communities without first understanding the sacrifices of African Americans. LatCrit, TribalCrit, and AsianCrit would not exist without the inspiration they drew from CRT. Finally, I would not be exploring the controlling images of women and girls in specific communities across time if my eyes were not opened to the controlling images endured by Black women. Most importantly, these bricks represented by *Tape*, *Piper*, and *Mendez* would not be the subject of scholarly exploration if they were not part of a path that ultimately leads to *Brown*.

[Figure 2.2: approximately here]

CHAPTER 3: THE 101 BRICKS BEFORE BROWN

"It's always best to start at the beginning—and all you do is follow the yellow brick road."
-Glinda to Dorothy, Wizard of Oz

"School houses do not teach themselves—piles of brick and mortar and machinery do not send out men. It is the trained, living human soul, cultivated and strengthened by long study and thought, that breathes the real break of life into boys and girls and make them human, whether they be black or white, Greek, Russian or American."
-W.E.B. DuBois

In the documentary, *The Road to Brown,* director and writer William Elwood tells the brilliant tale of how Charles Houston, Chief Counsel of the NAACP, worked tirelessly and strategically to dismantle the school segregation and Jim Crow. Understandably, the documentary focuses exclusively on *Plessy v. Ferguson* and the Jim Crow South. However, in the spirit of recognizing what historians call the "long civil rights movement," the proverbial road to *Brown* begins long before the storied 1950s (Dowd 2005; Hall 2005; Stein 2012). Indeed, there are at least 101 cases I have identified using *LexisNexis* legal software, in addition to the many other cases studied by legal scholars, historians, and education experts (Anderson 1988; San Miguel, Jr. 2001; Bow 2010; Rury and Hill 2012). While my method may result in missed cases that were not appealed to federal court or state supreme courts, this chapter provides an excellent sample of the various attempts to dismantle the practice of "separate but equal" established nearly since the creation of the common school. These cases demonstrate that the road to *Brown* is long, circuitous, determined, and, most importantly, multicolored with the contributions of Chinese Americans, Native Americans, and Mexican Americans.

To place *Tape, Piper*, and *Mendez* within the larger context of the legal struggle for educational equality in which they are embedded, I first provide a brief history of the growth and development of the common school, which was the genesis of the public-school system in the

United States. More importantly, I demonstrate how, since its inception, the public-school system, despite its egalitarian ideological roots, was marred by segregation. Second, I provide descriptive statistics of the cases filed before *Brown*. Next, I discuss historical, geographic, and legal patterns of the cases to illustrate its trajectory. Following this general overview, I specifically discuss the cases involving Chinese Americans, Native Americans, and Mexican Americans, noting their complicated contributions to case law. Finally, I explain how and why *Tape*, *Piper*, and *Mendez* are the ideal cases for this project.

The Legal and Historical Beginning of "Separate but Equal"

The creation of the common school (aka public education) marks the beginning of the struggle for educational equality. In "Origins of Mass Public Education," Bowles and Gintis (1976) demonstrate how the development of the U.S. educational system went hand-in-hand with the country's economic development. In colonial times, the home was the schoolhouse and family members were the teachers. The skills necessary were largely agrarian in nature. While an elementary education was available to children, their occupational aspirations were to either return home to the farm or become an apprentice and learn a trade.

After 1776, an increase in foreign trade and investment capital transformed the U.S. economy into a capitalist system of production where wage labor steadily drove out the small business owners and independent farmers. "In 1820, for every person working in manufacturing and distribution, there were six people engaged in agriculture; by 1860, this figure had fallen to three" (Bowles and Gintis 1976:157). Furthermore, from 1846 to 1856, over 3.1 million, mostly Irish, immigrants arrived in the U.S. with little to offer but their labor (Bowles and Gintis 1970). The family, as a unit of production, was replaced with manufacturing mostly related to the textiles and shoe industries.

The largest company, Merrimack Manufacturing Company, based in Lowell, Massachusetts, was perhaps the most influential force in the creation of mass public education. Eager to establish a school system, the owner Kirk Boott invited Theodore Edson, a young minister, to move to Lowell and start a school (Bowles and Gintis 1970). The changes to the colonial school model quickly changed. A central school board was created comprised mostly of businessmen and professionals, the school year was lengthened, sequential grades were created, and school became compulsory. At the state level, a board of education was formed in 1837, led by Horace Mann, the father of common schools. In Mann's mind, this school system would know "no distinction of rich and poor, of bond and free…without money and without price, it throws open its doors and spread the table of its bounty, for all the children of the State" (Bowles and Gintis 1970:167). Common schools, then, began to spread across the country. While there was no uniformity amongst the schools at the time, wherever there was wage labor, there was sure to be schools.

During this same time of vast economic transformation, the growth of the abolitionist movement and the continued call for the end of slavery develops a growing community of free Blacks in the North (Horton and Horton, 1979; Franklin and Higginbotham 2011). Accompanying this growing population came the responsibility to educate the children. While the vision for the common school was that it be a space where all children were welcomed and educated, African Americans were routinely marginalized and excluded. Northern and Midwestern states established separate schools for Black children that were often underfunded, ill equipped, and overlooked (Litwack 1965; Moss 2009; Franklin and Higginbotham 2011). According to Ronald Takaki (2008:99), an individual observed "[t]he colored people are…charged with want of desire for education and improvement, yet, if a colored man comes to

the door of our institutions of learning, with desires ever so strong, the lords of these institutions rise up and shut the door."

This history, then, explains why one of the first cases is *Roberts v. Boston* in 1849. This, for the purposes of this dissertation, is where the legal road to *Brown* begins. It seems fitting since the first common school originated in Boston, Massachusetts (Nasaw 1979). In 1849, Benjamin F. Roberts, on behalf of his daughter Sarah, filed a lawsuit against the city of Boston for violating an ordinance which stated "[e]very member of the [district] committee shall admit to his school, all applicants, of suitable age and qualifications, residing nearest to the school under his charge, (except those for whom *special provision* has been made,) provided the number in his school will warrant the admission" (*Roberts* 1849). Similar to today, schools were established and managed by districts. According to the opinion, "[f]or half a century, separate schools have been kept in Boston for colored children and the primary school for colored children in Belknap street was established in 1820." In Boston, the schools for colored children were in districts eight and two and were more than 2,100 feet from her residence. To attend that school, Sarah would have to pass five White schools along the way. Roberts applied to a White school "nearest her residence" in the sixth district and was rejected four times (Martin, Jr. 1998).

Using the special provision language of the ordinance, the school committee refused her admission on "ground of her being a colored person." The school committee successfully argued that the distance to the Belknap Street was an inconsequential issue and that by admitting her to any school satisfies the requirements of the law. More importantly, they argued, "the teachers of this [colored] school have the same compensation and qualifications as in other schools in the city" (*Roberts* 1849:203). This case is, in essence, a precursor and precedent for *Plessy* and the separate but equal doctrine.

Despite famed attorney Charles Sumner's impassioned plea that "[p]rejudice is the child of ignorance. It is sure to prevail, where people do not know each other," Chief Justice Shaw remained unconvinced (Waldo, Jr. 1998:56). In his opinion, he upheld the decision of the school district. However, he prophetically wrote "[i]t is urged, that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in deep-rooted prejudice in public opinion. This prejudice, *if it exists*, is not created by law, and probably cannot be changed by the law" (*Roberts* 1849:209, emphasis mine). And so began the legal struggle to prove Shaw wrong. It began with an abolitionist and his daughter (Sarah Roberts) and ends with an activist and his daughter (Linda Brown).

From Pre-Plessy (1849-1896) to Pre-Brown (1896-1954)

Between *Roberts* and *Plessy*, lawsuits were filed throughout the country, spreading through the Midwest (Ohio, Iowa, Michigan, Indiana, and Kansas) to the West (Nevada and California) and eventually to the South (Louisiana and North Carolina). With mixed and inconsistent results, some cases won, and others lost (Table 3.1). Furthermore, a win does not necessarily imply victory against school segregation. As a review of the *Tape v. Hurley* (1885) reveals, a victory in court does not necessarily ensure legislative victory.

After *Plessy*, the campaign for equality remained focused on the K-12 education system. It appears that it is not until 1933 with *Weaver v. Board of Trustees of Ohio State University* that activists began a two-pronged approach by adding a strategic battle within higher education. In the literature, the NAACP is largely credited with this two-pronged approach (Kluger 2004; Klarman 2007). However, it is clear from the data that the strategy was deployed much earlier than the 1950s when the NAACP filed suit.

[Table 3.1 approximately here]

In this case, Doris Weaver, asked the University to admit her to housing provided for "students pursuing the course of Home Economics" (*Weaver* 1933:296). Relying, among other cases, on *Roberts*, the court denied her request citing "[t]he purely social relations of our citizens cannot be enforced by law; nor were they intended to be regulated by our own laws or by the state and Federal Constitutions (*Weaver* 1933:297-98)." The Supreme Court of Ohio supported the University's argument that it had offered her special and equal housing that would allow her to complete her educational requirements. Courts across the country reached similar results as plaintiffs sued to gain admission to colleges, law schools, graduate schools, and other professional schools (Table 3.2).

[Table 3.2 approximately here]

However, in areas where there were not separate but equal facilities, attorneys found overwhelming success (Table 3.3). With such chaotic, contradictory findings, it is no wonder that *Brown* emerged as the final answer to questions of fairness and equality. While the pattern attributed to legal strategy is fairly well known, it is the geographic and racial composition of the cases that inspire closer study (Kluger 2004; Payne and Green 2003; Bell 2004; Klarman 2004; Klarman 2007).

[Table 3.3 approximately here]

When school desegregation cases preceding *Brown* are examined in its totality, two very clear patterns emerge that reinforce the relevance of the case studies I present in the next chapters. First, the battle for racial equality is not just Black/White. The racial composition of the plaintiffs reveal the multiracial composition of the road to *Brown*. While African American plaintiffs account for 90 cases, five cases involved Native American plaintiffs, four involved

Asian American plaintiffs, and two involved Mexican American plaintiffs (Table 3.4). The mere presence of these cases alone invites inquiry.

[Table 3.4 approximately here]

Second, the race for educational equality is also not strictly a battle between the North and South. The South accounts for 41% of the cases and the North is responsible for 24%. This means that over a third of the cases took place outside of the North/South binary. Specifically, approximately 23% of the cases took place in the Midwest and 11% in the West. Over a third of the cases took place beyond the Eastern half of the country. What's more, the win/loss patterns of the regions are also remarkable.

As demonstrated in Tables 3.5 and 3.6, the North and South won and lost cases at relatively the same rate (33% vs. 67%). However, when the Midwest and West regions are examined, the pattern flips where 67% of the cases are won and 33% are lost (Tables 3.7 and 3.8). While a complete investigation of the reasons for these different win/loss patterns by region is beyond the scope of this dissertation, it is clear that there were more cases with non-Black plaintiffs in the Midwest and West than in the Northeast and South.

The majority of cases with non-Black plaintiffs occur in the West. In particular, of the 11 cases involving non-Black plaintiffs, four take place in the South (North Carolina and Mississippi) and the remaining seven all occur in the West (Arizona, Oregon, and California). Thus, focusing my in-depth study in California is appropriate given this pattern. The geographical spread, regional breakdown, names, and dates of the cases are also represented in Figures 3.1, 3.2, 3.3, and 3.4. There are 104 cases represented in the figures as it includes the cases filed with *Brown*, which are designated with a star.

[Tables 3.5, 3.6, 3.7, 3.8 approximately here]

[Figures 3.1, 3.2, 3.3, and 3.4 approximately here]

Below, I delve into the history of the Native American, Chinese American, and Mexican American bricks that preceded *Brown* that are reflected in the numbers in these tables. This analysis provides an overview of the legal and social landscape for the three racial groups represented in my research. It also situates these cases within the larger fight for educational equality.

I argue that given the U.S. racial hierarchy, the only option for, Native Americans, Latinx and Asian American communities was to distance themselves racially from Blacks (*McMillan*, *Crawford*, *Moreau*, *Gong Lum*, and *Tij Fung*) and never quite receive the full benefits of whiteness (*Piper*, *Peters*, *Tape*, *Wong Him*, *Mendez*, and *Sheeley*). These cases represent the forever floating and forgotten racial middle of a society that does not quite know where to place them on the binary or history of racial politics in the United States.

The Native American Bricks

There are at least five Native Americans cases that preceded *Brown*. The cases begin in the late nineteenth century and end in the early twentieth century, coinciding with the demise of Indian boarding schools throughout the United States that created an influx of Indian students for which public schools were unprepared.[7] The cases were argued in their respective state supreme courts but never made it to the U.S. Supreme Court. There are several explanations as to why, including, but not limited to, policy changes, lack of funding for an appeal, or favorable outcomes at the lower level. Taken together, they outline the problematic relationship that Native Americans have with the federal government, the racial binary, and the civil rights narrative. I present the cases below in chronological order.

[7] For an excellent resource on the history of Indian Education in the U.S. see *Education for Extinction* by David Wallace Adams (1995).

McMillan v. School Committee of District No. 4 (1890): Negro…not Indian

The first case featuring a non-Black plaintiff was decided in North Carolina in 1890 even before *Plessy v. Ferguson* (1896) codified the "separate but equal" doctrine. It reveals the troubling relationship between Native Americans and African Americans in Robeson County North Carolina. During this case, there were three schools in the district: one White, one colored, and another Indian. According to Wertheimer et. al. (2011:476), Robeson County was "famously tri-racial" with roughly equal populations of Native Americans, Whites, and Blacks. The Indian schools, created in 1885, were for "those…who claim to be descendants of the friendly tribe of Indians known as Croatans" (*McMillan* 1890: 613).[8] The school was created after the census revealed there were enough Croatans to garner a separate school. This was known as "The Croatan Act." Prior to the Act, Croatan children attended the colored school. Shortly before trial, in 1888, the state legislature amended the law specifically to exclude "all negroes to the fourth generation" from White and Indian schools (*McMillan* 1890:613).

Nathan McMillan, whose wife was Croatan and whose home was within the district of both the Croatan and colored schools, sent his children to the Croatan school. On August 18, 1888, he received a note from the school dismissing his children because they were Negro (Bailey 2008:92). He ignored the order and continued to send his children to the school until they were refused entry. He requested admission from the State Board of Education and J.A. McAllister, the superintendent, issued the following note: "It is ordered by the Board of Education that Nathan McMillan be assigned to Croatan District No. 4 and the committee of said district are hereby directed to receive his children" (*McMillan* 1890: 609). During the trial, the Superintendent testified that the note was not meant to be an official order. According to the

[8] The Croatans became the "Indians of Robeson County" in 1911, "Cherokee Indians of Robeson County" in 1913 and the present day "Lumbee Indians" beginning in 1953 (Wertheimer et al. 2011:477).

record, "[i]t was done simply to try to arrange the differences between [the schools]" (*McMillan* 1890:609). Even after presenting the note, the school refused again, arguing that prior to the Act, the Croatan were identified as mulattos, not Negros. The McMillan children, they argued, were neither Croatan nor mulatto and, therefore, ineligible. After this refusal, McMillan filed suit.

McMillan did not argue that separate schools were unconstitutional or that the legislature did not have the power to create separate schools. Instead, he argued that his children were classified improperly. Evidence introduced at trial showed that Nathan McMillan was a former slave whose father was White and mother Black, thereby making his children ineligible for the school. McMillan argued that he was mulatto, not Negro, making him the same racial background as Croatans. As further proof, "McMillan's son was 'exhibited to the jury' so that they might make a judgment on his racial background" (Bailey 2008:95).

During the initial trial, the jury was asked four questions in order to determine McMillan's eligibility for the Croatan School. Their answers are in parentheses"

- Are the plaintiff's children Croatan Indians? (No)
- Were the plaintiff's children included in the census taken under the Act of 1885? (No)
- Are the plaintiff's children of Negro blood within the fourth degree? (Yes)
- Did the Board of Education of Robeson Country order plaintiff's children to be received in said school? (Yes)

The issue under appeal centered on the third question and the definition of "within the fourth degree." The court explained that the phrase meant "[i]f, by tracing back four successive generations, through father or mother, we reach a negro ancestor of the plaintiff's children, then they are excluded" (*McMillan* 1890:615). McMillan's attorney argued, "[g]eneration, as used in the statute, means a single succession of *living* beings in natural descent" *(McMillan* 1890:615). Unconvinced by his argument, the court agreed that the McMillan children, by virtue of their father, were Negro and not Indian. The judge upheld the jury's answer to the third question and

supported the finding that the plaintiff's children were neither colored nor Indian. They also found that the board did not have the authority to override state law. Therefore, the superintendent's "order" held no authority.

On the last page of the opinion, the court references another argument the McMillan's put forth. In order to prove his children were Croatan, he wanted to admit evidence that Croatans, because they were formally called mulattos, were also of Negro descent and could not deny his children even if they were classified as Negro. The court, without explanation, refused to hear this testimony.

Crawford v. School District No. 7 (1913): Wholly White

Approximately twenty years later, in Oregon, William Crawford filed suit on behalf of his daughters Naoma and Juanita (ages 8 and 9 respectively). This case provides an example of the investment in whiteness via assimilation. His daughters were attending the local White school for at least two years. Then, in 1912, the local school board established a separate school for "Indian children and children that were part Indian" (*Crawford* 1913:390). Once this Indian school was created, school officials directed a teacher to refuse the sisters admission on the basis that they were "part Indian" (*Crawford* 1913:393).

Crawford and his wife admitted that they both had fathers who were White and mothers who were Indian. However, Crawford also provided evidence that, while they owned land in the nearby reservation, they did not live there and had "voluntarily adopted the customs, usages and habits of civilized life" (*Crawford* 1913:390). According the Dawes Act, this made them U.S. and state citizens and therefore eligible to attend the White schools. The Oregon Supreme Court accepted the evidence, held "[t]hese children are half white, and their rights are the same as they would be if they were wholly white," and compelled the school to admit them (*Crawford*

1913:395). This particular finding is an example of a clear departure from the "one-drop rule" unfailingly applied to African Americans (Haney López 1996; Gross 2008).

Once again, the plaintiffs did not argue that separate schools were unconstitutional, only that their children were U.S. citizens and therefore allowed to attend the White school. Even though the Crawford family did not challenge the constitutionality of separate schools, the court dedicated the remainder of the opinion to making it clear that separate schools were constitutional and possible. In the *Crawford* opinion (1913:397), the court advised that:

> The states may enact laws proving for the establishment of separate schools for colored children, whether black or red, but such schools must be equal…but in this state we have no statute expressly providing for the establishment of separate schools for colored children.

Because no state law existed allowing for the creation of separate but equal schools, the court held that the school board did not have the authority to create a separate school on its own. By 1922, however, the state legislature, dominated by members of the KKK, ensured that local school boards were granted such power (Horowitz 1999). However, those efforts were considered more anti-Catholic than racist (*Pierce v. Society of Sisters*, 268 U.S. 510 (1925)).

Moreau v. Grandich (1917): "Slight strain of red blood"

The next case, *Grandich*[9], was decided in 1917 by the Mississippi Supreme Court. The plaintiffs put forth two arguments. First, the school board overstepped its authority in determining that their children where colored. As a result, they sought the right to sue the school board in court and have their decision reversed. The lower court concurred with them and agreed to hear the case. Next, they argued that while laws governing education did designate separate schools for "children of white and colored races," the Mississippi marriage law affirmed that

[9] In other writings, this case is referred to as *Moreau.* To avoid confusion, I use Grandich to identify the family.

they were White and therefore eligible to attend the White school. Under the Mississippi Marriage Statute, marrying people with one-eighth or more Negro blood was unlawful. Since they were allowed to marry under Mississippi law, it meant that they were neither colored nor Negro but White.

The school board argued that determining whether a child is colored is a power that lies within the reach of the school board, its superintendent, and the State Board of Education. The plaintiffs, therefore, did not have a right to "appeal" its decision to the courts. Their remedy was to appeal to the superintendent and then to the Board of Education. Because they had not even exercised their administrative appeals, the Board argued that they should not be allowed to pursue legal appeals. Even if they could appeal to the courts, they argued that the record makes it clear that the children were colored because they were ultimately of Negro descent. The lower court agreed with the Grandich family and compelled the school to admit their children.

The school appealed and pled their case to a circuit court judge. The circuit court judge agreed with the Grandich family's argument that if they are White under marriage law then they are certainly White under the education law. The attorney for Grandich family, J.H. Leathers, argued that if their marriage is recognized as a marriage between two White people, then the children could not be classified as colored. He argued:

> Would it not be folly to say nothing of the injustice of it, for the legislature to have thus provided that such marriages may have the legal status of white marriages, and then have intended that if children are born as a result of such marriage, the court shall hold that they are colored children and of the colored race. (*Grandich* 1917:570)

Furthermore, he argued, the children had been admitted into the White schools until 1914, before the school board determined they were "colored" and therefore ineligible. The circuit court ruled in favor of the family.

The school board appealed to the state supreme court to argue it case before Justice Ethridge. The attorney for the school, E.J. Gex, devoted a great deal of their argument to specifically defining "colored," relying mostly on the "usual common acceptation of said word" (*Grandich* 1917:560). Quoting the Standard Dictionary, they argued that colored was defined as "[o]f a dark skinned or noncaucasian race; specifically, in the United States. Of African descent, wholly or in part" (*Grandich* 1917:560).

Antonio Grandich and his wife claimed that they were White with only "a slight strain of red blood" and, as such, their children were entitled to attend the White school near their home. They also argued that their expulsion from the school "…resulted in irreparable damages, humiliation, and disgrace, being classed as members of the colored race" (*Grandich* 1917:572). More importantly, they contend that the school board had no authority to act as a judicial authority to determine who is or is not colored.

To prove their whiteness, testimony centered on the race of the great-grandmother, Christiana Jourdan. They argued that she was an Indian woman married to a White man and that her descendants intermarried with Whites. The children, their attorney argued, "are as fair as members of the white race, and there is nothing in their personal appearance to indicate the presence of negro blood." This meant that the children were less than one-eighth colored and therefore White by law.

The school board presented evidence that Christiana was "negro, classed and associated with the negroes at church and other social gatherings" and that two of her daughters intermarried with "negroes" (*Grandich* 1917:573). Witnesses said that her appearance was "griff" or "a shade lighter than negro," and that "…she had negro hair, was dark or ginger-cake

color, and that she associated…with negroes exclusively" (*Grandich* 1917:573). Furthermore, when she and her children attended church, they "…sat with the negroes" (*Grandich* 1917:573).

The judge, J. Ethridge, made two legal conclusions. First, he determined that the marriage statute had no bearing on the separate school statute. "Both sections," he explained, "reflected the purpose of the Constitution makers to provide for a separation of the races in the state" (*Grandich* 1917:574). The marriage statute was created to prevent, "the evils of bastardy from falling upon children" (*Grandich* 1917:574). Under the separate school provisions, the judge held:

> …the Constitution makers must be assumed to have used those [racial] terms according to their fixed and settled meaning in this country. The word "white" defined means member of the white or Caucasian race, and the word "colored" means, not only negroes, but persons who are of the mixed blood. (*Grandich* 1917:574)

Therefore, the state supreme court found that the lower court erred and reversed the decision and excluded the Grandich children from attending the White school.

While *Grandich* refers to "a slight strain of red blood," the opinion never indicates their tribal affiliation. However, because the case originated in Hancock Country, it is likely that they were referring to the still federally recognized Choctaw Tribe of Mississippi (Osburn 2009). While, I am not certain what percentage of the population of Hancock County was comprised of Choctaws, in the eyes of the court, there was no distinction between Black and Choctaw. Grandich's mixed blood was enough to disqualify his children as White.

Piper v. Big Pine (1924): Citizenship vs. Race

The next and most frequently cited case is *Piper v. Big Pine*, decided by the California Supreme Court in 1924.[10] This is the case that I discuss in greater depth in Chapter 4. In this

[10] This is the only case cited by any of the cases in my larger project, namely in the Mexican American case *Mendez v. Westminster (1947).*

case, Pike and Annie Piper filed suit on behalf of their daughter, Alice (age 15). Six other students joined the suit. The school board argued that an Indian school, established by the federal government, was "in all respects…equal" to the White school and was "better adapted to the education of members of the Indian race" (*Piper* 1924:668).

The attorneys for Alice presented evidence, and the board conceded, that she "…has been a person of good habits and character, in good physical health, and that she is in need of and desirous of obtaining" the education offered by the public school (*Piper* 1924:666). As a result, the board could not argue that under California law she was a child of "filthy or vicious habits, or…suffering from contagious or infectious diseases" (*Piper* 1924:666). Still, the board did argue that, according to the laws governing the education:

> School districts in California where the United States government has established an Indian school, or in an area not to exceed three miles from the said Indian school, the Indian children of the district or districts, eligible for attendance upon such Indian school, may not be admitted to the district school. (*Piper* 1924:66)

Therefore, because a suitable and equal in almost all respects Indian school was available to Alice Piper, she was required under the law to attend. The school district had the law on its side, as the "separate but equal" precedent was established in California by *Ward v. Flood* (1874). They also made the argument that there were plenty of private schools that Alice and her family could consider instead of the public school system. Finally, they argued that admitting Alice and the other six children would increase the attendance of other Indian children "who cannot be cared for because of the economic or administrative problem which it will create" (*Piper* 1924:674).

The court nonetheless found a way around the state law to justify her admission. The court found "[s]he is the descendant of an aboriginal race whose ancient right to occupy the soil

has the sanction of nature's code" (*Piper* 1924:671). U.S. policy, he explains, "…has been, so far as feasible, to promote the general welfare of the American Indian even to the point of *exercising paternal care"* (*Piper* 1924:671, emphasis mine). Under the Dawes Act, the Pipers were citizens of both the United States and California because they maintained "…a residence separate and apart from any tribe of Indians…and [have] adopted the habits of civilized life" (*Piper* 1924:672). Since they were citizens and lived off the reservation, she was entitled to admission. The increased economic costs, the court explained, is a matter for the State Legislature…not the court. Alice Piper and her fellow litigants integrated the school the following year (see Figure 3.5).

[Figure 3.5 approximately here]

Even though the court refers to their "aboriginal race," it never specifically names their tribal membership. According to their 1930 Office of Indian Affairs (OIA) records, they claimed membership in the Paiute Tribe of Inyo County, California. Pike Piper, the father, was designated as having ½ degree of "Indian blood" because his mother, Sepsey, was full Paiute and his father was White. Annie Piper, the mother, according to her records was full Paiute.[11]

From the opinion of the case, it sounds as if Pike and Annie had separated themselves from tribal affiliations. The court record reflects that they had "adopted civilized habits," without explaining what those habits entailed other than owning land on and off the reservation and choosing to live off the reservation. Their tribal application and my own subsequent field research, however, demonstrate a deep connection to their Paiute community. It begs the

[11] A redacted copy of Pike and Annie Piper's 1930 OIA records were courtesy of the Tribal Historic Preservation Office of the Big Pine Paiute Tribe of the Owens Valley.

question as to whether compliance with the Dawes Act was nothing more than a legal strategy to establish U.S. and California citizenship in order to win the case.

Peters v. Pauma (1928): Race vs. Land

The final case, *Peters v. Pauma School District*, occurred in 1927 in San Diego, California. The father, Max Peters, filed suit on behalf of his son Wesley Peters. Because of the *Piper* decision, the school district could not deny him admission based on race. Instead, they argued that they could deny him admission because he lived on a reservation and was thereby required to attend the reservation school. If it was determined that they did not live on an Indian reservation, then the school, under *Piper*, would be required to admit him. Therefore, the main legal question in this case was "[w]ho owned the land?" Interestingly, this was the only case where the government, represented by Samuel W. McNabb, the United States District Attorney and Ames Peterson, the Assistant United States District Attorney, found it necessary to file an amicus brief.

The court reviewed the history of "ownership" of the land. Noting that it was "originally a large Spanish Grant" passed on to the Mexican government, via Jose Serrano, in 1844. The land was then "patented" as "planting grounds for the use and benefit of said Indians (*Peters* 1928:577). In 1889, the land grant passed to Francis Mora who, in 1899, quit claimed it to the government "for the use and benefit of the Mission Indians" (*Peters* 1928:577).

The lower court found that they lived on the reservation but lived "in the manner of other American citizens in the vicinity" (*Peters* 1928:793). Like *Piper*, the record does not outline what the "manner of other American citizens" means. On appeal, the government argued that the Peters did not live on an Indian reservation and were therefore, according to the *Piper* decision, allowed admittance to the White school. The government also argued that the Mission Indians

were not a federally recognized tribe. All the while, Mission Indians were "allowed to" live on and use the land for agricultural purposes. The school district argued that because the Mission Indians lived on the land for so long, it was in fact and in practice an Indian reservation. The court disagreed, holding that a reservation must be established by an act of Congress, treaty, or executive order. "Custom or prescription" does not constitute ownership (*Peters* 1928:794).

In this particular case, it appears that land trumps race. If the court had held that the land was an Indian reservation, it would have made way for the Mission Indians to claim ownership of the land and gain federal tribal recognition, with all the accompanying responsibilities of the U.S. government to the tribal nation. While the school was trying to exclude him based on race under the guise of reservation ownership, Peters and the government argued that he did not live on a reservation and had adopted a "manner of American citizens." Land, as the old saying goes, is supreme. Furthermore, to maintain its ownership and skirt its responsibilities to the Mission Indians, the U.S. government deliberately interfered in local politics.

Were these precedent setting cases?

Some of these cases set legal precedent for future school desegregation cases, illuminating the ways in which they represented bricks before *Brown. McMillan* and *Grandich* were cited in *Gong Lum v. Rice* (1927), a school desegregation case out of Mississippi involving a Chinese American plaintiff. It was also cited in *Briggs v. Elliott* (1951), the South Carolina case that became one of the five cases subsumed in the *Brown* decision. *Crawford* was cited by *Pearson v. Murray,* a 1936 case out of Maryland where a Black student was denied acceptance into law school and *Graham v. Board of Education,* a 1941 case involving the segregation of Kansas's junior high schools. *Piper* was used as precedence for *Peters* and it was cited in *Mendez v. Westminster* (1947), a case involving Mexican American plaintiffs that ultimately

dismantled segregation in California. Finally, *Peters* was never cited again, probably because it was about land ownership and not race.

The Chinese American Bricks

The four cases involving Chinese American plaintiffs begin in the late 1800s and represent the unique temporal and regional experiences of Chinese Americans in the United States. Similar to the Native American cases, the opinions in these cases reveal the complicated position of Chinese Americans in the racial binary. Unlike the Native American cases, however, there is no government directive or responsibility to the community as a whole, leaving it to float vulnerably in the binary of Black/White. Indeed, what these cases demonstrate is that the Chinese are simultaneously shunned by Whites and used as a convenient token to shame African Americans.

Tape v. Hurley (1885): The Power of Legislature

The first case, *Tape v. Hurley* (1885), was a lawsuit brought against the San Francisco School District. As one of the three cases I use for my in-depth case study, I delve deeper into the socio-historical and legal analysis of *Tape v. Hurley* in subsequent chapters. Here, I provide a brief overview of the legal history and facts of the case.

In 1884, Joseph Tape attempted to enroll his daughter Mamie in the school nearest his home. The school representative, Jeanine Hurley, denied her entry because she is "of Chinese parentage." Unfortunately for the school district, the California Supreme Court decided in *Ward v. Flood* (1874:57) that "[e]xcept where separate schools are actually maintained for the education of colored children…all children of the school district, whether white or colored, have an equal right to become pupils at any common school organized under the laws of the State." Separate Chinese schools did not exist in California at the time. Furthermore, in 1880, the

California legislature passed a law that read, "[e]very school, unless otherwise provided by law, must be open for the admission of all children between six and twenty-one years of age residing in the district." Therefore, they were compelled by law to admit Mamie Tape.

Judge Sharpstein, however, in his opinion essentially advised the school district to lobby the legislature if they want the law changed. He explained that while his hands were legally constrained by the law, "[t]he legislature not only declares who shall be admitted, but also who may be excluded" (*Tape* 1885:474). Using a clause that prohibited "children of filthy or vicious habits, or children suffering from contagious or infectious diseases," the San Francisco School District delayed Mamie's admission to the school until the California Legislature amended the law to allow school districts to establish separate schools for Chinese children. On April 8, 1885, the school board met and voted for the creation of a separate Chinese school (*Daily Alta* 1885k). It opened a few days later with six pupils, two of which were Mamie Tape and her brother Frank. Separate schools based on race continued to exist until *Mendez v. Westminster* was decided in 1947.

This case is an example of a case that won legally but lost legislatively. Like *Roberts*, the *Tape* case laid the groundwork for *Plessy* to become the law of the land 11 years later. Because the law in California was changed to reinforce school desegregation due to this case, *Tape* disappeared into the annals of legal history and never became part of the civil rights narrative. Nonetheless, legal scholar Kuo (1998:199) argues that this case "symbolized a new era of activism through the legal system."

Wong Him v. Callahan (1902): Legislation upheld

Relying on the Fourteenth Amendment, the next attempt to legally challenge separate Chinese schools was *Wong Him v. Callahan* (1902). Also set in San Francisco, the Wong Him

family attempted to enroll their daughter in the local White school and were turned away based on her race. California law, as written after *Tape* gave "…to the trustees of school districts the power to establish separate schools for children of Mongolian or Chinese descent" (*Wong Him* 1902:382). The family alleged that the statute is in direct conflict with the Fourteenth Amendment Equal Protection Clause. In their complaint, the family argued that the maintenance of separate schools results in "…discrimination that is arbitrary, and the result of hatred for the Chinese race" (*Wong Him* Opinion 1902:382).

Citing *Roberts*, the court explained that it plays no role in the affairs of the state and the motivations of its lawmakers. "If the law does not conflict with some constitutional limitation of the powers of the state legislature," Judge De Haven wrote, "it cannot be declared invalid (*Wong Him* Opinion 1902:382). Furthermore, according to Kuo (1998), because *Wong Him* did not argue that the separate schools were unequal, just simply inconvenient, the court did not find a violation of the Equal Protection Clause and upheld the "separate but equal" doctrine established by *Plessy*.

Beginning as early as 1905 however, Wollenberg (1976) asserts that the segregation policy towards the Chinese became less and less enforced. Over the years, Chinese parents, wealthy Chinese merchants, and Chinese American educators challenged the educational policy and more and more Chinese American children were steadily admitted into White or "mixed" schools (Wollenberg 1976). By 1936, "the 'Chinese school' no longer officially existed" and any predominantly Chinese schools were due to residential segregation rather than the enforcement of policy (Wollenberg 1976:44-45).

The Settled Law of the South

From the late 1800s to the early 1920s, a surprising and strong Chinese presence emerged in the South. Historians James Loewen (1988), Robert Quan (2007), and John Jung (2011), attribute this growth to the pull of economic forces established by the growing cotton industry. The Chinese either directly immigrated into Mississippi from the Guangdong Province, left the "Golden Mountain" and other ethnic enclaves of California to pursue work as farm laborers, or joined the ranks of the growing grocer population emerging in the South. According to Jung (2011:4), Southern cotton plantation capitalists at the Memphis Convention of 1869 "considered a proposal to have contractors hire Chinese laborers to replace blacks to punish them for acting like free men." Their labor, therefore, was not only desired, but also used to punish Black men and women after the demise of slavery. These laborers, Jung (2011) explains, may also represent the remnants of the completed Texas and Yazoo Railroad. Regardless of the reasons and circumstances that brought the Chinese to the Delta, by the 1920s the relatively small population of 211 people was about to make two disastrous contributions to constitutional law that solidified segregation. The 1927 cases involving the Tij Fung and Gong Lum families signaled a seismic departure from the legal wrangling of the West. Based in the Mississippi Delta, all pretense and coded language disappears.

Gong Lum v. Rice (1927): Constitutionally Colored

The first and arguably most powerful case, *Gong Lum v. Rice* (1927) has the distinction of being the only case involving non-Black plaintiffs to make it to the Supreme Court. In *Gong Lum*, the plaintiff's daughter, Martha, was initially admitted to a local White school, only to be sent home at noon recess and told she was not allowed to return. When asked why she was refused admission, the school board affirmed that she is excluded based on her race. According

to the school board, she was classified as colored under the law. As such, she must avail herself of the colored school nearest her home.

Her attorneys provided a convoluted argument to the Mississippi Supreme Court. On one hand, they argued that the racial classification system was a product of White supremacy and, as a result, discriminated against anyone who was not White. On the other, they argued that this unjust classification system wrongly classified the Chinese as colored. Finally, they argued that because she was not colored and there were no Chinese schools in the state, she was therefore entitled to admission to the White school.

The Mississippi Supreme Court disagreed. It classified Martha as colored and explained that the state was under no obligation to create separate schools for every race. As a Chinese citizen of the United States, she was afforded the ability to attend an equally situated school for colored children and, therefore, not denied equal protection. The additional concern or reason for separate schools (i.e. the maintenance of White purity) was a moot point so long as the law satisfied *Plessy*.

The Gong Lum family appealed their case to the United States Supreme Court only to be disappointed with the decision. First, the Court affirmed that the creation and maintenance of separate schools was settled law. Second, they affirmed and agreed with Mississippi's classification of Chinese as colored. In a unanimous decision, Chief Justice Taft wrote:

> Most of the cases cited [by the plaintiffs] arose, it is true, over the establishment of separate schools between white pupils and black pupils, but we cannot think that the question is any different…between white pupils and the pupils of the yellow races. (*Gong Lum* 1927:87)

Decided on November 21, 1927, *Gong Lum* makes it clear that the Chinese were not White under the law, but instead were clearly colored under the Constitution (Kuo 1998).

Bond v. Tij Fung (1927): Substantially Similar

Filed near the same time as *Gong Lum*, Tij Fung deployed a different, yet unsuccessful, approach. In *Tij Fung*, the plaintiff, Joe Tin Lun, was a 14-year-old "good, clean, moral boy," and native-born citizen of China. He sought entry and was denied admission to the White, Dublin consolidated school. Like *Gong Lum*, he argued that there was no separate school for Chinese children established for him to attend. Unlike *Gong Lum*, however, Tij Fung argued that he was guaranteed admission to the local, White public school under the Burlingame Treaty of 1868. The Treaty, he argued, established a reciprocal relationship between China and the United States that granted its citizens the right to attend the public schools located within each country. He also alleged racial discrimination against Chinese students in general. However, the petitioners problematically argued that "[b]ecause a Chinese child is living in the state, it is entitled to equal protection of the law…and to *force it to associate with colored children* or to not attend the white school is discrimination" (*Tij Fung* 1927*:*462, emphasis mine).

While the county superintendent admitted that the child was turned away based on his race, the school board argued that the *Gong Lum* decision established that the Chinese were, under the law, colored and not entitled to attend White schools. When the plaintiffs argued that the separate schools were unequal, the court responded by stating:

> We belong to that class of people who believe that there are no two things created exactly alike. Things are similar to each other. So it is with schools. They have a similarity, but it is certain that no two schools in Mississippi…are exactly alike. (*Tij Fung* 1927:471)

In one opinion, the Mississippi Supreme Court established that sufficiently "similar" satisfied the constitutional requirement of equality. Moreover, the court unapologetically argued that in fact segregation is established to protect "the colored races…[and] promote the peace, quietude, and happiness of all the races… [so that]…the prejudices and passions engendered by

race consciousness might be avoided" (*Tij Fung* 1927:471). The purpose of the Mississippi Constitution, according to the justices, was to "preserve the purity and integrity of the white race, and prevent amalgamation, and to preserve, as far as possible, the social system of racial segregation (*Tij Fung* 1927:470)." According to *Gong Lum* and the precedent set by *Plessy*, the reason for creating separate schools was not important so long as the separate schools were, in all respects, equal.

Together, these cases essentially erased the Chinese identity in the South and, like *Moreau*, lumped any race that was not White into the category of colored. Tamura (2003:9) argues that *Gong Lum* "…brought [Chinese racial] in-between-ness into public debate and thereby transformed their status from invisible to visible." I respectfully disagree.

In the *Gong Lum* and *Tij Fung* decisions, three truths became abundantly clear. First, despite their efforts to the contrary, the courts did not recognize the Chinese as a separate and distinct racial group. They were very clearly lumped in with African Americans under the label "colored" and not separated into their own category. Second, they, like African Americans, drew the disgust, ire, and hatred of Whites in the South. Third, and perhaps most unfortunately, the cases provided fodder for the division that exists between two racial groups that should be allies.

As all four cases demonstrate, the status of Asian Americans within the racial hierarchy of the United States has always been complicated matter (Takaki 1998; Tuan 2005; O'Brien 2008; Okamoto 2014; Chou and Feagin 2015). On one hand, they are a handy token used to shame and antagonize African Americans. On the other, they are clearly rejected by White society as foreigners who are a threat to White purity. Chapter 5 addresses this middling, invisible position of Chinese Americans.

The Mexican American Bricks

A search of federal and state legal databases reveals two published cases involving Mexican American plaintiffs: *Mendez v. Westminster* (1947) and *Gonzales v. Sheely* (1951). The emergence of only two cases, however, demonstrates the challenges inherent in legal research. For example, secondary research reveals the existence of several other cases, namely *Del Rio Independent School District v. Salvatierra* (1930) and *Delgado v. Bastrop Independent School District* (1948), based in Texas, and *Alvarez v. Lemon Grove School District* (1931), based in California. These cases, however, did not appear in my search results because they were never appealed to their respective state supreme courts or to federal courts. Furthermore, these cases may be more appropriate for a study on community organizing rather than constitutional legal history. While outside the scope of this dissertation, they have been examined, studied, and considered by other legal scholars, historians, and education experts (San Miguel, Jr. 1987; Garcia 1989; Sánchez 1993; San Miguel, Jr. 2001; Almamillo 2006; Powers and Patton 2008). For the purposes of this dissertation, however, the focus was limited to the two cases that were appealed to the federal circuit courts -- *Mendez* and *Gonzales*.

The position of Mexican Americans in California, Arizona, and Texas during the 1940s and 50s explains the emergence of legal challenges to segregated schools. Poor treatment of day laborers, the criminalization of Mexican American youths, the mistreatment of returning Mexican American servicemen from WWII, and the segregation endured by Mexican Americans in the West and Southwest all came to a head in the 40s and 50s. While Mexicans were, in accordance with the Treaty of Guadalupe Hidalgo, classified as White based on citizenship, they were not necessarily afforded the same treatment and rights as Whites (Gross 2008). Classification did not imply cooperation on the part of Whites in the United States. While

African Americans in the South lived under *de jure* Jim Crow laws, Mexican Americans in the Southwest and West were recipients of a socially sanctioned segregation practice of José Crow (Alvarez 2016).

Ngai (2004) illustrates this complicated relationship between citizenship, race, and immigration when it comes to Mexicans and Mexican Americans. Describing the relationship between the United States agricultural industry and Mexican labor as "imported colonialism," she correctly identifies the mechanism through which Mexicans and Mexican Americans become "racialized" beginning as early as the 1920s (Ngai 2004:129). That mechanism is an immigration policy designed to supply the seemingly endless need for cheap labor for a growing agricultural market. The history of immigration policies as it relates to Mexicans can be directly linked to the United States labor needs.

Mexicans and Mexican Americans became commodities that were subject to the laws of supply and demand. In the 1920s, a shortage of labor inspired the development of guest worker programs to serve the ever expanding and seasonal nature of the agricultural industry. In the 1930s, shortly after the Depression, immigration policy "repatriated" 400,000 Mexicans, only to be followed by the creation of the *Bracero*[12] program in the 1940s during World War II to bring them back. The racialized bodies of Mexican labor became a handy token whose physical value increased and decreased according to the market demands, but whose personal value was measured as either worker or wetback but never citizen. It is against this foundation of pity, disdain, and anti-Mexican sentiment that *Mendez* and *Gonzales* are situated in history.

[12] The Bracero Program was the result of a 1942 agreement between the United States and Mexico effectively "leasing" manual labor allowing Mexicans to work in the United States to make up for the labor shortage created by WWII. Braceros literally translated means one who works with his arms (aka manual labor).

Mendez v. Westminster (1947)

In her book, Strum (2010) masterfully lays out the circumstances that led to the *Mendez* case. While I will provide a more in-depth discussion of the social and legal history of *Mendez* in the next chapter, a brief overview of the case highlights will suffice in this chapter.

In 1945, Soledad Vidaurri took her children and their cousins, Sylvia, Gonzalo, and Geronimo Mendez to enroll in the school closest to their home. The school administrator refused the Mendez children admittance, directing them instead to Hoover Elementary, the Mexican school. Refusing to allow her nieces and nephews to be excluded, Soledad returned the Mendez home and reported what happened to the father of the children, Gonzalo Mendez.

After numerous failed appeals to the school board, Mendez sought legal counsel. He retained David Marcus, a local attorney who had demonstrated some recent success with discrimination cases. During the course of the trial, Marcus deployed two brilliant legal strategies. The first was that he filed a claim not based on race but based on Mexican descent. As noted above, at this time in history Mexicans and Mexican Americans were classified as White by law. As a result, they could not bring a case alleging racial discrimination because it would have been dismissed by the court. In subsequent chapters, I argue that this strategy was neither an admission of whiteness nor a protection of what legal scholars call a "Caucasian Cloak" afforded to Mexican Americans (García 1989; Wilson 2003; Ruiz 2004a; Ruiz 2006; Gross 2008).

The school boards, in response, collectively argued that Mexican schools were necessary because Mexican children were "retarded" in the English language and generally inferior to White students. Throughout the trial, several children testified, in perfect English. Furthermore, the school administrators failed to demonstrate when and how Mexican children's language

skills and intelligence were assessed. They produced no records and could demonstrate no "testing" for the court.

In response to the administrator's testimony, Marcus deployed his second brilliant legal strategy: the use of expert witnesses. While *Brown* is often lauded for being the first to use expert testimony in the form of the Clark's "doll experiment," it was actually *Mendez* who first utilized the services of experts, namely an education specialist and anthropologist. Together, they testified that the separation of Mexican children from White children not only made the acquisition of English harder but also triggered an emotional and psychological toll on the children themselves. It was not just that segregated facilities were unequal, but a child's placement in these schools resulted in and compounded feelings of inferiority.

Judge Paul McCormick ruled in favor the Mendez families. He wrote, "[a] paramount requisite in the American system of education is social inequality. It must be open to all children…regardless of lineage" (*Mendez* 1946:549). The school board, he explained, "[m]anifests a clear purpose to arbitrarily discriminate against the pupils of Mexican ancestry and to deny to them the equal protection of the law" (*Mendez* 1946:551). In response, the school board appealed the case to the Ninth Circuit, where the *Mendez* families garnered support in the form of amicus briefs from the NAACP, Japanese-American Citizens Council, American Jewish Council, the American Civil Liberties Union, the National Lawyers Guild, and the Attorney General of California.

The Ninth Circuit upheld McCormick's decision and the Governor of California successfully lobbied the California Legislature to integrate the state's school system. Because California schools were subsequently ordered to integrate, the school boards did not appeal the case. As a result, *Mendez* failed to become *the* Supreme Court case on school segregation.

Gonzales v. Sheely (1951)

In *Gonzales*, the Gonzales and Curiel families of Arizona sued the Tolleson School District of Maricopa County on behalf of their children: Gloria and Mary Ellen Gonzales, Faustino, Jr. and Dora Curiel, and 300 other students and their families. Similar to the Westminster school board, the Tolleson school district acknowledged that they did create and separate schools for Mexican children. The schools, they argued, were not only equal to White schools but were necessary because Mexican children were "retarded" in their ability to acquire and master English. They purported to administer a "test" to measure a child's mastery of English but failed to produce credible evidence of such tests.

In *Gonzales* (1951:1006), Justice Ling also methodically laid out the following findings of fact:

- This segregation results in an injury to the plaintiffs that, "is continuous, great, and irreparable…[and] does affect their health, rights, and privileges as citizens of the United States."
- The school boards contention that Mexican children are "retarded in learning English" is not enough of a reason to segregate an entire population of children even if they are just learning English.
- Such segregated practices, "foster antagonisms in the children and suggest interiority among them where none exists."
- The tests, which the school board put forth as evidence of Mexican inferiority, were "generally hasty, superficial and not reliable."
- Most importantly, that, "There is substantial inequality in the accommodations accorded [Mexican children] when compared to the facilities and accommodations" afforded White children."

Relying heavily on *Mendez*, Justice Ling concluded that the school board's "conduct of segregating public-school children of Mexican descent…is discriminatory and illegal and is a violation…of the Fourteenth Amendment" (*Gonzales* 1951:1008). In addition to *Mendez*, Ling cites the *McLaurin* (1950) decision, which found that the Equal Protection Clause was violated simply by placing an African American student in a separate room because of his racial origin. If

that was a violation of the Fourteenth Amendment, Ling concluded, then how much more so the creation and maintenance of an entirely separate school system. Ling relied so heavily on *Mendez* that he used the exact same language as McCormick when he wrote "[a] paramount requisite of the American system of public education is social equality. It must be open to all children…regardless of lineage" (*Gonzales* 1951:1009).

While *Gonzales* signaled a victory for Mexican American children, the victory did not carry over to African American communities. Despite Ling's acknowledgement of the constitutional connection between *McLaurin* and *Gonzales*, Arizona school districts continued segregating African American children until May 13, 1954, four days before the *Brown* decision, when the Mesa School District of Maricopa County announced that children could attend whichever school was in their district "regardless of race or color" (Knox 1954:292). This lag in justice exposes the slow and unequal progression of justice through the racial hierarchy of the United States.

Scholars such as Powers and Patton (2008:128) attempt to distinguish *Gonzales* from *Mendez* by arguing that the *Gonzales* court made a more explicit, unqualified case against segregation and "embraced a social science critique of racism." A deeper review of the legal and social history of the *Mendez* case in the following chapter demonstrates that the arguments put forth in *Gonzales* would not have been possible without *Mendez*. One thing that both cases share, however, is a citation in the NAACP's brief in *Brown*. However, they are not cited in the actual *Brown* opinion, which explains their relative obscurity. Marcus's legal strategy, while shrewd, unfortunately also contributes to the divide between Black and Brown, where one is seen as a race and the other simply as an ethnic identity.

Why Tape, Piper, and Mendez?

A review of the 101 total state supreme court and federal appellate cases that preceded *Brown* helps to provide an explanation for why *Tape*, *Piper,* and *Mendez* are the ideal cases for a more in-depth analysis. In deciding which cases to select for deeper case study, I considered the following criteria:

1. There had to be enough information in the opinion to conduct deep archival research;
2. It had to be a case that made claims of racial prejudice;
3. It had to be the first of its kind; and
4. It had to be argued within the same state or circuit court system in order to keep law constant.

Tape clearly fits the criteria. However, two more characteristics separate it from the Mississippi Chinese American cases, specifically the relatively more famous *Gong Lum* decision. First, unlike *Gong Lum*, the attorneys in *Tape* were arguing racial prejudice specifically against Chinese Americans. *Gong Lum* was simply arguing that Chinese individuals should not be considered Black or colored. Second, there were no separate Chinese schools in Mississippi, whereas *Tape* ultimately resulted in the creation of separate Chinese schools. If the purpose of the study is school desegregation, I need the cases to represent the existence of separate schools for the racial group in question.

For the Native American case, I did have to make a decision between *Crawford* (an Arizona case) and *Piper,* since both were in the Ninth Circuit and *Crawford* came before *Piper*. Once again, it is the fact that *Piper* made a claim of racial prejudice that sets it apart from *Crawford*. The two young plaintiffs in *Crawford* were already enrolled in a White school and were fighting to maintain their attendance by asserting their whiteness. They were not claiming that, as Native Americans, they have a right to an equal education. They were arguing that as Whites they could not be denied their education.

Finally, *Mendez* not only came before *Gonzalez*, but was also the legal precedence that the attorneys in Arizona relied upon. Furthermore, the *Mendez* decision benefitted all the racially segregated schools in California, whereas it only applied to Mexican schools in Arizona. The limited scope of *Gonzalez* also made it the first case of its type in Arizona, but not the first case of its significance for all segregated schools. As California cases, *Tape*, *Piper*, and *Mendez* fit all of these criteria. They also, fortunately, marked the beginning and end of the "separate but equal" doctrine in California.

Conclusion

The U.S. public school system was designed with democratic principles of equality in order to provide access for all. However, like *Roberts v. Boston* (1849) makes clear, its beginnings were not properly laid to withstand inequality. It appears that *Plessy* and *Brown* do not represent the beginning and the end of segregated schooling. In fact, there appears to be two distinct roads. The first road leads to *Plessy*, with various states implementing "separate but equal" before it became legal doctrine. The second road leads away from *Plessy* towards *Brown* that, upon hindsight, represents more of a speed bump rather than the end of the road (Hannah Jones 2016).

Reviewing the dates, locations, and racial identity of the plaintiffs of each case separately and then collectively reveals a pattern that is compelling and complicated. First, the bricks before *Brown* were not limited to the South or the 1950s. The contributions to these structures of inequality came from all around the country and all across time, demonstrating not only how long, but also how deep and wide the civil rights movement was throughout history. From Massachusetts to California, the bricks that lined the path to *Brown* were the result of families,

communities, and attorneys around the country taking a stand against injustice beginning as early as the mid-1800s.

Second, the 101 bricks that line the road to *Brown* revealed that the road is long, deep, fractured, and not simply Black and White but also multicolored. While Chinese Americans, Native Americans, and Mexican Americans also desired and demanded equal protection and treatment under the law, they also reinforced the U.S. racial hierarchy. The fact that 90% of cases involve Black plaintiffs shows how African Americans have been, are, and continue to be pushed toward the bottom of the U.S. racial hierarchy. As unwilling immigrants into the United States, theirs is a history of 476 years of systemic, legal, and overt forms of racism and discrimination that cannot and have not been undone in the over 50 years since the passage of civil rights laws of 1965.

As a description of the 11 cases represented by Chinese Americans, Native Americans, and Mexican Americans plaintiffs reveals, most of those cases were rooted in legal arguments that characterized the racial divide as Black/Non-Black. The result of this anti-Blackness strategy, I argue, is the solidification of a U.S. racial hierarchy that strategically places Asians, Native Americans, and Latinx racial groups above African Americans but always below Whites. In reality and practice, however, the racial divide is decidedly White vs. Non-White. However, White supremacy is most effective when it convinces the oppressed that they are superior to one another yet never equal to White. These cases did not necessarily legally touch because most of them failed to cite one another. It is ultimately the mortar of oppression that united them into one tragic history. Pulling *Tape, Piper,* and *Mendez* for an in-depth analysis allows for the interrogation of the racial hierarchy and expansion of the analysis of school desegregation to include the role of gender and class. The next chapter provides the legal, social, and historical

background of the selected cases to explain how these groups engaged in the legal fight for racial equality in education before comparing the construction of race, gender, and class within and among the cases.

CHAPTER 4: THE OMITTED, THE FORGOTTEN, AND THE NEARLY

The year is 1884 in the City of San Francisco. An eight-year-old child, excited about enrolling in her new school, holds tightly to her brother's hand as her father holds tightly to hers. She is too overwhelmed by the number of children around her…children who are going to be her future classmates and maybe friends. Her eyes trace the school walls and she is in awe of the building nearest her home. She is too distracted to see what her father sees…confused looks, quiet whispers, and the stern look on the face of the woman with whom he must interact in order to enroll his children in the school.

He is familiar with that look. He saw it when he first arrived. He saw it despite training his tongue to say the misshaped, large words that fell rather than flowed from his mouth. He saw it every time he was called upon to translate for the local consulate and businesses. He was accustomed to the register of mixed assessments of his dress. He looks Chinese, but he is not dressed like the Chinese. He is wearing a suit…a nice suit…an expensive suit. The little children he has in tow are quiet, respectful, and uncommonly un-Chinese.

The little girl is snapped from her worshipful gaze of the school by the loud voice of a woman and the terse voice of her father. She can tell he is angry because his grip on her hand has tightened but his voice is calm, even, and determined. The words emerge like the blurry photographs her mother sometimes takes. They are not clear, but you know what the picture captures. White. School. Filthy. Chinese. Go Home. She notices that other parents begin to look over to her family and whisper among themselves. She is not used to this treatment. Her friends and their families come over to her house, play in their yard, worship with her in church.

Her father pulls her towards him as she frantically grasps her brother's hand. Where are we going? What happened? Why are we leaving? All these questions must have flooded her little mind, but they were all questions she was too smart to pretend not to know the answers. She and

her little brother Frank could not attend this school because they were Chinese. This school did not want them. They return home to their beautifully situated home on 1769 Green Street, an affluent part of San Francisco that is just outside of Chinatown. Her father arranges a meeting with Honorable F.A. Bee, the Chinese Consul of San Francisco since 1878. All the while Mamie and Frank are left to wrestle with a complicated answer to a relatively simple question. Where do we go to school tomorrow?

While this account is not explicitly written in the California newspapers of the late 1800s, one can construct this scene based on the letters, interviews, and newspaper accounts of this case, as well as the testimony from later school desegregation cases. However, it does describe the events of early September when Joseph Tape attempted to enroll his children in the school nearest their home. This chapter shapes and introduces the disparate but connected worlds of Chinese Americans in the 1880s, Native Americans in the 1920s, and Mexican Americans in the 1940s. In providing the social and legal history of *Tape*, *Piper*, and *Mendez*, a clearer picture of the ways in which inequality works in the United States emerges. It is an image that is simultaneously bitter in the losses but inspiring in the struggle. After I explain how and why these cases were selected for research, I proceed with the social and legal histories in chronological order.

As discussed in the last chapter, 104 total state supreme court and federal appellate cases preceded *Brown v. Board*. In deciding which cases to select for deeper case study, I considered the following criteria:

- There had to be enough information in the opinion to conduct deep archival research;
- It had to be a case that made claims of racial prejudice;
- It had to be the first of its kind; and
- It had to be argued in the same state or within the same circuit court system to follow the development of the law within a similar jurisdiction.

As California cases, *Tape*, *Piper*, and *Mendez* fit all of these criteria.

The Tapes, The Omitted

> *"History is not the past. It is the stories we tell about the past. How we tell these stories—triumphantly or self-critically, metaphysically or dialectally—has a lot to do with whether we cut short or advance our evolution as human beings."*
> *-Grace Lee Boggs, Chinese American activist*

The story of Joseph Tape attempting to enroll his child in school is not where their family story begins. It begins in 1869, when Jeu Diep immigrated to the United States from Skipping Stone Village in Xinning County, Guangdong Province in Southern China (Ngai 2010). Born in 1852, Jeu was approximately 17 years old when he arrived in San Francisco's port. His name was Americanized to Joe Tape or Joseph Tape. While the details of his story are not clear, Ngai (2010) writes that Joseph Tape lived his life as a houseboy delivering milk for Matthew Sterling. His delivery route included the home where he would eventually meet and wed Mary Tape.

Mary Tape was born in 1857 in Northern China, near Shanghai, and immigrated to the United States in 1868 when she is 11 years old (Gamble 1892). While the specific circumstances of her immigration are unknown, the fate of many Chinese girls her age was domestic service, slavery, or prostitution (Pascoe 1990; Takaki 1990; Yung 1995; Jorae 2009). She lived alone for five months in San Francisco's Chinatown before being "rescued" by the San Francisco Ladies Protection and Relief Society ("Society"), a middle-class women's service organization that built and managed an orphanage in Chinatown (Gamble 1892). While it is not clear what her life was like during those first five months in the U.S., the Society's mission was to "render protection and relief to strangers, to sick, and dependent women and children," suggesting that she needed protection (Krah 2007). In 1871, she came under the guardianship of the Society by way of

Samuel Loomis, head of the Presbyterian Chinese Mission, who introduced Mary to the women who would change the course of her life.

While the Society had not yet become an official orphanage for Chinese girls, they did serve as an orphanage for children whose parents were struggling to provide the necessary care. During their meetings, the women would have a member report on visits to the orphanage. On April 4, 1871, the minutes indicated, "Mr. Loomis made application to have the two Chinese girls put under the guardianship of the Society. Mrs. Gray appointed a com (sic) to attend to it" (Society Records 1865:191). For some unknown reason, Chinese girls become "the Chinese girl" suggesting that two became one. The name and fate of the other girl was never addressed in the minutes.

At the July 7, 1873 meeting, the minutes revealed a remarkable event that must have been deeply meaningful to Mary Tape:

> Mrs. Hill visited fourth week; found the cook unwilling to submit to the Matron in allowing the Chinese girl her turn in the kitchen; so she was discharged, as was the laundress for the same reason. It was decided that the Chinese girl should assist in the kitchen and the laundry in turn with the others. (Society Records 1865:223)

At a time when anti-Chinese sentiment was at its highest, even before the Chinese Exclusion Act, the women of the Society stood up on her behalf in the face of bigotry. According to the minutes, there was no discussion of the issue. The decision to fire the cook and laundress was swift and certain.

In her study of Protestant women and their work with Chinese mission homes, Pascoe (1990) writes that the racialism of Chinese wards was mixed. While some individuals adhered to a strict racial hierarchy, others believed that the adoption of "Victorian values of piety and purity" made Chinese women the perfect example of the successful civilization of the racial other via Christianity. Mary Tape was very much a valued member of the Orphanage as noted in

the August 5, 1873 minutes, which states "[t]he Chinese girl had sole charge of the nursery dining room, Mrs. Harvey being sick with erysipelas (sic), [she] seemed patient and methodical with the babies" (Society Records 1865:237-238). In a home with over 150 children at any given time, this was a tremendous responsibility and Mary Tape's service stood out. Her time at the orphanage and the lessons she learned regarding equality and respectability will become more salient as we consider race, gender, and class in the subsequent chapters.

Mary lived with the Society for a total of five years where she learned English, acquired "American manners," assisted the Society in recruiting orphaned Chinese girls, and ultimately met and married Joseph Tape (Gamble 1892). It is likely that they met through the Presbyterian Church whose benevolence efforts were often tied to the Chinese community (Pascoe 1990). Reverend Loomis married them on November 16, 1875 in the First Presbyterian Church, which allowed White guests to attend. Joseph Tape stopped working for Matthew Sterling and went on to become a drayman delivering goods from the San Francisco ports. Shortly thereafter in 1876 they welcomed their first child Mamie Hunter who, according to Ngai (2010), was named after her father's favorite pastime: hunting. She was also the only child who was given a Chinese name, Yuen Heung ("distant fragrance") (Ngai 2010:25). Their second child, Frank Harvey, was born in 1878 and Emily, the third, arrived in 1880. Gertrude, their last child, was born later in 1890 well after the case (see Figure 4.1).

[Figure 4.1 approximately here]

Living in White neighborhoods, adopting Americanized and expensive pastimes (i.e. hunting, painting, and photography), attending White churches, and maintaining friendships almost exclusively with Whites, Joseph and Mary Tape were an example of the classic assimilated, immigrant "success story." From poor immigrants to model citizens, the Tapes

represented the kind of family that bootstrap polemics used as an example that the American Dream was achievable for everyone, except for one significant detail. They were Chinese at a time when the Chinese of California experienced a deluge of adverse judicial decisions, legislative prohibitions, and city ordinances that taxed them differently for mining, fishing, policing, and laundering; ordered removal of their queue/braid (*Ho Ah Kow v. Nunan* 1879); did not allow for their testimony against White men (*People v. Hall* 1854); and did not explicitly protect them from educational discrimination (*Ward v. Flood* 1874).

It was shortly after the passage of the Chinese Exclusion Act of 1882 that Joseph, described as "an Americanized Chinaman" in the local newspaper, sought admission of his daughter to and was "refused admittance to the Spring Valley Primary School" (*Daily Alta* 1884a:1). According to the *Daily Alta*, she was denied entry because she was neither a United States citizen nor a citizen of the State of California despite being American born. The headline of the article, "No Chinese Need Apply" made it clear where the Tapes stood in the public eye. Because of his connection to the Chinese consul as a translator, Joseph approached the Chinese consulate who decided to help "test the matter in the Courts" via a writ of mandate (*Daily Alta* 1884a:1). Attorneys request a writ of mandate or a writ of mandamus when a plaintiff needs a judge to review a decision made by an administrative body. In this case, the Tapes were asking the court to review the decision of the school board and order them to admit Mamie Tape. This legal action did not require a formal trial or the recording of testimony. It was handled via legal briefs and affidavits provided by both parties. (See Appendix A for chart demonstrating the relevant parties to the case).

Chinese Consul Frederick Bee and William T. Welcker, the State Superintendent, engaged in correspondence where the Consul "urged that under the law and the ruling of the

recent decision by Justices Field, Sawyer, Sabin and Hoffman, all Chinese children born in the country were entitled to public instruction" (*Daily Alta* 1884c:1). Consul Bee, according to Ngai (2010), was among a group of White lawyers who worked on behalf of Chinese workers and organizations. The law that Bee referenced was Political Code §1667, which read:

> Every school, unless otherwise provided by the law, must be open for admission of *all children* between six and twenty-one years of age, residing in the district (emphasis mine).

The justices whom the consulate referred to were members of the U.S. Circuit Court of San Francisco. They had recently handed down a decision regarding the citizenship of American born Chinese children via *In re Look Tin Sing* (1884). *Look Tin Sing* was a case involving a Chinese-American boy who was born in California but was sent to China for his education when he was nine (McClain 1990:163). Upon his return five years later, the port authorities refused him entry. His parents, with the help of the Chinese consulate, filed a writ of habeas corpus on his behalf. They claimed that, under the Fourteenth Amendment, he was a citizen of the United States and California and thereby not subject to the Exclusion Act of 1882. Therefore, he was entitled to the rights and privileges afforded all citizens.[13]

Before rendering his opinion in *Look Tin Sing*, Justice Fields explained that this decision was bigger than managing Chinese immigration. "If you depart from the plain wording of the statute," he explained, "you will close the rights of citizenship upon thousands of native born persons of Irish, English, and German parentage" (*Daily Alta* 1884b:1). In fact, in the opinion itself, Fields made it a point to argue that the citizenship clause of the Fourteenth Amendment was created to overrule the *Dred Scott* case. Was this decision an affirmation of the citizenship of African Americans and Chinese Americans? Alternatively, was it the recognition that such a

[13] For a detailed account of the legal history of discrimination against the Chinese in the 1800s, see McClain (1990).

ruling would jeopardize European American citizenship? In this declaration, there seemed to be an inherent protection of whiteness even if it meant also protecting non-Whites.

Though it was clear that both state law and judicial precedent were on the Tapes side, the decision was not well received by the school board. In a letter published in the *Daily Alta* on October 10, William Welcker, the Superintendent for Public Instruction, rejected the finding for three reasons. First, he explained that he was not required to follow a simple newspaper account of the hearing. Second, the *Look Tin Sing* case was not specifically about schools. Finally, the federal courts had no say over state matters. While his first two arguments were legally groundless, he was correct in that the San Francisco Board of Education held the ultimate authority over school issues.

Agreeing with Welcker, Andrew Jackson Moulder, the Superintendent of Public Instruction in San Francisco, made his case to deny entry to Mamie Tape at an October 21 school board meeting. While most board members agreed with the action, there was surprise opposition from Director Cleveland, an ardent supporter of Chinese exclusion laws and vocal opponent of Chinese immigration. According to the newspaper, Director Cleveland "was in favor of extending the privileges of the public schools to all native-born children irrespective of race or color" (*Daily Alta*, October 22, 1884c:1). Two other board members, Bowie and Foard, joined him to vote against it. Nonetheless, the following resolution was proposed and passed with a vote of 8 to 3:

> *Resolved*, That each and every Principal of the public schools throughout the city and county under the jurisdiction of the Board of Education be and he or she is hereby absolutely prohibited from admitting any Mongolian child of proper school age or otherwise, either male or female, into such school or class.

Violation of this order, they warned, would result in immediate dismissal. The order passed, though it was clear that the Tapes would seek legal remedy.

The Tape family again attempted to enroll Mamie. Principal Jeannie M. Hurley denied her entry as directed by the school board. The following day the Tapes, with the help of their attorney, William F. Gibson, and the support of the Chinese consulate filed a writ of mandate with the Superior Court of the City and County of San Francisco. At the hearing, Judge James Maguire ordered an alternate writ of mandate for the board to admit Mamie to the school or provide an explanation for their refusal to do so by Friday, November 14 (*Daily Alta* 1884d:1). In response, the board moved to quash the writ and argued that she could not be admitted because she was vicious, filthy, and dangerous to the other students because she carried contagious or infectious diseases. Under California Code §1667, these were legitimate grounds for excluding an individual regardless of race. The school also argued that "[t]he mingling of the Mongolian and Caucassian (sic) races in the public school will be fraught with disastrous consequences to our civilization and to our institutions" (*Daily Alta* 1885a:1). There were no such legal grounds for this assertion.

Judge McGuire's opinion was released January 9 and immediately reported in *The Daily Alta California* the next day. He ruled in favor of Mamie Tape, supporting the argument that, in conflict with the Fourteenth Amendment, she was denied entry "because she is descended from the Chinese branch of the Mongolian race" (*Daily Alta* 1885a:1). According to Maguire, state law made public school available to "all other races—white, black and copper-colored." To do otherwise, he noted, would be "unconstitutional and void" (*Daily Alta* 1885a:1). He explained that, according to state law, schools were always meant to be open *unless* there are provisions for creating separate schools. Maguire agreed with the school's argument that comingling would be catastrophic for the schools, but he explained, again, that without legislative action, he could not assert his judicial power. "This Court," he wrote, "has no power to avert a danger which springs

from the absence of *necessary* laws" (*Daily Alta* 1885a:1, emphasis mine). While this opinion seemed to support a win for the Tapes, it also simultaneously advised the Board in no uncertain terms that any racial restrictions could only be handled through the legislature.

Once again, despite the holding, it was clear that the Chinese were not welcome in White schools. "Moulder," the newspaper reports, "is strongly opposed to the admission of Chinese children into our already crowded schools and will probably contest the case to the bitter end" (*Daily Alta* 1885a:1). The argument of "already crowded schools" was no doubt a precursor to race and space politics common throughout the school desegregation movement. The argument migrated from racial reasons to administrative/budgetary reasons. In arguing that there was no room and no funding to serve the influx of students into a school, Moulder attempted to side step the issue of race. It was this argument, among others, that the Board engaged in a public appeal to the California Legislature for separate Chinese schools while they legally appealed the ruling. During the appeals process, they still refused Mamie's entry to the school.

At the Board meeting following the court's decision, Moulder read another letter from Welcker that addressed what the press dubs "The Chinese Problem" (*Daily Alta* 1885c:8). In the letter, he argued that the Fourteenth Amendment, which addressed citizenship and equal treatment, did not apply to the Chinese. "Every intelligent person knows," he wrote, "that the Fourteenth Amendment was intended for persons of African descent" (*Daily Alta* 1885c:8). This argument is more thoroughly addressed in the next chapter on race and school desegregation.

Despite weak constitutional arguments, the true sentiment regarding the Chinese in California emerged in the Welcker letter. Arguing that free public education would encourage Chinese immigration, he asserted that the Chinese would do anything to learn English. "They have attended Sunday Schools and even pretended to be converted to Christianity in order to

learn English" (*Daily Alta* 1885c:8). The Chinese, no matter how Americanized, were unacceptable. The Tape family in all their wealth and status were still unacceptable. According to this statement, even their Christianity was a ruse to take advantage of a system created and sustained by the White citizens of San Francisco. Therefore, in order to "protect public schools from disaster," the Board disagreed with the ruling and set the matter to the Judiciary Committee, who ultimately decided to appeal the decision. The full text of the letter was also reported in *The Sacramento Daily Record Union* the following day. It was, decidedly, front-page news.

The appeal was presented to the California State Supreme Court and the court published its decision on March 3, 1885 in favor of the Tapes. The court made it clear that, according to the law, the school board could not deny entry to any child because of race. Because there were no specific provisions regarding separate schooling, they were required to admit her. Furthermore, the court's decision in *Ward v. Flood* (1874) also made it clear that the legislature could not exclude children from public education based on race. They could, however, create separate schools for Black and Indian children. So, like McGuire, the supreme court made it clear that "[w]here the law is plain and unambiguous, whether it be expressed in general or limited terms, *the legislature should be intended to mean what they have plainly expressed*" (*Tape* 1885:474, emphasis theirs). Once again, the court made it clear that, unless the law was changed, they could not prohibit entry to Mamie Tape. If, however, the legislature allowed local school boards to determine a need for separate schools, then they were free to deny her entry, but it required establishing a Chinese school, even though *Ward* did not specifically refer to or include "Mongolians."

The decision was reported in the news immediately thereafter and the board, specifically Director Culver, petitioned the legislature to create a bill that allowed for the creation of separate schools for Chinese children. One month later, the Board began discussing and planning a separate school for Chinese children within the boundaries of Chinatown. However, Moulder and Culver both objected to spending public funds to create a Chinese school. At the April 1 board meeting, Director Culver made the case that, in spite of the rulings, California schools should remain White. "If we have patriotism, if we have love for our fellow men, the Caucasian race, if we have any regard for the 50,000 children…placed our charge, we should cry halt" (*Daily Alta* 1885i:1). While it was not clear exactly what he proposed as a solution, he used vivid war imagery to argue that the Board should, like the Spartans against the Persians, "never be polluted by these barbarian hordes" (*Daily Alta* 1885i:1).

His appeal was wrought with anti-Chinese sentiment, explaining that 10,000 "long, sinuous, blue-bloused, wooden shod, stealthy-looking Mongolian monster(s)" were working feverishly to steal labor and that Mamie Tape was "the apex of a triangle whose base is unknown" (*Daily Alta* 1885i:1). Finally likening the Chinese as worse than pests, Culver called on the Board and the citizens of San Francisco to exclude "this blight, this cancer on our otherwise fair city" (*Daily Alta* 1885i:1). Though hyperbolic in his assertions, Culver's use of catastrophic, monstrous, and diseased language was evidence that Mamie Tape and children like her were unwelcome, unwanted, and intolerable.

Shortly thereafter, Joseph, with judicial order in hand, applied again for Mamie to attend the school. This time, Hurley denied her admission on the grounds that she did not present vaccination records "properly signed by a respectable physician" (*Daily Alta* 1885k:1). The headline "Mamie Tape Outwitted" represented the public pride in deterring an eight-year-old

from her education. The Board called a special meeting to discuss the creation of a Chinese school. In addition to discussing location, they discussed paying Miss Thayer, the Principal of the Chinese school, over $100 per month, which was over 3 times as much as a nearby principal was paid. Why the increased salary? Moulder explained that she deserves extra pay because this assignment "would not be very pleasant at this time; she would have to go through Chinatown and be thrown constantly among children of a foreign race" (*Daily Alta* 1885k:1). This was tantamount to hazard pay.

It was also during this meeting that Moulder proclaimed, "[t]he people of this city and State have been often abused by the tirades of such cranks as Henry Ward Beecher, De Witt Talmage, and Bob Ingersoll for their exhibitions of race prejudice" (*Daily Alta* 1885k:1). Henry Ward Beecher was a preacher who was known for his advocacy of the Chinese. During visits to California, he "gave lectures and interviews deriding the opposition to the Chinese and accusing Californians of gross exaggeration regarding the danger of Chinese immigration" (Sandmeyer 1973:30). He and Thomas De Witt Talmage, an American Presbyterian minister, both wrote or spoke out against anti-Chinese legislation put forth in Congress that attempted to restrict vessels to fifteen Chinese passengers (Sandmeyer 1973:90). Robert "Bob" Ingersoll, while not a religious man, was a local, well-known lawyer who vigorously defended and supported equal rights for all races (Anonymous n.d.). The fact that their names were even uttered demonstrates the powerful influence clergy and allies provided during the politics of the day.

After securing vaccination records, the Tapes once again attempted to enroll Mamie. This time they were turned away because the classes were "full." Gibson threatened to file for contempt. Moulder, the Board, and Hurley explained that she could attend any school created for Chinese students. The Tapes alleged that the school was too far away from their home. This

argument is a foreshadowing of what would become a common theme in future school desegregation cases, including those in this study: "the distance argument." Many plaintiffs will try and fail to argue that inconvenient or dangerous distances were legitimate reasons to allow entry into White schools that were closer to their homes. Unfortunately, as Joseph Tape and his attorney made these pleas, "carpenters began the work of fitting the school room" for the Chinese school (*Daily Alta* 1885l:8).

The Chinese school opened the following Monday, April 13, 1885 with only six children in attendance, including Mamie and Frank. The reporter identified them as "a pair of little heathens" and described the room, in vivid detail, as a "fully equipped American class" (*Daily Alta* 1885n:1). Despite the fact that Mamie and Frank were U.S. citizens, Americans, in this report, was synonymous with White. I address this raced language and allusion to the "forever foreigner syndrome" in more detail in the next chapter.

In the afternoon, four more children came to the school and the reporter observed that "[t]he youngsters all speak good English" (*Daily Alta* 1885n:1). The same, however, could not be said for the reporter. Nonetheless, it was clear that Mamie was the focus of the article. She was described as "the most intelligent member of the class" (*Daily Alta* 1885n:1). The detail used to describe her dress is fascinating. All the other children wear "Chinese costume," except for Mamie. Mamie was "gorgeously attired in American clothes, including pink stockings and a light-colored leghorn hat, provided with an ostrich plume of *immense* proportions" (*Daily Alta* 1885n:1, emphasis mine). One can only imagine how Mary dressed her daughter with the knowledge that she would be on display. Her family was captured in the public eye for the better part of a year, all the while accused of false Christianity, described as heathens, and likened to catastrophic events like waves, floods, and plagues.

Still, even her fancy and elaborate dress could not insulate her from slights and stereotyping. Superintendent O'Connor visited the school and tested Mamie. He asked her for the definition of newspaper, an interesting choice of word considering the presence of the press. The reporter wrote, "[s]he looks puzzled for a few seconds, then quickly answers, 'a tidings sheet.'" Instead of being impressed, the reporter wrote that her answer was obviously coached, directly contradicting his earlier praise of her intelligence. He wrote, "[f]rom the answer it is apparent that most of her information is a result of drilling." This was all laid out on the front-page for all of San Francisco to see. According to the American Newspaper Annual (1885), *The Daily Alta* had a circulation of 17,000 subscribers and innumerable readers. As the citizens of San Francisco consumed these newsworthy events, it must have shaped and contributed to the contention that the Tapes, and by extension the Chinese community, could never truly be Americans.

With all of those eyes fixed on the Tapes, the final story printed on the Tape family is telling. On April 16, 1885, the newspaper published "a verbatim copy" of a searing letter from Mrs. Mary Tape addressed to the Board (Figure 4.2). The editors did not correct the numerous spelling and grammatical errors. Perhaps this was intentional, making Mrs. Tape (and, by extension, her children) appear unintelligent and unworthy of the White school. A reader could further conclude that either Mrs. Tape did not have mastery over English or that she was so angry she wrote without regard for grammatical rules. The strong vocabulary and generous use of exclamation points supports the latter. Nevertheless, it was a letter filled with outrage that mimics the fierce rhythm of Sojourner Truth's "Ain't I A Woman" speech. In it, she turned many of the Board's arguments against them. For example, she questioned their Christianity by writing: "I suppose, you all goes to church on Sunday! (sic) Do you call that a Christian act to

compel my little children to go so far to a school that is made in purpose for them" (*Daily Alta* 1885o:1).

She also argued that they have "expended a lot of the Public money foolishly" considering their reticence to spend tax money on the school in the first place. She consistently deployed the imagery of men picking on a little girl, demonstrating the obvious power dynamics inherent in the case. She referred to Mamie as "my little child…one poor little Child…little Mamie Tape," using "little" to describe both her age and size (*Daily Alta* 1885o:1). For almost a year, Mamie was the face of a reviled population demanding equality, dignity, and a recognition of citizenship. By consistently referring to her as little, she constructed Mamie as the innocent victim of the big, bad Superintendent Moulder for whom she reserves her most direct and acerbic accusations. She wrote, "[i]t seems to me Mr. Moulder has a grudge against this Eight-year-old Mamie Tape (sic)…May you Mr. Moulder never be persecuted like the way you have persecuted little Mamie Tape" (*Daily Alta* 1885o:1). Though notions of assimilation and allegations of racism comprised most of the letter, which is discussed in the next chapter, her "momma bear" instincts were on full display. In Chapter 6, I address the thoroughly gendered dynamics of her letter.

[Figure 4.2 approximately here]

In addition to the *Daily Alta California,* the letter was also printed in the *Sausalito News* and the *Marin County Journal* on June 11, 1885. Why it was printed almost two months after the original printing is uncertain. What is certain, however, was that this case captured the public's attention. It was a watershed event in history that laid the groundwork for *Plessy v. Ferguson* (1896) before it was even argued, and the Supreme Court established the doctrine of "separate but equal" which remained the law of the land until 1954.

The case itself was not mentioned or revisited again until the *Sacramento Union* (1910:6) published a small, 11-line retrospective called "Twenty-Five Years Ago Today." It was printed on page six, indicating how inconsequential the story may have been to the newspaper editors. The legal case was not the last time the Tape family was on display however. Approximately seven years after the case, the fascination transferred from Mamie to her mother. In 1892, a reporter from the *Morning Call* visited the Tape family home to investigate the "fairy tale" of "a young Chinese woman who devoted most of her spare time to photography" (Gamble 1892:12). It may have been considered a "fairy tale" for two very significant reasons: (1) There were so few female photographers in the late 1800s; and (2) The sheer equipment and materials necessary to master photography made its enjoyment limited to those who could afford it (Wexler 2000). Francis Benjamin Johnston, one of the most well known "lady photographers" in the late nineteenth/early twentieth century, explained that being a woman photographer involves "personality, mental poise, physical strength, staying qualities, technical training, unrestricted patience, and endless attention to detail" (Wexler 2000:40). From an indignant mother to an extraordinarily talented photographer, the Mary Tape who publicly scorned the San Francisco school board only a few years prior was elevated, in detail, to the status of sameness. Her letter and this *The Morning Call* article are addressed in Chapter 5 regarding race, class, and school desegregation.

Directly after the case, Mamie and her siblings attended the Chinese school and continued using private tutors to advance their education. According to Ngai (2010), by 1890 there were more than one hundred children in the school, two of which were little girls. But eventually that little girl left, and Mamie became the only girl in the school. While Mamie and her brother learned Chinese, were sometimes dressed in Chinese attire, and spent time in

Chinatown as their father served the people of Chinatown, the Tapes could not be more different from the other Chinese residents. By 1895 the Tapes moved to Berkeley where, according to the Berkeley Architectural Heritage Association (BAHA), they lived at 2123 Russell Street, South Berkeley where the home still stands to this day (Figure 4.3). Berkeley became home to the Tapes and they seemed more at ease among wealthier Whites than their Chinese customers. It was there, in Berkeley, that they become "archetypal members of the first Chinese American middle class," where they lived a life marked by an impressive upper-class life replete with "touring cars, hunting dogs…and society weddings" (Ngai 2010:ix).

[Figure 4.3 approximately here]

The story of *Tape v. Hurley*, its participants, and its legal significance are largely omitted from the school desegregation narrative. There may be several reasons for its omission. First, it was a pre-*Plessy* decision. Once *Plessy* became the "law of the land," its legal findings and significance were moot. Second, there were far more legal cases involving Black plaintiffs that set stronger precedent than those involving non-Black plaintiffs. It may have been too easy to dismiss the significance of a case involving a Chinese American plaintiff when there were so many stronger, similarly situated cases involving Black plaintiffs. Third, because it was never appealed to the federal courts, it never gained the same legal significance reserved for circuit and Supreme Court cases. This begs the question of whether or not *Tape* could have become the "separate but equal" case before *Plessy*. Finally, as I will discuss in the next chapter, civil rights scholarship largely fails to consider the past experiences of Asian Americans due to their contemporary status and modern-day perception as "model minorities" (Chang 1994; Okihiro 1994; Wu 1995; Kim 2007). It is ultimately rooted in the belief that the past discrimination of Asian Americans did not result in the same persistent, long-term, and systemic oppression

experienced in Latinx and Black communities and is therefore historically insignificant. This project demonstrates otherwise.

The Pipers, The Forgotten

Remember you are all people and all people are you.
Remember you are this universe and this universe is you.
Remember all is in motion, is growing, is you.
Remember language comes from this.
Remember the dance language is, that life is.
Remember.

-Joy Harjo, poet, Muscogee Nation

Driving on paved roads, it is really easy to imagine cutting through the muddy looking mountains that separate Nevada from Eastern California. However, in this visit, I cannot help but wonder what it must have looked like in the 1920s. Were there roads? How did they travel? Was the land as desolate and parched then as it is today? According to my informant, the land was beautiful, full of trees that bloomed white flowers that would float across the sky with the wind. Furthermore, a steady, strong river fed the Paiute Nation.

As I drive up to the modern Big Pine, it is just turning night. From the mountains, the town looks like a small collection of twinkling lights. Big Pine is a sleepy, one-stoplight town. I visit a local market where I sense a familiarity among the people. With a population of little more than 2,000, I imagine everyone must be familiar. I drive down the main road through town and absentmindedly pass a white school building. Less than a mile ahead, I see signs telling me that I am about to enter the Paiute Reservation. Not certain if I could proceed without permission, I turn my car around and head back through town. That is when I see the school more clearly. How could I miss it? I park my car, step out, and walk to the front of the school. There she is, atop a strong pedestal, clutching her books: Alice Piper. The tribute to her sacrifice

is more beautiful than I had imagined in my mind's eye and all I can see are the shadowed shapes of her details. There is writing around the statue, but it is too dark for me to read. I could use the flashlight application on my iPhone to read it, but I want to wait till morning when I am set to meet Pamela Jones, the superintendent of the school, Sage Andrew Romero, community outreach coordinator of the Paiute Nation, and Danelle Gutierrez, historian of the Nation for an interview (Interview, March 7, 2017).

This began my journey to meet Alice Piper, her family, and her extraordinary community. For me, it felt like sacred land. This was where she grew up. This was where she lived. The only child of Pike and Annie Piper, at the tender age of 15 years old, stood as the named plaintiff in the fight for equality…a fight for dignity. Up until this point, Alice Piper was a blurred face in a crowd of people I could never identify (Figure 4.4).

[Figure 4.4 approximately here]

The research on *Piper* is scant but what exists is informative. There have only been two scholars who have written about the case and they both identify it as the most influential in Native American educational history (Wollenberg 1976; Blalock-Moore 2012). While Blalock-Moore were able to secure newspaper accounts and some archival material regarding either the case or the political atmosphere of Owens Valley at the time, much of the story of Alice Piper is told from an outsider's perspective rather than from within the Big Pine Paiute Tribe. Much of the history of the case from the Paiute perspective has been passed down through the oral tradition characteristically associated with Native American cultural practices. Capturing the Paiute ethnohistory through interviews requires what Indigenous scholar Leo Killsback (2013:134) describes as an understanding that "time must be deconstructed, especially when discussing indigenous peoples and their histories." Traditional methodologies must be

decolonized as suggested by Tuhiwai Smith (2012). She explains that telling history from an Indigenous perspective requires an understanding that much of it is "*re*writing and *re*righting our position in history" (Tuhiwai Smith 2012:29, emphasis hers). Indigenous communities, she explains, possess "a very powerful need to give testimony to and restore a spirit, to bring back into existence a world fragmented and dying" (Tuhiwai Smith 2012:29-30).

In an effort to *re*right the story, I rely on both traditional and decolonized methodologies. First, I provide the story according to traditional methodologies (i.e. archival research, newspaper accounts, interviewing, and secondary research). I identify this section as research according to "The Papers." Next, I deliver a fuller account of the *Piper* story as I learned it from "The People" that include not only past understandings of the case, but also the contemporary efforts to ensure that future generations will always remember Alice Piper and her legal struggle for equality. Learning the stories from "The Papers" and "The People" allows for a richer understanding of the parties involved from an outsider's perspective as well as an insider's understanding.

First, what The Papers Say….

The year was 1924 in the Owens Valley of Big Pine, California, which housed members of the Paiute and Shoshone Tribe. For the purposes of this case, there were two important historical events that contributed to the significance of the case: water rights and the closure of Indian schools across the country. The fight over water rights began as early as the 1860s when White settlers helped themselves to the Owens Valley Paiute irrigations system and in doing so destroyed the Paiute food supply (Walker 2014). Later in 1907, Owens Valley was designated as an area that would supply water to Los Angeles via an aqueduct, completed in 1913. Between 1905 and 1935, the Los Angeles Department of Water and Power began purchasing land from

the Owens Valley Paiute farmers and ranchers (Walker 2014:43). The ultimate battle over water rights challenged the deceptive manner of obtaining signatures for the 1937 Land Exchange Act. This Act effectively stripped the Owens Valley Paiutes rights to land and life sustaining water. In fact, according to the Inyo County Water Department's website (2017), Owens Lake became a "dry lake bed" as a result of quenching the demand for water from Los Angeles.[14]

As water was being drained from the community, children who had been part of the failed system of Indian day and boarding schools were pouring in from around the country. As discussed in Chapter 2, Indian day and boarding schools began shortly after the passage of the 1887 Dawes Act. In 1887, Senator Henry Dawes proposed the "Indian Emancipation Act," allowing the President of the United States to, at his discretion and without the consent of indigenous leadership, deed 160 acres of reservation lands to the head of Native American families. Those lands in turn would be ineligible for sale for twenty-five years. The Act also granted United States citizenship to its participants. The stated goal was to "protect" Native Americans from theft so that they could farm their own land, "adopt civilized habits," and live side-by-side with their White neighbors, who also received 160 acres from the reservation "surplus." According to the congressional record, supporters of the Act anticipated the following:

> With white settlers on every alternative section of Indian lands there will be a school-house built, with Indian children and white children together; there will be churches at which there will be an attendance of Indian and white people alike…they will readily learn the ways of civilization. (Takaki 2008:222)

Despite its seemingly auspicious beginnings, the ultimate result of the Dawes Act was the loss of over 90 million acres of "Indian land" that left Native Americans landless and impoverished (Reyhner and Eder 2004).

[14] For a more in-depth review and discussion of the history of Owens Valley water rights, please see Kahrl (2000), Hoffman (2011), Bauer, Jr. (2012), and Walker (2014).

In the late nineteenth and early twentieth century, the U.S. government determined that the best way to ensure civilization was through education. With the goal of assimilation, the Dawes Act provided funding to public schools that taught Indian children beside White children. The ranks of public schools, however, did not swell with the growth of Indian children. Instead, there was a tremendous growth of government sponsored Indian boarding schools and trade schools, which purported that the best way to civilization was to remove children from their homes on the reservation. According to David Wallace Adams (1995), over 21,000 Native American children were removed from their homes (Table 4.1). By 1905, however, the Indian commissioner, Francis Ellington Leupp, declared these tactics an abysmal failure. Table 4.2 represents the subsequent drop in attendance since 1900.

[Table 4.1 approximately here]

Separate Indian schools were already determined to be legal as a result of *Ward v. Flood (1874)* provided they were "in all respects…equal." According to Blalock-Moore (2012), by 1912 the federal government began asking California public schools to accept more Native American children. It was not until the 1920s that they actually started accepting children once it was confirmed that they would receive more federal funding.

[Table 4.2 approximately here]

In 1891, the federal government established an Indian school in Big Pine, California (Blalock-Moore 2012). As the federally-run schools began closing around the State, the public-school systems were required to accept them due to compulsory attendance laws. By 1920, the population of students in California's public schools dropped by 25 percent. By 1920, a brand-new facility housing Big Pine's public high school was constructed and Paiute parents, including Alice Piper's, showed interest in enrolling their children. According to Pamela Jones, during the

fundraising efforts for the new high school, members of the Indian community were very much a part of the process and were "promised that their children would be able to come to school here" (Interview, March 7, 2017). In *Piper* (1924:674), the judge described the public-school system of California as:

> A product of the studied thought of the eminent educators of this and other States of the Union…Each grade is preparatory to a higher grade, and, indeed, affords an entrance into schools of technology, agriculture, normal schools, and The University of California. The common schools are doorways opening into chambers of science, art, and the learned professions.

With such promise of advancing their education beyond the traditional trades taught at the government-run school, it is no wonder the Pipers sued for Alice's right to walk through the doorways afforded by California public schools. The school board, however, closed the doors, citing Political Code §1662 that required Indian children to attend a government-run school within a 3-mile radius of their home.

In December 1923, the Pipers, through their attorney J.W. Henderson, file a writ of mandate for the California Supreme Court to review the administrative decision not to admit Alice to the all-White public school. Six other students joined the suit because they were excluded from attending the local White school on the basis that they were Indian. Henderson delivered two arguments. First, he argued that because the Pipers were citizens and lived away from the reservation, Alice was eligible to be admitted to the local school under the Dawes Act. Second, citing the Fourteenth Amendment, he challenged the constitutionality of Political Code §1662, its 3-mile radius requirements, and the ability for the school board to create separate (but equal) schools for Native American children. At that time, Big Pine had a government-run school for Native Americans, but Alice lived approximately 30 miles away in Fish Lake Valley and was therefore not required to attend (Interview, March 7, 2017; Figure 4.5).

[Figure 4.5 approximately here]

The Board argued that the Government-run school was, "in all respects…equal" to their public school and was "better adapted to the education of members of the Indian race" (*Piper* 1924:668). They also argued that there were plenty of private schools that Alice and her family could consider in lieu of the public-school system. Furthermore, they claimed that admitting Alice and the other six children would increase the attendance of other Indian children, "who cannot be cared for because of the economic or administrative problem which it will create" (*Piper* 1924:674). Finally, because the Board maintained that they would fight the matter to the California Supreme Court, the application for writ was made directly to the Supreme Court and accepted.

The court held that even though she was a "descendant of the aboriginal race," the policy of the federal government was "to promote the general welfare of the American Indian, even to the point of *exercising paternal care*" (*Piper* 1924:671, emphasis mine). Under the Dawes Act of 1887, the Pipers were citizens of both the United States and California because they maintained "…a residence separate and apart from any tribe of Indians…and [have] adopted the habits of civilized life" (*Piper* 1924:672). Since they were citizens, lived apart from the Paiutes, and the Board had not established its own public Indian school, she was entitled to admission. In a letter dated June 4, 1924, Jess Hession, the district attorney from Independence, wrote the following to Mr. L.L. Goen, a clerk for the Big Pine School District:

> Dear Mr. Goen,
>
> I beg to advise that I am to day (sic) in receipt of a postal card from the Clerk of the Supreme Court, informing me that on the 2nd of this month the Court ordered the writ to issue as prayed for in the Alice Piper case. This means that the Court has taken the petitioner's view of the law in the case and undoubtedly holding the state law unconstitutional so far as it attempts to make the Indians attend a government school. I will be in receipt of a copy of the opinion in a few

> days and will know than (sic) definitely what they have done. We gave them the best we had and apparently had them stuck for awhile (sic) anyway.
>
> Yours very truly,
>
> (signed) Jess Hession

The final sentence in the letter provides some insight into how desperately the school board did not want to admit Native American children. The notion that they "apparently had them [the Pipers] *stuck* for awhile anyway" provides evidence of using the court system to delay the process or at least delay the decision to admit Alice.

Coincidentally, the *Piper* decision was issued the same day that the United States Congress passed the 1924 Native American Citizenship Act declaring all Native Americans, regardless of tribal affiliations, U.S. citizens with the right to vote. While this event could be happenstance, the decision came at a time when the country was experiencing large shifts in Native American policies. As previously noted, government-run day schools were closing all over the country. According to Blalock-Moore (2012) enrollment in federally-run schools in California had dropped by 25% by 1920 and the federal government was not reimbursing state public schools that accepted Native American students. *Piper*, therefore, emerged from a "perfect storm" of state policy, federal policy, structural changes in education, and the collective response of the Native American community differentiating it from *McMillan*, *Crawford*, *Grandich*, and *Peters*.

Second, What the People Say….

I interviewed representatives from the Owens Valley Big Pine Paiute Tribe and a representative from the Big Pine Unified School District. Once again, those individuals were (in alphabetical order): Danelle Gutierrez, the tribal historic preservation officer (hereinafter Mrs. Gutierrez), Pamela Jones, the superintendent of Big Pine Unified School District (Ms. Jones),

and Sage Andrew Romero, the outreach coordinator (Mr. Romero). Together, they tell a story of a family who did not abandon their Paiute heritage as the opinion suggests, but fought for the dignity of it and the right to secure an education beyond trades.

According to Ms. Jones, the families "did not necessarily want to be assimilated but they wanted to be a part of this new world they were building, and they wanted the best thing for their children" (Interview March 7, 2017). For the Piper family and the six other families involved in the case, it was about access that was deserved rather than access that required surrendering their identities and communities.[15] In fact, as Mr. Romero shares, "these were the ones that were sticking to it. They were like telling them, 'We're not gonna move!' It's not like they were stepping from the people because they were stronger with their culture and their homeland." Indeed, the Pike and Annie Piper's OIA records were signed six years after the case. In those papers, they affirmed their Paiute identity and listed the residence they maintained on tribal land (Piper, P. 1930:2,4; Piper, A. 1930:2).

According to their OIA records, the Pipers claimed membership in the Paiute Tribe of Inyo County, California. Pike Piper claimed ½ degree of "Indian blood" because his mother, Sepsey, was full Paiute and his father was White. His mother's Indian name, typed phonetically, was "Te-va-ku-wa." When asked to list his father's name, he simply answered, "[d]o not know." It appears from the records that he knew his family lineage on his mother's side, including his maternal grandfather ("Co-ma-hah-nuh-gu") and grandmother ("Ya-pah-cu-ha"). Unfortunately, he knew nothing from his father's side. Pike, too, had an Indian name, "Maw-che," as dictated in the record.

[15] All the informants wanted it known that, while Alice Piper was the named plaintiff, there were six other children and families involved in the case. Their stories remain unknown, but their sacrifice is not. During the interview, however, Sage and Danelle surmise that Jeff Tibbets and Ike Baker may have been co-plaintiffs. They are pictured integrated school photograph featured in Figure 3.5.

Annie Piper, according to her records, was full Paiute. Her maiden name was Annie Stewart. Her parents, Mike and Peggy, were also known as "Wo-ho-ki-ke" and "Pow-now-we," respectively and were married according to "Indian Custom." Unlike Pike, Annie knew both her paternal and maternal grandparents who were all members of the Paiute Tribe.

From the opinion of the case, it sounds as if Pike and Annie had separated themselves from tribal affiliations. The court record reflected that they had "adopted civilized habits," without explaining what those habits entailed other than choosing to live off the reservation by owning land unconnected to a Tribe. Their OIA records and my informants, however, demonstrate a clear connection to their Paiute community. It begs the question as to whether compliance with the Dawes Act was nothing more than a legal strategy to establish U.S. and California citizenship in order to win the case. To solidify the Piper's connection to the land, Mrs. Gutierrez shares:

> Traditionally…and even to this day, back then families in their birthing ceremonies would do it some place special that connects them to their area to their ground that locks you in…gives you your strength…and calls you back and what keeps you solid. (Interview March 7, 2017)

While I am still trying to construct a timeline for Alice's life, I do know that at one point she was, according to her father's OIA record, "attending high school at Los Angeles California" (Pike, P. 1930:2). Whether it was high school or college, she did further her education beyond Big Pine and, as discussed earlier, served as headmistress for the Carson City Steward Indian School in Nevada (Figure 4.6). A phone call to the Stewart Indian School reveals that they have several unarchived historical materials from the late 1800s to the mid-1980s. A future visit to this site may provide more information about Alice Piper specifically or life in the school generally during her tenure.

[Figure 4.6 approximately here]

As suggested by Mrs. Gutierrez, Alice Piper was called back to her home as evidenced by the fact that she maintained a residence on the reservation until her death (Figure 4.7). Furthermore, her parents are both interned in the burial site maintained by the Tribe.[16] Unfortunately, her home fell into disrepair. However, to the left of the house is what remained of her greenhouse. According to Mr. Romero, she was an avid gardener. Mrs. Gutierrez explained that someone has purchased the home with the intent to fix it up, but she is unsure of who "owns" the land and where those efforts stand.

[Figure 4.7 approximately here]

The *Piper* story is incomplete without telling the story after the story. During our interview, Mrs. Jones and Mr. Romero explained how they met at Big Pine's Centennial Celebration in 2009. Mr. Romero, a traditional hoop dancer, and the AkaMya Cultural Group dedicated a performance to Alice Piper. He founded the AkaMya Cultural Group in 1998 with a focus on sobriety, health, and connection to culture. AkaMya means "red hand" in Paiute as red, for the Paiutes, represents power and strength and the Paiute culture is known for creating music, crafts, and dancing with their hands (Langley 2017). Ms. Jones suggested that there should be something at the school to commemorate her. "I was thinking a plaque or *maybe* a head," she recounts (Interview, March 7, 2017). Then Mr. Romero suggested a life-size statue.

After obtaining permission from the Big Pine Paiute Tribal Council and the Big Pine Paiute Cultural Committee and support from the school board, the Alice Piper Memorial Committee, comprised of Pamela Jones, Sage Andrew Romero, Sharon Romero, and Alicia

[16] In an effort to demonstrate my respect to Alice and her family, I asked to visit their gravesite in order to place flowers nearby. Mr. Romero and I did find Pike and Annie Piper's site but did not find Alice's. There was an unmarked grave, but he was not certain if it was hers. Danelle Gutierrez surmised that because she was an only child, never married, and never had kids, she did not have descendants who would maintain her burial site. It was also surmised that she might not have been buried there but near Fish Valley where she lived.

Peterson, began their journey to memorialize Alice Piper for years to come. Through fundraising efforts, a Kickstarter campaign, various conference presentations, visits to Pow Wows, local radio advertisements, and collaboration with Native American actress Misty Upha and Native American Rapper Lady Xplicit, they earned enough funds to commission an artist in Utah to create the statue from a sketch rendered by Robert Gutierrez, a local Paiute artist, that was approved by the school and Tribe (DigitalNdn 2014a, b, c, d, and e).

The Alice Piper memorial was unveiled on June 2, 2014, the 90th anniversary of the *Piper* decision, in a ceremony filled with celebration and tears for having accomplished such an amazing goal. Shortly after the ceremony, an anonymous donor left a frame at the base of the statue that was filled with a collage of pictures of Alice Piper throughout her life (Figure 4.8). In it, she is with friends and family. She is celebrating weddings. She is posing for the camera. It is evidence that she had a very full life. The photographs were new to Sage and Danelle. The anonymous donor has yet to be identified, though Mrs. Gutierrez is working with the Tribal Elders to identify the individuals and locations in the photographs.

[Figure 4.8 approximately here]

The major contributors to the project are honored with nameplates that line the memorial in a circular fashion. It represents names from individuals, organizations, schools, and churches. They are:

Tule River Tribal Council
Inyo County Superintendent of School
Jill Kinmont of the Indian Education Fund
Joan and Alden Nash of Bishop, CA
Leora Howard Charley
Stidham Law Office who donated "In Memory of the Bowers Family,"
Lee Howard Family
Big Pine Community United Methodist Church
California Teachers Association
Soboba Foundation

Big Pine Paiute Tribe of the Owens Valley, and
The Alice Piper Memorial Team: Pamela, Sage, Shannon, and Alicia.

Though there are two stories to be told through Papers and the People, the results are the same: Native American education was transformed that day in the small town of Big Pine, California. Alice Piper's contribution to educational equality is forever memorialized in a plaque situated at the base of her statue (Figure 4.9). It says:

ALICE PIPER MEMORIAL
"Fighting for Education, a Paiute Student Breaks Down Barriers"

Alice Piper, the daughter of Pike and Annie Piper, was a 15-year-old Paiute girl living in Big Pine, California in 1924. She, along with other Indian students in Big Pine, wanted to attend Big Pine High School, but was denied because state law prohibited Native Americans' attendance if an Indian School was nearby. Piper sued the school district claiming the state law establishing separate schools for Indian children was unconstitutional.
The State Supreme Court ruled in her favor. Due to this historic action, the Big Pine School District and Alice Piper are memorialized as major players in the constitutional battle over the rights of Native Americans to attend public schools. The decision has been used as a precedent in other cases such as Brown v. Board of Education.[17]
Piper v. Big Pine (1924) 193 CAL 664

[Figure 4.9 approximately here]

The Mendez', The Nearly

The date is July 5, 1945, one day after patriotic celebrations of America's Independence. A woman sits on a bench in a courtroom listening to men in suits arguing back and forth. Thinking of her four children, she braces herself when she hears her attorney, David Marcus, say, "I call Mrs. Ochoa." She walks to the stand hearing the echo of her footsteps bounce off the walls. The clerk asks her to raise her right hand and swear to tell the truth. She does so because that is all she wants…. the truth. As she looks out to the courtroom, she sees White men and women on one side and the faces of her community on the other. The clerk asks, "State your

[17] While the case itself was not cited as ***legal*** precedent in briefs filed on behalf of *Brown* or in the *Brown* opinion, it can be argued that it set an important historical precedent.

name please." She takes a breath and says clearly, "Manuela Ochoa" (Trial Transcript, July 5, 1945:8).

While this testimony began the trial portion of *Mendez v. Westminster,* the story begins much earlier in 1913 in Chihuahua, Mexico where the named plaintiff and organizer of the suit, Gonzalo Mendez, was born. According to Strum (2010), Gonzalo and his family came to Westminster, California in 1919. There he attended Westminster Main School until fifth grade when he was transferred to Hoover Elementary, "the Mexican School." Once administrators became aware of his advanced English skills, he was returned to the Westminster school. Unfortunately, he dropped out of school to help with the family finances. This, sadly, was the fate of many Mexican and Mexican American children in the 1920s (Rosas 2014). He was, nonetheless, a diligent worker and learned the ins and outs of farm management, a skill that would help him later in life.

As for the mother, Felícitas Mendez, McCormick and Ayala (2007) provide the most detailed history of this accomplished woman. Her accomplishments are detailed later in this chapter. For now, however, it is important to know that Felícitas Gómez Martínez was born in Juncos, Puerto Rico on February 5, 1916 (McCormick and Ayala 2007:15). In 1926, her family was part of a large group of 1,500 Puerto Ricans who were recruited by the Arizona Cotton Growers (ACG) to move to Arizona with the promise of a $2 daily wage, drinking water, sanitary conditions, and homes with electricity (McCormick and Ayala 2007:16). The Puerto Rican labor force was supposed to be a workforce to rival the Mexican and Mexican American workers of California.

Unfortunately, upon arrival, they were met with the realities of the conditions that were the norm for many Mexicans workers. The ACG's plan might have worked except for one

critical detail: Puerto Ricans were U.S. citizens. To assert their rights as citizens, the Puerto Rican work force "staged a minor rebellion…deserted the camps" and reduced the workforce by 50 percent (McCormick and Ayala 2007 citing McWilliams 1947:80). To say the ACG's recruitment plan failed would be a tremendous understatement. Though the Puerto Rican workers had the American Federation of Labor (AFL) and the Porto Rico Federation of Labor (PRFL) on their side, the governor of Arizona used the police force to arrest those that refused to work (McCormick and Ayala 2007:19). As a result, many Puerto Ricans, including Felícitas' family, moved to California.

The Gómez family eventually made their way to Westminster, California and worked alongside the Mexican labor force. Their racialization as Mexicans is discussed in the next chapter. In the meantime, this was where Felícitas and Gonzalo met, were married in 1935, and had three children in quick succession: Sylvia, Gonzalo Jr., and Gerónimo (Jerome). Both Felícitas and Gonzalo exhibited an entrepreneurial spirit in that after three years in the fields, they opened "The Arizona Café" in Santa Ana. According to Strum (2010:36), "they prospered during the early years of World War II, accumulating sufficient funds to purchase three houses." Managing a farm, however, was the ultimate dream for Gonzalo Mendez. That opportunity presented itself through a tragedy that was transformed into a triumph over racist U.S. policies.

It was 1943 and President Roosevelt signed Executive Order 9066: the evacuation of Japanese Americans into "relocation" (aka concentration) camps throughout the West and Southwest. According to Sylvia, her family were friends with the Munemitsus, a Japanese family who owned an asparagus farm just outside of Westminster (Strum 2010). Fearing their farm would be "repossessed" by the federal government and lost forever, the Munemitsus asked if the Mendez family were willing to lease the farm until they returned. The Mendez family agreed, the

two families signed a lease, and Mendez, along with his brother-in-law Frank Vidaurri, moved to Westminster and began "running the 40-acre Munemitsus asparagus farm, which employed fifteen workers…and as many as thirty *braceros* during the peak season" (Strum 2010:36).

Shortly after moving to Westminster, in September 1944, Gonzalo's sister, Soledad Vidaurri, took her three children and their cousins Sylvia, Gonzalo Jr., and Jerome to enroll them in the school closest to their home. According to several accounts, the teacher in charge of registering the children pointed to the Vidaurri children and said, "[w]e'll take those three." She then pointed to the Mendez children and said, "[b]ut we won't take those three" (Nance 2007:29; McCormick and Ayala 2007:24). The Vidaurri children were very light-skinned, as their father was Mexican with French ancestry. With their non-Spanish name and light skin tone, the school administrator believed them to be Belgians. The Mendez children on the other hand were, as Felícita described in an interview, "igual de prietos que yo" which translated means "dark-skinned like me" (McCormick and Ayala 2007:26 n 34). Aunt Soledad recalled telling the teacher "I said no way! She [the teacher] told me I am going to report you. I said, you? You are not going to report me. I am going to report you!" (McCormick and Ayala 2007:24). With that, she returned to the farm and relayed the incident to Gonzalo.

Outraged by the slight, Mendez appealed in vain to various school officials. He argued that, as a tax-paying citizen, he should be allowed to send his children to Westminster. The school board refused, explaining that there was an equal Mexican school, Hoover Elementary, available for his children. According to McCormick and Ayala (2007:26), Sylvia reports that Hoover was:

> Near a ranch and at that time the ranchers electrified the fences that surrounded their property to keep their cattle from leaving. I remember a girl touched that

> fence. The shock did not kill her, but she did not get up until adults came to help her.

These were the very schools Gonzalo attended himself when he was a child, schools he left in order to help his family. In a full circle moment, he was now attempting to secure a future for his children that he was denied so many years before.

With no other alternative available, Mendez considers legal recourse. One of his truck drivers informed him about David Marcus, an attorney who successfully sued the city of San Bernardino for refusing to allow Mexicans and Mexican-Americans use of the public pool (*Lopez v. Seccombe* 1944). In various parts of Orange County, public pools designated Mondays as "Mexican Days," similar to the Jim Crow South. Public officials ordered the pool drained every Monday evening in order to clean and prepare it for Whites to use for the remainder of the week (Strum 2010). San Bernardino, however, refused to have "Mexican Days" and barred all Mexicans from its public pool. David Marcus sued on behalf of Ignácio Lopez, an American citizen, University of California graduate, WWII veteran, and translator for the California Division of War Information, as well as 8,000 other residents of "Mexican and Latin descent and extraction" and won. Mendez reached out to Marcus and hired him to sue the school district (See Appendix B). Together, they rallied the community and began a nearly four-year legal journey for public school integration (Strum 2010).

As Gonzalo and Marcus recruited the families, Felícitas Mendez, according to McCormick and Ayala (2007), made significant, yet largely unknown contributions to the case. First, she ran the farm in Gonzalo's absence as he and their attorney rounded up families for the case. She is captured in a photograph working a tractor and was also represented in a children's book written and illustrated by Duncan Tonatiuh (2014:21) (See Figures 4.10 and 4.11). So deeply involved was Mendez in the case that he "left the farm for Felícitas to administer for over

one year. She not only ran the farm well, but it became more prosperous than ever" (McCormick and Ayala 2007 citing Gonzalez 1990:151).

[Figures 4.10 and 4.11 approximately here]

In addition to running the farm, she also created the *Asociación de Padres y Niños México-Americanos* (Association of Mexican American Parents and Children) which not only organized the parents and children represented in the case but also covered their transportation to and from the courthouse, their resultant loss in pay, and, of course, all legal fees. Perhaps her early childhood experience with Puerto Rican organizing was reflected in her service to her adopted Mexican community. According to Strum (2010:42), the *Asociación* held 151 meetings with parents in the community "which both provided moral support for the effort and signaled to school officials that the Mexican community was behind the fight." She and Gonzalo also reimbursed the farmworker families involved in the case for loss of pay as they attended the trial (McCormick and Ayala 2007).

While Felícitas ran the farm, Gonzalo and Marcus recruited four more families representing four different school districts and 5,000 Mexican American children to join the suit that was filed in federal district court. The petitioners were comprised of the following fathers and their children:

- Mendez and his children, Sylvia, Gonzalo, Jr. and Jerome;
- William Guzmán and his son Billy;
- Frank Palomino and his children Arthur and Sally;
- Thomas Estrada and his children Clara, Roberto, Francisco, Sylvia, Daniel, and Evelina; and
- Lorenzo Ramirez and his sons Ignacio, Silverio, and José (Strum 2010:61).

Together, they challenged the constitutionality of segregated Mexican schools under the Fourteenth Amendment and alleged discrimination based on their Mexican descent. According to McCormick and Ayala (2007), Westminster officials offered Gonzalo and Felícitas a

compromise, to admit their children but no other Mexican children. In a display of solidarity, they refused. After the customary legal exchange of petitions, answers, briefs, and pretrial hearings, the trial finally began on July 5, 1945 when Manuela Ochoa was sworn in to offer her testimony. Over five days in July 1945, the families' testimony provided a window into the social, cultural, and political challenges they encountered; the community support they displayed; and shared commitment to their rights as citizens.

Despite the fact that these families were situated just south of Los Angeles in the small towns of Orange County, they were not immune to the social, cultural, and political influences of the big city. Two major events preceded the lawsuit that placed education squarely in the political spotlight: the Sleepy Lagoon Murder Trial of 1942 and the Zoot Suit Riots of 1943. The 1942 Sleepy Lagoon Murder trial involved the wrongful convictions of 17 Mexican American youths for the murder of José Díaz, a man whose body was found near the vicinity of a party where large groups of zoot suited youths were seen (Sánchez 1993). The convictions gave rise to rampant anti-Mexican sentiment, which exploded into the Zoot Suit Riots of 1943 when, for 10 days in early June, 200 White servicemen raided various parts of Los Angeles and attacked zoot-suited men and women (Ramirez 2009). These two events dominated Los Angeles headlines and Mexican American youth "became objects of scrutiny and concern for civic leaders, law enforcement, academics, journalists, and cultural commentators in general" (Ramirez 2009:4-5).

Educational intervention was the order of the day and White city and community leaders organized a bevy of conferences, committees, and workshops to investigate the root causes of Mexican American juvenile delinquency. An editorial in the *Times* urged Governor Warren to investigate the riots and abandon the focus on race in favor of "eradicating the causes of gangsterism" (*Los Angeles Times* 1943a:A4). Experts at the 10th Annual Meeting of the Southern

California Youth Conference suggested trade schools may help curb "juvenile gang outbreaks" *(Los Angeles Times* 1943b:A2). Shortly before the 1943 school year, the Los Angeles City and County schools held a workshop to discuss the racial animosity generated by the zoot suit riots. According to the article, the purpose was designed to formulate "…programs which will ground Los Angles youngsters, including those of Mexican descent, in an all-American tradition" (*Christian Science Monitor* 1943c:12).

In addition to the stereotypes generated in the popular press, the *Mendez* families had to challenge the vicious characterizations of their children by the school administrators. From being labeled dirty to mentally inferior, school officials laid the blame for the disparate treatment squarely at the feet of the children and families. Juan Perea, a critical race scholar, calls the prevailing assumption within education "that Latino students cannot do difficult work and cannot be competitive with the Anglo counterparts," the *pobrecito* syndrome (Perea 2004:1442). The word *pobrecito* translates to "poor thing." It is supposed to evoke complete sympathy and sadness for the utterly helpless, hapless, and hopeless.

A review of the superintendents' testimony revealed that overcoming the *pobrecito* syndrome, along with all of the accompanying stereotypes, would be the *Mendez* families' greatest challenge. During the trial, the superintendents evaded questions, refused to answer, or provided complicated explanations to simple questions. With their attorney repeatedly objecting to his line of questioning, the defense succeeded in frustrating Marcus. However, as the trial progressed, they transformed into a plaintiff attorney's dream when the Judge began asking them to "illustrate" their points. The best thing Marcus could do was to allow the school officials to speak freely and remain silent as the judge asked them very pointed questions.

The testimony of the school officials demonstrated the kind of attitudes the parents

encountered when they asked to have their children moved from one school to another. The school's justifications for maintaining segregation fell into one of five categories:

1. Language handicap brought on by growing up in a Spanish-speaking household;
2. Health and safety due to issues related to personal hygiene;
3. Neighborhood zoning;
4. Testing which evidences "retarded" learning; and
5. The need for Americanization.

James L. Kent, the superintendent of the Garden Grove school district, explained that the reasons for segregating Mexican children were language, hygiene, and the need for Americanization. He even dedicated his master's thesis to the subject (Trial Transcript, July 5, 1945:80). He maintained that they segregate all "non-English-speaking students" (Trial Transcript, July 5, 1945:81). Mexican children, he explained, have a "bilingual handicap," which apparently did not afflict bilingual Japanese or Filipinos, though he did not explain the distinction (Trial Transcript, July 5, 1945:81). All the parents under his jurisdiction, however, testified in English and shared that their children spoke English as well (Trial Transcript, July 5, 1945:14) .

This language deficiency, he explained, put the children "a year retarded in comparison with white children" (Trial Transcript, July 5, 1945:108). While he testified that he had records to prove the learning gap, he never produced them for trial or submitted them into evidence. Marcus suggested that if the schools were integrated, Mexican children would benefit from special classes to help them close their learning gap that were available at the White school. Kent disagreed explaining, "Our teachers would not be trained to work with Mexican children" (Trial Transcript, July 5, 1945:109).

In addition to overcoming their language barrier, he explained that "Mexican children have to be Americanized…They must be taught…cleanliness, and…manners, which ordinarily

do not come out of the home" (Trial Transcript, July 5, 1945:85). Evidence of this lack of cleanliness, he explained, existed "…in the care of their heads, lice, impetigo, tuberculosis; generally dirty hands, face, neck, ears" (Trial Transcript, July 5, 1945:116).[18] Once again, unable to produce health figures, he could only say that "a large portion" of the students in Hoover were so afflicted (Trial Transcript, July 5, 1945:116). He testified that he believed that 75% of Mexican children were inferior to the White race in "personal hygiene…scholastic ability…economic outlook, their clothing and their ability to take part in the activities of school" (Trial Transcript, July 5, 1945:122).

The parents and their children were in the courtroom during this testimony. Sylvia Méndez, in a recording for StoryCorp, recalled, "I remember being in court every day. They would dress us up really nice and we'd be there sitting very quietly" (Reiman 2010). Whether or not the children were dressed nicely and well behaved, however, did not matter to Kent. He admitted that, even if there were exceptional students at Hoover, they could not transfer to Lincoln because "[t]here is the psychology of the thing. There is one thing in putting one lone Mexican child in a group of 40 white children…by himself, [it] would not be fair to him or to the other children" (Trial Transcript, July 5, 1945:128).

Frank Henderson, the superintendent for the Santa Ana school district, maintained that the schools seem segregated because of the neighborhood zoning. The 14 schools under his jurisdiction were simply representative of the populations closest to the school. The so-called Mexican school was Mexican because the neighborhood was Mexican. Most of his answers were limited to "I don't remember the details" or "I don't recall." He maintained that the children were sent to the Mexican school because the parents had never asked for permission to stay,

[18] According to the National Institutes of Health, impetigo is a common skin infection cause by staphylococcus (staph). It is most common in children who are in unhealthy living conditions.

implying that their request would have been granted (Trial Transcript, July 6, 1945:225).

Eventually however Judge McCormick asked more pointed questions that were critical of the permission policy. In particular, he asked why the school granted African American children who lived in the Mexican school district permission to transfer without a formal request. Henderson answered with renewed clarity. "Let us illustrate with little colored children," Henderson explained. "The little colored children who reside in the Fremont [Mexican school] district are very few…. they are permitted to transfer…to the school where they will find most of their own people" (Trial Transcript, July 6, 1945:229-230).

Harold Hammarsten, the superintendent of El Modeno, relied exclusively on testing, Hammarsten testified "[o]ur tests show that in spite of the fact that these so-called Mexican children have the better opportunity because of their American parentage…they are still in…the lower percentage…in grade placement, and mental ability and everything" (Trial Transcript, July 6, 1945:311). He argued that the curriculum was equal and that any intellectual shortfall of Mexican students was largely due to their "language handicap." He appeared convincing until he mentioned one exceptional class in the Mexican school that even out-performed the students in Roosevelt, the White school (Trial Transcript, July 6, 1945:320).

The exceptional class remark caught Judge McCormick's attention. If they were such an exceptional group, the judge asked, "[w]hy couldn't they be transferred to Roosevelt" (Trial Transcript, July 6, 1945:322). After fumbling and attempting to back pedal, Hammarsten finally offered the following explanation,

> The advantage to this system [segregation] is that the children that are high mentally amongst the Mexican group become the leaders in that group and form the nucleus…They are the ones that push the programs in that classroom, and it is a distinct advantage to have those children in the Mexican school….If you took those out of the Mexican school, it would leave the lower class again by

> themselves, and there would be no initiative for those that are left. (Trial Transcript, July 6, 1945:326-327)

In short, exceptional Mexican student leaders remained segregated for their own good and the good of their classmates.

Richard Harris, the superintendent of Westminster, attempted to sever the Westminster district from the case because the school board had voted to end segregation. For the families, this would have been an incredible victory. However, Marcus asked an important question: ***When*** did they intend to integrate the school? After evading a direct answer, Harris explained that they would integrate the schools once the district secured the necessary funding (Trial Transcript, July 9, 1945:350). Without an assurance that segregation of Mexican children will end in the fall of 1946, Harris was required to testify.

Like his colleagues before him, Harris argued that the district segregated Mexican children because of a "language handicap" and "inferior test results" (Trial Transcript, July 9, 1945:358, 360, 361-367). He, too, encountered the most trouble when he attempts to explain the purpose of segregation. According to Harris, the Mexican children needed to learn "American culture as seen through English words" (Trial Transcript, July 9, 1945:376).

Asked to explain the difference between growing up in a Spanish-speaking home and an English-speaking home, Harris provided the following history lesson,

> In an English-speaking home…there are certain cultural backgrounds which undoubtedly were formed…and came in earlier days from England. Out of those come Mother Goose rhymes. Out of those come stories. Out of those stories of our American heroes, stories of our American frontier, rhymes and rhythms. (Trial Transcript, July 9, 1945:376)

After the judge asked for clarification, he ultimately admitted that, even if the schools were integrated, "[t]hey would probably fall about as they are, in my estimation. They will be in separate rooms" (Trial Transcript, July 9, 1945:379, 382). Later, he shared that he believed 60%

of the Mexican children speak English and that they were not inferior in any way (Trial Transcript, July 9, 1945:382). Why, then, could they not be allowed to attend the school of their choice? He answered, "[b]ecause [their] conception of symbols and words of the English language…is still not up to the children of Anglo-Saxon descent" (Trial Transcript, July 9, 1945:382).

Not all educators were proponents of segregation. Many posed direct challenges to the stereotypical justifications for segregation. One year before the trial, the *Los Angeles Times* ran the article "Problems of School Child of Latin Lineage Studied" (Wilson 1944). The 1944 article identified Marie Hughes as "a specialist in education of minor groups in Los Angeles County schools" (Wilson:A5). The newspaper quoted her extensively throughout the article regarding her opinion of segregated schools. Sharing at a social work conference, Hughes stressed,

> I honestly don't know how thoroughly we can impress the American-born child of Mexican parentage with our good intentions toward him, when he has to submit to restricted seating in the school cafeteria, or goes past the well-equipped playground of the school reserved for children of American parentage to his own small and meager school facilities or face similar discriminations. (Wilson 1944:A5)

An ardent advocate, Mrs. Hughes was a frequent speaker and presenter at local health, youth, education, and social conferences held in the Los Angeles area. She believed "[a]djustments in school are difficult enough for the Mexican-American child; he should not have them made more difficult by such embittering and unexplainable experiences" (Wilson 1944:A5). Unfortunately for the superintendents, Hughes became one of the plaintiff's leading experts representing one of the many supporters for the families.

The Community: Testimony from Families

> *I shed tears of anguish*
> *as I see my children disappear*

behind the shroud of mediocrity,
never to look back to remember me.
I am Joaquín.
I must fight
and win this struggle
for my sons, and they
must know from me
who I am.
-Rodolfo Gonzales (1967:82)

While most of the newspaper coverage focused exclusively on "the five fathers" who were the named plaintiffs, this case was a community effort (*Prensa* 1945; *Prensa* 1946; and *Baltimore Afro-American* 1946). It involved numerous attorneys, civil rights organizations and, most importantly, families who were committed to enacting change. In total, seven mothers, six fathers, two sisters, and one brother took the stand to give compelling testimony on behalf of the children against the racist arguments of the school districts, and in opposition to the criminalization of Mexican American youth by the mainstream media.

The parents and children took the stand ahead of the superintendents. As a result, their testimony contrasted sharply with the school official's declarations of language handicaps, low intelligence, and questionable personal hygiene. While some witnesses shared very little and their time on the stand was limited, others offered clear, passionate, and spirited testimony.[19] Their testimony revealed their commitment to full citizenship, equal rights and treatment for their children, and the strength of their own community organizing.

While the jurists struggled with how to identify Mexican Americans with non-racial language, the plaintiffs maintained a fierce hold on their identity as American citizens.

[19] There were six witnesses who did not spend a great deal of time on the stand or were prematurely taken from the stand because the judge upheld various objections put forth by the school's attorney. Among them were 17-year-old Isabel Ayala who was there to testify on behalf of her younger sisters (Trial Transcript, July 11, 1945:637-642); and Jane Sianez, married mother of five who traveled three miles to attend the Mexican school when the white school was only half a mile away from her home (Trial Transcript, July 5, 1945:56).

According to Gross (2008:254), this battle between "formal citizenship and nominal legal whiteness played a more complex role in their exclusion from full social and political citizenship." On one hand, the U.S. census largely classified Mexicans as White in the 1940s so, under the law, the families could not allege racial discrimination. On the other hand, the plaintiffs were prepared to offer substantial evidence of the disparate treatment between Mexican schools and White or racially mixed schools.

The court and the attorney's settled on the phrase "persons of Mexican descent," but they remained highly inconsistent throughout the trial. The school district attorneys referred to the plaintiffs as: the Mexican race (Trial Transcript, July 5, 1947:63); "Spaniard or a Mexican," (Trial Transcript, July 6, 1945:212); Caucasian (Trial Transcript, July 6, 1945:252); and non-English speaking, Spanish speaking, and even Mexican speaking (Trial Transcript, July 9, 1945:351). There was even evidence of the influence of scientific racism and genetic determinism. Kent explained the difference between the "Mexican race" and the "White race" in this way:

> Your Mexican child is advanced…he matures physically much faster than your white child, and he is able to do more in games. Therefore, he goes more on physical prowess than he does mental ability. (Trial Transcript, July 5, 1945:138-139)

At one point during the trial, Kent admitted that he did not consider the Mexicans to be "of the White race" (Trial Transcript, July 5, 1945:120), an admission that could have devastated their case. During the pretrial hearing, the defense argued that since Mexicans were White, there was no racial discrimination and the court should dismiss the case. The school's attorney quickly requested a recess. Upon returning, Kent testified that he was "merely talking of color when I said white" (Trial Transcript, July 5, 1945:124). Marcus asks, "[a]t this time you believe that a Mexican is of the Caucasian race?" Kent replied yes and then Marcus asked, "[w]hen did you

determine that, during the recess?" (Trial Transcript, July 5, 1945:124).

The court, the school officials, and their attorney were inconsistent with their identifications throughout the trial. The families, however, consistently asserted their identity as American citizens. Mrs. Ochoa, the first witness to testify, set the tone for the trial when she declared, "I am of Mexican descent, although I was born here, and I am an American citizen" (Trial Transcript, July 5, 1945:13). Frank Palomino, one of the named plaintiffs and married father of two, expressed that his ultimate goal was simply to "…raise them [his children] as a good American, if they give us a chance" (Trial Transcript, July 5, 1945:48). Felícitas Méndez, while not on the stand very long, provided one of the more powerful and oft-quoted statements of the trial. Sitting there, perhaps even looking at her children's faces, she shared "[w]e always tell our children they are Americans, and I feel I am American myself, and so is my husband" (Trial Transcript, July 10, 1945:469).

Chicano scholars, such as David Gutiérrez (1995:73) and Vicki Ruiz (2004:667), characterize this embrace of an American identity as a rejection of a Mexican identity, an attempt to assimilate or "pass" as White. The League of United Latin American Citizens (LULAC), an organization often criticized for promoting their legal "whiteness," organized fundraising efforts to pay for legal fees (García 1989). The Mendez family's association with this middle-class Mexican American civil rights group could support an argument that their patriotism was a form of passing.

However, Mrs. Ochoa, a married mother of four who lived within the Garden Grove school district for over 20 years, directly contradicts that characterization. She lived closer to the racially mixed Lincoln school, but the school officials directed her to Hoover Elementary, the Mexican school that was over a mile away (Trial Transcript, July 5, 1945:10). When Kent

refused her request to transfer her children, she asked why Mexican children who live closer to Hoover were able to attend Lincoln (Trial Transcript, July 5, 1945:24).

According to her, Kent said "…they were probably of Spanish ancestry" (Trial Transcript, July 5, 1924:24) and suggested she register as Spanish. Had she simply registered her children as Spanish, she could have given them access to the privilege of attending the "better" school. Instead, she replied, "[m]y children cannot be registered as Spanish, because their father is Mexican" (Trial Transcript, July 5, 1945:29). When presented with the opportunity to deny her children's Mexican identity and pass, she did not.

The families also demonstrated their united commitment to securing equal rights for their children by attacking the stereotypical, discriminatory characterizations that comprised the school's reasons for segregation. Their strongest reactions were against the allegations that Mexicans are "too dirty." Nearly every superintendent argued that Mexican children were dirty, diseased, or even both, which indicates how pervasive the stereotype was in the school system.

Felícitas Fuentes, a mother of two who lived in the area for over 12 years, gave a strong response to her children's accusers. She testified that a Fremont school official wanted to know "…why the Mexican people are so dirty" (Trial Transcript, July 5, 1945:150). She responded, "[w]hy [are] the Oklahoma people were so dirty and filthy" (Trial Transcript, July 5, 1945:151). Because one of her sons, Joe, was in the U.S. Navy, "working in the post office somewhere in the Philippines," (Trial Transcript, July 5, 1945:142) she also asked the school official,

> If our Mexican people were so dirty…why [don't] they have all of our boys, that are fighting overseas, and…bring them back and let us have them home...if Joe [her son] wasn't qualified [for an education], why didn't they let me have him and not take him overseas. (Trial Transcript, July 5, 1945:152)

Her challenge reveals the contradictory nature of asking a mother—indeed an entire community—to sacrifice their sons without the promise of honoring that service with basic

human rights. Similar to the "Double Victory" campaign created in African American newspapers, Mexican Americans had hoped that that securing a victory abroad would secure "first-class citizenship" at home (García 1989).

The plaintiffs evoked images of the War and Mexican American youth serving in the war throughout the *Mendez* trial. In his opening brief, Marcus, wrote:

> Of what avail are the thousands upon thousands of lives of Mexican-Americans who sacrificed their all for their country in this great "War of Freedom" if freedom of education is denied them? (Petitioner's Opening Brief, September 29, 1945:45)

The hypocrisy of fighting against fascism and racial hatred abroad while racial prejudice in the form of legalized segregation existed in America was not lost on the community. Strum (2010:28), in her book on the *Mendez* case, quoted a former paratrooper who shared "[w]e didn't like it when we came home and found out we'd risked our lives…but our children wouldn't be getting as good an education as the white student" (quoting an interview printed in the *Santa Ana Register*, dates unknown). The patriotic, sacrificial Mexican American solider became a powerful symbol throughout the trial, deployed to combat stereotypical characterizations of Mexicans.

When the school officials alleged dirt and disease, the families demanded dignity. Juan Muñoz, a married father of four who lived in the area for over 20 years, provided riveting testimony as he recounted his confrontation with a school official:

> He said the Mexicans were too dirty to go to that school [Lincoln]…. Naturally, well, I had an answer to him. I said, 'Do you judge everybody alike?' He says, 'For one Mexican the whole town has to take it.' I says, "But that is not right…I am fighting for my children's rights. (Trial Transcript, July 5, 1945:65)

Mr. Muñoz pled, on behalf of his daughter, to change the manner in which the school requested children report to the nurse's office for tuberculosis testing. Instead of announcing it over the loudspeaker, he suggested that the teachers help facilitate a more discreet way of testing the

children. He explained "[t]he other pupils go by and they stare at them…My gosh, not all Mexicans are dirty" (Trial Transcript, July 5, 1945:67).

These families did not hesitate to name the behavior of the school district as discriminatory. Felícitas Mendez testified, "we thought that they shouldn't be segregated like that, they shouldn't be treated the way they are" (Trial Transcript, July 10, 1945:469). Frank Palomino, one of the named plaintiffs, opted to send one child to a private parochial school instead of the segregated school because "the other way they are segregating them, discriminating, I will say" (Trial Transcript, July 5, 1945:45).

Mrs. Fuentes proved to be a formidable witness as she faced the school's attorney. He asked if she thought the White school was small. Her reply likely made him regret he even asked the question. "I think it is big enough for my child," she replied, "and for the children that are claiming their rights" (Trial Transcript, July 5, 1945:161). Like Mrs. Fuentes, John Marval, a married father of three, gave equally spirited and confrontational testimony (Trial Transcript, July 10, 1945:471). The principal instructed Mr. Marval to transfer his child from Franklin to Fremont. Mr. Marval testified that he told the school official,

> I will send him to the Fremont School with this condition, that you send all your white children from the white families to the Fremont school…I own property…and I have got a business here, and I don't see why my child can't have the same opportunity the rest of them have…. I am fighting for my child. (Trial Transcript, July 10, 1945:476-477)

Lorenzo Ramirez, another named plaintiff, provided compelling testimony on behalf of his three sons. He had lived in the area since 1922 and attended Roosevelt school when it was not segregated. "I wanted my boys to be educated at the Roosevelt school because their father had his education there," he explained, "and to give them the opportunity, the same chance to go where the rest of the boys will go" (Trial Transcript, July 6, 1945:281). He demonstrated that, at

some point in history, the school adopted a policy of discriminatory segregation. This policy denied the children an equal education and the parents the ability to build a legacy of learning.

His testimony also carried themes of racial solidarity. Mr. Ramirez proclaimed "[t]he days will come when the Japanese, Filipinos, and Negroes would be together again" (Trial Transcript, July 6, 1945:281). According to Mr. Ramirez, Hammarsten's replied:

> I tell you why a Negro is supposed to have better rights. Because he was brought here during slavery days, and that was just the truth, and that is the reason I think they should have better rights. (Trial Transcript, July 6, 1945:282)

Mr. Ramirez's reply evoke images of unity and sacrifice as he sermonized "…thanks the Lord, we live in a country that everybody was equal…I wanted my kids…to go and march through up until the end of the war like the boys be marching right along" (Trial Transcript, July 6, 1945:282).

Not all witnesses were as gripping and certain as Mrs. Fuentes, Mr. Marval, and Mr. Ramirez. William Guzmán, another named plaintiff and married father of three, sued on behalf of his son Billy. He was incredibly nervous on the stand, stumbling and unsure if he remembered everything that happened. He explained that he was "too excited" (Trial Transcript, July 6, 1945:167). Eventually, Marcus told him, "[n]ow, look, Guzmán, don't get excited, and just think of these things before you answer. Don't become confused" (Trial Transcript, July 6, 1945:176). The intensity of the trial and pressure to do well is palpable throughout his entire testimony.

Most attorneys invest a great deal of time preparing their witnesses for trial. Throughout this trial, the judge instructed many of the witnesses how to answer the questions. Testifying is a painstakingly slow and methodical process that often requires simple yes or no answers before a witness can get to the crux of their testimony. Marcus may not have properly prepared his clients. As a result, their testimony was subject to countless objections from the school's

attorney. For example, the school's attorney repeatedly objected to nearly every individual's testimony as "incompetent, irrelevant, and immaterial." (Trial Transcript, July 5, 1945:10, 68; Trial Transcript, July 6, 1945: 172, 189, 269, 278; Trial Transcript, July 9, 1945: 422). This no doubt had the potential of creating a great source of anxiety in the witnesses, making their appearance in court that much more meaningful.

The school attorney was successful however in severely limiting the testimony of four witnesses. The first, Mrs. Nieves Peña, was a married mother of four who was called to testify that her children were clean and that she spoke English (Trial Transcript, July 6, 1945:288-289). The second was Robert Pérez, a young 17-year-old who had attended segregated schools since 1941. He was there to demonstrate a pattern of segregation practiced by the school. Unfortunately, the court only wanted to hear testimony about "situations that exist in these schools at the present time" (Trial Transcript, July 6, 1945:272). The third witness was Mrs. Virginia Guzmán, the wife of William Guzmán. While she fared much better than her husband did, her purpose was to identify the "non-Mexican" neighbors in her district who were permitted to stay in the White school (Trial Transcript, July 6, 1945:204-210). Finally, Felícitas Mendez would have had more time on the stand, but Marcus stipulated that she was simply going to say the same things that her husband, Gonzalo, shared. While her time was severely limited, her testimony is still one of the most quoted in articles about the case (Trial Transcript, July 10, 1945:467-470).

Understanding the challenge of taking the stand makes the appearance of 14-year-old Carol Torres that much more significant (Trial Transcript, July 10, 1945:258). Her testimony reveals the strategic and organized nature of the community's effort to organize the lawsuit. Miss Torres testified that the students in Lincoln Elementary, the Mexican school, called a meeting

with the principal to ask him why he separated them when there were children of Mexican descent who were attending Roosevelt, the predominantly White school (Trial Transcript, July 10, 1945:264). Hinting at possible classism, Miss Torres testified, "[the] pupils of Mexican descent that went over to Roosevelt School considered themselves superior to us, and sometimes they wouldn't even talk to us" (Trial Transcript, July 10, 1945:265).

Marcus asked her why she never asked the administrators for permission to transfer. Her response was perfection. "I guess that we just felt hurt because they wouldn't admit all of them [her fellow classmates], and it didn't seem right…We all wanted to be together" (Trial Transcript, July 10, 1945:267). Her testimony illustrates how invested the youth had become in the movement to change policy and practices. They called a meeting, questioned authority, and demonstrated solidarity. They were foreshadowing the kind of student activism that would eventually shake Los Angeles 20 years later.

Mabel Méndez, a married mother of five children, member of the PTA and 22-year resident of Santa Ana also organized parents (Trial Transcript, July 6, 1945:184, 201). She was part of a group of 25 families who received a letter from the school board requiring them to withdraw their children from the White school and re-enroll them in the Mexican school. She and 25 other parents attended the local school board meeting to demand an explanation for the letter and to challenge the policy (Trial Transcript, July 6, 1945:190). While the board promised an investigation, she testified that she had not heard anything else from them.

Gonzalo Méndez, the man credited with organizing the families, outlined how the community rallied to have their voices heard. Méndez testified that he, along with four or five mothers and fathers, called a meeting with Ray Atkinson, the superintendent over the entire Orange County school districts (Trial Transcript, July 9, 1945:421). His testimony shows the

strategic nature of their visit. Two mothers testified about how their sons were fighting abroad only to return to an unfair system of segregation (Trial Transcript, July 9, 1945:437-438).

They gave Atkinson a letter signed by 38 parents. Read into the record, the letter stated:

> Dear Sir:
> We, the undersigned, parents, of whom about one-half are American born, respectfully call to your attention to the fact that of the segregation of American children of Mexican descent is being made at Westminster, in that the American children of non-Mexican descent are made to attend Westminster grammar school on W. Seventeenth Street at Westminster, and the American children of Mexican extraction are made to attend Hoover School on Olive and Maple Street. Children from one district are made to attend the school in the other district and we believe that this situation is not conducive to the best interests of the children nor friendliness either among the children or their parents involved, nor the eventual thorough Americanization of our children. It would appear that there is *racial discrimination* and we do not believe that there is any necessity for it and would respectfully request that you make an investigation of this matter and bring about an adjustment, doing away with the segregation above referred to. Some of our children are soldiers in the war, all are American born and it does not appear fair nor just that our children should be segregated as a class.
> Respectfully submitted. (Trial Transcript, July 9, 1945:434-435)

The claims of citizenship, combat sacrifice, and social justice peppered throughout the document are undeniable. Furthermore, at no point in the letter did they claim Whiteness. Instead, they specifically used the phrase "racial discrimination" to describe their plight, which contradicts the aforementioned accusations of assimilation and passing usually associated with this particular generation of Mexican Americans. Mr. Méndez informed the judge that they "…were forming a club in Westminster and trying to do our best to send our children clean to school" (Trial Transcript, July 9, 1945:444). While this admission seemed troubling, he also told him that they had formed a "Father's Association," "interviewed a lawyer," and were working with the Latin-American League of Voters (Trial Transcript, July 9, 1945:446). This group of parents were organized and determined to stop the practice of segregation in order to "create a better democratic way of living" (Trial Transcript, July 9, 1945:448). This was an important trial

for this community.

An incident that demonstrates the effect this trial had on the local community happened on the beginning of day three. Marcus seems almost frenetic as he engaged with the school's attorney and Judge McCormick. It was almost as if he were searching for something. Finally, he explained to the court:

> Your Honor, I have been seriously handicapped here. Over the weekend, I had my automobile stolen, and my brief case including all of the papers in this case, the entire file, was in it, along with a suit case (sic) of clothes. (Trial Transcript, July 9, 1945:345)

Whether the theft was connected to the case is unclear. However, the first few days of testimony were certainly going in the families favor. He had strong witnesses, even to the extent that the judge personally acknowledged their intelligence. During the Mabel Méndez testimony, Judge McCormick corrected Marcus and told him "[w]hy don't you put a question to her instead of making a statement? She can answer the questions. She is very intelligent" (Trial Transcript, July 6, 1945: 188). During the Carol Torres testimony, he corrected Marcus again by saying "[d]on't lead her. You don't have to lead this girl. She is a very intelligent witness" (Trial Transcript, July 6, 1945:265). Finally, during Felícitas Mendez' testimony, he said, "I have heard sufficiently from her to form my own estimate of her qualifications. She seems to have a pretty good knowledge of the vernacular, beyond the commonplace vernacular" (Trial Transcript, July 10, 1945: 470).

This observation from the judge aggravated the school district's case. After all, their main argument was that growing up in a Spanish speaking home resulted in mentally inferior children. He had an admission from three of the four superintendents of the inherent bias against Mexicans. Even the judge was compelled to ask questions that resulted in less than favorable responses for the defense. There were numerous reasons for someone who did not want to see

the schools integrate to steal the car and make it that much more challenging for the families and their case.

In a final show of community support, Marcus called local education experts, Dr. Ralph L. Beals, chair of the Department of Anthropology and Sociology at the University of California and the aforementioned Mrs. Marie M. Hughes. Together, they delivered the final devastating blow to the defense, which arguably secured victory for the plaintiffs. Judge McCormick referred their testimony heavily in his judicial opinion. Dr. Beals testified, "[t]he disadvantage of segregation, it would seem to me, would come primarily from the reinforcing of stereotypes of inferiority-superiority" (Trial Transcript, July 11, 1945:676). Mrs. Marie Hughes, who at the time of trial was completing her doctorate at Stanford, told the court:

> It is not in the best interest of the children in America to work and play together and go to school together under segregated conditions…. Segregation, by its very nature, is a reminder constantly of inferiority, of not being wanted, of not being part of the community. (Trial Transcript, July 11, 1945:690-691)

With those words, Mrs. Hughes not only validated the families' experiences but also acknowledged their place in America and the Orange County School District.

The Victory That Nearly Was…

And now the trumpet sounds,
the music of the people stirs thee
revolution.
Like a sleeping giant it slowly
rears its head
to the sound of
tramping feet
clamoring voices…
And in all the fertile farmlands,
the barren plains
The mountain villages,
smoke-smeared cities,
we start to MOVE
Gonzales (1967:92,96)

"Ruling Gives Mexican Children Equal Rights," read the front-page headline in the *Los Angeles Times* (1946:1) after Judge McCormick issued his opinion. *La Prensa* (1946:1), a Spanish newspaper of San Antonio, Texas, quoted the section of McCormick's opinion that said, "[s]egregation…fosters antagonism in the children and suggest inferiority among them where none exists." African American newspapers also celebrated the victory, including the *Afro-American* (1946:1) in Baltimore, *New England Journal and Guide* (1946:1) in Virginia, *Phylon* (1946:200) in Atlanta, and *The Chicago Defender* (1947:3) announced the appellate victory.

The historical significance of the case was not lost on scholars and journalists of the time. Famed journalist Carey McWilliams (1947:302) declared "[t]he Westminster case is a perfect one for testing the constitutionality of segregated schools." Lester H. Phillips (1949:407) in the Black journal *Phylon* wrote, "[t]his case must be ranked among the vanguard of those making a frontal attack upon the 'equal but separate' canon of interpretation of the equal protection clause."

The fame of the case was lost on the families. It was not the result of grand scale community organizing and mobilizing. While they did not generate multipage manifestos,

circulate impressive magazines, assemble huge conferences, or author intellectual essays on the identities of Mexican Americans in Los Angeles, these families asserted their rights to first-class citizenship; organized on behalf of their children; and took a stand against inequality, discrimination, and injustice. McWilliams observed the following: "The suit was not 'rigged,' 'inspired,' or 'promoted' by any cause committee. It was filed because rank-and-file citizens of Mexican descent in Southern California realized that they had long since 'had enough'" (McWilliams 1947:304). The rank-and-file citizens were comprised of mothers, fathers, sisters, and brothers who organized and overcame overwhelming social, cultural, and political challenges to effect a significant legal change.

I designate the Mendez case "The Nearly" because it almost made it to the Supreme Court. After the McGuire decision, the school districts appeal the case to the Ninth Circuit. The Ninth Circuit ruled in a unanimous decision that:

> By enforcing the segregation of school children of Mexican descent against their will and contrary to the laws of California, the respondents have violated federal law by denying them the equal protection of the laws. (*Westminster School District of Orange County v. Mendez* 9th Cir. 1947)

After the Ninth Circuit decision, the school districts voted not to appeal the case to the Supreme Court. Instead, as discussed in Chapter 2, the governor of California successfully lobbied the state legislature to integrate all California public schools, declaring Chinese, Mexican, and Indian schools unconstitutional. Earl Warren, the governor of California, eventually became Chief Justice of the Supreme Court and lobbied his fellow jurists to vote unanimously on the *Brown* ruling holding "separate is inherently unequal."

What makes *Mendez* even more fascinating is the array of multiracial organizations that filed amicus briefs on their behalf. Briefs were submitted at the appellate level from the Japanese American Citizens League (JACL), the American Jewish Congress (AJC), the American Civil

Liberties Union (ACLU), National Lawyers Guild (NLG), and perhaps most powerfully, the National Association for the Advancement of Colored People (NAACP). While Thurgood Marshall was said to have limited contact with the Mendez case, Robert Carter used it as a "trial run for *Brown*" (Strum 2010:135).

Subsequent interviews with Robert Carter revealed that he also met with Marcus to discuss his legal strategy, particularly the use of experts. He is said to have used the "skeletal structure" of *Mendez* for *Brown*. Even though Marcus made it clear that the case was not about race, the NAACP knew that it held tremendous potential for *Brown*. However, because it was not about race, *Brown* could really only limit its use to a footnote in a brief filed in *Brown*.

Conclusion

Three cases, three plaintiffs, three sets of families, and three different time periods that all tell a similar story of seeking justice through the courts when it was denied by those in power. I recounted the *Tape* story through newspapers, the *Piper* story through interviews, and the *Mendez* story through transcripts. All were supplemented by secondary sources. Still, even as powerful as the stories are, when it comes to the civil rights narrative in the United States they remain the omitted, the forgotten, and the nearly. Each case provides insight into how education was transformed from the dream of a common school created for children of all races to commonplace schools marked by the extreme racial prejudice of the times, including Chinese Exclusion, the failure of Indian boarding and day schools, and the Zoot Suit Riots. Across time, each group was characterized as filthy, uncivilized, mentally inferior, and unwanted. While all the cases were "victorious," *Tape* solidified separate schools in California, *Piper* questioned it but did not end the practice, and *Mendez* dismantled desegregation in California.

This, however, is where most researchers end their analysis and discussion, with the

families and the facts of the case individually. For the next two chapters, I will add to the research by critically examining and comparing the *Tape*, *Piper*, and *Mendez* civil rights narratives to demonstrate that their fight for justice is not only raced but also classed and gendered. By adding these extra layers of depth to the discussion of desegregation, it is my hope that *Tape* will move from omitted to included; Piper will be remembered not forgotten; and *Mendez* is clearly, not nearly, recognized as an important player in the long Civil Rights Movement for educational equality. If anything, these stories reveal that the Civil Right Movement is not confined to the 50s, rooted in the South, and limited to the Black/White racial binary. They form a complicated narrative that incorporates several periods, emerges from the West, and reveals the experiences of Chinese Americans, Native Americans, and Mexican Americans.

CHAPTER 5: THE COMPLICATED CASE OF RACE

> "Central to racial thinking is not only the notion that the categories of white, black, brown, yellow and red mark meaningful distinctions among human beings but also that they reflect inferiority and superiority, a human Chain of Being, with *white* at the top and *black* on the bottom. Determining racial identity was about raising some people up that chain to put others down; enslaving some people to free others; taking land from some people to give it to others; robbing people of their dignity to give others a sense of supremacy."
>
> -Ariela J. Gross (2008:9), *What Blood Won't Tell*

In discussing the legal treatment of race in the U.S., Gross provides a vivid description of "a human Chain of Being" that identifies the top and bottom of the chain as White and Black, respectively. However, the analogy does not discuss the placement or positions of the brown, yellow, and red links within the chain. While her chain analogy provides a strong visual for the U.S. racial hierarchy, it supports the notion that Asians, Native American, and Latinxs have a fixed placement and position within the binary of Black and White, inferiority and superiority, or enslaved and free. What *Tape*, *Piper*, and *Mendez* demonstrate however is that their racial positions are much more flexible. The Black part of the binary will always be constructed against the White, but Asian, Native American, and Latinxs are constructed against both.

By combining Critical Race Theory (CRT), its intellectual offspring, with the "Politics of Respectability" and applying an intersectional lens, this chapter interrogates the profound differences and meaningful similarities in how the families were racialized from 1885 to 1954. These plaintiffs were never quite worthy of the rights afforded to Whites. However, because they are not able "to depict themselves and their problems by analogy to Blacks," and they promulgated a message of anti-Blackness by failing to include them in their legal arguments, their contributions are frequently overlooked (Delgado and Stefancic 2012). Nonetheless, examining these cases solely through a Black/White binary paradigm, I argue, limits the analysis

of race and fails to capture the differential racial experiences of Asian American, Native American, and Latinxs.

Because it puts race at the center of analysis, CRT was supposed to be a solution for explaining these differences. However, as Chang (1993:1248) explains, "[c]ritical race theory claims that race matters, but which has not yet shown how different races matter differently" and, I argue, similarly. In this chapter, I contend that the Black/White binary paradigm fails to fully acknowledge or meaningfully capture the experiences of non-Black racial groups. Race scholars are often left to wrestle with where to place the experiences of Asians, Native Americans, and Latinx people, organizations, and communities. Legal scholars have critiqued the paradigm since the creation of CRT, identifying its limitations through discussions related to constitutional law, school desegregation, interracial marriage, and immigration law (Chang 1993; Perea 1997; Haney López 1997; Gross 2008; Delgado and Stefancic 2010).

Sociologists too have struggled with how to even define these racial groups. They have described the position of non-Black racial groups as "a racial middle" (O'Brien 2008), "racial ambiguity" (Ho 2015), "Honorary Whiteness" (Tuan 2005; Bonilla-Silva 2014), "a Caucasian cloak" (Gross 2008), a "racial continuum" (Roth 2012), "Partly Colored" (Bow 2010), and "middleman minorities" (Bonacich 1980) just to name a few.

Some sociologists have even proposed using color, not race, to analyze inter- and intra-racial experiences between and among people of color (Burton et al 2010). I respectfully disagree. Colorism merely sidesteps the complexity of race and fails to acknowledge how the Black/White binary paradigm silences, excludes, and even renders invisible the experiences of "middleman minorities." Even Omi and Winant (1994:154), the creators of racial formation theory and the concept of racial projects, acknowledge that a "bipolar racial discourse tends at

best to marginalize and at worst…eliminate other positions and voices in the ongoing dialogue about race in the U.S.A." Despite their call to explore a variety of racial projects, a majority of the sociological and CRT studies on race still focus exclusively on the Black experience and the role of White supremacy in maintaining inequality in the United States.

CRT scholars have responded in a similar manner to the Black/White binary paradigm, with some critics even describing it as "hegemonic in nature" (Luna 2003:232). The prominence of *Brown* alone within CRT literature has been particularly effective in maintaining and strengthening the Black/White binary paradigm (Bell 1980; Brooks 2004; Love 2004). In response, Latinx, Asian American, Native American, and sympathetic scholars proposed and developed Latino Critical Race Theory (LatCrit), Asian Critical Race Theory (AsianCrit), and Native American Critical Race Theory (TribalCrit).

Using newspaper accounts, judicial records, and secondary research, I show how the racial flexibility of the *Tape*, *Piper*, and *Mendez* families worked both for and against them both socially and legally. To accomplish this goal, I will first summarize the scholarly development and relevant literature of CRT, LatCrit, AsianCrit, and TribalCrit, as well as their analysis of race. Second, I will describe and apply the tenets of AsianCrit to *Tape*, TribalCrit to *Piper*, and LatCrit to *Mendez* to demonstrate the unique positions of Asian Americans, Native Americans, and Latinx communities along the racial hierarchy over time. The overall goal is to provide historic evidence of the racial flexibility afforded to Asians, Native Americans, and Latinxs in California that was not available to Black plaintiffs and that the Black/White binary paradigm fails to capture. In doing so, I proceed through the theoretical frameworks of each crit as they were developed (LatCrit, AsianCrit, and TribalCrit), but apply them chronologically from *Tape* to *Mendez*. Finally, I offer an alternative paradigm through which to examine race that more

adequately captures the racial flexibility that racial hierarchies and continuums fail to explain. I propose that race in the United States is constructed more like an abacus and that, like beads on an abacus, Asians, Native Americans, and Latinxs can be moved back and forth along the color line depending upon the sociohistorical circumstances.

Exploring the social, legal, and historical construction of race through *Tape*, *Piper*, and *Mendez* will not result in a linear storyline that cleanly connects the cases through time. Race as it is constructed within and among each case is, in a word, complicated. I contend, however, that challenging the Black/White binary paradigm requires race scholars to embrace this complexity. As noted by Perea (1997:1213) in his early critique of the Black/White binary paradigm, "[p]aradigms have limitations…among them is the tendency to truncate history for the sake of telling a linear story of progress." Adding and comparing the experiences of Asian Americans, Native Americans, and Mexican Americans to the story of school desegregation in the United States definitely adds curves, twists, and turns. Ultimately, however, this results in a more profound understanding of the complicated structure of race in America. To understand the complexity, I begin by summarizing the development and scholarship of CRT and its intellectual offspring.

Critical Race Theory, its Intellectual Offspring, and Race

During the late 1970s, a growing movement of legal scholarship, Critical Legal Studies (CLS), developed in parallel to the growing political unrest in the United States. Founded to challenge the dynamics of power in the seemingly objective field of law, legal scholars used social science and history to inspire a critical dialogue about the economic, political, and social inequality the law helped to maintain. The goal, according to John Henry Schlegel (1984), was to teach that "[t]he law is politics" and that one cannot study law without considering the role and

influence of the politics outside the sacred halls of the legal academy. Relying on the work of Weber and Marx, legal scholars began to incorporate and encourage the critical analysis of the "rationality" and "reasonableness" of the law (Tushnet 1991). Considering that the founders of CLS were largely comprised of White men,[20] it is no surprise that the fields of Critical Feminist Theory (FemCrit) and Critical Race Theory (CRT) emerged to identify the failure of CLS to consider the role of gender and race despite its activist roots.

In response to this blind spot within CLS and the failure of the Civil Rights Movement to affect substantive social change for people of color, legal scholars developed the foundation for what would become CRT. From discussing the role of White supremacy in the development of American Jurisprudence to challenging the efficacy of *Brown v. Board of Education,* scholars such as Derrick Bell, Jr., Alan Freeman, Richard Delgado, Kimberlé Crenshaw, and Mari Matsuda developed the foundational writings upon which CRT was built.[21] While there are, depending on the author, 8-10 tenets of CRT, it is a movement that is both intellectual and activist in nature. The overall focus of CRT scholars is "studying and transforming the relationship among race, racism, and power" (Delgado and Stefancic 2012).

These tenets, of course, developed over time as the CRT scholarship has grown. The original studies of CRT were more theoretical and descriptive, interrogating the role of the NAACP in *Brown*, the function of anti-discrimination laws, the purpose of affirmative action, the promises of the U.S. Constitution, the value of Whiteness, and the intersections of race and gender (Crenshaw et. al. 1995). The foundation of CRT, as articulated by Derrick Bell, is to

[20] While not an exhaustive list, the following legal scholars are typically credited with starting the field of CLS: Duncan Kennedy, David Trubek, Lawrence Friedman, Phillip Selznick, Philippe Nonet, and Richard Abel. Some writings of the history of CLS also include Catherine McKinnon as one of its founders for her work on sexual harassment and discrimination.

[21] This is by no means an exhaustive list of "the first" CRT scholars. For a more complete discussion of the history of CRT, please read *Critical Race Theory: The Key Writings that Formed the Movement* edited by Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas.

recognize that changes in racial policies are rarely born from a desire to right past wrongs. Such policies, he explains, are shaped by capitalism and the White elite's desire to maintain and limit access to status and privilege.

To illustrate CRT, Bell (1980) used *Brown v. The Board of Education* as his point of analysis. He theorized that the culmination of the 1950s civil rights changes had little to do with attempting to right the wrongs of Jim Crow. Instead, it had to do with the fact that two major wars had ended, the Cold War was a growing reality, and the U.S. needed to win "the loyalties of uncommitted emerging nations, most of which were black, brown, or Asian" (Delgado and Stefancic 2012: 23). The racial injustices occurring in the United States played out on the world's stage and could compromise U.S. interests. Prior to *Brown*, the United Nations General Assembly had unanimously adopted the Universal Declaration of Human Rights in 1948. As the so-called bedrock of democracy, the United States addressed its own violations of human rights because, according to Bell (1980:523), "the interest of blacks in achieving racial equality will be accommodated only when it converges with the interest of whites." While controversial at the time, his assertions have since been supported in the literature (Dudziak 2000, Layton 2000).

Bell's initial work not only outlines the genesis of CRT but also demonstrates how, since its inception, the Civil Rights Movement generally and school desegregation specifically have been a point of departure for CRT scholars. As "revisionist historians," CRT scholars comb through popular U.S. narratives to find hidden aspects of a story and "to understand the zigs and zags of black, Latino, and Asian fortunes [by looking] to things like profit, labor supply, international relations, and the interest of white elites" (Delgado and Stefancic 2012:24).[22] It is from this literature that the intellectual offspring emerged.

[22] Interestingly, the authors did not refer to Native Americans in their list further demonstrating the almost "mythical" nature of their community that is only summoned when remembered.

Development of LatCrit

An early LatCrit scholar, Juan Perea (1997), used equal protection cases such as *Mendez, Lopez v. Seccombe* (1944), and *Hernandez v. Texas* (1954) to discuss the absence of Mexican Americans within CRT scholarship. Each of these cases involved issues relevant to Black communities as well. *Mendez*, of course, involves segregated schooling; *Lopez*, segregated swimming pools; and *Hernandez*, jury exclusion. Despite being classified as White in the U.S. census, Mexican[23] communities in the West and Southwest experienced a *de facto* José Crow, a Mexican version of *de jure* Jim Crow practices in the South that were socially enforced rather than legally enforced (Alvarez 2016). These cases, however, were not necessarily decided on race, legally speaking, thereby revealing the complicated nature of how race is constructed differently for Blacks and Latinxs.

In *Hernandez*, for example, an all-white, male jury indicted the plaintiff for murder. The plaintiff and his attorneys argued that the indictment was tainted because of jury discrimination because there were no Mexicans on the jury. The state of Texas argued that because Mexicans were considered legally White, no actual exclusion occurred. The League of United Latin American Citizens (LULAC), a middle-class Mexican American organization who represented Hernández, agreed that Mexicans were White but argued that the discrimination was based on descent or nationality. This decision was no doubt strategic because had they alleged racial discrimination their claim would have been thrown out as in previous Texas cases like *Ramirez v. State* (1931) and *Carrasco v. State* (1936).

While the strategy worked well enough to make it to the Supreme Court, it added to the confusion of where to "place" Mexicans. In fact, as Haney López (1997) reveals in his research

[23] For the remainder of this chapter, the phrase Mexicans is inclusive of Mexican Americans. When I specifically use Mexican American, it is to describe individuals who possess U.S. citizenship.

on *Hernandez*, the Supreme Court refused to refer to Mexicans as a race or color. Instead, they determined that discrimination was based "other differences from the community norm" that "might define groups needing the same protection" (Haney López 1997:1145). The evidence the Court relied on to determine that Mexicans were a "group needing the same protection" were the following:

> First, people in Jackson County, Texas, routinely distinguished between "white" and "Mexican" persons. Second, business and community groups largely excluded Mexican Americans from participation. Third, until just a few years earlier, children of Mexican descent were required to attend a segregated school for the first four grades, and most children of Mexican descent left school by the fifth or sixth grade. Fourth, at least one restaurant in the county seat prominently displayed a sign announcing, "No Mexicans Served." Fifth, on the Jackson County courthouse grounds at the time of the underlying trial, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here"). And finally…there was the stipulation that "for the last twenty-five years there is no record of any person with Mexican or Latin American name having served on a jury commission, grand jury or petit jury." (Haney López 1997:1160)

In examining "differences from the community norm," Haney López (1997) correctly concludes that the Court was inadvertently arguing that being Mexican was a social construct. Even though the evidence was congruent with practices associated with racial discrimination, Mexicans were still considered White and the Court refused to recognize discrimination based on race. Mexicans were, in a sense, trapped in a racial limbo borne of the Black/White binary.

What these cases and studies reveal is the inability for CRT to capture the racialized experiences of Mexican Americans. CRT could not provide a theoretical explanation for why the Court determined race was not an issue in *Hernandez* yet two weeks later rendered its decision on *Brown* using similar social evidence to make its decision. CRT did not have a scholarly space for a group that was "legally White, but socially Mexican" (Ruben and Hanson 2012). The differences between racialized experiences of Mexicans and African Americans does not stop

there. African Americans, for example, did not have international connections with which the United States needed to maintain strong relationships. They did not have states initiating "Good Neighbor" policies[24] in order to assuage a foreign government's (Mexico) concern that their citizens were experiencing discrimination and therefore should limit participation in a worker (*Bracero*) program that was critical to the agricultural economy of the United States. They did not have the political pull of needing to "make nice" with countries with whom it was necessary to maintain relations that would be advantageous in times of war. This kind of disparate treatment and influence from a foreign government could not be captured in the Black/White binary paradigm that developed within CRT, thereby inspiring the creation of LatCrit.[25]

Since Perea's (1997) and Haney López' (1997) groundbreaking work, LatCrit scholars from a variety of traditions have continued to examine issues unique to the Latinx population. Scholars have explored such issues as Mexicans and whiteness (Blanton 2006; Guglielmo 2006; Calderon-Zaks 2011), immigration and citizenship (V. Romero 2003; M. Romero 2006; Reyes 2014), racial tensions between Black/Brown communities (McClain et al 2006), and research focused on Latinx populations beyond Mexicans such as Puerto Ricans (Aparicio 2016) and Cubans (Hernandez 2000; Sandrino-Glasser 2007). Most relevant to this project, however, is the CRT scholarship related to the Civil Rights Movement and segregated schooling and the unique position of Latinxs within the Black/White binary.

Mostly historians, legal scholars, and ethnic studies experts have produced such research. Arguing that Latinx people in the U.S. are more disadvantaged than African Americans, Luna

[24] The "Good Neighbor Policy" of Texas "proclaimed Mexican Americans valued state citizens, as well as "members of the Caucasian race" against whom no discrimination was warranted" (Haney López 1997:1171).
[25] While this project focuses on LatCrit theory, civil rights, and school desegregation, a ten and fifteen-year review of LatCrit theory, writ large, is provided by Aoki and Johnson (2008) and Bender and Valdes (2011).

(2003) uses *Mendez* to point out the erasure of Mexicans and Mexican Americans from the U.S. civil rights narrative. Luna (2003:225,233) writes

> The Civil Rights Movement and discourse on race/ethnic relations are almost inextricably intertwined with, and exclusively focused on, the contributions and experiences of Blacks…Black historical legal experiences are positioned on center stage, and the experiences of other minority groups are relegated to secondary and inferior roles as stagehands.

While I do not agree with Luna's participation in the "Oppression Olympics," where scholars measure which racial group has suffered more, I do appreciate his observation regarding the invisibility of Latinx contributions to civil rights.

Perea (2004), like Derrick Bell, interrogates whether cases like *Mendez* resulted in better legal protections and improved schooling for Mexican Americans. In addition to identifying continued discrimination based on race, he also argues that when examining issues related to Latinx populations, one must also consider discrimination based on language. "Language discrimination," Perea (2004:1425) asserts, "*is* race discrimination." This is yet another area unaccounted for within CRT.

Other noted scholars have explored segregated Mexican schooling in Texas, such as *Independent School District v. Salvatierra* (1930) (Donato and Hanson 2012); Arizona, such as *Gonzales v. Sheely* (1951) (Powers and Patton 2008; Powers 2008); and unreported/unpublished cases such as *Alvarez v. Lemon Grove* (1931) (Madrid 2008). None of the research is analyzed through the lens of sociology or considers intersectional aspects such as gender and class. This is notable because intersectionality is such a critical component of both CRT and LatCrit. All of the research, however, wrestles with the racial positioning of Mexicans and most conclude that Mexicans took advantage of or embraced their status as Whites and distanced themselves racially from the civil rights efforts of Black organizations like the NAACP. This limited analysis, which

defines the Mexican experience as conforming to the Black/White binary, overlooks the ambiguous place they inhabit on the racial hierarchy.

Cloaks, Wedges, and Whiteness: Mexicans and Race

CRT scholars' treatment of the racial identity of Mexicans is largely built around the argument that this group related to and assimilated into whiteness. Sociologists of race and ethnicity borrow heavily from these scholars, just as CRT scholars borrow from sociological theories such as colorblind racism (Bonilla-Silva 2003), racial formation theory and racialization (Omi and Winant 1994), and White Racial Frame (Feagin 2010). Through this borrowing, many CRT scholars agree "…each disfavored group in this country has been racialized in its own individual way and according to the needs of the majority group at particular times in history" (Delgado and Stefancic 2012:77).

Gross (2007), for example, explains that Mexicans both denied and challenged whiteness by the selective deployment of a "Caucasian Cloak." On one hand, Mexicans deployed it to assert their civil rights. If they were indeed White then they were equal to Whites, therefore any disparate treatment would be a violation of the Fourteenth Amendment. On the other hand, White institutions deployed the cloak to shield themselves from allegations of racism and discrimination, arguing, "[b]ecause you are White, it is not possible to discriminate against you." It was a cloak whose convenience depended on who used it, thereby adding to the racial tug-of-war that some Mexicans experienced in the West and Southwest.

The Caucasian Cloak was also very much classed. Mexican American organizations such as LULAC and the American G. I. Forum (AGIF) were comprised mostly of middle-class, well-resourced individuals who distanced themselves from Black civil rights efforts and argued for Whiteness. For example, Hector Garcia, the founder of AGIF, in an effort to avoid an

association with Black civil rights efforts, made it clear that "we are not and have never been a civil rights organization" and wrote in another letter "[i]f we are white, why do we ally with the Negro" (Gross 2007:270, 273). Historian Mario García (1989:37) explains that "[b]oth middle-class and working-class Mexican Americans joined LULAC, but the middle class dominated leadership positions." Their leadership, too, made several efforts to distance themselves from Black people, declaring "[t]ell these Negroes that we are not going to permit our manhood and womanhood to mingle with them on an equal social basis" (Foley 2012:60).

Considering class also reveals that arguing for whiteness was not necessarily available to all Mexicans. The working class Mexican farmworker whose skin was bronzed in the burning sun could not, for example, wear the cloak. Instead, he is *Indio, Mestizo, Cafécito,* or whichever of the several descriptors were deployed by Mexicans to describe darker colors. This mixture of race and class further complicates the "race" of Mexicans whose colonized history represents a continuum of color and class made up of both light-skinned, wealthy, land owning elites and the dark-skinned, poor, farmworker who labors on it.[26] Despite the fact that Mexicans were comprised of the full racial spectrum, many scholars continued to focus on the construction of and proximity to whiteness (Foley 2004, Ruiz 2004, Calderon-Zaks 2011).

In her analysis of the racial status of Mexicans in nineteenth century New Mexico, Laura Gómez attempts to capture the complexity of Mexican's racial position, but still uses whiteness as a measure. Gómez (2005:10) agrees with general characterizations that Mexicans constituted an "in between" racial group that represented a sort of "racial ambivalence." She uses the phrase "off white" and describes Mexicans as a "wedge racial group" in her analysis of the racial status of Mexicans in New Mexico during the nineteenth century (Gómez 2005:11). Off-white, in her

[26] For a more detailed racial history of Mexicans in the U.S., please read Laura E. Gómez' (2007) *Manifest Destinies: The Making of the Mexican American Race*.

analysis, denotes a racial subordination that comes from being almost White. The phrase "wedge racial group" captures how Mexicans distanced themselves from racial groups that were lower on the hierarchy, namely Native Americans and Blacks. In a sense, the racial position of Mexicans functioned as a double-edged sword, cutting down whiteness while simultaneously cutting away color.

Other scholars regularly use the phrase "becoming White" to describe the racial legal journey of Mexicans in the U.S., almost suggesting that whiteness is available to, or can be achieved by, all Mexicans (Foley 2004; Blanton 2006; Rochmes 2007; Foley 2012). Quoting James Baldwin, Rochmes (2007:21) argues that by asserting whiteness, Latinos were hiding behind "a curtain of guilt and lies." By limiting his analysis to the strategic legal arguments, Rochmes misses out on the evidence that could come from the litigants and community members to whom whiteness was a foreign and inapplicable concept. This, I argue, is what much of the literature on *Mendez* misses: the assertion of a racial identity and the complexity of color within Mexican communities.

The research appears largely constructed in response to whiteness. For instance, Perea (2004:1442) recounts the hostilities faced by Mexicans through the concept of the *pobrecito* syndrome.[27] This syndrome appears in teacher's handbooks that describe Mexican students as "lazy," "dirty and diseased," and sharing stories of teachers who refused hugs "without first inspecting their hair for lice." In their review of the segregated school system of Oxnard, California, García, Yosso, and Barajas (2012:11-12) use excerpts from school board meeting minutes to discuss how school officials identified "the brightest and the best [and cleanest] of the Mexican children" by using class and race markers such as hygiene and skin tone. They argue

[27] Pobrecito means poor little thing or poor little one. It is a word designed to evoke sympathy.

that clean, lighter-skinned Mexican children represented a more resourced group and were therefore, in the eyes of White school administrators, worthy of praise and preferential treatment.

What is lacking in the race literature about Mexicans are the counter-narratives and construction of "brownness," as well as the coalition efforts between various race-based organizations, including the NAACP. The agency and community building that developed within the legal battle for educational equality is understudied, limited, or unreported (Blanton 2006; Garcia, Yosso, and Barajas 2012). Much of the evidence provided comes from handbooks, testimonies, and articles written by Whites about Mexicans, not from the community or people themselves. Furthermore, the literature has not progressed much further than exploring and misinterpreting whiteness as a legal strategy. Even the *Mendez* plaintiffs and their attorney have been mischaracterized as embracing whiteness (Ruiz 2001; Rochmes 2007; Foley 2012). A review of the transcripts, letters, and interviews reveals a much more complex story of racialization and provides insight into how the plaintiffs racially characterized themselves.

Development of AsianCrit

As LatCrit developed to challenge the Black/White binary paradigm, so too did AsianCrit. Since both theories were developed at approximately the same time, several scholars wrote about LatCrit and AsianCrit together to articulate their aligned and disparate interests, such as language discrimination, restrictive immigration policies, and exclusion from the U.S. civil rights narrative (Török 2002; Chang 2003).

Early scholars of AsianCrit, Matsuda (1997), Chang (1993) and Ancheta (1998), introduced and developed this area of study by examining Japanese American and Hawaiian claims for reparations, immigration and nationalization, treatment of Asian Americans during times of war, and deployment of the model minority myth. These were issues for which

traditional CRT had not generated space. In contrast to Asians, African Americans were, generally, involuntary immigrants, denied reparations, not characterized as "the enemy" during times of war, and constructed in direct opposition to the model minority myth.

Similar to Asians, Latinx communities experience language discrimination, disparate treatment under immigration legislation related their labor, and a connection to a country outside of the United States. Latinx and Asians both represent culturally diverse nationalities; however, Latinxs are largely monolingual whereas Asians are multilingual, both between and within different groups. Both theories address racial tensions with Black communities. These differences and similarities provide an explanation for the much-needed development of AsianCrit.

AsianCrit scholars have also used civil rights issues and the Fourteenth Amendment as a point of analysis. Much of the scholarship regarding the Fourteenth Amendment centers on citizenship rights and racial classification. To discuss these issues, AsianCrit scholars borrow heavily from the sociology of race and ethnicity. Ancheta (1998) embraces racial formation theory as well as the concept of racialization. "The racialization of Asian Americans," Ancheta (1998:45) explains, "has taken on two primary forms: racialization as non-Americans and racialization as the model minority." Challenges to the "American-ness" of Chinese people in the late 1800s, for example, began once it was clear that Chinese miners and railroad workers were going to remain in the United States even after the work was completed.

Because the Chinese were characterized as foreign and presented a threat to labor, courts were reticent to apply the Fourteenth Amendment, resulting in several critical cases involving Chinese plaintiffs. There were also a series of tax cases and legislation where Chinese miners and merchants were disparately taxed compared to White miners and merchants. An example of

the type of legislation passed began with the following wording: "An Act to protect Free White Labor against competition with Chinese Coolie Labor, and to Discourage the Immigration of the Chinese into the state of California" (McClain 1994:26).[28] One of the earliest cases, which came before the Supreme Court, *People v. Hall* (1854), involved the right for Chinese to testify as a witness in court. The Court ultimately held that the Chinese, as nonwhites, were similar to African Americans and prevented from testifying against whites.

Like Mexicans, Chinese citizens in the United States enjoyed a certain protection that comes from having a foreign government intervene on their behalf. There was a Chinese consulate in San Francisco, local Presbyterian Churches who hired a lawyer and former judge to lobby the California State Legislature, and treaties negotiated between the United States and China which declared China a "most favored nation" (Takaki 1989; McClain 1994:30). The "most favored nation" status ended once the Pacific Railroad was completed in 1869 and several Chinese workers chose to stay in the United States. What followed were a series of anti-Chinese laws and ordinances that ultimately resulted in the Chinese Exclusion Act of 1882 (Sandmeyer 1973). As a result, the Chinese found themselves fighting for the right to attend White schools, (e.g. *Tape v. Hurley* 1885*)*, and to be afforded protections under the Fourteenth Amendment, (e.g. *Yick Wo v. Hopkins* 1886*)*.

While this is, admittedly, a brief summary of the history of nineteenth century discriminatory practices against the Chinese in California[29], AsianCrit scholars argue that it is often concealed by the contemporary myth of the model minority and reinforces a foreign, monolithic narrative of Asian Americans (An 2016). Similar to Blacks and Latinxs, Asians in

[28] Coolie is a derogatory term used to describe unskilled, Chinese laborers.
[29] For a more detailed history of the lives of Nineteenth Century Chinese consider *In Search of Equality* by Charles McClain (1994), *Strangers from a Different Shore* by Ronald Takaki (1989), *Unbound Feet* by Judy Yung (1995), and *The Children of Chinatown* by Wendy Rouse Jorae (2009).

America are characterized as populations to which things happen rather than a community that makes things happen. As An (2016:262) explains, AsianCrit scholars want to change the civil rights narrative to include events such as the 1903 Japanese farmworker strike, legal challenges to immigration laws, *U.S. v. Wong Kim* (1898) and *U.S. v. Singh* (1923), and cases involving Japanese Americans who were unjustly, illegally, and unconstitutionally interned in concentration camps such as *Hirabayashi v. US* (1943) and *Korematsu v. U.S.* (1944).

Similar to LatCrit, AsianCrit scholars write to transform the U.S. narrative of civil rights to be more inclusive of the varied experiences of different racial and ethnic groups in America. Chang (1993:1267) observes:

> The discourse on race and the law is not as rich or complete as it might or should be…To focus on the black-white paradigm is to misunderstand the complicated racial situation in the United States. It ignores such things as nativistic racism. It ignores the complexity of a racial hierarchy that has more than just a top and bottom.

Most relevant to this project, however, is the AsianCrit work regarding school desegregation efforts. In addition to McClain's (1994) and Kuo's (1998) research on nineteenth century discrimination case law in California, historians, ethnic scholars, and journalists have more recently expanded the Black/White binary paradigm of segregated schooling to include the experiences of Asian Americans in the South (Bow 2010; Wu 2014; Berard 2016).

This historical data has yet to receive direct sociological treatment. This may be due, in part, to the small number of cases involving Asian American plaintiffs, as well as the contemporary emphasis on the model minority myth and Asian American achievement (Jiménez and Horowitz 2013; Chou and Feagin 2015; Lee and Zhou 2015). Considering that AsianCrit also purports to value intersectionality, much of the literature is presented through the singular

lens of race. As the next section reveals, AsianCrit scholarship is largely dedicated to exploring the placement of Asians within the U.S. racial hierarchy.

Miners, Models, and Middlemen: Asian Americans and Race

The focus of AsianCrit on race, it seems, is two-fold: to challenge the construction of Asians as perpetual foreigners who do not belong and honorary Whites who are used to demonstrate the failures of other non-White groups to achieve "American success." These bipolar characterizations are not accounted for within CRT. From research on the "yellow peril," represented by miners and miscegenation (Pascoe 2009), to modern day members of "the racial bourgeoisie" (Matsuda 2010:559), the racial identity of Asians has been perhaps the most marked by extremes. Once again, there is a growth of heavy borrowing between CRT scholars and sociologists represented in the literature (Chang and Gotunda 2007; Kim 2007; Lee and Zhou 2017; Shiao 2017). Combining social science definitions of racialization and law, CRT scholars argue, "the dominant society racializes different minority groups at different times, in response to shifting needs" of the dominant society (Delgado and Stefancic 2012:9).

The differential racialization of Asian Americans according to shifting needs is most apparent in the legal treatment and fluctuating favored status of the Chinese. The concept of "yellow peril," for example, has been applied to the Chinese, Japanese, Koreans, and Vietnamese during times of war and perceived economic threat (Tchen and Yeats 2014), the Chinese in the 1800s (Hsu 2015), anti-miscegenation laws (Pascoe 2009), and Japanese American concentration camps (Austin 2004). The group that represented the yellow peril changed according to favored status of the home country, as demonstrated in the treatment of Filipinos (Ocampo 2016), Koreans (Takaki 1998), and South Asians (Harpalani 2013). From the 1982 death of Vincent Chin, a Chinese American man murdered by two White men laid off from an auto plant, to

English-only laws and restrictive immigration laws, fear of the labor competition that the yellow peril represents is at the core of all these incidents.

The challenge, however, is that AsianCrit scholarship has been focused on the yellow peril or forever foreigner or model minority as separate, historically distinct processes. What I contribute to the literature is to show how within one family, the Tapes, all three characterizations can and do exist, often simultaneously. The siloed manner in which AsianCrit is applied runs the risk of creating even more dichotomies within dichotomies. Furthermore, I add to discussion of race by also considering the role of class. The Tapes, as a wealthy, "Americanized" Chinese American family, demonstrate how their class both failed to protect them from discrimination but also allowed them to bring suit against the school district, as well as challenge the social norms associated with the Chinese of the late 1800s.

Development of TribalCrit

Of CRT's intellectual offspring, TribalCrit is the youngest and is still developing a scholarly repertoire. While Brayboy (2006) identifies the nine tenets associated with TribalCrit (Table 2.1), he is not the only scholar to explore the intersections of race and law within Native Americans communities. Other scholars in the area of TribalCrit include Torres and Milun's (1990) article on the Mashpee Indians, as well as Sturm's (2002) work on blood politics within the Cherokee Nation.

A pertinent aspect of TribalCrit is that Native Americans have had a "complicated relationship" with the United States federal government (Brayboy 2006:427). This adds a layer to traditional CRT, which generally only examines race and racism. Brayboy describes the position that Native Americans occupy as a "liminal space" that examines not only the racial identity of Native Americans but also their political/legal relationship to the Government.

TribalCrit also acknowledges the overriding and lasting effects of colonization that disappear with the mythical narrative of Native Americans. Native Americans, Brayboy (2006:432) explains, possess "a joint status as legal/political and racialized beings." These dual layered identities, he argues, are often oversimplified into a singular racialized status.

Native American's political, legal, and racially defined relationships lies at the heart of TribalCrit. Because the political and legal relationship is codified, controlled, and legally defined through the Constitution, treaties, and federal statutes, it sets Native Americans apart from African Americans, Latinx, and Asian American communities (Sturm 1998; Garroutte 2003). In essence, according to the government, if you are not federally recognized, you do not exist; your identity is not real. "Federally recognized" is the term most often used when listing tribes. No other racial group has this federal requirement in order to be recognized.[30]

Authenticity, Assimilation, and Absence: Native Americans and Race

Currently, definitions of who is or is not a "real Indian" is both legally and socially determined. Individuals who can prove through blood quantum evidence that they are at least ¼ Native American are issued a Certificate of Degree of Indian Blood (CDIB). Individuals who cannot obtain this card are pejoratively called members of the "Outalucks" or the "Wannabe Tribes" (for more discussion see Sturm 2002; Garroutte 2003). The blood quantum method of identification is not, however, the only way to be recognized. Each tribe/nation has its own particular requirements for identification, such as matriarchal lineage in the Choctaw and Navajo Nations.

[30] While immigration laws and policies are definitely a form of federal recognition, immigrants ultimately are associated with their home countries.

Tuhiwai Smith (2012) argues that Indigenous identities are regulated by the government to meet its interests rather than the interests of Native Americans. According to TribalCrit, this is a threat to autonomy and self-determination. Tuhiwai Smith (2012:23) writes:

> Legislated identities, which regulated who was an Indian and who was not…who had the correct fraction of blood quantum, who lived in the regulated spaces of reserves and communities, were all worked out arbitrarily (but systematically), to serve the interests of the colonizing society.

There were also legally created rules related to land ownership which ultimately led to (1) the "removal" of countless Native Americans from their sacred homes and spaces and (2) the reclamation of lands by the government once a tribe lost its federal recognition. This tenet, Brayboy (2006) argues, is a result of White supremacist's definitions of land ownership, Manifest Destiny, and the Norman Yoke.

In addition to legislating identities and legally defining land ownership, nowhere is the government's intent to wipe out an entire population's history, livelihood, and future more apparent than in educational policy. Brayboy (2014:396) explains:

> Education in its many forms is imbued with power: power to control young people's bodies, epistemic engagement, curriculum and teaching; power to best determine how education and schooling are utilized and to what end; power to control what kinds of knowledge is shared—or not—when, and where.

It is clear that the goal of the education system established for American Indians was never to empower but to assimilate. "The history of American Indian Education," Brayboy (2014:396) writes, "can be boiled down to three simple words: Battle for power" (citing Lomawaima 2000:2).

In this battle for power, the development of a scholarly narrative from *within* Indigenous communities is paramount. Yet, in reviewing the sociological and legal scholarship on CRT, LatCrit, AsianCrit, and civil rights efforts, what is clearly visible is the *invisibility* of research on

Native American education and civil rights efforts. Research on or about Indigenous populations are, comparatively speaking, underrepresented in the sociology of race and ethnicity and in critical race scholarship. This is due, in part, to the small population of sociological and legal scholars who engage in this type of research. This reduced presence, therefore, results in reduced power.

Conducting adequate research presents another impediment to producing Indigenous scholarship. There exists a lack of formal archives filled with materials generated from specific Indigenous nations. The formality of archival research leaves little room for collective memory and stories passed from one generation to the next. It also fails to consider history that has been "lost or deliberately erased" as Fear-Segal and Rose (2016:5) encountered in researching the 39-year history of Carlisle Indian schools. Unless methodologies are decolonized and come to accept the oral traditions of Indigenous populations, this will continue to remain a challenge. Therefore, my contribution to this literature is simply to expand on it by analyzing *Piper* through the lens of TribalCrit and identifying its unique contributions to the scholarship on race.

In this section, I described the development of and summarized the relevant literature associated with AsianCrit, TribalCrit, and LatCrit. In the next section, I discuss and apply particular tenets of each theory to *Tape*, *Piper*, and *Mendez*. For comparative purposes, I created a table outlining founding authors, significant writings, watershed case law, and civil rights organizations and leaders generally affiliated with each theory (See Table 5.1). It is not designed to be all-encompassing, only to offer a snapshot of the similarities and differences of CRT and its intellectual offspring.

[Table 5.1 Approximately Here]

Application of Theory

In discussing these cases, I consider the advice of Gross (2008), who interrogates race through anti-miscegenation laws. "We cannot take their legal strategies," she explains, "as a direct reflection of their actual beliefs about their racial or national identity" (Gross 2008:255). Examining the historical record, interviews, and transcripts provides a very different picture of how these plaintiffs understood their racial identities and class positions. These plaintiffs, I argue, present a much more complicated narrative than whiteness vs. racial pride, assimilation vs. authenticity, and peril vs. preferential status.

AsianCrit and Tape

An analysis of the *Tape* case and the Tapes as a family reveals how the racialization of Asians and its mixture with the politics of respectability contributes to the variability of their placement on the racial hierarchy. In one case and with one family, they move from not belonging on the color line to forever foreigners to model minorities. Their very public legal journey, I contend, reflects the AsianCrit tenets of Asianization, transnational contexts, and (re)constructive history (Recall Table 2.1).

Asianization builds upon the treatment of race under CRT by adding the convenient, incongruent treatment of Asian and Asian Americans as "yellow peril," "forever foreigners," and "model minorities." As my research demonstrates, the Tapes experienced all three treatments. First, school officials declared them to be outside the protections of the Fourteenth Amendment's Equal Protection Clause, arguing it was only applicable to African Americans. Second, newspapers regularly characterized them as threats to an "American" way of life. Third, journalists, and the Tapes themselves, described their family as more American than Americans.

A review of the historical record, however, reveals how ascribing a singular treatment to the Tape family fails to take into account the complexity with which they were racialized. The Chinese, in essence, were outside the outsiders. In 1885 San Francisco, it seems the Chinese were below African Americans on the racial hierarchy and outside the Black/White binary of race all together. AsianCrit provides an explanation for this "flip" in the racial hierarchy. Specifically, it has been called "unevenly oppressed" as well as a "flexibility of convenience" (Bow 2010:11, 42).

First, school officials, despite the lower court's ruling, determined that the Chinese were not beneficiaries of the Constitution. In the initial case, Judge McGuire ruled that Mamie Tape was protected under the Fourteenth Amendment. On January 10, *The Daily Alta* (1885a:1) with the headline "Judge Maguire Says They Have Same Rights as Others," prints a verbatim copy of the judge's opinion:

> The only reason urged against her (Mamie Tape's) admission is that she was born of Chinese parents. In other words, because she is descended from the Chinese branch of the Mongolian race, she is excluded by law from participating in the benefits and privileges of free public education, which are by the same law accorded children of all other races—white, black, and copper-colored.

While he does not define "copper-colored," it is clear from his opinion that he is referring to the Chinese. Later in the week, in a letter from State Superintendent Welcker read during a school board meeting, he announces:

> There is not an intelligent man or woman in the United States…who does not know perfectly well that the Fourteenth Amendment was intended for persons of African descent, and particularly for the protection of those who had been born in slavery. No thought was had of the Chinese in the matter; indeed (sic) had there been such thought, undoubtedly an exception would have been made against them. (*Daily Alta* 1885c:8; *Sacramento Daily* 1885a:1)

The Fourteenth Amendment, the school officials argued, "is confined to those within the sphere of Federal citizenship" (*Daily Alta* 1885c:8). In other words, this is a classic state's rights argument.

This declaration, however, is fraught with contradictions. On one hand, it is an acknowledgment that such protections were afforded to African Americans, despite numerous state laws and ordinances in California and around the country designed to limit such protections (McClain 1994; Watkins 2001). On the other, the Chinese were excluded from what little protections that did exist.

So, how did the school officials and courts avoid the Fourteenth Amendment? They essentially argued for an early version of the "separate but equal" doctrine. Even Judge McGuire, who ruled in favor of the Tapes, seems to advise the school officials of this particular legal loophole. "For many years," he writes, "the statutes expressly provided for their education in separate schools*"* (*Daily Alta* 1885a:1). Prior to 1880, the California Political Code §1667 regarding education read, "[e]very school, unless otherwise provided by special statute, must be open for the admission of all *white* children." In 1880, shortly after the *Ward* (1874) decision, it was amended to say "all children." The court's hands, figuratively speaking, were tied. The appellate court, too, seems to advise the schools as well, writing "[a]s amended, the clause is broad enough to include all children who are not precluded from entering a public school by some provision of law; and we are not aware of any law which forbids the entrance of children of any race or nationality" (*Tape v. Hurley* 1885:474). In other words, if the school officials wanted to keep the races separate, then it would have to petition the legislature to do so, as the current law bound the Courts. As discussed in Chapter 4, the school officials delayed and delayed

Mamie's admission until the law was changed to allow local school boards to create separate schools based on race, thereby paving the way for *Plessy*.

Second, the Tapes were often characterized by school officials as threats to Whites and America, which was consistent with representing Asians as the "forever foreigners" and part of the "yellow peril." While most of the language was ascribed to two individuals, State Superintendent Welcker and San Francisco Superintendent Culver, they were two men in positions of power whose words can and were translated into law. In their petition to the lower court, the attorneys for the schools argue "…that the mingling of the Mongolian and Caucassian (sic) races in the public schools will be fraught with *disastrous consequences* to *our* civilization and to *our* institutions" (*Daily Alta* 1885a:1, emphasis mine). Judge McGuire writes back "[t]his Court has no power to avert a *danger* which springs from the absence of necessary laws" (*Daily Alta* 1885a:1, emphasis mine). Nonetheless, the newspaper reported, "[M]oulder is strongly opposed to the admission of Chinese children into our already crowded schools and will probably contest the case to the bitter end" (*Daily Alta* 1885a:1). Even Superintendent Welcker asks "[s]hall we neglect *our own children* for the Chinese, who are *thrusting* themselves on us in spite of treaties, Federal laws and Custom House officers?" (*Daily Alta* 1885c:8). In supporting the decision to appeal the case, Superintendent Welcker explains that it is the responsibility of the school board "to protect public schools from *disaster*" (Daily Alta 1885c:8). Furthermore, the Tapes are consistently referred to as "The Chinese Problem" or "The Chinese Trouble" in headlines (*Daily Alta* 1885b, c, k, and m).

Throughout the case, the newspapers and school officials use the following language to refer to the Chinese generally and the Tapes specifically:

- "Preventing children of the Caucasian race from coming into contact with their objectionable neighbors" (*Daily Alta* 1885b:1).

- "Admitting Chinese will demoralize our schools" (*Daily Alta* 1885h:1);
- "Our classes will be inundated by Mongolians. Trouble will follow" (*Daily Alta* 1885h:1).
- "Dreaded and the most insidious enemy we have" (*Daily Alta* 1885i:1);
- "Long, sinuous, blue-bloused, wooden-shod, stealthy treading Mongolian monster…Mary Tape is one Chinese person" (*Daily Alta* 1885i:1);
- "Heathen temples with idolatrous worship to be reared beside our churches…or that the barbarous din of gongs or invocation to gods of wood should rise and mingle with the sweet church bell" (*Daily Alta* 1885i:1);
- "Insects and pest that threaten the products of the husbandman" (*Daily Alta* 1885i:1);
- "A moral blight that no skill or science can cure" (*Daily Alta* 1885i:1);
- "This foul element that is amongst us—this blight, this cancer on our otherwise fair city" (*Daily Alta* 1885i:1);
- "A pair of little heathens, Mamie Tape and her brother" (*Daily Alta* 1885n:1).

Violence-laden words like disastrous, danger, thrusting, problem, enemy, and trouble are constructed against the repeated use of the word "our" to delineate clear line between Whites and Chinese. It seems as if the Chinese are not only a different race, they were inhuman, akin to insects, pests, fictional monsters, and a destructive cancer.

In addition to being characterized as a yellow peril, they are often described as unwelcomed foreigners who are incapable of assimilation. In a letter published in the newspaper, San Francisco Superintendent Moulder seems to cast Mamie's citizenship into question by writing that Tape "demands admittance…for his daughter, who he *alleges* is native born" (*Sacramento Daily* 1884). Later Superintendent Welcker calls any Chinese who asserts California citizenship likely did so with "perjured witnesses," explaining that he "should not be surprised to see gray-haired Chinamen apply for admission to our schools, and with plenty of

witnesses to wear that they had been born in California, and less than seventeen years ago" (*Daily Alta* 1885a:8; *Sacramento Daily* 1885a:1). The fact that Mamie was born in San Francisco, California carries little weight in the eyes of school officials. She is Chinese-- not American. In what the newspaper calls "An Exhaustive Communication" (*Daily Alta* 1885c:8), Welcker argues:

> It would be the strongest inducement to Chinese immigrants to give them free education. The Chinese are extremely anxious to learn English. They have attended Sunday Schools and even pretended to be converted to Christianity in order to learn English"

Superintendent Welcker even goes so far as to question the ability of the Chinese to speak English, as well as their Christianity and, in doing so, throws the Tapes abilities and religion into question.

When private schools were initially suggested in January, Superintendent Welcker lamented, "[w]here is the money to come from! There are thousands of children in San Francisco for whom we cannot provide" (*Daily Alta* 1885c:1). By March, the newspaper reported, "the city can draw $10,000 for the support of the special schools for Chinese, which will be ample" (*Daily Alta* 1885h:1). While the school was under construction, they took the occasion to continue to make claims about the Chinese. In observing that the walls of the new Chinese school were covered with slang, a reporter writes "[i]t is more than probable that the children will become familiar with it before they learn the rudiments of the English language" (*Daily Alta* 1885m:8). This statement infers two things that both assert their "forever foreigner" status: (1) Chinese children do not speak English and (2) they are more likely to learn low-class slang than even Basic English. These Tape children and the Chinese children they represent, irrespective of citizenship, do not belong.

Despite the contention that the Tapes represented a yellow peril and forever foreigners, they also, through the politics of respectability, represented an early version of "the model minority." While they were characterized as a Mongolian monster, they were simultaneously called American. In Chapter Four, I described how Joseph and Mary transformed from "Chew Diep" and "the Chinese girl" into American entrepreneurs and homeowners. Over the course of the case, newspaper reports referred to Joseph Tape as an "Americanized Chinaman" initially and then reverted back to "a Chinese resident of California," and "Chinaman" shortly thereafter (*Daily Alta* 1884a, c, e:1). Journalists made similar observations of the Tape children. In her original petition, a journalist describes Mamie as being "eight years of age, a native of California, in good health, of good character and cleanly habits" (*Daily Alta* 1885a:1). When the school first opens, the reporter on site observes, "The youngsters all speak good English…they are as conversant with the language as many white children of foreign birth or parentage" (*Daily Alta* 1885n:1). This directly contradicts the assertion that Chinese children did not speak English. Furthermore, while they were called "white," it was still a foreign form of whiteness. Nonetheless, the reporter goes on to observe, "Mamie Tape is, perhaps, the most intelligent member of the class" (*Daily Alta* 1885n:1). When compared to the other children who were attired in "Chinese costume," the reporter writes that Mamie "was gorgeously attired in American clothes" (*Daily Alta* 1885n:1). Another reporter observed that:

> Both children are bright and talk English as well as most pupils at the public schools. They are dressed neatly in clothes like those worn by American children and have none of the Chinese peculiarities in regard to the manner of wearing their hair. (*Sacramento Union* 1885b:1)

There is no one, however, more adamant of Mamie's status as an Americans than Mrs. Tape. "My children don't dress like the other Chinese. They look just as phunny (sic) amongst them as the Chinese dress in Chinese look amongst you Caucasians" (Tape 1885:1). In

describing "the other Chinese" as funny looking in their Chinese dress, she sets herself apart from the general Chinese population. She further sets herself apart when she writes "[h]er playmates is (sic) all Caucasians ever since she could toddle around…You better come and see for yourselves. See if the Tape's not same as other Caucasians, except in features" (Tape 1885:1). At first glance, these statements could be (and have been) interpreted as embracing assimilation and used as evidence of worthiness. With assimilation comes a denial, so to speak, that racism exists as a hindrance. "If *they* can do it," goes the model minority saying, "why can't *you*?"

However, when placed in the context of the letter, it is clear that Mrs. Tape recognizes that her treatment is a direct result of racism and discrimination on the part of prejudiced men. For example, after asserting that all of her friends were White, she also asks "[i]f she is good enough to play with them! (sic) Then is she not good enough to be in the same room and studie (sic) with them?" Later in her letter, she asserts "I will let the world see sir What (sic) justice there is When it is govern by the Race prejudice men," and even declares Mamie to be "more of a American than a good many of you" (*Daily Alta* 1885o:1).

Taken together, I contend that Mary Tape is not arguing to be recognized as White or that she achieved honorary whiteness. In fact, she is very clearly pointing out the absurdity of racism that allows children to play but not study together. She is not arguing for racial sameness, but for recognition that Mamie's race should not preclude her from the same rights as Whites. Finally, she directly accuses the White men of racism and suggests that Mamie, a Chinese American child, represents more of the American ideal than they ever could. Just as the Society fired the kitchen worker and laundress who refused to work with Mary when she was younger, years later she stands up for her daughter. In examining this letter within its historical context, I argue that

these mother's words and actions were a form of protest. Mary, even in the face of legislative defeat, still wanted the public to know that it was these men, and not the Tapes, who were unchristian, foolish, and un-American.

Years later, their middle-class status brings into question their description as forever foreigners and solidifies their status as model minorities. A journalist, Leland Gamble, visited the Tape family home in a neighborhood at Washington and Stockton at the edge of Chinatown and made several observations regarding their wealth and American-ness. First, he was surprised by Joseph Tape's ability to speak "as good English as I ever heard in my life" (Gamble 1892:12). When left alone for a moment in the home's parlor, Gamble (1892:19) wrote that "[e]verything in the room bore the unmistakable signs of refinement…Against the wall…stood an upright piano, on the top of which rested a French horn and zither." He described Mary Tape as "charming," "pretty," "intelligent" and that she spoke "the best of English" (Gamble 1892:19). Later, he described Joseph Tape as an accomplished businessman and sportsman, saying that he "in every way possible is thoroughly American" (Gamble 1892:19).

In the article, Mary Tape is quoted as saying "[s]ince that time [their marriage] we have always lived as Americans, and our children have been brought up to consider themselves as such" (Gamble 1892:19). Once again, this declaration could be interpreted as embracing assimilation. However, as she describes, she and her family straddle the Chinese world and their upper-class existence. "[Our children's] education in the common branches has been gained at the Chinese public school on Clay Street and their other accomplishments by private tutors" (Gamble 1892:19). With the means to hire private tutors, there is conceivably no reason to send her children to the Chinese school.

Among the lessons provided by the tutors was playing the piano. Once the reporter learns that she is "quite proficient" in piano, he asks to hear her play and then effuses one compliment after another asserting her American-ness. "Imagine my surprise," he wrote, "when without any of the backwardness and diffidence of American girls of the same age, she took her seat at the piano and began to finger the keys…she brought out its notes as well as I have ever heard them brought out by an American girl" (Gamble 1892:12). In addition to playing piano, Gamble (1892:12) observed that Frank Tape, Mamie's brother, "plays the French horn and is a member of one of the boys' brigades in the city."

Remembering that he had wanted to see Mary Tape's photographs, another expensive hobby, he provides the best evidence of how the Tapes were simultaneously foreigners and model minorities. Gamble (1892:19) writes

> I was sitting in a room with a family of full-blooded Chinese listening to a Chinese girl playing an old-time favorite on an American piano and talking to me with as much spirit as any girl of my own race. This fact struck me at first as exceedingly ludicrous, as I had always been accustomed to view Chinese in an entirely different light; but when I saw around me the father and mother and their accomplished children I changed my opinion in regard to race in general and saw that with proper instruction before they had become imbued with national traits they were as susceptible of civilization as any nation in the world.

He goes on to observe a full set of encyclopedias, copies of Shakespeare, birds preserved by a professional taxidermist, gold and silver galena, sea shells they had accumulated from their world travel, and a telegraph used to communicate between the home and the business, all markers of wealth and achievement.

The Tapes, in demonstrating racial flexibility, vacillated between a yellow peril, forever foreigners, and model minorities depending upon the circumstance and the observer. They consistently referred to themselves as American. To argue that is a declaration of whiteness is attempting to interpret history through modern definitions and experiences of race. I argue that

American-ness in this case is not a rejection of Chinese-ness. It is, instead, an argument for citizenship, equality, and full recognition of their rights. Superintendent Welcker perceived them as a threat, newspapers characterized them as unassimilable foreigners, and Leland Gamble declared them "thoroughly American." While I am not certain how many readers of *The Morning Call* consistently read Gamble's column, it is certain that whomever read the story was introduced to an extraordinary family. While the trial was not mentioned in the Gamble article, readers who were familiar with the Tapes had the task of reconciling the family created in the newspapers with the one interviewed by Gamble. To equate them with honorary whiteness, selling out, or assimilation would be to disregard the fact they put themselves and their families under the microscope of a society that detested their very existence. It would be to miss the possibility that the Tapes, too, experienced a form of double consciousness balancing and reconciling their Chinese identities with their American identities, wholly aware that they are being observed and judged by Whites.

This discordant characterization of the family as a yellow peril, forever foreigners, and model minorities was, I believe, a result of being unable to place the Tapes in any particular category due to their class. They could not represent a yellow peril because instead of taking jobs, they were creating businesses. Furthermore, they, like many Whites, were homeowners. They could not be forever foreigners because they spoke English fluently and did not engage in traditional Chinese practices. Finally, they were not model minorities because, while impressive, Mary Tape's letter and their later performance of respectability was not about demonstrating American as White but challenging the very notion of American democracy and freedom.

In considering the second tenant of AsianCrit, transnational context, the presence of China in this case was recognized repeatedly by the newspapers, school officials, and jurists. The

United States and its democracy were on display upon the world stage. In Judge McGuire's opinion, he writes:

> It would be a sad commentary upon our institutions and our civilization if it should appear to the world that by our laws we levied forced contributions, in the shape of special taxes for school purposes…upon our Chinese residents, and then refused to let them share in the benefits. (*Daily Alta* 1885a:1)

The phrase "it should appear to the world" acknowledges the deleterious effects their case could have internationally. At this point, the United States recently celebrated its centennial and the Fourteenth Amendment had only just passed in 1868. The *Tape* case captures the national struggle with how to reconcile messages of freedom and democracy with discriminatory, racist practices. It was essentially a test case for what would become law under *Plessy* just over 10 years later.

Superintendent Culver, referring to a report by the Bureau of Labor and Statistics, warned the school board:

> It is difficult to overrate the effect and influence of the Chinese upon our industrial condition of our State. At a rough estimate we have about 104,000 of them here at present—eighty per cent of that number directly competing with white labor, and the remaining twenty per cent engaged in trading with China. (*Daily Alta* 1885i:1)

In line with both CRT and AsianCrit, it is clear the Chinese not only represent a threat to labor domestically but also to international trade. He further attempts to calculate how much money had been paid to the Chinese in the form of wages and reports the number at a little over $27 million dollars. "What do you think of that showing," he asks, "[t]There is no work except at starvation prices; but there is $20,280,000 per year paid to this thrice detested race…Think of it—the prosperity, the homes, the business that amount of money would produce if spent here instead of being shipped to China" (*Daily Alta* 1885i:1).

Their connection to the Chinese consulate did not even escape Gamble's adoration. He writes that Joseph Tape acts as an interpreter for the "Imperial Consulate in China," possessed a "monopoly of transporting Chinese," and supplied wholesale Chinese merchants in Chinatown (Gamble 1892:19). In today's world, he would be revered for keeping Chinese business within Chinese hands. Gamble also takes the opportunity to ascertain whether the Tapes intend to return to China. The Tapes answer, "[w]e may some day (sic) if we feel that we can afford the trip, but it will only be as tourists visiting a foreign country. California is our home" (Gamble 1892:19).

Traditional CRT does not capture this Chinese American experience. Black plaintiffs did not have a consulate with which they could avail themselves. They did not have the force of an entire country's economy at stake in their cases. They were not accused of pretending to be Christian in order to learn English or subject to immigration laws that limited their entry and made it increasingly difficult for them to stay. Apart from racist calls to "go back to Africa," they are not seriously asked if they are going to visit or return to an unidentifiable country of origin. The Tape family represented the yellow peril, forever foreigners and model minorities. Their model minority presentation, however, did not shield them from some forms of discrimination as perhaps it would today. The *Tape* case reveals the temporal nature of the model minority myth. With no population against whom the Chinese could be constructed against, it serves no purpose. Furthermore, as forever foreigners, they are inexorably tied to a country of origin regardless of their birthplace. A double-edged sword, being from a foreign country provides fodder for exclusion on one hand, but protection on the other as it is subject to the checks and balances that come with a global economy.

TribalCrit and Piper

This section relies on the recently outlined TribalCrit tenets as put forth by Brayboy (2006). Relying on the court opinion and fieldwork in Big Pine, California, I specifically consider the following TribalCrit tenets: the liminal space Native Americans occupy, the problematic governmental policies built around assimilation, and obtaining autonomy and self-determination.

As it relates to occupying liminal spaces, the Piper family possessed both a racial and political identity. In the opinion, the Pipers are referred to as belonging to the "aboriginal race" and her parents as "persons of the Indian race and blood" (*Piper* 1924:666). They also possessed a political identity, as established in the OIA records where they outline their family lineage. Recall that their OIA records not only outlined their blood quantum but also recognized their Paiute names and that they were married according to "Indian custom." Between the opinion and the OIA paperwork there exists a tension between blood quantum, cultural practices, and federal requirements.

Within CRT, there is much discussion on the one-drop rule for African Americans and using customs and social relations to identify the "true race" of the racially ambiguous. For Native Americans, however, the one-drop rule is inapplicable. One drop, so to speak, would not be enough to be recognized not only by the tribe but also by the Government. This biologically determined method of identifying individuals who are Native by blood confounds sociological assertions that race is a social, not biological, construct. Even using the term "Indian race" is problematic because, as Gross (2008:13) explains, "[m]aking blood quantum…the *sine qua non* of tribal citizenship has helped to turn national identities into racial ones." Alice is not a member of the Paiute race. She is a member of the Paiute Tribe. The traditional language of race within the race scholarship does not provide a space for the Pipers. The Pipers are an example of what

Brayboy (2006:432) argues is a "state of inbetweeness," represented in the possession of both a racialized identity ("Indian blood") and a legal/political identity (Paiute).

One could argue that this in-betweeness is similar to a border identity as outlined by Gloria Anzaldúa (2012). The difference, however, is that a border identity represents the social pressures that arise from living between two cultures: one Mexican and one American. The Piper's liminal space is not only socially constructed but also subject to legal requirements. Furthermore, it is not an internal battle of authenticity. Their identities are more than "feeling" their race or split identities, it is very often the difference between rejection and recognition. TribalCrit provides the language and the analytic framework necessary to describe the racialized experiences of Native Americans.

Piper also represents the TribalCrit tenet of identifying and interrogating problematic government policies that require assimilation. In order to win the case, they had to meet certain requirements under the Dawes Act. Their compliance was recorded in the opinion where the court observed:

> Neither the petitioner nor either of her parents has ever lived in tribal relations with any tribe of Indians or has never owed or acknowledged *allegiance* or *fealty* of any kind to any tribe or 'nation' of Indians or has ever lived upon a government Indian reservation or has at any time been a ward or dependent of the nation. (*Piper* 1924:666, emphasis mine)

The requirement to reject their nation of origin and to pledge allegiance or fealty to the United States is akin to asking an American to renounce her citizenship, cut all ties with her American family, sell her home, move to Mexico, learn Spanish, and pledge allegiance to the Mexican government. Such a suggestion would seem absurd, yet it was standard treatment of sovereign tribal nations within the United States.

The court further concedes that her political and civil citizenship is not in dispute. They recognize the following:

> She is a descendant of an aboriginal race whose ancient right to occupy the soil has the sanction of nature's code. Since the founding of this government its policy has been, so far as feasible, to promote the general welfare of the American Indian, even to the point of exercising paternal care, and whenever he has shown an inclination to accept the advantages which our civil and political institutions offer, to permit him to enjoy them on equal terms with ourselves. (*Piper* 1924:671)

This quote not only captures how she is raced, but also how she is rendered mythical and characterized as bound to the Earth. It is almost romantic, ethereal. Nonetheless, despite the court's fascination with "nature's code," they, in a completely revisionist fashion, claim that the policy of the federal government is to "promote the general welfare of the American Indian." To avail themselves of this government "paternal care," they must, per the Dawes Act, "voluntarily [take] up…his residence separate and apart from any tribe of Indians therein, and [adopt] the habits of civilized life" (*Piper* 1924:672).

According to my informants, we now know that the Pipers did none of those things. They remained Paiute through and through. This leaves one to wonder if it was a legal strategy to acquiesce publicly yet subvert the law privately. It also reveals how lax the policing of assimilation was by this time in history after the failure of Indian industrial schools. According to my informants, the federal Indian schools were no more than glorified trade schools designed to teach Native Americans trades that would ultimately serve Whites. According to Mr. Romero, women were taught to be housekeepers and men were taught to be groundskeepers (Interview March 7, 2017). That Alice's parents desired to enroll her in the White public school suggests that those skills were not the civilized life they imagined for her. According to Superintendent Jones, the Piper family "didn't want to necessarily be assimilated but they wanted to be a part of

this new world…They wanted the best thing for their children. They wanted access" (Interview March 7, 2017).

This leads me to the third tenet, which identifies Indigenous people's desire for autonomy, self-determination, and self-identification. I argue that the Piper family then and the Paiute Tribe today are engaging in a powerful form of self-identification. Then, the Piper's rejected government policy and reconciled their liminal positions by maintaining their connection to the Paiute Tribe. Furthermore, in examining the photographs of the integrated school (recall Figure 3.5), she is significantly lighter-skinned than her Paiute classmates. Passing could have very well been a possibility for her. Unfortunately, there is not much literature on early efforts of passing amongst members of Native American nations. All evidence presented in her life choices, however, points to maintaining a strong connection to her community. She accepted a position as headmistress for the Carson City Stewart Industrial School. She lived on the reservation. She buried her parents in the tribal cemetery.

Today, the Paiute Tribe continues its efforts of self-determination and self-identification. In coordinating community efforts to erect a memorial to Alice and her role in the *Piper* case, the Paiutes of Owens Valley have "defined themselves and create what it means to be Indian" (Brayboy 2006:434). They are not "ecology-loving, bead-wearing, feather-having, long-haired," men and women (Brayboy 2006:434). They are activists, organizers, and change agents. They did not settle for a plaque as was initially suggested when discussing the memorial. They wanted and earned a life-size statute. As a young Paiute student explains in one of the many videos created to promote the memorial, "[t]he Alice Piper case isn't known very much anywhere. It's kinda sad. That's our own Native American history. We gotta get it out there and teach it to everybody" (DigitalNdna (a) 2017). According to the modern-day keepers of knowledge, *Piper*

inspired the Paiute community to redefine and reconstruct the *Piper* narrative and attempt to insert it into the civil rights narrative. Race scholars should not diminish the contributions of *Piper* to the civil rights narrative simply because they won using the Dawes Act and not the Fourteenth Amendment. If anything, it demonstrates the complex ways equality was achieved and how, to borrow a phrase from Audre Lorde (1984), it is necessary to use the "colonizers tools" against them in order to win.

LatCrit and Mendez

Of the three cases, *Mendez* provides the most evidence of racial flexibility that worked both for and against the family. From the moment the Mendez children and their cousins attempted to enroll to pretrial arguments, the *Mendez* case is rife with confusion and contradictions regarding where to "place" the Mendez children on the racial hierarchy. To analyze the case, I consider the following tenants of LatCrit: Latino/a essentialism and Latino/a stereotypes.

One of the first ways the Mendez family was racialized came long before the case. In Chapter 4, we learned that Felícitas Gómez and her family were from Juncos, Puerto Rico and brought her to Arizona in the early 1900s as a source of agricultural labor. With over 1,500 Puerto Ricans recruited to work, this group could have very well become its own ethnic enclave within Arizona. They were brought to compete with Mexican workers directly. Instead, they organized, insisted on higher wages, left the state when their demands were not met, and either dispersed across California or returned home (McCormick and Ayala 2007). Once in California, Felícitas met and married Gonzalo, a Mexican national, and adopted a Mexican identity.

In just this story alone, she was racialized by four different groups: the growers, her adopted Mexican community, the schools, and by Felícitas herself. First, she was racialized by

the growers who recruited her family for their labor. Either the growers did not know or did not understand the fact that Puerto Ricans were considered citizens of the United States. Regardless, they believed they could compete with Mexicans by subjecting them to the same pay and working conditions. Unlike the Mexican workers, the Puerto Rican workers could organize against and ultimately leave the farms in Arizona. They had the benefit of choice. This was not an option available to Mexican workers largely due to a threat of deportation. Their departure, however, was not wholly easy. Agricultural workers who broke their contracts were gathered into concentration camps and referred to as both Puerto Rican and Negro (McCormick and Ayala 2007:21 citing McWilliams 1967:80).

Second, she was racialized into her adopted Mexican community in California where she became the cultural minority. Prior to her marriage to Gonzalo Mendez, she was married to a "Mexican boy" who was deported. When asked if she wanted to go to Mexico, she replied, "I didn't want to go, because I did not know the Mexican way of living" (McCormick and Ayala 2007:22 citing Felícitas Interview, 1975). Once married to Gonzalo, she adopted the identity of her Mexican husband. Research on early immigrant marriages indicates that this practice of leaving their own culture to adopt their husbands was common among women (Parrillo 1991). In one journey, according to McCormick and Ayala (2007:13), Felícitas and her family were considered "mulattos" in Puerto Rico, "black" in Arizona, and Mexican in California. This is in line with Latino/a essentialism that struggles with how and where to categorize Latinx communities.

Third and fourth, she was racialized by school officials and racialized herself according to skin tone. When Aunt Soledad brought her children and the Mendez cousins to enroll in the school, the school official very much racially sorted the children. "We will take those three [the

Vidaurri children] …but we won't take those three [the Mendez children]" (Nance 2007:29; McCormick and Ayala 2007:24). As explained in Chapter 4, the Vidaurri cousins were, because of their half-French father, very light-skinned and could pass for White. The Mendez children, on the other hand, their mother describes were "*prieto*" like her (McCormick and Ayala 2007:26 n 34). She could have also been described as "India" or Indigenous looking (See Figure 5.1). Had Aunt Soledad gone by herself, her children would have been accepted. Instead, she rejected the acceptance and returned home. This, I argue, is a direct refusal to be covered by, and benefit from, the so-called Caucasian Cloak.

[Figure 5.1 approximately here]

This particular post-war generation of Mexicans and Mexican Americans are often referred to as White passing or assimilated (Garcia 1989, Blanton 2006). Their actions throughout the lawsuit, I contend, tell a different story. Take, for example, the letter sent by the parents to the Westminster school board quoted in Chapter 4. They very clearly named the actions of the school officials as racial discrimination. The letter did not say "we are White therefore we should be treated as such". In the letter, they also referred to service during WWII. "Some of our children are soldiers in the war, all are American born and it does not appear fair nor just that our children should be segregated as a class" (Trial Transcript, July 9, 1945:434-435). They were not declaring whiteness. They were expecting equality.

Nowhere was Latino/a essentialism more apparent than in the pretrial record. As previously explicated, David Marcus, the Mendez attorney, had to deploy a strategy that contended discrimination based on descent. Naturally, it would be in the school's best interest to have the case dismissed on the grounds that Mexicans are White and therefore not subject to racial discrimination. The attorney for the school, Mr. Holden, tried to put forth these arguments

and failed. In the following exchange, take note how often the attorney and jurist confuse themselves and one another. To provide clarity, I will italicize my comments, narration, and remarks and separate them in brackets. This is taken from the pretrial transcript recorded on June 26, 1945:

[From the very beginning, they are trying to "avoid" raced language.]

Mr. Holden: They have 14 elementary schools in the city, and they divide the city into eight territories and one school serves each territory. It happens that there are three school (sic) that *serves Mexican descendants almost 100 per cent*. There are three schools that *serve white or—well, white isn't, of course, the proper term to use here*, but it has been used in the pleadings.

Mr. Marcus: No, it hasn't, counsel.

Mr. Holden: Let's divide them into *English speaking and Spanish speaking* just for the purposes of talking here….

[Later, the judge asks…]

The Court: Has the Board of Education…enacted any memorial in writing with respect to the classification of schools as to the student personnel relative to the *linguistic qualities of the student* who would attend those schools?

[The Court is asking to they have a test for determining language proficiency.]

Mr. Holden: They have not.

[No longer able to rely on dividing the students via language, both attorneys attempt another route.]

Mr. Marcus: They have established certain arbitrary lines, which curve and bend and twist to include only those children of Mexican descent. There are children that are attending the school where *Mexican children* attend that have to go through various lines where *only American children* attend.

The Court: Wait just a moment. "*Only American children attend*." What do you mean by "*American children*?"

Mr. Marcus: Well, we will say of *Anglo Saxon descent*.

The Court: You mean the children of Mexican lineage, do you not?

Mr. Marcus: That is correct, your Honor, but I was using the language adopted by counsel in his answer.

The Court: On what page?

[Later, Mr. Holden stipulates the following:]

Mr. Holden: I will stipulate to this: That in that district there are probably between 5 and 10 pupils who are not of the *Mexican descent*, but are, we will say, *English speaking* pupils, and they are permitted to go to another school.

[Later, language gets conflated with race and gets conflated with descent all in one interaction.]

Mr. Holden: Don't we mean that it is people of *Mexican descent who speak Spanish at home* and in the communities where they reside?

Mr. Marcus: I can't agree with the fact that…

[*Holden interrupts and the Court corrects him*.]

Mr. Marcus: …that a child three or four year of age is not proficient in the English language. I am willing to say this, however, that they have the same proficiency with respect to speaking the English language as, we will say---*what was the word your Honor suggested*?

The Court: *English speaking people*.

Mr. Marcus: You see, I run into that difficulty again, your honor because *these children do speak English.*

Later Mr. Holden refers to the children as "Mexican speaking pupils" and Whites as "non-Spanish speaking pupils."

The Court: [To Marcus] You contend, I believe, that those [policies] are based upon *race or ancestry or heredity or ethnic or anthropological features*?

Mr. Marcus: That is correct…. We may make this statement to the Court, that we do not contend that *there is such a thing as the Mexican race*. That will eliminate the question of race. We do, however, contend [the school's practices] is based upon the fact that they are of Mexican or Latin descent.

[*This is the crux of Mr. Marcus' argument. It is often interpreted to mean that he and his plaintiffs reject being called a race. This is clearly a misreading of the text and a misunderstanding of legal nuance. Later, Mr. Holden lays out his argument, but it is not nearly as eloquent as he continues to stumble over how to identify children of Mexican descent*.]

Mr. Holden: The purpose of the segregation is simply this. They live in communities that talk Spanish. When they come to school, the do not understand one word of English, [*Almost as if he has realized that he has opened the door for Dr. Marcus to prove they speak English fluently*] …that is, most of them don't. There are exceptions, and the petitioners in this case, I will admit the petitioners in this case, the named petitioners, probably are able to speak fairly good English, but they also go into these schools, and they are not, in the lower grades, able to complete or to carry the work that these students who are familiar with the English language are able to do so. [*You can almost sense his growing frustration*]. We have a five-year-old—*this is confusing me, too*, because I don't want to say white people, because Mexicans are white, but say the non-Mexican…

In this short pretrial interaction, they racialize Mexican children as "of Mexican descent," "Spanish speaking vs. English speaking," "Mexican children vs. American children," "Anglo Saxon descent vs. Mexican lineage," and finally decide "Mexicans are white." They never truly resolve the question of what to "call" Mexican children. During the trial, the judge, the attorneys, and the witnesses used several descriptors to define and identify Mexicans. What follows is a small sample from just one-day's testimony:

- "I am of Mexican descent, although I was born here, and I am an American citizen" (Manuela Ochoa, Trial Transcript, July 5, 1945:13).

- "Mr. Kent said, 'On the other hand, if your children were registered as Spanish, they could attend the Lincoln [White] school.' I said, 'My children cannot be registered as Spanish, because their father is Mexican'" (Manuela Ochoa, Trial Transcript, July 5, 1945:29).

- "[The school official] said the Mexicans were too dirty to go to [the White] school" (Juan Muñoz, Trial Transcript, July 5, 1945:65).

- "[The school official] says, 'the Japanese and Filipino race was classified higher, a higher race than Mexicans" (Juan Muñoz, Trial Transcript, July 5, 1945:65).

- "We mean that Mexican children have to be Americanized much more highly than our so-called American children…They must be taught manners. They must be taught cleanliness…which ordinarily do not come out of the home" (James Kent, Trial Transcript, July 5, 1945:85.

- "If we put them with our white children, they naturally cannot go at the same rate of speed" (James Kent, Trial Transcript, July 5, 1945:100).

- "[The children are not acquainted] in the care of their heads, lice, impetigo, tuberculosis; generally dirty hands, face, neck and ears" (James Kent, Trial Transcript, July 5, 1945:116).

- "Judge…there is a psychology of the thing. There is one thing in putting one lone Mexican child in a group of 40 white children merely because he has come up to the level of the other white children, which is not fair to him" (James Kent, Trial Transcript, July 5, 1945:123).

- "Your Mexican child is advanced, that is, he matures physically much faster than your white child, and he is able to do more in games. Therefore, he goes more on physical prowess that he does on mental ability…" (James Kent, Trial Transcript, July 5, 1945:138-39).

- "Then I told [the school official] that if our Mexican people were dirty, and all that, why didn't they have all our boys that are fighting overseas, and all that, why didn't they bring them back and let us take them home?...I told him if [my son] wasn't qualified, why didn't they let me have him and not take him overseas, as he is right now" (Felícitas Fuentes, Trial Transcript, July 5, 1945:152).

In one day, Mr. Marcus was able to elicit testimony from the parents and the school officials that was both powerful and tragic. Throughout the trial, the parents and children, in perfect English, were consistent with one message: "I am an American." Even when advised that her child would be admitted if she only declared a Spanish background, which presumably is considered European and therefore White, Mrs. Ochoa refused to do so.

The school official, James Kent, provides ample evidence of an anti-Mexican bias based on the stereotypes of being dirty, diseased, and dumb. While I will address gender in the next chapter, I should note that when describing a child who "matures physically faster than your white child," Mr. Kent is clearly referring to a boy conjuring all the stereotypes associated with overpowering Mexican men whose only strength is physical, not mental. Mrs. Fuentes responds to all of this by pointedly asking "[i]f my child is qualified to fight and die for this country, why can't he attend its schools?" If he is too dirty, she says, "[t]hen let me have him." Putting on the

mother of a soldier, I surmise, had to have been another legal strategy on David Marcus' part. In his previous case, his lead plaintiff was also a soldier in WWII.

Finally, in the racial hierarchy of this school system, it seems that Mexicans are below Black, Filipino, and Japanese students. When asked to explain why, Mr. Kent does not mince words when he tells a parent "[t]he Japanese and Filipino race are classified as higher." I surmise that Filipinos are placed higher because they were U.S. Allies in WWII. This classification of Japanese students, however, perplexes me considering the case takes place soon after the end of Japanese American concentration camps. Nevertheless, this represents another "flip" in the racial hierarchy with Mexicans, not African Americans or Asian Americans, at the bottom. This "flip" further supports what Lipsitz (1995:371), asserts in *The Possessive Investment of Whiteness*:

> Even though there has always been racism in American history, it has not always been the same racism. Political and cultural struggles over power shape the contours and dimensions of racism in any era.

The Role of Class

While I have discussed the role of class throughout this section, I would be remiss if I did not devote a portion of this chapter to how race and class intersected during the *Tape*, *Piper*, and *Mendez* cases. The Tape, Piper, and Mendez families were all well-resourced and well-connected families. All of the families in these cases were successful entrepreneurs. As discussed in Chapter 4, Joseph Tape was a drayman, translator, and homeowner. Pike Piper owned a car and listed himself as self-employed in his OIA paperwork. They also, according to the opinion and my informants, "owned" land inside and outside of the reservation.[31] Gonzalo Mendez and his wife ran an asparagus farm and The Arizona Café. Furthermore, they were all able to hire an

[31] I use "owned" to recognize that land ownership is a very different concept within some Indigenous Nations. The Paiute's are no exception. There is a definite sense of community ownership among the Paiutes of Owens Valley. For example, I asked Outreach Coordinator Romero who "owned" Alice Piper's home on the Reservation. Perplexed by the question, he simply said, "I don't know…to everyone I guess."

attorney not just for the initial suit but also for the subsequent appeals, which lasted almost a year in each case. If not wealthy, they were at the very least solidly middle class.

One of the critiques of respectability politics today is that it generates a narrative of assimilation or suggests a strategy based on sameness. As a result, several scholars are revisiting the efforts of the civil rights movement and criticizing the strategies deployed, including, but not limited to, selecting the "appropriate plaintiff" (McGuire 2010), requiring a particular manner of dress when protesting (Smith 2014), and asserting an American identity rather than a racial identity (García 1989). This kind of revisiting, I believe, diminishes the contributions and strategies of the participants. As Higginbotham (1993:192) attests:

> Respectability was perceived as a weapon against such assumptions [of racial inferiority], since it was used to expose race relations as socially constructed rather than derived by evolutionary law or divine judgment…. polite behavior on Jim Crow streetcars and trains did not constitute supine deference to white power. Nor did politeness constitute unconscious acts of political concession.

Their middle-classness did not protect them from racism or discrimination. The anti-Chinese sentiment surrounding *Tape*, the steady colonization of Native Americans in *Piper*, and the racial violence that preceded *Mendez*, I believe, were still very much a threat to these men and their families. Fortunately, at least for *Tape* and *Mendez*, their middle-classness also protected them from the threats to their economic well-being that usually accompany civil rights activism. They could not be fired because Tape was in a business that relied mostly on Chinese, not White, customers. Furthermore, he provided a necessary skill, that of providing bonds for incoming Chinese men and translating for the companies that hired them. Despite being called a "dirt farmer" by the judge, *Mendez* ran and enjoyed the benefits of a massive 40-acre farm. Furthermore, he was able to continue to pay his employees during the days of the trial and provide transportation back and forth to the courthouse. While their lives could have been

threatened, the evidence about their economic situation suggest that their livelihood would remain intact.

To truly appreciate the chances these families took by taking a stand against a resourced school system determined to keep them out; their actions must be analyzed within their historical context. It would have been amazing, for example, if Mrs. Tape, in her letter to the school board, declared pride in her Chinese heritage. Desiring those actions, however, places modern demands on historical figures. I contend that their actions and words were radical, particularly during that time in history. It was radical, for example, for Mendez and Marcus to draw amicus briefs from a multiracial collection of legal organizations, including the Japanese American Citizen League, League of United Latin American Citizens, American Jewish Congress, and the NAACP. It was radical that the Tapes continued their suit despite the fact that they could afford private tutors. It was radical that Gonzalo Mendez was able to convince 5,000 families to join suit. These families engaged in a legal battle that consumed their time, money, and resources in order to take a stand against unjust school systems.

An Alternative Theory: The U.S. Racial Abacus

As I show in my analyses above, the position of Latinx, Asian, and Native Americans is less static and not as orderly as the scholarship suggests. In current race scholarship, the racial order is Black, Latinx, Asian, and White. Native Americans, if even considered and stripped of their "mythical" status, would likely fall somewhere between Black and Latinx. I suggest that while studies uphold the order of racial categories, their position along the hierarchy demonstrate a racial flexibility depending on historical context, cultural milieu, and political climate. Furthermore, interpreting their racial experiences through the lens of Whiteness diminishes the radical nature of their efforts. Interpreting them through the lens of Blackness renders their

stories invalid or invisible to the discourse on race. Failing to take into account the complexity of these experiences oversimplifies the ways race is discussed within academia

Tape, *Piper*, and *Mendez* provide examples of the variable treatment of race among Asians, Native Americans, and Latinxs. These stories are not necessarily captured by the Black/White binary and do not represent the static racial positions ascribed to their racial groups. However, failing to acknowledge how these groups are used and constructed against Blackness fails to acknowledge the role of White supremacy in further dividing these racial communities. Similar to a model used to explain gender fluidity, I offer the U.S. Racial Abacus Model (RAM) to simultaneously capture the hierarchal and linear nature of race, as well as its flexibility.

While several paradigms have been offered to describe the position of non-Black racial groups, Chang and Gotunda (2007) suggest that new theoretical directions must be explored. The traditional way to discuss race uses the analogy of a racial continuum or hierarchy (See Figures 5.2 and 5.3).[32] These models are linear in nature and suggest a particular racial order that is fixed. Using CRT, I propose and describe a U.S. Racial Abacus Model (See Figure 5.4). A RAM, I believe, resolves the linear and static challenges of traditional models by providing each racial group its own row, while still reflecting racism and power as well as colorism and perception. Like beads on an abacus, Asians, Native Americans, and Latinxs can slide back and forth along racial lines depending on the historical, social, and political circumstances.

[Figure 5.2-5.4 Approximately Here]

Furthermore, their yellow, red, and brown beads can present in different "shades" within their row, representing colorism and assessments of authenticity (See Figures 5.5-5.8). This racial flexibility, I contend, is what traditional models of race fail to capture. This flexibility is

[32] There are, of course, other models including Eduardo Bonilla-Silva's (2014) racial pyramid and Tuan's (2005) Asian triangulation.

also, I argue, at the root of the tension that exists between communities of color. A greater understanding of how race is not only socially constructed, but also historically and legally constructed in the U.S, can moderate this tension. Analyzing what or who "moves" the bead allows us to analyze responses ranging from complicity to solidarity. Furthermore, this model can also be used to illustrate how arbitrary racial placement can be, particularly as it pertains to the law.

[Figures 5.5-5.8 Approximately Here]

In this model, Asians, Native Americans, and Latinxs do not "control" the movement of the beads. In general, larger structural forces move the beads to particular racial positions over time. Such is the case with school desegregation (See Figure 5.9). This model demonstrates how the courts situated different racial groups depending on skin color, social custom, and government policy. For example, the Black beads demonstrate that no matter how light-skinned the plaintiff may have been, the one-drop rule reigned supreme. Whereas, the Native American (or red) beads, as well as the Latinx (or brown) beads, demonstrate how passing was acceptable within both communities, as was the case with *Crawford* (1913) and the light-skinned cousins of Sylvia Mendez. Lack of overall social control, however, does not eliminate agency. The beads are also moved to be complicit with White supremacy by using racial flexibility to distance themselves from Blackness. Is there a way to use that agency and recognize the privilege that arises from favorable placement on the U.S. racial hierarchy in order for racial groups to align with one another? I contend that the privilege of racial flexibility can be used in a powerful way by aligning with Blackness whenever possible and rejecting honorary whiteness when it is bestowed.

[Figure 5.9 Approximately Here]

The RAM can also demonstrate how even being on the bottom of the hierarchy does not preclude complicity with White supremacy, as is the case with restrictive immigration policies (See Figure 5.10). For example, African Americans voted overwhelmingly with Whites on laws restricting immigrants and language, such as California's Proposition 187 and 227 in 1994 and 1998 respectively (Vaca 2004). The RAM reflects the racial tension between groups without denying the overall power dynamics among groups.

[Figure 5.10 Approximately Here]

Conclusion

In this chapter, I summarized the scholarly development of CRT, LatCrit, AsianCrit, and TribalCrit as well as its relevant literature as it pertains to race. Next, I described and applied the AsianCrit tenets of Asianization, transnational context, and (re)constructive history to *Tape*. For *Piper*, I applied the tenets of TribalCrit that explore the liminal identity of Native Americans, identify the problematic government policies regarding citizenship and race, and discussed the past and present efforts of self-determination and autonomy. Then I applied the LatCrit tenets of Latino/a essentialism to explore the construction of race in Mendez and to identify the prevalent Latino/a stereotypes deployed within the case. The overall goal was to provide historic evidence of the racial flexibility unique to Asian Americans, Native Americans, and Latinx communities along the racial hierarchy over time that is not captured by the Black/White binary paradigm.

In an effort to identify the salience of class and its interaction with race, I discussed how the middle-classness of the families allowed them to engage in this legal battle. Furthermore, I challenged the notion that respectability politics diminishes the activist nature of their cause. Finally, I offered an alternative paradigm through which to examine race that more adequately captures this racial flexibility that Black/White paradigms and racial continuums fail to capture. I

proposed that race in the United States is constructed more like an abacus and that, like beads on an abacus, Asians, Native Americans, and Latinxs can be moved back and forth along the color line depending upon the sociohistorical circumstances. From its inception, CRT has wrestled with how to characterize and position the so-called racial middle. From honorary whiteness to Black exceptionalism, LatCrit, AsianCrit, and TribalCrit scholars have attempted to carve out a place for non-Black racial groups to identify the issues unique to their communities without interpreting their merit through a Black/White lens.

In closing, instead of using "Black Exceptionalism" to describe the well-established field of race scholarship, I would offer the phrase "Black Foundationalism" to recognize that the foundation for research regarding race has been built upon the rich and varied work established by Black scholars. Recognizing the foundation of research regarding non-Black racial groups does not preclude one from observing the inherent differences. Indeed, it allows one to characterize new research as a development of the scholarship rather than challenges to Blackness. This project, for example, began with the question, "Since there is a *Brown v. Board*, wouldn't there be a Mexican American, Asian American and Native American equivalent?" Comparing and discussing the complicated role of race and class in *Tape*, *Piper*, and *Mendez* does not diminish the standing of *Brown*. If anything, it reveals all of the twists and turns inherent in the struggle for equality.

CHAPTER 6: FIGHTING FATHERS AND PRETTY LITTLE PLAINTIFFS

"Whoever controls information, whoever controls meaning, acquires power."
--Laura Esquivel

The narrative is the same. A young girl attempts to enroll in a school nearest her home. She is brutally rebuffed based on skin color and told she must attend another school, one that is further from her home. Her father, in response to this rejection, files a lawsuit on behalf of his daughter and fights for the right of his child to attend the local public, but all White, school. This is the familiar narrative of the famous *Brown v. Board of Education.* As outlined in Chapter 4, we see that it is also the narrative of *Tape v. Hurley, Piper v. Big Pine,* and *Mendez v. Westminster,* all representatives of worlds that are not included in the one described in the classic civil rights narrative. While the scholarship on school desegregation has captured the social, historical, and legal construction of race, it falls short in providing an intersectional analysis that considers the role of gender, class, and even age.

Using theories related to controlling images and the politics of respectability, I argue that within these stories of school desegregation, the roles of gender, class, and for this chapter, age are just as salient as the role of race. In fact, they are inextricably connected. They are more than just Chinese, Paiute, and Mexican American plaintiffs. They are Chinese, Paiute, and Mexican American fathers and daughters who, combined with their middle-class status, generated a sympathetic image that portrayed a sense of worthiness not only within the court of law but also in the court of public opinion (Martinez-Cola 2017). Change any one of these social characteristics and a different story emerges. Had poor, unmarried mothers whose teenage sons were rejected from attending all-White schools brought the cases, I wonder if they would have been as memorialized. Whether intentional or not, the fact that the fathers were entrepreneurs married to women who were "homemakers," who brought suit on behalf of their accomplished,

young daughters at a time when the Chinese were excluded, Native Americans were forcibly assimilated, and Mexican Americans were subject to José Crow policies of California is meaningful. Its meaning emerges from the similar storylines and enduring markers of race, gender, and class inequality that subsists across time, across historical periods of racial animus, and across racial groups.

To explore this meaning, I briefly describe the research related to controlling images. Next, through secondary research, I will identify the criminalized, sexualized, and pathetic controlling images associated with Chinese American women and girls in the late 1800s, Native American women and girls in the early 1920s, and Mexican American women and girls in the 1940s. Finally, through analysis of primary documents--newspaper articles, interviews, and court transcripts, I will demonstrate how, through the politics of respectability, these plaintiffs and their attorneys constructed a narrative that countered the controlling images of their time. While I did not uncover direct evidence that suggests plaintiff selection was legally strategic, their respectability narratives are nonetheless theoretically and empirically relevant to the study of school desegregation.

The Power and Purpose of Controlling Images

In order to situate the controlling images within these cases, a brief review of the scholarship explaining what controlling images are and how they work is necessary. Focusing specifically on Black women, Collins identifies and explains how the controlling images of mammies, matriarchs, jezebels, and welfare queens are used in popular culture to disempower, sexualize, criminalize, and disenfranchise Black women. More insidious than stereotypes, Collins (2009:77) explains, "[c]ontrolling images are designed to make racism, sexism, poverty, and other forms of social injustice appear to be natural, normal, and inevitable parts of everyday

life." I would add that such images also make social injustice appear to be deserved, allowing society to blame the victim for their dire circumstances and immorality. It strips away the sense of worthiness and humanity necessary to confer human rights and basic dignity.

"Within U.S. culture," Collins (2009:77) explains, "racist and sexist ideologies permeate the social structure to such a degree that they become hegemonic, namely, seen as natural, normal and inevitable." The strongest way these ideologies disseminate in society is through popular culture by inundating the American imagination with such images. As bell hooks (1997:2) argues, popular culture is the "primary pedagogical medium for masses of people globally who want to, in some way, understand the politics of difference." Feminist and critical race scholars have identified other gendered controlling images across all forms of media, including but not limited to, advertising (Kilbourne 1999), film (Haskell 1997), comic strips (Unger and Crawford 2004), and other forms of television and media, but they use the phrases "myths" or "stereotypes" to describe them.

There is debate regarding the difference between "controlling images" and stereotypes. While Collins (2009) does not explicitly explain the difference, her use of the phrase considers not only the cultural aspects of representations but also the power such imagery had in shaping policy, justifying oppression, and generating discriminatory practices. The "Welfare Queen," for example, was considered a stereotype based on a Black woman from Chicago that was propagated by Regan during his 1976 campaign (Collins 2009; Levin 2013). "She," Regan described, "used 80 names, 30 addresses, [and] 15 telephone numbers to collect food stamps, Social Security, veteran's benefits for four nonexistent deceased veteran husbands" (Levin 2013:1). What makes the "Welfare Queen" stereotype a controlling image is that such imagery was used to shape policy regarding public assistance. As discussed below, Golash-Boza (2015)

uses the phrases interchangeably. I contend, however, that controlling images and stereotypes are more complementary than interchangeable or divergent. Stereotypes are the historically generated, descriptive terminology that are often dismissed as false representations. Controlling images, however, denotes an understanding that such representations, while false, possess a power to shape/influence the social structure that result in very real consequences.

In *Black Feminist Thought*, Collins (2009:41) invites scholars to find "points of connection that further social justice projects" between historically oppressed groups. Much of the scholarship on controlling images, however, focuses on the challenges specific to Black women. Golash-Boza (2016), one of the few scholars to specifically discuss controlling images, examines film and television to demonstrate that controlling images are not only raced, but also gendered and classed. In her book *Race and Racisms*, Golash-Boza (2015:111) identifies the controlling images that are Black, gendered, and classed as described by Collins, such as the working-class bad bitch, the bad black mother (BBM), the middle-classed mammy, and the educated Black bitch. Taking a step further, she also identifies Latinx, Asian American, and Native American controlling images, such as the Butterfly and dragon lady for Asians, the Squaw and Princess for Native Americans, and the hot-blooded Latinas and Maid for Latinas (Golash-Boza 2015:112). While she generates a more inclusive list of controlling images, there is still room to identify even more by adding age to the intersectional analysis.

Collins and Golash-Boza identify gendered and classed images, both scholars fail to consider the role of age and the possible controlling images related to Black, Latinx, Native American, and Asian girls. The interdisciplinary field of girlhood studies provides useful guidance in this arena. Similar to scholarship on race, generally much of the research on girlhood studies examines childhood within literature (Wright 2016), zines (Moscowitz and Carpenter

2014), film and television (Blue 2017; Hentges 2006), historical media culture internationally (Moruzi and Smith 2014), education (Thomas 2011), and visual culture (Wallace Sanders 2008). Because it is firmly rooted in the Black/White binary, most of the controlling images identified in the literature are confined to Topsy-pickanny-sambo-caricatures that are constructed against the innocence and respectability of White girlhood, as represented by Little Eva in *Uncle Tom's Cabin* or Shirley Temple. It is this construction of racially opposite girlhood that is germane to this study.

Robin Bernstein (2011), in her study on racial innocence, provides the most compelling explanation for the purpose of girlhood controlling images. Using decidedly sociological language such as "racial projects," "performance," and "scripts" Bernstein (2011:3-4) explains:

> Childhood figured pivotally in a set of large-scale U.S. racial projects…performance, both on stage and, especially, in everyday life, was the vehicle by which childhood suffused, gave power to, and crucially shaped racial projects. Childhood in performance enabled divergent political positions each to appear natural, inevitable, and therefore justified.

Innocence, she explains, is constructed through whiteness. Quoting from Stowe's (1852:213) *Uncle Tom's Cabin*, she captures the opposing positions embodied in Topsy and Little Eva (See Figure 6.1).

> There stood the two children, representatives of the two extremes of society. The fair, high-bred child, with her golden head, her deep eyes, her spiritual, noble brow, and prince-like movements; and her black, keen, subtle, cringing, yet acute neighbor. They stood the *representatives of their races*. The Saxon, born of ages of cultivation, command, education, physical and moral eminence; the Afric (sic), born of ages of oppression, submission, ignorance, toil, and vice! (Bernstein 2011:44, emphasis mine)

[Figure 6.1 Approximately Here]

She observes that racial girlhood represents a line which divides the worthy from the unworthy and the innocent from the undeserving. It provides the language necessary to understand how

Mamie, Alice, and Sylvia, as representatives of their race, had to portray a certain innocence that mimics white girlhood notions of beauty, intelligence, and purity. In doing so, I am also adding to the literature by considering age alongside raced, classed, and gendered controlling images.

As Golash-Boza (2016) contends, all people in society are affected by these kinds of images and imagery. She suggests that there are three responses to such images. People can: "1) Internalize them; 2) Resist them; or 3) Ignore them" (Golash-Boza 2015:111). Collins is not quite as generous in her choices. Collins (2009:98) argues "[b]ecause controlling images are hegemonic and taken for granted, they become virtually impossible to escape." Golash-Boza seems to focus on the power of an individual to respond to the images whereas Collins focuses on the fact that the power endemic to such images defines an entire population's inability to overcome them. I believe it accomplishes both.

What we understand, then, is that controlling images are promulgated within the institutional structures influenced by popular culture. Furthermore, they possess both a political and psychological purpose designed to elicit social conclusions and emotional responses regarding entire groups of individuals. In the next section, I will not only verify the controlling images identified by Golash-Boza, namely the Squaw, Hot-Blooded Latina, and the Mexican Spitfire, but I will also add additional controlling images culled from the literature on Asian, Native American, and Latinx women and children.

The Presence and Pervasiveness of Controlling Images

When examining the secondary research on women and children in popular culture, more controlling images emerge, and their historical roots are affirmed. In this section, I identify prevailing controlling images that emerge from secondary research on Asian women and girls, Native American women and girls, and Mexican American women and girls, as well as the

historical period relevant to each case. Table 6.1 summarizes the prominent controlling images and Appendix E summarizes the literature from which they emerge.

[Table 6.1 Approximately Here]

Pagans, Prostitutes, and Poor Creatures

The relevant period for *Tape* is the mid-to-late 1800s as the United States experiences its first group of Chinese immigrants, giving rise to controlling images of Chinese women and girls as Pagans, Prostitutes, and Poor Creatures. The presence of women is small and limited, as there are only seven women for every 4,018 men in San Francisco (Yung 1995). As more and more Chinese immigrate, their labor transforms from a necessity to a threat. As a result, by 1870 an array of laws limiting Chinese rights to immigrate, give testimony, intermarry with Whites, and own land soon follow (Yung 1995; Takaki 1998). Efforts to exclude the Chinese begin with the imposition of numerous taxes thereby limiting their value and pay and eventually culminate in the Chinese Exclusion Act of 1882. This time frame provides the historical backdrop to the harsh anti-Chinese immigration policies and sentiments that precede and envelope the 1885 *Tape* case. Yung (1995), Takaki (1998), and Jorae (2009) provide some of the richest descriptions of the lives of Chinese women and children in the late 1800s in San Francisco.

Probably one of the most powerful images of the Chinese, in general, is that of the Heathen. Decades of anti-Chinese sentiment identify the Chinese as "…immoral and diseased heathen, and unassimilable aliens" (Yung 1997:22). In 1870, for example, Bret Harte, a noted American author and poet, published a poem in the *Overland Monthly* called "The Heathen Chinese." The poem and the phrase become so popular that the *New York Globe* publishes it twice. (Takaki 1998:104). As the image below demonstrates, the Chinese of California are characterized as lazy, drunk, violent, and completely hedonistic (see Figure 6.2).

[Figure 6.2 Approximately Here]

It is at this intersection of time and space that missionaries express their deep commitment to enlightening "heathen" Chinese women. Quoting an 1881 annual report, Jorae (2010:72) demonstrates how missionaries frequently "contrast between light and dark, cleanliness and filth, or heathenism and Christianity" in their work. Visiting a Chinese home, Ms. Cable, a reformer, writes

> Setting aside all feelings of loathsomeness born of the repulsive act of this filth and darkness, I entered upon the task of illuminating a soul of corresponding degradation, speaking to her of God's love, pure air and sunshine, contrasting these with her present surroundings. Each succeeding visit found a growing appreciation of my words, 'till finally she became as thoroughly nauseated with her surroundings as myself. Today we find her in a cheerful room at 822 DuPont Street, which she has thoroughly cleaned, whitewashed and papered. (Jorae 2010:72)

Such diary entries reveal that heathen Chinese women, while filthy, savage and diseased, are nonetheless salvageable and, if trained properly, are also fully capable of becoming part of respectable American society. For the purposes of this paper, instead of using the phrase heathen, I will use the more popular synonym pagan to describe this controlling image.

The next most pervasive controlling image is that of the Chinese prostitute. According to Takaki (1998:122), locals call prostitutes "*lougeui* ('always hold her legs up') and *baak haak chai* ('hundred men's wife')." In the 1870s, most of the prostitutes are either stolen by a brothel owner or sold by their parents "for as little as $50 and then resold in America for as much as $1,000" (Yung 1995:27). Without legal or diplomatic representation, they enter into service contracts with clauses like "[i]f Ah Ho shall be sick for any time for more than ten days, she shall make up by an extra month of service for every ten days' sickness" (Yung 1995:17). Due to menstrual cycles, illnesses, or even unwanted pregnancies, such clauses extend contracts

indefinitely (Pascoe 1990; Yung 1995; Yung 1997; Takaki 1998; Jorae 2009). According to Yung (1995:32), Chinese prostitutes are characterized "…in books, magazines and newspapers as…. 'reared to a life of shame from infancy'…[and] are also guilty of 'disseminating vile diseases capable of destroying 'the very morals, the manhood and health of our [read white] people.'"

The final controlling image most prevalent in the narrative about Chinese women and girls is that of the pathetically poor creature. They are called *mui tsai*, which in Cantonese means "little sister" (Yung 1995:37). The *mui tsai* are largely responsible for serving the home in any capacity an owner sees fit, including taking care of children, cleaning the home, and being "on call" at any time of the day or night (Yung 1995). Under a Confucian ideology, these young girls are to be submissive and obedient to their "father at home…husband in marriage…and eldest son when widowed" (Yung 1995:18-19). Furthermore, because these girls could not carry on the family lineage, they are at risk for being "sold, abandoned, or drowned during desperate times" (Yung 1995:18). This largely explains why *mui tsai* are mostly little girls. Census data confirms that in 1880, the time closest to the trial, many Chinese children in San Francisco were either at home or working as servants, cooks, or gardeners (see Table 6.2).

[Table 6.2 Approximately Here]

In these times, the benevolent actions of maternal missionaries' rally to "rescue" these poor creatures. According to historian Peggy Pascoe (1990:53), the most powerful image in missionary writings, literature, and reports was that of the "Chinese slave girl." Missionary women, answering the call to rescue young girls sold into domestic service, capitalized on this image. Determined to interrupt the "…hateful practice of buying and selling their women like so much merchandise," missionaries often made these girls the target of their rescue operations

(Pascoe 1990:121). As outlined in Chapter 4, Mary Tape herself was a beneficiary of these types of organizations.

The controlling images of the Pagan, the Prostitute, and the Poor Creature represent two distinct and extreme representations of Chinese women and girls. Chinese women are sexualized and criminalized while Chinese girls are infantilized. Mamie Tape, as the lead plaintiff of the case, was neither. Instead, she occupies a respectable position where she is too young to be a sexual object or a hardened criminal and too wealthy to be a poor creature.

Savages, Squaws, and Sacrificial Maidens

The relevant period for the *Piper* case is from 1887 to 1924, when the controlling images of Native American women included savages, squaws, and sacrificial maidens. This particular period is marked by two significant and related events relevant to this case: the Dawes Act of 1887 and the creation, implementation, and subsequent failure of "Indian Boarding Schools." All of these efforts were ultimately created to assimilate, dissolve, or destroy tribal nations and transform Native Americans into "American" citizens (Adams 1995; Lomawaima and McCarty 2006). There were two provisions in Section 6 of the Dawes Act specifically mentioned in *Piper*. The first was the requirement to maintain voluntarily a residence "separate and apart from any tribe of Indians." The second was to "adopt the habits of civilized life." Upon fulfilling these requirements, the federal government would grant U.S. citizenship to the participants.

Because the Dawes Act also provided that any "surplus" from the sale of Native American land would be put towards education, there was also an unprecedented growth of government sponsored Indian boarding schools. These schools were designed to ensure the civilization of Native Americans by removing children from their families and placing them in boarding schools around the country, effectively assimilating the future of tribal nations. This

experiment, however, ultimately failed to generate sustained assimilation since the children, upon returning to their homes returned to their traditions (Adams 1993). The closing of the Indian schools resulted in an influx of Native American children back into the public schools.

In considering this change in U.S./Tribal educational policy, one must also consider the cultural climate in which such policies were generated and transformed. From children's toys to films, a growth of scholarship has emerged on the cultural representations of Native Americans due in large part to the interdisciplinary field of Native American studies. These kinds of representations provide insight into the "relationship between media content and cultural schemas" (Baumann and de Laat 2012:536). Furthermore, "exploring the cultural continuities and changes that are an intricate part of critical periods in history furthers our understanding of the interconnections between symbolic and social relations" (Pescosolido et al. 1997:444 citing Gans, 1970; Peterson 1976; Griswold 1981). A review of the literature on cultural production of Native American imagery allows us to consider the social relations that emerge in the struggle for educational equality.

Much of scholarship on stereotypical representations of Native Americans assumes the figure in question is male (Shively, 1992; Smith, 2000; Turner Strong, 2013; Howe et al., 2013). Nevertheless, there are a number of studies that focus specifically on women and children. In *Killing the Indian Maiden*, women's studies scholar M. Elise Marubbio (2006) analyzes over thirty-four films in which Native American women appear. While she names a variety of "types," including the squaw, the hag, the celluloid princess, and the sexualized maiden, she devotes her analysis of thirteen films between 1908 and 1931 to "the helper" and "the lover" (Marubbio 2006). Both figures, Marubbio (2006:29) describes, are:

> Innocent, attached to an exotic culture, and linked to ritual and the American landscape; she yearns for the white hero or western European culture; and she sacrifices herself to preserve Whiteness from racial contamination.

These figures symbolize both "the possible merging of the two [cultures] and the differences between them" (Marubbio 2006:26). The main difference between the two, she explains, is that the helper figure is usually killed while the lover figure takes her own life.

Helper films such as *The Broken Doll* (1910), *Red Wing's Gratitude* (1909), and *Iola's Promise* (1912) set up a savage/civilized dichotomy in which a white settler or settlers help an Indian maiden who is abused by her tribal family. In return for their kindness, the helper warns the kind, benevolent settlers of an impending attack at the hands of her tribe. Her reward for this act of heroism is death. In the ensuing melee, she is tragically killed, usually by her own kind. "The sympathy created for the Indian girl…reinforces how very dangerous Indians are to each other and, by extension, to whites" (Marubbio 2006:36).

Lover films, on the other hand, seem to follow the plotline established by playwright Edwin Milton Royle in *The Squaw Man,* a play that opened in New York in 1905, became a national touring show in 1906, and returned to Broadway in 1907 and 1908 (Marubbio 2006). Cecil B. DeMille adapted the plotline in three feature-length films. Marubbio (2006:44-45) summarizes the plotline of one of the film *The Kentuckian: Story of Squaw's Devotion and Sacrifice (1908)* as follows:

> The text tells us 'Ward Fatherly is the son of a wealthy and indulgent Kentuckian' who finds himself in trouble for killing a man in a duel. He escapes to the 'Western frontier, whither he has gone incog[sp?], working as a miner.' Here he meets a young Indian girl, who rescues him when 'a couple of low-down Redskins' knife him. 'She drags the wounded Kentuckian to her tipi and nurses him back to health. *The inevitable happens*—they are married. A lapse of several years occurs and we find the little family—the Kentuckian, his Squaw, and a little son—living in blissful peace.' A friend arrives to give Ward the news that he has inherited his father's estate and must return immediately to the East. 'He feels, on the one hand, that he cannot take his Squaw back and introduce her into society of

> his set, and on the other, he knows it would break her heart to leave her. No, no. He must give up all and stay where he is…the Squaw realizes the situation. She must, for her love for him, make the sacrifice, which she does by sending a bullet through her brain, thus leaving the way clear for him—a woman's devotion for the man she loves'. (citing Niver & Bergsten 1971, p. 365, *emphasis mine*).

While the reasons differ, in all three films the Indian girl kills herself to set her lover free and give her mixed-race child the chance to live in "civilized" society. These films identify the emotional, physical, and cultural price to be paid when social boundaries are crossed. Only the death of the native resolves the problem and restores racial order.

It is important to remember that these films were made during a time of great policy change regarding Indians schools. At the time, "federal Indian policy maintained a distinct paternalistic attitude towards Native Americans, who were lagging in the evolutionary march from savagery to a more civilized state" (Marubbio 2006:45). Particularly relevant to my research, these kinds of films highlighted the miserable failure of the assimilationist policy of the federal government. Furthermore, these films also celebrated "a mythic paradigm of the frontier West" (Marubbio 2006:6). Within this myth "the Celluloid Princess stands metonymically for Native American acquiescence to the sovereignty of the United States…and her death [represents] an unavoidable consequence of western expansion and conquest" (Marubbio 2006:7).

Like Pescosolido et al (1997), scholars have also found a wealth of research in children's picture books. Mary Gloyne Byler (1999), a member of the Eastern Band of Cherokee Indians of North Carolina, analyzed 600 children's books that were specifically about Native Americans. While I have yet to find her original research, her introductory remarks are often reprinted in scholarly research about Native representations in children's books (Haskins 1973; Gloyne Byler

1973; Moore and Maccann 1988; Pagni. Stewart 2002). As such, her critique gives me an idea of the kinds of types reflected in children's books. She concludes:

> There are too many children's books about American Indians. There are too many books featuring painted, whooping, befeathered Indians closing in on too many forts, maliciously attacking "peaceful" settlers or simply leering menacingly from the background; too many books in which white benevolence is the only thing that saves the day for the incompetent, childlike Indian…Non-Indian writers have created an image of the American Indian that is almost sheer fantasy…sustaining the illusion that the original inhabitants deserved to lose their land because they were so barbaric and uncivilized (Byler 1999:47, 51).

Finally, the diaries, photography, and newspaper accounts of the children of Carlisle Indian School provides yet another form of cultural object to identify controlling images. As previously explained, beginning in the late 1800s and into the early 1920s, a renowned Indian boarding school, the Carlisle Indian Industrial School in Pennsylvania, spurred the growth of industrial schools around the country. These schools were dedicated to developing an Indian women's education program that corresponded with the overall mission of Indian Schools. Many of the students were young Indian girls who were taken from their homes and families on the reservation, placed with white families, housed in boarding dorms, and taught to become good homemakers in order to help their future husbands fully assimilate (Trennert 1982). In her book, *Tender Violence*, visual arts scholar Laura Wexler (2000) visually illustrates this transformation, through before and after photographs that capture the transition from "savage to civility" (Figures 6.1 & 6.2) (Wexler 2000).

Her reading of the photographs outlines how the school successfully transformed its "Native girls" into imitations of white, middle-class women. Wexler (2000:111) describes how "the spontaneous and revealing postures of the first image are long gone…overridden by the imperative to dress up the Indian children in White children's outfits, place their hands upon

White children's games, set their limbs at White children's customary angles…[replicates] of the ideal image of Victorian girlhood."

In their book on a girls' basketball team from the Fort Shaw Indian School, Peavy and Smith (2008) provide numerous accounts of the public's fascination with young Indian girls. The descriptions are mythical, almost reverent, and definitely pleased with the "progress" these formerly savage girls demonstrate under the guidance of White caretakers. A journalist for the local newspaper, in observing the players schoolwork, noted "[it was] a great surprise to those…who have been more used to thinking [of] the Indian and the scalping knife than that of the Indian and the slate and pencil" (Peavy and Smith 2008:45). While these young girls were in a very different part of the country than Alice Piper, it is telling that they possessed the heavy responsibility of changing the minds of the public. One display of academic excellence, it seems, was enough to transform these young girls from savages to schoolgirls.

Not only did they demonstrate that it was possible to be "civilized," they were also allowed to be celebrated and even desirable. In a headline that touted a game as "White Girls against Reds," another local reporter wrote, "what…may be said [about] a team of Indian girls?" (Peavy and Smith 2008:155). He went on to describe them as "strong and lithe," "comely," and predicted "a great number of white boys will cheer for the dark-complexioned maidens" who were a combination of "half-breeds" and "full-blooded" Indians (Peavy and Smith 2008:155). It seems their complexion and blood status were important and perhaps provides an explanation for why White boys would cheer. Interracial interactions between White men and Indian women were commonplace and even normal (Pascoe 2009; Marubbio 2006). Young White boys could cheer on Indian maidens, but would they be encouraged to cheer for mulattos, mestizos, or Mongolians?

More recently, in a series edited by Fear-Segal and Rose (2016), readers were allowed intimate, sometimes painful first-hand accounts of life with the Carlisle Indian School. Momaday (2016:45) in describing the Carlisle school writes:

> It is a kind of mythic memory in the American mind. Perhaps it is an extension of the Wild West, which is so gaudy and predictable in the dime novels and stock Hollywood films. The crucial difference, of course, is that the Indians who take the field are not fabled warriors like…Sitting Bull. They are children.

In order to save this "savage race," the philosophy was to begin the assimilation progress early and, through education, teach children respectability as represented by whiteness. In one account after another, Fear-Segal and Rose (2016) capture the singular failure this experiment represented when it came to U.S.-Indigenous policy. This was the fiasco that preceded *Piper*. Attorneys for the Native American Legal Rights Fund (NALR) described the impact of these boarding schools in the following manner:

> Cut off from their families and culture, the children were punished for speaking their Native languages, banned from conducting traditional or cultural practices, shorn of traditional clothing and identity of their Native cultures, taught that their cultures and traditions were evil and sinful, and that they should be ashamed of being Native American.…They returned to their communities…as deeply scarred humans lacking the skills, community, parenting, extended family language and cultural practices of those raised in their cultural context. (Fear-Segal and Rose 2016:11)

The closure of Indian boarding and industrial schools left behind children who represented proverbial sacrificial lambs, stripped of their innocence and culture for the so-called greater good.

Like the helper and lover images in Hollywood films, these young girls represent the sacrifice White society required to be deemed acceptable, worthy, and pure. However, instead of sacrificing themselves through tragic death or suicide, these young girls were required to sacrifice their families, homes, and customs in order to "kill" their tribal identity and affiliations

for the promise of equal opportunity. These photographs, newspaper accounts, and indigenous reclamations provide examples of the Native American struggle for legitimacy in the eyes of White America. These young women represent a fraction of the thousands of Indian children who tried, but ultimately "failed," to adopt the norms, values, beliefs, and definitions of "civilized" society.[33] The relevance to this study is that these experiences provide insight into the low expectations of Indian children and educational achievement but high expectations to assimilate and deny their indigenous heritage and identities.

Mamacitas, Malinches, and Mentally Inferior

The relevant period for *Mendez* is from the late 1920s to 1948. Massive immigration from Mexico and major changes in U.S.-Mexico relations involving the Mexican repatriation efforts of 1929-1930, the 1939 Good Neighbor Policy, and the Bracero program of 1942 characterize this period. High levels of participation by Mexican Americans in WWII also mark this era. Furthermore, as discussed in Chapter 4, two significant events dominate Los Angeles newspapers just before the *Mendez* trial: the 1942 criminal trial of *People v. Zamora*, also known as the "Sleepy Lagoon Murder Case," and the infamous 1943 Zoot Suit riots.

As for Mexican American women and girls in the 1920s-40s, I rely on the scholarship of women studies, American studies, and Chicano studies scholars and historians to identify and describe the *Mamacita,* the *Malinche,* and mentally inferior controlling images. Similar to Chinese women and girls, the scholarship shows how Mexican women and girls were also racially othered with sexualized, criminalized, and infantilized controlling images.

The first and probably most well-known controlling image is that of the "spicy senorita" or the *Mamacita*. Clara Rodriguez (2011) explains Hollywood's hunger for the spicy senorita in

[33] For more readings on boarding school experiences see also Lomawaima and McCarty (2006), Fear-Segal (2007), and Child (2012).

her review of Latinos in film. According to Rodriguez (2011), with the advent of sound in films, one particular Mexican actress, Lupe Vélez, dominated the spotlight.

Because she was bilingual, she was one of the few Mexican actresses able to crossover into American films in the 1940s as the industry moved from silent films to "talkies." A comedic actress, she played a character that speaks in highly exaggerated, broken English and was prone to fits, temper tantrums, and frequent outbursts in Spanish. According to Rodriguez (2011:73), the press described her as "[j]ust a Mexican wild kitten." A simple review of the titles of her films demonstrates the popularity of her *mamacita* persona. Her films were *The Girl from Mexico* (1939), *Mexican Spitfire* (1940), *Mexican Spitfire Out West* (1940), *Mexican Spitfire's Baby* (1941), *Playmates* (1941), *Mexican Spitfire at Sea* (1942), *Mexican Spitfire Sees a Ghost* (1942), *Mexican Spitfire's Elephant* (1942), and *Mexican Spitfire's Blessed Event* (1943). Her character, Carmelita, was a "hot-blooded, south-of-the-border Latina" and a "feisty, in-your-face- hot tamale, defiant of traditional conventions and seemingly independent of male and industry controls" (Rodriguez 2011:80).

The next controlling image is that of the *Pachuca* or the *Malinche*. In Mexican folklore, *La Malinche* was an indigenous woman who helped the Spanish conquer Mexico by serving as translator to Spanish conquistador Hernán Cortés and offered her body as the vessel for creating a new *mestizo* (mixed) race. The term *malinche* refers to troublemakers, race traitors, and temptresses. Catherine Ramirez (2009) identifies the 1940s zoot suit wearing *pachuca* of Los Angeles as the modern day *malinches*.

In 1940s Los Angeles, the public was very familiar with the zoot suit because of the 1942 Sleepy Lagoon murder case and the 1943 Zoot Suit riots. The zoot suit, with its long jacket, broad shoulders, and loose-fitting pants, required an excessive use of fabric during a time when

Americans were called to fulfill their patriotic duty through wartime rationing (Sanchez 1993; Ramirez 2009). The local media described the Sleepy Lagoon case as a gang fight between two groups of *pachucos* that resulted in the death of one man, the arrest of 600 Mexican American men and women, and the conviction of 17 young men. (Strum 2010; Ramirez 2009). Shortly after their convictions, 200 white servicemen raided East Los Angeles for ten days, attacking any zoot suiter they found by stripping him of their clothing, cutting their hair, and viciously beating them (Sanchez 1993; Ramirez 2009). What soon followed was a Los Angeles City Council resolution banning zoot suits making it clear that the zoot suit is indicative of criminality. In a time when the country was rationing heavily for the war, the zoot suit was considered excessive, indulgent, and unpatriotic.

Pachucas, female zoot suiters, were also subject to public scrutiny. They were not only criminalized but also highly sexualized by the White and Mexican press. The general look of the *pachuca* involved tight-fitted clothing, ratted bouffant hair, and heavy makeup with dark lipstick. Ramirez (2009:38) explains "…they appeared to betray middle-class definitions of feminine beauty and decorum." They were also undesirable with the Mexican community. In an article from the local Spanish-language newspaper, *La Opinión*, a writer reported that,

> *Las malinches* wore '*falda negra y muy corta'* (very short black skirts), that they painted their faces—in particular their lips and eyes—*'en una manera escandalosa'* (in a scandalous manner) and that they punctuated their racy ensembles with a bushy head of matted hair soaked in grease. (Ramirez 2009:70-71)

What Ramirez describes is that the controlling image of the *Malinche* violated the politics of respectability among Whites and Mexicans.

The final and most damaging controlling image to the pursuit of educational desegregation is that of the mentally inferior Mexican child. This image dominates the discourse

on education in the 1940s. For example, Perea (2004), a critical race theorist and legal scholar, explains how teachers use genetic determinism to conclude that Mexican American children are less intelligent than White children are. He writes that "Mexican American students are considered to have low intelligence and inferior academic potential, as measured by "intelligence tests" of questionable validity" (Perea 2004:1442). Through the *pobrecito* syndrome, Perea (2004) goes on to explain how the mentally inferior stereotype still continues to manifest even today. "Current research demonstrates that Latino students continue to be tracked toward vocational and technical courses…[and] are systematically overrepresented in classes for the educable mentally retarded" (Perea 2004:1443).

The mental inferiority of Mexican children also arose from a perceived lack of cleanliness (that is the dirty Mexican stereotype). Historian George Sanchez (1993:102) describes the reasoning behind the dirty Mexican stereotype as written in a 1929 manual called *Americanization through Homemaking*:

> Sanitary, hygienic, and dietetic measures are not easily learned by the Mexican. His [sic] philosophy of life flows along the lines of least resistance and it requires far less exertion to remain dirty than to clean up.

As I reported in Chapter 5, Perea (2004:1442) also describes how, even years after *Mendez*, "[m]any Anglo teachers and parents advocated for mandatory baths for 'dirty Mexican kids because it will teach them how it feels to be clean.' Another teacher refused to let her Mexican American students hug her without first inspecting their hair for lice."

What this research demonstrates is a pattern of criminal and sexual controlling images for women and pathetic, inferior, and victimized controlling images for girls. In exploring "patterns of representation and modes of portrayal across gender, age, [and racial] groups," I follow research similar to that of Mears (2010) and Baumann and de Laat (2012:515). This effort helps

race and civil rights scholars consider the "cultural continuities and changes that are an intricate part of critical periods in history [that] furthers our understanding of the interconnections between symbolic and social relations." In the next section, I demonstrate where and how these images were used in and around the cases. More importantly, I show how, through a middle-class presentation, the plaintiffs and families were able to sustain a respectable position between the problematic and the pathetic racialized, gendered, and "low-class" imagery.

Parents, Pianos, and the Politics of Respectability

We learn from *Brown* that gender and class mattered. For years, the explanation for selecting Oliver Brown as the lead plaintiff was that the decision was alphabetical. If that were the case, then *Briggs, Belton,* or *Bolling,* and not *Brown* would have been the lead case. *Briggs,* however, involved a young boy, Harry Briggs, Jr., and his working-class parents who were forced to move to Florida as a result of racial intimidation. *Belton* was comprised of two cases brought forth by two mothers, Ethel Louise Belton and Sarah Bulah, on behalf of their daughters. *Bolling* was also brought by a mother, Sarah Bolling, on behalf of her junior high school aged son Spotswood Bolling, Jr. In an interview, Linda Brown recalled that her father was selected because he was the only man among the plaintiffs, as well as a minister, thus serving the politics of respectability (Irons 2002).[34] These gender and class dynamics in *Brown* guide my reading of the role of gender and class in *Tape*, *Piper*, and *Mendez*.

Between 1885 and 1947, a pattern of respectability politics similar to *Brown* emerges from *Tape* to *Mendez*. The fathers were cast as men who fight for the rights of their little girl. Mothers were conspicuously absent. It is not coincidental that the lead plaintiff in each case were

[34] There is also the supposition that Brown was selected as the lead plaintiff because of Kansas' middle American position that was neither North nor South. As a border state, Kansas does not represent the vitriol present in Northern and Southern extremes.

little girls. In every case, younger boys were available to serve as lead plaintiffs. There was Frank for Mamie, and Gonzalo for Sylvia. Alice was the only girl out of the original seven plaintiffs in her case. If, theoretically, youth could evoke more sympathy, then why were these boys overlooked? I suggest that the thought of little Brown, Red, and Yellow boys sitting next to little White girls stoked the very public fear of racial mixing. Young girls are less threatening, perhaps innocent, and definitely not as dangerous. These daughters, by contrast, are Americanized replicas of racial innocents who can be rescued from immorality and inferiority. *Tape* and *Mendez*, through newspapers, interviews, and transcripts, provide the most information on the families. Though there were a few articles about *Piper*, it is discussed in a very general way and, unfortunately, lacks the description necessary to ascertain how Pike, Annie, and Alice Piper were perceived by the public (Author Unknown, 1921, 1922, 1923a, and 1923b). Still, the *Piper* opinion and some photographs of Alice Piper later in her life are very telling and provides some material about the family generally and Alice specifically.

Fighting Fathers

The fathers in *Tape* and *Mendez* were consistently featured in both historical and contemporary accounts of the case. For *Tape*, *The Daily Alta California* provided two articles that followed the daddy/daughter narrative:

> The first application was made by Joseph Tape, a Chinese resident of California for eighteen years, who has a daughter aged 10. (*Daily Alta*, October 22, 1884)

> The case of Joseph Tape, a Chinaman who has sued the Board to compel them to admit his daughter… (*Daily Alta California*, December 24, 1884).

Mendez followed a similar narrative as well. *The Orange Daily News* reported "[t]he suit was filed in Los Angeles federal court…on behalf of student of Mexican or Latin descent in Santa

Ana…by Gonzalo Mendez, father of a student at Westminster" (*Orange Daily News*, April 14, 1947). The Spanish newspaper, *La Prensa* (1945:6), named all five fathers writing,

> *La demanda fué presentada a nombre de cinco padres de familia…Esos cinco señores son Gonzalo Mendez, William Guzmán, Frank Palomino, Thomas Estrada y Lorenzo Ramirez, suyos hijos han sido objecto de discriminación.*
>
> The demand was presented on behalf of five family men. Those five men are Gonzalo Mendez, William Guzmán, Frank Palomino, Thomas Estrada y Lorenzo Ramirez, whose children were objects of discrimination.

Even African American newspapers on the other side of the country, such as the *Norfolk Journal Guide* (March 2, 1946:1) and *Baltimore Afro-American* reported on the case. In the *Baltimore Afro-American*, the author wrote the petition was "filed by five Mexican fathers charging racial discrimination against their children" (March 2, 1946:17). While they incorrectly reported that the case was based in racial discrimination, they also only mentioned the fathers and never talked about the mothers.[35]

During the trial, four of the five fathers testified. For some unknown reason Thomas Estrada did not. Frank Palomino was the first to testify and explained to the court that he paid tuition to send his children to private school rather than the Mexican school (Transcript, July 5, 1946:44). He also testified: "[b]eing in this country…I want to live and I want to raise them as a good American, if they give us a chance" (Transcript, July 5, 1945:48). Unfortunately, later in his testimony, he admitted that he "chose" to send his son to the Mexican school to be with two-three cousins who were already there. He testified that he did not ask to go back to Garden Grove again after being rejected. The judge asked him "[h]ow did you happen to choose the Fremont School (Mexican School) to send your boy to?" Mr. Palomino admitted that he sent him there to be with his cousins. "In other words," Judge McCormick asked, "it was your choice to send the

[35] They were also referred to as "the five fathers" a second time in the *Orange Daily News* (February 20, 1946:1).

boy to that school" (Transcript, July 5, 1945:52). By admitting that he initially chose to send his children to the Mexican school took away the argument that he and his family were forced to do so.

Mr. Guzmán testified on the second day of the trial but, as outlined in Chapter 4, was terribly nervous. "I just can't remember everything now, and maybe I am too excited or—it has been quite a while" (Transcript, July 6, 1945:174). While it is not clear whether Marcus sufficiently prepped his clients, testifying in court can be a stressful and overwhelming experience. At one point, David Marcus urged him to relax to avoid confusion. It did not help.

Lorenzo Ramirez, father of seven children, whose spirited testimony regarding race was outlined in Chapter 4, offered even more insight into the racial dynamics of the case. Consistent with my proposed U.S. Racial Abacus Model, Japanese, Filipino, and African Americans were admitted to the White school while Mexican Americans were relegated to Mexican schools. In this particular instance, African and Asian Americans had "better standing" than Mexican American children. Nonetheless, rather than distance themselves from African Americans, Mr. Ramirez put forth themes of equality and justice, marching alongside African Americans. Where Mr. Hammarsten had tried racially to divide Blacks and Mexicans, Mr. Ramirez pushed back against any suggestion related to the Oppression Olympics.

Mr. Mendez, as the lead plaintiff, spent the most time on the stand but much of it was because the attorney for the school repeatedly objected and argued whether or not his testimony was even necessary. Ultimately, his attorney prevailed, and Mr. Mendez was allowed to testify over the next two days. He was definitely much more comfortable on the stand than the other fathers were. He identified himself as the leader of the group of parents and relayed the conversation the parents had at his ranch with Mr. Harris, the Superintendent of Westminster:

> Mrs. Pena related her story, saying she had two sons in the army and saying she thought it [school admissions] wasn't a very democratic way, on the basis that her sons were out there fighting for all of us, and the rest of her [family] was out here being segregated as a class. (Transcripts, July 9, 1945:437)

He relayed another conversation from another mother whose sons were fighting in the "European theater" and that she, too, did not think it fair to segregate the children. Normally such testimony regarding what others have said would be considered hearsay and the school officials did try to object saying, "I wouldn't object to one or two statements, but when he takes in the whole country" (July 9, 1945:441). The judge, however, stated "[t]here is no jury to be prejudiced by any such statements…he has mentioned four Mexican folk who went there together with himself…Go ahead with the conversation you had with Mr. Harris" (July 9, 1945:441). It is clear from the transcripts that the attorney for the school district was very frustrated.

He had reason to be, as Mr. Mendez was not only invoking motherhood and military service in WWII, he offered the most detailed descriptions of his children's experience in the Mexican school. After being told that the school board failed to obtain the necessary votes for a new health room and bigger cafeteria in the White school, Mr. Mendez testified:

> Yes, Mr. Harris, but that wouldn't benefit us at all, as to your having a nice cafeteria…and a health room, while we over there in our Hoover School have nothing but a small building, and without any trees, or benches for my children to come and have their lunch at noon. To the contrary, at noon, when they go out to eat their lunch, they have to sit down on the ground or on the stairs, and the teachers do not even ask our children to go in the room and eat their lunches…They do not care about our children. (July 9, 1945:439-440)

Explaining that he did most of the talking for the group, he also went on to relay Mr. Harris' "protests" against Mexican children:

> One of the main protest that he put was that all the Mexican people lived in nothing but shacks, and unsanitary, and that was not sufficient hygienic as to the go to the Main school. "How could we send our children, when they were so

> dirty?" That we should elevate our stand of living up to the standard of living of their race, meaning the Anglo-Saxon race." (July 9, 1945:443)

Mr. Mendez then argued that Japanese families were allowed to attend the White school. Even though his house was just like their homes, he was denied entry and they were accepted. Mr. Harris dismissed his observation. Mr. Mendez went on to testify:

> The main point was we wanted to see if we could come to some agreement where we could unite the two schools together. And we said that we have created…prejudice between the Anglo-Saxons and the Mexicans, because some of them would not want their children to be seated near *a Mexican boy*, on account that some were a little bit dirty. (July 9, 1945:444, emphasis mine)

The following day, the judge actually began to question Mr. Mendez about his farm business. Mr. Mendez testified that he oversaw 40 acres of his own asparagus farm, was a foreman for another farmer's 22 acres of asparagus, 100 acres of chili peppers, and a nursery of avocados and oranges. In all, he managed over 150 acres, supervised over 100 employees, negotiated market prices, and "kept the books." The judge continued to question Mr. Mendez and ask him about his family. He asked if Mrs. Mendez spoke English, which Mr. Mendez affirmed but explained that she had an accent. The judge replied:

> Well, of course, that would be natural. That would not only apply to the Mexican people. Any person of Latin or Slavic or Teutonic origin, or perhaps of other origin, would naturally have some. It might be an accent or a brogue. It might even be in our own country where someone would have an accent because he comes from the south or from New England. (Transcript, July 10, 1945:465-467)

The judge made it clear that an accent did not bother him so long as Mrs. Mendez could express herself in English. At this point in the trial, the school officials were arguing that the Mexican families did not speak English, were poor, unkempt, and inferior overall. By the time Mr. Mendez was dismissed from the stand, I imagine the defendants were not quite as confident as they were in the beginning of the trial.

In a short amount of time, Mr. Mendez established his leadership, invoked themes of democracy and justice, demonstrated that he managed a large business, and most importantly contradicted every stereotype put forth by the school system's attorney. Mrs. Mendez was next to testify but Mr. Mendez had done such a great job describing the parent's experience that the defense stipulated that his wife would give substantially similar testimony. It may have been done in an effort to get her off the stand as quickly as possible. Marcus explained that he simply wanted the judge to hear her speak in English, to which the judge replied, "[s]he seems to have a pretty good knowledge of the vernacular beyond commonplace vernacular, and as it should be spoken" (Trial Transcripts July 10, 1945:469).

Over the five days of trial, six fathers, seven mothers, two teen girls who were former students, and one teen boy who was a former student testified on behalf of the Mexican families. All were married. All lived close to the White school. All of them spoke perfect English. Some were parents of valiant and respectable WWII soldiers. Though more women than men testified, the only names ever published were the five fathers.

Finally, even when *Mendez* is reported in contemporary news accounts, the father is the one most mentioned. "If somebody else had written U.S. history books over the past half-century, Sylvia Mendez would be as familiar to us today as Oliver Brown, the plaintiff in *Brown v. Board of Education*" (*San Jose Mercury*, April 20, 2004). Later in the article, the author writes "[i]nfuriated, her father, Gonzalo Mendez, looked up a firebrand lawyer, David Marcus." In another contemporary account, Gonzalo is described as "[a]n immigrant who was born in Chihuahua, with a strong and willful temperament. Never one to give up, he got together four Mexican families and in 1945 they sued the city of Los Angeles" (Arrendondo 2011:1). Over

sixty years earlier, the daddy/daughter narrative began with Joseph Tape and was still utilized with Gonzalo Mendez.

As for *Piper*, the newspaper accounts were unfortunately limited and generally discussed "Indian schools" without referring specifically to the Pipers. My informants explained that, generally speaking, more information is known about Pike, the father, than Annie. In the community photograph in Figure 4.4, Pike and Alice Piper are in the photograph but Annie is nowhere to be found. In fact, none of the known relatives of the Pipers could produce a photograph of her. Recent articles on the *Piper* case in *Indian Country Today*, *The Inyo Register*, and *Sierra Wave* case only mention Alice. However, in the two academic treatments of the case, Blalock-Moore (2012) only mentions the parent's Native and English names and does not go in depth, and Wollenberg (1974), the first academic to write about the case, only mentions the father, Pike Piper.

The reason for this may be as simple as the fact that only men were allowed to file lawsuits. However, California passed the Married Women Property Act in 1850, which allowed married women to purchase property, file lawsuits, and manage family assets as the legal representative (Chused 1985). However, much of the Married Women Property Act still deferred to the husband, and woman's rights were mostly triggered upon the husband's death. Still, the strength of the daddy/daughter narrative is indicative of a patriarchal society that paint men as strong and women as supportive.

If court cases are ultimately performances, as asserted by CRT scholars, then the fathers were on the stage while mothers were behind the curtain. The daughters, however, were the stars. As demonstrated in the next section, their gender, class, and age were constructed as complete opposites of the controlling images of their time.

Mamie Tape: "As well as…an American girl."

As previously described, the Tapes were a thoroughly Americanized Chinese family. They possessed "American" names, lived outside of Chinatown, and spoke English fluently. Nonetheless, a review of twelve newspaper articles from the *Daily Alta California* regarding the *Tape* case makes it is clear that even the Americanized Tapes could not escape the pagan controlling image. A reporter described Mamie and her brother Frank as "a pair of little heathens" (*Daily Alta* 1885l:8). The State Superintendent of Public Instruction accused the Tapes of pretending to be "converted to Christianity in order to learn English" (*Daily Alta* 1885c:8). At a meeting of the Board of Education, James H. Culver declared that:

> …those brave men who signed that immortal declaration…. Never thought their descendants would permit heathen temples with idolatrous worship to be reared beside our churches dedicated to the living God, or that the barbarous dim of gongs or invocation of gods of wood should rise and mingle with the sweet church bell. (Author Unknown 1885b:8)

Such pagan imagery painted the Tapes as non-Christian, non-English speaking, and ultimately unworthy.

Having their Christianity questioned publicly, Mary Tape retaliated by publicly challenging the school board's Christianity. In a letter to the Board of Education, she wrote:

> Dear sirs…Didn't God make us all!!!...I suppose you all goes to churches on Sunday! Do you call that a Christian act to compel my little children to go so far to a school that is made in purpose for them [sic]? (1885o:1)

The issue, however, was that she questioned their Christianity but did not confirm her own. Instead, her letter could be publicly perceived as the ranting of an angry, uneducated mother. Furthermore, the letter came too late. She wrote it after the school board decided to create a separate Chinese school. Throughout the ordeal, reporters obsessively followed and described the family without mention of their strong ties to their local Presbyterian Church or

connection to the Society (Ngai 2010). Consequently, this aspect of the Tape family's life was never captured or reported in the local newspaper.

The Tape family also did not escape the vitriol normally reserved for the criminal elements like prostitutes or poor creatures. According to Director Culver, Mamie Tape was part of a "long, sinuous, blue-bloused, wooden-shod, stealthy-treading Mongolian monster" (Author Unknown 1885e:1). The school board argued for separate schools by claiming "…the mingling of Mongolian and Caucasian races in the public schools will be fraught with disastrous consequences to our civilization and to our institutions" (*Daily Alta* 1885a:1). The State Superintendent explained that the admission of Chinese children would "drive many of the Caucasian children out of the schools" (*Daily Alta* 1885a:1). In a speech to the school board, he asked "[s]hall we neglect our own children for the Chinese who are thrusting themselves on us" (*Daily Alta* 1885a:1). Finally, School Superintendent Moulder proclaimed, "[h]e was not ashamed to avow his belief in the existence of a natural feeling of dislike to the people of the Chinese race" (*Daily Alta* 1885d:1). The school officials make it clear that Mamie Tape is not one of their own children. Instead, she was a "monster" and a disastrous threat to their civilization and institutions and would always be subject to a natural feeling of dislike.

The Tape family could not be further from this characterization. In fact, on Mamie's first day in the new Chinese school, a reporter observes that she was "…gorgeously attired in American clothes, including pink stockings and a light-colored leghorn hat, provided with an ostrich plume of immense proportions" (*Daily Alta* 1885n:1). Their status and "difference" may have been useful to the case if this description had been reported before the school board's decision or when the school first refused Mamie admission. A fascinating family, the Tapes were

definitely worthy of reporting. Unfortunately, an article that could have helped them came seven years too late.

In 1892, Leland Gamble, a reporter for the *San Francisco Morning Call* visited the Tape family home. What prompted the visit is a rumor that there was a "Chinese girl" who was a photographer in her spare time. In the late 1800s, it was unheard of for women to be in photography, much less a Chinese woman (Wexler 2000). Upon meeting Joseph Tape, Gamble wrote "[o]n being asked if the story was true that his wife understood photography, he answered with a laugh and said in as good English as I ever heard in my life: 'Yes, sir, and a good many other things too'" (Gamble 1892:12). Joseph Tape invited him into the home, which the reporter described as:

> …a cozy little parlor furnished with the best of taste…an upright piano, on the top of which rested a French horn and a zither…a combination library and specimen case [with] a goodly array of books… [and] some beautiful specimens of California birds [which] had all been shot by the master of the house. (Gamble 1892:18)

He described Mrs. Tape in the following manner:

> Mrs. Tape…is dressed in a gown of soft clinging silk or some Indian stuff which set off her figure to good effect. Her hair was arranged in the latest American fashion and was as black and glossy as ever graced the head of Andalusian beauty. Her face was comely, one might even say pretty, because it had so much intelligence and was set off by a fine mouth behind which were a set of pearly teeth. (Gamble 1892:12)

The accolades did not stop there. Upon learning, "Mamie is quite proficient in piano," he writes:

> I expressed a desire to hear the young lady play and imagine my surprise when without any of the backwardness and diffidence of American girls of the same age she took her seat at the piano and began to finger the keys… to play the "Mocking-bird" and brought out its notes as well as I have ever heard them brought out by an American girl. (Gamble 1892:12)

In this article, Mamie Tape stood in stark contrast to the earlier descriptions of Chinese prostitutes. She is regal compared to them. Mamie, because she dressed like an American girl and played piano better than an American girl, was far from a poor creature. The article was almost a tribute to the Tape family. The reporter made it clear to his San Francisco readers that this Chinese family was different. As discussed in the previous chapter, he revealed:

> I had always been accustomed to view the Chinese in an entirely different light; but when I saw around me the father, the mother and their accomplished children I *changed my opinion* in regard to the race in general. (Gamble 1892:18, emphasis mine)

What if this article had appeared at the same time the Tape family filed suit? Could they be presented in such a way to contradict controlling images? How many other minds would have been changed? Would the public have been outraged at how the school board treated this assimilated family? Would Mamie have been worthy of an American education? Their faith, Mamie's impressive piano skills, and the Tapes Americanized identity did not reach the public until it was too late. Though she won the legal battle, she lost the race war, and was forced to attend the Chinese school furthest from her home. The Tape family, their attorney, and the Chinese consulate could not capture the American imagination and position themselves as sympathetic symbols in the pursuit of the American Dream.

Alice Piper: "A person of good habits and character."

Piper, unfortunately, provides more circumstantial than direct evidence to ascertain how she may have been perceived. But for the opinion, a few photographs, and vague recollections from Big Pine informants, we know very little about Alice. We know that, at least for legal arguments, she and her family "severed" ties with their Paiute community. Recall the court's observation in Chapter 4 that the Piper's never "…owed or acknowledged allegiance or fealty of any kind to any tribe or "nation" of Indians" (*Piper* 1924:665). We also learned however that

these contentions were more ruse than truth. Also, in the opinion, both the attorneys for the Pipers and the school board admitted that:

> She is now and at all times…been a person of good habits and character, in good physical health, and that she is in need of and desirous of obtaining an education such as is obtainable in the public school of this state and that her parents are desirous that she should obtain such an education. (*Piper* 1924:666)

These "good habits and character" requirements were directly constructed against the same laws that denied children of "filthy or vicious habits…" from being allowed entry into the school. As discussed in Chapter 5 and above, the assessments of filthy and vicious habits were mostly assigned to children of color who sought entry into White schools (Wollenburg 1974; McClain 1994; Takaki 1998). As such, I suggest that this fact was included to counter any notions that she and her family were still "uncivilized" or "savage." As was the case with Native populations, according to the federal government and its education policy, these children were more likely to assimilate, unlike their Black, Asian, and non-passing Mexicans counterparts.

In the integrated photo with her classmates (Figure 3.5), she was also the lightest skinned Paiute child in the school photograph. But for her dark hair and rounded face, she could have passed for White. Sporting a plain white dress and a hairstyle that seems more contemporary than her blunt browed female classmates did, she seemed the very picture of assimilation. She was a representation of what many of the creators of the Indian boarding schools attempted to create and capture in photographs.

We also know that education was critical to the Piper family. After completing her course of study in Big Pine, Pike Piper's OIA papers reveal that she "lived in Los Angeles for school." Which school she attended and for how long is uncertain, but we do know that she returned to serve as head mistress at Carson City/Stewart Indian School in Nevada.

Finally, the anonymously donated collage of photographs provides scenes from a life that could never be attributed to a "squaw princess." She was captured at a traditional wedding at the age of 25 (Figure 6.5).

[Figure 6.5 Approximately Here]

She was photographed with an array of unidentified female friends and family members at various points in her life from childhood to adulthood (Figure 6.6).

[Figure 6.6 Approximately Here]

Her attire was simple and conservative, definitely not stereotypically traditional Native attire generated in the popular culture at that time. If only the anonymous donor were known, I would have a better idea of the circumstances behind each photograph. Instead, I am only left to piece together a life that, according to my informants, was well lived.

She obtained her education at Big Pine, continued it in Los Angeles, shared it with others in Carson City as a head mistress, and then returned home where she lived a quiet life tending to her beloved garden. These photographs and stories are, at a minimum, evidence that in those captured moments she was happy, loved, and connected to friends and family. Taken together, the opinion, the photographs of her life, and family recollections demonstrate that she was most certainly not a savage, a traditionally dressed squaw nor a sacrificial maiden as constructed by popular culture for the American imagination. Her ability to be mobile, pursue education, and live independently both on and off the reservation situates her, like Mamie, in this middling position where she could not be considered uncivilized, sexual, or poor.

Sylvia Mendez: "Just as good as he is!"

The Mendez family, like the Tapes, were also in a solidly middle-class position as "temporary owners" of the Munemitsus asparagus farm and owners of a café. A review of the

court transcripts and interviews suggests that the Mendez family and Marcus strategically positioned the families before and during the trial. First, Sylvia could never be mistaken for a spicy *mamacita* or a traitorous, unpatriotic *pachuca*. In examining a photograph of her take during the trial, she was a symbol of angelic purity in her white dress and not fitting the *mamacita* or *malinche* stereotype (See Figure 6.7). Furthermore, her status as a little girl makes her too young to be sexualized in this manner. In her photograph, Sylvia projects an image that is more saint than spitfire. But from being called "dirt farmers" to "mentally handicapped," the Mendez family were still very much subject to controlling images, particularly that of mentally inferior.

[Figure 6.7 Approximately Here]

There is no better evidence of the strength of the mentally inferior controlling image than what was recorded in the *Mendez* transcripts. Because the mentally inferior controlling image was applied to both boys and girls, the image itself is not inherently gendered. The response to the controlling image, however, is very much gendered. In response to why the Mexican-American children were separated from White children, Harold Hammerston, a superintendent, said: "[w]e keep them separate and apart because during the first two or three years the teachers that have those children…are better able to get those children to progress more rapidly, when they are with their own group" (Transcripts July 6, 1945:301). When the judge asked him, what would happen if the Mexican children and the White children went to the same school, he replied "[o]ur tests show that…they are still in lower groups and they are in a lower percentage in grade placement, and mental ability, and everything" (Transcripts July 6, 1945:311).

Mr. Holden, another superintendent, who admitted that 60 per cent of the children in the Mexican school spoke English fluently, was asked why those students were not "afforded the

same opportunities or the same privileges" as White students. He replied "[i]t is the degree of sufficiency…which is still not up to the children of Anglo-Saxon descent" (Transcripts July 9, 1945:382). In Holden's opinion, children who spoke Spanish in the home were forever damaged: "I think this retardation of children…who speak the Spanish language in their homes," Holden testified, "…well I think that the retardation continues. I would say that there is a degree to which it handicaps the child" (Transcripts July 9, 1945:384).

Because of their perceived mental inferiority, school administrators also accuse Mexican children of being unfamiliar with cleanliness and hygiene. As recounted in Chapter 4, Superintendent James Kent testified to their lack of cleanliness and propensity to contract lice, impetigo, and tuberculosis. Though he kept no formal records, the Mexican children of his district were considered diseased and dirty health risks. Segregation in his mind was the only solution. According to district officials, mentally inferior Mexican children were "retarded" in their learning, "handicapped" by their language, and lacked personal hygiene.

Their biggest obstacle was to overcome the pervasive image of the mentally inferior Mexican child who was unworthy of and would not benefit from White schools. As a result, the Mendez family and Marcus made sure that the students could never be mistaken for mentally inferior. Similar to the *Lopez* case, Marcus utilized a "we are no different from you" strategy. The strategy was not a proclamation of whiteness, but rather a demand for recognition as American citizens worthy of the same rights, treatment, and opportunities afforded White citizens. In their first letter to the school board dated September 5, 1944, the families wrote:

> It would appear that there is racial discrimination and we do not believe that there is any necessity for it and would respectfully request that you make an investigation into this matter and bring about an adjustment…Some of our children are soldiers in the war, all are American born and it does not appear fair nor just that our

> children should be segregated as a class. (Transcript, July 9, 1945:434-435)

This was especially important since many Mexican American men were serving valiantly during World War II. Recall that Marcus selected Ignacio Lopez, an American citizen, University of California graduate, World War II veteran, and translator for the California's Division of War Information as the lead plaintiff, confirming the importance of military service. In a 1975 interview, Felícitas Mendez affirmed the importance of this strategy when she recalled:

> …the young boys…when they went and fought [in the war], and they came back with that feeling, that if they were good enough to fight for their country they were good enough to do everything else here. (McCormick and Ayala 2007:25-26)

From the battlefields to the classroom, this message of being "good enough" resonates strongly with Sylvia to this day. In a recording created for StoryCorp (Reiman 2010), Sylvia recalls how once she began attending the integrated Westminster school, a White boy came up to her and said "[w]hat are you doing here? You don't belong in this school. They shouldn't have Mexicans here." She returned home crying and told her mother that she no longer wanted to attend Westminster. According to Sylvia (Reiman 2010), her mother replied, "[d]on't you realize that this is what we fought for? Of course, you are going to stay in that school and prove that you are just as good as he is."

In her photograph, she was a picture of cleanliness and respectability in her white dress and well-groomed hair. In a StoryCorp recording, she recalled, "I remember being in court every day. They [her parents] would dress us up really nice and we'd be there sitting very quietly" (Reiman 2010). During the trial she was dressed nicely and sitting quietly, the exact opposite of a dirty, mentally inferior Mexican. The image of Felícitas Mendez dressing her child for the trial reminds me how Mary Tape also dressed her child for her first day at the Chinese school.

In yet another similarity with Mamie Tape, Sylvia Mendez was photographed sitting in front of a piano. This signaled her intelligence to master a refined instrument. Sitting there, with her fingers over the keys, in her pressed dress and pigtails, her little racialized, nine-year-old body was an example that she was anything but mentally inferior. Where and how this photograph was used during the case, however, is unclear. Nonetheless, it was a staged, well-constructed photograph with a clear message of worthiness. In a recent article regarding the timeless influence of a piano, the author writes:

> The piano has been the center of many American homes for generations, not only a proclamation of love of music but also often a statement about striving for success. 'In a very traditional sense, the piano did stand for something. It was a symbol of mobility, moving up,' especially among immigrant families, said Joe Lamond, president of the International Music Products Association (Macvean 2009:1).

Upon inspection, I learned that the piano was made by Ivers and Pond and had a likely value of $600 to $1,000 [36] (Author Unknown 2016). This further supports their middle-class standing symbolically and financially. Though Mamie and Sylvia were not immigrants to the country, the piano also asserts their family's American success.

Sylvia Mendez was not a *mamacita*, a *malinche*, nor was she mentally inferior. Like Mamie Tape, she was simply the eldest daughter in a middle-class family who were trying to, as Felícitas Mendez testified, "do the right thing and just asking for the right thing, to put our childrens [sic] together with the rest of the childrens [sic]" (Transcript July 10, 1945:468-469). Unlike Mamie Tape, Sylvia Mendez won her legal battle at both the district court and federal circuit court level. This suggests that while historically oppressed groups were shut down by systems of inequality that generated oppressive, caricatured controlling images, the one small area of agency they possessed was the selection and strategic framing of their litigants. I argue

[36] This information was discovered by, Jae Hoon Chae, a former Emory University student.

that these young girls held a position that, because of their age, were too young to be sexualized and too accomplished to occupy significantly diminished positions.

Conclusion

These young plaintiffs and their families occupied a respectable position within the racialized, gendered, and classed controlling images of their time. They were neither Black nor White, poor nor rich, disastrous nor desirable. While they would never "achieve Whiteness" and were distanced, intentionally or not, from Blackness, they possessed a flexibility that represented a balance between extremes. Ultimately, what I suggest in this chapter is that to consider the role of race in the school desegregation movement by itself provides an incomplete picture of the school desegregation civil rights narrative.

These cases, while focused on issues of race, citizenship, and descent, were also shaped by gender, class, and age. The controlling images, as representations of immorality, unworthiness, and poverty, were contradicted by the families through the politics of respectability. The families were racialized, middle-class, imitations of traditional nuclear families. Joseph, Pike, and Gonzalo were fathers who stood up on behalf of their daughters and used their resources to maintain a long legal battle for educational equality. Mamie, Alice, and Sylvia were the pretty little plaintiffs whose middle-class lives set them apart from the controlling images of their time. By blending controlling images and the politics of respectability, we can theorize whether activists, organizers, and lawyers can exercise what little agency they possess to offer an alternative to the images "controlling" the American, hegemonic, and racist imagination.

CHAPTER 7: SCHOLARLY CONTRIBUTIONS AND FUTURE DIRECTIONS

> *"The fruits of the African American battle for civil rights are positions of power held by African Americans in the public and private sectors. And now we find ourselves in the position of defending that power against other people pushing for inclusion. Though we pride ourselves on our leadership role in civil rights, paradoxically, we guard the success jealously. "We're the ones who marched in the streets and got our heads busted. Where were they? But now they want to get in on the benefits."*
>
> --Brenda Payton, Columnist for *The Oakland Tribune*

> *"We need to stop playing Privilege or Oppression Olympics because we'll never get anywhere until we find more effective ways of talking through difference. We should be able to say, "This is my truth," and have that truth stand without a hundred clamoring voices shouting, giving the impression that multiple truths cannot coexist."*
>
> --Roxane Gay, Writer of *Bad Feminist*

In the epigraphs above, the authors capture the tension that underlies social justice projects that propose inclusivity. Such tension can arise when examining the iconic role of *Brown* and asking what histories may be hidden in its shadow. In attempting to construct a more inclusive narrative of school desegregation, this project is not meant to diminish the importance of this groundbreaking Supreme Court case. It is also not a pronouncement of, "We matter too!" or "You're not the only ones!" as was suggested by a colleague when I described my research to her. Most importantly, it is not a project that ranks the experiences of different racial groups and awards the gold, silver, and bronze medal for Oppression accordingly. It is, as Roxane Gay suggests, an exercise in multiple truths that reveal the complicated yet connected narratives of Chinese Americans, Native Americans, and Mexican Americans families who initiated legal challenges against separate and unequal education.

By combining CRT and its intellectual offspring with theories related to controlling images and the politics of respectability, the research goals of this project were two-fold. First, to explain how these groups engaged in the legal battle for racial equality in education. Second, to analyze how race, class, and gender were constructed similarly and separately in each case and across time. In doing so, this research adds the legal and historical contributions of three families in an effort to enhance, not diminish, the journey to *Brown* and contributes to civil rights scholarship by expanding the analysis of school desegregation beyond questions of race.

Fulfilling these research goals required five chapters dedicated to blending three theories, describing 101 school desegregation cases, reviewing the social and legal histories of three families pieced together from numerous archives, and providing an analysis that considered not only the role of race but also class, gender, and age. After a brief introductory chapter, the substantive portion of this research project began with Chapter 2 where I described how school desegregation has historically been studied separately and unequally across time and across racial groups. I reviewed the scant literature on Asian American, Native American, and Latinx school desegregation generally and the scholarly treatment of *Tape*, *Piper*, and *Mendez* specifically. In doing so, I identified the scholarly gap within the literature generated by the absence of Asian, Indigenous, and Latinx plaintiffs, as well as the absence of the consideration of the role of gender and class. Next, I described how CRT, AsianCrit, TribalCrit, and LatCrit would enhance a discussion on race and proposed using Patricia Hill Collins' Theory of Controlling Images and Evelyn Higginbotham's the Politics of Respectability to add the construction gender and class to the racial discourse. Finally, I explained how a comparative historical case study methodology that relies on the CRT traditions of counter narratives and

legal storytelling provided the best approach to examine the similarities and differences in and between the cases.

Before delving into the specific foci of this research, I situated the *Tape, Piper,* and *Mendez* cases within the full legal landscape of reported cases that preceded the famed *Brown*. In Chapter 3, I identified, described, and organized 101 cases that represented the proverbial bricks which line the road to *Brown*. I argued that much of the literature regarding segregated schooling focused on a few cases, in specific time periods, representing particular regions or states. Few, if any, attempted to construct a legal genealogy of segregation case law that began in the mid-1800s and identified a national representative sample that included the contributions of Chinese Americans, Native Americans, and Mexican Americans. In doing so, I explained that an analysis of school desegregation did not have to be limited to the 50s, rooted in the South, or defined by a Black/White racial paradigm.

In Chapter 3, I also provided descriptive statistics on all 101 pre-*Brown* cases as well as a national map showing the origin of each case. That data revealed that segregated schooling arose almost as soon as the common school was created setting a precedent for what would eventually become *Plessy*. The maps also indicate where and when segregated schooling was legally challenged throughout the country. Most importantly, this chapter included specific case histories of four cases filed by Chinese Americans in the West and South, five cases filed by Native Americans in the West and South, and two cases filed by Mexican Americans in the West and Southwest. As a result, this research contributes to the literature by demonstrating that the road to *Brown* was multiracial, nonlinear, lengthy, and all connected by the mortar of inequality.

With an inclusive and more comprehensive legal history established, I used Chapter 4 to introduce the various parties involved in *Tape, Piper*, and *Mendez* and the historic context in

which the cases were filed. By analyzing primary and secondary resources, I provided a detailed, chronological account of the social history of the families, school officials, and their respective racial communities from 1885 to 1947. I also examined newspaper accounts, letters, and trial transcripts to outline the legal history of the cases discriminatory legal practices, prohibitive school policies, and explicitly racist treatment that stirred the families to seek legal redress.

More than just a recitation of fact, I introduced the fathers, mothers, children, and school officials that made up the cast of characters in these omitted, forgotten, and almost historical legal narratives. Despite being identified by historians as an example of a long civil rights movement, research on school desegregation still tends to focus on one particular case, racial group, or time period. I contribute to the literature by illustrating the "long" in the long civil rights movement by researching three separate cases, representing disparate racial groups that span several distinctive time periods. In doing so, I demonstrate how racial inequality grew and transformed over time under the guise of separate but equal. More than just a legal recounting of the facts of a case, I provided the detailed social, historical, and legal background from Mary Tape's time in the orphanage to Sylvia Mendez's recounting of attending her newly integrated school. In doing so, I provided the information necessary to understand how race, gender, and class were constructed similarly, yet separately, within and between the cases.

This intersectional analysis began in Chapter 5 with investigating the legal, historical, and social construction of race and class across all three cases. Overall, I discussed how race was constructed in very different ways, between Asian Americans, Native Americans, and Mexican Americans, that challenged the deeply rooted Black/White binary paradigm of civil rights scholarship. I also identified the similar role that the families' middle-class status played in

allowing them to engage in a long, arduous legal battle for educational equality. I accomplished these goals by expanding a traditional CRT analysis to include the specific issues addressed by LatCrit, AsianCrit, and TribalCrit, including, but not limited to immigration, language, citizenship, and tribal sovereignty. Identifying these issues demonstrated how the experiences of Asians, Native Americans, and Latinx communities are disparate from one another and African Americans, yet still rooted in the intersectional, revisionist, and interrogative foundation of CRT. Specifically, I described how whiteness has been used as a racial wedge or protective cloak for Latinxs; how Asians are characterized as the yellow peril, forever foreigners, or model minorities; and how Native Americans occupy a complicated, liminal space between a racial and political identity in the United States. Most importantly, I described how Asians, Native Americans, and Latinxs all occupy a vague, flexible position within the U.S. racial hierarchy that simultaneously benefits and punishes them individually and collectively for failing to be completely defined by either Blackness or Whiteness.

In Chapter 5, I also applied specific tenets of crits to their respective racial group. I used the tenets of Asianization, transnational contexts, and (re)constructive history to identify how the Tapes were simultaneously cast as both a yellow peril and model minorities, connected in reality and fictitiously connected to the economies of China, and largely left out of the civil rights narrative of school desegregation efforts in the U.S. I used the tenets of liminality, assimilationist policies, and autonomy to explain how the Pipers possessed dual/conflicting identities defined by race and politics, professed assimilation to circumvent the law, and inspired a community to define its contributions to history by memorializing the case with a life-sized statue. Finally, I applied the tenets of Latinx essentialism and stereotypes to reveal the chaotic and confusing racial identities assigned to the Mendez family that included Puerto Rican, Mexican, French, and

White as well as the vicious, othering stereotypes of Mexicans as dirty, non-English speaking, and poor.

Finally, in Chapter 5, I proposed a U.S. Racial Abacus Model to better accommodate the racial flexibility of Asians, Native Americans, and Latinxs than the traditional models based on hierarchies and continuums. In proposing an alternative theory, I identify the ineffectiveness of the Black/White binary paradigm within race scholarship to capture the experiences of non-Black communities in meaningful ways that reflect their complexity. Instead of defining Asians, Native Americans, and Latinxs as middling identities defined by their proximity to Blackness and Whiteness, I argue that scholars should embrace the multiple, variant, intricate, and unique racial identities of these communities.

In Chapter 6, I added an analysis of the role that gender, class, and age played within *Tape*, *Piper*, and *Mendez* by identifying and analyzing controlling images prevalent within each particular historical period. In doing so, I argued that the plaintiffs represented more than the racial experiences and treatment of their respective communities. Specifically, I analyzed legal opinions, trial transcripts, and secondary research to identify controlling images of Chinese women and girls in the late 1800s, Native American women and girls in the early 1900s, and Mexican American women and girls in the mid-1900s. A pattern of sexualized, criminalized, and infantilized images emerged within all three populations including, but not limited to, the Pagan, the Prostitute, and the Poor Creatures during *Tape*; the Squaw, the Savage, and the Sacrificial Maiden during *Piper;* and the *Mamacita*, the *Malinche*, and mentally inferior during *Mendez*. I contended that Mamie, Alice, and Sylvia represented "pretty little plaintiffs" that were too young to be declared criminals or sexual objects and too resourced to be considered pathetic, inferior, or poor. I also suggested their presentation of middle-class respectability as well as their youth

made them ideal candidates because they provided a racial innocence that mimicked the purity and American ideal of little White girls. In discussing the role of fighting fathers and pretty little plaintiffs, I supplement the current literature on school desegregation by demonstrating that the path to educational equality was not only raced, but also gendered and classed in meaningful and contrasting ways. These families were not simply Chinese Americans, Native Americans, and Mexican Americans. They were also accomplished, resourced men that maintained unquestionably respectable, middle-class lifestyles marked by land ownership, entrepreneurial spirits, financial generosity, and sophisticated hobbies. They were also young little girls who were clearly not defined by the controlling images of their time and were, therefore, deserving of the quality education afforded to White children. Ultimately, the fathers in these cases represented men who responded to and challenged injustice on behalf of their pure, innocent, and intelligent daughters.

Overall Scholarly Contributions and Future Projects

In describing the legal journey of *Tape*, *Piper*, and *Mendez* as well as the ways in which race, class, and gender were constructed across the cases, I envision adding to the scholarship on race, class, and gender in two meaningful ways. First, by generating a more inclusive and intersectional narrative of school desegregation efforts in the United States. Second, by providing a template for how to research and connect the other social justice efforts and racial projects represented in marginalized groups. As an example, a future project could be a comparative, historical study of the role of women in the Black Panther Party, United Farm Workers Union, the Red Guard, and the American Indian Movement. By conducting a content analysis of the writings, interviews, and speeches of leaders such as Angela Davis, Delores Huerta, Yuri Kochiyama, and Yvonne Swan, I can try to capture the differences and similarities in their

experiences as social justice activists. Each of these organizations and women have been researched separately, but a richer, more complex narrative of race, gender, and class could be captured if they were studied collectively and comparatively.

Before such a study could begin, however, this comparative, historical case study requires more archival research, interviews, and dialogue. As discussed in Chapter 4, a visit to the Carson City Stewart Indian School may reveal more information on Alice Piper. There also remains an opportunity to interview Sylvia Mendez regarding her childhood and educational experiences. Finally, there are recently discovered transcripts and affidavits related to the *Tape* case that are housed in the California court archives.

In addition to completing research on the plaintiffs and their families, there is also an opportunity to develop research around controlling images, as well as determine the viability of the U.S. Racial Abacus Model. First, I can determine if the controlling images identified in this study exist in popular culture materials. As an example, I plan to code a popular 1920s Western pulp magazine called *Western Story Magazine* to identify the gendered imagery and determine whether or not the Savage, the Squaw, and the Sacrificial Maiden controlling images are contained therein. Second, I can identify other race-based social movements to determine if the racial flexibility represented in the U.S. Racial Abacus Model is applicable.

Finally, there is an opportunity to develop a digital component of this research. In an effort to tell the multiple truths of all 101 reported cases before *Brown*, I aim to apply for research funds to develop a digital archive that provides an interactive map. This map would allow users to click on a particular case within a particular state and be provided pertinent background information as well as links to archival materials of the case. For example, a person

could click on Massachusetts and then *Roberts v. Boston* (1850) to see the Court's opinion, photographs, newspaper reports, and links to other archival materials.

Potential as Course Materials

In addition to producing and encouraging more intersectional, comparative, and sociohistorical research, I envision this research being useful for sociology courses as well as a variety of subject areas due to its interdisciplinary nature. It could be used in whole or in part for courses in law related to Civil Rights History or Critical Race Theory. Chapter 4 could be useful for history courses regarding civil rights movements or legal history as cases that are part of the long civil rights movement. Finally, it may also fit into any of the interdisciplinary studies including, but not limited to, Native American Studies, Chicano Studies, Asian American Studies, and Women's Studies. In the past few years, there has been efforts at several institutions to consolidate these area studies into one area regarding the study of race and ethnicity.

As an example, Clark University situated in Massachusetts recently created a Center for Gender, Race, and Area Studies (CGRAS) that offers concentrations in Africana Studies, Holocaust and Genocide Studies, Latin American and Latino Studies, and Peace Studies. While some may fear this is a way for institutions to save money by defunding area studies or "restructuring" certain area studies out of existence, Lalu (2016) suggests that these combinations provide unique opportunities for collaboration and coalition building among disciplines that have become siloed and disconnected. In either case, this research would feed a growing need for race scholarship that is intersectional and inclusive of experiences beyond the Black/White binary paradigm.

Conclusion

When I first proposed this research project, I was advised by several trusted, knowledgeable scholars to select one case for study and apply an intersectional analysis to it. As one colleague explained to me, "You realize that this represents three dissertations in one?" This project, however, was not simply an exercise in the intellectual for me. It was, at its core, a social justice project dedicated to establishing the "critical connections" Patricia Hill Collins alluded to in *Black Feminist Thought*.

A singular focus on one case would only slightly disrupt what Ronald Takaki (1993:4) calls, "The Master Narrative of American History" marked by historical inaccuracies, the implied whiteness of an American identity, and the othering of those deemed "different, inferior, and unassimilable." American history, I was taught, is ultimately about *who* gets to tell which *story*. Therefore, in order to revise the Master Narrative, it has been and continues to be redefined one-story-at-a-time by adding the various racial classifications, gender disparities, and class inequalities experienced by historically marginalized populations in the U.S. The Master Narrative has been challenged, for example, by Danielle McGuire's research on Rosa Park's role in investigating rape cases, Leslie Bow's account Asian Americans in the South, Laura Gómez' sociohistorical construction of a "Mexican race" in New Mexico, and Linda Peavy and Ursula Smith's rich description of a Native American, all-girl basketball team in Montana.

Singular stories, while valuable, miss an opportunity to confront the Master Narrative using a multi-pronged, interdisciplinary approach that connects and compares the raced, gendered, and classed stories offered by Chinese Americans, Native Americans, Mexican Americans, *and* African Americans in the United States. American history, therefore, is not defined by one "Master Narrative" but is instead comprised of multiple, parallel, and sometimes

interconnected narratives. What "The Bricks before *Brown*" demonstrates then, is that there is no one master narrative of school desegregation. It is a narrative that describes a path to justice that was not designed for individual travel. It is a path whose bricks were constructed by the collective efforts and etched with the multiple names and stories of overlooked, forgotten, or disconnected individuals, families, and organizations who can and must proclaim that *they, too, are America*.

FIGURES

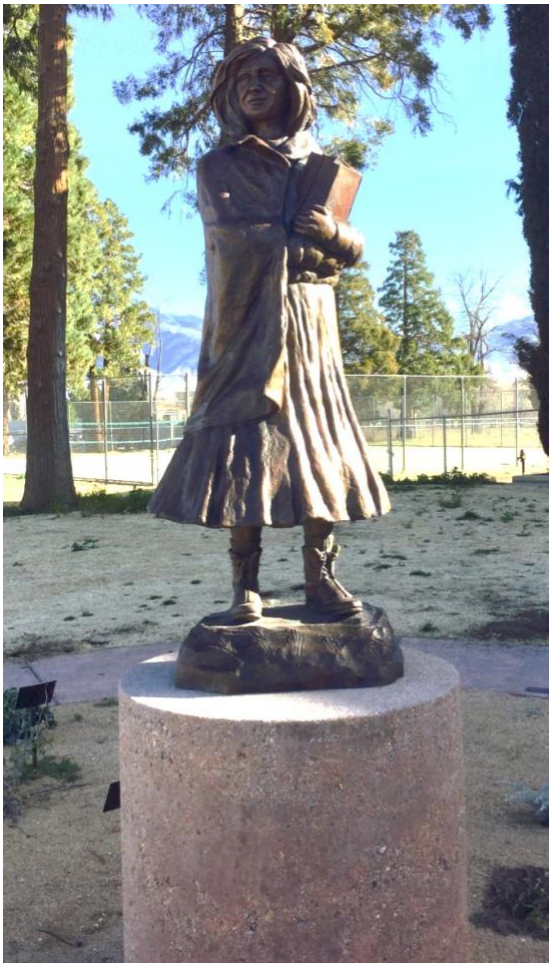


Figure 2.1: Alice Piper Memorial, Big Pine, CA

Author's personal photograph

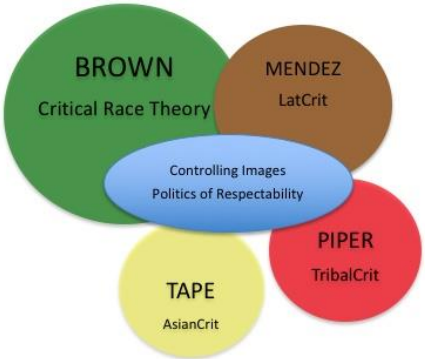


Figure 2.2: Theoretical Frameworks

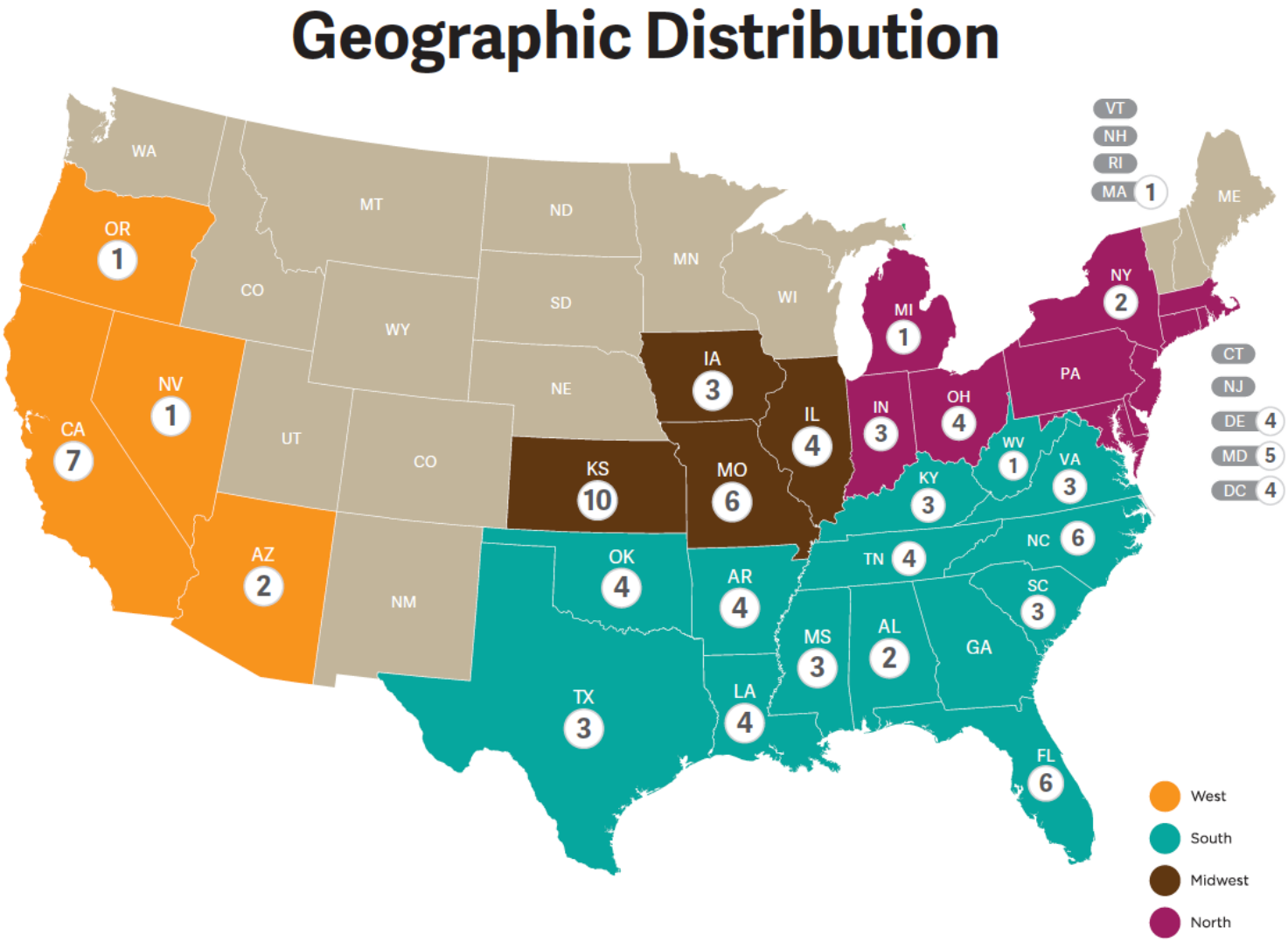


Figure 3.1: Geographic Distribution of School Desegregation Cases

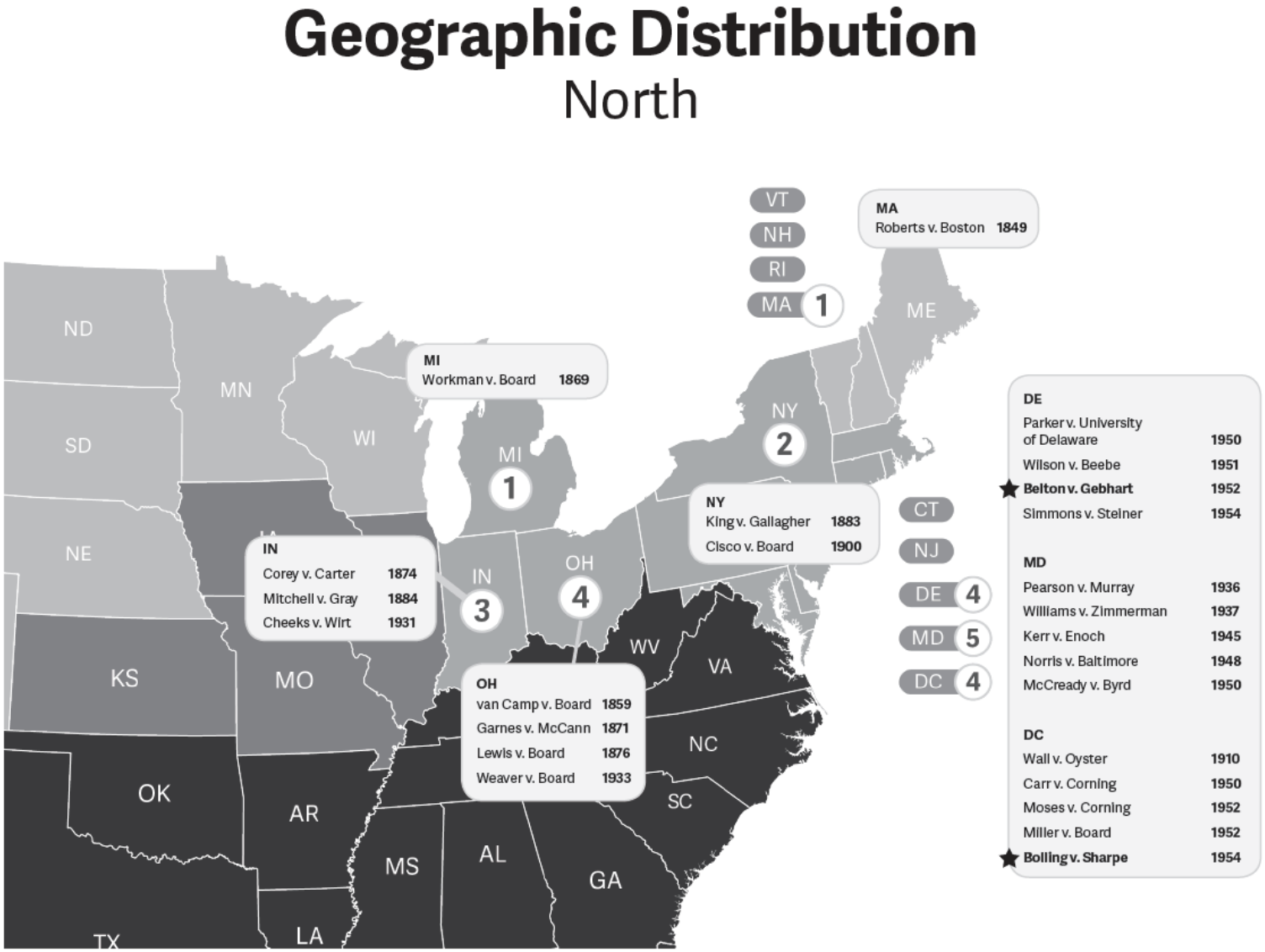


Figure 4 (3.2): Northern School Desegregation Cases

Geographic Distribution

South

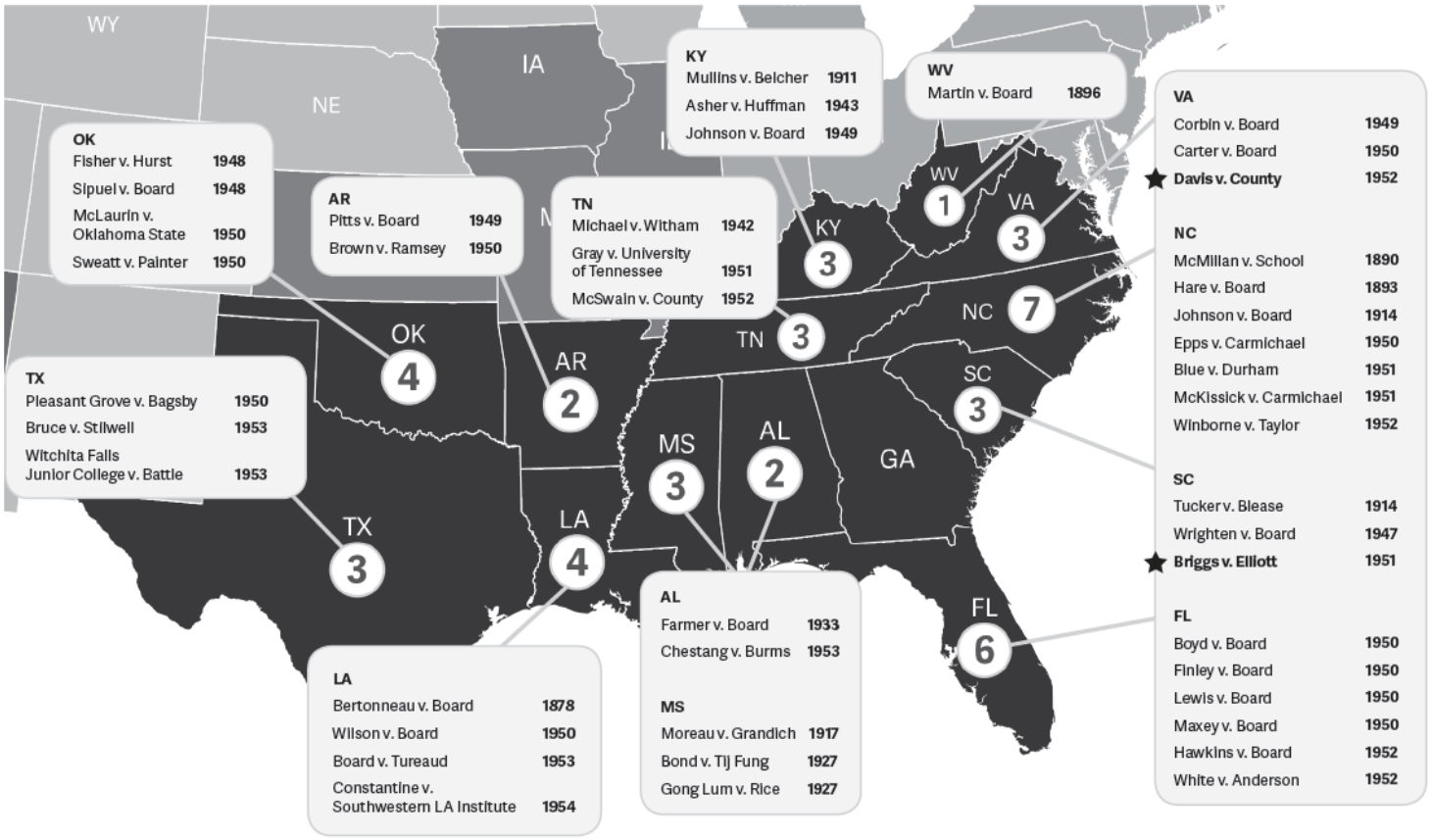


Figure 5 (3.3): Southern School Desegregation Cases

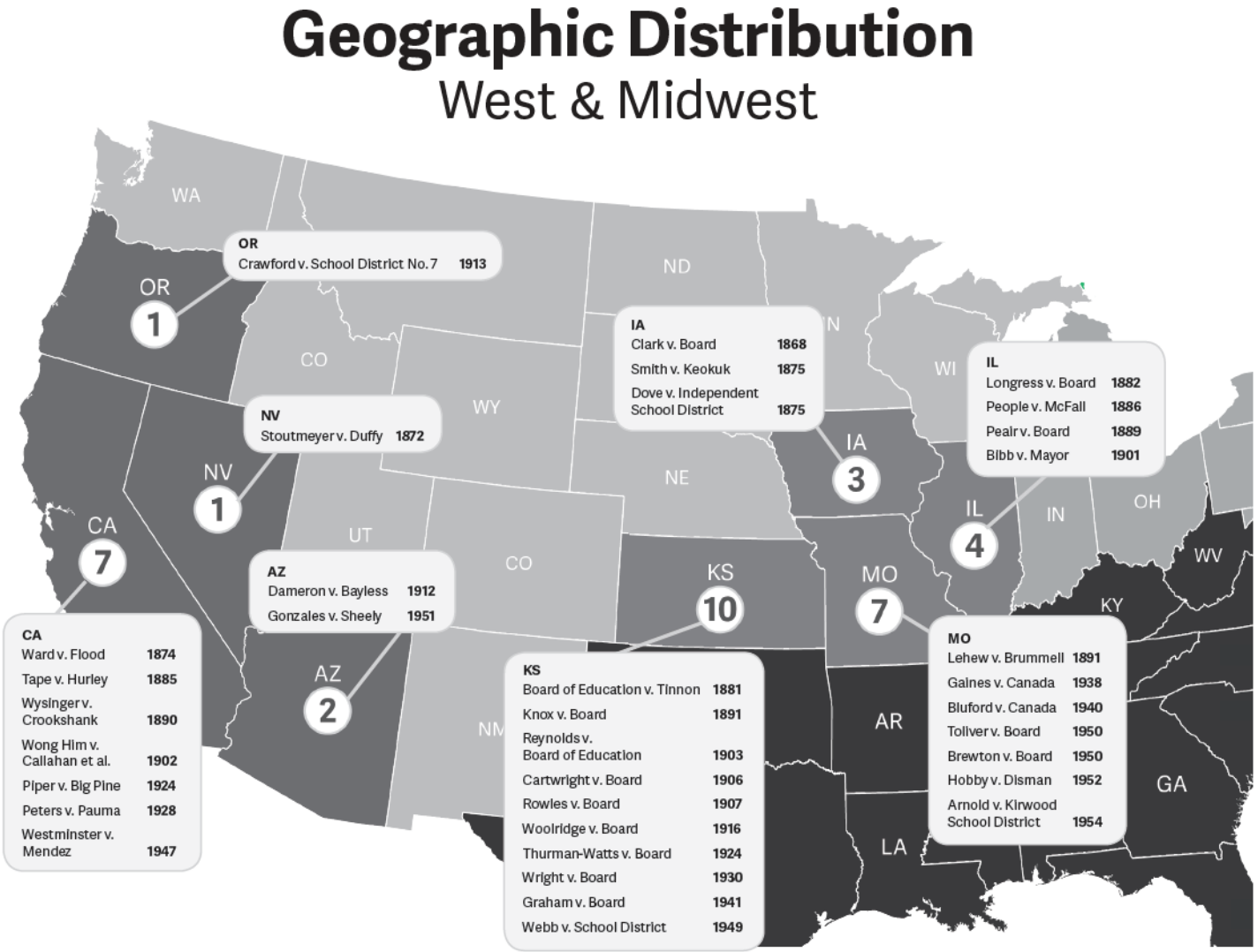


Figure 6 (3.4): West and Midwest School Desegregation Cases

Figure 7 (3.5): Big Pine School Integrated, circa 1925

Courtesy of Big Pine Paiute Tribe of the Owens Valley and Big Pine Unified School District
Top (L-R): Weldon Bartels, Hank Houghton, Charlie Conners, Blanch Steward, Ken Steward, and Marvin Steward
Middle: Alice Piper, John Davito, Banta, Jeff Tibbe
Bottom (L-R) Ike Baker, Maxine Brown, Albert Cuddubac, Myrtle George, Ward Rogers

Figure 8 (4.1): Tape Family Photograph, circa 1885

(From Left to Right) Joseph, Emily, Mamie, Frank, Mary, circa 1884-85
Courtesy of Mr. Mitchell Kim

A LETTER FROM MRS. TAPE.

The following is a verbatim copy of a letter received from Mrs. Tape, in regard to her children at present attending the Chinese school :

1769 Green Street,
San Francisco, April 8, 1885.

To the Board of Education—Dear Sirs: I see that you are going to make all sorts of excuses to keep my child out off the Public schools. Dear sirs, Will you please to tell me! Is it a disgrace to be Born a Chinese? Didn't God make us all!!! What right have you to bar my children out of the school because she is a chinese Decend. They is no other worldly reason that you could keep her out, except that. I surpose, you all goes to churches od Sundays! Do you call that a Christian act to compell my little children to go so far to a school that is made in purpose for them. My children don't dress like the other Chinese. They look just as phunny amongst them as the Chinese dress in Chinese look amongst you Caucasians. Besides, if I had any wish to send them to a chinese school I could have sent them two years ago without going to all this trouble. You have expended a lot of the Public money foolishly, all because of a one poor little Child. Her playmates is all Caucasians ever since she could toddle around. If she is good enough to play with them! Then is she not good enough to be in the same room and studie with them? You had better come and see for yourselves. See if the Tape's is not same as other Caucasians, except in features. It seems no matter how a Chinese may live and dress so long as you know they Chinese. Then they are hated as one. There is not any right or justice for them.

You have seen my husband and child. You told him it wasn't Mamie Tape you object to. If it was not Mamie Tape you object to, then why didn't you let her attend the school nearest her home! Instead of first making one pretense Then another pretense of some kind to keep her out? It seems to me Mr. Moulder has a grudge against this Eight-year-old Mamie Tape. I know they is no other child I mean Chinese child! care to go to your public Chinese school. May you Mr. Moulder, never be persecuted like the way you have persecuted little Mamie Tape. Mamie Tape will never attend any of the Chinese schools of your making! Never!!! I will let the world see sir What justice there is When it is goverened by the Race prejudice men! Just because she is of the Chinese decend, not because she don't dress like you because she does. Just because she is decended of Chinese parents I guess she is more of a American then a good many of you that is going to prewent her being Educated. Mrs. M. Tape.

Figure 9 (4.2): Mary Tape Letter

Figure 10 (4.3): Tape Family Home, May 15, 2016

Author's personal photograph

Figure 11 (4.4): Big Pine Community Members

Alice Piper, 1st Person, Top Row
Courtesy of Big Pine Paiute Tribe of Owens Valley

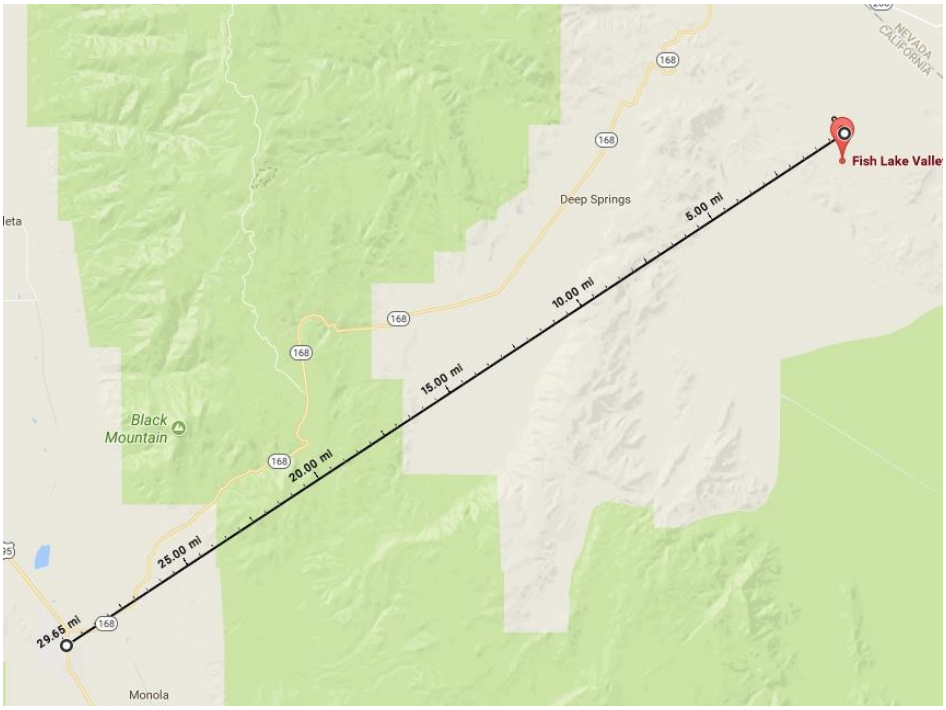


Figure 12 (4.5): Distance between Big Pine and Fish Lake Valley

Figure 13 (4.6): Alice Piper's Head Mistress Photograph

Date, Age Unknown
Courtesy of an Anonymous, Unidentified Donor

Figure 14 (4.7): Alice Piper's Home at 971 Bowers

Author's personal photograph

Figure 15 (4.8): Collage of Alice Piper's Life

Courtesy of An Anonymous, Unidentified Donor

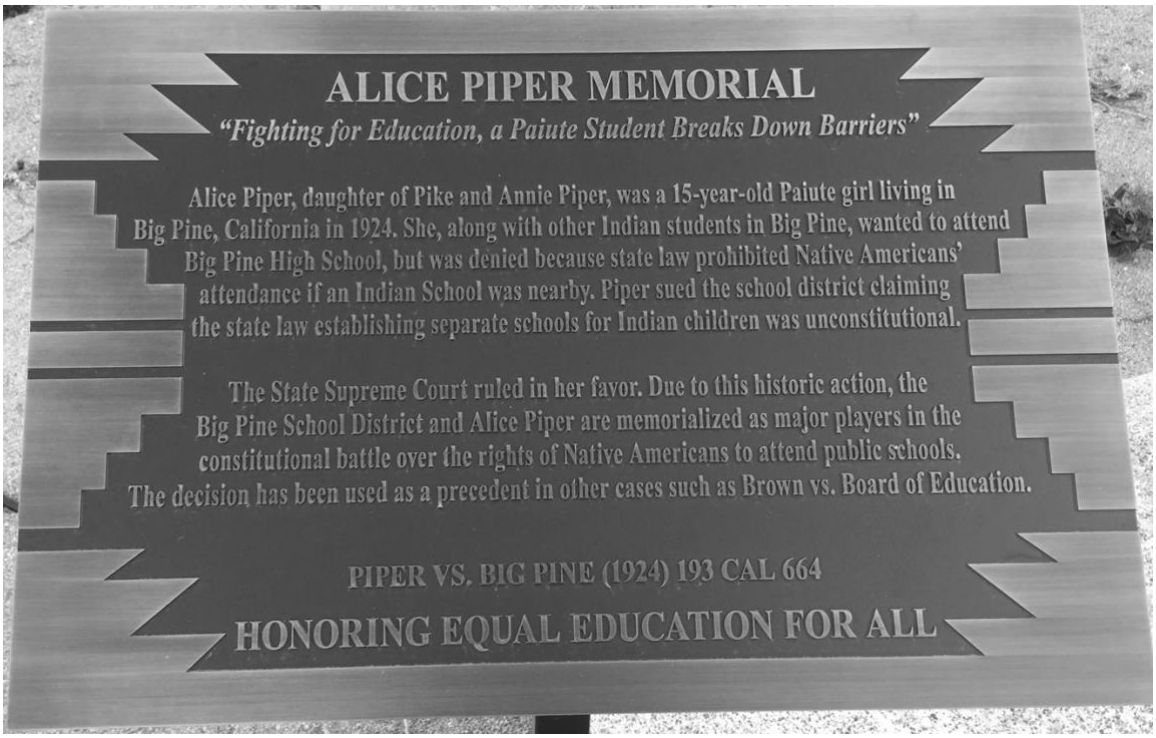


Figure 16 (4.9): Alice Piper Memorial Plaque

Author's personal photograph

Figure 17 (4.10): Felícitas Mendez on Family Farm Tractor, circa mid 1940s

Courtesy of The Gonzalo Mendez Family

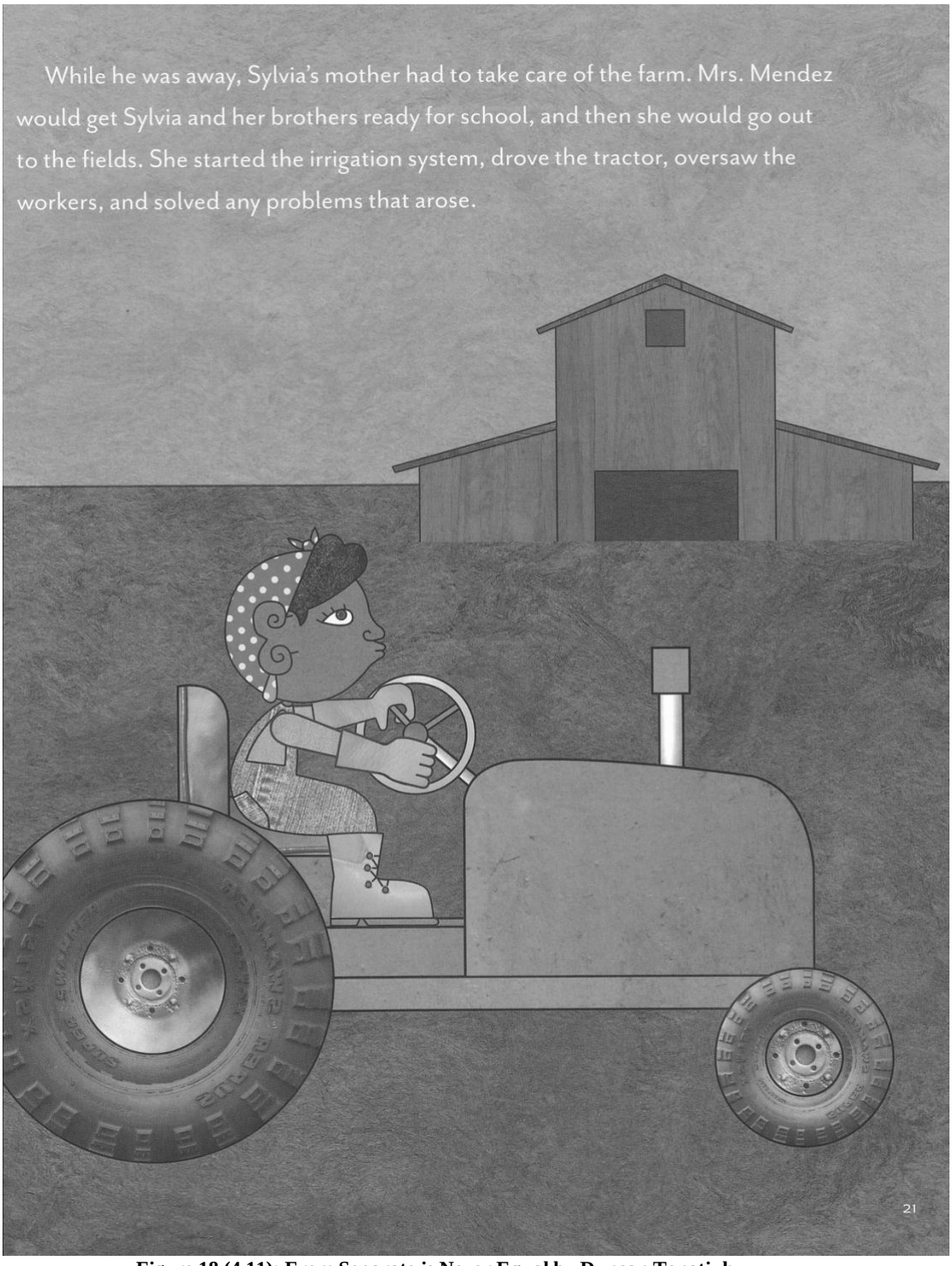


Figure 18 (4.11): From Separate is Never Equal by Duncan Tonatiuh

Courtesy of Duncan Tonatiuh

Figure 19 (5.1): Felícitas Mendez circa 1960s

Courtesy of The Gonzalo Mendez Family

Racial Continuum Model

Figure 20 (5.2): Traditional Racial Continuum Model

Traditional Racial Hierarchy

Figure 21 (5.3): Traditional Racial Hierarchy Model

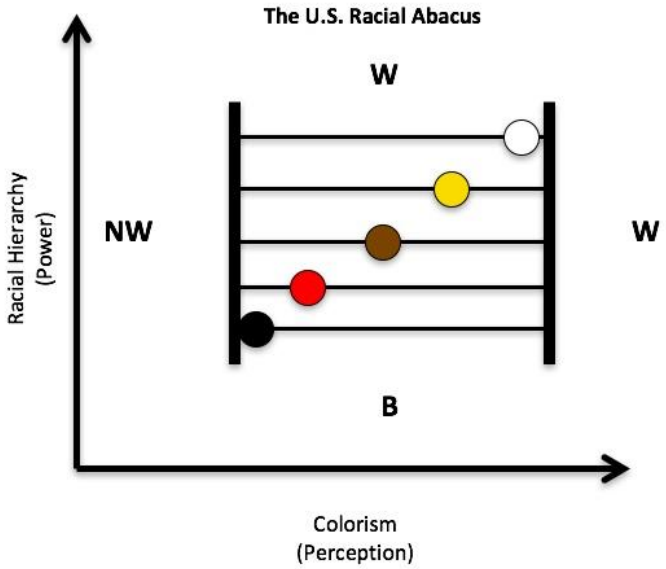


Figure 22 (5.4): U.S. Racial Abacus Model

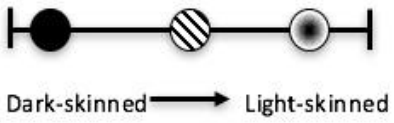


Figure 23 (5.5): Black Racial Variability

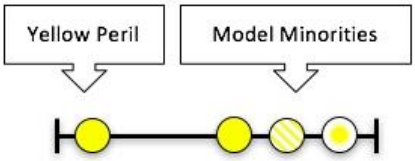


Figure 24 (5.6): Asian Racial Variability

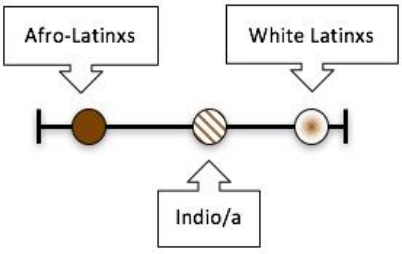


Figure 25 (5.7): Latinx Racial Variability

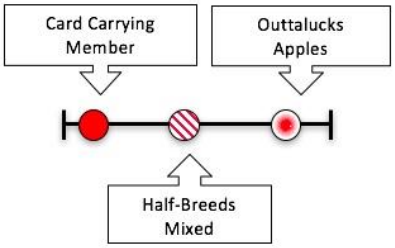


Figure 26 (5.8): Native American Racial Variability

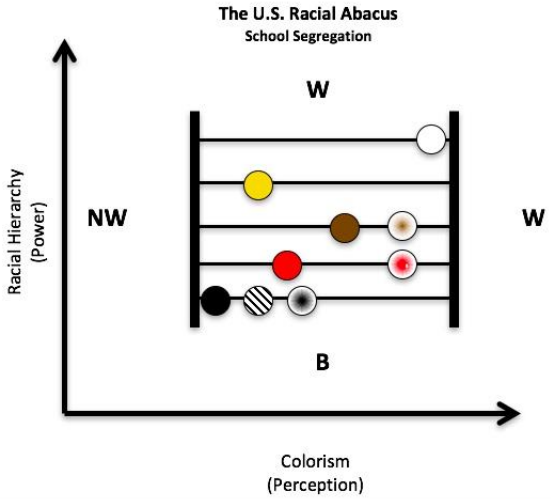


Figure 27 (5.9): The U.S. Racial Abacus Model and School Segregation

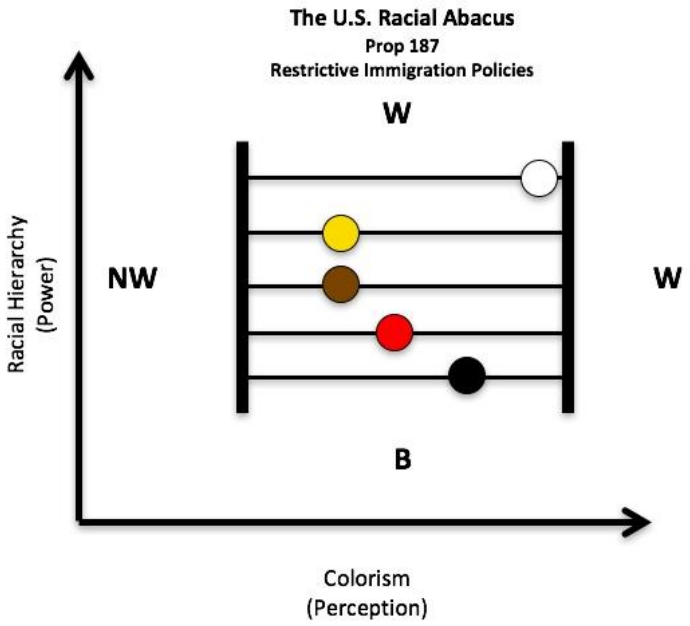


Figure 28 (5.10): U.S. Racial Abacus Model and Restrictive Immigration Policies

Figure 29 (6.1): Eva and Topsy (1908)

Courtesy of Boston Public Library, *The Story of Little Black Sambo* written by Helen Bannerman, Illustrated by John R. Neill, p. 51.

Figure 30 (6.2): "Let the Chinese Embrace Civilization and They May Stay"

Harper's Weekly, March 18, 1882

Figure 31 (6.3): Carrie Anderson, Annie Dawson, and Sarah Walker

On arrival at Hampton, VA (Photographer Unknown, circa 1872?)
Courtesy of Harvard University Peabody Museum of Archeology and Ethnography at Harvard University

Figure 32 (6.4): Same girls fourteen months later

(Photographer Unknown, circa 1872?)
Courtesy of Harvard University Peabody Museum of Archeology and Ethnography at Harvard University

Figure 33 (6.5): Wedding Party Photo, April 16, 1935

Alice Piper is second from the right

Figure 34 (6.6): Alice Piper with unidentified friends or family (dates unknown)

Figure 35 (6.7): Sylvia Mendez, Age 9, 1947

Courtesy of The Gonzalo Mendez Family

TABLES

Table 1 (2.1): Tenets of CRT, LatCrit, AsianCrit, and TribalCrit

Critical Race Theory[37]	**LatCrit**[38]	**AsianCrit**[39]	**TribalCrit**[40]
• Racial inequality is hardwired into the fabric of our social and economic landscape; • Because racism exists at both the subconscious and conscious levels, the elimination of intentional racism would not eliminate racial inequality; • Racism intersects with other forms of inequality, such as classism, sexism, and homophobia; • Our racial past exerts contemporary effects; • Racial change occurs when the interest of white elites converges with the interests of the racially disempowered; • Race is a social construct whose meanings and effects are contingent and change over time; • The concept of color blindness in law and social policy and the argument for ostensibly race-neutral practices often serve to undermine the interests of people of color; • Immigration laws that restrict Asian and Mexican entry into the United States regulate the racial makeup of the nation and perpetuate the view that people of Asian and Latino descent are foreigners; • Racial stereotypes are ubiquitous in society and limit the opportunities of people of color; • The success of various policy initiatives often depends on whether the perceived beneficiaries are people of color.	• Critique of Liberalism; • Storytelling/Counterstorytelling and "naming one's own reality"; • Revisionist interpretation of U.S. civil rights law and progress; • Critical social science; • Structural determinism; • Intersectionality; • Gender Discrimination; • Latino/a essentialism; • Language and bilingualism; • Separatism and nationalism; • Immigration and Citizenship; • Educational issues; • Critical International and human rights law; • Black/brown tensions; • Assimilationism and the colonized mind; • Latino/a stereotypes; and • Criticism and response.	• Asianization; • Transnational contexts; • (Re) constructive history; • Strategic (anti) essentialism; • Intersectionality; • Story, theory, and praxis; and • Commitment to social justice.	• Colonization is endemic to society • U.S. policies toward Indigenous peoples are rooted in imperialism, White supremacy, and a desire for material gain; • Indigenous peoples occupy a liminal space that accounts for both the political and racialized natures of our identities; • Indigenous peoples have a desire to obtain and forge tribal sovereignty, tribal autonomy, self-determination, and self-identification; • The concepts of culture, knowledge, and power take on new meaning when examined through an Indigenous lens; • Governmental policies and educational policies toward Indigenous peoples are intimately linked around the problematic goal of assimilation; • Tribal philosophies, beliefs, customs, traditions, and visions for the future are central to understanding the lived realities of Indigenous peoples, but they also illustrate the differences and adaptability among individuals and groups; • Stories are not separate from theory; they make up theory and are, therefore, real and legitimate sources of data and ways of being; • Theory and practice are connected in deep and explicit ways such that scholars must work toward social change.

[37] Carbado and Roithmayr (2014)
[38] Stefancic (1997)
[39] An (2016)
[40] Brayboy (2006)

Table 2 (3.1): School Desegregation Cases filed between 1849 and 1896

Case	Year	Race	State	Result
Roberts v. Boston	1849	B	MA	L
Van Camp v. Board of Education	1859	B	OH	L
Clark v. Board	1868	B	IA	W
Workman v. Board of Education of Detroit	1869	B	MI	W
Garnes v. McCann	1871	B	OH	L
Stoutmeyer v. Duffy	1872	B	NV	L
Ward v. Flood	1874	B	CA	L
Cory v. Carter	1874	B	IN	L
Smith v. Keokuk	1875	B	IA	W
Dove v. Independent School District	1875	B	IA	W
Lewis v. Board	1876	B	OH	L
Bertonneau v. Board	1878	B	LA	L
Board of Education v. Tinnon	1881	B	KS	W
Longress v. Board	1882	B	IL	W
King v. Gallagher	1883	B	NY	L
Mitchell v. Gray	1884	B	IN	L
Tape v. Hurley	1885	A	CA	W
People v. McFall	1886	B	IL	L
Peair v. Board	1889	B	IL	W
Wysinger v. Crookshank	1890	B	CA	W
McMillan v. School Committee District	1890	N	NC	L
Knox v. Board	1891	B	KS	W
Lehew v. Brummell	1891	B	MO	L
Hare v. Board	1893	B	NC	L
Martin v. Board of Education	1896	B	WV	L

Table 3 (3.2) Higher Education cases with unfavorable results for the plaintiffs

Colleges	Law Schools	Graduate Schools
Boyd v. Board (1950)	*Gaines v. Canada (1938)*	*Bluford v. Canada (1941)*
Maxey v. Board (1950)	*Wrighten v. Board (1947)*	*Michael v. Witham (1942)*
Toliver v. Board (1950)	*Fisher v. Hurst (1948)*	*Finley v. Board (1950)*
	Lewis v. Board (1950)	
	Epps v. Carmichael (1950)	
	Hawkins v. Board (1952)	

Table 4 (3.3): Higher Education cases with favorable results for the plaintiffs

Colleges	**Law Schools**	**Graduate/ Professional Schools**
Parker v. University of Delaware (1950)	*Pearson v. Murray (1936)*	*Kerr v. Enoch (1945)*
Board v. Tureaud (1953)	*Sipuel v. Board (1948)*	*Johnson v. Board of Trustees (1949)*
Bruce v. Stilwell (1953)	*Wilson v. Board (1950)*	*McCready v. Byrd (1950)*
Witchita Falls Junior College v. Battle (1953)	*Sweatt v. Painter (1950)*	*McLaurin v. Oklahoma State Regents (1950)*
Constantine v. Southwestern LA Institute (1954)	*McKissick v. Carmichael (1951)*	*Gray v. University of Tennessee (1951)*
	Gray v. University of Tennessee (1951)	

Table 5 (3.4): Racial Composition of Cases

	Black	**Native American**	**Asian**	**Latinx**
Total cases	90	5	4	2
Percentage	89%	5%	4%	2%

Table 6 (3.5): School Desegregation Cases in Southern States

State	**Win**	**Loss**	**Total Cases**
Southern States			
Alabama	0	2	2
Arkansas	0	2	2
Texas	2	1	3
Oklahoma	3	1	4
Louisiana	3	1	4
Mississippi	0	3	3
Tennessee	1	2	3
Kentucky	1	2	3
West Virginia	0	1	1
Virginia	2	1	3
North Carolina	2	4	6
South Carolina	0	3	3
Florida	0	6	6
Totals	14	29	43
%Win/Loss	33%	67%	

Table 7 (3.6): School Desegregation Cases in Northern States

Northern States	**Win**	**Loss**	**Total**
Indiana	0	3	3
Michigan	1	0	1
Ohio	0	4	4
DC	1	3	4
Delaware	3	1	4
Maryland	3	2	5
New York	0	2	2
Massachusetts	0	1	1
Totals	8	16	24
%Win/Loss	33%	66%	

Table 8 (3.7): School Desegregation Cases in Midwestern States

Midwestern States	**Win**	**Loss**	**Total**
Kansas	8	2	10
Missouri	1	5	6
Iowa	3	0	3
Illinois	3	1	4
Totals	15	8	23
% Win/Loss	65%	35%	

Table 9 (3.8): School Desegregation Cases in Western States

Western States	**Win**	**Loss**	**Total**
California	5	2	7
Arizona	1	1	2
Nevada	0	1	1
Oregon	1	0	1
Totals	7	4	11
% Win/Loss	64%	36%	
GRAND TOTAL	**44**	**57**	**101**

Table 10 (4.1): Indian Schooling and Average Attendance, 1877-1900[41]

	Boarding Schools		Day Schools		Total	
	Number	Attendance	Number	Attendance	Number	Attendance
1877	48		102		150	3,598
1880	60		109		169	4,651
1885	114	6,201	86	1,942	200	8,143
1890	140	9,865	106	2,367	246	12,232
1895	157	15,061	125	3,127	282	18,188
1900	153	17,708	154	3,860	307	21,568

Source: Annual Report of the Commissioner of Indian Affairs, 1909:89.

[41] Reprinted with permission from Wallace Adams 1995:58, Table 2.2.

Table 11 (4.2): Distribution of Indian Students by Institutional Types, 1900-1925[42]

	1900	1905	1910	1915	1920	1925
Government Schools						
Off-reservation boarding	7,430	9,736	8,863	10,791	10,198	8,542
Reservation boarding	9,604	11,402	10,765	9,899	9,433	10,615
Day schools	5,090	4,399	7,152	7,270	5,765	4,604
Subtotal	22,124	25,537	26,780	27,960	25,396	23,761
Public schools	246	84	2,722	26,438	30,858	34,452
Other						
Mission, private, and state institutions	4,081	4,485	5,150	5,049	5,546	7,280
TOTAL	26,451	30,106	34,652	59,447	61,800	65,493

Source: Annual Report of the Commissioner of Indian Affairs (ARCIA), 1900, 22; ARCIA, 1905, 50; ARCIA, 1910, 56; ARCIA, 1915, 51; ARCIA, 1920, 147; and ARCIA, 1925, 51.

[42] Reprinted with permission from Wallace Adams 1995:310, Table 10.1.

Table 12 (5.1): Comparisons of the Foundations of CRT, LatCrit, AsianCrit and Tribal Crit

	CRT	LatCrit	AsianCrit	TribalCrit
Founding Authors	Derrick Bell Kimberlé Crenshaw Alan Freeman	Richard Delgado Ian Haney Lopez Juan Perea	Robert Chang Neil Gotunda Mari Matsuda	John Brayboy
Significant Cases	*Dred Scott v. Sandford (1857)* *Plessy v. Ferguson (1896)* *Brown v. Board (1954)*	*Hernandez v. Texas (1954)* *Mendez v. Westminster (1947)*	*People v. Hall (1854)* *Yick Wo v. Hopkins (1886)* *Gong Lum v. Rice (1927*) *Korematsu v. U.S. (1944)*	*Elk v. Wilkins (1884)* *Talton v. Mayes (1896)*
Treaties & Legislation	Civil Rights Acts 1964 Voting Rights Act 1965	Treaty of Guadalupe Hidalgo 1848	Burlingame Treaty 1868 Chinese Exclusion Act of 1882	Dawes Act 1885 Native American Citizenship Act of 1924
Civil Rights Organization	NAACP	League of United Latin American Citizens (LULAC)	Japanese American Citizens Council (JACL)	Native American Rights Fund (NARF)
Unique issues	Impact of Slavery One-drop rule	Colonization Legal whiteness Immigration Race v. Ethnicity	Yellow Peril Model Minority Myth Immigration	Colonization Liminal Status Blood Quantum
Aligned interest	Race as a Social Construct Intersectionality Re-constructive Narratives Storytelling Commitment to Social Justice Connection between Race and Labor			

Table 13 (6.1): Sexualized, Criminalized, and Pathetic Controlling Images of Women and Children

Racial Group	Controlling Images	Time Period
Chinese Women and Girls	Pagans, Prostitutes, and Poor Creatures	1850-1900
Native American Women and Girls	Savages, Squaws, and Sacrificial Indians	1887-1925
Mexican American Women and Girls	*Mamacita, Malinche*, and Mentally Inferior	1920-1948

Table 14 (6.2): Occupations of Chinese Children in San Francisco, 1860-1880

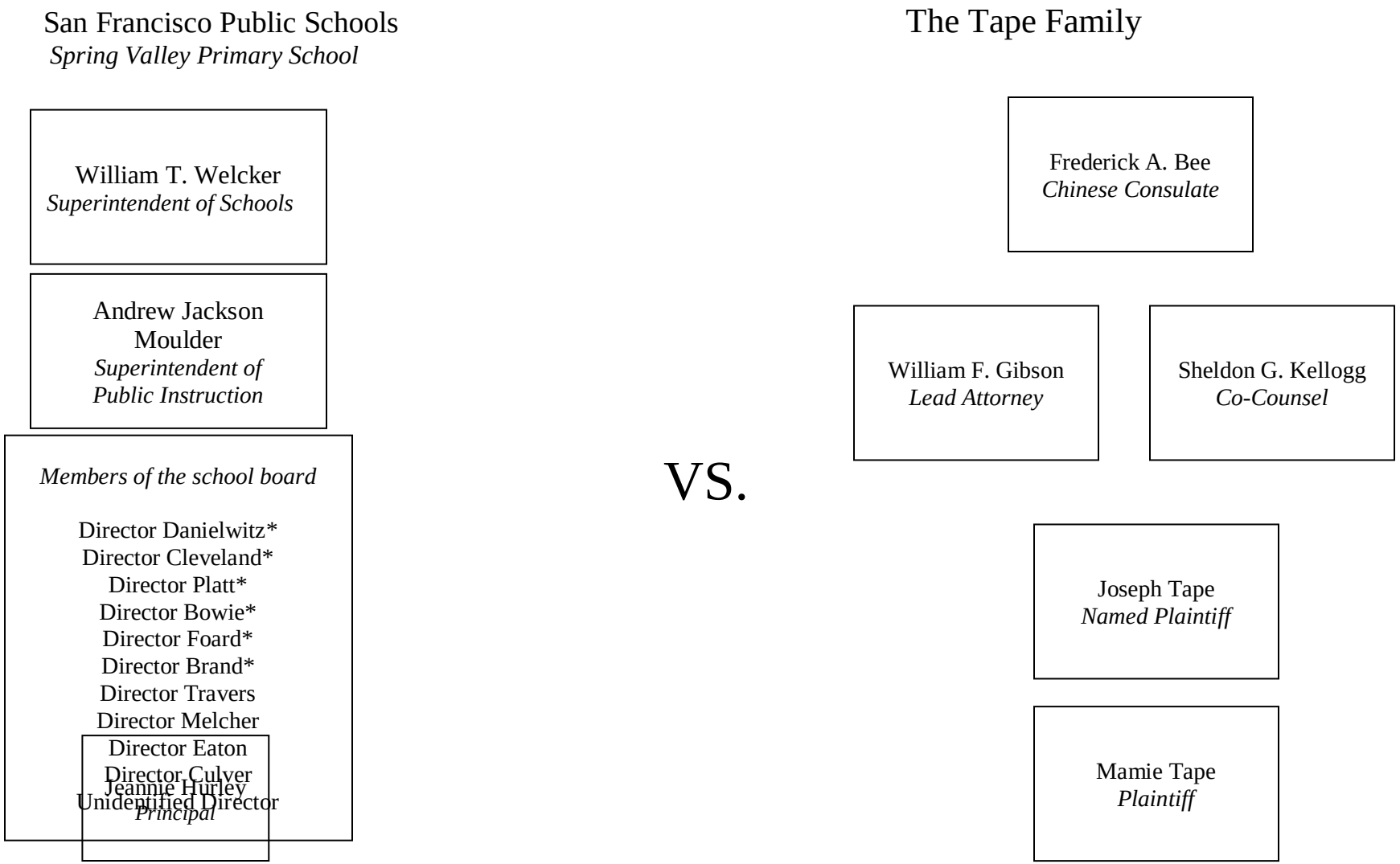
Occupation	1860	1870	1880
At home/ none listed	67 (63%)	444 (29%)	708 (48%)
At school	0	21 (1%)	82 (6%)
Servant/cook/ Gardner	4 (4%)	498 (32%)	322 (22%)
Laundry/ washman	1 (1%)	179 (12%)	89 (6%)
Cigar maker	0	188 (12%)	60 (4%)
Clothing manufacturer	1 (1%)	5 (<1%)	52 (4%)
Shoe/slipper Factory	0	42 (3%)	23 (2%)
Laborer	20 (19%)	49 (3%)	42 (3%)
Prostitute	0	66 (4%)	33 (2%)
Miscellaneous	13 (12%)	54 (3%)	63 (4%)
Total	106	1,546	1,474

Source: U.S. Census Bureau, tabulated by Jorae (2009)

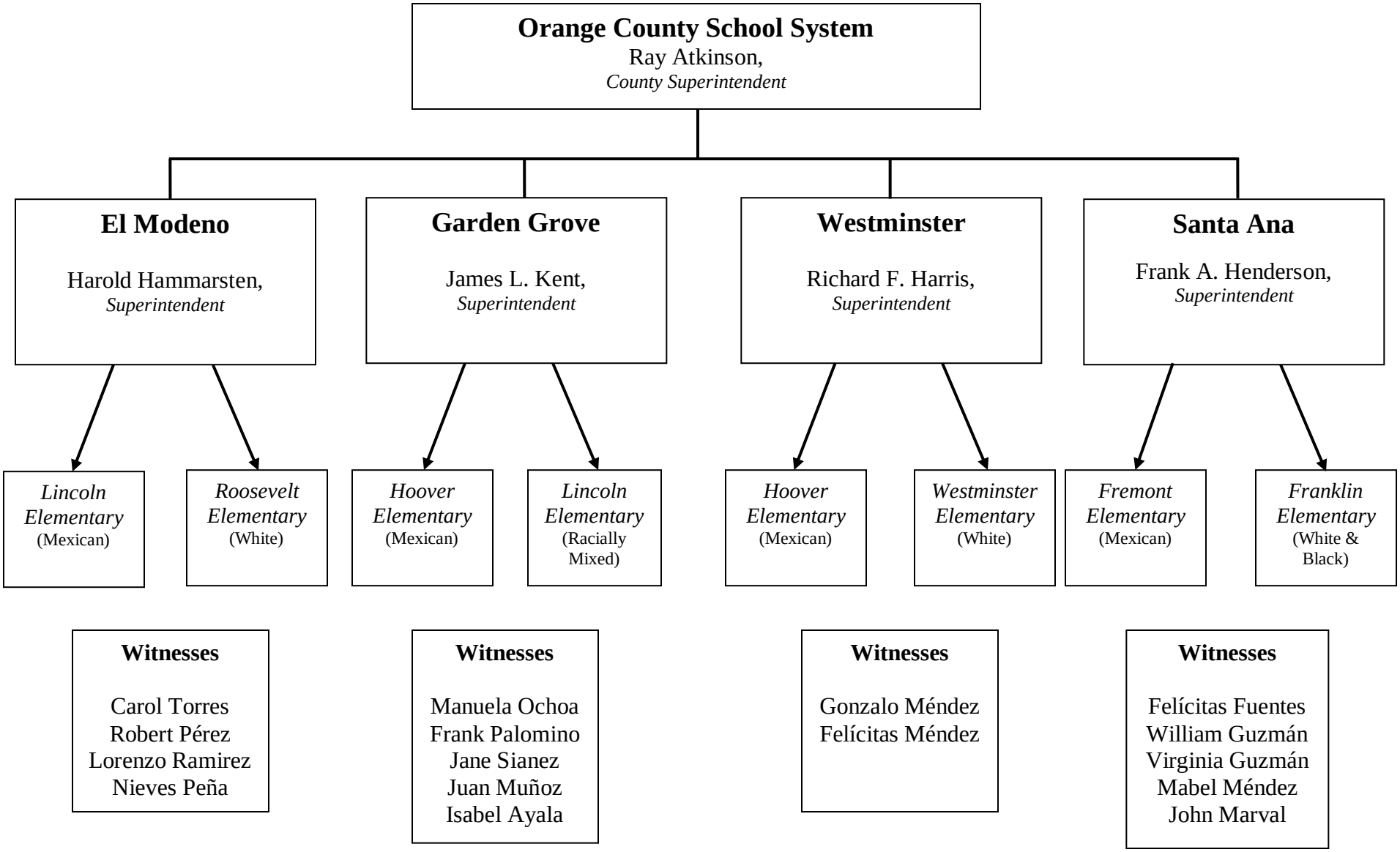
Note from Jorae (2009:81): This data is based on my survey of all Chinese children age sixteen and under in San Francisco. The category of clothing manufacturer in this table includes children whose occupations were listed as seamstress, tailor, embroiderer, sewing machine operator, pant and overall maker, shirt maker, button sewer, or underwear maker. The miscellaneous category included a number of the children employed in the food-service industry.

APPENDICES

APPENDIX A: Parties involved in *Tape v. Hurley*



APPENDIX B*: Mendez v. Westminster* School and Witness Charts



APPENDIX C*: Legal Methodology*

In addition to archival research, this dissertation is rooted in legal research to identify and select the 104 school desegregation cases. I collected my data for the inventory of school desegregation cases through an iterative process using the legal database, *LexisNexis Legal.* It is an interface that allows me to research state and federal cases using Boolean search terms or names of specific cases. In order to be included in my data the cases needed to be:

1) Filed on behalf Black, Asian, Latinx or Native American plaintiffs;
2) Names a school or its representatives;
3) Makes a Fourteenth Amendment equal protection claim; and
4) Have been filed before the *Brown* decision in 1954.

My initial goal was to identify all of the cases decided in state and federal court involving the keywords "14th Amendment," "schools," and "education" that occurred before the *Brown* decision. This general search yielded over 3,000 results. My initial reading of these cases indicated that many cases did not fit within the scope of my research question. Narrowing the search to "14th Amendment," "school," and "equal protection" generated a list of more relevant cases (1,477).

I scrolled through each case, reading the summaries provided by *LexisNexis* as well as the opinions themselves. Because I used the search term "equal protection," the results included every criminal and civil case involving equal protection from unequal pricing on milk to jury racial exclusion. The education cases were easy to find, particularly since most of the case titles involved a form of the phrase "board of education." In the end, I identified 61 cases in all.

After this first search, I identified limitations of my search terms. In particular, as I reviewed the facts of each case, I noticed that the opinions were citing cases that were not included in my original search. Furthermore, I noticed that cases of which I had direct knowledge did not appear (i.e. *Tape v. Hurley*). In order to "find" these missing cases, I used the

"Shepardize" function on each of the 61 cases from my initial search. Shepardizing, as it is called, is a service that provides a summary of the legal history of a given case as well as any cases, law reviews, journal articles, or amicus brief where it appears. Each time I found more cases, I "Shepardized" those until I could no longer find any new cases. Four rounds of Shepardizing revealed 43 more cases. I am fairly certain I have captured every case related to school desegregation filed in state supreme courts and federal appellate courts in the *LexisNexis* database because cases began to cite one another.[43]

I coded the following social characteristics and facts from each case: name of the case, year it was decided, race, gender, and age of the plaintiff, where it was argued (state or federal court), state, school (i.e. Elementary, High, College, etc.), and the result (win/loss). I was able to ascertain the race of the plaintiffs in each case, but it was not as easy to determine gender and age. Some of the cases listed the names and ages of the plaintiffs, but most did not. Further archival research is necessary. Fortunately, many archives are accessible online. I have found that state archives will be the best place to find the details of each case. One final issue was that some cases referred to the school as a "common school" instead of a specifically graded school system (high school, elementary, etc.). Common schools were open to children between the ages of six and twenty-one years of age, making the coding of both the school and the ages challenging. Nonetheless, educational scholars generally consider the common school to be the equivalent of elementary school (Bowles and Gintis 1977; Peterson 2010). As a result, I coded all common schools as elementary.

While I had decided that 1954 would be my end date, I had yet to determine my start date. Initially, I had considered, 1868, the year the Fourteenth Amendment was ratified, as my

[43] In order to confirm these results, I need to conduct the same search in *Westlaw*, another electronic legal database.

start date. However, three cases came before the passage of the Fourteenth Amendment that were cited repeatedly by subsequent cases.[44] Because they were cited by so many subsequent cases, I decided to keep them as well for two reasons. First, they represent the very first cases decided by state supreme courts regarding educational inequality. Second, their dates line up with important historical conditions, namely the growth of common schools, the end of slavery, and the beginning of civil rights challenges to the Fourteenth Amendment.

Along the way, I had to make a few important research decisions regarding which cases to exclude. For example, there were a few cases where the legal strategy involved suing school districts as taxpayers to demonstrate that tax funds were not being equally distributed.[45] These cases involved adult plaintiffs and tax laws that were not relevant to the cases writ large. These cases were not brought on behalf of any one student or group of students but by taxpayers in general.[46] With no identifiable lead plaintiff or plaintiffs, it was difficult to ascertain, age, race, school type, and the like. Finally, there was one case where a plaintiff successfully argued that his children were White and were therefore eligible to attend the local White school.[47] Had, as in other cases, the result been a finding that the children were "negro" or "colored" or possessed "red blood," I would have included it in the total.

This computerized system of research is not fool proof. For example, some other well-known civil rights cases such "The Little Rock Nine" and Hamilton Holmes lawsuit against the University of Georgia were neither included in my search nor cited by the identified cases. There

[44] *Roberts v. Boston, 59 Mass. 198 (1849), Van Camp v. Board of Education, 9 Ohio St. 406 (1859)* and *Clark v. Board, 24 Iowa 266 (1868).*
[45] *Claybrook v. Owensboro, 23 F. 634 (1884), Maddox v. Neal, 45 Ark. 121 (1885), Davenport v. Clover Port* (1896) *and Cumming v. Richmond, 175 U.S. 528 (1899)*
[46] *Berea College v. Kentucky, 211 U.S. 45 (1908), Pierce v. Society of Sisters, 268 U.S. 510 (1925), Butler v. Wilemon, 86 F. Supp. 397 (1949)* and *Pitts v. Board, 84 F. Supp. 975 (1949)*
[47] *Medlin v. Board, 167 N.C. 239 (1914)*

were also three cases involving Mexican American plaintiffs that did not appear in the search results.[48] I surmise it was because their lawsuits never made it to the supreme courts of their respective states.

The other shortcoming to this type of research is the fact that it only captures cases filed and successfully appealed through the court system. There are countless cases that were never filed, filed but never adjudicated, or decided but never published.[49] Fortunately, the 104 identified cases provide a representative sample of case law involving the legal history of the struggle for educational equality from the local district courts, through the state courts and, ultimately, to the Supreme Court allowing me to examine any relevant patterns related to race and gender.

[48] *Del Rio Independent School District v. Salvatierra (1930), Alvarez v. Lemon Grove School District (1931), Delgado v. Bastrop Independent School District (1948)*
[49] *Jones v. City of Ketchikan Alaska (1929)*

APPENDIX D*: Names, Dates, and Purpose of Archival Visits*

California State Archives, Sacramento, California
May 11, 2015 to May 14, 2015

Because Earl Warren served as governor of California during the *Mendez* case and subsequently lobbied the state legislature and signed legislation to integrate the schools, I had hoped to find documents related to the case. I even searched he materials that documented his interactions with the attorney general because the AG filed an amicus brief in support of *Mendez*. Unfortunately, after a week of searching through letters, memos, minutes, and reports, I could not find a single document related to the case.

Stanford Special Collections, Stanford, California
January 19, 2016

This collection held the original research of Christopher Arriola on *Mendez,* an attorney who authored the first article about *Mendez*, "Knocking on the Schoolhouse Door." In addition to his own extensive notes, newspaper articles, and legal documents, he conducted interviews with former students from the schools represented in the case.

California Historical Society, San Francisco, California
January 20, 2016

This was an exploratory visit while I was visiting *Tape* historical sites. Unfortunately, the building was closed for renovations.

Bancroft Library, University of California, Berkeley, California
January 21, 2016

This was another exploratory visit to examine their "Chinese in California" Collection and Native American Collection. While the Chinese in California collection had excellent materials that captures the experiences of Chinese in San Francisco in the late 1800s, there was nothing specific identifying Tape.

The Native American collection had a magazine that I spent over a year trying to find: *Western Story Magazine*. This weekly magazine dedicated to "Big, Clean Stories of Outdoor Life" was archived under a collection dedicated to Max Brand, a popular writer of western stories. He published heavily in this magazine. While his collection did not have a sequential order of the magazines, there were enough editions between 1920-1925 to create a strong sample for content analysis.

Bancroft Library, University of California, Berkeley, California
May 9, 2016, May 12, 2016, and May 16, 2016

This was a return visit to scan stories related to Native Americans within *Western Story Magazines*. Over the course of several days, I digitally scanned 50 editions of the magazine

from 1920 to 1924 that contained approximately 880 stories about Native Americans or involved Native American characters.

California Historical Society, San Francisco, CA
May 18, 2016 and May 20, 2016

The California Historical Society (CHS) houses materials related to the San Francisco Ladies Relief and Protection Society ("Society"). Mary Tape became a ward of the Society five months after she arrived San Francisco, California. In her 1892 interview with *The Morning Call*, she disclosed that she lived there for approximately five years beginning at age 11. Working backwards using Mamie Tapes age at the time of the case, I surmised she lived there between 1871 and 1876. Just to be safe, I looked at orphan case histories, financial records, and meeting minutes from 1870 to 1880. On my third day at the archive, I finally found mention of her in the minutes of the Society. It was an excellent find considering little is known about her life prior to her marriage to Joseph Tape.

National Archives, Riverside, California
Online

There were several digital copies of briefs filed in *Mendez v. Westminster*. The archivists at the National Archives generously provided me a CD disc containing Briefs, Pre-trial transcripts, and full transcripts of the trial. It amounted to over 700+ pages of archival materials.

California Digital Newspaper Collection (CDNC)
Online

The CDNC is a free, online digital archive of California newspapers that allows for simple keyword searches to advanced searches for particular issues. Critical to this project, it contained editions of San Francisco based newspaper *The Daily Alta California* from 1849 to 1891. I conducted searches using the following words and/or phrases: "Joseph Tape," "Mamie Tape," "Mary Tape," and "Chinese school." This yielded several articles. After reading the articles, I searched for more articles using the phrase: "Judge McGuire," Culver, Welcker, and "The Chinese Problem." This resulted in several more articles about the case that did not mention any of the family members but contained invaluable material about school board meetings, letters from the State Superintendent, and articles printed in other newspapers such as the *Sausalito News* and *Sacramento Daily*.

APPENDIX E*: Theoretically Informed Controlling Images*

Racial Group	**Controlling Image**	**Theoretically informed by**
Chinese American women and girls late 1800s	Pagan	Takaki, Ronald. 1998. *The History of Asian Americans: Strangers from A Different Shore.* New York, NY: Back Bay Books.
	Prostitute	Yung, Judy. 1995. *Unbound Feet: A Social History of Chinese Women in San Francisco*. Berkeley, CA: University of California Press. Takaki, Ronald. 2008. *A Different Mirror: A History of Multicultural America.* New York, NY: Back Bay Books.
	Poor Creature	Jorae, Wendy Rouse. 2009. *The Children of Chinatown: Growing Up Chinese American in San Francisco, 1850-1920*. Chapel Hill, NC: The University of North Carolina Press.
Mexican American women and girls 1940s	*Malinche*	Ramirez, Catherine S. 2009. *The Woman in the Zoot Suit: Gender, Nationalism and the Cultural Politics of Memory*. Durham, NC: Duke University Press.
	Mamacita	Rodriguez, Clara E. (Ed). 1998. *Latin Looks: Images of Latinas and Latinos in the U.S. Media*. Boulder, CO: Westview Press. Rodriguez, Clara E. 2004. *Heroes, Lovers and Others: The Story of Latinos in Hollywood*. Oxford, UK: Oxford University Press.
	Mentally Inferior	Perea, Juan F. 2004. "Buscando América: Why Integration and Equal Protection Fail to Protect Latinos." *Harvard Law Review*, Vol. 117(5), pp. 1420-1469. Sanchez, George J. 1993. *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945.* New York, NY: Oxford University Press.
Native American women and girls 1920s	Squaw	Hirschfelder, Arlene, Paulette Fairbanks Molin and Yvonne Wakim. 1999. *American Indian Stereotypes in the World of Children: A Reader and Bibliography*. Lanham, MD: Scarecrow Press, Inc.
	Savage	Strong, Pauline Turner. 2013. *American Indians and the American Imaginary: Cultural Representations Across the Centuries.* Boulder, CO: Paradigm Publishers.
	Sacrificial Maiden	Marubbio, M. Elise. 2009. *Killing the Indian Maiden: Images of Native American Women in Film.* Lexington, KY: The University Press of Kentucky.

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