"Because of Blood Differences Alone": Challenging the Segregation of Native American Students in California

By David S. Ettinger

Alice Piper stands in the upper back row, farthest to the left (next to the window). She is with a group of Owens Valley Paiute in front of the community center in the 1920s. *Photo courtesy of the Laws Railroad Museum & Historical Site in Bishop, California and the National Park Service.*

June 2, 2024, marked the hundredth anniversary of the California Supreme Court's opinion in *Piper v. Big Pine School Dist.*[1] The decision ordered the defendant school district to admit to its school Alice Piper, "a female Indian child of the age of fifteen years,"[2] instead of requiring her to attend a separate "Indian school." The court characterized the lawsuit as a constitutional challenge to the district's authority "to exclude Indian children, because of blood differences alone."[3]

Piper is not the best known school desegregation case in the country, or even in the state, but it was recently hailed as a civil rights milestone in Big Pine, and especially by that town's Native American community, at a special centennial celebration.[4] Additionally, California's Legislature passed a resolution that called the case "a significant step in school integration in California and the nation" and that commemorated June 2 as Alice Piper Day.[5]

By today's legal standards, the *Piper* ruling seems obvious. But 100 years ago, in the entrenched separate-but-equal era of *Plessy v. Ferguson*[6] (and its predecessors and successors), and still a full three decades

1. (1924) 193 Cal. 664.
2. *Piper, supra* 193 Cal. at 665.
3. *Id*. at 666.
4. Video of the event is here: *https://www.youtube.com/watch?v=niVrmsmCY6A* [as of Sept. 4, 2024].
5. Sen. Conc. Res. No. 145, Stats. 2024 (2023-2024 Reg. Sess.) res. ch. 130.
6. (1896) 163 U.S. 537.

before *Brown v. Board of Education*,[7] the case was hotly contested. It was not an easy case for Alice to win; she had some substantial obstacles blocking her path to success.

Alice Piper's 9th Grade homeroom class at Mount Vernon School in Los Angeles after the California Supreme Court's decision in *Piper v. Big Pine School District* (1924). Alice (circled) is in the fourth row, second from right. *Photo courtesy of the Legacy of Alice Piper Centennial Celebration.*

The Barrier Preventing Alice Piper From Attending a District School

Alice's biggest legal obstacle to enrolling in the Big Pine School District was erected by the California Legislature.

In Political Code section 1662, the Legislature had given school districts the authority "to establish separate schools for Indian children and for children of Chinese, Japanese or Mongolian parentage" and provided that, when there was such a separate school, those children "must not be admitted into any other school." The district didn't have a separate school, but the federal government did have one nearby, and the Legislature had recently amended the relevant statute to cover that situation, too: "Indian children . . . may not be admitted to the district school," the amendment specified, if "the United States government has established an Indian school" in the district.[8]

With the Legislature squarely against her claim, Alice could win only by attacking the validity of section 1662 itself.

Why the Case Was Filed Directly in the California Supreme Court

Alice and her parents, Pike and Annie Piper, petitioned the California Supreme Court directly for a writ of mandate on December 11, 1923. The petition was filed by San Francisco attorney J.W. Henderson.

At the time, seeking supreme court relief from the get go, jumping over the superior court and the Court of Appeal, was discouraged. The rules required a writ petition filed in the Supreme Court — or the Court of Appeal, for that matter — that "might have been lawfully made to a lower court in the first instance" to "set forth the circumstances which . . . render it proper that the writ should issue originally from the appellate Court . . . , and not from such lower court."[9]

The writ petition followed the rule by stating reasons for going directly to the supreme court.

First, there was the district's obstinance: "the defendants . . . assert that they will not give to Petitioners the relief herein demanded until and unless compelled so to do by the highest Court of the State, . . . and would . . . appeal from the decision of any lower Court."[10] The district admitted the allegation.[11]

The intransigence had a history.[12] Two years earlier, district trustees had reportedly encouraged the local Native Americans to vote in favor of financing a new school with the understanding that their children would be admitted to the school if financing was approved. The measure did pass, but the trustees then relied on section 1662 to continue barring Native American students.[13]

7. (1954) 347 U.S. 483.

8. Former Political Code section 1662 (Stats. 1921, ch. 685, § 1, p. 1161).

9. Rules of the Supreme Court, rule XXVI(1), 144 Cal. l (1906). The current rule about writ petitions is similar. (Cal. Rules of Court, rule 8.486(a)(1) ["If the petition could have been filed first in a lower court, it must explain why the reviewing court should issue the writ as an original matter"].)

10. Petition for Writ of Mandate (filed Dec. 11, 1923; S.F. No. 10953), p. 1.

11. Defendants' Answer (filed Feb. 4, 1924; S.F. No. 10953), p. 1.

12. For the detailed backstory of the *Piper* case and for more fully putting the writ petition in the context of the times, see Nicole Blalock-Moore, "*Piper v. Big Pine School District of Inyo County*: Indigenous Schooling and Resistance in the Early Twentieth Century" (2012) 94 *So. Calif. Qtrly* 346; Marisela Martinez-Cola, *The Bricks before* Brown: *The Chinese American, Native American, and Mexican Americans' Struggle for Educational Equality*, Athens, GA: Univ. of Georgia Press, 2022, 106–25; Charles Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855–1975*, Berkeley, CA: Univ. of Calif. Press: 1976, 82–107.

13. Wollenberg, *All Deliberate Speed*, *supra* n. 12 at 94.

The district's position apparently had widespread support from non-Native Americans in the area.[14]

The writ petition also asserted there would be damage from prolonged litigation: An appeal from a lower court "would cause a great expense to Petitioner and would cause such delay that the . . . minor could not for a long time be admitted to school and would lose time at her age extremely valuable in acquiring an education which she needs and desires."[15]

Finally, counsel added that, because his offices were in San Francisco, filing suit in Inyo County Superior Court "would entail much greater expense to your Petitioners than the expense required in this Court."[16]

Those reasons were apparently sufficient for the supreme court. Two days after the petition's filing, the court issued an alternative writ of mandate and, less than six months later, decided the case on the merits in the Pipers' favor without even mentioning the potential procedural problem.

Why the Pipers Downplayed Their Native Heritage

According to Big Pine community members and government records, the Pipers were proud members of the Paiute Tribe and were connected to their tribal ancestry.[17] But their writ petition told a different story.

The pleading, verified by Alice's father, alleged that Alice "is an Indian," but went on to explain, "neither [she] nor her parents are now or ever have been living in tribal relations in any Indian Tribe, and do not owe and never owed any allegiance to any Tribe of Indians."[18]

Why the dissonance? Blame it on the federal Dawes Act.[19]

Section 6 of the 1887 congressional legislation bestowed United States citizenship on "every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life."

The distancing from Alice's heritage might have been "more ruse than truth,"[20] but counsel must have thought it a necessary prerequisite to claiming protection under the national and California constitutions. This approach was probably a prudent one given Alice was seeking relief from a court with a historical attitude toward Native Americans that can charitably be described as condescending.

Six years earlier, the court had concluded that a Native American was a citizen under the Dawes Act because "[h]e voluntarily lives separate and apart from any recognized tribe, he works, dresses, eats, and lives with and maintains his lawful wife and his family, *after the manner of civilized peoples*."[21] And just a week after Alice's petition was filed, the court held a Native American was not "incompetent," which would have tolled his time to file a workers' compensation claim, even though in school "he did not advance as rapidly as youths of the white race would do."[22]

Of course, those cases were not as bad as some of the court's 19th century jurisprudence. In *People v. Hall*, for example, the court declared that the "evident intention" of a statute precluding any "Black, or Mulatto person, or Indian" from testifying in a case involving "a white man" was "to throw around the citizen a protection for life and property, which could only be secured by removing him above the corrupting influences of degraded castes."[23]

The distancing from Alice's heritage might have been "more ruse than truth," but counsel must have thought it a necessary prerequisite to claiming protection under the national and California constitutions.

The *Piper* court found that, because of the Dawes Act and its *Anderson*[24] opinion, there was "[no] dispute . . . as to [Alice's] political or civil status."[25] On the condescension scale, the opinion was a bit better than past pronouncements. It did recognize that Alice "is the descendant of an aboriginal race whose ancient right to occupy the soil has the sanction of nature's code."

On the other hand, it explained, "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."[26]

In an ironic twist, or maybe a cosmic convergence, the very same day that the court issued its *Piper* opinion, the Dawes Act's citizenship conditions became obsolete. On that date, Congress passed the Indian Citizenship Act, declaring "all non-citizen Indians born within the

14. *Id.* at 95; Blalock-Moore, "*Piper v. Big Pine School District*," *supra* 94 *So. Calif. Qtrly* at 364–65.

15. Petition, *supra* n. 10, at 1–2.

16. *Id.* at 2.

17. Martinez-Cola, *The Bricks before* Brown, *supra* n. 12, at 112–14, 121.

18. Petition, *supra* n. 10, at 4.

19. 24 Stat. 388.

20. Martinez-Cola, *The Bricks before* Brown, *supra* n. 12, at 122.

21. *Anderson v. Mathews* (1917) 174 Cal. 537, 546, italics added.

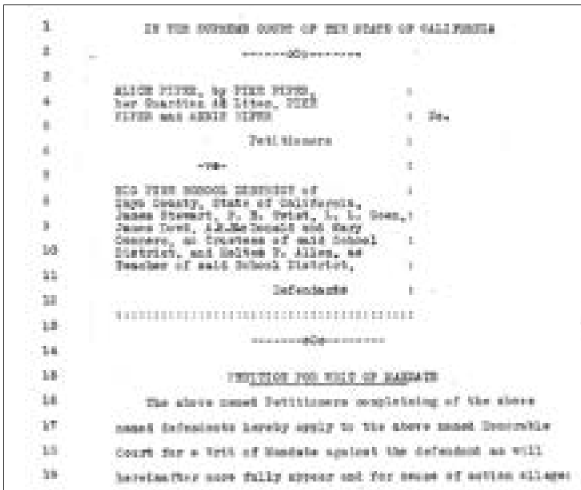
22. *Francisco v. Industrial Acc. Commission* (1923) 192 Cal. 635, 642.

23. *People v. Hall* (1854) 4 Cal. 399, 403.

24. See *supra* n. 21 and text.

25. *Piper*, *supra* 193 Cal. at 671.

26. *Ibid.*



IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[illegible]

Petitioners

-vs-

[illegible]

Defendants

PETITION FOR WRIT OF MANDATE

The above named Petitioners complaining of the above named defendants hereby apply to the above named Honorable Court for a Writ of Mandate against the defendant as will hereinafter more fully appear and for cause of action allege:

Petition for Writ of Mandate, page 1, *Alice Piper v. Big Pine School District,* filed Dec. 11, 1923. California Supreme Court files, California Secretary of State.

territorial limits of the United States be, and they are hereby, declared to be citizens of the United States."[27] Gone were the requirements of living "separate and apart" from a tribe and of "adopt[ing] the habits of civilized life."

Why the Pipers Didn't Challenge the Propriety of Segregated Schools *Per Se*

The Legislature had required the separation of Native American students from whites. Alice Piper could have broadly claimed that *any* forced racial segregation violated her constitutional equal protection guarantees,[28] but she didn't. She didn't because the argument was then a probable loser.

Fifty years earlier, the California Supreme Court had upheld a statute providing that "[t]he education of children of African descent, and Indian children, shall be provided for in separate schools."[29] The court said in *Ward v. Flood* that the statute didn't violate the equal protection clause of the federal constitution's Fourteenth Amendment: "that the races are separated in the public schools, there is certainly to be found no violation of the constitutional rights of the one race more than of the other, and we see none of either, for each, though separated from the other, is to be educated upon equal terms with that other, and both at the common public expense."[30]

There was no indication when the Pipers sued the district that the principle stated in *Ward* was vulnerable to attack. To the contrary, two decades after *Ward*, the U.S. Supreme Court in the *Plessy* case made separate-but-equal the law of the nation and — even though reviewing a statute about railway cars, not education — specifically noted with approval that establishing "separate schools for white and colored children . . . ha[s] been held to be a valid exercise of the legislative power."[31]

Unsurprisingly then, the Pipers didn't attack the prevailing separate-but-equal law at all. Rather, their attorney expressly conceded that "[t]he State may enact laws providing for the establishment of separate schools for the Indian children and the Indian children must attend such schools so established for them by the District."[32]

Also unsurprising was the *Piper* court going along with the concession and endorsing the existing law: "The establishment by the state of separate schools for Indians, as provided by the statute, does not offend against either the federal or state Constitutions. . . . [I]t is now finally settled that it is not in violation of the organic law of the state or nation, under the authority of a statute so providing, to require Indian children or others in whom racial differences exist, to attend separate schools, provided such schools are equal in every substantial respect with those furnished for children of the white race."[33]

There was no indication when the Pipers sued the district that the principle stated in Ward was vulnerable to attack. To the contrary, two decades after Ward, the U.S. Supreme Court in the Plessy case made separate-but-equal the law of the nation.

How the Pipers Won

The Pipers acceded to the general validity of statutes establishing separate schools for Native Americans and that there was in fact a California statute requiring Alice to attend a separate "Indian school." Was any argument left that could lead to the Pipers prevailing? There was one.

It might be acceptable for the state to establish separate schools for Native Americans, but, the Pipers argued, that was constitutional only if "such schools . . . conform to all the laws and requirements of the State regarding public schools, so that the Indian child is thus guaranteed the same privileges as the white child."[34] The applicable statute was requiring Alice to attend a school established by "the United States government," and the Pipers asserted that a student at a federally run school did not have the same privileges as students at a district school because the federal facility "is not part of the State

27. 43 Stat. 253.

28. The Fourteenth Amendment's equal protection clause provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

29. Former Common Schools Act section 56 (Stats. 1870, ch. 556, § 56, p. 839).

30. *Ward v. Flood* (1874) 48 Cal. 36, 52.

31. *Plessy v. Ferguson, supra* 163 U.S. at 544.

32. Petitioner's Points and Authorities on Application for Writ of Mandate to Compel the Admission of Indian Children to the Public Schools, filed Dec. 11, 1923, pp. 3–4.

33. *Piper, supra* 193 Cal. at p. 671.

34. Petitioner's Points and Authorities, *supra* n. 32, at 4.

System of public schools, is in no way under the control of the educational department of our State[,] . . . [and] is not required, and cannot be compelled, to furnish education . . . in the same subjects or the same grades, or with the same facilities as the white children are entitled to have in the District School."[35]

The district responded by arguing at some length that separate schools were constitutionally unobjectionable, an issue the Pipers had conceded. The "evil consequences, if any," of the statute requiring Alice to attend a separate school, the district said, "can only be changed by [changing] the law itself," which is the job of the Legislature, not the courts.[36]

Later, the district defended the Legislature's delegation to the federal government the task of educating Native American children. By enacting section 1662, the district contended, "The Legislature . . . has adopted the [federal] government schools as part of the system contemplated by" the part of California's Constitution requiring the Legislature to "provide for a system of common schools."[37]

The district explained without citation that the United States school was "established and maintained to furnish knowledge and training in a manner intended to produce the best results to the particular class it is attempting to educate" and that "presumably the United States government feels that the white schools are not conducted in a manner conducive to the best interests of this particular race of people, otherwise the United States government would be satisfied to leave the education of all the Indian children with the state schools."[38]

Speaking of presumptions, the district added, "The Court will not presume that our United States government would do less for the Indian children than would the governing authorities of the State of California."[39]

The district also took a turn into more explicit racism. It leaned on case law upholding the constitutionality of the statute prohibiting various races, including "Indian[s]," from testifying in a case involving "a white man,"[40] and it said, "If the Legislature could deprive an Indian of the right to testify against a white man, then it cannot be denied that it could deprive him of the right to attend a white school or even any school, because by denying an Indian the right to testify against a white man, [it] is certainly denying him of greater and more important rights and privileges than that of acquiring an education."[41]

35. *Id*. at 3.

36. Memo of Argument by Respondent, filed Feb. 4, 1924, at unnumbered pp. 3–4.

37. Respondents' Closing Brief, filed February 25, 1924, at p. 4, referring to Cal. Const., art. IX, § 5.

38. Respondents' Closing Brief, at pp. 2–3.

39. *Id*. at 2.

40. See *supra* n. 23 and text.

41. Respondents' Closing Brief, at pp. 5–6.

FILED

[illegible]

Alice Piper, by Pike Piper, her Guardian Ad Litem, Pike Piper and Annie Piper, Petitioners,

v. S.F.No.[illegible]

Big Pine School District of Inyo County, State of California, [illegible], as Trustees of said School District, and [illegible] Allen, as Teacher of said School District, Defendants.

This is an application for a writ of mandamus to compel the trustees of Big Pine School District of Inyo county, this state, and its teacher, to admit and receive into said school as a pupil thereof, Alice Piper, a female Indian child of the age of fifteen years, and a resident of said district, who has been excluded from attendance upon said school. Big Pine School District is a part of the common or public school system of this state, organized and maintained in obedience to the constitutional mandate and the general school laws of the state. The guardian ad litem, Pike Piper, and his wife, Annie Piper, persons of the Indian race and blood, are the parents of petitioner, Alice Piper. It is admitted by the answer that both parents and petitioner are citizens of the United States and of this state and that neither the petition-

California Supreme Court opinion, page 1, *Alice Piper v. Big Pine School District,* June 2, 1924. California Supreme Court files, California Secretary of State.

The Pipers' narrower, targeted attack on section 1662 worked.

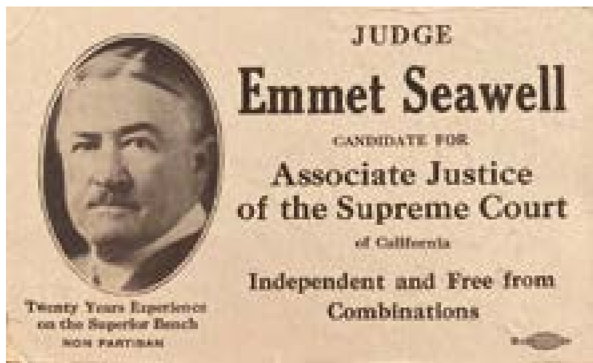
The supreme court's unanimous opinion focused on the "equal" condition of the separate-but-equal doctrine. It violates the Fourteenth Amendment's equal protection clause, the court held, to deny citizens or citizens' children "admittance to the common schools solely because of color or racial differences without having made provision for their education equal in all respects to that afforded persons of any other race or color."[42]

The lack of equality in the case before it was established because the "Indian school" that the district — and the Legislature — required Alice to attend was run by the federal government. The court reasoned that the California Constitution requires *the state* to provide a free public education and that, as the Pipers argued, the right to such an education — a right not guaranteed by the United States Constitution — was denied by compelling a student to attend the federal school, which was "without the control, supervision and regulation of the educational departments of the state."[43] Educating California children, the court concluded, "is in a sense exclusively the function of the state which cannot be delegated to any other agency."[44]

42. *Piper*, *supra* 193 Cal. at 669–70.

43. *Id*. at 669.

44. *Ibid*.



Campaign card, Emmet Seawell, 1922. *Photo: David S. Ettinger.*

They Had Warned the District It Would Lose

Even though the Legislature was on its side, the district should not have been surprised by the *Piper* outcome. The state's attorney general, Ulysses S. Webb, had twice criticized section 1662 and the district's defense of it.

A few years earlier, when the statute was amended to include the provision requiring Native American attendance at the federal school, Will C. Wood, California Superintendent of Public Instruction, specifically referencing the situation in the Big Pine School District, asked Webb for his opinion about the amendment's validity. The attorney general answered that the Native American children were entitled to attend the district's school and that "[t]he Legislature is without power in my judgment to deprive these children of this right."[45]

Later, Attorney General Webb directly rebuffed the district's request for help after the Pipers filed their writ petition. The Inyo County district attorney, who was representing the district, asked the attorney general for his "co-operation" in the case, but was met with the response, "I am of the opinion that there is no defense to this action" and "that the petitioners are entitled to the relief prayed for."[46]

At the oral argument of the case, Chief Justice Louis Myers asked about the attorney general's opinion, and the district provided to the court both of the attorney general's communications before the case was decided.[47] Moreover, the county district attorney was the only counsel listed on any of the case's pleadings. For some reason, however, the opinion in the official reports lists the attorney general and the deputy who drafted both letters as counsel for the school district.

The Opinion's Author Might Have Had an Ex Parte Contact About the Case

The *Piper* opinion was authored by Justice Emmet Seawell. A California native and former Sonoma County district attorney, Seawell was elected to and served on that county's superior court for 20 years before his election to the supreme court in 1922, defeating a sitting justice.[48] He was reelected in 1934 in another contested election. His supporters included then-Alameda County District Attorney and future United States Chief Justice Earl Warren, while then-attorney and future California Supreme Court Justice Matthew Tobriner was among those who came out against giving Seawell a second term.[49] Seawell died on the bench, almost literally. In 1939, at age 77, he excused himself from an oral argument, walked to his chambers, lay down, lost consciousness, and could not be revived.[50]

The court's *Piper* file includes evidence that Justice Seawell did some independent research aside from consulting case law and treatises. A letter to Seawell from California Superintendent of Public Instruction Wood acknowledges receipt of a Seawell "communication" some six weeks after oral argument in the case.[51] The court file does not contain Seawell's "communication" nor any indication that the parties were made aware of the contact.

The letter reported Wood's "reply" to Seawell that "the course of study for the elementary schools . . . is made by the local school board" and that "California has no uniform course of study." A district filing had outlined in detail the "course of study for United States Indian Schools."[52] It's possible Seawell was looking for a way to demonstrate that the curriculum of federal "Indian schools" was inferior to the curriculum of California schools, a point that would have bolstered the court decision's thesis that the district did not offer equal educational opportunities to Alice. If so, he apparently found the superintendent's letter provided insufficient support for that approach. Instead, the court's opinion relied solely on the significance of the federal schools being beyond the state's control.

45. Letter from California Attorney General Ulysses S. Webb, by Frank English, Deputy, to Will C. Wood, Superintendent of Public Instruction, Oct. 17, 1921, found in the Secretary of State's file for this case, attached to the Respondents' Closing Brief. See also *post*, fn. 47 and text.

46. Letter from California Attorney General Ulysses S. Webb, by Frank English, Deputy, to Jess Hession, district attorney, Inyo County, Jan. 7, 1924.

47. As described in Respondents' Closing Brief, p. 8.

48. J. Edward Johnson, *History of the Supreme Court Justices of California,* v. II, 1900–1950, San Francisco: Bender-Moss, 1966, 81–2. Supreme Court justices were chosen in contested elections until after 1934, when California adopted the current retention election method under which justices are appointed or nominated by the governor and are subject to a "yes" or "no" vote by the electorate. Seawell was a Democrat, but the election, although contested, was nonpartisan.

49. *Id.* at 82–4.

50. *Id.* at 84.

51. Letter from Will C. Wood, Superintendent of Public Instruction, to Justice Emmet Seawell, Mar. 31, 1924, acknowledging "receipt of your communication of March 21." The court's minutes show the case was argued on Feb. 4.

52. Memo of Argument by Respondent at unnumbered, 8–9.

COURT RULES PUBLIC SCHOOLS OPEN TO INDIANS

INDIAN CHILDREN WIN VICTORY

AFTER several successful preliminary contests in local courts in which they contended for public school rights for their children, California Indians have won a favorable decision from the state supreme court which settles the school question for all time.

For some time the Indian people have been indignantly aware that courses in government schools were entirely inadequate for the training of their children. In various parts of the state they have endeavored to enter their children in the public schools, only to meet with rebuff and refusal, the contention of school officers being that where government schools were provided for the Indians they were not entitled to public school privileges.

When this question first arose F. G. Collett, executive representative of the Indian Board of Cooperation advised the perplexed Indians that as citizens of California they were entitled to entry to any publicly supported institution pointing out that the establishment of federal schools for them in no sense invalidated their claim to public school rights. The board gave its support to the Indians in several cases where the question was tested in local courts. In each case the Indians won a favorable decision.

Sacramento Bee, June 3, 1924.

Meryl Picard, chairwoman of the Bishop Paiute Tribe, speaking at the centennial event, June 1, 2024. *Photo: David S. Ettinger.*

The *Piper* Decision's Impact

The Legislature's recent resolution honoring the *Piper* case said the supreme court's opinion "not only changed the treatment of Indigenous pupils in California schools, but also set a precedent that was later cited by the United States Supreme Court in *Brown v. Board of Education of Topeka* . . . , which declared racial segregation in public schools unconstitutional."[53]

That statement goes overboard. *Piper* was *not* cited in the *Brown* opinion. Nor should it have been. The California Supreme Court had expressly approved of the separate-but-equal principle that the *Brown* court jettisoned.

The first part of the statement — that *Piper* "changed the treatment of Indigenous pupils in California schools" — is more accurate. The opinion plainly suggested that, if *the district* had established the "Indian school," there would have been no problem excluding Alice from the district's new school. But California's school districts apparently didn't follow up on the implicit invitation to build separate facilities and perpetuate discrimination. Rather, *Piper* seemed to promote integration, grudging or otherwise. The decision "did not result in large numbers of segregated Indian schools. By 1931, when more than 2,800 Indian children were enrolled in California public schools, there were only seven segregated Indian schools with ninety-two students in the state."[54]

In its briefing, the district warned the supreme court of dire consequences if section 1662 were invalidated: Such a ruling "would be to upset the entire school system of the State of California, thereby placing the tax burden of the education of all Indian children upon the people of the State, which is now being voluntarily borne by the government of the United States."[55] And a newspaper report about the opinion said the decision "will have an upsetting effect upon many public school districts within the state."[56] The Supreme Court was unsympathetic, instructing the district to tell it to the Legislature.[57] It seems doubtful that the opinion caused any widespread disruption.

53. Sen. Conc. Res. No. 145.

54. Wollenberg, *All Deliberate Speed*, *supra* n. 12, at 98, citing California State Department of Education Biennial Report of 1932, at 32.

55. Respondents' Closing Brief, p. 1.

56. "Exclusion of Indians From Public School," *Courier-Free Press* [Redding, CA], June 3, 1924, 4.

57. *Piper*, *supra* 193 Cal. at 674 ("The economic question is no doubt an important matter to the district, but it may very properly be addressed to the legislative department of the state government").

***

Piper has been called "a mixed decision."[58] That might not be wrong, but it's a glass-half-empty view of the case. Preferable are the descriptions of the case as being "one step in the history of minority education rights, one that was vital to educational equality for Indians throughout California," and of Alice Piper as "the name that will be forever associated with the struggles of Indian children to gain access to public education in California."[59]

Focusing on the opinion's restatement of separate-but-equal law fails not only to recognize the pre-*Brown* historical context in which the case was litigated but also ignores the psychological impact of the decision.[60]

Statue of Alice Piper on the grounds of Big Pine School. *Photo: David S. Ettinger.*

In a time of ingrained discrimination, having the state's highest court order a Native American student admitted to a previously white school must have had a profound empowering and culturally reaffirming effect on California's Native American communities. The pride exhibited at the Big Pine centennial celebration testifies to that effect.

I spoke at the *Piper* centennial, and I concluded with these words: "I can't imagine the Piper family's bravery in speaking truth to power the way they did, nor the satisfaction of having power respond so agreeably. They are true civil rights heroes. There's a saying that too many people must beat the odds and not enough people are working to change the odds. Well, the Piper family beat the odds in getting a favorable ruling from California's highest court and, in beating the odds, they changed the odds for children throughout California and the United States." ★

58. Elaine Elinson and Stan Yogi, *Wherever There's Fight: How Runaway Slaves, Suffragists, Immigrants, Strikers, and Poets Shaped Civil Liberties in California*, Berkeley: Heyday, 2009, 132.

59. Blalock-Moore, "*Piper v. Big Pine School District of Inyo County*," *supra* 94 *So. Calif. Qtrly* at 349, 369.

60. I plead guilty to that offense. See David Ettinger, "The Quest to Desegregate Los Angeles Schools" (Mar. 2003) *Los Angeles Lawyer*, at 56 (saying about the *Piper* case, "The supreme court still had no problem with segregated schools").

DAVID S. ETTINGER is Of Counsel at the appellate law firm Horvitz & Levy and is the primary writer for AtTheLectern.com, the firm's blog about the California Supreme Court. He serves on the board of directors of the California Supreme Court Historical Society.